



26 September 2018

Members of the Board of Directors

Asian Infrastructure Investment Bank
B9 Financial Street, Xicheng District
Beijing 10033 People's Republic of China

Copied to:

Dr. Joachim von Amsberg, Vice – President Policy and Strategy
Mr. Hamid Sharif, Compliance, Effectiveness and Integrity Unity, Director – General
Ms. Laurel Ostfield, Head of Communications and Development

Re: CSO Policy Inputs for the AIIB Board of Directors Meeting (September 2018)

We are writing to you in reference to the AIIB's Board of Directors meeting this 27 – 28 September 2018. The NGO Forum on ADB ("Forum") would like to raise specific concerns on some of the operational policies of the Bank particularly on the draft Policy on Public Information (PPI), draft Project – Affected People's Mechanism (PPM), Environmental and Social Policy, Draft Sustainable Cities Strategy as well as reiterate our key asks in the Accountability Framework and in the draft Transportation Sector Strategy. The Forum will also submit a separate letter on the recent concerns and issues on AIIB – funded projects.

Policy Concerns: ESP and PPI Disconnect

1. According to the consultations held on the draft Policy on Public Information (PPI), it points towards the Environmental and Social Framework (ESF) and the Environmental and Social Policy (ESP) when it comes to meeting social and environmental information disclosure due diligence. However, the ESF fails to provide any timelines or directives for information disclosure on ESF related documentation for Category A, Category B and Financial Intermediary (FI) projects *thus, making the PPI fail its promise to promote transparency in Bank operations (PPI, para. 1.2).*
2. Both the PPI and the ESF fail to provide clarity on the exact nature of the AIIB project cycle and simultaneous release of relevant information. **The scope of the PPI that it pertains to "the information held by the Bank" is inadequate.** The Policy should be intended first and foremost to the information provided for the project affected communities. As such there should be no disconnect between the PPI and AIIB's ESP (para. 57 on Information and Consultation).
3. Furthermore, Information Disclosure by the Client and the Bank (paras. 57 – 58, ESP) should override the Exceptions to Disclosure Requirements of the draft PPI (section 9). As this is the Bank's responsibility as per the ESP to ensure that project – affected persons (PAPs) receive all project – related information in a timely and accessible manner as well as in a form and language understandable to PAPs, to other stakeholders and the general public to meaningfully engage in the design and implementation of the Project.
4. The ESP also lacks clarity in terms of issues of non-compliance and fails to provide clear remedy or mitigation measures to address harm, thus proving that the PPI cannot address

non-compliance, monitoring to the ESP information disclosure function. **NGO Forum on ADB urges the AIIB to address the limitations of the AIIB PPI in relation to ESP and ensure the robust implementation of project cycle bound information disclosure related to the Public Information Requests Processing Directive (“Directive”).**

5. On the Directive which was posted last August 2018, accordingly “within 30 working days the Head of the Communications and Development Department (CDD), ***shall provide a determination of whether disclosure will be allowed*** in accordance with the Guiding Principles, Public Information and Confidential Information provisions of the PIIP (para. 15) [Note: Emphasis supplied].” While the Forum acknowledges this to address the necessity for time – bound disclosure requirements, the Directive itself and specifically this paragraph are limited in scope as it does not provide a clear guidance on the number of days the Bank should respond. This pertains not only to information requests but also to communication sent by CSOs for instance to AIIB e.g. comments on policy and/or strategy documents, letter to the Bank, etc. "Determination" in itself is not enough as there are situations when AIIB's official response is needed. These types of information and/or communication should also have a clear binding language whether it be in a Directive or in a Policy.

Non - Compliance of PPI poses risks to project - affected persons as this is not subject for compliance under the PPM

6. In case of the current draft of PPI, it remains outside the purview of compliance review function of the proposed Project - Affected People’s Mechanism (PPM). We want the AIIB Board to consider that local communities will be left powerless in situations when AIIB operations will fail to meet PPI requirements, that could lead to direct harm on the ground due to lack of timely disclosure of project related information (especially on environmental and social dimensions). The PPI should ensure that the Directives and Administrative Guidelines should also be disclosed and undergo public consultation. These should also be mandatory and binding policy procedures and should be subject for compliance review under AIIB’s Project – affected People’s Mechanism.

Language and Translation: PPI cannot deliver ESP or PPM requirements

7. The use of multiple languages and translation of documents have been stated in the ESP Articles 57¹ and 58² for all project related information as well as Client held information. Unfortunately according to the consultations held on PPI, the **PPI will only operate in English**. On the other hand the draft Project Affected Peoples Mechanism (para. 18)³ is also open to multiple languages as it will directly work with affected peoples, unfortunately this is not addressed as a core requirement of the PPI.

¹ Information Disclosure by the Client. “The Bank requires the Client to ensure that relevant information about environmental and social risks and impacts of the Project is made available in the Project area in a timely and accessible manner, and **in a form and languages (s) understandable to the Project - affected people**, other stakeholders and the general public, **so they can provide meaningful inputs into the design and implementation of the Project** (para. 57, ESP) [Note: Emphasis supplied].”

² Information Disclosure by the Bank. “**The Bank posts online the Client’s documentation on the Project as provided in para. 57.... or as early as possible during the Bank’s appraisal of the Project**; and other documentation referred to in para. 57 in a timely manner (para. 58, ESP) [Note: Emphasis supplied].”

³ “The preferred language for submissions to the PPM is English, the designated working language of AIIB.18 If a submitter is unable to make an English language submission to the PPM, the submission may be in a national language of the AIIB Member in whose territory the Project area of influence is located. The PPM will make its best efforts to respond to such submissions in the most practically informative, useful and inclusive ways for the Project-affected people concerned (para. 18, PPM).”

Accountability Framework Key Issues

8. In our letter to AIIB dated 10 September 2018, we reiterate our concern on the significant lack of transparency on its information disclosure around project selection and project operation. The Bank at present has an interim Information Disclosure Policy while there is no Environmental Social Framework Guidelines for Implementation and no Redress Mechanism in place. The Bank has approved over 24 projects⁴ without any of these binding requirements to ensure basic standards in multilateral development financing (MDB) financing.
9. We would also flag we reiterate para. 18, that AIIB's strategy will be implemented within a set of risk thresholds agreed by the BoD. The BoD approved the Risk Appetite Statement (RAS) in January 2018 and will be asked annually to approve the specific levels of top-down risk allocation. **While the BoD is opting to relinquish portion of its approval authority of projects to the President, the question of investment, social and environmental risk requires more in depth attention. Is the RAS open for public scrutiny? Will it include social and environmental risk? How will it be updated and what are its parameters for risk assessment?** The RAS must be a public document and inclusive for views from civil society. While we commend the spirit of the RAS, it still raises questions which will become more important as the AF will be implemented.
10. There are no structural checks and balances between the Compliance, Effectiveness and Integrity Unit (CEIU's) role in Management Meeting and the Executive Committee Meeting. One cannot rule out the potential risks of a compromised working environment and other unofficial exchanges between the Management and CEIU which might impact on the evaluation of the Accountability Framework. This is an alarming concern considering the scale of the finances and the impacts the project may have on the ground.

Concerns on the Draft Transport Sector Strategy

11. The Forum also sent our comments in the Draft Transport Sector Strategy last 4 July 2018 but no official response has been communicated yet by the Bank to the network. We re-echo our concern that **the characteristics set forth by the AIIB in what constitutes as a "sustainable transport" should be considered and implemented in its entirety** i.e. when a proposed project fails to be environmentally sustainable or not socially acceptable but it is financially viable, the Bank should either re-design the project or completely withdraw from financing the said transport-related project. Equally important, AIIB's approach (paras. 10 – 14) on its draft **Transport Strategy should be interpreted and later on implemented vis-à-vis the Bank's commitment in ensuring stringent enforcement of its Environmental and Social Framework and Policy.**
12. In addition, the backdrop provided for transport as a system of infrastructure pertains to the various modes that in turn serve different passenger and freight transport markets. Accordingly, these modes also display highly varied economic and financial returns (para.2). This background is merely based on the economic and financial returns of investing on transport and its related projects, which is unacceptable. The environmental and social

⁴ Note: There were only 24 projects approved by the AIIB when the Forum submitted the letter outlining the concerns on the Accountability Framework.

aspects of investing in transport – related projects should always be taken into consideration.

13. The draft also states that, “(Environmental and social sustainability) requires projects to minimize environmental and social impacts during project implementation and operation, in line with the requirements of AIIB’s ESF and Policy (para. 12)”. The succeeding section also states about “minimizing environmental impact as an important consideration for transport project design (para. 13). However this is not consistent with the language on the ESF and Policy and the internationally accepted hierarchy of mitigation measures. The action to first avoid any environmental impact is missing and should be reinstated into this section. By doing so, the draft transport strategy would be consistent on the Bank’s approach on environmental and social management, which is designed to, **“identify actions to avoid, minimize, mitigate, offset or compensate for environmental and social impacts of the project (AIIB ESF, para. 3) [Note: Emphasis supplied].”** This is a critical omission in the draft transport strategy that should be revised.

Concerns on the Draft Sustainable Cities Strategy: Financing Solutions for Cities in Asia to Achieve GREAT

14. Accordingly, “AIIB is well – positioned to support the sustainable development of cities given its ability to directly finance not only national governments, but also sub – national entities xxx. In addition, AIIB’s considerable financial resources xxx and thematic priority to mobilize private capital into infrastructure development will enable the Bank to support urban public – private partnerships (PPPs) and commercially – financed solutions (para. 5).” **While the trend across several MDBs has been pushed towards scaling up private sector – led operations, the questions on accountability, transparency and compliance to environmental and social standards has been inadequate.**
15. To support cities in Asia to be “economically, environmentally and socially sustainable by being green, resilient, efficient, accessible and thriving”, this should also mean that “quality infrastructure” should apply safeguards upstream especially in project selection, design and construction where greater weight should be given to the social and environmental impacts of the projects.⁵ When the norms and standards are clear, implemented and monitored rigorously, only then that potentially affected households can hold their respective governments as well as state – owned and municipal – owned enterprises and lending institutions such as the AIIB to be truly accountable.
16. The investment areas identified i.e. “enhancing urban mobility, improving basic infrastructure and city resilience, promoting integrated development and building freestanding health and education facilities,” however there have been significant risks and impacts associated in assembling the land requirement for “developing a sustainable city”. This includes potential resettlement that would jeopardize livelihood, affordability of cost of living and food security among others of affected households.

In summary, we ask that the AIIB Board of Directors to consider the following:

1. Address the limitations of the AIIB PPI in relation to ESP and ensure the robust implementation of project cycle bound information disclosure related to the Public Information Requests Processing Directive.
2. As part of the time – bound disclosure requirements, the Directive should also consider adopting a specific number of working days for AIIB to respond on communication and information request.

⁵ Alexander, N. *The Big Gamble: How Sustainable are Global Efforts to Leverage Private Investment in Infrastructure*. April 2018.

3. The Policy on Public Information should be subject under compliance review in the Project – Affected People’s Mechanism. The Bank’s policies, strategies, directives and administrative guidelines should also be disclosed and undergo public consultation. These should also be mandatory binding policy procedures and should be subject for compliance review under AIIB’s Project – affected People’s Mechanism.
4. The spirit and implementation of Accountability Framework should ensure that there will not be a trade – off between the speed of approving a project and the corresponding due diligence requirements that any likely adverse harm will be mitigated, if not avoided.
5. Ensure that the draft Transport Sector Strategy and the Draft Sustainable Cities Strategy would also be consistent with the existing policies of the Bank particularly on provisions related to disclosure of information to project – affected persons and use the hierarchy of mitigation approach.
6. As the ESF provides that, "the Bank will, at the end of the first three years of the Bank's operation, conduct a review of the overall ESF (para. 4)," we urge the Board of Directors to mandate the Management to design a robust consultation process on the review of the ESF where civil society can meaningfully engage and provide inputs.

Sincerely,



Rayyan Hassan

Executive Director

NGO Forum on ADB

Signatories:

Accountability Counsel, International
 Aksi! Indonesia
 Arab Watch Coalition for Just Development
 Bangladesh Working Group on External Debt (BWGED)
 Bank Information Center - Europe
 Centre for Environmental Justice/ Friends of the Earth Sri Lanka
 Centre for Human Rights and Development, Mongolia
 Coastal Livelihood and Environmental Action Network (CLEAN), Bangladesh
 EnviroNics Trust, India
 Freedom from Debt Coalition, Philippines
 Gender Action, USA
 Inclusive Development International
 Indian Social Action Forum
 Legal Rights and Natural Resources Center-Kasama sa Kalikasan, Philippines
 Lumière Synergie pour le Développement, Senegal
 Nash Vek - Kyrgyzstan
 NGO Forum on Cambodia
 Oil-Workers' Rights Organization Public Union, Kyrgyzstan
 Pakistan FisherFolk Forum
 Safety and Rights Society, Bangladesh
 Society for Participatory Education and Development (SPED), Bangladesh
 WomanHealth, Philippines
 Ulu Foundation, USA