

NGO FORUM ON ADB JOINT SUBMISSION, AIIB ESF REVIEW PHASE 2 INPUT

<p>NGO on</p>	<p>Forum ADB</p>			
				
				
				

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PREAMBLE

NGO Forum on ADB at the onset of this submission would like to state that this Phase2 input is in response to the Draft ESF released Sept 7, 2020. It needs to be noted that this current draft has significant changes in language on various aspects reducing client requirements, especially in categorization, and information disclosure. As a result, the draft ESF is a drastically weaker document in terms of ensuring community and environmental safeguards. This joint submission from NGO Forum on ADB calls out this draft to be an instrument to erode binding requirements by borrowers of AIIB from environmental and social responsibility surrounding projects. Before delving into the details it needs to be mentioned that the AIIB has not provided an assessment of its existing ESF delivery in the public domain. It should be noted that the AIIBs CEIU has not come up with a public report that has evaluated the effectiveness of the ESF 2016. We have further observed stand-alone projects such as Bhola IPP with severe environmental and social impacts for over 2 years without meaningful mitigation to harm, similarly gross discrepancies on information disclosure and lack of meaningful consultation persist with the Beijing Gas Project (stand-alone) along with co-financed projects such as Myingyan Gas Power Plant in Myanmar. Therefore what prompts the AIIB management to remove binding requirements from clients and borrowers with this new draft ESF must be questioned by all stakeholders engaging AIIB.

The Forum network thinks that this draft ESF, in general, fails to prioritize project-affected communities, whose rights should be at the center of project design, operation, and implementation. The network calls out the material weaknesses in provisions of this draft ESF and urges for significant rewrites to the sections identified in this submission. The Forum will highlight some of the problematic sections in the critique below to help guide AIIB towards a more responsible and binding ESF that holds clients accountable to the environment and communities.

CRITICAL ANALYSIS OF THE DRAFT ESF

INTRODUCTION

On ESF review and update, section 1.6, the AIIB indicates that ‘updates may be introduced to the framework’. The update process is not articulated further in Section 1.6 and implies a ‘closed-door’ management-led process. This is problematic as issues such as client compliance measures, information disclosure timelines, categorization, and ESEL lists have all tremendous significance on people's lives and environments. Updates without a full public consultation on proposed changes to the ESF threatens local communities directly. Section 1.6 must include that all updates of the ESF must go through public consultation before Board approval with meaningful consultations with civil society and local communities.

From Sections 1.7.1 -1.7.12 in the Objectives of the ESF, we want the ESF to be clear in the onset for ‘equivalency and assessment’ of all corporate, client, government, and borrower systems to the ESF as a binding objective. We urge the inclusion of the terms ‘highest standards will apply’ as a principle objective of the ESF to ensure harm is proactively mitigated and avoided through the implementation of this ESF.

The ESF must gravitate towards the highest level of protection for the environment and communities as its core objective. To provide the highest protection for communities, human rights should be adopted by the AIIB as an overarching framework for the ESF. AIIB needs to respect human rights and operationalize the international obligations of its member states to protect human rights. The ESF should also be aligned with international human rights standards and norms. AIIB should also adopt a zero-no tolerance policy for threats and retaliation against affected communities/persons/human rights defenders.

VISION

In sections 2.5 and 2.7 the fact of client system gaps has been mentioned. Forum strongly believes that if clients do not have environmental and social systems in place they should not be qualified for loans. All systems and capacity building outputs on CSS should go through a thorough equivalency and assessment by the AIIB management. In case the borrower system is not up to par with the AIIB ESF the bank policy standard must prevail for that project.

GENDER

Section 2.9 has new language on Gender especially GBV and SEA but later as the draft unfolds into policy none of these issues manifest into tangible policies for safeguarding women and girls from abuse and harm. This form of ornamentalizing issues at the top of the ESF without giving policy direction is misleading and irresponsible. The AIIB must ensure binding gender safeguards articulating details in terms of client responsibility, scope, and depth of safeguarding on gender issues into the ESP.

LABOR

Section to 2.11 mentions the treatment of labor and articulates some key features on issues such as wage, non-discrimination, the abolition of forced and child labor. Yet the ESF does not allude to the ILO

Core Labor Standards as the highest standard for labor safeguards. Further down the document, the lack of CLS persists in the ESP and therefore must be included.

RESULT BASED FINANCING (RBF) AND CO-FINANCING

Sections 2.18 and 2.19 point towards Result Based Financing (RBF) and Co-financing modalities to have their policy frameworks; this draft ESF does not breakdown further one what ‘ self-contained policy’ for RBF and ‘policy framework’ for co-financing will be and what it entails in terms of mitigating and preventing harm on communities and environment. Further inclusions of policies about RBF and co-financing must be included in the ESP with adequate public consultation measures for feedback and review.

AIIB’S DESCRIPTION OF THE PPM

The draft ESF describes the PPM as an onerous option for raising concerns only after project-affected people exhaust other avenues. The first sentence of paragraph 7.9 of the ESP should be modified to remove the clause after “in accordance with the Policy on the PPM . . .” To facilitate the effective resolution of concerns, project-affect people must be able to choose the approach best suited for them. In determining which forum can most effectively address their concerns, project-affected people must consider a range of factors. The nature of the concern, timing, and the perceived independence of the forum can all advantage one forum over others. The new language in the first sentence of paragraph 7.9 would undermine project-affect people’s ability to seek an effective resolution by entrenching a rigid hierarchy for raising concerns¹.

CO-FINANCING AND PPM

The ESF should prescribe circumstances under which the AIIB excludes access to the PPM for co-financed projects. Under the draft ESF, when the AIIB permits a client to apply a co-financiers environmental and social policy to a project in place of the ESF, the AIIB can agree to use the co-financiers IAM and prohibit the PPM from receiving complaints about the project. In practice, this has created a significant accessibility problem. This exclusion is unprecedented – no other major international financial institution has a provision like this. This presents a problem not only for communities, who have fewer means of raising concerns but also for the institution, as it undermines accountability and forgoes opportunities for institutional learning. Given that the AIIB engages in co-financing regularly and the exclusion of the PPM in favor of a co-financiers accountability mechanism has been applied extensively, in practice this exclusion removes the PPM’s purview from a significant number of projects. According to the AIIB’s website, 55 of 95 approved projects are co-financed, with virtually all of them applying the co-financiers environmental and social policy. In fact, since 2019, when project summary documents started to include information on whether the PPM could hear complaints about projects, they revealed that 28 of 35 co-financed projects expressly exclude access to PPM. That means that almost half (47%) of the entire AIIB portfolio approved during that period has been removed from the purview of the PPM.

¹ We recognize that the Policy on the PPM currently requires project-affected people to have raised concerns through other means. This provision does not align with good practice at other accountability mechanisms and will hopefully be addressed in a future review of the PPM policy. By simply referring to the Policy on the PPM without additional qualifications, the ESF can avoid conflicting information should the PPM policy be changed.

Restricting access to the PPM on this basis is problematic for several reasons. First, it severely restricts accountability options for project-affected people. Accountability mechanisms exist to serve communities affected by projects, and the accountability mechanism process should therefore provide agency to the communities to determine how best to raise their issues. Deciding for communities that the PPM is not available limits their options for raising concerns and seeking effective resolution. In evaluating how best to have their concerns heard and addressed, project-affected people should be able to choose where to raise a concern or whether to file complaints with multiple mechanisms.

Second, it significantly undermines the credibility and effectiveness of the AIIB. Even in instances where project-affected people do file with a co-financiers accountability mechanism, that mechanism will not have the mandate to examine the AIIB's actions and omissions and will instead focus on the co-financiers. Even where a co-financiers environmental and social policy is adopted, the AIIB has obligations under the ESF, such as assessing the adequacy of a co-financiers environmental and social due diligence and monitoring. Yet project-affected people with concerns about whether the AIIB has met these obligations cannot bring a complaint to the PPM, the only accountability mechanism with a mandate to examine the AIIB's compliance.

Third, it risks the creation of an accountability gap. The exclusion of the PPM for a co-financed project could conceivably lead to a circumstance where project-affected people could find themselves with no IAMs able to handle their complaints. For instance, if their concerns were related to a specific project facility that was being financed by the AIIB but not the co-financier, their complaint could also be excluded from the mandate of the co-financier's IAM. Lastly, it undermines the ability of both the PPM and the institution as a whole to learn and improve. Contrary to AIIB policy, most accountability mechanisms commit to coordinating with each other when complaints regarding a co-financed project are co-filed. It would behoove the PPM during its infancy to be able to coordinate with other mechanisms and learn from them. Furthermore, the PPM's ability to produce institutional learning and foster continuous improvement will arise chiefly from handling complaints, which can highlight gaps in AIIB policy or practice. If the PPM is unable to process a significant number of cases because of the co-financing bar, its ability to identify lessons learned and produce systemic analyzes will likewise be curtailed.

The language in various provisions of the draft ESF permitting the AIIB to restrict access to the PPM should be deleted wholesale. The ESF should not enable the AIIB to exclude access to the PPM for co-financed projects. Even where a co-financier's environmental and social policy is applied, project-affected people should be able to raise concerns about the AIIB's obligations to vet and monitor the project's environmental and social performance. At the very least, the ESF should limit the circumstances under which PPM can be excluded. The draft ESF, para. 3.5 makes clear that project-affected people can access the PPM when co-financiers' obligations like vetting and monitoring are applied *unless expressly excluded*. Short of removing this exclusion outright, the ESF should at a minimum spell out the narrow circumstances under which this can occur. Circumscribing exclusion of the PPM to instances where the AIIB is, for instance, providing a *de minimis* percentage of financing would be more in line with AIIB's evolving role in the projects it co-finances.

CRITIQUE OF THE ENVIRONMENTAL AND SOCIAL POLICY ESP

Within the context of Section 1.3 Approach for Environmental and Social Management, the draft language once again ignores drawing on the effectiveness of safeguards implementation in mitigating and preventing environmental and social harm. Section 1. We strongly recommend that within sections 1.3.1 to 1.3.11 a further point be included on ‘measuring safeguards delivery for each ESS1, 2 and 3’.

SCOPE OF APPLICATION

Section 3.1 leaves a caveat for the ESP to not apply to all AIIB lending. This needs to be redrafted and the AIIB must ensure that the ESP is a binding policy, which applies to all forms of lending operations including Equity Financing, RBFs, and all forms of lending modalities.

Section 3.3 in cases where borrower systems prove to be more rigorous than AIIB systems the draft must include the terms the ‘higher standard will apply’. This needs to be clearly and explicitly stated to ensure that the affected community and environment gain the highest priority in the ESP.

Similarly, Section 3.4 on co-financiers policies must include binding requirements on equivalency assessments and then the implementation of the highest standard among the co-financiers. The arbitrary selection of lead financiers systems or that which is ‘materially consistent’ with ESF must be abolished from the ESP and the overall ESF. The call for ‘higher standards will apply’ should be made mandatory for section 3.5 Clients using the MDB system.

Also on page 10, point 3, which says: “Ensure that the scope and depth of the assessment is commensurate with, and proportional to, the nature and magnitude of the Project’s potential risks and impacts and the categorization assigned by the Bank.” The bank assigns categories based on project impacts into A, B, C or FI (high impacts, medium impacts and low impacts respectively). A ‘framework for project categorization’ based on scale of impact could strengthen the process of categorization. A set benchmark based on say, a minimum amount of land acquired, or a minimum number of persons displaced, or a location having one or more number of endemic species, etc., could ensure projects would already land in a said category, which would then need a detailed assessment, stronger mitigation plan and other measures².

SECTION 3.6 ON ESG APPROACHES TO CAPITAL MARKET

The current draft ESF formalizes the derogation for capital market projects from applying the ESP. Instead, these projects will apply to ESG Frameworks. These frameworks make no reference to information disclosure and provide limited detail on how exactly potential portfolio investments will be assessed. The draft also states explicitly that the Project Affected Peoples Mechanism will apply to AIIB capital market investments. The ESG Frameworks adopted by existing projects contain no grievance mechanism, leaving affected people with no path to recourse if they are negatively impacted. We strongly urge the AIIB to rewrite this section and ensure that the ESP applies to all financing which manifests into projects using AIIB funds, including capital market investments, and bring them into compliance with the ESP.

² Inputs from [Oxfam](#).

SECTION IV. ROLES AND RESPONSIBILITIES

Section 4.2 points '(d) discloses environmental and social documentation for the Project in a timely manner'. Forum urges AIIB to refrain from the use of the word 'timely' concerning project information, especially environmental and social documentation. We have noticed in Bholra IPP and Beijing Gas that environmental and social information was not released before project construction leading to direct harm to communities and the environment. Therefore we strongly suggest that all social and environmental information be released in a 'time-bound' manner to ensure meaningful consultation before project implementation to avoid and mitigate potential harms from a project. We further urge the AIIB to replace the word 'timely' with 'time-bound' throughout the ESF (especially Section 4.3), as the loose interpretation of 'timely' information disclosure will result in direct and indirect harm to people and the environment. On the issue of non-compliance, we suggest the use of the word 'will' instead of 'may' in the language- 'the Bank will exercise its available contractual remedies under the Legal Agreements governing the Project.'

SECTION V. ENVIRONMENTAL AND SOCIAL SCREENING, CATEGORIZATION AND DUE DILIGENCE BY THE BANK

Section 5.2.2 articulates that ‘As an element of the categorization process, the Bank may conduct a field-based review of the Project to provide....’. In the draft ESF, this is one of the first mentions of field-based reviews, and the language allows flexibility on doing field-based reviews as part of categorization using the word ‘may’. There is no substitute for field-based reviews in assessing environmental and social risk as project sites are mostly in remote areas and directly affect communities and ecological systems. We strongly urge replacing the word ‘may’ with ‘must’ when it comes to the Bank conducting field-based reviews as part of its environmental and social due diligence.

CATEGORY A

For Cat A in Section 5.3.1, the requirements articulated are ESIA, ESMP, and ESMPF. The caveat ‘or other similar Bank-approved documentation’ must be removed from the draft ESF as replacing a comprehensive ESMPF with arbitrarily Bank endorsed documentation undermines the severity of Cat A risk. We strongly urge removing this clause to avoid dilution to Cat A risk assessments and binding requirements. In the same Section 5.3.1 (c) the bank must introduce language that explicitly ensures that affected communities will be restored to pre-project levels if not better as per ESIA and ESP application. Furthermore, CAT A must remove the provision of ‘offsets’ when it comes to projects with high risk. All mitigation and preventive measures must be ensured at the project site.

CATEGORY B

Section 5.3.2 point (b) allows loose interpretation of risk through the language ‘The Bank may determine that an environmental and social assessment or another similar instrument is appropriate for the project’. This sentence must be removed from this section entirely. For Category B projects a strict procedural Initial Environmental Examination IEE must be made mandatory to assess the environmental and social risk. On many occasions, Cat B does not anticipate seasonal variations in local livelihoods, migratory shifts in flora and fauna which lead to unanticipated harms due to lack of proper environmental and social assessment. To be proactive in safeguarding all projects deemed Category B, the Bank must mandate IEEs without exception (NOT cases by case basis). The Bank must also ensure that seasonal and environmental variations that affect communities and the environment are factored into the IEE methodology. Furthermore, CAT B must remove the provision of ‘offsets’ when it comes to projects with medium risk. All mitigation and preventive measures must be ensured at the project site.

CATEGORY FI

All Category FI projects identified in section 5.3.4 must ensure that the FIs identified have ESMS which are assessed in equivalency to the ESP. Furthermore, the ESF must include language which identifies high-risk CAT A sub projects within CAT FIs and ensure the risk assessment follows Cat A risk assessments and policies as recommended above.

Section 5.10.1 the Bank allows too much flexibility to FI clients by allowing future lending approval based on FI ESMS track record. This section 5.10.1 is a dangerous loophole in the draft ESF which

allows FIs to do future subprojects anywhere in the world without any form of environmental and social assessments on environmental and social impacts. The NGO Forum on ADB is gravely concerned about this provision and demands the AIIB remove section 5.10.1 from the ESF, and ensure that FIs be subject to the strictest environmental and social assessment and due diligence for all future lending and sub-projects.

SECTION 5.9 ON REVIEW OF INFORMATION

The Forum strongly suggests that the Bank has to assess all risk assessment documentation as per the given category of a project-

- CAT A: ESIA, ESMP, ESMPF, LARP, LARPF, IPP, IPPF
- CATB: IEE, IARP, LARPF, IPP, IPPF
- CAT FI: ESMS equivalency assessment to ESP, Subproject CAT A: ESIA, ESMP, ESMPF, LARP, LARPF

The NGO Forum on ADB urges AIIB to pay heed to the above assessments per category and urges the bank to leave no room for exceptions. The Bank must be diligent in assessing all risk related information regardless of category status before project approval to ensure that communities and environment are ensured safeguarding from any AIIB investment. The due diligence of risk assessment should also go through multiple checks by key AIIB officials at different levels of AIIB management safeguard machinery to ensure that risks have been assessed in compliance with the ESP and the highest standards of safeguards are met.

MANAGEMENT ENGAGEMENT ON CONCERNS RAISED

The ESF provides little guidance to Management on how to meaningfully engage with project-affected people who have raised concerns. Project-affected people will be reluctant to raise concerns with Management unless they trust in the safety of the process and believe there will be a meaningful response. The ESF should provide a process for responding to concerns in a safe and meaningful way. At a minimum, the ESF should establish a timeline for Management's response, to ensure predictability for project-affected people. It should also provide for disclosure of concerns raised while respecting any confidentiality sought by project-affected people, and actions taken by Management in response.

SECTION VI ENVIRONMENTAL AND SOCIAL ASSESSMENT BY THE CLIENT

Section 6.1 needs to remove the flexibility for Clients to avoid or bypass integrated environmental and social assessment. Once again we see this draft ESF favoring the Client and putting more risk on the environment and the communities. This section should hold the highest standard for Clients (both public and private) in ensuring integrated environmental and social risk assessments without any form of exception.

It's important to note the Client delivers the ESP on the ground, therefore the integration of risk assessments must be done by the client, not the bank.

Section 6.5.2 should also strictly apply to Category B projects.

Section 6.5.2 must also include Cat FI subprojects. For all Category A, B, and FI subprojects the Bank and Client must ensure that Land Acquisition and Resettlement Plans LARP and Land Acquisition Resettlement Frameworks as well as Indigenous Peoples Plans are shared with the communities for public comment with adequate time before project approval. The LARP, LARPF and IPP, IPPFs should also be translated into local languages and explained to local communities through meaningful consultations using culturally and socially appropriate methods to ensure that risks and plans have been clearly understood.

Section 6.7.2 must be reworded and ensure that there are no exceptions to the ESP application on Associated Facilities. This is a direct dilution from the existing ESF, and the Forum strongly urges that this section be reworded and ensure that all Associated Facilities will be in compliance and coverage of the ESP without exception.

C. ENVIRONMENTAL AND SOCIAL MANAGEMENT PLAN

NGO Forum on ADB is gravely concerned with Section 6.12 as it allows Clients with poor to zero ESMS to gain AIIB finance to do risky projects that directly threaten people and the environment. Under no circumstances should a Client be qualifying for AIIB funding without having an ESMS in equivalency to the ESP standards. The Forum recommends an immediate removal of Section 6.12 and urges the bank to ensure that until Clients have achieved equivalency to ESP they should not qualify to apply for AIIB loans to do projects.

SECTION 7 INFORMATION DISCLOSURE

The current ESF (2016) includes two paragraphs on information disclosure. They do not mention essential time frames for the public release of documents, such as environmental and social impact assessments. Instead, the ESF calls for documents to be made available in a “timely” manner or, “as soon as they become available.” Such loopholes allow financial or corporate interests to outweigh the public’s interest in learning of environmental and social risks ahead of time. The proposed framework is also strikingly weak in addressing the growing trend of channeling investments through financial intermediaries such as commercial banks and private-equity funds. Even when these entities finance high-risk activities with AIIB support, they are not required to publish specific information regarding environmental and social impact. To prevent and alleviate harm, the AIIB should ensure full disclosure of environmental and social impact assessments, including plans for land acquisition and resettlement, before project approval, when there is still a chance to influence the outcome. But the ESF review draft demonstrates the bank’s intention to delegate the responsibility for accountability to its future clients. Unless the draft undergoes fundamental changes, we will miss a critical opportunity to promote transparent governance, fairness, and environmental sustainability in AIIB projects. The broader risk is that the bank’s approach encourages weaker environmental and social standards across the board as international financial institutions compete for investment opportunities.

The AIIB current ESF draft on Section 7 in its entirety leaves no explicit provision for meaningful consultations with affected communities to explain project risks anywhere in the document. Furthermore, Section 7.22 for Cat A to have 45 days of public commenting with Cat B 35 days of public commenting, are probably the weakest standards on information disclosure to be proposed across all MDBs. The NGO Forum on ADB calls for a full redrafting of this section with a minimum of 120 days period for public commenting for all E and S risk assessments across Cat A, B, and FI subprojects.

HUMAN RIGHTS DUE DILIGENCE

AIIB should incorporate human rights due diligence (HRDD). HRDD is an ongoing process necessary to ensure that AIIB and its public and private clients respect, protect, and work toward fulfillment of human rights. This involves identifying human rights risks and impacts directly or indirectly connected with the AIIB activities; preventing human rights abuses; mitigating adverse human rights impacts, and maximizing positive human rights impacts where possible; accounting for how human rights are impacted and impacts are addressed, and remedying any adverse impacts.

HRDD should involve deep consultations with communities directly affected by AIIB's activities. AIIB should conduct or require *ex ante* community-led, human right-based impact assessments before approval of AIIB support, regardless of modality.

As a publicly funded multilateral institution that is primarily financing, not directly implementing development projects, AIIBs' human rights due diligence includes active analysis and intervention by the AIIB, as well as ongoing supervision, monitoring and capacity building with clients. Due diligence measures may take different forms depending on the nature of the AIIB's relationship with the client, e.g. whether it is providing a direct loan or a loan through a financial intermediary, equity investment, credit guarantee, technical assistance, etc. The obligation, however, remains that adverse human rights impacts are addressed. AIIB should commit to use its leverage and resources to ensure compliance with human rights standards as well as remedy for adverse impacts caused, contributed, or linked to their activities, including those caused by clients or third parties, or linked to the AIIB through financial intermediary investments.

AIIB should incorporate HRDD at multiple layers. AIIB should require: 1) its own due diligence to ensure that it respects, protects and fulfills human rights within its own activities, 2) its public and private sector clients undertake human rights due diligence in accordance to their respective human rights obligations or responsibilities within the context of the AIIB-supported activity, and 3) where those clients are acting as financial intermediaries, AIIB must assess and address the human rights impacts of the end use of its investments³.

Project-level grievance mechanisms and consultations with affected communities should be inclusive and accessible to people with disabilities. They must be included throughout the project cycle and the client's responsibility must be to use accessible and culturally appropriate formats for the different physical, sensory, cultural, and/or cognitive needs of project affected people and local communities. Strengthening requirements on accessibility will not only prevent adverse impacts but will also guarantee the engagement of persons with disabilities⁴.

RETALIATION

AIIB's acknowledgment of retaliation as a major concern is welcome but not enough to address this serious problem against affected communities. AIIB needs to take direct responsibility undertaking robust and comprehensive human rights due diligence to avoid adverse impacts, screening projects for reprisal risk prior to approval, developing protocols, contractual requirements, and other necessary leverage to identify, prevent, and mitigate risks for defenders, and conditioning investment decisions and disbursements on the ability to prevent abuses, ensure an enabling environment for defenders, and adequately address human rights impacts.

The Bank, not the clients, should be mainly responsible for developing measures against retaliation including mitigation measures that include proactive engagement with communities to be affected by the project, proactive monitoring of the situation, and speaking out if and when retaliation against affected communities/persons/human rights defenders happen.

³ Inputs from [Coalition for Human Rights in Development](#)

⁴ Inputs from [Bank Information Center USA](#)

The Bank should also promptly review ALL allegations of retaliations in connection with the Projects it supports - as it now stands the text suggests only "credible allegations" need be reviewed and there is no definition of what amounts to a credible allegation. It should also define what a "reasonable time" for the client to address retaliation risks. The steps to be taken in cases of retaliation need to be discussed with appropriate experts on defender security - the text currently states that the "Bank will discuss with the Client appropriate efforts to be made by the Client to address retaliation risks under the Project." The bank should center its efforts around the security needs of the affected communities/persons facing retaliations and consult either directly with the affected communities/persons - if it is safe to do so as well as with defender security experts to determine the appropriate to ensure the safety of the affected persons as well as ensuring no further retaliations take place.

PROJECT LEVEL GRIEVANCE REDRESS MECHANISM

While the ESF provides guidance on GRM functionality, there is little indication of how information on concerns and overall GRM effectiveness are reported to the AIIB. This has led to a lack of information about GRMs generally and only anecdotal evidence of GRM functionality, some of it worrisome. The ESF should prescribe a systematic process for relaying GRM information from the project-level to the AIIB and detail how the AIIB will correct issues where individual GRMs are shown to be ineffectual⁵.

DISCLOSURE

We commend the inclusion of language instructing clients to provide project-affected people with information about the PPM, in addition to the project's GRM. By utilizing clients' logistical advantages for stakeholder engagement, the ESF will enhance awareness of the full accountability framework for AIIB-supported projects. This will increase access for project-affected people, ultimately bolstering accountability and fostering continuous institutional improvement.

⁵ Inputs from [Accountability Counsel](#)

ESS1, BIODIVERSITY OFFSET

Page 51. 2.25. Biodiversity Consideration. Consider direct and indirect, aggregated and cumulative Project-related impacts on biodiversity, ecosystems and landscape, for example, habitat loss, degradation and fragmentation, invasive species, overexploitation, hydrological changes, nutrient loading, pollution and incidental take, as well as projected climate change impacts. Consider the incremental impact of the action, when added to other past, present and future actions. Any attention to project-specific impact should be immediately contextualized in terms of other anthropogenic stresses on the chosen valued ecosystem components. Focus on valued ecosystem components (VECs) that are likely to be subject to cumulative impacts against a threshold level of acceptable condition, if known, or in reference to a past baseline.^[4] Also take into account the differing values attached to biodiversity by affected communities and other relevant stakeholders.

2.26. Biodiversity Impacts. Avoid adverse Project impacts on biodiversity. When avoidance of adverse impacts is not feasible, implement measures to minimize adverse impacts and restore biodiversity, including, as a last resort, biodiversity offsets. Offsets for adverse impacts in critical habitats only when the parameters for which the area is classified as critical are not involved. (see also par. 2.27.4) Use suitably qualified and experienced biodiversity to conduct the environmental and social assessment, to assist in the development of a mitigation hierarchy and to verify the implementation of mitigation measures. Address biodiversity as an element of the ESMP or ESMPF (or both, as applicable). In the case of complex situations, prepare as appropriate, a biodiversity management plan and/or landscape analysis, which may be included in the ESMP or ESMPF or be self-standing.

2.27. Critical Habitats. Project activities in areas of critical habitats are prohibited, unless:

- 2.27.1. There are no predicted measurable adverse impacts on the critical habitat that could impair its ability to function;
- 2.27.2. There is no predicted reduction in the population of any recognized endangered or critically endangered species;
- 2.27.3. Any impacts are mitigated; and
- 2.27.4. The factors that have led the area to be classified as a critical habitat are not involved.

If the Project is located within a legally protected area, implement additional programs to promote and enhance the conservation objectives of the protected area. Take all measures required so that the Project also complies with any applicable national laws and regulations.

2.28. Natural Habitats. If the Project must be implemented in an area of natural habitats, refrain from any activity that would result in significant conversion or degradation; and if feasible alternatives are not available, take all measures required so that: (a) the Project's overall benefits substantially outweigh the environmental costs; and (b) any conversion or degradation is appropriately mitigated through measures acceptable to the Bank. Apply these criteria when proposed actions under the Project could potentially cause deforestation or conversion of naturally regenerating forests.

2.29. Protected Areas. Where the Project occurs within or has the potential to adversely affect an area that is legally protected or internationally recognized or designated for protection, identify and assess

these potentially adverse impacts and apply the mitigation hierarchy so as to avoid, or when avoidance is not feasible, to mitigate those adverse impacts that would compromise the integrity, conservation objectives or biodiversity importance of the area. Take all measures required so that the Project also complies with any applicable national laws and regulations relating to protected areas.

2.30. (to be inserted) Regional and local spillover impacts of Operations nearby critical habitat and protected areas demand for protected buffer zones, to minimize the impact of economic activity⁶.

ESS 2, INVOLUNTARY RESETTLEMENT

Section 1.4 is an exception which considers - voluntary, legally recorded market transaction on land acquisition by the Client. We believe this clause completely nullifies all the protections for communities outlined in ESS2 on land acquisition and involuntary resettlement. The Section 1.4 exception solely rests on the Client's word alone with no further provision for AIIBs validation in any way or form. We have seen in the case of Bhola IPP the Client had used a land aggregator to acquire land, without any legal record. This was later proven in the AECOM report commissioned by NBBL, furthermore, local communities raised concerns about- under-compensation, intimidation, and coercion during the land acquisition process.

NGO Forum on ADB and CLEAN had raised the issue multiple times with NBBL and the AIIB Management leading to further compensations to be provided. It should also be stated that various local communities did not formally step forward for the fear of retaliation. Therefore we strongly suggest the removal of Section 1.4 in its entirety as it negates the entire pillar of the ESS2 standard and absolves Client's from all due diligence and compliance to ESS2. There just cannot be any exceptions on ESS2 as it opens the door to all forms of displacement, discrimination, and erosion of legal and de facto rights and livelihoods of communities.

To this end Section, 2.1.4 allows another exception for Clients to push through with undisclosed activities and programs in a project with Land Acquisition and Involuntary Resettlement impacts. Section 2.1.4 embeds the weakness of the phased approach outlined in the ESP, Section VI. E Special Circumstances. Both ESS2 Section 2.1.4 and the 'phased approach' ESP, Section VI. E Special Circumstances allows projects to be approved by the AIIB Board or President without a clear outline of actual project activities. This is a dangerous policy gap and has direct ramifications on local communities. How will a farmer or villager know how construction work will affect them, or whether they will be relocated, or their immediate environment be altered affecting their daily life and livelihood? The Phased Approach loophole compounded by Section 2.1.4 of the ESS2 are gross violations of human rights and must be removed from the ESF entirely.

Lastly, Section 2.1.15 of ESS2 must have timebound information disclosure replace 'timely'. People must know inadequate time what the components of a project entail; and what are the timelines and activities which are to be implemented in project operations before any construction work. Simply put it is detailed project information alone which will be the pillar of safeguarding communities from

⁶ Inputs from BothENDS

resettlement and land acquisition impacts. The AIIB ESF must ensure project information is provided to local communities in a time-bound manner commensurating the project cycle in a culturally appropriate and socially integrated manner without flexibility or exception.

ESS3, INDIGENOUS PEOPLES AND FREE PRIOR INFORMED CONSENT (FPIC)⁷

We deplore that the review draft of the ESF continues to require merely Free, Prior and Informed Consultation (FPICon) with the affected Indigenous Peoples against the international human rights standards of Indigenous Peoples requiring to obtain their Free, Prior and Informed Consent (FPIC) as embodied and agreed by nations in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Furthermore, the FPICon is narrowly defined and invalidates collective consensus and unanimous FPIC by hinting towards disagreements within the Indigenous communities to still validate individual FPICs to represent the consent of the community. This is a clear manipulation of the usage of FPIC into FPICon and needs to be redrafted. Requirement of FPICon and FPIC only if the laws of the country where the Project is located is also inconsistent with the policies of other international financial institutions.

FPIC is the only available self-determined tool for IPs that allows them to protect their land and resources from MDBs and other private and government operations, which do not fulfill their own development pathways. FPIC is a self-driven process that does not need the approval of the Client or any other bodies. It is vitally important to ensure a robust and direct consultation with Indigenous Peoples representatives on the design of ESF safeguards for Indigenous Peoples. The AIIB must adopt the FPIC definition as per the UNDRIP with no exceptions.

The inclusion of a requirement for obtaining the FPIC is fundamentally important as it achieves the objective of ensuring that Indigenous Peoples can exercise their right to self-determination and are full partners in the development process. However, there is a need to ensure that the provisions for FPIC are consistent with the principle in the UNDRIP. It should be clear that the right to FPIC gives the affected community the right to give or withhold their consent to any program and project to be implemented in their territories. The process of decision making and agreements reached with Indigenous Peoples based on their FPIC must be described and verified by the AIIB together with the Indigenous Peoples and independent experts. Further, any conditions made by Indigenous Peoples as part of their FPIC shall be clearly stated in the terms of agreement, including time-bound actions and clear budget allocations necessary to ensure that agreements are met.

The agreement in particular shall contain the following, as appropriate⁸:

- Detailed benefit-sharing provisions, indicating the type of benefits to be derived by the affected Indigenous Peoples, specific target beneficiaries as to sector and number, the period covered, and other pertinent information;
- Development projects must be based on the development priorities of the community;
- Monitoring of the implementation agreement which shall be paid for by the AIIB/Client;
- Mitigation and resettlement plans for potential risks, if any;
- Effective, accessible and gender-sensitive redress mechanisms at the project level with explicit option to use other redress mechanisms;
- Clause on the non-transferability and or concrete conditions for transfer (such as, death of the local leader who was the signatory) of the agreement;

⁷ Inputs from [Community Empowerment and Social Justice Network \(CEMSOJ\)](#) based on the comments of the Asia Indigenous Peoples Pact (AIPP) for the AIIB's first ESF review available at the link <https://www.business-humanrights.org/en/latest-news/asia-indigenous-peoples-pact-aipp-comments-on-draft-of-aiib-framework/>

⁸ 2012 FPIC Guideline of the National Commission on Indigenous Peoples in the Philippines with some modifications.

- Clause for renegotiation of the economic provisions;
- List of responsibilities of the company (Client) and the affected community
- Inclusive dates/duration of agreement;
- Transparency mechanism on transfer and disbursement of funds (from the Bank to the Client);
- Detailed measures to protect Indigenous Peoples' rights and value systems;
- Detailed measures to conserve/protect any affected portion of the indigenous territories critical for watersheds, mangroves, wildlife sanctuaries, forest cover, and the like;
- Remedies and/or penalties for non-compliance or violation of the terms and conditions, which includes applicability of customary laws and imposition of sanction(s);
- Provision by AIIB/Client to render assistance in the event of calamities/disasters in the community;

In any case of violation or non-compliance with agreements reached with Indigenous Peoples or in any case of violation of the requirements in ESS 3, there must be a clear and accessible grievance mechanism that affected Indigenous Peoples can access, including but not limited to direct access to the AIIB Project Affected Peoples Mechanism. Technical support for use of grievance mechanisms and/or PAPM must be made available upon request.

Disclosure of information must be required to be in a language and in appropriate forms understood by the affected Indigenous Peoples. The involvement of Indigenous Peoples' representative bodies and organizations must specifically include women, youth and other community members in addition to councils of elders, village councils or chieftains.

Respect for decision-making processes of Indigenous Peoples should be mandatory (and not where applicable) and must ensure respect for the independent and collective decision-making processes free from intimidation, manipulation and any form of undue pressure.

Further, with regards to requirement of unanimity or disagreement within or among Indigenous Peoples affected for FPIC, the draft ESF should be revised as: Customary decision making processes of Indigenous Peoples respect and recognize collective decision of the community resulting in an independent decision free from coercion or manipulation. Conflicting views shall be resolved by community members and the AIIB and the Client shall adhere to the final outcome of the decision making process taking into account the legitimate views and issues raised by community members as bases for their decision.

Finally, if AIIB is unable to ascertain that FPIC is obtained in conjunction with the concerned and affected Indigenous Peoples, it should require the Client not to proceed further with the aspects of the Operation that are relevant to those Indigenous Peoples, or the entire operation and not merely require that the Client ensures the Operation will not have adverse impacts on such Indigenous Peoples.

PERSONS WITH DISABILITIES (PWDS)⁹

The draft ESF must have clear and stringent safeguard provisions for PWDS against all forms of discrimination and barriers related to AIIB Operations; in accordance with the United Nations Commission on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities. Further, the protection of PWDS' access to customary rights and land ownership should be clearly stated in the document.

AIIB should also promote employment of qualified persons with disabilities. The Bank should take affirmative action to ensure that there will be qualified persons with disabilities employed in the Operation.

ESEL EXCLUSION LIST

The AIIB should explicitly exclude all projects that are misaligned with the Paris Agreements 1.5C goal to limit global warming and add these to the Environmental and Social Exclusion List (ESEL, p73). This should include coal, as well as oil and gas – upstream and downstream. Most MDBs include specific exclusions of fossil fuels in their policies, including in the ESF. For example, the European Investment Bank (EIB) has announced that it will no longer support fossil fuel energy from the end of 2021. AIIB management has argued that such issues should be dealt with in the Energy Sector Strategy, but this is not sufficient: other sectors are highly relevant to climate change and so should be addressed in the overarching ESF. In addition, associated facilities and fossil fuels for industrial use should be excluded, such as coal for cement production. Other environmentally damaging projects, such as greenfield large-scale hydropower plants should also be excluded¹⁰.

NO TO NUCLEAR

AIIB Exclusion List fails to have clear and unambiguous prohibitions. ADB states clearly, “The following do not qualify for Asian Development Bank financing...” Whereas the International Finance Corporation (IFC) states clearly that, “The IFC Exclusion List defines the types of projects that IFC does not finance. IFC does not finance the following projects...” On the other hand, the World Bank has “excluded expenditures” and prohibitions.

In the case of AIIB, it states: “AIIB does not knowingly finance Operations involving the following.” In sharp contrast to the other MDBs, AIIB list makes no prohibition on support for:

- “production of or trade in radioactive materials, including nuclear reactors and components thereof;”
- “production or activities involving harmful or exploitative forms of forced labor or child labor” (This is notwithstanding the discussion of prohibition of certain types of labor in the body of the AIIB safeguards but not in the exclusion list.)

In addition, IFC also prohibits support for Financial Intermediaries engaged in “production or trade in wood or other forestry products other than from sustainably managed forests” while the AIIB does not.

⁹ With inputs from [Life Haven, Inc.](#) (Philippines)

¹⁰ Inputs from [Recourse](#).

IFC also prohibits (apparently only for microfinance projects) “production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.”

NO TO COAL FINANCING

The current AIIB exclusion list does not prohibit production of coal-based energy. “In light of commitments such as the recent US-China pledge to ensure that new international finance institutions uphold high environmental and governance standards¹¹, and consistent with the best practices reflected in the coal restrictions of other multilateral development banks and country governments, the AIIB’s Environmental and Social Framework should include an exclusion policy that limits financing of coal-fired power plants to only those that meet an emissions performance standard (EPS) of less than 500gCO₂/kwh.’ Public financing of coal projects may also come in the form of support for the associated infrastructure upon which a coal plant depends, such as mines, ports and rail links, and transmission and distribution networks. Following best international practice on environmental and social risk management, the AIIB should not finance associated facilities specifically designed for mining or transporting coal, or for facilitating the transmission and distribution of electricity from a new coal-fired power plant.”¹²

No to Financing Projects in Conflict Zones¹³

Similarly, financing projects in conflict zones must be included in the AIIB Exclusion List. As it is evident, there is hardly an established rule of law in conflict areas. Thus, investments on procurement, personnel, natural resources, land, labor or infrastructure may all lead to further divisions between the various factions and exacerbate the imbalances in the power dynamics of the proposed project area. Any provision for human rights, environmental standards, labor standards, public participation would hardly bear relevance or traction within the conflict zone context. Since establishing peace and democracy becomes the highest priority; we urge AIIB to set a precedent through absolute disinvestments in conflict zones thereby setting an example for responsible development financing.

BAN ASBESTOS

AIIB, which purports itself as a clean, green and post-Paris Bank, should ban deadly asbestos in all its projects and should no longer hide behind other MDBs in the name of co-financing and alignment¹⁴.

¹¹ On September 25, 2015, the White House released a fact sheet on U.S.-China economic relations that stated: “Both sides acknowledge that for new and future institutions to be significant contributors to the international financial architecture, these institutions, like the existing international financial institutions, are to be properly structured and operated in line with the principles of professionalism, transparency, efficiency, and effectiveness, and with the existing high environmental and governance standards, recognizing that these standards continuously evolve and improve.” <https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-us-china-economic-relations>

¹² Bank on Information Center (BIC). Letter to Mr. Jin Liqun, AIIB President-Designate 23 With inputs from North East Peoples Alliance (India).

¹³ With inputs from North East Peoples Alliance (India).

¹⁴ Inputs from Environics Trust.

CONCERNS OVER DIGITAL INFRASTRUCTURE AND TECHNOLOGY ON LABOR, CLIMATE AND PRIVACY

Regional cooperation, digital Infrastructure, and transboundary projects were key themes being pushed during the AIIB 5th Annual Meeting yet there was no mention of it in the proposed ESF. On the digital infrastructure front, themes discussed included – artificial intelligence (AI), internet of things (IoT), transport, and automation not so much on their impact on the environment, employment, and energy demand. It is being feared that automation in storage and transport will have a direct impact on the unemployment of large masses of human labor, which requires further research and thorough social risk assessment by AIIB.

Consequently, the digital infrastructure projects, such as mobile towers, server warehouses, and automated service points, will all need to be powered and maintained from an energy point of view. The issue of energy systems powering digital technology and infrastructure has to be done in line with the Paris Agreement of 1.5 and therefore requires a much deeper questioning. There is a high probability that without the right energy framework, the digital future strategy may further embed existing fossil fuel pathways. Digital technology issues also have a direct impact on privacy and security. With rising authoritarianism, the use of digital surveillance through digital technology will have a direct impact on democratic freedoms. We are deeply concerned that without ensuring privacy and protection of constitutional freedoms, digital technology will have a detrimental role in increasing further censorship of the press, suppression of critical voices who are seeking to uphold accountability and transparency. The ESF fails to ensure any form of ESP or ESS to the digital sector projects and the new emerging issues of social and environmental impact. We strongly recommend a separate Environmental Social Standard for Digital Sector Projects to be integrated into the ESF.

ENDORSED BY THE FOLLOWING ORGANIZATIONS:

350.org, Asia

350.org, Japan

35.org Pilipinas

Aksi Ekologi dan Emansipasi Rakyat, Indonesia

Accountability Counsel

Alternative ASEAN Network on Burma (ALTSEAN Burma), Burma

Asian Peoples' Movement on Debt and Development (APMDD)

Bank Information Center (BIC) USA

Bangladesh Working Group on External Debt (BWGED), Bangladesh

BothEnds, The Netherlands

Building and Wood Workers' International (BWI), Global

Buliisa Initiative for Rural Development Organisation (BIRUDO), Uganda

Center for Energy, Ecology and Development, Philippines

Centre for Environmental Justice, Sri Lanka

Centre for Financial Accountability, India

Coastal Livelihood and Environmental Action Network (CLEAN)

Community Empowerment and Social Justice Network (CEMSOJ), Nepal

Derecho Ambiente y Recursos Naturales, Peru

Environics Trust Inc., India

E3G (Third Generation Environmentalism)

Finnish Asiatic Society

Food First Information and Action Network (FIAN), Sri Lanka

Foundation for Environmental Management and Campaign Against Poverty (FEMAPO),

Tanzania

Freedom from Debt Coalition, Philippines

Friends with Environment in Development, Uganda

Gender Action

Green Advocates International, Liberia

groundWork, South Africa

GrowthWatch, India

Indian Social Action Forum, India

Initiative for Right View, Bangladesh

International Accountability Project, USA/Global

International Center for Not-for-Profit Law (ICNL)
Jamaa Resource Initiatives, Kenya
MiningWatch Canada, Canada
Network Movement for Justice and Development, Sierra Leone
NGO Forum Cambodia, Cambodia
OTWatch, Mongolia
Oyu Tolgoi Watch, Mongolia
Pakistan Fisherfolk Forum, Pakistan
Progressive Plantation Workers Union (PPWU), India
Réseau Camerounais des Organisations des Droits de l'Homme (RECODH), Cameroon
Recourse, Europe
Rivers without Boundaries International Coalition
Rivers without Boundaries Coalition, Mongolia
Safety and Rights Society (SRS)
Sri Lanka Nature Group, Sri Lanka
Stiftung Asienhaus, Germany
Umeedenoo, Pakistan
Urgewald, Germany
VedvarendeEnergi, Denmark
WomanHealth, Philippines
Youth Group on Protection of Environment, Tajikistan