Mr. Mark King & Ms. Anne-Katrin Arnold

World Bank Safeguards Team

Washington, D.C.

London & Brussels, 15 December 2017

Dear Mr. King and Ms. Arnold,

**Comments on the draft Guidance Notes**

Following the issuance by the World Bank (WB) of its draft Guidance Notes relating to the new *Environmental and Social Framework: Setting Environmental and Social Standards for Investment Project Financing* (Framework), Minority Rights Group International (MRG) and Lex Justi would like to submit the following comments on the draft Guidance Notes.

Initially, we would like to express our appreciation for the WB’s solicitation of comments on the draft Guidance Notes consistent with its open dialogue during the drafting of the Framework. MRG and Lex Justi find that the draft Guidance Notes contain a number of clarifications that assist in furthering respect for the rights of persons, including indigenous communities, affected by WB financed investment projects. For example, the expression of the need to give particular attention to sub-groups within indigenous peoples, ‘who may be vulnerable, such as women, youth, the poor and persons with disabilities’ in **GN25.2** of ESS7 provides an important acknowledgement of the intersectionality of groups of marginalized persons.

MRG and Lex Justi welcome this opportunity to provide comments on a number of issues that we have addressed during our participation in the consultations related to the WB’s formulation of the Framework and through our several submissions. We also provide additional detailed comments on specific provisions in the draft Guidance Notes for ESS1, ESS5, ESS7, ESS8 and ESS10.

**I. Issue-Specific Comments**

**References to international human rights instruments**

MRG and Lex Justi are extremely disappointed that the WB has not made references to international human rights instruments throughout the text of or annexes to the Guidance Notes. Despite the WB’s clear utilization of the International Finance Corporation (IFC)’s Guidance Notes as a basis for drafting, the WB has explicitly declined to follow the approach of the IFC of referencing relevant international human rights instruments. Consequently, we fear that this decision will have numerous negative repercussions.

First, Borrowers may undertake actions that are consistent with national law, but violate international law standards. We can take forced evictions as an example. The WB’s Guidance Note for ESS5 only mentions how Borrowers should respect due process in carrying out forced evictions (**GN31.1** and **GN31.2**). These GNs omit any mention of the requirement that Borrowers must comply with international law, not only with respect to the way forced evictions are carried out, but also regarding how such evictions are decided and planned. These requirements, among others, are summarized in the ‘Forced Evictions’ guide jointly prepared by the UN Office of the High Commissioner for Human Rights and UN Habitat.[[1]](#footnote-1) The provisions in this guide reflect developments in the international law standards relating to forced evictions since the IFC’s Guidance Notes were drafted. **GN31.1** and **GN31.2** should reflect these developments and the guide should be an essential reference document for Borrowers, but is nowhere mentioned in the Guidance Notes. We note that free, prior and informed consent (FPIC) is another example of where a Borrower may be in compliance with national law but violate international law standards, a possibility that the WB has failed to allow for in the Guidance Note for ESS7.

Second, the WB creates contradictions with its failure to mention international human rights instruments. Government borrowers obtaining investment project financing from the WB will likely contract with private entities to carry out the ground, infrastructure and other works on a project. These private entities are expected to comply with international human rights principles, consistent with the UN Guiding Principles on Business and Human Rights. In contrast, the WB seems to let government borrowers off the hook regarding respect for human rights by its failure to mention international human rights instruments. Also, the WB’s failure to reference international human rights standards implicitly results in the World Bank Group holding private entities to a higher standard than states. While the IFC’s Guidance Notes require private entity borrowers to respect human rights, the WB oddly shuns away from reminding government Borrowers of their human rights obligations and thereby overlooks a key opportunity to reinforce human rights.

In fact, we can wonder whether the WB is not creating an incentive for a shift of borrowing from the World Bank Group, for development projects, from private entities to governments as the private entities seek to avoid the explicit human rights obligations under the IFC Performance Standards.

In sum, we note that the WB appears to adopt a risk management, rather than human rights-based approach, in its Guidance Notes. Yet, we envision that with developments in the business and human rights field, which include banks’ increasing consideration of human rights in their assessments of borrowers and the greater acknowledgement of the close relationship between rights and remedies,[[2]](#footnote-2) as well as the human rights-based approach of the United Nations family, that the WB will soon be required to incorporate human rights more explicitly into its Guidance Notes. We think it is a mistake for the WB not to take this approach now.

A common introductory paragraph across all Guidance Notes explicitly mentioning international human rights standards (with a listing of relevant standards) would significantly help bridge these gaps.

**Reference to indigenous peoples**

We remain very concerned about the use of the terminology, ‘Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities’ throughout ESS7 and now in its draft Guidance Note. In particular, we have repeatedly pointed out that the term ‘Sub-Saharan African Historically Underserved Traditional Local Communities’ lacks legal substance and is confusing: why ‘Sub-Saharan African’ and not North African or indeed, other regions? Ultimately, it simply serves to distract readers from the indigenous peoples’ focus of ESS7, which after all should be grounded in the national and international legal norms governing indigenous peoples’ rights.

In order to ensure that it is not detracting from or affecting the international legal status of the term ‘indigenous peoples,’ the WB should add to the end of **GN6.2** the phrase ‘or under international law’. In addition, we understand that the language was necessary in order to achieve agreement, principally on ESS7. Now that agreement has been reached and the Guidance Notes are meant to help guide implementation, we would urge the WB to allow the phrase ‘Sub-Saharan African Historically Underserved Traditional Local Communities’ to remain only in the title and the sections directly quoting ESS7; beyond that, the paragraphs of the Guidance Note should just use ‘indigenous peoples’ as a more straightforward way of guiding implementation.

**Free, prior and informed consent**

The right of indigenous peoples to FPIC continues to receive increasing recognition and support within the international legal community and in state practice. However, the omission of references to international legal instruments, such as the authoritative UN Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as documents providing guidance on the application of FPIC, only contributes to the risk that Borrowers will not carry out FPIC in compliance with international law standards. This omission by the WB may also lead to Borrowers not requiring entities, with whom they contract to carry out work on a project, to fully respect indigenous peoples’ FPIC right.

We remain highly critical of the introduction of the words ‘adverse’ and ‘significant’ into the criteria for applying FPIC in ESS7. These terms are overly vague and run counter to the spirit of FPIC, since we presume that a determination of whether an impact is either of these will be made by the Borrower and not by the community itself. Moreover, the WB is forgetting the principal basis for FPIC, namely indigenous peoples’ right to self-determination, and therefore couching the right too narrowly. For instance, Article 19 of the UNDRIP states more broadly:

‘States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.’

And the relevant UNDRIP Articles concerning impact on land and resources (Article 28) and culture (Article 11) have no such limiting (i.e. ‘adverse’ or ‘significant’) wording.

We therefore recommend the addition of a new para. **GN 24.3** in the Guidance Note for ESS7 that provides that a determination of whether an impact is 'adverse' in the case of para. 24(a) or 'significant' under (b) should be made by affected indigenous communities with clear documentation of both the process and outcome.

In addition, we note the WB’s failure to adopt the suggestion, contained in our Recommendations for the drafting of the WB’s Guidance Notes of 5 June 2017, to signal in the Guidance Notes when determinations trigger the application of FPIC. However, this could lead to Borrower’s violation of indigenous peoples’ rights in multiple situations. Borrowers may overlook the applicability of FPIC with respect to: ‘significant residual impacts,’ ESS1, para. 27(d); ‘adverse impacts,’ ESS7, para. 24(a); ‘significant impacts,’ ESS7, para. 24(c); ‘conversion of customary usage rights,’ ESS7, para. 29; whether ‘a project may significantly impact cultural heritage’ of an indigenous community, and whether the cultural heritage is ‘material to the identity and/or cultural, ceremonial, or spiritual aspects’ of indigenous peoples’ lives, ESS7, para. 32; and ‘risks and impacts on cultural heritage,’ ESS8, para. 8. Again, we strongly encourage the WB to insert a statement that FPIC may be triggered in the GNs to each of these paragraphs.

We also reiterate the suggestion, from our Recommendations, that mention should be made, in the Guidance Note for ESS8, that the FPIC of an indigenous community will likely be triggered when a WB funded project impacts their cultural heritage or uses their cultural heritage, including knowledge, innovations or practices, for commercial purposes. Similarly, a comment should be made in the Guidance Note for ESS5 that restrictions or deprivation of the land of indigenous peoples may fundamentally affect their culture and livelihoods and threaten the very existence of the community, which consequently implicates the community’s right to FPIC. This observation could usefully be made in a new GN added to the initial paragraphs of the Guidance Note for ESS5 as well as **GN17.3.**

There is an unfortunate word choice in the description of FPIC processes. **GN25.1** states that representatives ‘may be chosen through a process that is culturally appropriate.’ Clearly, the ‘may’ should be replaced with ‘should’.

While FPIC can be achieved ‘when individuals or groups within’ indigenous communities explicitly disagree, the community itself should decide when its consent has been given. Therefore, the following sentence should be added to the end of **GN25.6** in the Guidance Note for ESS7: ‘The determination of whether consent has been reached by the community will be determined by the community itself.’

**Meaningful consultation and effective participation**

We welcome **GN4.1** in the Guidance Note for ESS10 and its acknowledgement that ‘[e]ngagement begins as early as possible in project preparation.’ According to the WB’s *Loan Handbook for World Bank Borrowers* (Feb. 2017), the preparation phase of a project has two parts: the identification of programs/projects as well as key stakeholders and target beneficiaries, and second, the preparation of a ‘concept note’. Therefore, **GN4.1** should reflect that stakeholders, including potentially affected persons and communities, should be consulted even during the identification of programs/projects. This modification would make **GN4.1** consistent with **GN23.1** in the Guidance Note for ESS1 that provides for the environmental and social assessment to start ‘as early as possible during project identification and preparation’.

A statement as to the purpose of the consultation would assist in guiding the nature and scope of Borrowers’ consultations with affected persons and communities. In particular, the phrase, found in GN105 in the IFC’s Guidance Note 1, and GN27 in its Guidance Note 5, could serve as a basis for the WB’s GN; it provides for ‘organized and iterative consultation, leading to the client’s incorporating into its decision-making process the views of the affected households.’

Where persons and communities affected by a project are consulted to determine the appropriate form and nature of the engagement and consultation, those processes are likely to be more effective and efficient, and the concerned persons and communities will feel a stronger commitment to the processes. The addition of a phrase expressing this understanding at the end of **GN21.1** in the Guidance Note for ESS5 and in the GNs concerning physical displacement and economic displacement also in the Guidance Note for ESS5, as well as in **GN13.1** of the Guidance Note for ESS10 about preparation of the SEP, would constitute good advice to Borrower.

We remain concerned that the term ‘proportionality’ might be misconstrued by Borrowers so as to exclude affected persons and communities from consultations and to limit the disclosure of information. We believe a sentence should be included at the end of **GN4.2** in the Guidance Note for ESS10 to clarify that ‘proportionality’ should not affect the information shared nor the range of stakeholder participants. This point should also be made in connection with the SEP in **GN13.4** in the Guidance Note for ESS10.

The GNs should mention the importance of involving project-affected parties in the design of the grievance mechanism, for example in **GN19.1** in the Guidance Note for ESS5 and **GN26.1** in the Guidance Note for ESS10. Such involvement assists in ensuring that the mechanism is feasible and will address the concerns of those parties. The UN Working Group on the issue of human rights and transnational corporations and other business enterprises has expressly underlined the right of affected persons to participate in the design of the grievance mechanism in stating:

‘[R]emedial mechanisms, whether judicial or non-judicial, should not treat rights holders merely as recipients of remedy. Rather, all mechanisms should be at the service of rights holders, who should be consulted meaningfully in creating, *designing,* reforming and operating such mechanisms.’[[3]](#footnote-3) [emphasis added]

Finally, the draft Guidance Notes are not clear as to how the WB will evaluate Borrower’s performance of consultation and consent processes based only on the documentation provided by the Borrower under **GN9.1** in the Guidance Note forfor ESS10. What check can and will the WB do, for example, to evaluate the Borrower’s assessment of its incorporation of stakeholders’ concerns? In this connection, the WB will need to ensure that it is aware of the environment encompassing the consultation and consent processes, including whether human rights defenders feel threatened. We believe the WB requires independent information. Also, we think it would be helpful to specify the ‘categories’ of participants, under **GN9.1** to ensure that Borrowers properly document stakeholder engagement**.** The categoriesshould include vulnerable and disadvantaged groups and details about their level of participation.

**Mitigation hierarchy**

We remain deeply concerned by the description of the mitigation hierarchy, specifically sub-para. (d) of para. 27 of ESS1. The language (‘Where significant residual impacts remain, compensate for or offset them, where technically and financially feasible’) is potentially a ‘get-out’ clause for Borrowers, following a finding that remedial actions are not feasible. Some attempt at underscoring the hierarchy of steps has been taken by the drafters in **GN27.2** in the Guidance Note for ESS1. Worryingly, **footnote 3** states that financial viability also includes ‘whether this incremental cost could make the project nonviable for the Borrower.’ Surely, such a finding should be considered before a project commences, rather than left as a final escape clause. Moreover, we cannot imagine why the WB would wish to finance projects that it knows will leave significant social impacts without providing for a remedy in such situations

We would urge that the WB institute some form of review of a finding by the Borrower that remedial action is not technically and financially feasible as an added protection to the requirement that ‘the rationale for this determination… will be set out…’ (**footnote 26**) by the Borrower.

Moreover, in a number of places in the draft Guidance Notes, there are references to ‘mitigation’ or ‘mitigation measures’ (nonexclusive examples include: **GN29.1** in the Guidance Note for ESS1 for the former term, and **GN28.2** in the Guidance Note for ESS1; **GN9.2** in the Guidance Note for ESS8, and **GN24.1** in the Guidance Note for ESS10 for the latter). However, we believe that it is important that Borrowers understand that these terms refer to the ‘mitigation hierarchy’ rather than merely ‘mitigation’ as the 3rd step of the ‘mitigation hierarchy.’ Therefore, we suggest that such references, wherever found in the draft Guidance Notes, are changed to ‘mitigation hierarchy’ or that the phrase ‘avoidance, and minimization and reduction,’ in reference to the first two steps of the mitigation hierarchy, is added.

**II. Additional Comments on Specific Guidance Notes**

**ESS1**

**GN7.4** - When the Borrower’s ability to achieve the environmental or social outcomes depends on activities of other government agencies or third parties, it should be incumbent upon the Borrower to ‘identify and evaluate the potential limitations on the Borrower in this regard and consider ways to support the desired environmental and social outcomes.’ Thus, we would suggest deletion of the qualifying phrase ‘Where possible’ at the beginning of the last sentence.

**GN14.1** – As the agreement by the Borrower and the WB as to the ‘manner the risks and impacts of the project will be assessed and managed, and appropriate timing for this assessment’ can impact affected parties and other interested parties, we believe the WB and Borrower would benefit from obtaining the input of affected and other interested parties. Therefore, the need for consultation with project-affected and other interested parties should be specifically mentioned in this GN.

**GN20.2** – While a Borrower may have a policy, legal and institutional framework as well as laws, regulations, rules and procedures (subparagraphs (a) and (b) under **GN20.2**), that are considered to constitute good practice, they may not be implemented in the country. Therefore, the WB’s assessment should include implementation and enforcement aspects of the framework and procedures. For example, a country may have legal provisions that provide for respect of indigenous peoples’ FPIC, but those laws may not be implemented in practice nor enforced when challenged by indigenous communities attempting to assert their rights.

In addition, as **GN26.1** specifically mentions ‘international obligations or treaties that are directly applicable to the project,’ these also should be included as one of the aspects to be assessed by the WB in determining the appropriateness of Borrower’s ES Framework, in **GN20.2,** to ensure consistency.

**GN20.3** – Moreover, input from relevant stakeholders related to Borrower’s implementation of the framework and procedures, under **GN20.2(a)** and **(b)**, is essential. The replacement of the term ‘may’ with ‘shall’ would effectuate this suggestion.

**GN26.1** – While we appreciate the reference to ‘international obligations or treaties’ in **GN26.1**, we are concerned that the qualification that they must be ‘directly applicable to the project’ is too narrow. Given the definition of ‘Project’ in the Glossary: ‘the activities for which Bank support through Investment Project Financing is sought by the Borrower,’ the phrase ‘directly applicable’ may be interpreted as not applying to persons affected by the project. Therefore, the last sentence of this GN should instead read: ‘Where the Borrower has entered into international obligations or treaties that are relevant to the project and its impact….’

**Proposed GN28.3 to Footnote 28** – Although the WB has issued a Bank Directive specifying ‘disadvantaged or vulnerable’ groups, we note that this Directive is only for WB staff. Therefore, in order to ensure that Borrowers are aware of the very groups of persons mentioned in the Bank Directive, we would suggest that a new GN be added that would essentially repeat the definition contained in Section II.1 (Definitions) of the Directive.

**Suggested GN32.1** - We would suggest adding a GN 32.1 in order to provide Borrowers with guidance as to what is meant by ‘proportionate to its control or influence over the Associated Facilities.’

**GN 34.1 -** The term ‘extended’ is an additional qualification that narrows Borrower’s obligations with respect to its primary supplies and is not found in the wording of para. 34. The Borrower, consistent with Principle 5 of the UN Guiding Principles on Business and Human Rights ‘should exercise adequate oversight in order to meet [its] international human rights obligations when [it] contract[s] with… business enterprises to provide services that may impact upon the enjoyment of human rights.’ Therefore, the term ‘extended’ should be deleted.

**ESS5**

**Suggested GN to para. 2** – While we appreciate that para. 2 of ESS5 mentions some of the negative impacts of physical and economic displacement, we believe that a GN should elaborate upon these impacts and specifically reference the effects, such as those mentioned in ‘Impoverishment Risks and Reconstruction Model’ (Cernea, 1997, 2000) and reproduced in the first note in GN5 of the IFC Guidance Notes. A paragraph should also be added to emphasize that Borrowers should take steps to avoid the acquisition of land that results in the physical or economic displacement of people given the stated objectives of ESS5.

**GN4.10** – We suggest inserting ‘or use’ after ‘occupy’ in the third line to render this phrase consistent with para. 4(d) of ESS5.

**GN4.13** – With reference to Footnote 10, we appreciate that there may be a few instances where land is donated to a project, but we worry that this possibility may pave the way for abuses. We suggest that donations by indigenous peoples, and other vulnerable or disadvantaged groups should receive particular attention and scrutiny from the WB, and mention of this should be included in the text. We would also suggest particular mention of donations as requiring heightened scrutiny in **GN45.1** in the Guidance Note for ESS1 on monitoring.

**GN10.1** – The drafts have opened up an unfortunate gap between the Guidance Notes for ESS5 and ESS7. The Guidance Note for ESS7 includes seasonal use as one of the criteria determining collective attachment to land and natural resources (**GN8.2**) – which is welcome. However, **GN10.1** in the Guidance Note for ESS5 explicitly excludes seasonal resource-users, unless their rights are recognized by national law, from compensation for land. MRG has catalogued many instances of land-grabbing affecting ethnic, religious and linguistic minorities as well as communities defined by their occupation or descent, including seasonal resource-users with deep-seated connections to customary lands (e.g. fisher-folk; nomadic pastoralists). They may not necessarily fall within the scope of the protections in the Guidance Note for ESS7. And while a few countries have adopted legislation concerning the land rights of minorities with long-standing ties to their customary lands, many others have not. While the phrase ‘eligible for resettlement and livelihood assistance and compensation for assets’ in sub-para. (c) is positive, we would urge the drafters to insert ‘or international’ in ‘under national law’ and add ‘or jurisprudence’ so the phrase reads ‘under national or international law or jurisprudence’ in Category (b) in order to stay in line with international norms concerning the customary land rights of minority seasonal resource-users.

**GN20.2 and GN20.4** – A statement should be added to express that an adjustment will be made for the loss of fixed assets (such as built structures, crops, fruit trees, and woodlots) where there has been a delay in communication or a ‘historic’ cut-off date problem. We would think it would be reasonable for the concerned persons to demonstrate that there was a need for additional fixed assets, such as the construction of a new building for storage to replace an inappropriately old weathered one, or the planting of additional crops to maintain the person’s livelihood. Alternatively, since the establishment of a cut-off date can impose a hardship on affected households and communities, the Borrower should compensate for losses generated by the restriction of land use. The Borrower should also consider ways to minimize impacts from cut-off restrictions.

**GN35.1** – This Note could usefully acknowledge the interconnected nature of assets, as does GN11 in the IFC Guidance Notes.

**Requirement of independent expert** – A number of evaluations are to be undertaken under ESS5 that will have significant impacts on affected persons. In order to ensure fairness in practice and in perception and to minimise the imbalance of power and knowledge between the Borrower and these persons, an independent expert should conduct these evaluations. We cite several places in the Guidance Note where this is the case: due diligence to confirm that a voluntary purchase is voluntary under **GN6.1**; an assessment related to ‘land titling or other activities intended to confirm, regularize or determine land rights’ under para. 7; an assessment to ‘identify potential economic and social risks and impacts of the planning or regulation, and appropriate measures to minimize and mitigate them’ para. 8; eligibility classification under para. 10; and ‘the calculation of the value of the improvements is robust’ in **GN32.1**. Moreover, the census in **GN20.1** should mandatorily be taken by ‘a social specialist with expertise in land and natural resource tenure’ and therefore the phrase ‘and if needed’ should be deleted in **GN20.1**.

**ESS7**

**GN8.1** – This GN should mention that the screening shall be conducted in consultation with the indigenous community, since this determination will have a significant impact on their rights.

**GN9.1** – This GN elaborates upon the language in para. 9 of ESS7. However, we note that the emphasis on ‘temporal limitation’ has been added in **GN9.1.** We would urge removal of this paragraph, whilst allowing the limitation to remain only in para. 9.While we can understand that there must be some cap on community involvement after many generations of displacement, we regret the new emphasis on limiting what we see as a very positive step forward by the WB, namely the recognition that displaced indigenous communities also retain a collective attachment to their lands. The fact is that for many indigenous communities, a lifetime may actually not be a very long period of time – given the impact that extreme poverty, racism, violence and displacement may have. For example, first- and second-generation indigenous city-dwellers may be crucial bearers of their heritage who urgently need to retain collective attachment to their lands. After all, we are speaking of the threatened extinction of whole cultures through displacement.

**GN25.2** - We believe that the absence of a bibliography that references guides concerning how ‘particular attention should be given to groups within affected IP/SSAHUTLC who may be vulnerable’ handicaps Borrowers in providing such particular attention.

**GN33.1 & GN33.2** – We welcome the greater elaboration provided in these GNs on cultural heritage compared with ESS7. These paragraphs could usefully also include specific mention of intellectual property rights, with for instance community-led cooperatives being set up to secure, receive and disburse royalties. The reason is that the language currently and perhaps inadvertently depicts indigenous communities as passive beneficiaries, rather than as bearers of traditional knowledge.

**Appendix A to ESS7** - In the 2nd line of 1b), under ‘IP/SSAHUTLC Plan,’ ‘any of’ should be inserted before the phrase ‘the three circumstances’ since the three circumstances do not need to be conjunctively present.

**ESS8**

**GN3.1** – We appreciate that a reference to ESS7 is made in **GN29.2**, but would also suggest that the WB signal the connection between ESS8 and ESS7 earlier in the Guidance Note for ESS8. Specifically, at the end of **GN3.1**, the following sentence found in **GN29.2** could be added: ‘Where such a project concerns the cultural heritage of Indigenous Peoples […], the relevant requirements of ESS7 also apply’.

**GN7.1**- Stakeholder consultation is essential when the Borrower evaluates ‘whether and how the project may materially impact [cultural] heritage’ and its determination of ‘measures and actions to mitigate’ these impacts. Consequently, we strongly urge the WB to insert that ‘project-affected and other interested parties are consulted’ after ‘if impacts are identified’ in this GN. While we recognize that interested parties should be consulted consistent with ESS1, we believe it is essential to articulate the importance of such consultation in ESS8 since the two determinations mentioned above will substantially impact the rights of such persons.

**GN9.1 –** In order to ensure consistency throughout this Guidance Note for ESS8, we believe that a reference to ‘international regulations and practices,’ similar to that made in **GN17.1** should be made in this GN. The insertion could be made directly after the term ‘national laws.’

**GN17.1** – Given that para. 17(a) and Footnote 6 of ESS8 mention ‘regional’ and ‘international cultural heritage regulations,’ the reference to ‘national legislation, regulations and practices’ in **GN17.1** should be modified to read ‘national, regional and international legislation, regulations….’

**ESS10**

**GN5.1** - For purposes of clarity, the description of ‘project affected parties,’ should specifically mention that such persons may be outside the delimited area of the project.

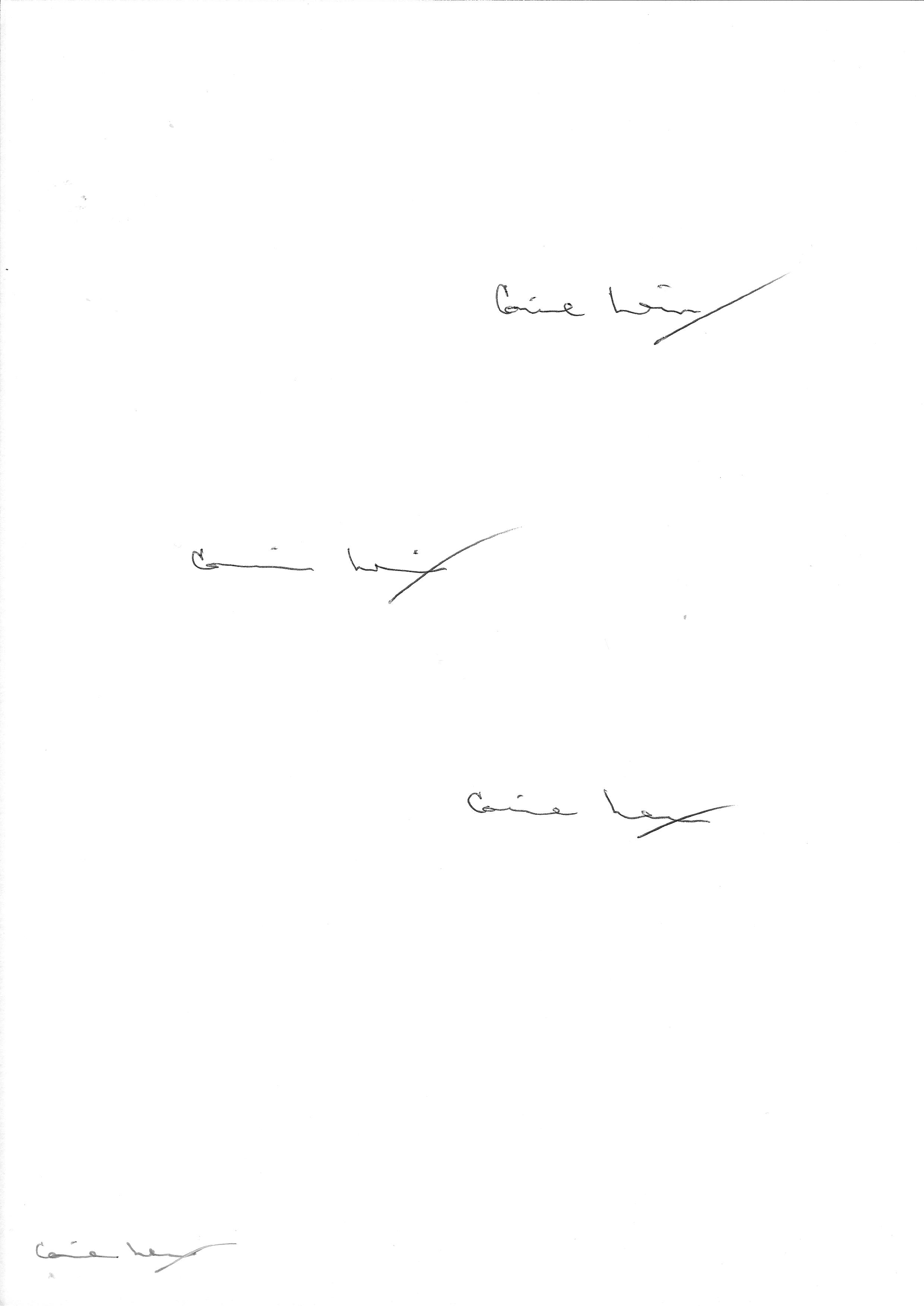
**Proposed GN11.1 to Footnote 2** – As with the proposed **GN28.3** in the Guidance Note for ESS1, we note that the list of ‘disadvantaged or vulnerable groups’ (‘age, including the elderly and minors…’) is incomplete (notably missing gender and minorities) and inconsistent with mentions elsewhere. Given that the WB has issued a Bank Directive specifying ‘disadvantaged or vulnerable’ groups for WB staff, we would suggest that a new GN para. is added that would repeat the definition contained in Section II.1 (Definitions) of the Directive.

**GN22.1 –** The phrase ‘where appropriate’ is superfluous in the first sentence; it also detracts from the importance of consultations. We suggest its deletion.

**GN27.1** – The determination of whether existing formal and/or informal mechanisms ‘are deemed suitable’ should be based primarily on the views of project affected parties rather than the Borrower. Therefore, the phrase ‘to project affected parties’ should be inserted after ‘deemed suitable’ in the fourth sentence.

Thank you for this opportunity to comment on the draft Guidance Notes. If you or your colleagues have any questions or need any clarifications, please do not hesitate to contact us. Our e-mail addresses are, respectively: [clewis@lexjusti.com](mailto:clewis@lexjusti.com) and [carl.soderbergh@mrgmail.org](mailto:carl.soderbergh@mrgmail.org)

Best wishes,



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1. ‘Forced Evictions’ (Fact Sheet No. 25/Rev.1) issued by UN Habitat and OHCHR in 2014. [↑](#footnote-ref-1)
2. See UN Working Group on the issue of human rights and transnational corporations and other business enterprises, ‘Access to effective remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework’ (A/72/162), para. 2, submitted to the UN General Assembly (18 July 2017). [↑](#footnote-ref-2)
3. *Ibid.*, para. 21. [↑](#footnote-ref-3)