**African Development Bank’s responses to Call for Inputs – Special Rapporteur on Adequate Housing as a component on the right to an adequate standard of living, and on the right to non – discrimination in this context – “Resettlement as a Human Rights Issue”**

The African Development Bank (AfDB) Group is a regional multilateral development finance organization created to support the African regional member countries (RMCs) in their efforts to improve economically and socially. Currently, the Bank Group focuses on financing projects, programs, and studies aligned to its identified High 5s priority areas which are intended to support African countries’ achievement of the SDGs. These priority areas in its current strategy are to: Light up and Power Africa; Feed Africa; Industrialize Africa; Integrate Africa; and Improve the Quality of Life for the People of Africa. The Bank extends financing to both private and private Sectors.

1. The African Development Bank has an Integrated Safeguards System (ISS) which governs environmental and social safeguards requirements in projects and comprises:

* The African Development Bank Group’s Vision for Sustainable Development, which sets the approach and aspirations regarding environmental and social sustainability.
* The African Development Bank Group’s Environmental and Social Policy that sets out the Bank’s commitments and the relevant principles and requirements that the Bank must follow regarding projects, activities and initiatives that it supports.
* Ten Environmental and Social Operational Safeguards (OS), together with supporting Annexes, which set out the mandatory requirements that apply to the projects, activities and initiatives of Borrowers.
* Environmental and Social Guidance Notes (ISS Guidance notes) which are tools that provide technical guidance for the Bank and its Borrowers on specific methodological approaches, Good International Industry Practice (GIIP) and standards relevant to meeting the requirements of the Operational Safeguards.

For the management of resettlement in projects, the ISS has E&S Operational Safeguard 5 (OS5): Land Acquisition, Restrictions on Access to Land and Land Use, and Involuntary Resettlement. It is one of the ten Environmental and Social Operational Safeguards (OS), which set out the mandatory requirements that Borrowers must meet throughout the life cycle of a Bank funded operation whenever the operation is associated with involuntary resettlement. This OS applies to all Bank Group’s funded operations, both public and private sector, and to project funded through all financial instruments managed by the Bank. This is applied together with all the other 9 E&S OS but specifically E&S Operational Safeguard 1 (OS1) on Assessment and Management of Environmental and Social Risks and Impacts; E&S Operational Safeguard 7 (OS7) on Vulnerable Group; and E&S Operational Safeguard 10 (OS10) on Stakeholder Engagement and Information Disclosure. This OS does not apply to management of refugees from, or persons internally displaced by, natural disasters, epidemics, pandemics, conflict, crime or violence. .

The updated ADB SSI is available on the websites: <https://www.afdb.org/fr/documents/systeme-de-sauvegardes-integre-avril-2023> and <https://www.afdb.org/en/documents/integrated-safeguards-system-april-2023>

1. Evacuation and relocation of persons in emergency situations is normally project, industry, country, and context specific. The African Development Bank does not directly get involved in financing evacuation and relocation of persons in the context of emergencies, such as disasters, hazards, armed conflict, or internal violence. However, from time to time the Bank Group provides emergency relief assistance to its member countries in case of disasters, and hazards for example the Bank provided financing for the Post Cyclone Idai Emergency Recovery and Resilience Programme for Mozambique, Malawi, and Zimbabwe. In accordance with the Updated ISS, the Bank may waive or defer requirements of the Operational Safeguards including OS 5, in whole or in part, with no prejudice to the objectives of the Bank’s Environmental and Social Policy, subject to approval by the Bank’s Board of Directors specifically (i) where a Borrower is deemed by the Bank to: (a) be in urgent need of assistance because of a natural or man-made disaster, large-scale epidemic, pandemic or conflict; or (b) experience capacity constraints because of fragility or specific vulnerabilities; or (ii) on account of justifications, reasons and/or circumstances provided by the Borrower and to be evaluated on a case-by-case basis. Based on the potential risks and impacts identified during the environmental and social assessments (procedures in OS1), emergency prevention and preparedness and response arrangements/plans to emergency situations are prepared and put in place as part of mitigation measures. The Emergency Preparedness and Response Plans (EPRP) are prepared in coordination with local authorities, are reviewed by the Bank and must comply with the country’s overall emergency response framework. Specific procedures for preparation are described in E&S Operational Safeguard 2 (OS2) on Labour and Working Conditions and E&S Operational Safeguard 4 (OS4) on Community Health, Safety and Security.
2. The E&S Operational Safeguard 5 (OS5) describes processes and procedures for land acquisition, restrictions on access to land and land use, and involuntary resettlement. The risk of resettlement is assessed on a project by project basis during the environmental and social assessments as described in E&S Operational Safeguard 1 (OS1) on Assessment and Management of Environmental and Social Risks and Impacts. The Bank does not put in place resettlement policies, budgets, programmes or schemes (Resettlement Action Plans). It is the responsibility of the Borrower with the support of the Bank. For large-scale or complex Resettlement Action Plans, the Bank may require the Borrower to retain an independent third-party resettlement specialist to support the Borrower in implementing the resettlement action plan.

The cost of resettlement for a project is defined based on socio economic baseline survey, assets census, valuation and adequate engagement and consultations with impacted persons. The costs are provided in a Resettlement Action Plan (RAP) after reaching consents with the impacted. The budget for such programmes, can either be funded by a Regional Member Country (Sovereign Operations) or by the Bank as agreed upon by the Bank and the country. In case of Non-Sovereign Operation (NSO), the project sponsor meets the cost of resettlement.

For all projects with significant involuntary resettlement impacts, the Borrower is required to commission an external completion audit of the plan when all mitigation measures have been substantially completed. The completion audit (i) will be undertaken by competent resettlement professionals, (ii) will assess whether livelihoods and living standards have been improved or at least restored and, (iii) as necessary, will propose corrective actions to meet objectives not yet achieved.

1. E&S Operational Safeguard 9 (OS9) provides procedures for operations by Financial Intermediaries. FIs are required to develop and maintain, in the form of an Environmental and Social Management System (ESMS), procedures and capacity for assessing, managing, and monitoring risks and impacts of subprojects, as well as managing overall portfolio risk in a responsible manner. Over and above complying with the Bank’s requirements on resettlement, the FI must also apply relevant national laws.
2. The Bank does not have a standalone agency mandated to deal with resettlement. However, the environmental and Social Safeguards and Compliance Department (SNSC) is responsible for ensuring adequate assessment of resettlement and involuntary displacement risks in projects throughout the project’s life cycle. The department works with borrowers (both private and public) to ensure assessment is done and there is risk of resettlement, the department works with Borrower to ensure that a Resettlement Action Plan (RAP) is developed and implemented in a manner satisfactory to the Bank. The Bank’s other departments that deal with Gender and Civil Society Organizations also contribute heavily to development and implementation of RAPs in projects. In large-scale or complex Resettlement Action Plans, the Bank requires a Borrower to retain an independent third-party resettlement specialist to support the implementation of the RAP.
3. The Bank’s approach to financing of resettlement projects is two fold, funding by the Borrower for both Sovereign and Non-Sovereign Operations; and funding by the Bank of resettlement costs for Sovereign Operations. In accordance to the Updated ISS requirements, the availability of the resettlement and compensation cost, part of the environmental and social management plan’s (ESMP) costs included in the overall project cost, is evidenced either as : (i) included in the Bank financing (loan, grant, etc.); or (ii) a co-financing from another donor; or (iii) a counterpart funding, which is the less preferable option to consider, due to lessons learnt based on borrowers systematic failures to mobilize liquidity in time, thereby resulting in project delays and cost overrun. In the event of this latter option (counterpart funding) to finance the resettlement cost, the availability of the total resettlement cost amount in a dedicated project account is set as condition for effectiveness or first disbursement in the Financing agreement. Any operation inducing resettlement of people and that does not clarify at least one of the abovementioned three financial liquidity options, is not ready for implementation.
4. The Bank does not mandate a human rights impact assessment plan before projects or policies that require settlement. The Bank requires the Borrower to conduct and environmental and social assessment and prepare a resettlement action plan with the aim of minimizing and proposing appropriate measures to mitigate adverse impacts (including impacts on human rights) on displaced persons (and on host communities receiving displaced persons). Kindly refer to OS 5 for more details.

AfDB’s activities support the realization of human rights expressed in the Universal Declaration of Human Rights, the UN Charter and the African Charter of Human and Peoples’ Rights. Through the projects, activities and initiatives it finances, and in a manner consistent with the Agreement establishing the African Development Bank Group5 , the AfDB seeks to avoid adverse impacts and will continue to support its member countries as they strive to progressively achieve their human rights commitments (Section A.8 of the Updated ISS, page 10).

The E&S Operational Safeguard 7 (OS 7) on Vulnerable Groups provides guidelines for identification and their management. The Bank views economic and social rights as an integral part of Human rights, and respects the principles and values of human rights as set out in the UN Charter and the African Charter of Human and Peoples’ Rights. Through the requirements of this OS the Bank encourages Borrowers to observe international human rights norms, standards, and best practices and reflect in Bank operations national commitments made under, inter alia, International Human Rights Covenants and the African Charter of Human and Peoples’ Rights. The OS7 recognizes that the situation of vulnerable groups varies from region to region and from country to country. The particular national and regional contexts and the different historical and cultural backgrounds will be considered as part of the environmental and social assessment of the project. The applicability of this OS is established during the environmental and social assessment described in OS1.

1. a. Free, Prior and Informed Consent (FPIC)

OS 7 provides guidance on the FPIC process for impacted and vulnerable groups. The application of OS7 is determined early in the project through assessments carried out as described in OS1 and OS 10 on Stakeholder Engagement process.

b. Access to Administrative and Judicial Remedies are a right of the impacted and is ensured through several approaches and mechanisms:

i. Project Level Grievance Redress Mechanism (GRM) – every project is required to have a fit for purpose and accessible GRM for those impacted to lodge complaints and obtain resolution.

ii. In country administrative and judicial structures – those impacted are encouraged to seek remedies within the country’s system in the event the project level GRM does not provide resolution.

iii. Independent Recourse Mechanism – which is Bank’s accountability mechanism open to project affected persons to lodge complaints directly with the Bank.

c. The ISS through OS 5 provides for procedures to be followed in projects with resettlement. Disbursement for works and related physical activities cannot be done until all affected persons have been resettled and compensated. These requirements are formulated into legal clauses and form conditions precedent in the financing agreement. The Borrower will take possession of acquired land and related assets only after compensation in accordance with this OS has been made available and, where applicable, displaced people have been resettled and resettlement assistance and/or moving allowances have been provided. In certain cases there may be significant difficulties related to (i) the payment of compensation to particular affected persons (e.g. where repeated efforts to contact absentee owners have failed, where project affected persons have rejected compensation that has been offered to them in accordance with the approved plan, or where competing claims to the ownership of lands or assets are subject to lengthy legal proceedings), (ii) the implementation of additional measures envisaged in the resettlement plan, and/or (iii) actual resettlement of all displaced people. On a case-by-case basis, with prior agreement of the Bank, and where the Borrower demonstrates that all reasonable efforts to resolve such matters have been taken, the Borrower may deposit compensation funds, as required by the plan (plus a reasonable additional amount for contingencies), into an interest-bearing escrow or other deposit account and proceed with the relevant project activities. Compensation placed in escrow will be made available to eligible persons in a timely manner as issues are resolved.

d. Refer to description in 8 (b) above

9. In accordance with the Updated ISS, the Bank monitors the environmental and social performance of funded projects in accordance with all applicable Environmental and Social documents, provisions and the Financing agreement. Situation of resettled persons is normally tracked through periodic monitoring and submission of progress reports on the implementation of RAP. This is done on a monthly basis for high risk projects and a quarterly basis for medium risk projects. Independent RAP implementation Audits are also carried out annually for each project and the data on the situation of resettled persons is reported on. Corrective Actions are usually recommended in the reports. OS 5 provides for establishment of a mechanism for monitoring the performance and effectiveness of involuntary resettlement activities and for remedying problems as they arise. The Bank also deploys independent evaluation of its funded projects.

The grievance redress mechanisms (GRM) have worked well so that there is no resurgence of conflicts after the project has ended. The list of justified grievances and complaints, that have been recorded in relation with the payment modalities, and the causes of their occurrence. The promised accompanying measures and socio-community services have been effectively delivered; otherwise the reason and possible implications are clarified. The evidence that the overall socio-economic situation of the populations concerned (including that of the host populations in the event of physical resettlement) has not deteriorated if it has not improved substantially.

10. The Bank has put in place legal arrangements (Conditions in the Financing Agreement) to ensure that the Borrower complies with all these requirements. In accordance with the Updated ISS, the Bank agrees with the Borrower on the conditions under which the Bank is prepared to provide support to a project as set out in all applicable Environmental and Social documents, provisions and the Financing agreement. OS5 provides procedures for ensuring that affected persons are compensated for all their losses at full replacement cost before their actual move; before land and related assets are taken; and, if the project is implemented in phases, before project activities begin for each particular phase.

11. The procedure for identification of vulnerable groups is provided in OS1, OS5 and OS7. This varies from project to project and country to country and specific project contexts. OS7 provides for guidelines and procedures relating to identification and management of vulnerable groups. ‘Vulnerable’ from the Bank’s perspective refers to those who may be more likely to be adversely affected by the project impacts and/or more limited than others in their ability to take advantage of a project’s benefits. Such an individual/group is also more likely to be excluded from or unable to participate fully in the mainstream consultation process and as such may require specific measures and/or assistance to do so. Depending on the specific context of the project, vulnerable groups may include, amongst others, female-headed households, the landless, the elderly, youth and children, persons with disabilities, groups who are marginalized on the basis of ethnicity, religion, language as well as sexual orientation and gender identity, and highly vulnerable rural minorities including groups referred to as indigenous peoples in some contexts. Vulnerability is not an inherent characteristic of people and does not occur in a vacuum. Women for instance are not inherently more vulnerable than men; but discrimination, entrenched social roles and attitudes, poverty and lack of access to decision-making can weaken their resilience and render them vulnerable to project risk and adverse impacts. Vulnerability is thus context-specific and is to be understood through the interplay of three factors: (i) exposure to risk and adverse impacts; (ii) sensitivity to those risks and impacts; and (iii) adaptive capacity.

12. The Bank’s ISS provides for Contextual Risk Assessments that are used to understand the broader political economy and dynamics of human interaction within the project area of influence. It gathers information on social, cultural, political and economic factors which may have a bearing on social conflict, inclusion, discrimination, intimidation, violence including Sexual Exploitation, Abuse and Harassment, Gender-based Violence, limitations to meaningful consultation and free speech, including the risks of reprisals to stakeholders, limitations on access to the environment, resources, services and development opportunities, formal and informal power and influence structures, corruption and the rule of law. It provides insight into the potential for such negative forces to distort stakeholder engagement; to exacerbate social inequality; and to compromise the potential for project benefits to be received by project affected people in an equitable manner. Contextual risk assessment begins with the collection of publicly available information in order to scope potential issues of concern.

OS1 provides a procedure for social risk and impacts assessment and particularly in reference to any prejudice or discrimination toward individuals or groups in providing access to development resources and project benefits and particularly in resettlement.

OS 10 provides for a process for the rights-based principles of participation, non- discrimination and transparency in engagement and consultation to be addressed by the Borrower by providing identified vulnerable groups with all the relevant information about the project as early as possible and done in a culturally appropriate manner.

13. OS5 recognizes that project-related land acquisition, and restrictions on land access or land use, and loss of property/assets can have adverse impacts on communities and persons. The adverse impacts may include physical displacement (relocation, loss of residential land or loss of shelter), economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood) or both. The OS provides an Eligibility Classification which considers (i). those who have formal legal rights to land or other assets recognized under the laws of the country concerned. This category generally includes people who are physically residing at the project site and those who will be displaced or may lose access or suffer a loss in their livelihood as a result of project activities; (ii). Those who do not have formal legal rights to land or other assets at the time of the census/evaluation but can prove that they have a claim that would be recognised under the customary or national law in the country. This category may include people who may not be physically residing at the project site or persons who may not have any assets or direct sources of livelihood derived from the project site, but who have spiritual and/or ancestral ties with the land and are locally recognised by communities as customary inheritors; (iii). Those who have no recognisable legal right or claim to the land they are occupying in the project area of influence and who do not fall into either of the two categories described above. The census as described in the OS 5 will establish the status of affected persons in any project. An affected person themselves or witnesses should be able to demonstrate that they were in occupancy within the project area of influence for at least six months prior to a cut-off date established by the Borrower.

14. Compensation and Benefits for Affected Persons requirements and process are described in OS5

When land acquisition or restrictions on land access and use (whether permanent or temporary) cannot be avoided, the Borrower will offer affected persons compensation at full replacement cost, and other assistance as may be necessary to help them improve or at least restore their standards of living or livelihoods. Compensation standards for categories of land and fixed assets will be disclosed and applied consistently, and rates may be subject to upward adjustment where negotiation strategies are employed. In all cases, a clear basis for calculation of compensation will be documented, and compensation distributed in accordance with transparent procedures.

Where livelihoods of displaced persons are land-based or where land is collectively owned, the Borrower will offer the displaced persons an option for replacement land in accordance unless it can be demonstrated to the Bank’s satisfaction that equivalent replacement land is unavailable. Payment of cash compensation for lost land and other assets may be appropriate where: (a) livelihoods are not land-based; (b) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual land is economically viable; or (c) active markets for land, housing, and labour exist, displaced persons use such markets, there is sufficient supply of land and housing, and the Borrower has demonstrated to the satisfaction of the Bank that insufficient replacement land is available.

15. Resettlement with challenges, what were they and what could have been done differently?

Challenges

* Lengthy procedures for resettlement and compensation, in Regional Member Countries
* Delays in mobilization of counterpart funds by Regional Member Countries for resettlement
* Lack of adequately qualified staff for implementation of resettlement programmes
* Documentation of resettlement and compensation of affected persons

16. Process elements for successful resettlement

* Development of a comprehensive RAP – identification of impacts, assets census and valuation
* National government and political will and timely mobilization of resettlement funds\
* Adequate and continuous consultation with affected population
* Works and resettlement divided and implemented in phases
* Functional and accessible GRM built on local conflict resolution structures