

December 22, 2017

Manuela Ferro
Vice President, Operations Policy and Country Services (OPCS)
World Bank Group
1818 H Street, NW
Washington, DC 20433

Re: Environmental and Social Framework Draft Guidance Notes 1 and 10

Dear Ms. Ferro,

We write to offer the following recommendations to the World Bank on how to improve the usefulness of the Guidance Notes in helping Borrowers implement Environmental and Social Standards 1 and 10. While we appreciate the opportunity to comment on the draft, we feel strongly that it falls far short of achieving what we believe to be the Guidance Notes' purpose: to provide Borrowers with practical, actionable advice on how to effectively implement the Environmental and Social Framework.

As such, we urge the Bank to revise the Guidance Notes so that they provide substantive guidance, concrete examples, and references to additional outside tools and resources, with specific attention to disadvantaged or vulnerable groups. Our submission contains detailed recommendations and a suggested list of outside resources based on the expertise of 31 organizations and individuals committed to protecting people and the environment from risks associated with large-scale development projects. We hope that you find it useful for the preparation of a new draft of Guidance Notes, which we urge you to release for an additional round of public comment.

We look forward to your response, and to working with you to ensure the Guidance Notes and forthcoming Staff Guidance meet their objectives and provide the resources and clarity necessary for Borrowers and staff to carry out their responsibilities under the new Framework.

Sincerely,

Undersigned Organizations

Signatories

Access Bangladesh Foundation
Accountability Counsel
African Law Foundation (AFRILAW), Nigeria
ASEAN Disability Forum, Philippines
Bank Information Center
Both ENDS
Buliisa Initiative for Rural Development Organisation (BIRUDO) Uganda
Center for Advocacy, Learning and Livelihood (CALL) Foundation of the Blind Inc.
Center for International Environmental Law (CIEL)
Coalition for Human Rights in Development
Collectif Camerounais des Organisations des Droits de l'Homme et de la Démocratie (COCODHD)
Crude Accountability
Debt Justice Norway
Derecho Ambiente y Recursos Naturales DAR
Friends of the Earth US
Gender Action
Germanwatch
Government Union for the Integration of Differently-Abled Employees (GUIDE)
Human Rights Watch
Inclusive Development International
International Accountability Project
Life Haven Center for Independent Living
Lumière Synergie pour le Développement
Philippine Blind Union (PBU)
Philippine Chamber of Massage Industry of Visually Impaired
Social Justice Connection, Canada
National Union of Disabled Persons of Uganda
NGO Forum on ADB
Ulu Foundation, USA
Urgewald, Germany
Wedyan Association for Society Development, Yemen

Recommendations on the World Bank’s Draft Guidance Notes for Borrowers Regarding the
Implementation of the Environmental and Social Framework

December 22, 2017

Environmental and Social Standards (ESSs) 1 and 10 are intended to ensure Borrowers design and implement projects that properly identify and mitigate social and environmental risks in a way that is transparent, participatory, and accountable. The Guidance Notes for Borrowers are meant to provide additional *how to* information that will guide the Borrower’s implementation of the requirements contained in these ESSs, many of which provide flexibility depending on the level of risk and specific context of the project. However, the draft Guidance Notes for ESS1 and ESS10, released for public comment on November 1, 2017, do not provide adequate clarification, resources (such as references and definitions), and examples to support Borrowers in achieving this goal. In some cases, the notes use vague and abstract language that risks undermining the requirements in the ESF.

Given the significantly increased responsibility that the Environmental and Social Framework (ESF) assigns to Borrowers, both Borrowers and the World Bank (the Bank) will benefit from substantial and comprehensive guidance to appropriately implement the ESF. Moreover, while the guidance is not binding, it should be made clear that Borrowers have to demonstrate ESF compliance in practice by following the Guidance Notes and should be held accountable if they fail to do so. Such guidance should extend also to areas covered in the Annexes to ESS1 and 10, where it is currently completely absent. In some places, the draft Guidance Notes merely explain the importance of a particular requirement, without providing any actual guidance on how to implement it. At a minimum, the Guidance Notes should substantially elaborate on provisions of the policy, provide details and practical advice on how the Borrower can successfully implement the ESSs, cite relevant international standards, present good practice examples from the Bank’s experience, and share further resources for the Borrower to consult.

Because of these fundamental gaps in the current draft, we urge the Bank to prepare a new draft and release it for public comment. We have set out what we believe are the minimum parameters that should be included in the second draft of the Guidance Notes below.

1. ESS1: Assessment and Management of Environmental and Social Risks and Impacts

1.1 Use of Borrower’s Systems or Common Approach

The ability to utilize alternative systems or approaches in lieu of the ESF – including both Borrower Systems and Common Approach – is one of the riskiest developments in the Bank’s overhaul of its safeguards. The Guidance Notes do not clarify sufficiently when a Borrower’s

system or another bank's standards can be used, or what is meant by "achieve objectives materially consistent with the ESSs" – the standard the ESF sets. In certain cases, they even risk weakening the ESF requirements.

Moreover, the Guidance Notes lack detailed guidance on how the Bank will conduct its due diligence in assessing Borrower frameworks. While we recognize that the Guidance Notes are Borrower-focused, it is critical that Borrowers be given notice of the criteria or benchmarks against which alternative systems will be assessed and the due diligence measures the Bank will employ.

The guidance should:

- Define what it means to "achieve objectives materially consistent with the ESSs" so it is clear that such consistency results in objectives being achieved in all essential respects, including specific *components* of the ESSs necessary to ensure "material consistency" is achieved. Components should include, for example, use of the mitigation hierarchy (ESS6 paragraphs 9 & 15), goals of no net loss/net gain (ESS6 paragraph 16), etc.
 - Specifically, we propose as ESS1 GN5.1: "Material consistency exists if all of the ESS objectives stated in the standards are still achieved. The alternative system is materially consistent if it addresses all the risks and impacts of the project necessary to meet the objectives of the ESSs."
 - Additionally, in reference to the mitigation hierarchy (ESS1, paragraph 6 & ESS6 paragraph 9), material consistency with objectives in this context requires applying the mitigation hierarchy to avoid adverse impacts on biodiversity and habitats. The Borrower must document in detail all efforts made to avoid adverse impacts. When avoidance of adverse impacts is demonstrably not possible, the Borrower will consider the "no project" alternative and provide specific alternate site recommendations. The Borrower will implement measures to minimize adverse impacts in accordance with the mitigation hierarchy.
 - With respect to offsets, for example, material consistency requires that offsets be considered as a last resort, only if significant residual adverse impacts remain after all feasible avoidance, minimization, and restoration measures have been considered (in accordance with ESS6 paragraph 15). A biodiversity offset will only be considered, designed and implemented as a last resort to achieve measurable, additional, and long-term conservation outcomes that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity, based on a documentation of existing success by the Borrower proponent in other similar projects, with proof of a "net gain" of biodiversity. Offsets for areas in critical habitats should be strongly avoided. In the case of an offset used as mitigation for residual adverse impacts on any area of critical habitat, proof of Borrower having achieved such a net gain in a similar ecosystem is required,

based on a documented track record that the Borrower has proven their achievement of a “net gain” in an existing project. The design of a biodiversity offset will adhere to the “like-for-like or better” principle (ESS6 paragraph 16).

- Clarify that Borrower systems should be assessed through meaningful public consultation. The Guidance Notes should include a clear description of what such a consultation entails, including sufficient time for–in-person, open–consultation, and a public comment period with longer periods for high-risk projects.
- Ensure against dilution of ESF requirements. Specifically, GN20.3 should be revised so as to not eliminate or obscure the Bank’s mandatory requirement for public consultation. The ESF says that the Bank “will” consult with relevant stakeholders to identify gaps in the Borrower’s system. However, GN20.3 says the “Bank *may* need to discuss with relevant stakeholders identified *with input from the Borrower.*” “May” should be changed to “must.”
- Clarify that the Bank will ensure meaningful consultation with stakeholders on its Borrower systems assessment that is free of coercion and not unduly influenced by the Borrowers. GN20.3 introduces that “relevant stakeholders [be] identified with input from the Borrower.” This is problematic because Borrower governments hostile to civil society input or with a track record of corruption would likely not support, and may even oppose, identifying civil society organizations or communities already affected by projects as “stakeholders.” This sentence should be revised to read “the Bank will ensure meaningful consultation, free of coercion, with stakeholders, including those affected by existing projects, and civil society.”
- Specify that when looking at the “assessments from previous projects or analytical work” referenced in GN20.4, this will include independent assessments and not just those which the Borrower has previously submitted to the Bank. There is a danger that such assessments may be self-assessments by the Borrower, project proponents, or the implementation team. To preclude this possibility, the statement in GN20.4 should say “independent assessments of previous projects – including by experts on social and environmental impacts – carried out by parties neither affiliated with the Borrower nor those engaged in project implementation.”

1.2 Environmental and Social Assessment

1.2.1 More guidance needed on identification of social risks and impacts

One of the main goals of the new ESF is to strengthen assessment and management of social impacts. ESS1 26(b) lays out a much expanded definition of social risks and impacts, introducing new provisions on risks and impacts relating to discrimination, land and natural resource tenure, and conflict and violence, among others. The draft Guidance Notes, however, do not provide any guidance on these new areas of social risk and impacts. Globally, the regulatory frameworks and institutional capacity to adequately assess social risks and impacts is much less developed than

that of environmental assessment. It is not credible to expect Borrowers to be able to conduct robust social assessments without providing substantive guidance. While the best experts on social risks include affected communities and marginalized groups, ESS1 is largely silent on the need for social and environmental assessments to be participatory and how that can be achieved.

The guidance should:

- Provide expanded descriptions of the various types of social risk identified and examples of what risks and impacts might be expected from certain types of projects, and how these risks might be avoided as per the primary goal of the mitigation hierarchy. See for example GIZ's [Guidelines on incorporating human rights standards and principles, including gender, in programme proposals for bilateral German Technical and Financial Cooperation](#).
- Include instruction on identification of *contextual risk* – what issues should be examined and what data sources should be consulted.
- Provide information on how social risks and impacts can be identified, what data sources should be consulted, and specific methodology for assessments of risks to disadvantaged or vulnerable groups.
- Draw from and reference existing best practice, such as the [International Institute for Impact Assessment's Guidance on Social Impact Assessment](#).
- Stress the need for participatory processes for impact assessment, design, and monitoring and implementation. Provide substantive guidance for how assessment processes can be structured to ensure meaningful participation.

1.2.2 More guidance needed on assessment and management of environmental risks and impacts.

Many key terms are left undefined and issues unaddressed. These apply primarily in the environmental context, but may be important for social risks and impacts as well.

The guidance should:

- Underscore the uses and benefits of strategic, sectoral, and cumulative impact assessments, along with early scoping/risk screening, to inform project design (in ESS1 and ESS6, paragraph 10). In this context, the value of a landscape (or seascape, for marine areas) approach should be explained in both impact assessment, avoidance strategy, and mitigation, with a focus on avoidance. To communicate these and related concepts more effectively, Guidance Notes should provide a flowchart that outlines types/levels of risks, relevant assessments and decision support tools, and a timeline for the process.
- Provide guidance when to allow exceptions to the Mitigation Hierarchy (paragraph 6, Objectives; paragraph 27) based on a lack of technical and financial feasibility, and

explain the consequences of such a decision. Since the hierarchy provides a wide range of options, exceptions to its full application should be rare. In addition, given its importance and potential complexity, more clarity is needed on how to apply the hierarchy. Good practice includes documenting issues of infeasibility and seeking input on responding to them. There should also be guidance which indicates to Borrowers the limits of the “technical and financial feasibility” measure – i.e., if a project risks causing substantial environmental and/or social harms and the Borrower determines that avoiding or sufficiently mitigating such harms is not “financially feasible,” the guidance should advise against allowing the project to proceed.

- Note potential uses and benefits of Decision Support Tools. Screening tools such as the Integrated Biodiversity Assessment Tool (IBAT), National Red Lists, and national Key Biodiversity Area (KBA) assessments are valuable and should be referenced in Guidance Notes (15.1a, 24, 25, 28.2, and Annex 1, paragraph 13d). Also, a clear mechanism needs to be put into place so that Borrowers with limited capacity/budgets are able to access tools necessary for screening projects.
- Require documentation in a situation where a claim of “limited influence or control” over Associated Facilities (paragraphs 10 and 32) is made. Guidance should clarify that such a situation still requires the Borrower’s assessment, communication, and best efforts (i.e., to exert influence) to avoid, minimize, and mitigate risks and impacts of Associated Facilities.
- Provide an exclusion list (paragraph 14) to guide Borrowers at the beginning of the assessment process, so that resources are not wasted on more detailed assessment if any of the excluded activities are part of the proposed project. This should be broader than/additional to the IFC Exclusion List, since public sector responsibilities are generally broader than those of the private sector. This, along with listing international treaties and conventions which Borrowers are expected to observe, will help Borrowers and the Bank avoid missteps, reputational risk, and violations of international law.
- Highlight practices/activities and sectors with likely material risks and threats (paragraph 28(a) (iv) and (v)) that Borrowers should avoid. This information can be organized by the type of threat, by sector/industry where such threats occur, or both, as we have suggested, since the perspectives are complementary.

1.2.3 Provide a clear and detailed framework for identifying the Borrower’s obligations under international law

ESS1 requires the Borrower take into account a range of country-specific considerations when preparing an environmental and social assessment, including “the country’s applicable policy framework, national laws and regulations, and institutional capabilities...and obligations of the country directly applicable to the project under relevant international treaties and agreements.”¹

¹ World Bank Environmental and Social Framework, ESS1, p. 19, para 26.

The Guidance Note for ESS1 however, does not further define these broad concepts or direct Borrowers to where they can find the necessary information. Moreover, GN26.1 seems to undermine the requirement to assess country obligations under international law, stating that while consideration of *national law* requirements is “particularly important,” where international obligations are concerned, the assessment should merely “consider the way in which these *could inform* project design and implementation.” Finally, the Guidance Notes do not provide any guidance on how international obligations should be identified or assessed or which international treaties and agreements might be particularly relevant.

The guidance should:

- Affirm the importance of assessment of international obligations and clarify that projects and project impacts should be consistent with both national law and international obligations (GN26.1).
- Clarify that “directly applicable” treaties and agreements include all those that may be relevant for managing the potential environmental and social impacts of a project. Include reference to sources of international law that should be considered, including core international human rights treaties, particularly when pertaining to equality and non-discrimination, regional human rights treaties, and relevant regional court and commission decisions, and relevant international environmental treaties and agreements to ensure consistency across the standards.
- Provide guidance on how to identify variations in country conditions and project context, including those that can be triggers for greater social risk, such as weakening in the rule of law or legislative or regulatory frameworks, capacity changes, social conflict, drought or resource scarcity, etc.
- Provide examples of where to find relevant interpretations to identify what treaty obligations mean in practice, including pronouncements by treaty bodies, relevant declarations or guiding principles, and thematic reports of UN and regional specialist mechanisms such as rapporteurs and working groups; and
- Provide examples of where to find information on how relevant treaties have been applied in the country, for example observations of treaty bodies, regional human rights commission and court cases, and country visit reports from specialist mechanisms.

1.2.4 Avoidance of adverse impacts must be prioritized

The purpose of ESS1 is to assist Borrowers in applying the mitigation hierarchy, the primary objective of which is to avoid adverse social and environmental impacts, especially those that fall on the disadvantaged or vulnerable. This overarching aim is also spelled out in the vision statement: “the World Bank seeks to avoid adverse impacts and will continue to support its member countries as they strive to progressively achieve their human rights commitments.” Unfortunately, the Guidance Notes are largely silent on the actual aim of assessment and

mitigation. Alarming, GN27.3 gives the impression that adverse impacts do not need to be avoided even where technically and financially feasible alternatives and mitigation measures exist, so long as an economic cost-benefit analysis is provided. There is a need for detailed and specific guidance for each step of the mitigation hierarchy, with an emphasis on harm avoidance and reduction.

The guidance should:

- Clearly state in GN27.1, and throughout, that the goal of assessment and mitigation measures should be to avoid adverse impacts; in other words, to “do no harm.”
- Provide substantive guidance not only on how Borrowers can identify risks and impacts, but how they can select and implement alternatives, mitigation, and monitoring measures so as to most effectively avoid adverse impacts.
- Reiterate throughout that Borrowers should give specific attention to those persons or groups which may be particularly vulnerable to a specific impact as well as concrete examples of such groups.
- Delete GN27.3 and clarify that where Borrowers have the option to avoid adverse impacts, they should do so.
- Clearly state that certain adverse impacts, including those that amount to gross human rights violations such as forced evictions and sexual exploitation, are unacceptable and that the project should not go forward unless Borrowers are able to prevent these impacts and immediately stop them if they begin to occur.

1.2.5 Clearly define “significant” risks/impacts

Borrowers’ due diligence requirements under ESS1 often depend on the “significance” project’s risks. Strikingly, the Guidance Notes do not at any point explain how Borrowers should assess the significance of the risks a project poses such an assessment. This leaves the framework of due diligence resting on entirely subjective determinations.

The guidance should:

- Define significance in terms of international best practice: scale (number of people affected), severity (gravity of harm), and remediability (ease or difficulty of restoring the person impacted to their original state).
- Stress that severity of harm should draw from human rights norms, preventing human rights abuses, and seeking to avoid adverse human rights impacts. They should provide specific attention to vulnerability, defined as a person or group of people’s exposure to a risk or impact, and their resilience to overcoming that risk or impact.
- Make clear that the significance of impacts could differ across subsets of stakeholders, depending on their specific vulnerability to a given impact and provide examples to illustrate this point.

- Provide good practice references specifically on significance and prioritization of risk, such as those found within OHCHR’s [Interpretive Guide on the Corporate Responsibility to Respect Human Rights](#), and Shift Project’s [Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks](#).

1.2.6 Guidance needed on “disadvantaged or vulnerable groups” and non-discrimination

One of the objectives of the Environmental and Social Policy is to reduce project-related risks including “prejudice or discrimination towards individuals or groups in providing access to development resources and project benefits, particularly in the case of those who may be disadvantaged or vulnerable.”² The spirit of this provision is also reflected as an objective for ESS1.³ The Guidance Notes, however, do not provide any guidance as to how to assess disaggregated risks or avoid or mitigate impacts related to discrimination.

The guidance should:

- Emphasize the need to ensure both formal and substantive equality in Bank-financed activities. Formal equality reflects the basic requirement that equality be reflected in laws and policies through ensuring they are on their face neutral and applicable without discrimination to all. However, achieving equality and eliminating discrimination require also looking at the practical impact of laws and policies to assess if they alleviate or maintain the inherent disadvantage that particular groups experience.⁴
- Provide Borrowers with the necessary tools and resources to ensure that development resources, consultations and project benefits are gender sensitive and based on the use of gender-disaggregated data for all stages of planning, preparation, consultation, implementation, monitoring and reporting, etc.
- Provide Borrowers with the necessary tools and resources to ensure that development resources, consultations, and project benefits are accessible to people with disabilities by identifying and eliminating obstacles and barriers to accessibility, providing reasonable accommodation, and promoting universal design.⁵ Inclusion of people with disabilities should be considered at the beginning of project design.
- Provide detailed instruction on identification of disadvantaged or vulnerable groups. This discussion should make clear that while the disadvantaged or vulnerable groups for any given project will differ, Borrowers should be provided with a minimum indicative list of “disadvantaged or vulnerable groups” that must be considered when identifying risk,

² World Bank Environmental and Social Framework, p. 10, para 4(b)(ii) and (iii).

³ Ibid. at p. 16. The Bank’s Directive to ‘Address Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups’ recognizes measures to prevent project-related impacts disproportionately falling on individuals or groups who, because of their particular circumstances, may be disadvantaged or vulnerable: “Bank Directive: Addressing the Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups” [Bank Directive], (August 4, 2016), p. 3.

⁴ CESR General Comment No. 16 at para 7, and General Comment No. 20.

⁵ CPRD, Articles 2, 4, 5 and 9.

impacts, mitigation measures, and stakeholder engagement and information disclosure activities to particular groups. This instruction should include examples of which groups may be vulnerable to specific types of projects, and what mitigation measures might be employed.

- Direct Borrowers to:
 - Consider the internationally recognized grounds of discrimination, including those that may be less obvious and are not currently included in the Bank Directive⁶ such as those without title to land and discrimination based on language, property,⁷ sex characteristics, birth,⁸ marital or family status, and political opinion.
 - Avoid activities and language in any documents and consultations that may further reinforce discriminatory notions, behavior, actions, or biases.
 - Consider implications of discrimination beyond a State's legally sanctioned grounds.⁹

1.2.7 Provide clear instructions for disaggregating data

ESS1's goal is to assess the social and environmental risks of a project. But without accurate, up-to-date disaggregated data, it is impossible to identify the scope and significance of the risks and impacts of a project on particular individuals or groups or to determine to what extent mitigation measures have been effective or project results and outcomes have been achieved. The Guidance Notes should provide detailed information for Borrowers using disaggregated data for planning, preparation, consultation, implementation, monitoring and reporting, etc. Such disaggregated data should be used both for baseline data and data used for project monitoring.

The guidance should:

⁶ The Bank's Directive to 'Address Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups' lists age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources as factors for defining individuals or groups as "disadvantaged or vulnerable," "Bank Directive," p. 1.

⁷ See CESR General Comment 20 at para 25: "Property status, as a prohibited ground of discrimination, is a broad concept and includes real property (e.g., land ownership or tenure) and personal property (e.g., intellectual property, goods and chattels, and income), or the lack of it. The Committee has previously commented that Covenant rights, such as access to water services and protection from forced eviction, should not be made conditional on a person's land tenure status, such as living in an informal settlement."

⁸ See CESR General Comment 20 at para 26: "Discrimination based on birth is prohibited and Article 10(3) specifically states, for example, that special measures should be taken on behalf of children and young persons "without any discrimination for reasons of parentage". Distinctions must therefore not be made against those who are born out of wedlock, born of stateless parents or are adopted or constitute the families of such persons. The prohibited ground of birth also includes descent, especially on the basis of caste and analogous systems of inherited status. States parties should take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against dissemination of ideas of superiority and inferiority on the basis of descent."

⁹ For example, recognizing one's sexual identity or sexual orientation may be legally sanctioned by some states but alienating groups on such grounds should be recognized as discriminatory.

- Explain how to collect baseline information for the general project area, not just site-specific risks.
- Explain that baseline data should be disaggregated, at a minimum, by age, gender, marital and family status, demographic group (i.e., ethnic background, language, religion), geographical location (rural, urban, state/territory), disability, and sexual orientation and gender identity (with the below exception), and socio-economic, minority, or other status. Include additional distinctions depending on the environment for discrimination;¹⁰
 - Recognize and address human rights risks when collecting and disaggregating data. For instance, in countries where there are discriminatory laws against people on the basis of their sexual orientation or gender identity, or where people are routinely targeted for their sexual orientation or gender identity, any system of data collection disaggregated on these grounds should not put people at risk.
- Instruct Borrowers to analyze data to consider multiple forms of discrimination that people face.¹¹
- Provide examples of ‘differentiated mitigation measures’ that may be necessary to ensure adverse impacts do not fall disproportionately on the disadvantaged or vulnerable,¹² drawing on the work of relevant UN bodies regarding temporary special measures.¹³

1.3 Project Monitoring and Reporting

1.3.1 Provide guidance on monitoring and reporting

As identified by the World Bank’s Independent Evaluation Group, monitoring and reporting has consistently been a challenge for many Borrowers.¹⁴ The Guidance Notes should include specific and detailed instruction and guidance to support Borrowers in how to implement monitoring and reporting requirements.

The guidance should:

¹⁰ Failure to disaggregate data in a meaningful manner disregards and minimizes the risks and impacts specific to certain marginalized groups. For instance, the urban/rural classification fails to capture the experience of urban villagers (who are sometimes referred to as “slum dwellers”), who are often among the most marginalized or deprived. See CEDAW General Recommendation No. 34 at paras 93 and 94. Data on rural women should be collected and disaggregated by sex, age, geographical location, disability and socioeconomic, minority or other status to identify intersecting forms of discrimination and barriers to their access to rights.

¹¹ When collecting data regarding women, the CEDAW Committee states that statistical databases should analyze all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular. See General Comment No. 28 of CEDAW. Data should be disaggregated by sex and age in order to better assess the situation of older women: General Recommendation on Older Women No. 27 at para 2. When considering persons with disabilities, the effects and impacts on persons with different types of disabilities should be disaggregated.

¹² Bank Directive at para 3(b).

¹³ CEDAW General Recommendation No. 25, on Article 4, para 1, on temporary special measures; CEDAW General Recommendation No. 5 on temporary special measures. All CEDAW General recommendations can be found here: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

¹⁴ IEG, Safeguards and Sustainability Policies in a Changing World, 2010, p. xvii.

- Provide instruction on the requirement for high quality baseline data prior to project implementation, including on the need for gender-disaggregated baseline data as well as the use of gender-disaggregated data for monitoring purposes. The Guidance Notes seem to treat baseline data as “optional” when, in fact, without baseline data, no monitoring is possible.
- Stress that solicitation of input from affected communities should be early, proactive and freestanding, ongoing, and should not wait for project complaints or challenges.
- Provide specific guidance to Borrowers as to when and how monitoring should take place, with reference to milestones and markers within the project cycle.
- Clarify that in situations with high risks or implementation challenges, including a restricted environment for public participation, the Bank will conduct its own monitoring in addition to that of Borrowers.
- Provide specific guidance encouraging the use of participatory monitoring, especially by affected communities, as an effective strategy for obtaining accurate data on project impacts for any type of project. Clarify that in substantial risk projects, participatory monitoring should be utilized. Include specific guidance on how to ensure participation of disadvantaged or vulnerable individuals and groups.
- Stress that it is good practice to encourage community-led monitoring.
- Provide specific guidance on use of independent third-party monitoring, including that it shall be utilized in projects with substantial or high risk, and provide examples of different monitoring methodologies, e.g. expert resettlement panels, community mediators, independent labor monitors, technical advisory opinions etc.

2. ESS10: Stakeholder Engagement and Information Disclosure

ESS10 provides requirements for stakeholder engagement, information disclosure, and grievance mechanisms, which make its proper implementation critical. The principle of meaningful participation is central to the ESF and its implementation, and essential for the legitimacy of Bank-financed projects. For participation to be meaningful and build ‘shared prosperity,’ it is important to ensure that all stakeholders, particularly disadvantaged or vulnerable groups, are heard without fear of reprisal, and their views reflected in decisions that may impact them. People who may be impacted by projects should be involved in deciding the terms of participation, the scope of issues and questions to be addressed, their framing and sequencing, and rules of procedure.¹⁵ Additionally, all stakeholders should have access to information early in the process and in a manner and language they can understand as it is nearly impossible to meaningfully consult on a project that stakeholders have little or incomplete information about.

Equally critical is ensuring a robust accountability framework that provides affected people and communities with legitimate avenues for seeking redress and getting remedy. The ESF

¹⁵ Report of the Special Rapporteur on the human right to safe drinking water and sanitation, A/69/213 (July 2014).

acknowledges this by “requir[ing] the Borrower to provide a grievance mechanism, process, or procedure” and ESS10 specifically addresses accountability, as the Borrower is required to “respond to concerns and grievances of project-affected parties.... For this purpose, the Borrower will propose and implement a grievance mechanism.”¹⁶ This grievance mechanism may be separate from the issue-specific mechanisms detailed in ESSs 2, 5, and 7.

However, ESS10 itself fails to provide significant detail on how to implement robust stakeholder engagement, ensure meaningful consultation, or develop a grievance mechanism to respond to complaints. As such, it is critical that the Guidance Notes include sufficient, real *guidance* on these elements. Additionally, guidance on how to prevent retaliation and reprisals is noticeably missing, but should inform all aspects of ESS10. It is particularly urgent that the Bank and Borrowers ensure that they are preventing retaliation and reprisals associated with Bank-funded projects given a worrisome increase in threats to civil society and human rights defenders around the world. Since people may be vulnerable to reprisals based on their participation in project consultations, the Guidance Notes should not limit the discussion of this problem to grievance mechanisms, as the current draft does. The Guidance Notes should make clear that Borrowers must take steps to prevent reprisals in order to ensure meaningful stakeholder engagement and consultation. Similarly, the Guidance Note on ESS4 should be revised to ensure that project-related security forces do not engage in intimidation, coercion and threats.

2.1 Guidance needed on avoiding reprisal and retaliation

Globally, individuals and communities defending their human rights and the environment have increasingly faced intimidation, violence, and reprisals. The Guidance Note for ESS10 acknowledge that people who use grievance mechanisms “may not be subject to retaliation, abuse or any kind of discrimination” and instructs Borrowers to address allegations of retaliation, abuse, or discrimination against users of the Borrower’s grievance mechanism.¹⁷ However, it lacks detail on how Borrowers should do so. It is especially important, that the Guidance Notes emphasize the Bank’s role in addressing risks of reprisals, and set a zero-tolerance policy, since it is possible that Borrower governments might be complicit in or the perpetrators of intimidation and retaliation toward those raising concerns about projects. Further, the Guidance Notes need to go beyond retaliation against “users of a grievance mechanism,” and address the risk inherent in other situations, such as attempting to access information and expressing concerns during stakeholder engagement processes.

The guidance should:

¹⁶ World Bank Environmental and Social Framework, p. 22, para 60, and ESS10, pp. 131 and 136, paras 26 and 27.

¹⁷ Guidance Note for ESS10, page 10, para GN27.5 (draft for public comment).

- Require the Borrower to prevent and address reprisals, retaliation, abuse, or discrimination against people and communities generally in the context of Bank-financed activities.
- Require the Borrower to assess the environment for freedom of expression, association, assembly, and information when analyzing the risks related to proposed projects or programs. Avoidance measures should include a no-project option in instances where the Borrower (with support from the Bank) is deemed not to have the capacity to ensure the safety of project affected communities and complainants from reprisals. Mitigation measures should include, among other things, seeking an undertaking from the Borrower that they will not carry out reprisals against project critics, especially in countries where there is a history or practice of government involvement in crackdowns on peaceful protest.
- Outline measures for ensuring that people are able to safely participate in consultations and that consultation is free of coercion and duress, as persons living in poverty are particularly at risk of threats and reprisals for speaking in public spaces in the form of “violence or threats to them, their families, properties or livelihood.”¹⁸ This includes the requirement that military officials, police, and other non-uniformed security personnel must not be present in a meaningful consultation. Their presence would violate the requirement that a consultation is free of coercion.
- Emphasize that the Bank will play an active role in situations where there are concerns about whether the operating environment is conducive to free participation without risk of reprisal.
- Stress that the Borrower should take all necessary measures to ensure that requests by complainants to have their identities kept confidential are fulfilled and maintained throughout the process.
- Highlight the need to protect groups and individuals that are particularly vulnerable to reprisal, and provide specific examples and guidance on protecting these groups.¹⁹ Certain groups of individuals such as sex workers, undocumented migrants, survivors of human trafficking, or rejected asylum seekers face particular barriers and may fear exposing themselves when taking part in official processes.
- Include specific guidance to Borrowers on the context-specific situation of women human rights defenders, and recommendations on ensuring women human rights defenders’ effective participation in all initiatives, including in securing accountability for violations and abuses. Efforts to guarantee non-recurrence should include Bank

¹⁸ Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, A/HRC/23/36 (March 2013) at para 13; International Covenant on Civil and Political Rights, Article 19(2). See also, Human Rights Watch, *At Your Own Risk: Reprisals against Critics of World Bank Group Projects*, June 22, 2015, https://www.hrw.org/sites/default/files/report_pdf/worldbank0615_4up.pdf.

¹⁹ *Ibid.*, at para 26.

assistance to the Borrower on how to overcome the root causes of gender-based human rights violations and abuses.²⁰

2.2 Additional guidance needed on conducting stakeholder engagement and eliminating barriers to participation

While the Guidance Notes divide the section on “stakeholder engagement” into two phases – “project preparation” and “project implementation” – this section is meant to provide comments on all aspects of stakeholder engagement, which is vital to ensuring positive development outcomes. Robust stakeholder engagement, which includes meaningful consultation, should begin early in the project cycle at the conception/design phase and continue throughout, as acknowledged in ESS10 and in GN4.1 and 4.2. As such the comments on this section refer to the Guidance Notes related to paragraphs 1-18, 23-25.

The Guidance Notes do not provide sufficiently detailed information to guide Borrowers on how to conduct stakeholder engagement in a way that allows wide participation of stakeholders throughout the lifecycle of the project. The Guidance Notes need substantially more detail on the “how” of conducting effective stakeholder engagement throughout.

The guidance should:

- Include organizations that have previously commented on Bank policies and projects as stakeholders. GN4.1 regarding the “process by which the Borrower identifies” stakeholders is insufficient. Guidance is needed to indicate that organizations that have previously commented upon or made input on Bank policies and projects in that country or sector are considered “interested parties” who should receive information. Several countries have a poor track record of Borrowers not contacting those commenting on Bank projects for additional input.
- Describe a clear process and sequencing for Stakeholder Identification and Analysis and the Stakeholder Engagement Plan (SEP). For example, the process for identifying stakeholders must happen both before and after Borrowers have disclosed information in accordance with Bank policy. Community members and interested parties will not be able to identify themselves as Stakeholders unless they have some basic knowledge about the location, scope, and potential impacts of the project. Therefore, information disclosure must be ongoing, in a manner and language(s) that is appropriate for the local area.

²⁰ See Resolution adopted by the General Assembly on 18 December 2013 on the Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders, A/RES/68/181 (December 2013), and Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/68/262 (August 2013).

- Specify that engagement with *all* stakeholders is crucial for creation of the SEP, including those that may be important for future consultations, such as a Resettlement Plan or Indigenous Peoples' Plan.
- Provide detail on how to prepare an SEP and how to make it an “inclusive” process, i.e., by including stakeholders in its development as this is not yet laid out in GN13.1.
- Not only require documentation of the occurrence of certain aspects of stakeholder engagement (GN9.1), but direct the Borrower to present detailed information on how the topics listed in GN9.1 are determined, i.e., how the Borrower identified stakeholders.
- Provide additional guidance on how to identify stakeholders (GN10.1). A list of indicative stakeholders, i.e., organizations frequently involved in commenting on Bank projects, local communities, communities downstream on a river, etc., should be provided to help Borrowers.
- Provide detail in GN12.1 on the role of “independent third parties” as the reference to ESS1, paragraph 25 and its accompanying Guidance Note is imprecise, and that Guidance Note is about experts in environmental and social risk, which is much more narrow than the parties referenced in ESS10.
- Clarify that stakeholder feedback should always be incorporated in the draft SEP, not just “as appropriate” as indicated in GN13.3.
- Provide guidance requiring that “Borrowers provide regular updates to *all* stakeholders on project performance and changes to scope of schedule.” Currently, GN23.1 does not include the word “all,” which could lead to the exclusion of some stakeholders when updates are provided.
- Provide guidance on the need to and how to update and include new stakeholders during project implementation as once the project is developed and underway, new stakeholders may be identified who should be included in processes.
- Clarify that all of the guidance on stakeholder engagement during project preparation applies and should be followed during project implementation.
- Provide explicit instruction on how to identify and facilitate the participation of disadvantaged or vulnerable groups, including but not limited to race, ethnicity, nationality, religion, political beliefs, sexuality, gender identity, profession, age (to include elderly), caste, disabilities, those without title to land, and those facing security risks.
- Instruct the Borrower to take necessary measures to facilitate the participation of women, especially in contexts where there are strong patriarchal structures in place, such as special outreach, support, and public information programs and the use of gender-disaggregated data to encourage and ensure women’s equal participation in consultation processes.²¹ Stereotypes that perpetuate women’s inequality are often based in political, economic, cultural, social, religious, ideological or environmental factors and should be

²¹ CEDAW General Recommendation No. 25, para 22, General Recommendation no. 34, and General Recommendation No. 3.

identified, studied, and taken into account when designing consultation processes.²² Such a process could include working to overcome barriers such as illiteracy and restricted freedom of movement, as well as designing means to alleviate some of the burden of women's work in the home so they do not face a double burden while participating in public processes.²³ Women should be encouraged to participate in all discussions, including those involving finance and conflict resolution (versus solely ones regarding the environment, children, or health), and discussions should be facilitated in a way that makes this information understandable by all members of the community.²⁴

- Provide guidance on means of ensuring the inclusion of women who are particularly vulnerable to discrimination due to intersecting axes of marginalization such as women with disabilities, elderly, rural, widowed/divorced, pregnant, lower caste, lesbian, and transgender women. Guidance on insuring this inclusion should also be delineated and implemented accordingly, including by specifically promoting and advertising such opportunities and ensuring the safety of participants.²⁵ In certain contexts it may be necessary to conduct separate, additional consultations with women in order for them to feel able to share specific concerns or information about the proposed project and relevant past abuses suffered. Such consultations should not take the place of women's participation in regular consultations but should be considered as equally important.
- Ensure that persons with disabilities can effectively and fully participate in all public consultations.²⁶ To this end, physical accessibility of places where public consultations take place should be guaranteed, as well as accessibility of information and communication.²⁷ Participation of persons with disabilities should be consistent with article 12 of the Convention on the Rights of Persons with Disabilities, which recognizes the legal capacity of people with disabilities and promotes supported decision-making rather than substituted decision-making. To this end the full and effective participation of persons with a disability as autonomous individuals should be respected, and support should be provided when required to ensure that people with disabilities can express their views on an equal basis with others, and the decisions of others such as family members or relatives should not be accepted as a substitute.²⁸
- Clarify that children should also have access to the participatory process in matters that affect them and their views should be taken into account according to age and maturity.²⁹ Public consultations should take place in a child-friendly environment.
- Explain that “culturally appropriate”³⁰ does not mean that consultations can exclude women, persons with disabilities, children, or other marginalized groups.

²² CEDAW General Recommendation No. 28, para 5.

²³ CEDAW General Recommendation No. 23, para 11.

²⁴ *Ibid.*, para 12.

²⁵ CEDAW General Recommendation No. 28, para 31.

²⁶ CRPD, Article 29.

²⁷ Article 9 of the CRPD further elaborates the means of accessibility.

²⁸ See General Comment No.1 of the CPRD (May 2014).

²⁹ CRC General Comment No. 15 at II (E).

2.3 More instruction needed on disclosure and access to information

Comprehensive, accessible, and culturally appropriate information disclosure early on in the project cycle is the foundation of a successful stakeholder engagement process. To adequately equip the Borrower to achieve this, there need to be instructions, best practice examples, and definitional clarity when detailing information disclosure throughout project preparation, implementation, and external reporting.

The guidance should:

- Define and further explain terms and phrases included in GN19.1 such as “timely,” “as early as possible,” and “special efforts” to clarify the specific points within the project cycle where the Borrower should ensure adequate information disclosure *to all stakeholders*, and to specify what extra measures might need to be implemented to ensure that those categorized as “disadvantaged or vulnerable” also receive comprehensive project information.
- Remove “it is good practice” from GN19.1, as comprehensive, substantial, and culturally appropriate information disclosure is a necessary prerequisite for consultations to be meaningful – not just good practice.
- Make the causal link between the two sections of information disclosure and meaningful consultations more explicit for the Borrower.
- Clarify that the Borrower is responsible for, and provide clear instruction and examples to support the Borrower in how to:
 - Disclose relevant project information, including all draft, final, and amended assessments and management plans, in an appropriate place and in a manner and language(s) that is understandable to affected persons and all other stakeholders and interested parties.
 - Disclose proposed management measures to people affected by a project and other stakeholders and show how their feedback has been reflected in the measures prior to finalization.
 - Disclose complete information to both project-affected parties and other interested parties.³¹
 - Establish measures to prevent reprisals against those seeking to access project information.
- Elaborate the manner in which information will be disclosed in an “accessible and culturally appropriate manner” to all stakeholders,³² and clarify that project documentation should:

³⁰ World Bank Environmental and Social Framework, ESS10, para 7.

³¹ Guidance Note for ESS10, page 4, para GN10.1(a)-(c) (draft for public comment).

³² World Bank Environmental and Social Framework, ESS10, page 134, para 20.

- Include a non-technical summary of information and graphic presentations to facilitate and encourage input and the broadest possible stakeholder engagement. Summaries should not exclude important information, such as on risks or impacts.
- Set out accessibility requirements for people with different types of disabilities.
- Ensure all project-related information including notices for public participation, draft assessments, and management plans are translated into local languages and circulated substantially prior to the public consultation through various communications, including culturally appropriate communications and via communications channels likely to reach women. Provide examples of the length of time considered reasonable, for example the 120 day requirement for public comment on projects with significant impact.
- Stress that Borrowers must disclose detailed information on how to access the Inspection Panel and how to raise grievances.³³

2.4 Guidance needed on “meaningful” consultation

The Guidance Notes provide almost no clarity in the one paragraph of guidance on “meaningful consultation.” “Meaningful” consultation is closely linked to overall stakeholder engagement and to information disclosure as ensuring “meaningful consultation” about the project is an important part of robust stakeholder engagement, and consultation cannot be done at all, much less in a meaningful way, if the participants do not have the relevant information in a language and manner they understand and in a timeframe that allows for documents to be analyzed and comprehended. Significantly more detail should be provided in the Guidance Notes on how to ensure meaningful consultation, including how to ensure consultations are safe and accessible and how to disclose information in a manner accessible to all.

The guidance should:

- Eliminate the phrase “where appropriate” from GN22.1 as the “aim of consultations” is always to inform the Borrower’s decisions.
- Reference existing Bank guidance and good practice on conducting meaningful consultations, including the Inspection Panel Emerging Lessons Series report on Consultation, Participation & Disclosure of Information.³⁴ Other existing Bank guidance, such as the Guidance Note on Stakeholder Consultations in Investment Operations,³⁵ should be revised to account for new areas covered by the ESF, and should be referenced.

³³ Guidance Note for ESS10, page 7, para GN19.1 (draft for public comment).

³⁴ Inspection Panel, “Consultation, Participation and Disclosure of Information,” World Bank, Washington, DC, 2017, License: Creative Commons Attribution CC BY 3.0 IGO, <http://documents.worldbank.org/curated/en/891651511972161278/pdf/121756-WP-PUBLIC-ADD-SERIES-IPNConsultationReportFinalwebwithlinks.pdf>.

³⁵ World Bank, “Stakeholder Consultations in Investment Operations.” World Bank, Washington, DC, 2012, <http://documents.worldbank.org/curated/en/830941468323985308/pdf/671210WP00PUBL0ultations0Note0web20.pdf>

- Provide more information on how to conduct meaningful consultation, including, but not limited to, timeframes for disclosure, how to disclose, how to get feedback, how to respond to feedback, how to effectively incorporate feedback in project design and implementation, etc.
- Provide more information on how to, as GN22.1 says, “consider” security and accessibility and beyond that how to ensure accessibility to the consultation and how to protect the security of the people participating in the consultation.

2.5 Provide guidance on effective grievance mechanisms

Operational-level or project-level grievance mechanisms, when operating well, provide a means to raise grievances and access remedy. In contrast, and as the Commentary to the UN Guiding Principles on Business and Human Rights has noted: “[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.”³⁶ As these mechanisms are designed and operated by project management, the actors who manage the mechanism and determine outcomes are often the same as those who potentially perpetrated the harm. As such, these mechanisms can suffer from fundamental flaws, including a lack of independence and trust; inappropriateness for addressing human rights abuses; a lack of oversight and accountability; barriers to other forms of judicial and non-judicial remedy; a lack of protection against reprisals; and a lack of community participation. Accordingly, Borrowers need to be given sufficient guidance to ensure that their grievance mechanisms are well designed and properly implemented. The Guidance Notes for ESS10 do not provide sufficient detail to that end. For instance, GN27.2 outlines that an effective grievance mechanism should have a process for registering and monitoring grievances but does not elaborate on how that monitoring could be undertaken. Nor does it elaborate how grievances should be processed or addressed.³⁷

Another major gap in the Guidance Notes is the absence of an explicit requirement for the Borrower to inform project-affected or potentially affected people and communities about the existence of and procedures for how to access the Inspection Panel.³⁸ Affected or potentially affected people and communities may not always feel comfortable or safe approaching the project-level grievance mechanism or may want to use another avenue to seek accountability and remedy in addition to or in lieu of accessing the project-level grievance mechanism. Currently, the Guidance Notes do not require Borrowers to provide information on the Inspection Panel as an option for affected communities seeking remedy, which is a significant oversight.

³⁶ UN Guiding Principles on Business and Human Rights page 34, Commentary to Principle 31.

³⁷ Guidance Note for ESS10, page 10, para GN27.2 (draft for public comment).

³⁸ Guidance Note 19.1 recommends special efforts to inform disadvantaged or vulnerable groups on how and when to raise grievances but does not instruct Borrowers to inform stakeholders about the Inspection Panel: Guidance Note for ESS10, page 7, para GN19.1 (draft for public comment).

The guidance should:

- Emphasize that the purpose of the grievance mechanism is to prevent harms and provide effective remedy to project-affected or potentially affected people and communities and to ensure institutional accountability and continuous improvement for the Borrower and the Bank.³⁹
- Direct Borrowers to inform all stakeholders about the existence of the Inspection Panel and how to submit a complaint to it and to do so in a culturally appropriate and accessible manner and language(s). Information on the Inspection Panel should be included in all project documents including documents about the project-level grievance mechanism.⁴⁰
- Direct Borrowers to inform all stakeholders that using a project-level grievance mechanism is not required nor does it preclude them from accessing local, national, or international judicial mechanisms, the Inspection Panel, or other non-judicial mechanisms. Borrowers should be directed to provide information to stakeholders about these mechanisms.⁴¹
- Reference and incorporate the UN Guiding Principles on Business and Human Rights' effectiveness criteria for non-judicial grievance mechanisms as an internationally recognized guide for the creation of project-level grievance mechanisms and for determining the "suitability" of existing formal and informal grievance mechanisms. Both state-based and non-state based non-judicial grievance mechanisms (including, but not limited to project-level grievance mechanisms) should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.⁴²

Legitimate

- Provide more guidance about how to create an independent and legitimate project-level grievance mechanism. The Guidance Notes should direct the Borrower to engage project-affected communities in the design of the project-level grievance mechanism.⁴³ This includes involving the community in identifying key factors, such as the kind of disputes that could arise during the project cycle, the availability of local resources to resolve conflicts, and the methods in which people in the community actually want to raise concerns.⁴⁴
- Instruct Borrowers that to function independently, the grievance mechanism should be housed outside of project management, such as in a local or community institution, non-governmental organization, or think-tank. Borrowers should be directed to avoid conflicts

³⁹ Guidance Note for ESS10, page 9, para GN26.1 (draft for public comment).

⁴⁰ Guidance Note for ESS10, page 7, para GN19.1 and page 10, paras GN27.2- GN27.3 (draft for public comment).

⁴¹ Guidance Note for ESS10, page 9, para GN27.1 (draft for public comment).

⁴² UN Guiding Principles on Business and Human Rights pp. 33-34, para 31(a)-(g); *see also* C. Daniel, K. Genovese, M. van Huijstee & S. Singh, *Glass Half Full? The State of Accountability in Development Finance* (SOMO, Jan. 2016), *available at* glass-half-full.org.

⁴³ Guidance Note for ESS10, page 9, para GN27.1 (draft for public comment).

⁴⁴ Guidance Note for ESS10, page 9, para GN27.1 (draft for public comment).

of interest within the grievance mechanism by hiring independent staff with no ties to the preparation, design, or implementation of the project.⁴⁵

- Inform Borrowers how to provide adequate resources to staff the full grievance process and deliver redress.⁴⁶

Accessible

- Provide tools and inform Borrowers about how to make the project-level grievance mechanism known and accessible to potential users, including specific information on overcoming barriers to access such as language, literacy, costs, physical location, and fears of reprisal.⁴⁷ All informational materials and services should be provided in all primary languages spoken or used by project-affected people or communities and other interested parties. All documents generated in a particular case should be translated into the primary language(s) of the users. Where potential users are illiterate, or likely to be illiterate, Borrowers should conduct verbal outreach efforts in the local language(s).⁴⁸
- Provide more specificity about ensuring accessibility for disadvantaged, marginalized, and vulnerable individuals.⁴⁹ People with disabilities, for example, should be able to access the physical location where grievances are submitted as well as online portals with information about the grievance mechanisms.⁵⁰
- Provide detailed guidance to Borrowers on how to implement protections for users of the mechanism that go beyond safeguarding users' identities, including procedures for addressing instances of reprisal which outline the accepting of reports of threats or reprisals, documenting and responding to these instances, and appealing to national or international institutions. In the event of intimidation or coercion, the Borrower should respond promptly by providing alternative avenues for submitting a complaint.⁵¹

Predictable

- Provide more guidance to Borrowers on how to create a predictable project-level grievance mechanism that implements clear and known procedures applicable to all grievances.⁵² This includes guidance on developing policies and procedures, including procedures for appeals processes, and timelines and guidance on how to make this information available to stakeholders in an accessible manner.⁵³ The Guidance Notes should additionally provide clear examples of these policies.⁵⁴

⁴⁵ Guidance Note for ESS10, page 10, para GN28.1 (draft for public comment).

⁴⁶ Guidance Note for ESS10, page 10, para GN28.1 (draft for public comment).

⁴⁷ Guidance Note for ESS10, page 10, paras GN27.2, GN27.3, and GN27.5 (draft for public comment).

⁴⁸ Guidance Note for ESS10, page 10, para GN27.3 (draft for public comment).

⁴⁹ Guidance Note for ESS10, page 10, para GN27.3 (draft for public comment).

⁵⁰ Guidance Note for ESS10, page 10, paras GN27.2-GN27.3 (draft for public comment).

⁵¹ Guidance Note for ESS10, page 10, para GN27.5 (draft for public comment).

⁵² Guidance Note for ESS10, page 10, paras GN27.3-GN27.4 (draft for public comment).

⁵³ World Bank Environmental and Social Framework, pp. 100-101, ESS10 Annex 1, para 2-(c); Guidance Note for ESS10, page 10, paras GN27.3-GN27.4 (draft for public comment).

⁵⁴ Guidance Note for ESS10, page 10, paras GN27.3-GN27.4 (draft for public comment).

Equitable

- Direct Borrowers to allow users access to independent legal counsel or other advisors throughout the grievance process as this will ensure that project-affected communities and people and other interested parties can use the project-level grievance mechanisms on fair and informed terms.⁵⁵
- Direct Borrowers to adopt procedures that allow for consultation and participation of the aggrieved parties in developing remedial actions.⁵⁶

Transparent

- Instruct Borrowers to maintain a publicly available case register, including an online version on the implementing company's or agency's website, in addition to other culturally appropriate means of disseminating this information.⁵⁷ The Guidance Notes should provide details about the information that should be included in a case register, for example, date of complaint, information about the grievance raised, stage in the process, etc.⁵⁸
- Direct Borrowers to avoid blanket confidentiality provisions that bind all users, which can block the public from monitoring the effectiveness of the mechanism, and instead strive to build and maintain public confidence in project-level grievance mechanisms.⁵⁹

Rights-compatible

- Provide detail to Borrowers on how to develop processes and achieve outcomes and remedies that are accord with internationally recognized rights.⁶⁰ This includes the Borrower monitoring the rights compatibility of the outcomes.⁶¹

A source of continuous learning

- Include provisions relating to the monitoring and evaluation of the mechanism's performance as well as provisions for how the grievance mechanism can provide information to the operators of the project.⁶² This is critical because project-level grievance mechanisms can serve a valuable role by providing feedback for the project cycle and project operations in general, as well as serve as an early warning system for large, systemic problems.

⁵⁵ Guidance Note for ESS10, page 10, para GN27.3 (draft for public comment).

⁵⁶ The Guidance Notes call for "informed and balanced" actions taken on grievances, but do not direct Borrowers to consult with the complainants to achieve this: Guidance Note for ESS10, page 10, para GN27.4 (draft for public comment).

⁵⁷ World Bank Environmental and Social Framework, pp. 100-101, ESS10 Annex 1, para 2(b).

⁵⁸ World Bank Environmental and Social Framework, pp. 100-101, ESS10 Annex 1, para 2(b).

⁵⁹ Guidance Note for ESS10, page 10, para GN27.5 (draft for public comment).

⁶⁰ Guidance Note for ESS10, page 9, para GN26.1 and page 10, para GN27.4 (draft for public comment).

⁶¹ Guidance Note for ESS10, page 10, para GN27.2 (draft for public comment).

⁶² Guidance Note for ESS10, page 9, para GN26.1 (draft for public comment).

- Direct Borrowers to gather information from complaints and distill lessons learned from them and to provide that information to the project proponents and the Bank at regular intervals as well as disclose it publicly. The Bank should also use this information to monitor practice and outcomes from project-level grievance mechanisms, as well as learn lessons that can be applied in other contexts.
- Direct Borrowers to gather feedback from stakeholders and produce data at regular intervals.

Annex: Resources and practical guidance for Borrowers on how to implement ESS1 and 10

Assessment

Guidelines on incorporating human rights standards and principles, including gender, in programme proposals for bilateral German Technical and Financial Cooperation, GIZ: https://www.giz.de/expertise/downloads/Guidelines_on_incorporating_human_rights_standards_and_principles.pdf

Guidance on Social Impact Assessment, International Institute for Impact Assessment: https://www.iaia.org/uploads/pdf/SIA_Guidance_Document_IAIA.pdf

Interpretive Guide on the Corporate Responsibility to Respect Human Rights, OHCHR: http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf

Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks, Shift Project: <https://www.shiftproject.org/resources/publications/business-human-rights-impacts-identifying-prioritizing-risks/>

Human Rights Due Diligence Toolkit, esp Contextual Risk Indicator Questions and HRDD Overview, Coalition for Human Rights in Development: <http://rightsindevelopment.org/human-rights-due-diligence-project/>

Human Rights Due Diligence in High Risk Circumstances, Shift Project: <https://www.shiftproject.org/resources/publications/human-rights-due-diligence-high-risk-circumstances/>

Compilation of good practice on due diligence, Coalition for Human Rights Due Diligence: <http://rightsindevelopment.org/wp-content/uploads/2017/06/Practice-Table-Elements-of-HRDD.pdf>

Good practice on assessing risks, designing, and implementing measures against gender-based violence and violence against children in infrastructure projects, World Bank Inspection Panel: <http://ewebapps.worldbank.org/apps/ip/PanelCases/98-Inspection%20Panel%20Investigation%20World%20Report.pdf>

Recommendations for preventing sexual exploitation and abuse, World Bank: <http://documents.worldbank.org/curated/en/482251502095751999/pdf/117972-WP-PUBLIC-recommendations.pdf>

Integrating a child focus into poverty and social impact analysis, World Bank and UNICEF:
<http://documents.worldbank.org/curated/en/138331468322461599/pdf/665630WP00PUBL020110Layout0FinalPxP.pdf>

Children's rights in impact assessments, The Danish Institute for Human Rights and UNICEF:
https://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf

Integrating child rights in development cooperation, European Union and UNICEF:
<https://resourcecentre.savethechildren.net/sites/default/files/documents/child-rights-toolkit-web-links.pdf>

Emerging Lessons Series No. 3: Environmental Assessment, World Bank Inspection Panel:
<http://ewebapps.worldbank.org/apps/IP/IPPublications/Emerging%20Lessons%20Series%20No.%203%20-%20Environmental%20Assessment.pdf>

Stakeholder Engagement and Consultation

Emerging Lessons Series No. 4: Consultation, Participation & Disclosure of Information, World Bank Inspection Panel:
<http://documents.worldbank.org/curated/en/891651511972161278/pdf/121756-WP-PUBLIC-ADD-SERIES-IPNConsultationReportFinalwebwithlinks.pdf>

Guidance Note on Stakeholder Consultations in Investment Operations, World Bank:
<http://documents.worldbank.org/curated/en/830941468323985308/pdf/671210WP00PUBL0ultations0Note0web20.pdf>

Guide to improve accessibility for persons with disabilities for inclusive meetings, Handicap International: http://proadiph.org/IMG/pdf/guide_accessibilite_anglais.pdf

Ask me guidelines for effective consultation with people with disabilities, National Disability Authority, Ireland: <http://nda.ie/nda-files/-Ask-Me-Guidelines-for-Effective-Consultation-with-People-with-Disabilities1.pdf>

Guidelines for consulting with children and young people with disabilities, Plan International: <https://plan-international.org/publications/guidelines-consulting-children-and-young-people-disabilities>

A toolkit for monitoring and evaluating children's participation, Save the Children UK:
https://resourcecentre.savethechildren.net/node/8107/pdf/me_toolkit_booklet_6.pdf

Information Disclosure

Example of easy to read documents for project-affected communities and stakeholders, Human Rights Watch:

https://www.hrw.org/sites/default/files/accessible_document/zambia1017_easyread_web.pdf

The Public's Right to Know: Principles on Freedom of Information Legislation, Article 19

<https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>

Transparency Charter for International Financial Institutions Claiming our Right to Know, Global Transparency Initiative

http://www.ifitransparency.org/doc/charter_en.pdf

Grievance

United Nations Guiding Principles on Business and Human Rights effectiveness criteria for non-judicial grievance mechanisms, United Nations Office of the High Commissioner on Human Rights:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Grievance mechanism toolkit, International Finance Corporation Compliance Advisor Ombudsman: <https://www.cao-grm.org/>

A guide to designing and implementing grievance mechanisms for development projects, International Finance Corporation Compliance Advisor Ombudsman: <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf>

World Bank's recommended approach to strengthening grievance capacity in Bank-supported projects, World Bank:

<http://documents.worldbank.org/curated/en/155861468158375837/The-World-Banks-approach-to-grievance-redress-in-projects>

Addressing grievances from project-affected communities, International Finance Corporation:

http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_gpn_grievances