

Friends of the Earth US' Observations on the African Development Bank's Draft Integrated Safeguards System

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Friends of the Earth US

Friends of the Earth US (FOE US) appreciates the opportunity to provide feedback to the African Development Bank's (AfDB) draft Integrated Safeguards System (ISS). We hope these comments and observations strengthen the draft ISS, which we believe are weak in ambition and contain problematic contradictions.

In particular, we wish to point out that due to the AfDB's extremely opaque and short public consultation process, these comments are an initial but not fully comprehensive assessment. As a result, due to time restrictions, our assessment is limited to overarching concerns related to the banks' consultation process, climate, biodiversity, Indigenous Peoples and local communities, and exclusion policies.

Summary of Recommendations

- FOE US urges the AfDB to extend its consultation process from 45 days to 90 days, which is an industry standard.
- The bank should develop a standalone climate safeguard, so as to ensure climate issues are given due importance and attention.
- The bank should embed alignment with the Paris Agreement and host country NDCs in the ISS.
- The bank should establish, assess, and disclose an annual, institutional wide cap on greenhouse gas (ghg) emissions, in which all financed activities must be assessed based on ghg emissions across their entire lifecycle.
- The bank should ensure dedicated in-house environmental or climate experts retain independence and authority to oppose activities with harmful climate impacts.
- If the AfDB aims to take a positive approach in contributing to stopping biodiversity loss, it should remove all "no net loss" references. Instead, it should anchor its policy in a "no loss" approach which explicitly aims to halt and reverse biodiversity loss.
- The AfDB should prohibit the use of biodiversity offsets.
- Codify environmental and social requirements in loan and financing agreements between the bank and borrowers, with punitive clauses for clients who fail to uphold environmental and social obligations per ISS requirements
- The AfDB should require FPIC for all Indigenous and local communities.
- We urge the banks to more fully explore the use of exclusionary policies as a means of protecting the most sensitive areas and ecosystems left in the world. Strengthening exclusionary policies could have a large, positive impact in preempting negative environmental and social impacts in sensitive ecosystems known for their biodiversity and climate regulatory value.
- We strongly encourage ADB to adopt the Banks and Biodiversity No Go Policy which identifies eight sensitive areas and at risk ecosystems in need of urgent protection.

Opaque and Inadequate Consultation Process

Disappointingly, the AfDB's consultation process has been riddled with failures in outreach, communication, and professionalism to civil society and African communities. The AfDB had pledged to conduct a "[meaningful stakeholders consultation based on a draft](#)", however, the bank has persistently failed to meaningfully and adequately respond to civil society concerns and questions throughout the entire process thus far. First, although the bank launched a consultation website, this was done without notifying or actively engaging civil society, rendering such a website ineffective if not useless as the public remained in the dark regarding the bank's consultation plans. Second, the bank failed to provide accurate, up to date information regarding key consultation dates. During the December 2021 holiday season, the bank published a brief note regarding the consultation process, but again provided no clear dates as to when the draft would be published, or when comments would be due. Indeed, it appeared that when the ISS draft was published, it was done so in a haphazard fashion, with the website apparently [dysfunctional](#) for those wishing to contribute via the bank's consultation website. Thirdly, the consultation period is only 45 days, which is extremely short, and far behind AfDB's peers, such as the Asian Development Bank. The lack of sufficient time for the public to review the ISS is compounded by the fact that the ISS is not available in Arabic, despite it being the primary language of twelve African countries. This significantly disadvantages civil society and groups in those countries who wish to provide feedback but are unable to review the ISS due to language barriers. Furthermore, civil society groups who actively reached out to the bank regarding more information and updates prior to the ISS being released received generic responses with no meaningful information. Given the bank's subpar handling of its consultation process, **we ask the AfDB to extend its consultation process from 45 days to 90 days, which is an industry standard.**

Establishing a Climate Safeguard

Despite the existential threats posed by climate change, the ISS does not contain a climate safeguard. Currently, climate impacts are primarily referenced or considered as part of technical reviews or environmental assessments, which is insufficient if the bank is to do its part in decarbonizing its portfolio. The bank recognizes that "climate change is affecting the nature and location of projects, and that Bank Group operations should reduce their impact on the climate by supporting lower carbon emissions development trajectories", and yet the bank does not propose a specific safeguard to address and manage climate issues comprehensively. Instead, climate considerations are interspersed through the ISS via environmental or other related assessments with no details as to which activities the bank is obligated to decline due to climate impacts. Furthermore, there is no concrete guidance as to how the bank will actively lower carbon emissions. **We strongly encourage the bank to develop a standalone climate safeguard, so as to ensure climate issues are given due importance and attention.** Developing a separate climate safeguard will also help to ensure that relevant goals, such as biodiversity protection, are harmonized so as to avoid potential conflicts of interest on such cross-cutting issues. (For instance, a client's proposed biodiversity offset based on forest protection should not be used or considered as a climate solution. Or in another example, a proposed hydroelectric dam should not be considered as a low carbon energy source, especially if located in a biodiverse area.)

There are a number of actions the bank can take in developing a standalone climate safeguard. Some suggestions include:

- **Embed alignment with the Paris Agreement and NDC in the ISS:** The AfDB should contain explicit references to the Paris Agreement, and codify that borrowers do not violate host country nationally determined contributions (NDC) as part of their financing agreements and contracts with the bank. Although host country governments certainly bear responsibility in meeting NDCs, the bank should do its part in ensuring that its clients align and do not conflict with host countries meeting their international climate goals.
- **Establish, assess, and disclose an annual, institutional wide cap on greenhouse gas (ghg) emissions, in which all financed activities must be assessed based on ghg emissions across their entire lifecycle:** Establishing, assessing, and disclosing an institutional wide annual cap on emissions would enable banks to better prioritize and assess the climate impacts of their portfolio. This risk management tool would provide clear, measurable targets in ensuring banks adequately assess and track the greenhouse gas and carbon impacts of individual projects, but also across the entire institution, thus leading to better climate impacts in both preventing financing to high carbon activities, as well as requiring more robust carbon accounting (and accountable) practices.

By adjusting and reducing institutional cap targets on an annual basis, it would also allow banks to create and complement a climate plan which actively corresponds and meets Paris Agreement and related nationally determined contributions (NDC) goals. In regards to bank supervisors, this tool would allow regulators to measure and evaluate banks' climate performance; if made mandatory by bank regulators, it would also inspire deeper accountability in preventing and reducing climate risks from the banking sector. There is already precedent of banks using this tool in reducing their carbon impacts. For instance, the Overseas Private Investment Corporation, which was recently renamed as the US International Development Finance Corporation, has utilized an institutional cap to manage its emissions. Although its accounting practices can still be improved, the model itself can prove useful for others in the banking sector¹.

- **Ensure dedicated in-house environmental or climate experts retain independence and authority to oppose activities with harmful climate impacts:** The AfDB should ensure that in-house environmental or climate experts are empowered to independently approve or oppose activities with negative climate impacts at any stage of the project, but particularly in the design and loan application stage.
- **Codify environmental and social requirements in loan and financing agreements between the bank and borrowers, with punitive clauses for clients who fail to uphold environmental and social obligations per ISS requirements:** Codifying binding environmental and social clauses in financing agreements will be an effective tool to improve and accelerate clients' risk management of environmental and social issues. Doing so will link short term hazards (violating financing agreements and a tendency to overly focus on immediate project impacts) with long

¹ https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2020/05/2020.02.26_OPIC-GHG-Briefing_final.pdf

term considerations (addressing climate change). Finding ways to connect short and long term risks for both banks and clients is critically important, as historically clients and banks have only considered short term hazards and risks in their approach to environmental and social risks, whereas cumulative and long term risks have been largely ignored. Although cumulative, transboundary risks are now specifically referenced in the ISS, merely including or referencing these long term risks in environmental and social assessments will be of limited value and impact without legally binding accountability measures for clients who fail to meet expectations as set forth in the ISS.

Weak Ambitions for Biodiversity Protection and Policy Contradictions on the Use of Biodiversity Offsets

ISS 6 addresses how the bank conserves and protects habitat and biodiversity. Its core objectives are to “protect and conserve biodiversity and differing types of habitats”, to “apply the mitigation hierarchy”, and to “reinstatement or restore biodiversity informed by the mitigation hierarchy including, where some impacts are unavoidable, through implementing biodiversity offsets to achieve ‘not net loss but net gain’ of biodiversity”, in addition to promoting sustainable management of resources and ensuring inclusive economic development. However, in the midst of a biodiversity crisis, **ISS 6’s core objectives lack ambition, as an approach based on “no net loss” will not help the bank succeed in protecting or conserving biodiversity.**

Biodiversity approaches based on “no net loss” take a passive, misguided approach, as “no net loss” assumes (if not requires) environmental destruction in order to maintain what is perceived to be the status quo; it does not aim to, let alone acknowledge, the need to take a proactive, preemptive approach in conserving biodiversity. It also does not account for the inherent uniqueness or irreplaceability of complex ecosystems and its species, as it is a concept underpinned by the assumption that nature can be substituted, traded, and reduced to over-simplified biodiversity targets and accounting. Many complex ecosystems and its species are irreplaceable, and cannot be offset even if based on “like for like”. Although the concept suggests that there may be less if not no biodiversity loss due to the emphasis on “net” impact, it is important to note that environmental destruction is baked into the concept of “no net loss”; there is no compensation measures without the initial destruction. Such a concept thus accelerates biodiversity loss and environmental damages².

If the AfDB aims to take a positive approach in contributing to stopping biodiversity loss, it should remove all “no net loss” references. Instead, it should anchor its policy in a “no loss” approach which explicitly aims to halt and reverse biodiversity loss. Halting biodiversity loss is an emerging standard in the international banking sector, and multilateral development banks such as the European Investment Bank have already committed to “to halt and reverse biodiversity loss”. In addition, the core objectives of ISS 6 are weaker and do not align with the [2021 Joint Statement from MDBs on Nature, People, and](#)

² More detailed information on the subject can be found at: “No Net Loss of Biodiversity: A False Solution” by Friends of the Earth International. <https://www.foei.org/features/no-net-loss-biodiversity>

[Planet](#), which the AfDB endorsed. For instance, the joint statement states, “We commit to develop projects, business models and/or financing instruments to support economic activity that *seeks to reverse the drivers of nature loss* and promote the protection, restoration and sustainable use of nature and its services to people [italics added]”. However, reversing the drivers of nature loss is not referenced anywhere in the ISS.

Furthermore, **the AfDB should prohibit the use of biodiversity offsets. The inclusion of biodiversity offsets as a means of protecting biodiversity is misguided as biodiversity offsets have been shown to be ineffective, false solutions.** According to our research and current scientific literature, there has never been a successful biodiversity offset scheme with positive impacts for both biodiversity and local communities, and should therefore not be used as a mitigation measure in AfDB’s biodiversity safeguard, let alone be included as a core objective. The inclusion of biodiversity offsets is further complicated by the ISS’ contradictory positions on biodiversity offsets. On the one hand, ISS 6 emphasizes and seemingly encourages the use of biodiversity offsets based on “no net loss” and “like for like” principles. On the other hand, ISS 6 states that the bank bears “reservations” regarding the “long term success of biodiversity offsets”, and so offsets are to be considered a “last resort”.

The policy further notes that “Certain residual adverse impacts cannot be offset, particularly if the affected area is unique and irreplaceable from a biodiversity standpoint. In such cases, the Borrower will not undertake the project unless it is redesigned to avoid the need for such offset, and to meet the requirements of this OS”. As the ISS includes biodiversity offsets as part of its goals, the use of biodiversity offsets is clearly encouraged as a mitigation measure, however, ISS 6 simultaneously expresses doubt and discourages the use of biodiversity offsets as “certain residual adverse impacts cannot be offset” in particularly high biodiverse areas.

This contradiction is confusing, and as a result, will not set up borrowers for successful biodiversity outcomes, as the nebulous limits and criteria for using biodiversity offsets are ripe for abuse of discretion. **Although the bank has described biodiversity offsets as a “last resort”, in practice biodiversity offsets are used as a “first resort”. This is because the mitigation hierarchy does not contain a “no project” option and project alternatives are not consistently explored due to the fact that vested interests typically discount or overlook foregoing a project based on harmful environmental, social, and climate impacts.** This common dynamic was recognized by the Asian Development Bank in its Analytical Note on Biodiversity Conservation, stating: “While the SPS [safeguards] requires key habitats to be avoided unless there are no viable alternatives and other conditions met ...there is a risk that borrowers/clients may only conduct superficial consideration of alternatives if considerable resources have already been dedicated to feasibility and design studies. This may result in some projects that cannot be considered for ADB financing as won’t be able to meet ADB’s safeguard requirements, and for others the full application of the mitigation hierarchy may be constrained and may be applied without avoidance being truly explored”.

Furthermore, although the use of biodiversity offsets was normalized after IFC’s revision of its Performance Standards in 2012, to date, **there is still no consistent, reliable evidence that biodiversity offsets are effective;** according to IPBES, although the use of biodiversity offsetting has increased, at

best their “effectiveness is mixed, and they are often contested”³. The IUCN has also stated that “by design, even best-practice offsetting tends to lead to less biodiversity after a project than before, because many policies allow for the protection of existing biodiversity from later development or harm to be traded for residual losses from the project. As such, ecological compensation approaches like offsetting remain controversial, and their relationship with national or global biodiversity goals lacks clarity”⁴. Although the 2012 IFC Performance Standards prematurely normalized the use of biodiversity offsets, we draw attention to how the international banking sector may now be acknowledging their inefficacy. For instance, the Inter-American Development Bank prohibits biodiversity offsets in critical habitats. This is an extremely positive step, and one which demonstrates IDB efforts to take a leading role in stopping biodiversity loss. Although biodiversity offsets should be prohibited in both critical and natural habitats, it is clear AfDB can draw from its peers in improving its biodiversity policies.

Protecting Indigenous and Local Community Rights

Although the AfDB requires free, prior, informed consent for highly vulnerable rural minorities, **we strongly encourage the AfDB to require FPIC for all Indigenous and local communities**. There is increasing evidence that Indigenous and local communities are essential for conserving biodiversity. Indeed, some of the most biodiverse places left in the world overlap with lands belonging to Indigenous and local communities. Research has found that Indigenous Peoples protect 80% of the world’s biodiversity even though they make up less than 5% of the world’s population⁵. At the same time, however, Indigenous and local communities are under increasing threats from intimidation, harassment, harmful or misguided development pressures, disease, among many others.

Indigenous and local communities are critical in not only stopping biodiversity loss, but also understanding how to better manage resources and nature more sustainably via Indigenous knowledge and practices. **This is why the AfDB should require free, prior, informed consent in all financing activities. Indigenous and local peoples issues are deeply interdependent and intertwined with biodiversity issues, and so stopping biodiversity loss will not only involve consulting Indigenous and local communities, but its success in part depends on Indigenous and local communities to exercise their right to free, prior, informed consent.**

Scientific research is progressively acknowledging the irreplaceable knowledge of Indigenous and local communities, and has established that successfully conserving biodiversity is contingent on ensuring that Indigenous and local community rights are protected and upheld. According to IPBES, “The positive contributions of indigenous peoples and local communities to sustainability can be facilitated the

³ IPBES (2019): Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.

https://www.ipbes.net/sites/default/files/ipbes_7_10_add.1_en_1.pdf

⁴ IUCN (undated): Impact Mitigation and Ecological Mitigation. <https://www.iucn.org/commissions/commission-ecosystem-management/our-work/cems-thematicgroups/impact-mitigation-and-ecological-compensation-0>

⁵ Gleb Raygorodetsky, “Indigenous peoples defend Earth’s biodiversity—but they’re in danger”, National Geographic, 2018. <https://www.nationalgeographic.com/environment/article/can-indigenous-land-stewardship-protect-biodiversity->

application of free, prior and informed consent, and improved collaboration, fair and equitable sharing of benefits arising from the use, and co-management arrangements with local communities”⁶.

Strengthening the AfDB’s Exclusionary Policies

The AfDB has developed an Environmental and Exclusion List to mitigate risks associated with unsustainable and hazardous activities, including those related to mining and palm oil which do not meet sector standards. Although we are pleased that logging equipment in unmanaged primary tropical forests is also included, we believe the bank can go further in excluding harmful activities in sensitive areas. In light of the unique and irreplaceable biodiversity hotspots and iconic ecosystems in Africa, **we urge the banks to more fully explore the use of exclusionary policies as a means of protecting the most sensitive areas and ecosystems left in the world. Strengthening exclusionary policies could have a large, positive impact in preempting negative environmental and social impacts**; this is because a project’s location itself can be a determining factor in causing or exacerbating negative environmental and social impacts, especially for projects located in sensitive areas and at-risk ecosystems. As a result of unsustainable global economic development pressures, there are fewer and fewer intact, resilient, and functioning ecosystems left in the world; these areas are crucial for stopping the inherently intertwined biodiversity and climate crises. As a result, AfDB should consider excluding direct and indirect financing to harmful, unsustainable activities which may be located in or impact these areas.

We recognize the right of African countries to economic development, and so urge the bank to devote its resources to financing activities which are sustainable and do not exacerbate drivers of biodiversity loss. **We strongly encourage ADB to adopt the Banks and Biodiversity No Go Policy which identifies eight sensitive areas and at risk ecosystems in need of urgent protection.** This proposed policy is endorsed by over sixty civil society organizations to date, and is consistent with international trends recognizing the importance of prohibiting harmful investments in sensitive areas.

*Banks and Biodiversity No Go Policy*⁷

In order to safeguard the rights of Indigenous and local communities (IPLCs) in formally, informally, or traditionally held conserved areas – such as Indigenous and community conserved areas (ICCA), Indigenous Territories (TIs) or public lands not yet demarcated – as well as to better address and reflect the current crises of climate change, biodiversity loss, and emergence of zoonotic diseases, the Banks and Biodiversity campaign calls on banks and financial institutions to adopt a No Go policy which prohibits any direct or indirect financing related to unsustainable, extractive, industrial, environmentally, and/or socially harmful activities in or which may potentially impact the following areas:

AREA 1: Areas recognized by international conventions and agreements including but not limited to the Bonn Convention, Ramsar Convention, World Heritage Convention and Convention on Biological Diversity, or other international bodies such as UNESCO (Biosphere Reserves, UNESCO Global Geoparks, etc) or Food and Agricultural Organization (vulnerable marine ecosystems),

⁶ IPBES (2019): Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.

https://www.ipbes.net/sites/default/files/ipbes_7_10_add.1_en_1.pdf

⁷ More information can be found at www.banksandbiodiversity.org.

International Maritime Organization (particularly sensitive areas), IUCN Designated Areas (Categories IA – VI)

AREA 2: Nature, wilderness, archaeological, paleontological and other protected areas that are nationally or sub-nationally recognized and protected by law or other regulations/policies; this includes sites which may be located in or overlap with formally, informally, or traditionally held conserved areas such as Indigenous and community conserved areas (ICCA), Indigenous Territories (ITs) or public lands not yet demarcated

AREA 3: Habitats with endemic or endangered species, including key biodiversity areas

AREA 4: Intact primary forests and vulnerable, secondary forest ecosystems, including but not limited to boreal, temperate, and tropical forest landscapes

AREA 5: Free-flowing rivers, defined as bodies of water whose flow and connectivity remain largely unaffected by human activities

AREA 6: Protected or at-risk marine or coastland ecosystems, including mangrove forests, wetlands, reef systems, and those located in formally, informally, or traditionally held areas, Indigenous Territories (ITs), or public lands not yet demarcated, or Indigenous and community conserved areas (ICCA)

AREA 7: Any Indigenous Peoples and Community Conserved Territories and Areas (ICCAs), community-based conservation areas, formally, informally, traditionally, customarily held resources or areas, Indigenous Territories, sacred sites and/or land with ancestral significance to local and Indigenous communities' areas where the free, prior, informed consent (FPIC) of Indigenous and Local Communities have not been obtained

AREA 8: Iconic Ecosystems, defined as ecosystems with unique, superlative natural, biodiversity, and/or cultural value which may sprawl across state boundaries, and thus may not be wholly or officially recognized or protected by host countries or international bodies. Examples include but are not limited to the Amazon, the Arctic, among other at-risk ecosystems

Other international bodies have already recognized the value of developing No Go Areas, such as the World Heritage Committee and the UN Environment's Principles for Sustainable Insurance Initiative (PSI). The Banks and Biodiversity No Go Policy also aligns with banks and financial institutions' current practice of following institutional Exclusion Lists for sensitive industries or areas, as well as global goals of preventing further biodiversity loss. Projects that do not fall within Exclusion Lists should still be subject to rigorous environmental and social due diligence, assessment, screening, planning, and mitigation policies and procedures.

Adopting the Banks and Biodiversity No Go Policy is a cross-cutting solution which would expand and enrich ADB policies and procedures in yielding important, cross-cutting impacts – the No Go policy would not only protect biodiversity and combat climate change, but also ensure Indigenous and local communities' right to FPIC⁸.

⁸ More information can also be found in the FOE US 2021 report, "World Heritage Forever? How Banks Can Protect the World's Most Iconic Cultural and Natural Sites". <https://foe.org/resources/banks-can-protect-iconic-sites/>