

Public Consultation on AfDB Integrated Safeguards System
Joint Submission of comments and recommendations
May 2022

The undersigned organizations welcome the African Development Bank (AfDB)'s review and update of its Integrated Safeguards System (ISS). This update is a critical opportunity for the AfDB to commit to a strong safeguard system that respects international rights frameworks, allows affected people and civil society to meaningfully participate in decision making, and confines development to the limits of planetary boundaries. As civil society organisations that work closely with communities and grassroots groups, we envision a Bank that prioritizes community-led development and human rights-based approaches; protects natural resources and tackles environmental and climate crises; raises the bar on access to information, transparency and accountability; facilitates participatory processes in policies, programmes and projects and ends inequality, poverty, and the cutback and privatization of vital services. The ISS should be a strong framework that enables the Bank to implement this vision.

This input is a joint effort and brings together the analyses of different organisations. It includes more general recommendations that are applicable to the ISS as a whole, but also more specific recommendations on particular Operational Safeguards. This input covers the following topics: implementation, common approach & use of borrower frameworks, gender, definition of vulnerable groups, climate change, grievance mechanisms, biodiversity (OS6), indigenous peoples (OS7), reprisals (OS10) and stakeholder engagement & disclosure (OS10).

Implementation, common approach & use of borrower frameworks

The ISS needs to define a clearer, more explicit monitoring role for the Bank and the Bank needs to strengthen its capacity to implement the ISS. The Bank should not rely on Borrower systems without the necessary safeguards that are now lacking.

Any delegation of **due diligence responsibility** to borrowers carries the risk of aggravating the inherent tension between speed of implementation and quality of policy. As such, any approach and use of borrower frameworks needs to relate to the Bank's capacity for carrying its responsibility of continuous assessment, monitoring and evaluation, oversight and ensuring stakeholder and civil society engagement, as well the option to seek recourse at the accountability mechanism in case the borrower does not comply with the requirements of the safeguards.

Sound due diligence demands for an implementation framework with clear statements about exactly what is required and how requirements will be operationalized (delivery mechanisms). The Bank needs to clarify and make specific its role in monitoring the Borrower, the policy needs to describe the tools the Bank has to do so (i.e. site visits, audits, consequences of non-compliance on disbursements).

Also, the draft updated ISS represents a significant increase for the AfDB in terms of necessary due diligence, Borrower support, and supervision requirements. We are concerned that without considering the additional budget and capacity necessary to implement the updated ISS in conjunction with the draft, any advances in the new policy will not be realized at the project level, and dangerous compliance gaps will be perpetuated.

In addition we call on the AfDB to reflect all our recommendations on the Policy into its Procedures, Operational Manuals, technical guidances to ensure proper implementation. We are disappointed and concerned that the Procedures Operational Manuals are not subject to this public consultation, despite them being a crucial element linking the Policy and Standards.

To strengthen the *The African Development Bank Group's Environmental and Social Policy (ESP)* we have the following recommendations:

- Reinforce the Policy so that it is clear that contractual clauses enshrine the standards in all bank operations, enabling for suspension of contracts as well if the standards are not implemented. This is currently absent from the Policy.
- Sound due diligence demands for an implementation framework with clear statements about exactly what is required and how requirements will be operationalized (delivery mechanisms). The Bank needs to clarify and make specific its role in monitoring the Borrower, the policy needs to describe the tools the Bank has to do so (i.e. site visits, audits, consequences of non-compliance on disbursements).
- (risk categorization:) All impacts must be clearly categorized with respect to their severity: Scrutiny of environmental and social impacts can improve project returns. At the World Bank Group and Asian Development Bank, risky projects with the greater scrutiny of Category A have delivered superior project outcomes. But increasingly, fewer projects are being designated as Category A. This does not necessarily reflect fewer investments in high-risk projects, but could rather reflect an increased tendency to downplay potential risks. Therefore, it remains extremely important to ensure robust scrutiny for projects labeled Category B and C, as well.
- The policy states that use of all, or part, of the Borrower's E&S Framework will be agreed between the Bank and the Borrower. If so, it is no longer clear prior to appraisal and Board approval which due diligence requirements are mandatory or instead negotiable. The draft policy seems to allow for greater discretion on the part of the Bank, regarding which information will be disclosed and when. For vulnerable citizens and for the Accountability Mechanism of the Bank it will be harder to identify clear instances of non-compliance .
- The Bank should not solely rely on information provided by the Borrower, instead, the Bank needs to establish its own lines of communication and information gathering with other knowledge-holders and stakeholders such as community groups, civil society organisations, knowledge institutions and religious institutions.
- Stakeholder engagement, risks assessment and assuring compliance should both be required **upfront** to inform board appraisal and approval, and improve development relevance and prevent adverse impacts, but also **throughout** the implementation process and at the **end of the cycle** to adapt to changing circumstances. Management of adverse impact during implementation does not mean less requirement at the front end. To ensure learning, monitoring and independent evaluation of effectiveness is key.

- Adaptive management” contradicts upfront requirements in prevailing Environmental Impact Assessment policies that demand EAs to be closely integrated with the economic, financial, institutional, social and technical analyses of a proposed project, and it undermines a fully informed decision making at the time of Board approval.
- The AfDB has to clearly demonstrate that borrowers provide the same level of environmental and social protections. There has to be a requirement included for the full disclosure of an ‘equivalence-testing’. Also, “borrowers system” equivalency testing has to take into account actual implementation/track record and not only look at overarching legislation (in other words, it should go beyond a paper exercise)
- The Bank needs to use clear and explicit language for its responsibilities as laid out in the ESP and explain what it means with general terms such as proportionate, appropriate, etc.
- The Bank should be very clear on when a waiver would apply. The conditions that could apply to a waiver should be specified, an analysis and request by Borrower should be public, and a waiver should be able to be applied only to sections of the policy and never when it means rights can be violated.

Gender

Throughout the ISS differentiation on gender should be made, including recommendations to require gender experts to be included in projects with social impacts.

- **par 2, d**, of the Policy states that the Bank will carry out engagement and meaningful consultation with stakeholders, in particular affected communities. A differentiation here of women in the definition of affected people is important.
- Also in **par 3 b, and par 20** of the Policy language on gender that includes requirements for the consideration of gender in terms of project impact and risk assessment is strongly preferred.
- The Bank must consider gender dimensions of the environmental impacts and risks and develop specific measures to mitigate the environmental impacts and risks to women.
- The Bank must recognize gender as an essential determinant of social outcome, and it is recommended to have a requirement for gender experts for project implementation in place.

Definition of vulnerable groups (overall, specifically also OS7)

The updated ISS should take an integrated, systematic, and consistent approach to the inclusion of marginalized groups, including persons with disabilities and children.

While the specific references to persons with disabilities and children in the updated ISS draft are welcome, we are concerned about the fact that the draft includes different definitions for the terms “vulnerable,” “vulnerable groups,” and “disadvantaged or vulnerable,” and these definitions are not consistent across the ISS. We urge the AfDB to adopt a single, consistent definition across the ISS. The definition should specifically include persons with disabilities and children.

Climate Change

We urge the AfDB to clarify that international conventions for pollution prevention and control to be applied must include the UN Framework Convention on Climate Change and that the AfDB definition of “greenhouse gasses” is that of the UNFCCC. Similarly, the OSs should mandate consistency with the objectives and requirements of the [Paris Climate Agreement \(2015\)](#), [Glasgow Climate Pact \(2021\)](#), and regional member countries’ most recent [Nationally Determined Contributions](#) under the UNFCCC.

To strengthen the draft, we recommend the following:

- The exclusion list in OS1, Annex 4 [Environmental And Social Exclusion List as Complementary to the Bank Group’s Negative List] should be expanded to prohibit, *inter alia*, direct or indirect financing of, or support for, 1) fossil fuel-fired power stations or coal mining for use in coal-fired power stations, 2) upstream oil and gas, that is, exploration of oil and natural gas fields, and drilling and operating wells to produce oil and natural gas, 3) industrial livestock/concentrated animal feeding operations or other unsustainable agricultural practices; 4) deforestation¹; 5) unsustainable biofuel production; and 6) large dams on free-flowing rivers, or any dams that do not meet World Commission on Dams (WCD) guidelines as set forth in WCD’s final report.
- The social cost of carbon should be incorporated in determining projects’ financial feasibility.
- Scopes 1, 2, and 3 should be included in calculating gross GHG emissions resulting from the project.
- The climate change assessment process should be strengthened, consistent with BIC’s prior safeguards recommendations, to provide for a robust, strategic [assessment](#) of mitigation and adaptation risks and opportunities, and follow-up actions.

Grievance mechanism

The ISS should be consistent with the IRM Framework and ensure that well- functioning grievance mechanisms are made available for workers. The Bank should monitor the effectiveness and outcomes of project-level grievance mechanisms.

IRM and project level:

- As described in IFC Guidance Note paragraph 59 “The worker should have the right to be accompanied and/or represented by a colleague or official of a trade union at that meeting if they so choose.”
- Grievance handling procedures should use joint labour-management committees or a neutral third party, avoiding grievances being handled unilaterally by a single manager or department.

IRM

- Correct all references to the IRM to accurately describe its mandate and functions. Where the current draft ISS describes the IRM, it omits the mechanism’s key role of facilitating remedy. The final ISS should include the IRM’s full mandate as stated in its Operating Rules and Procedures (ORPs), para 3..

- The IRM performs three essential functions: compliance review, problem solving, and advisory. However, the draft ISS fails to mention problem solving and advisory, creating the misconception that IRM's only role is to evaluate Bank compliance with its own policies. The final ISS should describe each of the IRM's functions as defined in the ORPs.
- The ISS should clarify that the requirement in paras. 72-73 for complainants to first approach the Bank before approaching the IRM can be waived in cases where this engagement would be "futile or potentially harmful to the complainants." ORPs, para 16(c). Additionally, the ISS should clarify that the complainant has the option to approach either the Bank and/or the Borrower/Client before approaching the IRM and that engagement with the Bank is not required if the complainant has already approached the Borrower/Client.
- Strengthen information disclosure and information about the IRM for communities and clients. Include in the ISS the client disclosure provision from the new ORPs (para 4) requiring AfDB clients and sub-clients to inform project-affected people about the availability of the IRM. Loan agreements should refer to the possibility of IRM investigations when there is a compliance review, and the ISS should publicly enshrine this requirement.
- The ISS should enable remedy in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs). The ISS should revise the mitigation hierarchy to state that Bank operations should seek to avoid, mitigate, and *remedy* adverse impacts of its operations, clarifying that a range of potential remedial measures besides compensation may be necessary to make project-affected people whole when negative impacts are unavoidable. These other measures include restitution, satisfaction, rehabilitation, and guarantees of non-repetition. As a part of this ISS review, the AfDB should commit to developing a remedy fund to ensure that resources are available to provide timely and effective remedy. If the new ISS fails to address provision of remedy for project-affected people, it will risk falling behind best practice at peer institutions such as the IFC, which is currently developing a remedy framework for its operations.

Project-level mechanisms:

- The project-level grievance mechanism shouldn't remain the sole responsibility of the borrower; the ISS should govern this mechanism to guarantee its application at the local levels. The ISS should clarify the terms between the AfDB and the Borrowers in order to establish this mechanism.

- Prior to project appraisal, the mechanism should be disclosed to local communities in the most accessible formats and languages, including illiterate people, people with disabilities, and other underprivileged groups.
- Prior to project appraisal, the borrower should hold outreach activities to inform local communities about the project grievance mechanism and how to access and use it.
- Affected people may face different forms of retaliation risks, including jail sentences for raising their concerns about a project. The grievance mechanism should ensure the legal and physical safety of affected people in order to channel their feedback and concerns.
- The AfDB is advised to ensure that this mechanism is managed by independent personnel with no ties to the project to be more independent.
- The ISS should explicitly require the Borrower to provide multiple accessible means for stakeholders to access and use this mechanism (i.e., email address, phone number, SMS).
- Concerning grievance mechanisms: all communities should always, at all times, have direct access to an overarching grievance mechanism, no matter what local mechanisms are available. Always allow direct access to the IRM regardless of whether there is a local mechanism available.

Labour rights (OS 2)

- We urge the Bank to drop the new category of community workers. This category exacerbates risks for some of the most vulnerable groups of workers, creates loopholes that undermine the safeguard, and complicates monitoring in situations that are already difficult to track. Situations including public works and small-scale local labour mobilization can be adequately handled by the direct and contracted project worker categories.
- The definition of core functions is overly narrow, and the 2013 standard rightly choose not to use this language. This provision limits application to contractors and suppliers to those that produce goods or provide services “essential for a specific project activity without which the project, activities or other initiatives cannot continue”. This could allow borrowers to argue that particular good or service is non-essential to the technical completion of the project. Suppliers or contractors should only be excluded from the safeguard if the procurement by the borrower is of a very small size.
- protections should apply regardless of the legal status of a migrant worker. Otherwise, undocumented or other irregular status can be used to coerce, intimidate, and otherwise violate the rights of migrant workers. Additionally, this footnote does not further explain the kinds of situations where a worker may not readily fit into the categories.
- Written employment contracts in the language of the workforce are best practice to ensure respect for rights and avoid informal employment relationships on projects, in addition to being

required by law in many countries. This can and should coexist with additional communication on terms and conditions of employment, especially for workers who may have limited literacy. In such cases, terms and conditions should at least provide the core elements of decent work as defined by the ILO including fair income, social protection, and security in the workplace.

- European Bank for Reconstruction and Development (EBRD) and IDB require that “The client will inform workers that they have the right to elect workers’ representatives, form or join workers’ organisations of their choosing and engage in collective bargaining, in accordance with national law.” This practical step is an important part of ensuring implementation of freedom of association and collective bargaining, which in practice are routinely violated.
- Worker representatives in each work area that act as focal points for OHS are a key tool alongside joint labour-management committees. Both should be democratically elected by their co-workers and have adequate mandates. Substantive and open worker involvement is essential to a safe workplace. The evidence is also clear evidence that this reduces accidents and injuries and improves workers’ health.
- Worker in the supply chain deserve, at minimum, protection in all areas of the core labour standards. We urge the Bank to add non-discrimination and equal opportunity, freedom of association, and collective bargaining to the coverage of the section on primary supply workers.

Biodiversity (OS 6)

While the ISS’s treatment of habitat & biodiversity conservation and sustainable management of living natural resources has a number of positive elements and is consistent with the World Bank’s ESS6, there remain gaps that should be addressed, given development pressures. OS 6 needs to be more specific in its definitions, first and foremost on Critical Habitats.

To strengthen the draft, we recommend the following:

- Requirements as drafted for primary suppliers of natural resource commodities are insufficiently binding to stop financing of [buyers of] primary suppliers engaged in significant conversion or degradation of natural or critical habitats. Primary suppliers of unsustainable sourced commodities need to be clearly excluded. For such suppliers, Borrower must either change suppliers or AfDB financing should be withheld.
- The definition of “critical habitat” should be expanded to include 1) areas recognized by international biodiversity-relevant conventions and agreements 2) IUCN Designated Areas (Categories IA – VI) and 3) protected or at-risk marine or coastland ecosystems, including mangrove forests, wetlands, reef systems.
- For assessment of risks and impacts, OS6 should enumerate areas of biodiversity importance that may be affected by AfDB projects. We propose using the eight areas listed in the Banks and Biodiversity No Go Policy.
- Clients should in no circumstances be allowed to carry out operations that negatively impact forests in critical habitat, proposed or legally designated protected areas or designated protected area buffer zones.

- The scope of OS6 should specifically address all projects that impact local and indigenous communities, and the natural resources upon which they depend. Considerations for forest-dependent communities should be incorporated in OS 6. Language found elsewhere in the Safeguards Framework does not overcome this dilution.
- Primary forests, well-developed secondary forests and sites of major environmental, social or cultural significance (habitat of critical importance to communities) need to be considered as habitat that should be conserved. Such areas shall not be replaced by tree plantations or other land uses.
- Offsets should not be considered for environmentally harmful activities in areas designated as critical habitat, primary forests, well-developed secondary forests and, or sites of major environmental, social or cultural significance.
- When forested areas which may have been logged a decade or so ago and which still retain reasonable biodiversity and are inhabited by human communities (indigenous and non-indigenous) and which are critical for community survival, are targeted as "offset" areas, the local communities may be subject to substantial levels of violence, threats, and curtailment of rights. Plans for the use of forest of any kind must not involve the eviction or resettlement of forest-dependent peoples nor the curtailment of their ownership, access or use rights.
- The Bank should redefine 'forest' to distinguish between natural forests and plantations, consistent with FAO, CBD. This distinction would assure that conversion from natural forest to plantation is recognized as habitat destruction that is subject to safeguards.
- OS6 should specify that Sustainable Management of Living Natural Resources involves maintaining ecosystem integrity and ecosystem services.
- Projects involving industrial-scale commercial forest harvesting operations should be (additionally) required to adhere to national law and relevant conventions (e.g. CITES), and avoid deforestation or degradation of primary tropical forest.

Indigenous people (OS 7)

Instead of including indigenous peoples into a vulnerable groups policy, the Bank should adopt a stand-alone indigenous peoples policy.

This would be in agreement with the UN OHCHR position as it was issued at the 2014 World Bank safeguards review. The OHCHR states that Securing Indigenous peoples consent or agreement should be the objective of all consultation processes. (conform ILO c 169, art. 6.1 a, UNDRIP, art 19, 32). The Bank also should affirm its commitment not to finance any project that would lead to the physical relocation of indigenous peoples.

The lack of legal recognition and the lack of disaggregated data are (already) contributing to the invisibility of indigenous peoples, compounding the discrimination they face. Indigenous women and girls face additional forms of discrimination. They are three times more likely to experience sexual violence compared to non-indigenous women (source: OHCHR).

The threats to which indigenous peoples are permanently exposed can only be addressed in the policy with a stand-alone Operational Safeguard. Indigenous Peoples development plans must be prepared for projects that affect Indigenous Peoples significantly. The Policy has to ensure that interventions affecting Indigenous Peoples are consistent with their needs and aspirations, compatible in substance and

structure with their culture and social institutions, and conceived, planned and implemented with the informed participation of affected communities.

An umbrella policy for vulnerable groups confuses the rights that distinct groups enjoy, lowering the standard of protection for all groups, especially for indigenous peoples.

The Draft E&S Operational Safeguard 7 fails to address, in an adequate and complete manner, key due diligence procedures and safeguard measures. Besides including a stand-alone indigenous peoples policy, we recommend that the AfDB includes the following:

- The ISS should respect collective land ownership by prohibiting individual land titling for indigenous territories. It also falls short in prohibiting financial support to projects aimed at individual titling of collectively held indigenous lands thus disintegrating communities.
- The ISS should include the right of Indigenous Peoples to Free, Prior, and Informed Consent (FPIC). It now falls short in requiring that due process of law guarantees govern all consultation proceedings and respect traditional decision-making processes.

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Reprisals (general, OS 10):

The draft ISS update fails to look at how reprisals may pose a risk to AfDB activities more generally rather than just stakeholder engagement and labour. The ISS also, beyond recognising the issue about reprisals, expresses little about measures the AfDB should take to address reprisals.

Specific recommendations:

- The AfDB's commitment to protect project stakeholders from reprisals should clearly state the Bank's zero tolerance for reprisals.
- We welcome the ISS mentioning of conducting contextual risk assessments. We do recommend that it is clarified when these assessments should be done.
- The Bank's environmental and social due diligence should include screening for contextual risks that would increase risk of reprisals, and reprisal risk should factor into project risk classification.
- For projects where an initial screening identifies high reprisal risk factors, the Bank should conduct, or require the borrower to engage a third party specialist to conduct, a full Contextual Risk Assessment, including consultation with potentially affected stakeholders, as part of the environmental and social assessment.
- The Staff Directive on reprisals should include preventative measures that should be used for projects where reprisal risks are identified, and should lay out a protocol for responding to reprisals. The Directive should be consulted with experts.
- Stakeholder Engagement Plans and consultations should reiterate and reinforce the AfDB's and the Borrower's commitments to prevent reprisals against project stakeholders. Ensure its definition of reprisals it will not tolerate covers any reprisals that may impact its stakeholders as well as its activities,

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Stakeholder engagement and disclosure (OS 10)

Without providing factual tools to ensure effective engagement throughout the project cycle, the proposed OS10 is excluding a more comprehensive range of significant stakeholders: people with physical and mental disabilities, people with no access to technology or network

coverage, illiterate people, people with no foreign languages' proficiency (English, French and Portuguese), young people, and children.

- Stakeholder Engagement Plans should include a sufficient budget for implementation of all stakeholder engagement activities planned throughout the project lifecycle.
- The AfDB should conduct an audit of its website and information disclosure practices, identify the resources and capacity needed to comply with project documentation disclosure commitments laid out in the updated ISS, and factor the needed resources into the implementation plan.
- The ISS should include provisions requiring the Borrower to identify all stakeholders, including local civil society, Human Rights Defenders, and Human Rights organizations who are legitimate stakeholders to be consulted, especially given how often they are targeted for highlighting human rights violations.
- For public consultation to be effective, specific efforts are needed to include all stakeholders during the decision-making phase. The AfDB needs to explicitly state that consultations with significant stakeholders are a priority area of its design, appraisal, and monitoring processes. It should not leave all responsibilities to the project promoter.
- The Borrower shall implement a monitoring system led by third parties: representatives of local communities, CSOs, community-based organizations, external experts, or others familiar with the project's aspects.
- Given the immanent nature of the ISS draft, the document should be available in the official languages of the AfDB's countries of operation (i.e., African countries).
- The project documents, including the Environmental and Social Assessment and the Stakeholder Engagement Plan, should be publicly available in the AfDB portal for feedback and comments.
- Minutes of the consultations with stakeholders should be made public, with permission of the participants, including recommendations. The final draft of the Environmental and Social Assessment should also incorporate stakeholders' input.
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Yours sincerely,

Green Advocates, Liberia

Both ENDS, Netherlands

Accountability Counsel, United States

Africa Development Interchange Network, Cameroon

SEATINI, Uganda

Witness Radio, Uganda

Foundation for Environmental Management and Campaign against Poverty, Tanzania

AbibiNsroma Foundation, Ghana

Pan-African Platform of Non State Actors in Fisheries and Aquaculture, Kenya

PILC, Tchad

International Accountability Project, Global

World Animal Protection, Global

Twerwaneho Listeners Club, Uganda

Friends of Lake Turkana, Kenya

Green Development Advocates, Cameroon

Network Movement for Justice and Development, Sierra Leone

Kebetkache Women Development & Resource Centre, Nigeria

Bank Information Center, Global

Africa Coal Network, Africa

Friends of the Earth, United States of America

Arab Watch Coalition, MENA region

350Africa.org, Africa

Youth Volunteers for Environment Ghana, Ghana

Lumière Synergie pour le Développement, Senegal

Friends with Environment in Development, Uganda

Narasha Community Department Group, Kenya

Urgewald, Germany

Enda Lead Afrique Francophone, Senegal

Pan-African Platform of Non State Actors in Fisheries and Aquaculture, Africa

COMPPART Foundation for Justice and Peacebuilding, Nigeria