

The World Bank's Environmental and Social Safeguards

A critical gender assessment & recommendations for International NGOs and Civil Society Organizations

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Executive Summary

The Bank's Environmental and Social Policy (ESP) applies to the Bank and its Borrowers, it is mandatory for all projects supported through *Investment Project Financing*¹. The Environmental and Social Standards (ESS) are essentially intended to assess, avoid and minimize risks and to alert all project stakeholders to the complex social and environmental impacts of development. After a 20 year 'reform lull' the World Bank is caught up with its peers and revised and updated its ESS following a four-year period of consultation with client borrowers and other stakeholders. The overhaul represents an important junction in defining not only what its standards cover, but also the processes and accessibility of shaping their measurement, compliance and implementation.

There is growing recognition in the development community that safeguard standards are needed for people and planet, and not just for profit; that safeguards need gatekeepers to oversee their spirit and letter, but achieving those objectives greatly depends on stakeholders' capacity to manage risks directly; and that minimizing social risks and optimizing positive impacts needs the engagement of both women and men equally, working together for the common good. Safeguards are only as effective as interpreted and applied, they begin with policy commitments, and are operationalized through processes, management plans, organizational capacity, M&E processes and, finally, disclosure and documentation. Underpinning this commitment with a strategic gendered approach will help to ensure a level playing field, fairness among and between communities and improve the efficiency, effectiveness and sustainability of project investments. The up-graded WB's ESS introduce three new requirements encapsulated in ESS2, ESS6 and ESS10. These three can make significant contributions to the advancement and protection of women's land and property rights and the sustainability of primary livelihoods that they secure from these rights.

This is a critical juncture for international NGOs to ensure that the WB staff-generated Guidance Notes help operationalize the ESS to the highest aspirations and demands of civil society – including the absolute centrality of the social aspects of development and the gender concerns within that. The gender analysis of each Standard alerts the reader to key inputs to these guidance notes to secure quality gender-equitable and gender-relevant operations of the ESS.

The ESS are only as strong as the political will that supports them. INGOs can position themselves to work through multiple channels to keep the pressure on governments to establish and commit to their own high standards and to respect and protect the rights of women and men. The onus and effectiveness of the ESS rests squarely on national legislation and regulations; on abilities to comply with, to monitor and to document and to convene robust and fair grievance processes. This has important implications for the Financial Intermediaries that serve to channel funds from the World Bank. The authors make the case for a comprehensive influencing approach to hold governments, investors and financial intermediaries to account as well as the wider WB/IDA/IFC/MIGA family – these two considerations – WB and national policy - go hand in hand.

Structure of paper

INGOs have the unique position of collaborating closely with civil society organization partners and agencies at the national and grassroots level on the one hand, while on the other hand holding court with global players through their worldwide influencing network. This unique position needs to be strategically leveraged in all interactions with the World Bank's environmental and social standards processes so as to secure clear commitments on gender equitable outcomes. This paper is structured against this strategic backdrop and identifies three main entry points:

Entry point I: Influencing the World Bank

- Inputs to the WB's ESS guidance notes - to ensure gender responsiveness of the ESS
- Inputs to the WB's independent Inspection Panel – to ensure gender sensitivity in response to demands from affected people and communities

Entry point II: Influencing national governments and agencies

- Influencing financial intermediaries' gender-responsive policies and procedures
- Influencing and strengthening member government policies and procedures

Entry point III: Working with and through partner Civil Society Organizations

- Deepening gender-sensitive local ownership through CSO capacity development
- Facilitating timely resolution of concerns raised by project affected communities

Since there are multiple intersecting interests in the ESS within the World Bank, NGOs will need to develop a holistic and comprehensive strategy to effectively impact and influence the operationalization and enforcement of the new standards in their totality. There are many moving parts and they all need to be tackled at the same time. As well, the progress that some of the regional development banks are making are important gauges for momentum; the IADB, for example, has been most engaged in expressing policy, practice and impact as far as gender equality goes, and it is about to overhaul its ESF.

The paper devotes at least one page to each ESS to alert readers to the gender responsive considerations that the GNs could address. The details naturally can only be developed once the WB has released them in their entirety.

Having them in place is a critical first step, but it is *only* one aspect of the larger ecosystem of the ESS framework (see figure 1). Operationalizing the guidance notes through holding governments and financial intermediaries (FI) to account is indispensable because this is where World Bank-financed projects get implemented – it is where effectiveness is truly tested. And while this paper does not address tactics (this will have to be determined on a case by case basis), it identifies and highlights issues and processes for attention and follow up.

Compliance with the ESS guidance notes is primarily contingent on political will; political will to protect the most vulnerable constituencies in the country and political will to manage and maintain a sustainable approach to natural resources management and habitats. Note that the Bank has determined to give precedence to borrowing member countries' existing systems of standards for identifying and managing environmental and social impacts in line with the international development community's commitment to ensure that country-ownership will drive development in the 21st century. This presents both an opportunity and a challenge for civil society to leverage the WB's own compliance

and its concomitant set of Environmental and Social Standards and to upgrade borrowing member countries' systems to make them at a minimum equivalent to, if not superior, to the Bank's.

What happens when these standards fail to safeguard the environmental and social interests of the communities that INGOs works with? This is where the grievance protocol, arbitration procedures, Inspection Panel proceedings, whistleblower policy, transparency and access to judicial processes become critically important. And again, while the paper does not address tactics, it highlights avenues and relevant frameworks for attention. The authors have also flagged points for attention where:



there is a potential high risk in relation to women's rights and rights to land, and



the WB ESS framework and commitments to provide support and assistance to women.

Finally, the paper examines the Standards of the AIIB and raises issues of concern going forward.

Setting the Stage

1. The Environmental and Social Framework (ESF) – the good, the bad, and the ugly

The ESF comprises the Vision for Sustainable Development, the Environmental and Social Policy, Environmental and Social Procedure, a Bank Directive on disadvantaged or vulnerable individuals for information and the Environmental and Social Standards (ESS) for borrowers. The Bank issued its Bank Directiveⁱⁱ ‘Addressing Risks and Impacts on Disadvantages or Vulnerable Individuals or Groups’ in 2016, this sets out mandatory requirements on Bank staff relating to the identification of individuals or groups and the process whereby differentiated measures will be developed to address particular circumstances. The Directive goes into effect at the same time as the ESS.

The Environmental and Social Standards are essentially intended to assess, avoid and minimize risks and to alert all project stakeholders to the complex social and environmental impacts of development. Their significance grows relative to the levels of risk; this is particularly important when we consider the combined effects of among other challenges (i) climate change impacts on natural resources and land uses along with the significant changes in planetary water systems and (ii) the unprecedented movements of people displaced through insecurity or fear (economic or climate change induced). These two factors, among others, contribute to high-risk environments at local, national and global levels. Applying a risk lens to project design and implementation is without doubt a key first step to better align the costs and benefits of development with human ecology and long-term sustainability. The positive side to these Standards is that they should enable investment decisions to have the *foresight* to take account of a range of risks, not just as part of social responsibility but as a way to develop and implement quality risk-management strategies; to work closer with local stakeholders that brings in gendered perspectives and *insight* for quality projects; and provides for a framework of *oversight* to ensure that humans and ecology work optimally for the benefit of all.

On the minus side, there is a real danger that (a) the standards are treated as an end in themselves and not as the beginning of a holistic process towards a sustainable end; (b) the standards apply to a smaller and smaller proportion of WB-approved investments, loans and grantsⁱⁱⁱ and (c) the standards become yet another set of bureaucratic compliance measures to maintain and protect the status quo and may not allow for, or may even prevent, innovative and creative responses (which could be high-risk) to transform gender relations, equity and production systems.

At the same time, INGOs needs to be aware that (a) it is likely that high risk project development that does not lend itself to the new standards approach will be financed by other multilateral or bilateral (development) banks with lower environmental and social standards requirements and thresholds (like the newly created Asian Infrastructure and Investment Bank); and (c) does not consider human rights principles through the open aperture of its ESS lens. In other words, the time and effort that INGOs expend on the WB’s ESF and Environmental and Social Standards needs to be in proportion to a changing financing environment in international development and the leverage the WB can still realistically exert to influence the approach to environmental and social standards of other finance mechanisms.

Box 1: Recent Revisions to Safeguard Systems at the World Bank and Other MDBs

- World Bank Operational Policy (OP) 4.11, Physical Cultural Resources (2006); Revisions to and clarifications of OP 4.01, Environmental Assessment; OP 4.37, Safety of Dams; and OP 4.03, World Bank Performance Requirements (2013)
- ADB Safeguard Policy Statement (July 2009)
- IDB Environment and Safeguards Compliance Policy (2006), Policy on Indigenous Peoples (2006), and Policy on Gender Equality in Development (2010).
- IFC Sustainability Framework, consisting of Sustainability Policy and Performance Standards (2012)
- EBRD Environmental and Social Policy (May 2014)
- EIB Statement of Environmental and Social Principles and Standards (2009), and Environmental and Social Handbook (December 2013)

2. Framing the gender parameters of the ESS

Both ESP and ESS need to be applied in the context of the World Bank's own recognition that a lot more needs to be done on gender and development fronts^{iv} and its strategic commitment to apply its 2015 gender strategy. There needs to be alignment throughout the GNs to the Bank's own gender strategy – to better harmonize the ESS in-house.

The 2015 WBG gender strategy recognizes that stronger and better-resourced efforts are needed to address key gaps between females and males, in IDA countries and beyond. In particular, the strategy calls for IDA-supported activities to sharpen the focus on addressing inequalities in access to jobs and control over productive assets. And it steers activities and their monitoring towards IDA-country outcomes and results. Doing so requires strengthening the country-driven approach, developing a better understanding of what works, and leveraging partnerships, particularly with the private sector.^v

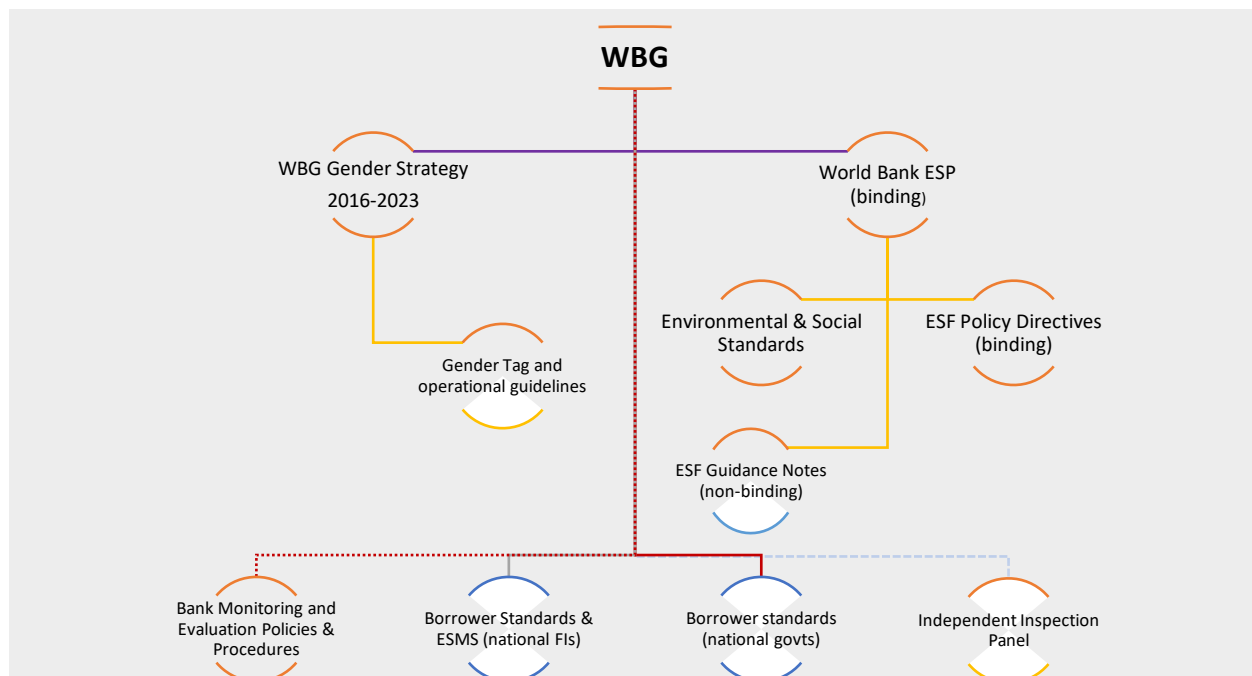


Figure 1: The WB ESS Ecosystem^{vi}

3. Applying a human rights lens to further integrate gender issues

Human rights cannot be parsed out to address selective/specific human rights, denying one ‘group’ rights and granting them to another. Human rights must be understood to mean that fundamental freedom and rights are causally indivisible, interdependent, and interrelated. A succession of legal opinions from WB general counsels^{vii} have clarified and endorsed the Bank’s evolving engagement in the human rights arena. They have pointed out that there are many areas of the Bank’s external activities that have a de facto human rights dimension which contribute to the realization of human rights in different areas, even though its policies, programs and projects have never been explicitly or deliberately aimed towards the realization of human rights.

In light of the emergence of rights-based approaches to development, and given the WB’s increasing commitment to human rights issues, the organization will need to develop its own set of human rights principles and standards.^{viii} Addressing gender considerations is and remains integral to a human-rights approach to international development, it includes the treatment of relationships between women and men who hold different positions of power and privilege – something that the rights-based approach can unequivocally address in making sure that basic entitlements, security and freedoms are provided to all and especially to the weakest and most vulnerable.

A close reading of the new ESF makes it clear that the World Bank struggled to properly place and provide the various human rights aspects of its operations in an unassailable context. It is quite aware that the international community is pushing it to embrace and support the realization of human rights as expressed in the Universal Declaration of Human Rights, and it responded to this demand by including in its non-binding Vision statement a paragraph on human rights and by embracing actions designed to remove barriers against those who are often excluded from the development process, such as women, children, persons with disabilities, youth and minorities.^{ix} And it followed up by making a number of human rights references, such as in ESS7, where the Bank explicitly states that one of its objectives is

“To ensure that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture and natural resource-based livelihoods of indigenous peoples/sub-Saharan African Historical Underserved Traditional Local Communities”

4. Gender relations and women’s rights across all the Standards

The Standards must be seen and applied as a total package, and gendered analyses and priorities cut across all the Standards. The WB has analysed implementation implications for the Bank and Borrowers and has already noted that implementing ESS1, ESS2 and ESS10 will require more resources. To provide readers with a holistic interpretation of the ESS, the authors suggest that cross-referencing among sub-groups of the Standards might be useful, as presented below.

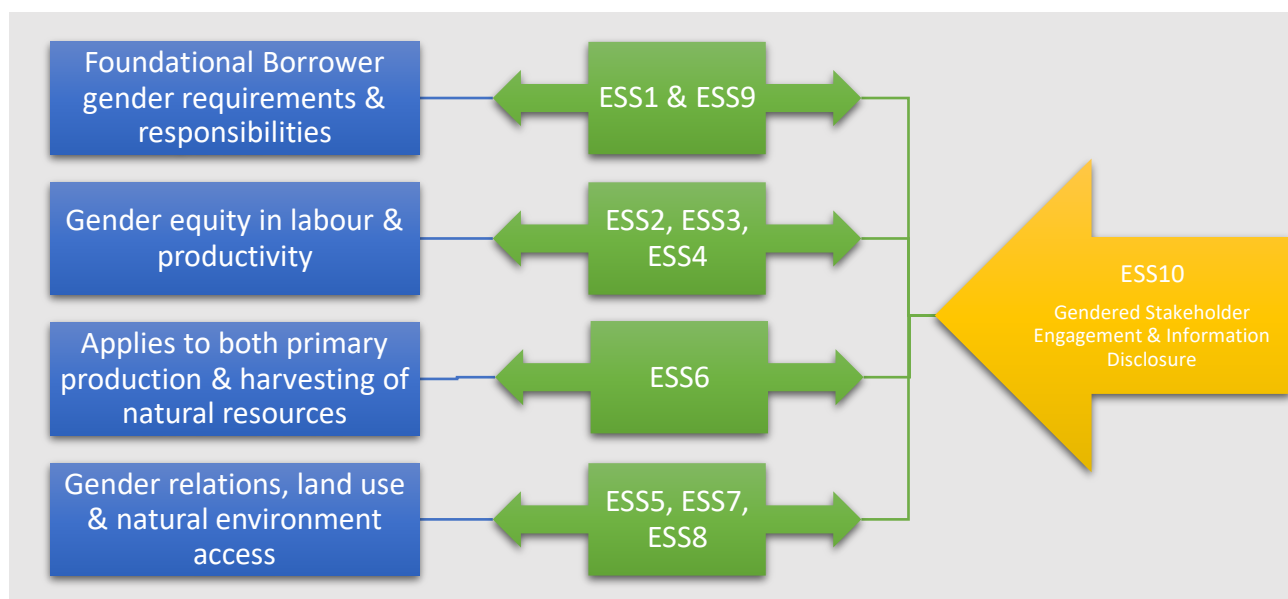


Figure 2: Cross cutting nature of gender in the ESS

The figure above categorizes the gender focus of each ESS, and suggests the following:

- a) ESS1 and ESS9 essentially mirror each other; ESS1 applies to all borrowers and establishes the Environmental and Social Commitment Plan (ESCP) to address potential risks and impacts of the project. ESS1 requires social, legal and institutional assessments where a project supports land titling or other activities intended to determine land rights. ESS9 applies to all Financial Intermediaries (FIs) which channel financial resources to a range of economic activities across industry sectors (ESS9.4) and they, in turn, are required to put in place the Environmental and Social Management System (ESMS) to screen, review, implement and monitor all projects. Both ESS1 and ESS9 require assurance that a project grievance mechanism is in place in accordance with ESS10.
- b) ESS2, ESS3 and ESS4 focus on labour productivity, resource efficiency and health and safety concerns (ESS2 addresses occupational health and safety while ESS3 also addresses pollution health impacts); these have clear gender-differentials which need to be recognized and addressed.

- c) ESS5, ESS7 and ESS8 focus on the direct links between people and natural resources, these Standards frame concerns around land and gender relations, roles, responsibilities and rights.
- d) ESS6 is particularly important to this paper because it straddles both (b) and (c) and is the Standard that most directly relates to the livelihoods of women and their communities living off primary production.
- e) ESS10 is an essential underpinning Standard that applies to every single Standard and is the lever to ensure that civil society engagement, stakeholder consultation, gender and vulnerability mapping and disclosure of information is availed to men and women alike.

Entry Point I: World Bank

5. Hold the World Bank to the ESS through its Gender Policy and Strategic Plan (and vice versa)

The WBG, primarily through the IDA, expects to provide strategic support to close gaps between men and women. It explicitly states that it will work to (i) change attitudes and behaviors related to gender identity by applying lessons from different cultural contexts, and to sustain activities through its financing instruments, policy analysis and advisory services; (ii) close opportunity and outcome gaps between men and women across many sectors and developing key gender indicators; such as girls' school enrollment, maternal mortality, labor force participation, and asset ownership; and (iii) draw on gender analysis and projects in all regions and inform both the public and the private sectors, and identify both gender issues and outcomes that are particular to a specific region and those that are independent of cultural contexts and are representative of a heterogeneous set of countries.

IDA commits to draw on the analytical resources available in the WBG, and to help push the knowledge frontier in areas such as identifying what works to close economic gaps between men and women, and what does not^x. In other words *IDA within the WBG is a natural point of reference for ensuring that the ESS advance and protect women's rights and opportunities.*

Civil society organizations can contribute to ensuring that the GNs are closely aligned with the WB's gender policy, gender strategy^{xi} as well as the Gender Tag and operational guidelines. This is critical because the *Gender Policy applies to all WB projects and spells out the principles for achieving gender parity*, the operational requirements for stakeholder involvement and partnership in the design, implementation, and evaluation of projects. The 2015 strategy places a stronger emphasis on IDA country outcomes and results, which require: strengthening the country-driven approach, with better country-level diagnostics, policy dialogue, and sex-disaggregated data; developing a closer understanding of what works for gender equality by enriching the evidence base; then building more systematically on what works and bringing the evidence to task teams and clients; rolling out and using a more robust monitoring system; and leveraging partnerships for effective outcomes, particularly with private sector and UN agencies.

The WBG Gender Strategy emphasizes the importance of defining the gender gaps that Country Partnership Frameworks (CPF) focus on, the approaches to address and track them in the analytical and operational portfolio, as well as clear result-chains on gender equality at the project and strategy level. It also highlights the critical role of country ownership since achievements on closing key gender gaps will only be sustained if they are integrated in countries' own development agenda and institutions.

6. Hold the WB gender-accountable through its ESS guidance notes

The Guidance Notes (GNs) are designed for internal use by World Bank task teams and are most likely to be presented as a checklist template against each paragraph of each standard. As such they are very legalistic, focusing primarily on each 'individual tree' and less so on 'the forest'.

The GNs are *not* open to a consultative process, however the Bank welcomes dialogue with and advice from selected institutions and experts as part of the completion of the ESF's reform process. It is anticipated that the draft guidance notes will be posted online before being finalized.

The GNs are *not binding*. Rather, they are ‘living documents’ that are expected to be adjusted with project experience. This suggests that, with the right approach to additional inputs there may be reasonable, but limited opportunities to make the GNs a potential vector for a more gender-responsive implementation of the Standards over time as good practices supersede previous Guidance Notes.

What follows is a Standard-by-Standard gender assessment highlighting specific gender-related concerns.

ESS 1: Assessment and Management of Environmental and Social Risks and Impacts

The main **objectives** include efforts to “identify, evaluate and manage the environment and social risks and impacts consistent of the project in a manner consistent with the ESSs”, and to “adopt a mitigation hierarchy approach to anticipate and avoid risks and impacts”, and where avoidance is not possible to “minimize or reduce risks and impacts to acceptable levels”, and where “risks and impacts have been minimized or reduced, to mitigate”, and where significant residual impacts remain, “compensate for or offset them where technically and financially feasible”. It further stipulates that differentiated measures should be adopted so they do not fall disproportionately on the disadvantaged or vulnerable, and that they are not disadvantaged in sharing the benefits of the projects and opportunities resulting from the project. Finally, it calls on utilizing national environmental and social institutions, systems, laws, regulations and procedures in the assessment, development and implementation of projects, and it calls to promote improved environmental and social performance.

Borrower is responsible for assessing, managing and monitoring environmental and social risks and impacts throughout the project cycle and conducting the Environmental and Social Impact Assessment (ESIA)

NOTE: Key project document produced by all borrowers is the **Environmental and Social Commitment Plan (ESCP)**

The ESCP must commit to addressing gender equality by (i) building staff capacity and expertise; (ii) allocating adequate financing and other resources; (iii)

▶ There are multiple references in ESS1 about “disadvantaged and vulnerable people and groups”, and it states explicitly that they should not be disadvantaged in sharing development benefits and opportunities resulting from projects.^{xii}

▶ ESS1(28.b) explicitly states that “risks or impacts associated with land and natural resource tenure and use, including land use patterns and tenurial arrangements” (refer to ESS5) will be part of all social impact assessments.

- Areas of interventions on behalf of women and women’s land rights should be made via GNs in response to ESS1 (Assessment and Management of Environmental and Social Risks and Impacts). They include the following assessment areas:
 - Environmental Health and Safety Guidelines
 - The examination for all Category A projects should automatically trigger the appointment of advisory panels of independent gender specialists to advise on all aspects of the project via-a-vis the ESIA
 - Category A projects should automatically assess the cumulative (negative) project impacts affecting women and their access to and tenure/rights of land rights
 - Where “Social Risks and Impacts, including threats to human security through the escalation of personal, communal, or inter-state conflict, crime or violence are addressed and where risks fall disproportionately on:
 - (i) individuals and groups who, because of their particular circumstances, may be disadvantaged or vulnerable;
 - (ii) where prejudice or discrimination toward individuals or groups who may be disadvantaged or vulnerable may restrict them access to development resources or project benefits;

monitoring and evaluating gender-differentiated results

- (iii) where negative economic and social impacts relating to the involuntary taking of land or restrictions on land use, land and natural resource tenure/tenorial arrangements, land access and availability, food security, land values may occur;
- (iv) and where risks relating to conflict and contestation over land and natural resources may negatively impact on the health, safety and well-being of workers and project-affected communities;

- ESS1 considers the development of management tools that the Borrower is expected to use to develop and implement agreed upon measures and action. According to the WB this could include environmental and social management plans, management frameworks, operational policies, operational manuals, management systems, procedures, practices. Substantive GNs that define desired outcomes in measurable terms against baseline conditions could be drafted with specific references to women and, where appropriate, to women's land rights;
- Gender-responsive monitoring, accountability and reporting: The extent and mode of gender-based monitoring should be defined, including the establishment of institutional arrangements, systems, resources, timelines, and personnel to ensure that gender differences and women's rights are taken into account and are being observed/protected. Additionally, social and environmental risks and impacts, and compliance requirements could be defined;
- ESIA entry points for gender relations/differentials and women's land rights include the following:
 - (i) Environmental and social audit – to determine the nature and extent of all environmental and social areas of concern at a project or activities;
 - (ii) Hazard and risk assessment – identifying, analyzing and controlling for hazards associated with the presence of dangerous materials;
 - (iii) Cumulative Impact Assessment – impact of the project in combination with impacts from other relevant past, present and reasonably foreseeable developments, as well as unplanned developments;
 - (iv) Social and Conflict analysis – where a project may exacerbate existing tensions and inequality within society, where it has a negative effect on stability and human security;
 - (v) Mitigation measures and analysis of alternatives to project proposal(s).

▶ The ESCP requires gender sensitive analysis and gender-responsive processes to be built into all the ESS management processes – throughout the project cycle. This entails conducting gender-sensitive environmental and social assessments and stakeholder consultations (refer to ESS 10). ESS GNs will need to seamlessly interlink gender-sensitive stakeholder consultation and engagement into each ESS.

▶ The national environmental and social framework is a key point of reference, this includes national policies, laws and protocols relating to human rights; labour rights; women's rights and the rights of indigenous communities. It also calls into reference the various international conventions that nation states are

signatories to. Projects will need to refer to the countries' national gender strategy or equivalent national commitments to aid in assessing gender risks.

- The GNs can ensure that gender assessment questions guide WB staff and Borrowers to consider the following:
 - What possibility is there that the project might reduce or increase risk to women's access to or control of resources, entitlements and benefits?
 - What possibility is there that project can adversely affect men and women in marginalized or vulnerable communities?
 - What is the possibility that the project might ignore gender roles and the abilities of women or men to participate in the decisions/designs of the project's activities (such as lack of time, child care duties, low literacy or educational levels, societal discrimination)?
 - What gender roles and abilities of women or men are recognized to benefit from the project's activities (e.g. does the project criteria ensure that it includes minority groups or landless peoples) by this project?
 - Might the Project potentially further deepen gender discrimination or the exclusion of minority and powerless groups?
 - Would the Project potentially limit women's ability to use, develop and protect natural resources, considering their different roles and priorities in accessing and managing environmental goods and services?
 - Is there a likelihood that the proposed Project would expose women and girls to further risks or hazards?
 - The Project shall not directly or indirectly lead to/contribute to adverse impacts on gender equality and/or the situation of women. Specifically, this shall include (not exhaustive):
 - Sexual harassment and/or any forms of violence against women - address the multiple risks of gender-based violence, including sexual exploitation or human trafficking;
 - Slavery, imprisonment, physical and mental drudgery, punishment or coercion of women and girls;
 - Restriction of women's rights or access to resources (natural or economic);
 - Recognize women's ownership rights regardless of marital status - adopt project measures where possible to support to women's access to inherit and own land, homes, and other assets or natural resources.
- Project ESCPs may be required to seek the input of Expert Gender Stakeholders and include their recommendations in their design. The called-upon experts may need to facilitate stakeholder consultations, and conduct gendered stakeholder mapping.
- WB should require project baselines for environmental and social risks or impacts that are gender-differentiated. Understanding that the Standards need to be operationalized through compliance and reporting, the Bank will need to work towards establishing the required personnel and resources to conduct verifiable M&E processes.

▶ *"The borrower may request technical assistance from the Bank to strengthen Borrower capacity, or the capacity of other responsible*

agencies for resettlement planning, implementation and monitoring. [This] assistance may include staff training, assistance in formulating new regulations or policies relating to land acquisition or other aspects of resettlement, financing for assessments or other investment costs associated with physical or economic displacement, or other purposes.”^{xiii}

GNs should require Project Leads and Borrowers to

- ✓ Ensure that the project aligns with the national gender strategy (if host country has one);
- ✓ Align the project with other national development strategies that promote equal opportunities, whether in the intervention region or in the sector;
- ✓ Refer to lessons learned from comparable development projects or programmes in the region that provide useful context on gender issues, risks and opportunities;
- ✓ Refer to, for instance, the national report to The Committee on the Elimination of Discrimination against Women^{xiv} (CEDAW) for data or context relevant to the project.

ESS 2: Labor and Working Conditions

The WB has introduced a separate Labor and Working Conditions Standard but it falls short of its promise when assessed against the much-needed fundamental shift in labor-management relations in WB investment project financing. ESS2's deficits may be less the result of ill intentions on the part of the WB and more a lack of familiarity with today's labor-management relations and the procedures and processes that govern today's employment rights and realities. The World Bank fails to make any reference in its treatment of "Worker's organizations" in ESS2.16 to the International Labor Organization (ILO), the international standard-setting body on labor, and its eight fundamental rights conventions, and/or its four core labor standards. This is troubling because the other MDBs that have labor safeguards include references to the ILO's core labor standards conventions, which all states belonging to the ILO must respect and comply with whether they have ratified the specific conventions or not.

The scope depends on the type of employment relationship and negotiated contractual agreements between project workers and the Borrower and applies to primary suppliers, migrant workers as well as part time, temporary and seasonal workers.

- Projects shall apply the principles of nondiscrimination, equal treatment, and equal pay for equal work, specifically:
 - Where appropriate for the implementation of a project, paid, volunteer work or community contributions will be organized to provide the conditions for equitable participation of men and women in the identified tasks/activities.
 - Introduce conditions that ensure the participation of women or men in project activities and benefits based on pregnancy, maternity/paternity leave, or marital status.
 - Ensure that these conditions do not limit the access of women or men, as the case may be, to project participation and benefits.
- ▶ ESS2 (16) has implications on freedom of association. The WB points toward "alternative mechanisms" to protect workers' rights without explaining what the alternatives might be. What is clear is that the critical freedom of association can be ignored in WB-financed investment projects with impunity by borrowers if national laws do not fully protect this right, even though the policy asserts that child labor, forced labor and gender and other types of discrimination will not be tolerated in Bank projects, no matter what national laws say. This introduces a troubling double standard with regard to which of the ILO-defined fundamental workers' rights must be respected in Bank projects. The GNs need to be consistent and clear to avoid a pick-and-choose approach by the borrower at the expense of project workers' right right to freedom of association of their choosing, this has important implications for women who tend to be employed in low-paid, low-security jobs.
- ESS 2 (12) "Terms and conditions of employment" requires a more consensual approach. Termination should not be a unilateral decision made and announced by the borrower, but should be considered and executed only after the project workers' bargaining agent/union has had a chance to review the reasons and details for the planned termination and both the borrower and project workers' bargaining agent have agreed on the terms of the termination.
- ESS 2 addresses "Non-discrimination and equal opportunity" in very generic terms. Given the proclivity of sexual harassment and violence in the work place, NGOs should demand a zero tolerance for any sexual harassment and violence, this has

no place in World Bank-financed investment projects. The borrower should also be required to offer trainings to both management and project workers about what is and what is not acceptable behavior at project sites and hold the borrower accountable for providing a work place free of any form of harassment and violence as more women seek formal employment alongside men.

- ESS 2 (15) states that the borrower will provide “appropriate measures of protection and assistance to address the vulnerabilities of project workers, including specific groups of workers, such as women, people with disabilities, migrant workers and children (of working age in accordance with ESS)”, INGOs should draw the World Bank staff’s attention to the need for concretizing the looked-for measures in its GNs to make them tangible and meaningful.
- The references to the Grievance mechanism (Paragraphs 21, 22, and 23) reflect an outdated approach to labor-management relations. In its present form, it is merely a management tool to dominate and, when necessary, limit the extent to which both potential grievances – as defined as any difference arising out of the interpretation, application, administration or alleged violation of a mutually agreed-upon working contract, whether negotiated in a collective agreement or bilaterally between management and labor - by project workers, irrespective whether they are project workers, contracted workers, or community workers – can be addressed and settled to terms favorable to the borrower. While paying tribute to the criticality of responding expeditiously to grievances, the relevant paragraphs lack fundamentals and clarity (what, for example, constitutes a grievance mechanism that is “properly designed and implemented”?) indispensable for their fair and balanced consideration and resolution. These will need to be addressed in the GNs from a gendered perspective.
- INGOs can stand by the principle that grievance mechanisms are only objective, independent and fair if they are NOT tied to or dominated by one of the parties involved. A mechanism exclusively devised by the borrower – as has been proposed – is destined to fall short of that requirement and can reinforce power inequities. Grievances by their very nature are very project-specific, and utilizing existing grievance mechanisms will not and cannot adequately respond to them. That is nowhere more evident when addressing grievances across the “project workers-contract workers-community workers’ spectrum” since workers of the latter categories are routinely subject to the greatest exploitation and abuse, and are more frequently the victims of unsafe workplaces, discriminatory practices and unjust dismissal. They routinely constitute the most dominant yet unrepresented workforce on World Bank project sites.
- INGOs can facilitate and influence a multi-stakeholder approach to bring the WB, the borrower, and project parties or their representatives (which may be their bargaining agent/union) to agree by consensus on the design of gender-sensitive project-specific grievance mechanisms; to jointly oversee the fair and balanced implementations of demands or grievances and seek guidance from, among others, the United Nations Guiding Principles on Business and Human Rights, which stress that grievance mechanisms should provide effective remedies for both individuals and communities adversely affected by an Operation. Once in

place, procedures should be made clear to all the relevant parties to avoid misunderstandings and, arising from there, skewed decisions.

- There should also be clear distinctions between the various grievance categories, such as individual, group, discrimination and policy grievances, all of which have important gender implications.
- Once a grievor has decided to file a grievance, he/she submits a statement of grievance with date of filing, nature and type of grievance, the article of the labor contract alleged to have been violated, a statement of the particular facts relevant to the grievance, including dates, and the remedy sought. There should be time limits within which a grievance can be/must be filed. The GNs prepared by WB staff should address all of them in sufficient detail to avoid project-related work interferences and stoppages arising out of labor and working condition disputes.
- The same general deficits apply to the Standard's references regarding "existing arbitration procedures". Here, too, INGOs can insist that the GN outlines what the affected project workers need to supply to get the arbitration process underway and how minority groups, marginalized groups and those with less agency are enabled and supported to file their demands or claims^{xv}.
- The representation and selection of the arbitrators themselves is of significance, ensuring that gender-sensitive arbitrators (both men and women) engage in decisions that are fair and equitable, and that give equal weight and attention not just to women's testimony but also to their priorities and perspectives.
- While the "Occupational Health and Safety (OHS) provisions cover standard requirements to ensure project workers' health and safety, they lack the needed institutional representation and capacity by those most exposed to work site dangers. To ensure that those tasked to ensure that healthy and safe working conditions exist can competently perform their duties, certified gender-sensitive training must be offered at regular intervals by competent training personnel, preferably by experienced personnel which have no professional links to the procured projects' contractors to avoid any and all conflict of interest.
- Project workers must also have the right to elect or appoint peers to work alongside their management colleagues on work site safety committees with each party being equally represented. When no consensus can be reached, the World Bank will cast the deciding vote on the issues under dispute.
- Critically important is the provision of gender-specific rest and hygiene locations at or near the projects' work sites. Paragraph 28 is silent on such necessities, though all too often the absence of such facilities is often responsible for the lack of equitable representation of women at Bank-funded projects.
- Last but not least, the provision of child labor and primary supply chain requires attention in the GNs. Independent experts from the ILO, which championed the conventions and recommendations on child labor, should be consulted with a view of making final determinations on such matters. This includes such considerations as the risks of child labor and forced labor in relation to primary suppliers. It is not

sufficient to rely on borrowers' abilities (or lack thereof) to identify those risks and exert their leverage (or lack thereof) to influence their respective primary suppliers' ethics and work practices.

Guidance notes can require Project Leads to

- ✓ Ensure that the project aligns with the ILO to honor and respect the latter's eight fundamental rights conventions and four core labor standards;
- ✓ Ensure that relevant norms contained in international human rights treaties, including the Convention on Protection of the Rights of All Migrant Workers and Members of their Families, are respected;
- ✓ Outline protocols and procedures for corrective action in response to incidences of non-compliance with ILO's conventions and labor standards, including the initiation of the grievance mechanism and, ultimately, calling on the World Bank's Inspection Panel to examine alleged violations of non-compliance; and
- ✓ Ensure that failure to take corrective action would result ultimately in loss of financial support.

ESS 3: Resource Efficiency and Pollution Prevention and Management

The main **objectives** are to “promote the sustainable use of resources, including energy, water and raw materials”, to “avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from project activities”. They also seek to “avoid or minimize project-related emissions of climate pollutants”, as well as “hazardous and non-hazardous waste”, and minimizing and managing “the risks and impacts associated with pesticide use”.

While ESS3 addresses potentially adverse project impacts on human health and the environment in the context of pollution, land use, projects’ proximity to areas of importance to biodiversity, the potential for cumulative impacts with uncertain and/or irreversible consequences, and impacts of climate change, it fails to differentiate gender-specific risks and impacts, nor does it spell out gender-specific contributions in the field of avoidance of negative impacts in, for example, the area of resource-efficient and environmentally-friendly land use practices, waste, recycling, water harvesting, reuse, recycling or recovering of waste.

ESS3 does not address gender-specific exposures to hazardous and non-hazardous materials and waste in tending to land and agribusiness (herbicides, pesticides) activities and in industrial-size work complexes, such as licensed hazardous disposal sites and chemical production and distribution work sites. Though the Standard states that WB-financed projects will not use any pesticides or pesticide products or formulations unless their use is in compliance with the WB’s Environmental, Health and Safety Guidelines (EHSGs) and applicable international conventions or their protocols, practice has shown over and over again that the enforcement of those Guidelines is not effective when the Borrower is responsible for reporting their use to the WB. Frequent and unannounced spot checks by independent experts contracted by the WB or representatives of the relevant protocols are indispensable to ensure compliance. In the push to increase employment and income earning opportunities for women, the reality is that more women are potentially exposed to pesticide use as this is routinely part of tending to saplings or nurseries (in plantations for example).

Borrower is responsible for assessing, managing and monitoring environmental and social risks and impacts throughout the project cycle and conducting the Environmental and Social Impact Assessment (ESIA)

- ESS3 applies to efforts to reduce adverse climate change impacts. Investments have the potential to both reduce and increase the vulnerability of people and their resilience to change. While the WB demands that estimates of GHG emissions resulting from projects will be calculated, the reality is that Borrowers by and large don’t have the capacity to develop the estimate of GHG emissions, particularly at small-scale, community-driven projects where women are primarily engaged. And while precise measurements at project sites for various reasons is not always possible, it is possible to identify which part of society or group of people is more vulnerable to climate change.
- ESS3 should screen investments for their effect on vulnerable communities and the environmental resources they depend upon. The GNs can highlight the need for the WB to reduce vulnerability of project-affected people and communities by enabling staff to early-on identify investments that are maladaptive to climate change. This would require a gender-sensitive screening that entails analysis of climate risks to the success of the investment itself, the well-being of people (men and women alike), and its harmful effects on ecosystems upon which particularly vulnerable people and communities depend. The aim would be to prevent investments that set society at large on a pathway toward greater climate vulnerabilities in the future.

ESS 4: Community Health and Safety

The main objectives are to “anticipate and avoid adverse impacts on the health and safety of project-affected communities during project[s] life cycle”, to “promote quality and safety, and considerations relating to climate change, in the design and construction of infrastructure, including dams”, to “avoid or minimize community exposure to project-related traffic and road safety risks, diseases and hazardous materials”, and to “have in place effective measures to address emergency events” in a manner that “avoids or minimizes risk to project-affected communities”.

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- Those most negatively affected are the vulnerable. This is particularly the case when dams are being constructed and projects have direct impacts on the maintenance of ecosystem services which often directly impact women. Mitigation efforts should be designed with their advice and consent before implementation.
- Water-borne, water-based, water-related, and vector-borne diseases as well as communicable and non-communicable diseases could result from project activities. It is not sufficient for the Borrower to “explore opportunities...to improve environmental conditions that could help minimize their incidence”. The GNs should require recruiting international and independent experts to analyze and devise a course of action that the Borrower is required to implement. This should be a *conditio sine qua non* to address the gender-differentiated health priorities of project stakeholders.
- If no remedy measures are forthcoming in a timely manner, the GN should call for a grievance mechanism as envisioned in ESS1 and ESS10

ESS 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement^{xvi}

The main **objectives** are to “avoid involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives”, to “avoid forced eviction”, to “mitigate unavoidable adverse social and economic impacts” by “providing timely compensation for loss of assets at replacement cost”, to “assisting displaced persons...to improve, or at least restore, their livelihoods and living standards...to pre-displacement levels”, to “improve living conditions of poor or vulnerable persons...through...security of tenure”, to ensure that “appropriate disclosure of information, meaningful consultation, and the informed participation of those affected” is provided.

In the context of this assignment, ‘security of tenure’ is critical. To the WB this means that resettled individuals or communities are resettled to a site that they can legally occupy, where they are protected from the risk of eviction and where the tenure rights provided to them are socially and culturally appropriate. In no event will resettled persons be provided tenure rights that are in effect weaker than the rights they had to the land or assets from which they had been displaced.

Borrower is responsible for assessing, managing and monitoring environmental and social risks and impacts throughout the project cycle and conducting the Environmental and Social Impact Assessment (ESIA)

Resettlement Framework is prepared when projects cause restrictions in access to natural resources, is designated to define and clarify resettlement principles, organizational arrangements as well as the framework’s design criteria

GNs interventions that address and respond to women’s land rights could be considered after a review of the following:

- Areas where the ESS does NOT apply (points 5 – 9);
- Eligibility classification of affected persons (point 10);
- Project design relating to questions of feasible alternatives (point 11)...in this case ESS5 refers explicitly (for the first time) to gender impacts on the poor and vulnerable;
- Displaced persons’ livelihoods affected by Land-based activities, or where land is collectively owned (point 14);
- ▶ Community engagement (point 17 - 18), particularly where women’s perspectives on resettlement planning and implementation as well as gender-specific compensation measures (such as replacement land or alternative access to natural resources rather than case) are contemplated, and where impacts to their livelihoods are at stake - also where matters particularly critical to indigenous peoples/women are an issue;
- Grievance and mediation/arbitration matters – reviewing the applicability and utility of applying existing formal or informal grievance mechanisms (point 19);
- Planning and implementation (point 20), here a census is being considered to establish an inventory of land and assets of the affected population; also eligibility criteria for compensation and assistance will be determined. Critical is the development of a framework establishing general principles and procedures in addition to a census survey and baseline socio-economic studies with gender-disaggregated data that reflect the spirit and letter of the ESS and relevant and applicable WB (gender) policies. Affected people, particularly women, need to be

involved in this exercise, and guidance on how to proceed and reach out and disseminate information to affected communities in the appropriate formats (written, non-written, visual, theater-type play, etc.) will have to be given to assure maximum participation, input and voice;

▶ Displacement (26-36). Given that women and their land rights will be affected by both political and economic displacement, putting the Borrower in charge of developing a plan that covers the requirements of the ESS is not sufficient. The affected communities (with assistance from independent and gender-aware resettlement experts) need to look at all possible options to avoid or mitigate resettlement risks. They need to be involved from the design stage of such plans, with the cost being borne by the project; as must be such vulnerable groups as women, indigenous people, ethnic minorities, and the landless by way of involvement in participatory community events;

- Monitoring and evaluation (point 15 Annex 1) to ensure that the relevant information/data for the purpose of this exercise will be ascertained and inform the appropriate remedy recourse – needs gender-differentiated data in the GNs
- Resettlement Framework (point 30 – 31), which is normally prepared when projects cause restrictions in access to natural resources, is the document designated to define and clarify resettlement principles, organizational arrangements as well as the framework's design criteria. It is critically important that the views and voices and demands of women, of the disadvantaged and vulnerable are heard and recorded and given appropriate reference in the Resettlement Framework. While the ESS refers to affected communities' participation, experience tells us that that more often than not means 'men' representing their communities. It must be made clear that affected women will be at the table on par with their male counterparts.

ESS 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

ESS6 can be easily overlooked and yet is critical in terms of gender equity and women’s priorities and rural livelihoods as it directly addresses the immediate realities of small scale producers and local communities. Its main objective is to “protect and conserve biodiversity and habitats”, to “apply the precautionary approach in the design and implementation of projects that could have an impact on biodiversity”, and to both “promote the sustainable management of living natural resources” and “support livelihoods of local communities, including Indigenous Peoples, and inclusive economic development, through the adoption of practices that integrate conservation needs and development priorities”. It applies to “projects that involve primary production and/or harvesting of living natural resources” – a central concern for rural women.

Borrower is responsible for assessing, managing and monitoring environmental and social risks and impacts throughout the project cycle and conducting the Environmental and Social Impact Assessment (ESIA)

- ESS6(9) requires the Borrower to ensure that “competent biodiversity expertise is utilized to conduct the environmental and social assessment and verification of the effectiveness and feasibility of mitigation measures”. Rosters of expertise (international and national) need to make sure that biodiversity expertise balances both social and environmental concerns.
- ▶ The Standard proposes, inter alia, the introduction of ‘biodiversity offsets’ (16-17).^{xvii} Any offset scheme should be approved only on condition that affected populations (women and indigenous peoples) are consulted about and consent to the terms of any offset agreement. (Refer to ESS10)
- ESS6 refers to “legally protected and internationally recognized areas of high biodiversity value” (26-27, 31) where stakeholder consultations will need to establish gender priorities and women’s perspectives as they relate to:
 - i. point 27c “consult and involve protected area sponsors and managers, project-affected parties including Indigenous Peoples, and other interested parties on planning, designing, implementing, monitoring, and evaluating the proposed project, as appropriate”;
 - ii. point 31 “The Borrower with projects involving primary production and harvesting of living natural resources will assess the overall sustainability of these activities, as well as their potential impacts on local, nearby or ecologically linked habitats, biodiversity and communities, including Indigenous Peoples”;
 - iii. point 36b “For projects involving forest harvesting conducted by small-scale producers, by local communities ... where such operations are not directly associated with an industrial-scale operation, the Borrower will ensure that they: (i) have achieved a standard of sustainable forest development with the meaningful participation of project-affected parties including Indigenous Peoples.
- ▶ ESS6(33) is relevant to women’s rural production activities and requires the Borrower to ensure that ‘small-scale producers operate in a sustainable manner and to gradually improve their practices where such opportunities exist’. Borrowers need to be held to this standard and women producers made aware that they are entitled to this kind of support.

- ▶ ESS6(34) specifies the following: “Where the project includes commercial agriculture and forestry plantations, the Borrower will locate such projects on land that is already converted or highly degraded”; this applies to projects involving land clearing or afforestation. This is a stipulation that can be called upon to prevent new conversion of lands for plantation production and to protect women’s existing land rights.
- ▶ ESS6(39) should not be overlooked by Borrowers – who are required to establish systems and verification practices to monitor the primary supply – the standard emphasizes environmental and biodiversity aspects but this presents an opportunity to ensure that the social (human ecology) aspects of monitoring primary supply are addressed in the GN. Sustainable modes of primary production often go hand in hand with equitable, non-discriminatory and safe eco-sensitive practices of production which will have long term benefits for women and men involved in those modes of production.

ESS 7: Indigenous Peoples / Sub-Saharan African Historically Underserved Traditional Local Communities

The main **objectives** of ESS7 are to ensure that the projects “ensure full respect for human rights, dignity, aspirations, identity, culture, and nature-based livelihoods of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities”, that they “avoid adverse impacts on Indigenous Peoples/Sub-Saharan African Historically Underserved traditional Local Communities, or when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts”, “promote sustainable development benefits and opportunities...in a manner that is accessible, culturally appropriate and inclusive”, and that “improve project design and promote local support...based on meaningful consultation with the Indigenous Peoples affected by projects”, and to “obtain the Free, Prior, and Informed Consent (FPIC) of affected Peoples”.

In recognition of some African governments’ reluctance to formally recognize certain ethnic groups as ‘indigenous’, ESS7 has extended protections traditionally reserved for indigenous peoples – including FPIC – to “Sub-Saharan African Historically Underserved Traditional Local Communities” possessing some of the defining features of indigenous peoples, including self-identification as members of a distinct social and cultural group and collective attachment to a distinct geographic area. This progressive provision will operate under a potentially undermining caveat: the ability of borrowers to allow their own laws, policies and regulations to supersede stronger WB policies so long as the two systems have “materially consistent objectives”.

ESS7 applies to forest dwellers, hunter-gatherers, pastoralists or other nomadic groups; all of whom have explicit gendered relationships with natural habitats and eco-system services. ESS7 recognizes Indigenous Peoples, their identities and aspirations and the fact that they are, often, marginalized and put in vulnerable predicaments not of their making. One could go so far as to argue that conventional economic development has not only undermined the cultures and systems of Indigenous Peoples, but has also undervalued their potential in terms of designing and delivering socio-ecological sustainability. Their overall societal status frequently compromises their priorities in favour of conventional development and further, limits their ability to defend their rights to, and interests in, land, territories, and natural and cultural resources.

Borrower is responsible for assessing, managing and monitoring environmental and social risks and impacts throughout the project cycle and conducting the Environmental and Social Impact Assessment (ESIA)

Borrower is required to prepare a **consultation strategy and to identify how**

- GNs for ESS7 need to align with the WB’s gender policy while recognising that the gendered relationships are highly contextualised to culture and belief systems. Working with agencies that can speak on behalf of the rights of all members of indigenous societies will be important.
- In most cases, it would be appropriate to call upon local gender experts knowledgeable and respectful of the delicate balance of gender relations in a collective/communal setting in an increasingly financialized and individualistic global culture.
- ▶ GNs will need to consider how women in the affected indigenous communities are engaged as equal partners in developing and co-designing project plans with the project proponent and Borrower. Borrower is required to prepare a consultation strategy and to identify how underserved communities will participate in project design and implementation – this is an opportunity to ensure that women participate and that their concerns and priorities are reflected in the project design, deliverables and measurable outcomes.

underserved communities will participate in project design and implementation

Free Prior and Informed Consent (FPIC)

- ▶ GNs will also need to be explicit about how any compensation plans – whether collectively or individually based – are culturally appropriate while also addressing gender equity. Cross references to ESS10 from a gender perspective is needed here;
- When the Borrower seeks to obtain the FPIC (24–28) of affected Indigenous communities, GNs will need to specify that women have a voice and a vote that carries as much weight as those of men in the community;^{xviii}
- ▶ ESS7 (29) addresses land that is traditionally owned or under customary use of occupation provides, GNs need to align the gender policies of both WB and national governments so as to address ESS7 (30d) which makes special mention that “the assessment of land and natural resource use will be gender inclusive and specifically consider women’s role in the management and use of these resources”;
- The GNs can also address points 35 -36 of ESS7 (“Underserved Traditional Local Communities and Broader Development Planning”) by building on the existing descriptive initiatives to help strengthen the participation and voice of Indigenous Peoples/SSA communities. The recommendations made provide a sound basis for injecting women and women’s land rights desiderata, and the fact that gender relations are prominently mentioned should be considered a positive approach and step to bend the trajectory for women in this context in their favor. Point 30(iii) refers to equitably sharing in the benefits derived from the commercial development of the land or natural resources that are central to the identity and livelihood of affected Indigenous Peoples/ SSA communities. The “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization” is the instrument which aims to ensure the fair and equitable sharing of benefits arising from the utilization of genetic resources, most of which have been historically identified and exploited in latitudes 20 degrees north and south of the Equator – in other words areas primarily inhabited by indigenous peoples/SSA communities, forest dwellers, hunter-gatherers, pastoralists, or other nomadic groups.
- INGOs can ensure that the GNs align with the Nagoya Protocol^{xix} and the Gender Strategy of the Convention on Biological Diversity^{xx} (CBD) on behalf of affected projected communities.

ESS 8: Cultural Heritage

The main **objective** of ESS8 spans the spectrum from protecting “cultural heritage from the adverse impacts of project activities to support its preservation”, addressing “cultural heritage as an integral aspect of sustainable development”, to promoting “meaningful consultation with stakeholders” and promoting “equitable sharing of benefits from the use of cultural heritage”. The right to housing, the right to grow and harvest food for consumption, the right to non-discrimination, the right to bury and honor the dead – these are all aspects of invaluable culture and belief systems and have gendered roles, responsibilities and rights.

Borrower is responsible for assessing, managing and monitoring environmental and social risks and impacts throughout the project cycle and conducting the Environmental and Social Impact Assessment (ESIA)

- ▶ Peoples whose tenure is governed by clan structures, lineage systems and other cultural systems, these need to be recognized, recorded and respected in the design of project and activities. Cultural belief systems can present obstacles to women’s voice, decision making and agency and GNs will need to address this (refer also to ESS7). Patronage and the right to privileges within culturally bound systems can exacerbate or diminish gender differences.
- Dispute resolution mechanisms and arbitration of land tenure conflicts need to be culturally appropriate and respectful of local systems of resolving conflict. This also suggests that the conventional use of courts of justice may or may not be the preferred channel of women, and that negotiation around the terms of settlement facilitated by a respected member of the community is something the GNs should consider. Understanding that financial compensation might not be a key driver in some cultural systems, but rather that lands are used (as in treaties) and then returned to the community after use (in the case of mining for example), and that other forms of compensation to women and men in the community might be alternatives that conventional systems should consider.
- Full disclosure of project design, activities and social and environmental risks and benefits, project contract terms and what these will mean for both men and women in the community, should be made available in accessible languages, and explained in the preferred formats of the affected communities. Stakeholder consultation – refer to ESS10
- While the above cited content questions go to the heart of this paper’s TOR, appropriate processes and procedures provide the framework within which the safeguarding of cultural heritage must take place. It is, therefore, important to provide more flesh to the bones of ESS8 than the WB has done for this Standard. As has been pointed out in our treatment of ESS 2, 5, 7, and ESS10, respectively, fair and balanced – as well as sustainable - decisions can only be reached through a participatory and representative approach. Such an approach must include all relevant stakeholders, including women, and the process to determine if cultural heritage is at risk should in all cases be undertaken early in the project-finding stage through, among others, scoping and assessment measures.^{xxi}

ESS 9: Financial Intermediaries

FIs are essentially go-betweens, taking World Bank and IFC resources and investing them on behalf of national governments in infrastructure and social projects and local business investments.^{xxii} The WB argues that the delegated nature of FI lending gives the domestic financial institution almost complete responsibility over investments in subprojects^{xxiii}. Those decisions extend to identifying, assessing, and mitigating the likely environmental and social impacts of subprojects. Because of their diversity, the financing of subprojects through FIs can lead to a variety of environmental and social impacts associated with their operations.^{xxiv}

The transfer of decision-making authority to FIs affects the way in which environmental and social impacts are handled; e.g. the transfer of authority does not allow the WB to make as straight-forward an environmental assessment of FI projects as it can for direct investment lending projects. In addition, the actual beneficiaries of the WB funds or the subprojects are usually not identified when the FI project is appraised – meaning that the WB cannot conduct as detailed an assessment of FI operations as it can with direct investment lending projects. For FI projects, an environmental and social assessment is more a calculation of the FI project sponsor’s capacity to manage environmental and social risks associated with a particular project. As a result, assessments are limited to a determination of the FIs capacity to conduct assessments of future subprojects.

The WB perspective is that even if it were possible to review all subprojects on par with direct investment lending projects, it would defeat the purpose of channeling WB funds through FIs.^{xxv}

The WB’s GN should on a needs basis revise or upgrade its requirements of FIs while also not abdicating its own accountability, and it should take full ESS ownership where critical projects simply cannot be implemented by FIs without causing considerable harm to the environment and communities because of their lack of implementation and enforcement capacity.

The GNs must find the right balance between aligning its FI sector lending priorities with its development mandate by ensuring that its FI investments strengthen the domestic financial markets while at the same time increasing the domestic capacity to account for and mitigate environmental and social risks.

FIs are required to develop and maintain an **Environmental and Social Management System** (ESMS) effective systems, procedures and ESS capacity

Project Appraisal Document **Environment and Social Commitment Plan** forms part of the

- According to the ESS^{xxvi} a heavy onus is placed on FIs to “*put in place and maintain an ESMS to identify, assess, manage, and monitor the environmental and social risks and impacts of FI subprojects on an ongoing basis. The ESMS will be commensurate with the nature and magnitude of environmental and social risks and impacts of FI subprojects, the types of financing, and the overall risk aggregated at the portfolio level. Where the FI can demonstrate that it already has an ESMS in place, it will provide adequate documented evidence of such an ESMS, indicating which elements (if any) will be enhanced or modified to meet the requirements of this ESS.*”

- ▶ The significance of the financial intermediaries’ role and the potential for reinforcing equity and gender values should not be underestimated. INGOs and their partners should pay close attention to the ways in which the financial sector interacts with the rest of the economy as these relationships have implications not only for long-term economic development, but also for the approach to and execution of the ESS. The gender considerations outlined in ESS1 and ESS10 all apply to ESS9. Also refer to Oxfam’s 2015 study^{xxvii} on the human cost of the IFC’s lending through financial intermediaries.

legal agreement
(p.19)

- ▶ Financial deepening through financial intermediaries. “Financial deepening” is one component of systemic financializing; placing increasing importance on financial markets, financial motives, financial institutions and financial elites relative to other measures of socio-economic progress. If financial profits remain the core measure of any economy’s success, social and environmental factors will continue to be measured primarily as risks relative to profits and not as investments to environmental and social sustainability in the overall development process.
- FI projects must be held to the same standards as those for traditional investment lending projects because FIs administer WB funds and therefore must meet the WB’s ESS. It must also do so because their impact on the environment and communities is quite considerable. That has led EBRD, for example, to ensure the proper implementation of its environmental mandate in its FI projects while respecting the principle of delegated responsibility.
- ▶ Many FIs have limited capacity to manage environmental and social risks^{xxviii}; this is both a risk and an opportunity. FIs provide a variety of financial products, and serve a multitude of sectors; the lack of transparency in decision making and the absence of institutional processes of disclosing information about FI projects to the public on an ongoing basis are gaps to be closed. FI environmental and social standards are not tailored to the needs of FI projects but are written in response to direct investment lending projects; this, admittedly, poses difficulties with training and EMS design and implementation;
- ▶ FI risk screening procedures and assessments are less likely to consider social concerns or risks relative to environmental risks – the latter are more standardized measurements relative to social risk impact assessments. FI screening procedures tend to be more narrowly focused on the immediate project investments (e.g. energy co-generation plant) and less concerned about monitoring primary supply chain (e.g. land use or agricultural labour) (See ESS6)
- ▶ The WB should put in place a transparent environmental and social risk rating (ESRR) tool and process, similar to the EIA process for WB’s direct investment lending. The ESRR would describe the capacity, categorization, and action plan for each FI. The ESRR should be created with public consultation, and before ‘investing’ in an FI, the ESRR should be open to public notice and comment. The ESRR – in contrast to what the IFC does – should be carried out before a decision is made to invest in an FI.
- ▶ If the ESSR determines a lack of FI capacity, a provision could determine that category A and large category B^{xxix} subprojects are categorically excluded from FI investments. New disclosure requirements for FIs would go into effect, resulting in the release to the public of the environmental and social standards applied to each subproject investment. Greater public transparency can be expected resulting in the creation of regulations affecting stakeholders.
- FI capacity for developing and screening for project risks and impacts may be weak, and ongoing project monitoring for ESS compliance and reporting may be next to non-existent, as few FI’s are concerned with measuring impact. If FIs lack

the needed capacity to manage environmental and social risks associated with projects, staff members must be given appropriate training;

- FI project processes may be limited to ISO quality control mechanisms and financial audits with minimal experience in stakeholder consultation, engagement in FPIC processes or understanding and recognition of gender responsive development;
- ▶ FIs should develop or review their gender policy in light of their mandate and mission to ensure that their ESMS capacity integrates gender sensitivity throughout;
- FIs are required to submit annual Environmental and Social reports on the implementation of its ESMS to the Bank as well as the environmental and social performance of its portfolio and should make gender reporting integral to this requirement. There is a need to craft persuasive arguments why these reports must integrate quantitative and qualitative gender reporting, and that these are made publicly available to project stakeholders;
- FIs are required to engage in stakeholder consultations (ESS9, 24) and to respond to public enquiries and concerns in a timely manner.

ESS 10: Stakeholder Engagement and Information Disclosure

The main **objectives** are to put in place a systematic approach to stakeholder engagement between Borrowers and stakeholders, and to maintain a “constructive relationship”, to “assess the level of stakeholder interest and support for projects and to enable stakeholders’ views to be taken into account in project design and environmental and social performance”. It further strives to “promote and provide means for effective and inclusive engagement with project-affected parties on issues that could potentially affect them”, and it aims to ensure that appropriate and relevant “project information on environmental and social risks and impacts is disclosed to stakeholders in a timely, understandable, accessible and appropriate manner and format” and, finally, to “provide project-affected parties with accessible and inclusive means to raise issues and grievances, and to allow Borrowers to respond to and manage such grievances.”

Over the course of the past two decades, the WB has made undeniable improvements in transparency and engagement^{xxx}, which in no small measure have been the result of an ongoing dialogue between the WB’s management and civil society. The WB appears to accept that the lynchpin of participatory and results-driven stakeholder engagement is an appreciation and understanding of local contexts, which requires the voices of civil society and communities to be at the heart of project design and decisions.

While the WB has touted the unprecedented number of consultations during the Safeguards’ overhaul, the critical question is how civil society’s inputs are effectively taken into account. The final version of the ESF, does not appear to have adopted the vast majority of the input provided by civil society, with the WB clearly still listening more to the voices of its shareholders.

Overall, the various ESS10 provisions provide the Borrower with proportionately more control and discretion relative to stakeholders – this does not bode well for the voices and perspectives of stakeholders who might have less to negotiate with, and might not consider gender differentials. The GNs will need to ensure that the implementation of the Standard is a truly participatory process between Borrower and affected stakeholders – with a gendered participatory, consultation and consent process mandated throughout. The Standard *raison d’être* must be to ensure that the borrower is a participant in the mechanism, and not the ultimate arbiter of rules, procedures, and outcomes.

Effective stakeholder engagement can improve the environmental and social sustainability of projects, enhance project acceptance and make a significant contribution to successful project design and implementation.

Borrowers are required to

- ▶ ESS10 applies to women and to women’s land rights (“point 5a speaks of stakeholders as individuals or groups who are affected or likely to be affected by the project (“project-affected parties”) and may have an interest in the project (“other interested parties”).
- Point 7 refers to the Borrower who will “provide stakeholders with timely, relevant, understandable and accessible information, consult with them in a culturally appropriate manner, which is free of manipulation, interference, coercion, discrimination and intimidation. The timing of information disclosure is key to civil society’s ability to respond meaningfully to documents. If information is not disclosed until a project is well under way, it is unlikely to improve the public’s ability to engage with its implementation. Inadequate timing can make information disclosure useless as a tool for participation and engagement. There is therefore a clear need to more clearly define what timely means. The setting of clear deadlines to deliver project-relevant documents to civil society before stakeholder meetings should be (come) a *conditio sine qua non*.

establish a Stakeholder Engagement Plan (SEP) and provide Information Disclosure

- Furthermore, the borrower should be obligated to disclose the existence and workings of the World Bank's independent Inspection Panel. Not being aware of this critical redress seeking instrument makes it unlikely that civil society stakeholders will refer their complaints and grievances to the Inspection Panel.
- Point 10 mandates the borrower to identify the different stakeholders. Giving the borrower 'carte blanche' on deciding who will be at the table risks that those who would raise critical issues or dissents will be excluded in the interest of a speedy while non-representative as well less costly and more meaningless 'consultation' and 'engagement' process.
- ▶ Point 13 addresses the establishment and implementation of a Stakeholder Engagement Plan (SEP). To ensure that the affected parties who traditionally are more likely to be excluded from/unable to participate fully in such mainstream consultation processes and therefore require specific measures and/or assistance to do so, a culturally sensitive plan must be developed – from design to implementation, including a method of recourse if the SEP is not being properly designed and implemented - with the fullest participation by those affected (or their freely chosen representatives), including (proportionally) women to mirror the communities make up. It cannot be left to the Bank and the Borrower.
- ▶ To avoid that the Information Disclosure (point 19) and assessment of risks and impacts of the project will be prejudicial and skewed, it cannot be left to the two driving parties (Bank/Borrower) to assess those. An independent advisory panel/independent experts should disclose their findings in the format of culturally-sensitive and gender-aware townhall-type meetings their findings.
- In addition, it should make mandatory the presentation of alternative project ideas, and comparing the alternatives to the current project proposal to show why they may be the better option. The borrower must seek stakeholder input on mitigation measures, and alternatives to harmful aspects of the project, and include the method of consultation and the stakeholder views in the report.
- That said, consultation is a means to an end, not an end in itself (point 21). To ensure that the voices of both project-affected parties and other interested parties are not only heard but will also find expression in the project design and recommendations on whether/how to proceed or, for that matter, to withdraw from the project, a formula needs to be devised that will assure those affected by the project that their objections and concerns have also found appropriate expression in the decision making process and plan.
- ▶ Meaningful consultation is important, but experience tells us that most consultation is interest-driven in the pursuit of objectives (“to get on with the project as soon as possible and keeping costs at a minimum”). External manipulation, interference, subtle coercion, corruptive actions (cash for votes), discrimination and intimidation are routinely used to gain consent. Therefore, impartial observers should be recruited to ensure that no foul play is taking place under the guise of 'meaningful consultation' and that women are not being coerced or threatened into silence.
- References to the good will of the Borrower abound (23–24) “will continue to engage”, “will seek feedback from stakeholders”, “encourages stakeholder

feedback”, but what are the penalties when there is systematic failure to honor the promises? All consultations need to be documented and available on request, and Borrowers held to account for managing and responding to the stakeholder consultation process.

- ▶ Procedural and substantive issues relating to the Grievance Mechanisms (26 -28) need to be robust as follows: before seeking a judgement by the court, a mediation and arbitration process with firm timelines should be mandatory, with agreed repercussions if timelines are not met; (“promptly and effectively” is always up to interpretation and provides the seedbed for distrust and project-interrupting actions.) The grievance process provides too much discretion to the Borrower, it needs to be mutually designed and agreed upon by the Bank, the Borrower and the affected parties (or their chosen representatives) (refer to ESS2). Grievance proceedings should be open to the community/public. The option to address the WB’s Inspection Panel and through it the Executive Board of the WBG should be made available to the redress-seeking party.

7. Hold the WB's independent Inspection Panel accountable to the ESS

INGOs need to be alert to enabling communities to effectively present their demands to the Inspection Panel at two critical time windows: (i) at the proposal / design stage and (ii) during the project implementation. NGOs could offer a critical independent facilitation role to ensure that communities are not just consulted – but also that their consent to the project investment is documented. It is, therefore, especially important that communities understand the project risks early on in the project cycle.

If stakeholders feel that proposed projects or projects already in the process of being implemented are in violation of the WB's ESS, they must, as a first step, file their complaint directly with the WB's management.

Should WB management decline to take up the complaint^{xxxii}, stakeholders can then submit their complaint to the independent Inspection Panel (IP)^{xxxii}. The IP is an independent complaints mechanism for people and communities who believe that they have been, or are likely to be, adversely affected by World Bank-funded projects. It was created to give affected people a greater voice in activities supported by the World Bank that affect their rights and interests, and foster/facilitate redress when warranted. Note: once the WB disburses 95% of the projected project funds, these demands will no longer be considered.

Most of the complaints submitted to the IP cover adverse effects on people and livelihoods as a consequence of displacement and resettlement related to infrastructure projects, such as dams, roads, pipelines, mines, and landfills; risks related to people and the environment to dam safety, use of pesticides and other indirect effects of investments; risks affecting indigenous peoples, their culture, traditions, lands tenure and development rights; as well as risks to peoples' natural habitats, including protected areas such as wetlands, forests, and water bodies. Complaints also address adverse effects on physical cultural heritage, including sacred places. The new standards in the ESF, e.g. protection relating to labour, community health & safety now introduce complex human/social considerations that need to be 'mainstreamed' into the consultations, consent and demand process.

The complaints' procedures usually follow the following steps:

- (i) In response to complaints from project-affected people, the IP typically asks WB management for a response, assesses allegations of harm to people or the environment and reviews whether the Bank complied with its policies and procedures.
- (ii) Once the IP has determined that there is valid cause, it reviews relevant documents and data and, if necessary, launches a field investigation and interviews the parties involved in the dispute. NOTE: NGOs can in exceptional cases file on behalf of adversely affected communities a complaint or assist and support community demands for an IP field assessment to gather evidence and to meet project-affected people. The assessment teams need to present a robust multi-disciplinary balance of gender, social and environmental expertise.
- (iii) To accelerate the resolution of complaints^{xxxiii} – either before a project proposal goes before the WB's Board of approval or while a project is being implemented – the IP has, on a trial basis, put in place an accelerated pilot program to deal with alleged ESS violations. The Pilot seeks to resolve concerns by affected people and communities without immediately

initiating a full-fledged Panel process. The approach would be taken in situations where there is an interest on the part of all key stakeholders to seek early solutions. The Panel considers this option when, in its judgment, the following factors are present: The issues of alleged harm presented are clearly defined, focused, limited in scope, and appear to be amenable to early resolution in the interests of those requesting resolution^{xxxiv}.

Failing any resolution through the IP, complaints can be submitted to the national judicial process.

Civil society organizations and INGOs can advocate for the following commitments from the Inspection Panel:

- a) Continued proactive field-based gender-sensitive monitoring and management to minimize the need for filing of complaints – these may need to be built into the GNs;
- b) Regular and dedicated registry of cases to enable public access to project information, community demands and the lessons learned to follow each IP case;
- c) Consultant roster that favours multi-disciplinary capacity and experience – requiring gender expertise in human ecology and environmental risk analysis;
- d) Commitment of resources for capacity development of WB teams to better manage gender-responsive stakeholder consultations and consent processes around project up and down stream impacts, even beyond the immediate project scope;
- e) That the WB or the FI agree to place a moratorium on project activities until the demands or complaints have been resolved.

Entry point II: Influencing national governments and agencies

8. Work with financial intermediaries on their gender-accountability and commitment

Ideally, the country-led approach could mean that the ESS and ESMS of the FIs should commit to their own gender policy and action plans that speak to specific country and cultural contexts underpinning gender relations. In reality, many FIs will need additional dedicated resources and expertise to effect these policies – too many have established gender policies simply to fulfil a requirement in order to secure donor and other finances. Furthermore, FIs are rarely prepared to either (i) conduct in-field stakeholder consultations, these require time, money and skilled human resources or (ii) conduct in-field monitoring and impact assessments, relying often times on the government appointed environmental agency for eco-related assessments and rarely working with the Ministry of Women’s Affairs or Social agencies to conduct gendered social assessments.

Project-related land acquisitions and changes in land use can have severe adverse impacts on communities and persons that use this land. While the stand-alone policy (ESS 5 on Land Acquisition, Restrictions and Land use and Involuntary Resettlement) gives formal acknowledgement of the criticality of this challenge, the policy is only of value if it ensures that land acquisition is restricted to takings in the public interest (which should then be narrowly defined). More resources are needed in Forestry Commissions, Land Registration agencies and government departments working on natural resources (including Fisheries, Mining and Extraction, Climate Change) to really integrate gender analysis and gender stakeholder knowledge and capacity. These capacities should feed into the FI ESS capacity, from baseline analysis to documenting community engagement and project impacts.

9. Work with national government to develop gender policies and guidelines

Secure tenure over land, fisheries and forests are central to global efforts to end poverty and hunger among local communities, indigenous peoples and women, and ensure sustainable management of the environment. The livelihoods of hundreds of millions of people, particularly the rural poor, depend on secure and equitable rights to natural resources, including water, which are primary sources of food and shelter, the basis for social, cultural and religious practices, and a core economic asset. While each country’s unique tenure system and challenges require tailored responses, there is a need common across most countries for substantial investments in land management and administration that address the needs of those sections of society whose tenure rights are the most compromised or at risk.

In line with the Accra Action Agenda and Busan Partnership for effective Development Cooperation the World Bank’s ESS is a clear nod to put country systems in the driver seat. The Bank will therefore promote the use of borrowing member countries’ existing systems of safeguards for identifying and managing environmental and social impacts whenever possible. This is an opportunity for civil society groups to leverage the WB’s ESF to upgrade borrowing member country’s systems and management capacity to make it equivalent or superior to the Bank’s.

10. Apply the VGGT and F&G as gender pressure-points at the national level

Adopted in 2012, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs) are the international standard setter. As the aspired-to international framework, it is based on human rights obligations and standards for the

governance of tenure of land, fisheries and forests, and it both acknowledges and recognizes the significance of land to development and good land governance and broad access to land indispensable for the provision of food security.^{xxxv} The VGGTs were negotiated at a point in time when concerns over global food insecurity were exacerbated by concerns over the loss of tenure rights and livelihoods by local communities in the face of large-scale ‘land grabs,’ environmental degradation and climate change. Against this background, the VGGTs have not only become the international standard for responsible governance over land tenure, for fisheries and forests on matters relating to food security, they have also established themselves as the quintessential “accountability mechanism” through which local communities can hold both the State and private actors to account in development planning and decision-making regarding large-scale land investments.^{xxxvi} The VGGTs thus provide communities and civil society with a framework around which to lobby for more vigorous national policies on land tenure and tougher implementation measures.

The African Union’s Framework and Guidelines for Land Policy (AU-F&G) promotes guidance and recommendations to national governments in Africa on policy formulation, and it advances provisions in the process of land tenure governance, including multi-stakeholder participation, gender equality and women’s rights to land.^{xxxvii}

NGOs can help to monitor country implementation of the VGGTs with a focus on women and small-scale food producers and rural/agrarian communities by assessing each country’s current legal framework and tenure governance arrangements against six key principles drawn from the VGGTs and the AU-F&G, and sharing this information with local constituencies along with capacity-building opportunities. The six principles are:

- 1) Inclusive multi-stakeholder platforms
- 2) Recognition of customary rights and informal tenure
- 3) Gender equality
- 4) Protection from land grabs
- 5) Effective land administration
- 6) Conflict resolution mechanisms

Principle 1: Inclusive multi-stakeholder platforms

Multi-stakeholder platforms are encouraged in the VGGTs as the recommended approach to the implementation, monitoring and evaluation of the Guidelines,^{xxxviii} in order to ensure participation, collaboration, transparency and accountability in these efforts. Multi-stakeholder platforms may be established at multiple levels and should be gender-sensitive and, more particularly, involve representatives of marginalized and vulnerable groups. The emphasis lies on inclusiveness and a multi-sector approach to the complexities of land governance. The AU F&G provides a template for the “design of land policy implementation strategies” and a detailed action plan to which states can refer when implementing the Land Policy principles.^{xxxix} It also recommends tracking systems through which all stakeholders can monitor and evaluate the progress of implementation.^{xl} Both frameworks emphasize the need for inclusiveness and participation in monitoring and evaluation mechanisms.

Principle 2: Recognition of customary rights and informal tenure

One of the principal tenets of the VGGTs is the recognition of all existing legitimate forms of tenure, both formal and informal.^{xli} Indigenous peoples and communities with customary tenure systems often face an absence of legal frameworks recognizing these rights, or may not have secured titles and/or documentation that would enable them to prove and defend their rights. To address these limitations, the VGGTs call on states to provide *appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems* and to adapt their policy, legal, policy and organizational frameworks to recognize such tenure systems.^{xlii} Similarly, the AU F&G advocates for the recognition of the “legitimacy of indigenous land rights” and calls for consultation and participation in policy processes, by those who have legitimate tenure rights that could be affected by policy decisions. This principle is consistent with the concept of a continuum of land tenure,^{xliii} which is a useful tool for States to ensure secure tenure in different contexts.

Principle 3: Gender Equality

Gender Equality is a principle essential to responsible governance of tenure of land, fisheries and forests, and calls on States to ensure that women and girls have equal tenure rights independent of their civil and marital status.^{xliv} The AU F&G recognizes that “gender discrimination” is pervasive in Africa and that women’s land rights need to be strengthened, through procedures that enable women to register their land rights whether married, divorced or widowed.^{xlv} A State that implements the VGGTs and/or the F&G will legally recognize the equal rights of women and men to access, use, control, inherit and own land. This may be constitutionally enshrined so that all subsequent laws will be subject to these constitutional principles. Current laws that contradict this principle should be reviewed and legally revoked. Supplementary laws that apply this principle in a concrete way, for instance family laws concerned with issues such as divorce and inheritance should be enacted, consistent with human rights law.^{xlvi}

Principle 4: Protection from land grabs^{xlvii}

Large-scale land acquisitions can pose significant threats to the land tenure security of women and small-scale food producers. The VGGTs note that *States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment* from risks associated with large-scale land acquisitions^{xlviii} and, further, call on States to consider promoting production and investment models that do not result in the transfer of tenure rights to investors.

The AU F&G does not recommend any alternative models of investment, noting only that enhanced agricultural exports could lead to increased state revenue.^{xlix} This implies a bias towards large-scale commercial agriculture. However, the AU does concede that the recent “scramble for land by foreign investors” raises serious problems for sustainable food production where agricultural land has been converted for other purposes.^l In 2014, the AU adopted Guiding Principles (GPs) for Large Scale Land-based Investment^{li} (LSLBI) which outlines six fundamental principles:

- **Fundamental Principle 1:** LSLBI respect human rights of communities to contribute to the responsible governance of land and land-based resources, including respecting customary land rights and are conducted in compliance with the rule of law
- **Fundamental Principle 2:** Decisions on LSLBI are guided by a national strategy for sustainable agricultural development which recognizes the strategic importance of African agricultural land

and the role of smallholder farmers in achieving food security, poverty reduction and economic growth

- **Fundamental Principle 3:** Decisions on LSLBI and their implementation are based on good governance, including transparency, subsidiarity, inclusiveness, prior informed participation and social acceptance of affected communities
- **Fundamental Principle 4:** LSLBI respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalization of women
- **Fundamental Principle 5:** Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment
- **Fundamental Principle 6:** Member States uphold high standards of cooperation, collaboration and mutual accountability to ensure that LSLBI are beneficial to African economies and their people

Principle 5: Effective Land Administration

A continuing challenge in many countries is the absence of effective institutions, land registries and community action for land management. The VGGTs provide multiple recommendations about land administration to strengthen land tenure security of small-scale food producers. They state that, *“States should provide systems... to record individual and collective tenure rights in order to improve security of tenure rights.”*^{lii}

For effective land administration, both the VGGTs and the F&G advocate for building the capacity of implementing agencies to ensure that policies and laws are put in place in an effective and gender-sensitive manner.^{liii} This should be done through the provision of human, financial and other inputs needed for the implementation of the Guidelines as well as ensuring co-operation of the actors involved.^{liv} Both advocate for delivery of services by ascertaining legitimate landholders and registering and recording their land rights.^{lv} Policies and laws should be established to promote sharing of information regarding tenure rights whereby everyone has a right to access information on land.^{lvi}

Principle 6: Conflict resolution mechanisms

Independent, reliable and effective conflict resolution mechanisms are key to ensuring justice and land tenure security of the poor, particularly women.^{lvii} Corruption, inefficiency and high costs plague the formal court systems in many poor countries, preventing the rule of law, and accessibility and transparency in conflict resolution mechanisms.^{lviii} These factors discourage the use of formal dispute resolution and cause many aggrieved parties to turn to informal mechanisms, some of which are based on customary practices within local communities. The VGGTs acknowledge both issues, and promote the development of alternative forms of dispute resolution, while the F&G advocates for the “prevention of conflict” and “resolution through mutually acceptable dispute processing mechanisms” and strengthening conflict resolution methods.^{lix}

Entry point III: Working with and through partner Civil Society Organizations

11. Deepen local engagement with and ownership of the ESS at local levels

1. INGOs are uniquely positioned to work with local CSOs and women's groups to strengthen their capacities to:
 - a. Maintain pressure on national governments to implement policies obligating parties to cover environmental and social assessments through specific tenure assessments of land issues;
 - b. ensure that environmental and social assessments consider the full range of rights and uses that are important to affected people, including tenure over land, water, common property resources and biodiversity;
 - c. ensure that all persons - men and women - affected by land acquisitions and changes in land use are meaningfully engaged in project design and are consulted and consent to land-based investments (Principle of FPIC);
2. NGOs through their global networks can collaborate with Local Government, FIs and CSOs to ensure that compensation to communities should be based on fair valuation and provided promptly to all legitimate tenure rights holders, especially vulnerable and marginalized groups, including holders of informal and customary as well as common/community and subsidiary tenure rights. Compensation and costs of relocation should be included in the project budget over the duration of the project.
3. At the national level, NGOs can credibly engage civil society to self-assess the risks to their communities, develop mitigation plans that most effectively meet community needs and priorities, manage and monitor the implementation of the Environmental and Social Standards, monitor communities' well-being long after projects have been signed off, and ensure that problems caused by WB-financed projects are rectified promptly and in a manner appropriate for the local context.

That said, we are mindful that the relationship between governments and different sectors of civil society often involve complex political dynamics. Understanding and engaging with these dynamics can be challenging, ignoring them however will come at a cost and will lead to sub-par outcomes in the GNs and implementation of the Standards.

The Women to Kilimanjaro Charter

The Women to Kilimanjaro (Stand up for Women's Land Rights) proclaimed a Charter of principles and demands specific to women's access to use, control, own, inherit and dispose their land and natural resources in October 2016. While the demands are in line with the needs and priorities as expressed by the representative group – there remains a lot more work to be done to base these demands in local realities.

In order to be able to make a value judgement on the kinds of benefits and levels of risks and costs of development projects – women leaders need to have a full and complete picture of the current and future social and environmental risks, the opportunity costs of various development options and

emerging technologies and digital systems, and basic social and environmental baselines from which to plan. People need requisite knowledge and capacity to make informed decisions around which risks can be completely avoided, which mitigated and what needs to be managed so as to optimize positive social and ecological impacts. People's knowledge and confidence about making these decisions needs to be supported by governance systems at the local, municipal and national levels.

Governance also translates into an ongoing continuous process of compliance and risk management, and the capacity to work with people to quantify benefits and measure impacts. It is not enough to fight for women's rights to land and the decisions around the commercial transactions of land, but to also enable women to lead the way in changing the ways that land is used, stewarded and managed for time to come. One can argue that while the Kilimanjaro Charter has every right to be there – it needs a lot more support around civic education, harmonization of laws, framing the land rights and enforcement issue beyond the political and legal, dedication of resources to Forestry Commissions, Land Use Registry, Vulnerability mapping and other tools that make compliance more affordable, measureable and accessible.

Stakeholder consultation and consent

Stakeholder consultation provides a critical opportunity for a Borrower to engage with stakeholders in a gender sensitive manner and to share and promote understanding of projects' risks and a sense of ownership of intended project investments. This may include exchanging views on risks (and mitigation), impacts, benefits and opportunities. It provides a valuable entry point to improve the project design and outcomes and help the Borrower to identify and control external risks. Examples of gender-sensitive consultation approaches include:

- (a) FAO: [SEAGA](#) (Socio-economic and Gender Analysis) demonstrates an approach based on an analysis of socio-economic patterns and participatory identification of women's and men's priorities. The objective of the SEAGA approach is to close the gaps between what people need and what development delivers.
- (b) CARE Canada: [Stakeholder and institution mapping](#).
- (c) US Aid: [When to use a Gender stakeholder analysis](#). An approach to integrate Gender into climate change projects

A recent paper^k notes that it is not enough to ensure that all concerned stakeholders are included around the table but that they have ' the capacity to make their voices heard and that asymmetry of powers can be circumvented by promoting the formation of common position'. The VGGT Guidelines are useful to answer concrete challenges of tenure governance and can generate dialogue, capacity development and tailor-made solutions at the country level (p.15). It goes on to suggest that at national level, deepening the voice and clout of stakeholders through partnership with academia, civil society and private sector, support inclusive multi-stakeholder dialogue process leveraging these kinds of partnership.

Stakeholder consultation is a low bar commitment to engage with project-affected communities. Adapting project design to their needs and priorities, and securing their consent is the next step up and can prevent costly delays to project implementation and activities if communities submit demands or complaints after projects have begun. (refer to Grievance Mechanism and Independent Panel)

Applying the principle of FPIC

'Free, Prior and Informed Consent' (**FPIC**) is the principle that is gaining traction - and supports the right of a community to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use.

We face an interesting situation – where laws do exist to protect land rights and governments do affirm their intentions to seek compliance with those laws – however patronage and politics and the investment commercial arguments for investment returns will mean that protecting the interests of peoples who are already marginalized in the capitalist system – who are already pawns – is difficult.

That said, the WB standards means that financial institutions and backers have to abide by the principles of stakeholders and find solutions to re-settling people who have to be moved, or finding alternate lands for people to grow food on if their project encloses that land for other purposes. The VGGTs complement these broad principles that apply to the financiers by providing citizen groups and community agencies to work with each country's unique tenure system, and within that – unique gender concerns.

The outcome should be a mix of project design tailored to social and community perspectives , while at the same time holding all stakeholders, (host government, investor and project beneficiary) best practice in land management and administration, as well as more focused work to address the needs of those sections of society whose tenure rights are the weakest.

The VGGTs place a lot of value on multi-stakeholder platforms to ensure participation, collaboration, transparency and accountability and should be gender-sensitive and particularly involve representatives of marginalized and vulnerable groups. The emphasis lies in inclusiveness and a multi-sector approach to the complexities of land governance. The AU F&G provides a template for the “design of land policy implementation strategies” and a detailed action plan to which states can refer when implementing the Land Policy principles.¹ It also recommends tracking systems through which all stakeholders can monitor and evaluate the progress of implementation.² Both frameworks emphasize the need for inclusiveness and participation in monitoring and evaluation mechanisms. These templates present a valuable complement to the WB ESS on stakeholder engagement and – the ultimate goal should be to arrive at FPIC with documented terms of consent and benefit sharing.

12. Facilitate participatory resolution of the immediacy of concerns of powerless communities

The new grievance mechanism (Annex 1) broadens the scope, scale and type of grievances when compared to its predecessor. It requires that grievances shall be proportionate to the nature and scale of the potential risks and impacts of the project.

It further specifies that the grievance mechanism may include different ways in which users can submit their grievances, which may, for instance, include submissions in person, by phone, text message, mail, email or via a website. It also calls for a log where grievances are registered in writing and maintained as a database, and that procedures are publicly advertised setting out the length of time users can expect to wait for acknowledgement, response and resolution of their grievances.

¹ Land Policy in Africa, 33.

² Land Policy in Africa, 37.

It calls for transparency about the grievance procedure, governing structure and decision makers and, in addition, provides for an appeals process (including the national judiciary) to which unsatisfied grievances may be referred when the resolution of the grievance has not been achieved. Alternatively, the Borrower may provide mediation as an option where users are not satisfied with the proposed resolution.

All of these provisions are standard in grievance and redress cases in labor cases, as they are evidence-based. While they can be levers to right wrongs when proper legal representation and support is provided to the griever in labor cases; whether they can also be equally effective in addressing gender and land issues remains to be seen when the first cases will be tried.

If all fails within the context of pursuing complaints through the grievance process, turning to the Inspection Panel provides a 'last ditch effort' for grievances that have failed to respond to stakeholders' complaints. (Refer to I:2 in this report)

The AIIB Standards – a first comparative assessment

With authorized capital of \$100 billion dollars and promises to deliver development assistance with less bureaucracy, the AIIB could play a significant role in reshaping countries' development prospects on the Asian continent while have a compelling impact on how development assistance will be managed in the future. The AIIB has indicated that it will apply best international environmental and social standards to its investment decisions. Some doubts, however, have been expressed by the wider international development community on its ability to deliver and promote "lean, clean, and green" infrastructure investments in Asia.

AIIB's Environmental and Social Policy (ESP) applies to all projects and its Environmental and Social Framework (ESF), and largely resembles the ADB's Environmental and Social Standards while adding references to biodiversity and labor.^{lxii} It lays out a vision, a policy, and three supporting standards. On some issues, the bank has embraced positions that are quite progressive on paper; AIIB excludes financing for commercial logging operations in tropical or old-growth forest.

AIIB's Framework recognizes many of the challenges other MDBs have faced and sought to address in one form or another in their respective ESFs, including appropriate references to the importance of gender equality - and calling in for identifying any potentially adverse gender-specific gender impacts, making use of gender-disaggregated data and analysis where relevant, and considering to enhance the design of projects to promote equality of opportunity and women's socioeconomic empowerment, particularly with respect to access to finance, services, and employment, and addressing climate change, biodiversity and ecosystems, resettlement, labor, cooperation with development partners, and support for green economic growth.

On other issues, AIIB's commitment are less progressive:

- ▶ AIIB will not follow the lead of the ADB or IFC in ensuring Indigenous Peoples the FPIC option when borrowers plan projects on their lands – limiting Indigenous Peoples only to engage in a Free, Prior and Informed Consultation process;
- ▶ It will continue the financing of bigcoal and nuclear projects;
- ▶ It frames its ESF primarily in terms of risk management and operational procedures and less so in ensuring accountability and protection of the environment and the rights of affected communities;
- ▶ It has not adopted an overarching set of principles that serve as guidance for project implementation, such as the polluter pays principle, the precautionary principle, the promotion of sustainable development, adherence to international human and labor rights, and, the provision of Free, Prior and Informed Consent.

13. AIIB and Human Rights

How AIIB will deal with human rights challenges is not yet clear. Its Vision statement, ESP, and ESS are silent on the matter. Yet the institution is very much aware that many of its founding members (primarily those from Europe) have acceded to, or ratified, several binding international human rights treaties and ILO conventions, notably the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the Convention on the Elimination of all Forms of Discrimination against Women; International

Convention on the Elimination of all Forms of Racism; and the Convention on the Rights of Persons with Disabilities.

These international obligations are binding for the clear majority of AIIB's founding members, including prospective lenders and borrowers. These obligations remain equally binding on States when they act jointly with others in international institutions, such as the AIIB. There should, therefore, be no question that human rights norms by extension apply to all AIIB's own business conduct. NGOs can champion the human rights cause on the strength of the legal arguments and work with partners and allies toward including a robust human rights standard (and the gender considerations within this) when AIIB reviews its ESP and ESS in the upcoming 18 months.^{lxii}

14. AIIB's Grievance mandate and capacity

It is critically important that AIIB establishes a fair and open grievance mechanism that responds to complaints relating to the planning and implementation of infrastructure projects particularly when those projects trigger Involuntary Resettlement issues and affect Indigenous Peoples habitat. As presently designed, the existing grievance mechanism will not do justice to this requirement. NGOs can therefore engage both AIIB and potentially affected people and communities in crafting a model grievance mechanism that includes the following aspects:

Legitimacy – establishing a governance structure which is independent from management to inspire fairness and trust;

Accessibility – eliminating obstacles such as language, literacy, costs, physical location impediments and fears of reprisal;

Predictability – establishing clear and transparent procedures with defined actions and time frames for each step in the process;

Equitability – provision non-biased advice and information on the process and consultation of affected parties during the process;

Transparency – establishing regular updates on public websites/case register, as well as other means of distributing information;

Rights-Compatibility – aligning the process as well as outcomes with internationally agreed human rights treaties, including redress and compensation;

Dialogue and engagement – establishing consultation and engagement opportunities for the design, performance, monitoring and evaluation of the grievance mechanism;

Learning – mandating that the grievance mechanism will be analysed beyond single cases and make recommendations for improvements to management;

Consultation – mandating that the structure and process of the grievance mechanism is submitted to consultations.^{lxiii}

While it is too early to make any conclusive call on how the AIIB's ESF has worked out so far for the environment and the people and communities affected by its infrastructure investment projects – we have to be mindful that the organization only became operational 18 months ago -, it is fair to say that the organization has 'a number of strikes against it right from the bat'. It operates a \$100B capital (half the WB's capitalization) with slightly more than 100 staff, and senior management has no intention to beef up its staff any time soon^{lxiv}. That indicates that the organization will not be able to put the kind of human resources behind the screening of project proposals that is typical for MDBs. It also means that its present staff will not be able to comprehensively address policy issues, nor dedicate the kind of time

needed to seriously undertake work on biodiversity, water, food, the environment, labor, or involuntary resettlement and indigenous peoples. It will thus rely more on specialist consultants with, among others, acknowledged gender expertise.

Furthermore, while it has only three environmental and social standards (Environmental and Social Assessment and Management, Involuntary Resettlement, Indigenous Peoples) to oversee, the nature of its mandate is such that the majority of its investments will by definition have to deal with and address critical environmental and social challenges. Whether its investments will indeed be financially sustainable, environmentally benign and socially acceptable remains to be seen.

15. Considerations for improving the AIIB standards

Entry points for upgrading AIIB management systems include:

- **Use of client systems** – The ESF does not provide adequate details on how and when client systems will be used or how gaps in country systems will be addressed to ensure that no harm will be done. Many countries that may draw on AIIB financing have weak or incomplete legal frameworks covering compulsory land acquisition and provisions of fair payment of compensation and resettlement support to those affected. Also, many have a disturbing record of forced evictions and spotty human rights records, it can therefore not be assumed that these countries will proactively strengthen national legal frameworks.
- **Ambiguous language regarding application of standards** – The ESF has a proclivity of making use of ambiguous language (“over a reasonable period of time”...“in a manner and a reasonable time frame acceptable to AIIB”...“a suitable grievance mechanism”) regarding the application of environmental and social standards. This lack of precision and broad discretion diminishes the accountability of both the client and AIIB.
- **The “phased” approach** – The ESF states that AIIB “may determine that the timing of the Client’s environmental and social assessment of identified activities under the Project, and the timing of the Bank’s environmental and social due diligence and the Client’s environmental and social assessment, may follow a phased approach that takes place following the Bank’s approval of the Project.” Approving an operation without appraising environmental and social risks and assessments would expose AIIB to reputational risks and potentially violate the international human rights legal obligations of Member states for failure to conduct due diligence.
- **Financial Intermediaries** – Oxfam’s 2015 study^{lxv} on the human cost of the IFC’s lending through financial intermediaries illustrates the harms that communities can be exposed to through inappropriate lending to FIs. The brief reference in the ESF on due diligence of FIs needs to be significantly expanded and strengthened if AIIB intends to channel funds through FIs. Oxfam’s recommendations in ‘The Suffering of Others’ also serve as recommendations to AIIB.
- **Involuntary Resettlement** – Forced displacement is inherently discriminatory, as with few exceptions it is the poor and marginalized who are exposed to such treatment in the wake of mega-infrastructure projects. It exacerbates already precarious situations leading to further impoverishment, food insecurity, psychological trauma, diminished access to basic services and the breakdown of social networks and cultures. While AIIB commits to not knowingly finance operations that either involves or results in forced evictions, the bank must also commit to strengthen its policy by harmonizing with international human rights law and standards governing evictions.
- **Indigenous Peoples** – While AIIB requires borrowers to engage in Free, Prior and Informed Consultation (FPIC), it has opted to forego the internationally customary Free, Prior and Informed

Consent (FPIC)^{lxvi} approach with affected Indigenous Peoples if project activities would have impacts on land and natural resources subject to traditional ownership. In case the laws of the country in which projects are located mandate FPIC, the Bank may determine that the client is required to apply FPIC as defined in that country's law.

At the time of writing, AIIB has shown a disposition to invest in large hydropower projects, which have multiple environmental and social impacts to address. To bridge the existing competency and capacity gap, AIIB has opted to work primarily with the WB, IFC and ADB on the co-financing of infrastructure investment projects – leaving it to them to do all the ESF and ESS footwork. The assumption is that AIIB's co-financing partners “will do the necessary to keep the organization out of the news” and will give AIIB the needed time to find its footing in how to do multilateral funding operations in a timely and effective as well as environmentally and socially friendly manner.

End Notes

i Investment Project Financing provides IBRD loan, IDA credit/grant and guarantee financing to governments for activities that create the physical/social infrastructure necessary to reduce poverty and create sustainable development. Investment Project Financing (IPF) is used in all sectors, with a concentration in the infrastructure, human development, agriculture, and public administration sectors. IPF is focused on the long-term (5 to 10 year horizon) and supports a wide range of activities including capital-intensive investments, agricultural development, service delivery, credit and grant delivery [including micro-credit], community-based development, and institution building. Unlike commercial lending, Bank IPF not only supplies borrowing countries with needed financing but also serves as a vehicle for sustained, global knowledge transfer and technical assistance. This includes support to analytical and design work in the conceptual stages of project preparation, technical support and expertise (including in the areas of project management and fiduciary and safeguards activities) during implementation, and institution building throughout the project.

ii <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=e5562765-a553-4eao-b787-7e1e775f29d5> (2016)

iii Other WB-Borrower relationships are not required to comply with the ESF, the P4R principles are not as broad as the ESF. Focusing on the ESF essentially means that PPP projects are not covered, not the P4R or other programmatic lending. This is problematic as more and more project agreements take on a hybrid nature – blending the private with the public. ESF project numbers have fluctuated in relation to the P4R and PPP, there is no conclusive evidence that one is increasing relative to the other, which is another reason why we need to monitor the standards against which projects are held.

iv See: <http://pubdocs.worldbank.org/en/520561444252805355/WorldBankGroup-WB-CorporateScorecardOctober2015.pdf>

v World Bank Gender Strategy

vi Source: Authors, NID (not intended to show hierarchy, but to illustrate the links between different protocols and processes within the ESS ecosystem)

vii Including, for instance, the World Bank's former General Counsels and Senior Vice Presidents Roberto Danion and Ana Palacio

viii This was clear during the safeguards reform effort when World Bank stakeholders across the board (from governments, to business, labor unions, churches, the larger NGO and IGO community, as well as a host of specialized United Nations agencies and bilateral international development actors) made powerful arguments for the World Bank to add a human rights safeguard to its established tableau of environmental and social safeguards.

ix See the WB's ESF "A Vision for Sustainable Development, page 1, paragraph 3

x 106181-BR-IDA-18-Gender-Development-PUBLIC-disclosed-6-2-2016-11-31PM-IDA-SecM2016-0114-Box360260B-1.pdf p.2

xi <http://documents.worldbank.org/curated/en/820851467992505410/pdf/102114-REVISED-PUBLIC-WBG-Gender-Strategy.pdf>. The strategy focus on four objectives: improving human endowments, economic opportunity, voice and agency, and the country driven approach which allows for emphasis according to specific situations within the country. The Gender Strategy (box 4.8) addresses women's property use as – ability to own, manage, control and inherit property. It also refers to women's access to the court system as – access to small claims court, right of women's testimony and number of women justices in court.

xii ESS1 P.19 (28.b) identifies these groups thus: "disadvantaged or vulnerable refers to those who may be more likely to be adversely affected by the project impacts and/or more limited than others in their ability to take advantage of a project's benefits. Such an individual/group is also more likely to be excluded from/unable to participate fully in the mainstream consultation process and as such may require specific measures and/or assistance to do so."

xiii ESS1

xiv <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx> is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women

^{xv} Includes: filing a notice of intention to proceed to arbitration, details of the grievance, statement of the issue in dispute, statement of the type of remedy sought from the arbitrator

^{xvi} Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisitions or restrictions on land use that result in displacement.

- Displacement, if unmitigated, may trigger severe economic, social and environmental risks. Whenever possible, displacement should be avoided, and when unavoidable should be minimized and measure should be taken to mitigate the adverse impacts on those displaced.
- Land refers to anything growing on or permanently affixed to land, such as crops, buildings and other improvements.
- Acquisition refers to all methods of obtaining land for project purposes, which may include outright purchase, expropriation or property and acquisition of access rights or rights, such as rights of way.
- Restrictions on land use refers to limitations or prohibitions on the use of agricultural, residential, commercial or other land that are directly put into effect as part of the project. These may include restrictions on access to parks, protected areas.

^{xvii} The concept of offset has had mixed results, on the one hand been hailed as a 'game changer' by its proponents and as a 'scam' by its opponents.

^{xviii} ESS (25d) states that "FPIC does not require unanimity...and that for the purpose of this ESS (26), consent refers to the collective support of affected Indigenous Peoples communities/SSA---communities for the project activities that affect them, reached through a culturally appropriate process. It may exist even if some individuals or groups object to such project activities..." That said and recognized, and being cognizant that cultural norms and processes are fluid and dynamic, consent for this purpose could also mean that it is not sufficient that a majority of men will 'seal a deal' if a majority of women in a community votes against a project proposal plan, the plan has failed and needs to be reworked or should be shelved. In such cases a 'super majority' comprised of a majority of votes ascertained by both men and women should be (come) the rule.

^{xix} The Nagoya Protocol addresses traditional knowledge associated with genetic resources with provisions on access, benefit-sharing and compliance. It also addresses genetic resources where indigenous and local communities have the established right to grant access to them. And contracting Parties (countries) are to take measures to ensure these communities' prior informed consent, and fair and equitable benefit-sharing, keeping in mind community laws and procedures as well as customary use and exchange.

^{xx} See: COP 12 Decision XII/7. Mainstreaming gender considerations - <https://www.cbd.int/gender/action-plan/> which, among other points (i) Encourages Parties to give gender due consideration in their national biodiversity strategies and action plans and to integrate gender into the development of national indicators; (ii) *Recognizes* that important steps in gender monitoring, evaluation and indicators relevant to the Convention have already been taken by Parties and relevant organizations but that additional work is required, including with regard to collecting and using gender disaggregated data, and therefore, encourages Parties and relevant organizations to undertake further work in this respect; (iii) *Encourages* Parties to build capacity to integrate biodiversity considerations into national gender policies and action plans;

^{xxi} Experience has shown that cultural heritage assessments are iterative rather than linear as circumstances commonly arise during an assessment of projects that require steps to be revisited. Under the supervision of cultural heritage experts, cultural heritage resources located on- and off-site which potentially could be affected by the project must be identified. Project site boundaries should remain flexible at least until all cultural resources have been identified and consensus among project team members has been satisfied. Once the geographical area and the significance of the resources have been identified, only then can the identification of site boundaries take place. When identifying spatial and temporal cultural heritage boundaries the cumulative environmental effects which could result from the project must be considered. Different boundaries may be appropriate for different cumulative environmental effects. For example, the boundaries selected for cumulative environmental effects on air quality might be quite different than those chosen for effects on cultural heritage resources. That said, spatial boundaries should extend beyond a project's immediate site to include the area likely to be affected, and temporal boundaries may extend beyond the timing of construction and operation to include the period of occurrence of the effects. Normally, the responsibility over heritage matters is shared by several jurisdictions and consultation with other government agencies is an essential aspect of the assessment. The public must also be

consulted, preferably in the early planning stages of the project, to ensure that community values and concerns have been considered in an environmental assessment..

^{xxii} According to a 2015 [IFC Factsheet](#), working with local financial intermediaries allows IFC to support more micro, small, and medium enterprises. In FY13, IFC clients, directly or indirectly, provided 5.4 million loans to small businesses worth a total \$275 billion and 29 million microloans to individuals, worth \$28 billion. IFC works with about 700 financial institutions and 220 private equity funds around the world with products including investment and advisory support for microfinance, insurance, loans to SMEs and low and medium income mortgages. It's work with financial intermediaries in more than 120 countries has helped strengthen financial institutions and overall financial systems, reinforcing responsible finance and introducing environmental and social standards for the first time

^{xxiii} FIs typically provide loans or equity financing to an entity like a local commercial bank or a private equity fund. The domestic financial institution in turn assumes the authority and responsibility for disbursing WB funds to various private companies and acts as a financial intermediary between the WB and the beneficiaries of the funds. The entire arrangement is referred to as a financial intermediary (FI) project, and the FIs investments using WB funds are referred to as subprojects. Subprojects vary also in size. They cover investments in SMEs in sectors such as manufacturing, textiles, and construction, to finance for larger companies in industrial sectors, including energy and infrastructure. Financial sector investments are moving away from credit lines to commercial banks and more toward equity investments in local commercial banks or funds. Such transactions comprise approximately half of total IFC FI operations.

^{xxiv} For example, lending to highly polluting SMEs, such as tanneries and textiles, may result in the contamination not only of local streams and waterways but also in the exposure to chemical contamination of workers; particularly women workers who heavily populate the SME sector. Financing in the wood-processing industry may contribute to local deforestation if the wood is not harvested in a sustainable manner, and FI investments in fossil fuel-based energy development or larger hydropower infrastructure projects can lead to a significant increase in GHG emissions or displacement of local communities. And while the individual subprojects' impacts may be negligible and comply with local environmental standards, the cumulative impacts on common resources and communities may be quite substantial.

^{xxv} WB does not have the resources and manpower necessary to serve SMEs directly because the individual loans are too small and the number of SMEs or subprojects is too large; and greater FI investments help develop capacity of financial markets in developing countries

^{xxvi} 2016. "World Bank Environmental and Social Framework." World Bank, Washington, DC p.92

^{xxvii} <https://www.oxfam.org/en/research/suffering-others>

^{xxviii} WB staff relies heavily on informal personal relationships with FI staff to influence FIs decisions and to ascertain whether subprojects are complying with environmental and social requirements. As a development institution, the WB is faced with many trade-offs regarding FIs. It is trying to develop and expand local financial markets. At the same time, it has made commitments to transparency and managing environmental and social risks. In order to meet its mission of poverty alleviation in the broadest sense, the WB must acknowledge that it will continue to rely on the collaboration and cooperation of FIs. But it must do so while minimizing risks to the environment and communities.

^{xxix} Substantial risk and high risk projects - Any subproject that involves resettlement is required to be categorized as high or substantial risk (ESS9, 18) and adverse risks or impacts on Indigenous Peoples considered as part of the risk categorization

^{xxx} The WB, for example, adopted its Access to Information Policy, which codified access to vital information for civil society and affected communities around the world. Sustained advocacy by civil society around these issues has now resulted in a Stakeholder Engagement safeguard policy, which requires borrower governments to engage with stakeholders throughout the investment project cycle, rather than just at the outset.

^{xxxi} The WB has apparently only ever halted a project once, generally it tends to offer financial compensation to allow the project to proceed.

^{xxxii} Who can file? - Any group of two or more people in the country where the Bank-financed project is located and who believe that, as a result of the Bank's violation of its policies and procedures, their rights or interests have been, or are likely to be, adversely affected in a direct and material way. They may be an organization, association, society or other group of individuals; a duly appointed local representative acting on explicit instructions as the agent of adversely affected peoples; in exceptional cases, a foreign representative acting as the

agent of adversely affected peoples; a World Bank Executive Director in special cases of serious, alleged violations of the Bank's policies and procedures. Those filing must live in the project area (or represent people who do), and have been or are likely to be adversely affected by project activities; they believe that they may suffer actual or future harm resulting from a failure by the Bank to comply with its policies and procedures; and their concerns have been brought to the attention of Bank Management, and they are not satisfied with the outcome.

xxxiii Complying with WB procedures can be a very time and resource-consuming undertaking. The Panel routinely receives complaints on issues that are narrowly focused and less contentious, and there may be an interest on the part of all key stakeholders to seek opportunities for early solutions. To this end, the Panel has developed this new accelerated approach.

xxxiv Procedural steps: The Panel would meet with management within a few days of receiving a request. If, in the view of the Panel, the case is well suited for resolution under this approach, and management indicates a preference for this optional approach, the Panel consults with the requesters immediately thereafter. If the requesters also accept this approach, management reverts promptly, normally within two weeks, with information on proposed steps and/or measures and an anticipated timeframe to address the concerns about alleged harm raised in the request.

xxxv Voluntary Guidelines on the Governance of Tenure of Land, Fisheries, and Forestry in the Context of Food Security (2102) <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

xxxvi Nancy Kachingwe, *From Under Their Feet*, 2012, p.9, Johannesburg: ActionAid International.

xxxvii See Benchmarks for Land Governance in Africa 2014 which draws parallels and common agendas between the VGGT and the AU F&G

xxxviii Voluntary Guidelines, 39 (paragraph 26.2).

xxxix Land Policy in Africa, 33.

xl Land Policy in Africa, 37.

xli Voluntary Guidelines, 3

xlii Voluntary Guidelines, 15

xliii <http://www.glt.n.net/index.php/land-tools/glt-n-land-tools/continuum-of-land-rights>

xliv Voluntary Guidelines, 5

xlv Land Policy in Africa, 15

xlvi United Nations, Article 16 of *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article14>

xlvii ActionAid joins IIED, ILC, IFAD and others in adopting the following definition of land grabs: "Large-scale land acquisitions or concessions are defined as land grabs if they are one or more of the following:

- violations of human rights, particularly the equal rights of women
- not based on free, prior and informed consent of the affected land users
- not based on a thorough assessment or are in disregard of social, economic and environmental impacts, including the impact on women
- not based on transparent contracts that specify clear and binding commitments about activities, employment and benefit sharing
- not based on effective democratic planning, independent oversight or meaningful participation."

xlviii Article 17, *Universal Declaration of Human Rights*. See <http://www.un.org/en/documents/udhr/>

xlix Land Policy in Africa, 16.

^l Land Policy in Africa, 11 and 17

^{li} http://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf

^{lii} Voluntary Guidelines, 29.

^{liii} Voluntary Guidelines, 14 and 9; Land Policy in Africa, 27-28.

^{liv} Voluntary Guidelines, 1 and 14; Land Policy in Africa, 33.

^{lv} Voluntary Guidelines, 35; Land Policy in Africa, 20.

^{lvi} Voluntary Guidelines, 15; Land Policy in Africa, 28.

^{lvii} Interview with Purna Sen, 25 March 2014

^{lviii} Julius Court, Goran Hyden and Ken Mease, *The Judiciary and Governance in 16 Developing Countries*, World Governance Survey Discussion Paper 9, (United Nations University, 2003),

<http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4108.pdf>

^{lix} Land Policy in Africa, 13 and 14.

^{ix} Bres Aurelie, Challenge and Opportunities for VGGT Implementation in Latin America and The Carribean (Paper prepared for 2017 World Bank Conference on Land and Poverty) Washington DC March 2017-07-14

^{lxi} AIIB also took a close look at the IFC Performance Standards and the WB's new ESF/ESS but found both of them too comprehensive and time-consuming to work with. ts Standards are now commonly referred to in the international development community as "ADB plus".

^{lxii} The authors recommend that Oxfam refer to the reasoning made by previous WB general counsels (Roberto Danion and Ana Palacio) who made the case for pursuit of human rights to WB's mandate. See Erich Vogt, "Establishing a Rights-based Approach to International Development", Environmental Policy and Law – The Journal for Decision-Makers, Vol. 45, Number 5, Sept.2015, pp. 180 – 190.

^{lxiii} See German Institute for Human Rights, "Consultation on AIIB Environmental and Social Framework (ESF)", 23 October 2015, p.6

^{lxiv} Senior AIIB management let it be known that it has difficulty recruiting seasoned professionals to join the organization at its HQ. Beijing does presently not offer international professionals the kind of living environment.

^{lxv} <https://www.oxfam.org/en/research/suffering-others>

^{lxvi} AIIB Environmental and Social Framework, February 2016, p. 44