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# GOING GREEN AND PROTECTING PUBLIC INTEREST, SUSTAINABLE SOLUTIONS TO ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) DISPUTES.

By:

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At the CIARB Kenya Branch International Conference



# Profile

## David Kaggwa, FCIArb, FICCP

LLM (Construction Law & Arbitration) RGU Arberdeen



### Current Positions:

- Chairman, Chartered Institute of Arbitrators – Uganda Chapter.
- Director, Chartered Institute of Arbitrators – Kenya Branch.
- Executive Director, Construction Law Institute.
- Senior Partner, Kaggwa & Kaggwa Advocates.

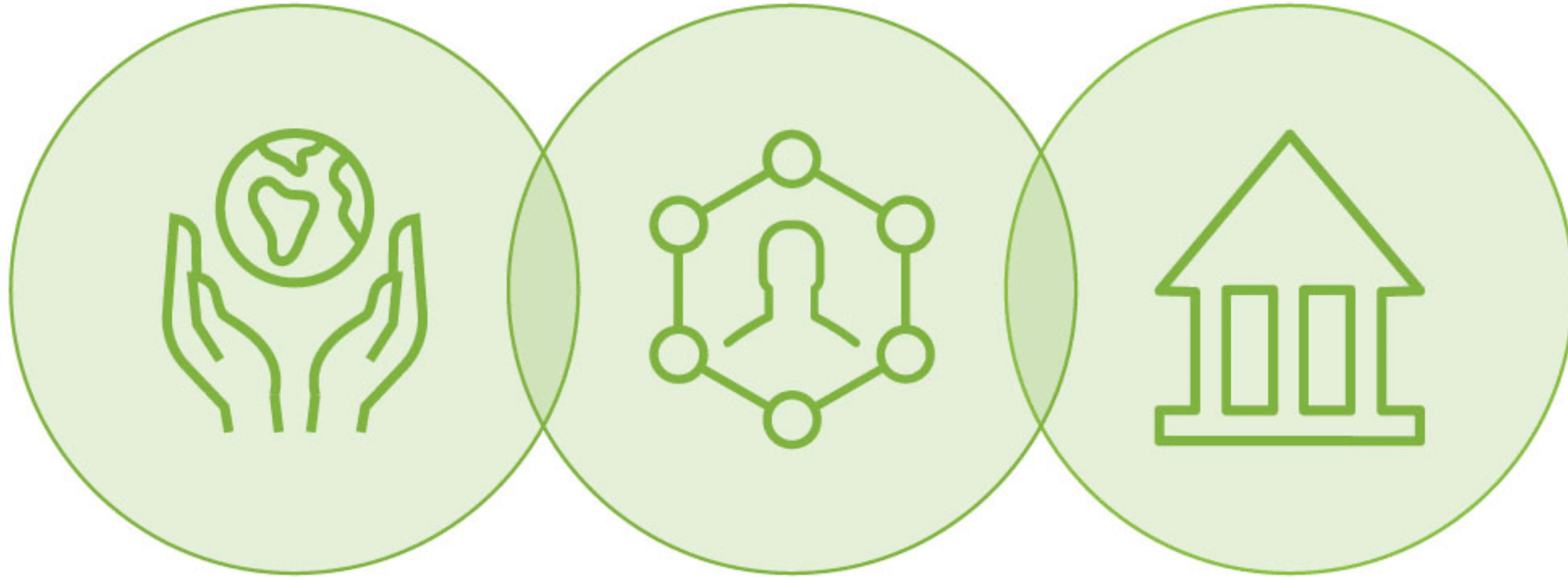
### Memberships:

- Fellow: Chartered Institute of Arbitrators (FCIArb)
- Fellow: Institute of Construction Claims Practitioners (FICCP)
- Member: Society of Construction Law (UK)
- Member: London Court of International Arbitration (LCIA)
- Member: International Center for Mediation & Arbitration in Kampala (ICAMEK)
- Member: Center for Arbitration & Dispute Resolution
- Member: International Bar Association.
- Member: Uganda Law Society and East Africa Law Society



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# What is What is ESG?



Enviroment

Social

Governance



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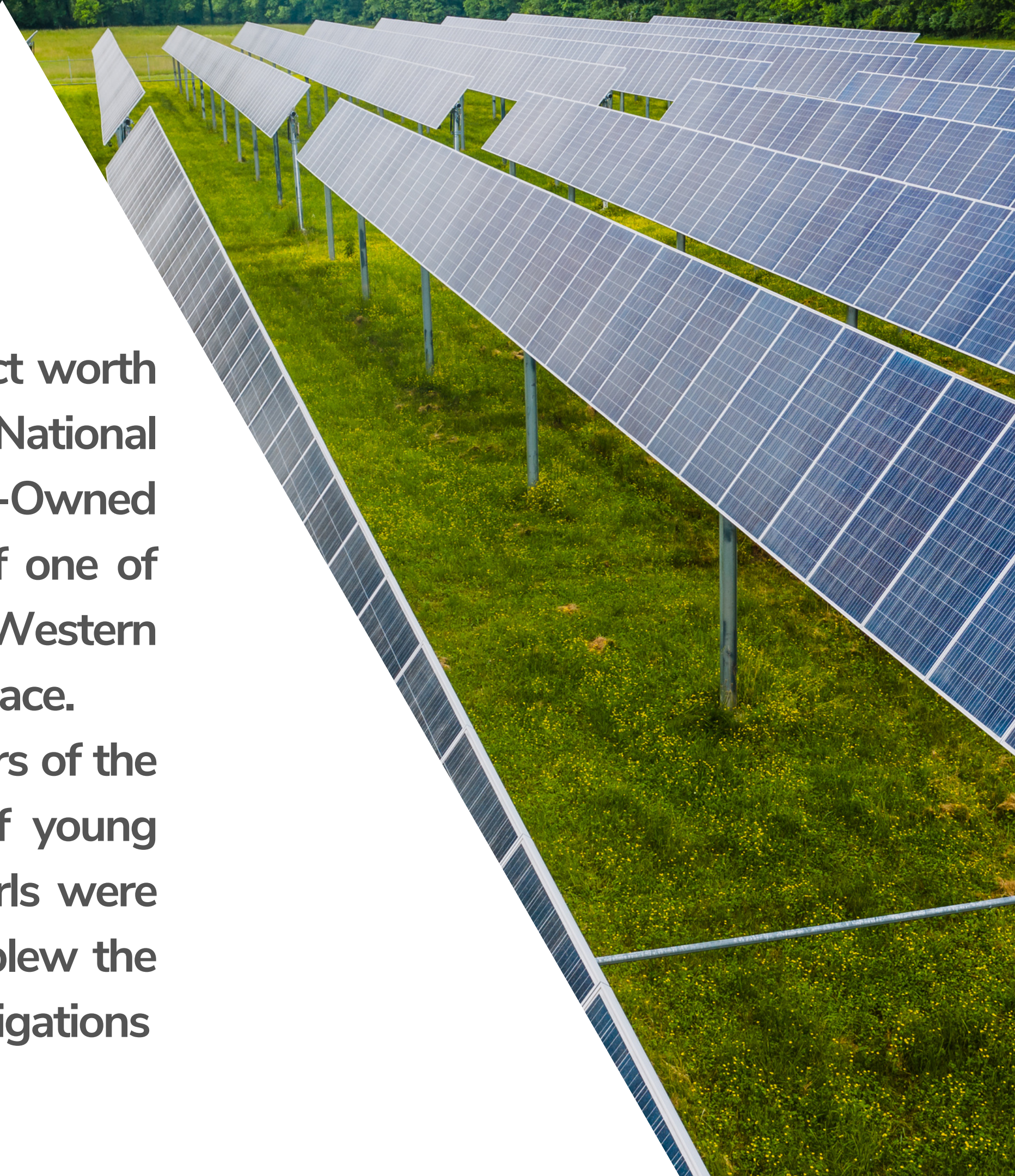
## ESG IN INFRASTRUCTURE PROJECTS



- The World Bank has the Environmental and Social Policy for Investment Project Financing that sets out the requirements that apply to borrowers who seek financing from the Bank.
- The World Bank seeks to support projects that are green, protect people and the environment and advance areas such as the labour force on projects, non-discrimination, climate change and biodiversity
- In 2015, the World Bank approved funding for infrastructure development in Western and Eastern Uganda worth **US \$ 243M.**

## ESG

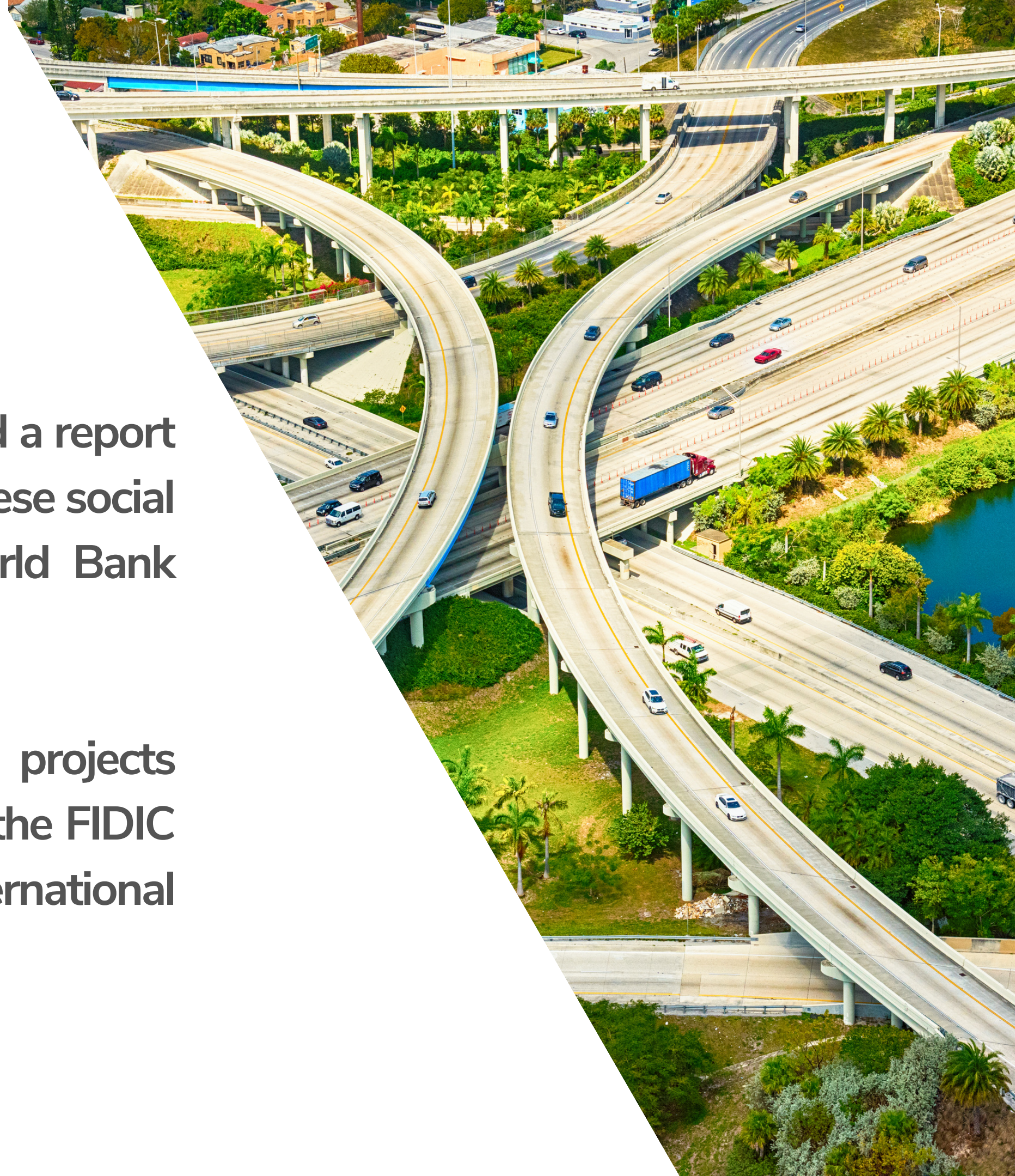
- Out of the said World Bank funding, a contract worth **US \$ 35M** was signed between Uganda National Roads Authority and a Chinese State-Owned Construction Company for the construction of one of the roads in the Albertine Graben area, in Western Uganda where oil production is slated to take place.
- During the construction of the road, the workers of the contractors engaged in sexual exploitation of young girls in the nearby school and some of the girls were impregnated by those workers. A local NGO blew the whistle and the World Bank commenced investigations





## ESG

- On 4th August 2016, the World Bank released a report regarding this incident. The consequence of these social violations led to the suspension of the World Bank funding worth US \$ 243M.
- In Uganda, most of the World Bank funded projects worth more than US \$ 10M are governed by the FIDIC Conditions of Contract published by the International Federation of Consulting Engineers.



# ESG



- In all construction contracts, one of the main obligations of the employer is to the contract price.
- In the 1999 editions of the FIDIC Contracts, the Contractor has a right to request the Employer to provide reasonable evidence that financial arrangements have been made and are maintained to enable the Employer pay the contract price.

- Because the World Bank had suspended funding to these infrastructure projects, Contractors, who led to this crisis, demanded from the Employer proof of financial arrangements, which had been suspended.
- The consequence was these contracts were terminated and the financial consequences were severe. The fact that most funding agencies emphasise compliance with ESG policies, Arbitrators must be aware that disputes are likely to be more prevalent from such rights.

# ESG





Thank You!



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