

Statement to the World Bank and its Member States

from African Civil Society Groups

on the Review of the World Bank Safeguards

July 21, 2016

As the World Bank's Board of Directors prepares to vote on the new Environmental and Social Framework, we civil society groups from Africa wish to make known to our governments, the World Bank's shareholders, and the World Bank President the following concerns.

For three years, we have participated in the process of reviewing the World Bank's social and environmental safeguards. We have conducted analysis, articulated our concerns, and engaged in consultations. Unfortunately, it seems that this exercise was not meaningful. In many consultations in our countries we were not given the opportunity to present our concerns. In other cases we did have the space to present our recommendations, however, what was then put forward as consultation summaries did not represent the issues articulated by civil society. This was the case even where we presented our inputs in writing. From what we have seen of subsequent revisions, the inputs of African civil society organizations are not reflected in the text. While the Bank and its shareholders state that they value civil society input and a participatory approach, we see a lack of sincerity in this regard when the voices of civil society are not taken note of. From the outcome, this was not a consultation, but a monologue.

At the same time, we see certain views and agendas which would seek to weaken the safeguards' protection of people and the environment being attributed to "African countries." These arguments include the following – 1) that human rights are not rooted in the African region; 2) that safeguards are not needed because national laws and regulations are sufficient to protect communities and the environment; 3) that those with informal land tenure are squatters and not deserving of resettlement protections; and 4) that Africa does not have indigenous peoples or that indigenous rights run afoul of our constitutions.

It is clear that these positions are not reflective of the positions of civil society from African nations. It is also the case that they do not have a basis in regional law and development practice. Here we respond to these false arguments attributed to "African countries".

African jurisprudence champions human rights in development. It has been argued that human rights are somehow not rooted in the African region and our laws and jurisprudence. This is simply not true. The African Charter on Human and Peoples' Rights (the African Charter) contains an expansive list of binding rights and obligations that frames the regional human rights system. In relation to the right to development, article 22(1) of the African Charter expressly recognises the right of all peoples "to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind". Article 22(2) goes further to impose a duty on states to ensure the exercise of the right

to development. In *Centre for Minority Rights Development & Others v Kenya* 276/03 (paras 144-162, see especially 146, 150, 157, 161), the African Commission held that ‘indigenous peoples’ or ‘distinct communities’ can qualify as ‘peoples’ and as such assert their right to development. That right specifically includes the right to demand that the community’s free, prior and informed consent (FPIC) is sought before development happens on their land (*Endorois* para 291). The right to development as contained in article 22 of the African Charter, and specifically its manifestation in the principle of FPIC, is a two-pronged test consisting of a procedural and a substantive element, both of which must be fulfilled. The Commission, in *Endorois*, noted that “recognising the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in the right to development” (para 277). Human rights, and the right to development of peoples and communities in particular, is therefore well-entrenched in the African regional system, and has been given substantive content. It would be impermissible for any system of law or policy to diminish or depart from this interpretation, and must instead strive to uphold this standard.

- *The Bank must ensure that safeguards give full, meaningful effect to the rights contained in the African Charter, which includes the right to development, as has been properly interpreted by the African Commission.*

Strong standards and supervision are needed to strengthen national systems. It has been argued that safeguards are an unnecessary burden because we have our own national laws and regulations. While national laws should be respected, in many cases, those laws may not be sufficient to protect people’s lives or the environment from harm. Nor may the State agents responsible for ensuring the implementation of those laws be in a position to ensure such compliance for lack of capacity or lack of will. For these reasons, the safeguards and their requirements must serve as a clear minimum standard. Where there are strong institutions, good governance, and entrenched rule of law, government can rely on its rules and processes. But many of our countries struggle with weak governance, institutions, and rule of law. For this reason, the Bank must play an active role in supervision and not rely on self-reporting from project implementers. Too often we have seen implementers ignoring requirements and submitting assurances on paper, which bear no resemblance to the reality on the ground for communities. Without stronger safeguards, the Bank is indirectly promoting this bad governance and weak institutions.

- *The Bank must ensure that the safeguards set a minimum standard, and the national systems and other alternative systems are assessed in an open and participatory manner, and that they are measured against the full requirements of the safeguards, not just their limited objectives. The Bank must engage in robust due diligence and supervision of project design and implementation.*

Land rights and resettlement protections are critical. It has been argued that those with informal land tenure are “squatters” and should not be protected in resettlement. The notion that only those land claims backed by a title deed or a certificate of occupancy has left many people with legitimate land rights, dispossessed. It should be noted that in the “global south”, most land is held under customary tenure. African regional legal instruments give specific recognition to customary tenure as a form of ownership. Article 14 of the African Charter guarantees the right

to property, which the African Commission has held extends to the “rights, interests and benefits of [traditional African] communities in their traditional lands (Endorois, para 187). The Principles and Guidelines to the Socio-Economic Rights contained in the African Charter provide that the right to property includes “*rights guaranteed by traditional custom and law to access to, and use of, land and other natural resources held under communal ownership. This places an obligation on State Parties to ensure security of tenure to rural communities, and their members.*” In their *Framework and Guidelines on Land Policy in Africa*, the African Union Commission, the African Development Bank and the UN Economic Commission for Africa encouraged countries to ‘acknowledge the legitimacy of indigenous land rights’ and ‘recognize the role of local and community-based land administration/management institutions and structures, alongside those of the State’. Despite this, in many cases national law in our countries still does not provide adequate legal protection for land rights, or even where recognized in law, rights are not protected. And while many African states have legislation and policies governing land expropriation and compensation for affected people, in many cases these schemes are not adequate to reflect the value of lost land, goods and livelihoods and to prevent further impoverishment. The Bank has the obligation to protect those people impacted by development projects through setting guidelines that seek to recognize all interests on land, including access to land and natural resources. For those who hold land through customary title, this must be respected and provided with legal recognition. Where communities are resettled, they must be provided secure title to the land and resources where they are resettled.

➤ *World Bank safeguards must ensure that those with customary tenure continue to receive protections under the resettlement policy and that land ownership documents are provided to those who are resettled. All interests in each parcel should be taken account of. Where there are gaps between local laws and the resettlement policy or international standards, these gaps must be addressed to ensure that the protections under the policy are provided.*

African law recognizes Indigenous Peoples and Free, Prior and Informed Consent. It has been argued that Africa does not have indigenous peoples or that indigenous rights run afoul of our constitutions. The African Charter on Human and Peoples Rights recognizes the collective rights of peoples in Articles 20-24, and Article 21 states that all peoples shall freely dispose of their wealth and natural resources, a right that shall be exercised in the exclusive interest of the people and shall not be denied under any circumstances. Accordingly the African Commission established a Working Group on Indigenous Populations/Communities in 2000 to provide specific guidance to Governments in Africa regarding the rights and interests of indigenous peoples. Collective rights of distinct peoples, including indigenous peoples, have been specifically recognised by the African Commission (see Ogoni e.g. at paras 62-63, Endorois esp para 159). Furthermore, several African countries have taken various legal, institutional and policy measures that are favourable to indigenous peoples. In 2011 the Republic of Congo adopted a specific law on indigenous peoples; Burundi introduced a quota for indigenous persons in the parliament; Niger Pastoral Code recognised use rights for pastoralist communities; the 2010 Kenyan Constitution makes explicit reference to lands and natural resources-related historical injustices suffered by hunters gatherers and pastoralist communities (using the term “indigenous communities”); and, the DR Congo legislation on forests uses the term “indigenous peoples”. In addition, the Report of the Ugandan Government to the Human Rights Council’s Universal Periodic Review (UPR) of 2013 stated “*Uganda has indigenous communities who*

include the Batwa in the West; Benet in the Mt. Elgon region; the Tepeth in Karamoja; and others in other remote locations”. Parliamentary debates on indigenous peoples have also taken place in Cameroon in 2011, in Namibia in 2012, and in DR Congo in 2014. Our countries have representatives in the UN Permanent Forum on Indigenous Issues, have reported on progress in the recognition of indigenous peoples and endorsed the outcome of the World Conference of Indigenous Peoples in 2014. In terms of the principle of Free, Prior and Informed Consent, African regional jurisprudence is advanced in this area. The African Charter on Human and Peoples Rights’ 2012 Resolution 224 on a Human Rights-Based Approach to Natural Resource Governance calls on States to “*Confirm that all necessary measures [are] taken by the State to ensure participation, including the free, prior, and informed consent of communities, in decision making related to natural resource governance.*” This is also alluded to in the Kenyan constitution when dealing with indigenous peoples on matters relating to development, extractives, and exploitation of land and natural resources in their territories.

➤ *The cultural, religious, economic and customary land rights of indigenous peoples should be respected and protected. FPIC should be required, and defined consistent with international standards – as agreement through such peoples’ own chosen representatives and decision-making processes.*

We civil society groups from the African continent have engaged in this review process because we have seen first-hand the devastation and impoverishment that comes from development projects implemented without effective protections for the rights of communities and the environment. It is this critical perspective that we brought to bear in countless consultations, meetings, and submissions over the past three years. The World Bank must strengthen its commitment and leadership in the field of social and environmental protection, in accordance with its mission of contributing to sustainable development and reducing poverty and inequality around the world. We urge the World Bank’s Board and our national representatives to take seriously the inputs of African civil society organizations and to ensure that the safeguards framework is strengthened, including in the areas we have identified above, and that critical protections are not weakened.

Signed,

Action Ceinture Verte pour l'Environnement (ACVE), Burundi

Actions pour les Droits, l'Environnement et la Vie (ADEV), Democratic Republic of Congo

African Law Foundation (AFRILAW), Nigeria

African Mining Alliance (AMA), South Africa

Buliisa Initiative for Rural Development Organisation (BIRUDO), Uganda

Business and Human Rights Tanzania (BHRT), Tanzania

Centre for Human Rights, South Africa

Community Outreach for Development and Welfare Advocacy (CODWA), Nigeria
Community Policing Partners for Justice, Security and Democratic Reforms (COMPPART), Nigeria
Congoese Civil Society Watch for the Minerals of Peace, Democratic Republic of Congo
Conseil Régional des Organisations Non Gouvernementales de Développement (CRONGD), Democratic Republic of Congo
Forest Peoples Programme, International
Foundation For Environmental Rights, Advocacy & Development (FENRAD), Nigeria
Foundation for the Conservation of the Earth (FOCONE), Nigeria
Global Network for Good Governance (GNGG), Cameroon
Human Rights Council, Ethiopia
Institut de Recherche en Droits Humains (IRDH), Democratic Republic of Congo
International Rivers (Africa Programme), International
Jamaa Resource Initiatives, Kenya
Justice & Empowerment Initiatives, Nigeria
Justice Pour Tous, Democratic Republic of Congo
Lake Albert Children Women Advocacy and Development Organization (LACWADO), Uganda
Legal Resources Centre, South Africa
Lumiere Synergie pour le Developpement, Senegal
Mazingira Network - Tanzania (MANET), Tanzania
Natural Resource Women Platform, Liberia
Nigerian Slum / Informal Settlement Federation, Nigeria
Nyota (Industrial projects and Human Right), Democratic Republic of Congo
Peace Point Action (PPA), Nigeria
Réseau Camerounais des Organisations des Droits de l'Homme (RECODH), Cameroon
The Centre for Social Impact Studies (CeSIS), Ghana
Uganda Consortium on Corporate Accountability, Uganda
Wassa Association of Communities Affected by Mining (WACAM), Ghana
Women Action Towards Economic Development, Tanzania
Zambia Education Fund Foundation, Zambia