



Consultation Environmental and Social Standards of the Land Degradation Neutrality Fund

A contribution on behalf of Drynet¹

Drynet is a global network of 19 organizations working with communities and CSOs in 23 countries on sustainable land use in drylands. Drynet members bring local realities of drylands to policy makers, while at the same time they bring information about policy processes to local people and communities in drylands.

Drynet consists of AIDER Peru, Both ENDS Netherlands, CAATINGA Brazil, CAREC Kazakhstan/ Uzbekistan/ Kyrgyzstan/ Tajikistan/ Turkmenistan, CARI France, CENESTA Iran, DCG/DCG Mali, DCG Norway, EMG South Africa, ENDA TM Senegal, GCOZA Mali, Gram Bharati Samiti India, La Route du Sel France, LPPS India, OLCA Chile, PROBIOMA Bolivia, SCOPE Pakistan, TEMA Turkey and TENMIYA Mauritania.

General remarks

Land is the most universal of the natural resources upon which human life depends, and we appreciate the initiatives of the UNCCD to increase investment in the sustained productivity of land. The efforts currently being made to establish comprehensive Environmental and Social Standards for the Land Degradation Neutrality Fund (LDN Fund) are laudable, and create the opportunity for this Fund to be the “best in class” of impact investment funds aimed at improving and sustaining natural resource-based livelihoods. The efforts currently being made to ensure that adequate social and environmental safeguards are in place to maximise the good and minimise that possible harm that might result from the proposed investments deserve the support of all concerned parties.

Our comments below are thus made with the express intention of enabling the improvement of the proposed LNDF.

Drynet appreciates the opportunity to contribute its perspective within the current process of consultation. We do so in a spirit of goodwill and in an attempt to make a positive contribution based on our extensive collective experience of the theory and practice of investment in sustainable land management and livelihoods in the drylands of the world.

We also note with appreciation the valued contribution made by the members of the UNCCD Civil Society Organisation Panel to the consultation.

The LDN Fund has the express ambition to be an impact investment fund: investments should generate social and environmental impact whilst also generating a financial return for investors. We welcome the ambition to generate financial means to ensure sustainable land management practices at a landscape level. This is especially needed as so many sustainable land-based initiatives that have demonstrated long-term effectiveness have started small, and

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been developed by groupings of indigenous peoples, small-scale farmers, women, pastoralists and nomadic people who have lacked access to significant investment funds.

Small is beautiful

The website of the Fund refers to many small-scale projects which demonstrate that sustainable landscape management is more profitable than the unsustainable alternatives. However, in its intended focus on large-scale rehabilitation of degraded land the Fund is unlikely to contribute to the emulation of these successes. The ambition of targeting 12 million hectares/ year for sustainable and productive use with long-term private sector financing (an area the size of Malawi and equivalent to all arable land in Germany) will, in all likelihood, demand a “big, private and profitable” approach that will prove incompatible with the local, people-driven approaches that have shown such promise.

There is a gap between (i) the ambition and long term potential of many local land users to produce sustainably, by doing good to the land, to the people and be profitable at the same time *and* (ii) investments of the Fund in large-scale rehabilitation schemes of degraded land, where the long-term sustainable use of the land by indigenous peoples, small-scale farmers, women, pastoralists and nomadic people is not necessarily the first priority. The LDN Fund should seek advice from established small grant funds like the Global Green Grants Fund (<https://www.greengrants.org>), Casa in Brazil (<http://www.casa.org.br/en/>), People and Nature Fund in India (<http://keystone-foundation.org/people-and-nature-fund/>).

Remember gender

The document lacks reference to gender and fails to recognise that evidence strongly suggests that women lose out on the benefits of large-scale investments and bear a disproportionate share of the negative impacts. Women typically use the land to produce food to feed their families, yet frequently they do not have formal or customary rights over the land, or ownership rights that allow them to decide what will happen with the land upon which they and their families depend. In many cases this has resulted in land being converted to mono-cultural use, with women losing access to food, status and control of household economies, with disastrous consequences for family health, let alone their own status and self-determination. In such instances being “gender neutral” is not enough: investors need to adopt explicit gender policies and take a proactive approach to ensuring that policies and practices help to overcome rather than reinforce pre-existing gender inequalities. The standards and procedures set up by the Fund should include a way to assess the actual land (user) rights and the use of the land. This means that gender impacts should be made explicit in all procedures related to investments:

- Assessing the risks of the investment: for every investment, it is important to ask what kinds of risks are being taken and who will assume the potential costs (land user, gender, age)
- Assessing the outcomes of the investment: it is important to be able to assess potential investments in terms of their impact on gender equality and the local priorities and needs of the poorest people.

With regards to gender, the Fund should look at the ways funds dedicated to enhancing the role of women function, e.g. Fondo Centroamericano de Mujeres for Central America (<http://fcmujeres.org/>), Mama Cash (<http://www.mamacash.org/>), etc.

Governance

It is not clear how the Fund will be governed. Sound, accountable and responsive governance is at the heart of any responsible investment in natural resources. If it is not in place the Fund is in danger of making investments that do not contribute to achieving the 3 objectives of the Fund. We therefore urge the Fund to carefully consider these principles and to clarify as a matter of priority:

- Who will take decisions on fund investments?
- Who will play the oversight role to ensure that the investments are contributing to the 3 objectives of the Fund?
- What will the role of UNCCD, GM and UNCCD country Parties be in the LDN Fund?
- What is the role of the Fund Manager?

- What is the role of the board of directors?
- What is the composition of the board?
- Will investment proposals be presented to the board?
- Will the board actually give a ‘go’ or ‘no go’ to the investment proposals or is the decision taken by the board just a formality?
- What kinds of accountability procedures within the Fund are put in place?
- How will an adequate separation of powers, with ‘best practice’ checks and balances ensured?
- Will third parties have a role in ensuring that investment proposals adhere to the standards and procedures?
- Will there be a body that can assess proposed projects against the agreed standards and procedures, e.g. an ethical committee that consists of different independent stakeholders?
- Will third parties have a role in monitoring the impact of the Fund?

Each of these questions should be adequately addressed. It is not clear from the current proposals that have been made public how an accountable governance system will function to ensure that social and environmental standards are utilised in a meaningful way, and are not reduced to “window-dressing”.

Where is the rest?

In the introduction of the Environmental and Social Standards of the LDN fund (E&S standards), it is mentioned that the *E&S Standards* are addressing risk management and are together with *E&S required positive impacts* part, of the *E&S Management System*, which is part of the *LDN Fund policy framework*. We applaud the fact that GM and Mirova have invited Civil Society to contribute their views on the E&S standards, but we seriously regret that we are not able to assess the whole set of policies, as it is the policy environment that will determine the rigour with which these standards will be implemented. We thus also require insight into the *E&S required positive impacts* document, the *E&S Management system* document and the *LDN Fund policy framework* document.

Only in this way will we be able to provide well-informed, comprehensive and sincere advice on how the Fund can best achieve its intentions to do good and avoid harm. For instance, we need to know how the Fund *and* its borrowers (clients and partners) will deal with topics like:

- Financial, social and environmental due diligence (criteria, principles, and rules of due diligence), like environmental and social impact assessments (look for instance at the practices of the Asian Development Bank)
- Free Prior and Informed Consent of indigenous people and other communities needs to be operationalized (FAO Governance of Tenure Technical Guide: Respecting free, prior and informed consent - a practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition)
- Meaningful consultation by timely public disclosure of information and dialogue with local land users like indigenous peoples, small-scale farmers, women, pastoralists and nomadic people on the possibilities for investment in sustainable land management and rehabilitation of the land, and release of the outcomes of environmental and social assessments 120 days *before* a project is presented for approval by the Board (refer to the procedure of the Asian Development Bank)
- Compliance with the standards prior to the approval of a project (once more, the Asian Development Bank provides guidance here)
- Complaints mechanism & ombudsman (ref. Asian Development Bank)
- Compensation

Accountability and Participation

It will be essential to ensure that borrowers (clients and partners) actually adhere to the environmental and social standards of the Fund, and are held accountable before a project is approved. It will be imperative to clarify these procedures, including the kind of verification documents that will be required.

We strongly advise actual engagement with local people and communities, with indigenous peoples, small-scale farmers, women, pastoralists and nomadic people about possible investments in their lands, before and after a project is approved, in the project design and implementation, during monitoring and evaluation of the project impacts. In accordance with UNCCD, they should participate in the planning and implementation of initiatives funded by the LND Fund. Such participation should not be of a manipulative, or merely consultative or tokenistic in its nature. It should not be driven by material incentives, but should be interactive and lead towards self-mobilisation.

Actual engagement can be verified by transcripts of dialogues with local people and communities, by interviews with local people and communities.

Existing agreements

There are many international and regional agreements and sets of principles that have been adopted that should provide guidance on a range of key issues that relate to the LDN Fund such as governance, ownership, access to land and security of tenure, investment, gender and equity. Whether in the context of the LDN Fund, or more broadly in the landscape, we would like to stress that these are to be followed, implemented and/or enforced by all stakeholders. Some of these internationally agreed documents are:

- Paris Agreement of the parties to the United Nations Convention on Climate Change (2015)
- Principles for Responsible Investment in Agriculture and Food Systems (2014)
- FAO Governance of Tenure Technical Guide: Respecting free, prior and informed consent - a practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition (2014)
- Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (2012) (<http://www.fao.org/nr/tenure/voluntary-guidelines/en>)
- OECD's Guidelines on Multinational Enterprises (updated in 2011) (<http://www.oecd.org/corporate/mne/oecdguidelinesformultinationalenterprises.htm>)
- UN Guiding Principles on Business and Human Rights (2011)
- Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council (2011) (<https://www.unglobalcompact.org/library/2>)
- Busan Partnership for Effective Development (2011) (<http://www.oecd.org/development/effectiveness/busanpartnership.htm>)
- UN Declaration on the Rights of Indigenous Peoples (2007) (http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- UN Basic Principles and Guidelines on development-based evictions and displacements (2007) (<http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx>)
- Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (2004) (<http://www.fao.org/docrep/009/y7937e/y7937e00.htm>)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) (<http://www.un.org/womenwatch/daw/cedaw>)
- International Covenant on Civil and Political Rights (1966) (https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&lang=en)

New insights

The text mentions that the E&S management system of the LDN Fund will be evolving as worldwide E&S systems are evolving. A monitoring & evaluation system must be put in place that will serve as the base for revision of the E&S management system, and should be open to public consultation and input.

Not sufficient

Finally, organizing a public consultation only on the *E&S standards* without providing insight into the overall policy framework of the LDN Fund, is inadequate and not responsible towards the respondents and stakeholders. Respondents need to have insight into elements such as the proposed procedures, governance and criteria to promote a positive contribution to stabilizing and reversing land degradation. In the absence of this information, engaging in the process is like getting only a taste of the cherry on top of the pudding, while the proof of the pudding is in the eating of it. We therefore strongly urge the LDN fund to organize a consultation that includes the entire *LDN Fund policy framework* (including the *E&S required positive impacts* and the *E&S Management System*).

Specific remarks

Website of the consultation

'The LDN Fund Environmental and Social Standards (ESS) define the framework upon which all projects that will be financed by the Fund must adhere to. Once finalized, the ESS will be integrated into all aspects of the LDN Fund's project investment cycle, and become part of the LDN Fund's overall risk management and due diligence approach to ensure the responsible handling of social and environmental risk. In particular, the ESS will be integrated into the investment policy of the LDN Fund, and the Fund Manager will have responsibility for conducting a detailed ESS assessment of each project before investment. Other Fund governance bodies will support and regulate the Fund Manager's work on ESS issues. Committees will be established to have a consultative role on ESS, providing advice and expertise when required. Other Fund governance bodies, responsible for the establishment of the investment guidelines (e.g. Board of Directors), will be responsible for the supervision of the Fund Manager to ensure compliance with the ESS, and will have the authority to request an investigation from a third party consultant to verify that the Fund is in compliance.'

It is of primary important to clarify in advance who will be responsible for the supervision of the Fund Manager to ensure compliance with the Environmental and Social Standards, the desired and required positive Environmental and Social impacts and the Environmental and Social Management System as a whole. Tasks, responsibilities and designated authorities related to the supervision of compliance with the Environmental and Social Standards must include the monitoring of investors' and projects' compliance with the Environmental and Social Standards and the authority to determine how the project must implement the Environmental and Social Standards and, indeed, whether the project should be allowed to continue. If this authority is vested in the Board of Directors (as is being suggested), and the Board represents only, or at least primarily the interests of the investors, this board will be unable to decide independently or impartially on the compliance with the Environmental and Social Management System in general, and the Environmental and Social Standards. The nature of its role and vested interests will preclude the Board from judging impartially whether the required positive Environmental and Social impacts are being achieved.

In order to ensure that this vital function be carried out independently, the establishment of a 'monitoring and compliance committee' that consists of Environmental and Social experts from third parties (including CSOs). The role of this committee must be clearly defined, and it must have powers of sanction if the LNDF is to ensure that it is a credible vehicle for advancing the Sustainable Development Goals in association with the United Nations Convention to Combat Desertification.

Environmental and Social Standards of the LDN Fund

P2:

Introduction: Environmental and Social Management System of the Land Degradation Neutrality Fund

'Lastly, it is important to recognize that the E&S systems from around the world are evolving, and thus the LDN Fund will regard its Standards as "modular". That is, as best practices change, the LDN Fund will review its E&S Management System and exchange "modules" from a variety of international financial and development institutions as new experience makes changes advisable. The LDN Fund will thus continue to learn from the experiences of other institutions and adopt new and innovative practices accordingly.'

Learning from the experiences of the LNDF and from other institutions is not value neutral. Such institutional learning should take place within a framework of seeking to achieve maximal benefits for all participants and affected parties whilst causing no, or at least minimal harm. Such learning frequently does not take place in institutions without adequate resource allocation, political will, adoption of appropriate methodologies and concerted and focused effort. We therefore propose that the LDN Fund must ensure adequate resource allocation to enable it to evaluate its Environmental and Social Management system one year after its inception, followed by a regular bi-annual evaluation every two years. Such evaluations should be conducted with the facilitation of a suitably skilled external service provider, and should take into account the impact of the Fund's activities on local land users. Good practices, standards, procedures and experiences garnered by other funds should also be included in the review process, including small grant funds like Global Green Grants Fund (<https://www.greengrants.org>), Fondo Centroamericano de Mujeres for Central America (<http://fcmujeres.org/>), Casa in Brazil (<http://www.casa.org.br/en/>), People and Nature Fund in India (<http://keystone-foundation.org/people-and-nature-fund/>) and Mama Cash (<http://www.mamacash.org/>).

We therefore propose that the text be amended as follows:

That is, as best practices change, the LDN Fund will review its E&S Management System one year after its initiation, and every two years thereafter. Such externally facilitated reviews will be designed to enable the LNDF to actively learn from both positive and negative experiences and impacts within its remit, and from other experiences globally. This process will enable the LNDF to adopt "modules" from a variety of international financial and development institutions as new experience makes changes advisable. The LDN Fund will thus continue to learn from the experiences of other institutions and adopt new and innovative practices accordingly.'

LDN Fund E&S Standards Introduction

P3:

'After a detailed analysis of E&S systems that exist in a variety of organizations it was decided that the LDN Fund's E&S Standards should be benchmarked against the International Finance Corporation (IFC)'s Performance Standards 2012. It is important to recognize, however, that the LDN Fund's mandate necessitates that its E&S Standards include elements that specifically address issues related to land tenure and land use.'

We propose including the words 'and both formal and informal land (user) rights' after land tenure and land use. The sentence would then read: It is important to recognize, however, that the LDN Fund's mandate necessitates that its E&S Standards include elements that specifically address issues related to land tenure, land use and both formal and informal land (user) rights.

'As such, a dedicated Standard explaining the LDN Fund's obligations as related to land tenure is included in the LDN Fund's E&S Standards. For the elaboration of this Standard the LDN Fund drew mostly on the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) as well as on relevant other documents and experiences.

We see it as a grave transgression of good governance principles that the draft LDN Fund document explicitly mentions that it does not adopt the CFS Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (VGGTs). These are the state of the art guidance for stakeholders dealing with land, including land users, governments and investors. Also, these are recognized as the basis for responsible governance towards in the Land Degradation Neutrality discussions regarding the UNCCD, the SDGs etc.

We therefore propose replacing the footnote 'Note that the LDN Fund is not adopting the VGGT but rather using the VGGT as guidance in constructing the environmental and social standards on land tenure' with 'The LDN

Fund will use the VGGT to judge whether proposed actions and the actions of others constitute acceptable practices.'

P4:

'Additionally, the Standards proposed for the LDN fund are ordered alphabetically.'

If this is the case, than LDN Standard 3: Community Health, Safety and Security should be placed before LDN Standard 2: Cultural Heritage.

We propos switching Standard 2 and Standard 3 in order to make the alphabetical ordering fully functional, and avoid the impression that other considerations have influenced the order in which the standards are presented.

LDN Standard 1: Biodiversity Conservation and Sustainable Management of Living Natural Resources (Corresponds to IFC PS36)

P5:

'LDN Standard 1 recognizes that protecting and conserving biodiversity, maintaining ecosystem services, and sustainably managing living natural resources are fundamental to sustainable development'

We agree with this sentence in general, but believe that it is necessary to specifically draw attention to the fact that biodiversity is fundamental to the fulfilment of the right to food on the part of local people and communities.

We propose adding, following the words 'sustainable development', the phrase 'and to the right to food of local people and communities'. The sentence would read: LDN Standard 1 recognizes that protecting and conserving biodiversity, maintaining ecosystem services, and sustainably managing living natural resources are fundamental to sustainable development and to the right to food of local people and communities.

P6:

'Standard 1 requires that all Projects apply the mitigation hierarchy, i.e. to take appropriate measures to avoid, minimize or rehabilitate/mitigate impacts that may damage biological diversity. Where residual adverse impacts on biodiversity remain, the projects promoters may propose biodiversity counterbalancing measures, where appropriate.'

This text is too vague and makes the implementation of proposed counterbalancing measures entirely optional.

We therefore propose strengthening the sentence to make it more committal: Where residual adverse impacts on biodiversity remain, the projects promoters shall propose and apply biodiversity counterbalancing measures in consultation with local people affected by the project.

LDN Standard 2: Cultural Heritage (Corresponds to IFC PS#8)

P7:

'In addition to complying with applicable law on the protection of cultural heritage, including national law implementing the host country's obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage, the Project Implementer will identify and protect cultural heritage by ensuring that internationally recognised practices for the protection, field-based study, and documentation of cultural heritage are implemented.'

We note that the link to local people as the owners and guardians of cultural heritage is not made in this text.

We therefore propose the addition of 'cultural heritage as identified by local people and communities' and locally acknowledged practices' The sentence would read: 'In addition to complying with applicable law on the protection of cultural heritage, including national law implementing the host country's obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage, the Project Implementer will also

identify and protect cultural heritage as identified by local people and communities by ensuring that internationally recognized and locally acknowledged practices for the protection, field-based study, and documentation of cultural heritage are implemented.

'The Project Implementer will also adhere to the Convention on Biological Diversity to inform how the Project uses cultural heritage. For the purposes of this Standard 2, cultural heritage refers to:

1. Tangible forms of cultural heritage, such as tangible moveable or immovable objects, property, sites, structures, or groups of structures, having archaeological (prehistoric), paleontological, historical, cultural, artistic, and religious values;
2. Unique natural features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls;
3. Certain instances of intangible forms of culture, such as cultural knowledge, innovations, and practices of communities embodying traditional lifestyles.'

Local people and communities determine their forms of culture and if they are intangible or not. We would like to see this recognition of self-determination.

We propose that the following text be included under bullet 3: 3. Less tangible or intangible forms of culture, such as cultural knowledge, innovations, and practices of local communities embodying traditional lifestyles, as identified by local people and communities.

LDN Standard 3: Community Health, Safety and Security (Corresponds to IFC PS #5)

'LDN Standard 3: Community Health, Safety and Security (Corresponds to IFC PS #4)'

The reference to IPF PS should be #4 as #5 is about Land Acquisition and Involuntary Resettlement.

We propose changing the wording of PS#5 into PS#4

'While acknowledging the public authorities' role in promoting the health, safety, and security of the public, Standard 3 addresses the Project Implementer's responsibility to avoid or minimize the risks and impacts to community health, safety, and security that may arise from Project-related impacts, with particular attention to vulnerable groups.'

We suggest specifying people who are specifically vulnerable in the case of large-scale projects, namely indigenous peoples, small-scale farmers, women, pastoralists and nomadic people. The sentence would read: 'While acknowledging the public authorities' role in promoting the health, safety, and security of the public, Standard 3 addresses the Project Implementer's responsibility to avoid or minimize the risks and impacts to community health, safety, and security that may arise from Project-related impacts, with particular attention to vulnerable groups such as women, indigenous people, small-scale farmers, pastoralists, nomadic people, youth and poor.'

P8:

'The risk that a Project could exacerbate an already sensitive local situation and stress scarce local resources should be considered during the Project Design and Monitoring Plan.'

As large-scale projects have the inherent risk of starting or exacerbating conflicts over land, we would like to stress that the risks for conflict are explicitly assessed before any project is approved.

We suggest to add the following: 'The risks that a Project could exacerbate an already sensitive local situation and stress scarce local resources are assessed in a participatory way before the project is actually approved, monitored during the implementation of the project and evaluated when the project is implemented.'

LDN Standard 4: Indigenous Peoples and Vulnerable Groups (Corresponds to IFC PS #7)

'Standard 4 also recognizes that Indigenous Peoples and Vulnerable Groups are often among the most marginalized and vulnerable segments of a country's population. In many cases, their economic, social, and legal status limits their capacity to defend their rights to, and interests in, land and natural and cultural resources, and may restrict their ability to participate in and benefit from development.'

We propose adding political status, which is typically a cause and a result of marginalisation and vulnerability. The sentence would thus read: 'In many cases, their economic, social, political and legal status limits their capacity to defend their rights to, and interests in, land and natural and cultural resources, and may restrict their ability to participate in and benefit from development.'

P9:

'As a consequence, Indigenous Peoples and Vulnerable Groups may be more vulnerable to the adverse impacts associated with an LDN Fund Project than non-Indigenous communities. This vulnerability may include loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease. LDN Fund Projects that may impact indigenous proples (sic) and vulnerable groups must thus carry out a participatory assessment conducted by an independent specialist who is agreed upon by all local stakeholders and verify:

- a. Whether indigenous peoples or vulnerable groups inhabit or use the proposed project area(s) (thus having formal or informal rights to the land) and, if so, include disaggregated data by indigenous group and geographical location; and
- b. Whether project activities may impact (even indirectly) indigenous peoples or vulnerable groups living outside the project area.'

In this paragraph there is a typo, namely 'proples' instead of 'peoples'.

We would like to stress the risk of exacerbating the position of indigenous people and vulnerable groups when there is an interest of an investor in the land for large-scale rehabilitation.

We propose the inclusion of more participatory elements in the initial risk assessment: LDN Fund Projects that may impact indigenous peoples and vulnerable groups must thus carry out a participatory assessment conducted by an independent consultant which is agreed upon by all local stakeholders and verify:

- a. *Whether indigenous peoples or vulnerable groups inhabit or use the proposed project area(s) (and thus have formal or informal land (user) rights) and, if so, include disaggregated data by indigenous group and geographical location; and*

'Standard 4 requires that, before adopting and implementing projects and programmes that may affect indigenous peoples or vulnerable groups, a process of Free, Prior and Informed Consent (FPIC) is followed and consent given by the indigenous or vulnerable community.'

Free Prior and Informed Consent must be obtained from all indigenous communities that are possibly affected by the project.

Therefore we would like to suggest including the plural form as well. The sentence would read: Standard 4 requires that, before adopting and implementing projects and programmes that may affect indigenous peoples or vulnerable groups, a process of Free, Prior and Informed Consent (FPIC) is followed and consent given by the indigenous or vulnerable community/ communities

In addition, FPIC can be (and is) explained in different ways.

We suggest taking up the FPIC definition from the FAO 2014 report Respecting free, prior and informed consent - Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition:

Free implies no coercion, intimidation or manipulation.

Prior implies consent is sought far enough in advance of any authorization or commencement of activities, and the time requirements of indigenous consultation and consensus processes are respected.

Informed implies that all information relating to the activity is provided to indigenous peoples and that the information is objective, accurate and presented in a manner or form that is understandable to indigenous peoples. Relevant information includes:

1. the nature, size, pace, duration, reversibility and scope of any proposed project;
2. the reason(s) or purpose of the project;
3. the location of areas that will be affected;
4. a preliminary assessment of the possible economic, social, cultural and environmental impacts, including potential risks and benefits;
5. personnel likely to be involved in the implementation of the project;
6. procedures that the project may entail.

Consent implies that indigenous peoples have agreed to the activity that is the subject of the consultation. Indigenous peoples also have the prerogative to withhold consent or to offer it with conditions. Consultation and participation are key elements of a consent-seeking process. Consultation must be undertaken in good faith, which, among other things, requires that indigenous views are accommodated in the process or objective justifications are provided as to why such accommodation is not possible. The parties must establish a dialogue allowing them to identify appropriate and workable solutions in an atmosphere of mutual respect and full and equitable participation, with ample time to reach decisions. Indigenous peoples and local communities must be able to participate through their own freely chosen representatives and customary or other institutions. The participation of women, youth and children is preferable where appropriate.

LDN Standard 5: Labour and Working Conditions (Corresponds to IFC PS # 2)

P10:

There are 8 ILO fundamental conventions and there is only reference to ILO 138 on minimum age and ILO 182 on child labour. Why is there no reference to the other 6 ILO fundamental conventions? These are: Forced Labour (ILO 29) Freedom of Association (ILO 87), Right to Organize and Collective Bargaining (ILO 98), Equal Remuneration (ILO 100), Abolition of Forced Labour (ILO 105), Discrimination (111).

Proposal: refer to all ILO fundamental conventions in the LDN Standard 5.

LDN Standard 6: Land Acquisition and Involuntary Resettlement (Corresponds to IFC PS # 5)

'LDN Standard 6 recognizes that Project-related land acquisition and restrictions on land use can have adverse impacts on Project-Affected Parties. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood). Resettlement is considered involuntary when Project-Affected Parties do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of:

1. Lawful expropriation or temporary or permanent restrictions on land use;
2. Negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.'

Expropriation and resettlement are primarily a legal issue, governed by ample legal guidance and jurisprudence especially from human rights law (see OHCHR on evictions:

<http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>). Throughout the text, there seems to be an assumption that failed negotiations can justify displacement, which is clearly not acceptable from a human rights perspective. Whether or not expropriation is lawful must be seen in the light of international human rights law.

We suggest adopting Part 4 of the VGGTs give guidance regarding Transfers and other changes to tenure rights and duties. It addresses the governance of tenure of land, fisheries and forests when existing rights and

associated duties are transferred or reallocated through voluntary and involuntary ways through markets, transactions in tenure rights as a result of investments, land consolidation and other readjustment approaches, restitution, redistributive reforms or expropriation. Clauses 12.11, 12.12 and 12.13 are especially relevant:

- 12.11 Contracting parties should provide comprehensive information to ensure that all relevant persons are engaged and informed in the negotiations, and should seek that the agreements are documented and understood by all who are affected. The negotiation process should be non-discriminatory and gender sensitive.
- 12.12 Investors have the responsibility to respect national law and legislation and recognize and respect tenure rights of others and the rule of law in line with the general principle for non-state actors as contained in these Guidelines. Investments should not contribute to food insecurity and environmental degradation.
- 12.13 Professionals who provide services to States, investors and holders of tenure rights to land, fisheries and forests should undertake due diligence to the best of their ability when providing their services, irrespective of whether it is specifically requested.

‘Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for the Project-Affected Parties, as well as environmental damage and adverse socio-economic impacts in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided. Where involuntary resettlement is unavoidable, however, it should be minimized and appropriate measures to mitigate adverse impacts on Project-Affected Parties should be carefully planned and implemented.’

Eviction and replacement is never “unavoidable”. Eviction and replacement may be required for a project, in which case it is either jointly agreed, or it is legally permitted. If there is no joint agreement, nor legal base, then eviction and replacement are out of the question and the project must not proceed. Therefore, ‘involuntary resettlement is unavoidable’ is an incorrect choice of words. The question to ask here is whether the eviction and resettlement is really necessary AND what alternatives to the proposed investment project would address local land users’ needs?

‘The government often plays a central role in the land acquisition and resettlement process, including the determination of compensation, and is therefore an important third party in many instances. Direct involvement of Project-Affected Parties in resettlement activities is encouraged because it can result in more cost-effective, efficient, and timely implementation of these activities, as well as in the introduction of innovative approaches to improving the livelihoods of Project-Affected Parties.’

The means of calculating compensation are extremely delicate and intricate and must involve all stakeholders, including local people, communities which have (in)formal land (user) rights and knowledge about the land, as well as local CSOs, government and investors. Compensation should include the real costs of eviction, taking into account not only the market value, but also the indirect costs of being evicted (related to the right to food and tenure rights), as well as the emotional, social, cultural and religious value of the land. There is also a need to look at dynamic compensation – not just returning people to the static position in which they initially found themselves, but also taking into consideration the prospects they had before the project, and how their prospects are likely to evolve over time, including any likely impacts that may arise as a result of the economic changes which are being introduced by the project.

‘The overarching goals of Standard 6 are to:

1. To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs;
2. To avoid forced eviction;
3. To anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impact from land acquisition or restrictions on land use by
 - i. Providing compensation for loss of assets at replacement cost; land-for-land compensation should be considered and favoured when relevant and possible, taking into account not only the quantity but the quality of the land (productivity)

- ii. Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of Project-Affected Parties;
- 4. To improve or restore the livelihood and standard of living of displaced persons; to the extent possible, to consider offering possibilities such as job creation or profit sharing plans
- 5. To improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.'

See remark above: eviction and replacement is never "unavoidable". Eviction and replacement may be required for a project, in which case it must be either jointly agreed, or legally permitted. If there is no joint agreement, nor legal basis, then eviction and replacement are out of the question and the project should not proceed. The phrase 'avoidance of eviction is not possible' is therefore not acceptable. The question that must be asked here is whether the eviction and resettlement is really necessary, AND, if so, what alternatives to the proposed investment project will adequately address local land users' needs?

LDN Standard 7: Land Tenure

The language used in LDN Standard 7 on land tenure is different from the rest of the text. In general, the text uses an active tone of voice. However, in Standard 7 a more prescriptive tone is used, and the word 'must' is used copiously. E.g. "LDN Fund projects *must* ensure that actions affected land tenure are consistent with State obligations". The latter may suggest that the actions are not yet consistent with State obligations. Using a more active construction the text will suggest that these actions are consistent with State obligations from the outset: "LDN Fund projects ensure that actions affected land tenure are consistent with State obligations". If the latter interpretation is consistent with the intended meaning, we would like to propose that it be used, and suggest for the sake of coherence to use the active voice throughout Standard 7 (lines 1, 3, 5, 6, 7, 9, 12, 14, 16).

P12:

'The LDN Fund recognizes that smallholder farmers provide a large share of agricultural output in the developing world, and thus contribute significantly to food security, nutrition, poverty eradication, and environmental resilience.'

In addition to smallholder farmers, the contribution and needs of pastoralists and nomadic people should also be addressed. Furthermore, the word smallholder suggests that the farmer is title-holder of the land, which is often not the case.

We propose explicitly including indigenous peoples, small-scale farmers, women, pastoralists and nomadic people. The sentence would read: The LDN Fund recognizes that indigenous peoples, small-scale farmers, women, pastoralists and nomadic people provide a large share of agricultural output in the developing world, and thus contribute significantly to food security, nutrition, poverty eradication, and environmental resilience.

'LDN Fund Projects therefore support investments in smallholders as well as public and private smallholder-sensitive investments.'

See our comments above.

We suggest the following text to replace this sentence 'All LDN Fund Projects recognize and respect the right to food of indigenous peoples, small-scale farmers, women, pastoralists and nomadic people. The projects support both public and private investments in the livelihoods of indigenous people, small-scale farmers, women, pastoralists and nomadic people.'