

A Comprehensive Critique on the Draft Environmental and Social Framework (ESF) of the Asian Infrastructure Investment Bank (AIIB)

By
NGO Forum on ADB

Introduction

The NGO Forum on ADB has been challenging the “development paradigm” of the Bretton Woods International Financial Institutions (IFIs), particularly the Asian Development Bank (ADB), and its effects of widening global inequalities and exacerbating ecological crisis. We believe that the fundamental rights of communities to charter their own path for development; should be the driving force behind any development policies and projects including- infrastructure development. We are determined to safeguard our communities, our people, the commons and the environment. To this end and building on our decades of struggles and campaigns along these principles, we are articulating our concerns on the draft ESF.

While we recognize the extension for the submission of written comments, we strongly reiterate that as a result of the modality and insufficient consultation period and process, the attached submission cannot be considered final. The truncated nature of this “consultation” makes it impossible to ensure sufficient, thoughtful and detailed analysis of the immensely important draft AIIB ESF. If there is a meaningful and face – to – face public consultation period of sufficient length and quality, with documents in the local languages of Asia and provided prior to the consultation period, this would allow for more detailed civil society inputs. Relative to this, we would also like to reiterate our request to meet in person with the Representatives to the Chief Negotiators Meetings (CNM) to comprehensively discuss the draft ESF.

To this end, our concerns are anchored on the following:

- i) What are the legally binding requirements within the ESF which ensure that both the Bank and Client implement and adhere to the ESF?
- ii) What are the mandatory and legally binding conditions whereby the AIIB assesses the “equivalence” of client systems with AIIB requirements in order to ensure that there is not an over-reliance on client self-assessment, self-monitoring, self-reporting?
- iii) What are the ambiguities/ gaps in the text which fail to clearly indicate the possible impacts of Bank operations on communities and the environment?
- iv) What are the clear and mandatory accountability mechanisms which allow affected communities direct access to accountability, prevention and redress of harms?
- v) Where is the commitment to “do no harm” in the ESF? The ESF objectives aim at “managing operational and reputational risks of AIIB” and to “address”, “identify” or “manage” “environmental and social risks and impacts” but fall short of a commitment to “do no harm” as an objective of the ESF.

The urgent concerns in the AIIB Draft ESF are as follows:

PART 1: Environmental and Social Framework

1. Safeguards Policy of other international financial institutions (IFIs) and AIIB Draft ESF

Vision Point 20. Cooperation with Development Partners: *“AIIB aims to promote harmonization of policies with financial institutions....AIIB seeks to cooperate with them (other IFIs) with a view to adopting a common approach to appraisal, environmental and social management requirements....”*

We feel the terms harmonization and common approach do NOT reflect adherence to the highest standards to be implemented in co-financing project scenarios. This may open up a risk of dilution of standards in order to fast track loans to Borrowing Clients. It is important to ensure “upward harmonization” with the highest safeguards.

The ADB’s public consultation process throughout the Asia-Pacific region from 2005 to 2010, which (is far from being a perfect model) has led to the ADB’s existing safeguards and may be an indicative example. The following are some of our recommendations for region-wide consultations:

- The need for a substantial consultation period with affected communities and civil societies and release of draft environmental and impact assessment (EIA) for projects with significant impacts: at least 120 days prior to Board evaluation. This was underscored by the input of affected communities across Asia, underscoring their need for significant time to overcome the many barriers to enable them to process and respond to information on proposed projects which could dramatically impact their lives and livelihoods;
- The need for materials and consultations – including the consultation on this draft – to be carried out in language(s) and manner appropriate to ensure meaningful public consultation;
- The need for clear, transparent, robust, mandatory and time – bound safeguard requirements to be implemented prior to disbursement;
- Clear and mandatory requirements for Financial Intermediaries (FIs) including Category A FI subprojects;
- The requirement that the Bank conducts due diligence and ensures client compliance with environmental and social requirements; and
- Support for strengthening of country systems and, at the same time, clear and mandatory requirements for evaluating and ensuring that prior to use of national systems/country systems/borrower systems, such systems are equivalent in content and implementation to those of the Bank.

2. Role of the Client: Client Systems¹

Vision Point 9. Leading Role of the Client: *“AIIB’s Clients.... are responsible for successful development and implementation of their Operations, including management of the environmental and social risks and impacts of these activities.”* Furthermore, *“AIIB aims to work in a **cooperative manner**- by providing expert advice and **financing consultants**...to support its Clients in integrating environmental and social **aspects** into their Operations” (page 4).”*

¹ Sources include Ecological Justice (Indonesia) and their partners.

The phrase ‘**cooperative manner**’ does not clearly emphasize any oversight mechanism on the Clients with legally binding requirements with checks and balances to ensure environmental and social due diligence and robust ESF implementation. Likewise, further responsibility of the implementation of ESF will be passed on to ‘**financing consultants**’, which has been arguably a failed practice to implement Safeguards both at the ADB and the World Bank.

Vision Point 11. Strengthening of Country and Corporate Systems: *“AIIB may selectively afford the Client the option of using such systems, following its review to assess their proposed application.”*

This assessment by the AIIB **does NOT indicate that equivalency to the AIIB ESF or any other multilateral development bank (MDB) Safeguard Standards will be required.**² The draft proposes an over-reliance on client self-assessment, self-monitoring, self-reporting. There is no clear way for public input into these assessments, including of client track record. The draft repeatedly calls for assessment of client “capacity” or “experience” (vague terms, apparently reported by the client or the AIIB) instead of objectively-verifiable independent and public assessments of client track record - reported by external parties, affected communities, civil society.

It is also worth citing that in Part 2 of the Draft ESF (Environment and Social Policy/Standards), **Point 20 on Due Diligence for FI Operations** places an apparently low level of screening for Financial Intermediaries. This is especially worrisome given the high risks involved with Infrastructure FIs. The AIIB merely assesses an FI’s policies and “capacity” (not “track record”), environmental and social issues “associated with” the FI’s portfolio and measures needed to strengthen policies.

Moreover, **Point 9 on Development Partner Policies** indicates that the AIIB may apply “a co-financier’s environmental and social policies” and “may rely on the co-financier’s determination as to whether compliance with their policies and procedures has been achieved.” If the “co-financier” is an Infrastructure FI, this could put a very low safeguard standard in place, generating significant environmental, social, fiduciary and reputational risks.

The unclear and vague requirements in the draft ESF lead to further concerns about due diligence and fiduciary responsibility of the Board. If the AIIB Board approves a loan based on a borrower’s rather vaguely-worded Environmental and Social Management Plan (i.e. a promissory note to do something “good” but vaguely worded, perhaps “at the discretion of the Bank”, in the future) this appears to introduce new levels of risk. If the borrower fails to implement the unspecified-as-of-Board-approval environmental/social actions, the Board would likely be judged to have failed to implement proper fiduciary due diligence by signing off on a vague “promissory note” and not requiring clear, time-bound, and mandatory measures prior to approval.

A range of countries require parliamentary approval of significant projects, so if (as per the draft ESF) there are vague, non-specific “promises” to do good due diligence at some later, unspecified time; and if Bank Management or the borrower introduce changes in the size, scope or location of the project post-approval, there is no process for ensuring parliamentary oversight of such significant changes.

² With inputs from Centre for Environmental Justice (Sri Lanka).

3. Gender³

The draft ESF has NOT integrated gender dimensions to all standards and procedures. This has not been reflected on **Vision Point 13, Importance of Gender Equality**. There is NO clear guideline/safeguards on land ownership, and gender-based access to customary rights over natural resources and safeguarding against gender discrimination and violence as per United Nations Convention on the Elimination of All Forms of Discrimination against Women (UN CEDAW). The draft does NOT require gender segregated information and data and impacts and risk analysis. This makes project impacts on affected communities not accurately identified.

Gender language is limited to the following: access to finance, services and employment. Addressing gender inequality requires a comprehensive integration into all standards of the ESF and operating procedures.

4. Labor Provisions⁴

In **Vision Point14, Treatment of Labor**, the AIIB does NOT clearly cite or require adherence to International Labor Organization's (ILO) core labor standards at all levels of operations including those of Clients, Associated Facilities and Financial Intermediaries.

PART 2: Environmental and Social Policy and Environmental and Social Standards

5. This section of the draft ESF specifies on the Scope of Application as reflected in Points **7 (Funds Administered by AIIB)**, **8 (Country Requirements)** and **9 (Development Partner Policies)**. In regard to the application of a co-financier's own environmental and social policies and procedures to Operation, the AIIB uses vague terms such as '*broadly consistent*' with ESP and ESS. This **fails to indicate** whether or not the highest standards will apply when it comes to co-financing with other IFIs.

Recommendation: There should be a rewording of this section to clearly indicate the adoption of highest standards for co-financing projects.

6. Project Categorization

Without the release of a complete Operational Procedures and Guidelines, it will be difficult for the Bank to ensure that Categorization of proposed projects will be done through independent reviews and assessments, and with adequate time for public commenting. The absence of these procedures will make it difficult for the Bank to determine which departments/divisions shall categorize a project and formulate the screening method for the assessments.

Upfront Environmental and Social assessments may require a multi-tiered review process before deciding on Categorization. There must be clear oversight and due diligence of AIIB ESF staff in reviewing the assessments prior to Board approval. There should be a clear provision/budget for (multiple) field visits to cross-validate feedback from potential affected communities. We encourage the AIIB to state that project categorization will look at '...direct,

³ Aksi! for gender, social and ecological justice. Letter to Mr. Jin Lique, AIIB President-Designate.

⁴ With inputs from All India Forum of Forest Movements (India).

indirect, cumulative and induced impacts in the Operation's area of influence' and assess risks 'associated with Operation-related existing facilities regarding of the categorization.'

The mitigation measures in the Environment and Social Management Plan (ESMP) do not clearly indicate a binding requirement on the Client in case of non-compliance.

CAT B: Limited number of potential adverse environmental and social impacts. Environmental and Social Assessments (ESA) are assigned in case-by-case basis.

This suggests that there are NO mandatory requirements for EIA or social impact assessments (SIA) for Category B projects. We are very concerned that the absence of 'binding requirements for EIAs and SIAs' will eventually lead to the approval of numerous high risk Category B projects that do not have adequate environmental and social assessments.

To this end **Point 29** further states: "*If AIIB determines that a **Category B** Operation has limited impacts with well-known mitigation and monitoring measures, **AIIB may decide**, in consultation with the Client, that the only required environmental and social assessment instrument is an ESMP.*"

Considering the wide bracket within Category B Projects, this provision that only requires clients to submit an ESMP is grossly inadequate as environmental and social protection from a proposed Operation impact. **Point 29 clearly omits the need for any Environmental or Social Impact Assessment for Category B project prior Board approval.** This exposes the communities and the environment to direct adverse Project Operation impacts without any clear understanding of immediate and long-term harm and consequent damage to life, livelihood and environment. **We strongly urge the AIIB to require binding ESIs for all Category B projects.**

CAT FI: An Operation is categorized as FI if it involves AIIB financing to or through a financial intermediary. **Point 20** indicates ESF requirements on FI projects as "*(a) the FI's existing environmental and social policies and procedures and its capacity to implement them; (b) environmental and social issues associated with the FI's existing and likely future portfolio; and (c) measures necessary to strengthen the FI's existing environmental and social policies and procedures.*"

Yet, there is no provision for further sub-categorization of FI projects into Category A or Category B after the assessment. More details on FI categorization are therefore required (page 9).

Do note in regards to AIIB's broad categorization method listed above for Projects/Operations there is **NO illustrative List for Industries/Types/Sectors as a baseline to screen projects**; although each is subject to independent Screening and Categorization.

Most Chinese banks, for instance, typically classify coal mines as Category A operations, while coal power plants are deemed as Category B. In which case, a coal power plant with known environmental and social risks will push through operation without the adequate assessments. In the long run, the consequences of these Category B projects will lead to a much higher cost in mitigating environmental and social impacts rather than preventing them upfront prior approval.

7. Polluter Pays Principle

ESS1 states: “Key considerations for ESMP preparation include mitigation of potential adverse impacts to the level of **no significant harm and the polluter pays principle**.” This is positive. However, these important commitments are not mandatory requirements and are nowhere found in the goals/objectives section or in any provision pertaining to mitigation (i.e., to undefined ‘acceptable’ levels, then allowing harm to be ‘offset’).

Recommendation: Mitigation to ‘no significant harm’ and ‘polluter pays’ must be mandatory requirements, included in all contracts/agreements. Furthermore it should be a prominent part of AIIB’s goals/objectives and should be found throughout the text in place of the repeated weak and contradictory language on mitigation.

8. Impacts on Vulnerable Groups

Annex 2, ESS1: Identifies **vulnerable groups** in relative detail as including “*vulnerability related to age, gender, disability, ethnicity, indigenous status, gender identity, sexual orientation, religion, economic disadvantage or social status, those below the poverty line, landless, elderly, children, women and children-headed households, refugees, internally displaced people, ethnic minorities, natural resource-dependent communities or displaced persons whose interests may not be legally protected.*”

Unfortunately, the identification of vulnerable groups is undermined because this draft merely calls for the assessment of risks and impacts that “*fall disproportionately on vulnerable groups*” and where they “*may be more adversely affected than others*”, instead of simply stating “impacts that affect vulnerable groups.” In order to be considered, it appears that they must, be impacted more than non-vulnerable peoples.

Recommendation: Remove the term “disproportionately.”

In case of Involuntary Resettlement, **Point 23** indicates that AIIB mandates the Clients to provide a Resettlement Plan or Resettlement Planning Framework (RP, RPF). Similarly, for Operations affecting Indigenous Peoples the AIIB mandates the Client to submit an Indigenous Peoples Plan (IPP) or Indigenous Peoples Planning Framework (IPPF) (pg. 10).

Persons with Disabilities (PWDs)⁵

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.

Vision Point 3. Social Development and Inclusion: “*...It also embraces action to remove barriers against those who are often excluded from the development process, such as women, children and **minorities**, and to ensure that the voice of all citizens can be heard...*”

⁵ With inputs from Life Haven, Inc. (Philippines).

Recommendation: The Vision section of the draft ESF should include, mention and acknowledge people with disabilities (PWDs).

Vision Point 4. Treatment of Labor: *“... (c) having good human resources management and a sound labor management relationship based on equal opportunity, fair treatment...”*

Recommendation: AIIB should 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.

9. Indigenous Peoples and Free Prior Informed Consent (FPIC)

There must be a clear mention of the human rights of IPs as embodied and agreed by nations in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Furthermore, the FPIC is narrowly defined. It invalidates collective consensus and unanimous FPIC by hinting towards disagreements within the IP communities to still validate individual FPICs to represent the consent of the community. This is a clear manipulation of the usage of FPIC and needs to be redrafted.

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.

Thus, we strongly endorse the letter of the Asia Indigenous Peoples Pact (AIPP) to the Bank. We also support the position of other Asian IP groups that had submitted to the ADB before the following position, *“For the purposes of policy application, consent refers to a collective agreement by the affected Indigenous Peoples’ communities, through an independent and self-determined decision-making process undertaken with sufficient time and in accordance with their cultural traditions, customs and practices”*.

It is vitally important to ensure a robust and direct consultation with Indigenous Peoples representatives on the design of ESF safeguards for Indigenous Peoples.

Recommendation: The AIIB must adopt the FPIC definition as per the UNDRIP and make the recommended changes as stated above.

Scope and Application⁶

The scope and application of ESS 3 are contradictory as described in different sections of the draft ESF. Under ESS 1 (P.25), if Indigenous Peoples are present in the area of or are affected by the Operation, the Client is required to describe this in the Environmental and Social Assessment and complement it with the preparation of an Indigenous Peoples’ plan as required by ESS 3. However, under the ESS 3 itself (P.30), the ESS applies (only) if the Operation would directly or indirectly affect the dignity, human rights, livelihood systems and culture of Indigenous Peoples or would affect the territories or natural and cultural resources that Indigenous Peoples own, use, occupy or claim as an ancestral domain or asset. Again, under the Requirements of the ESS 3 (P.30), the Client is required to undertake various actions if the Operation’s screening process has determined that: (a) Indigenous Peoples are present in, or have collective attachment to, the Operation area; and (b)

⁶ Asia Indigenous Peoples Pact (AIPP) and other Indigenous Peoples’ organizations and indigenous rights advocates. Letter to Mr. Jin Lique, AIIB President – Designate. 23 October 2015.

Operation will likely impact on Indigenous Peoples.

The Operation's screening process is the responsibility of the Client and the AIIB, which will require meaningful consultation with and informed participation of affected people and other stakeholders, as required since early preparation process and throughout the Operation. It is however not clear whether it is the Client or the AIIB that determines whether Indigenous Peoples are present in, or have collective attachment to, the Operation area.

Recommendation: The scope and application of ESS 3 should be made uniform throughout the draft ESF. "If Indigenous Peoples are present in, or have collective attachment to, the Operation area" should be a sufficient condition for application of ESS 3. Indigenous representatives from the proposed Operation area and Indigenous experts should be involved in determining whether Indigenous Peoples are present in, or have collective attachment to, the Operation area, as well as in determining the Operation's impacts throughout the Operation design and implementation.

Free, Prior and Informed Consent (Continued Analysis)⁷

The draft ESF (P.31) requires the Client to obtain the FPIC of the affected Indigenous Peoples if the Operation would: (a) have impacts on land and natural resources subject to traditional ownership or under customary occupation or use; (b) cause relocation of Indigenous Peoples from land and natural resources subject to traditional ownership or under customary occupation or use; or (c) have significant impacts on Indigenous Peoples' cultural heritage. The Client is also required to engage with independent specialists to assist in the identification of the risks and impacts of the Operation.

FPIC, for the purpose of the ESS, is established as follows: (a) the scope of FPIC applies to Operation design, implementation arrangements and expected outcomes related to risks to, and impacts on, the affected Indigenous Peoples; (b) FPIC builds on the process of meaningful consultation and will be established through good faith negotiation between the Client and affected Indigenous Peoples; (c) the Client documents: (i) the mutually accepted process between the Client and Indigenous Peoples; and (ii) evidence of agreement between the parties on the outcome of the negotiations; and (d) FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples explicitly disagree.

There is contradictory information if AIIB determines it is unable to ascertain that FPIC is obtained from the affected Indigenous Peoples. The draft ESF states that the AIIB does not proceed further with the aspects of the Operation that are relevant to those Indigenous Peoples (page 14, para. 47) while under the ESS 3, it only requires the Client to ensure that the Operation will not have adverse impacts on such Indigenous Peoples (page 31).

Recommendation: 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 current formulation proposed in P.31 to achieve this is not adequate, and the following important amendments, are at a minimum, required:

⁷ Ibid.

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:

- a) 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;
- b) Development projects must be based on the development priorities of the community;
- c) Monitoring of the implementation agreement which shall be paid for by the AIIB/Client;
- d) Mitigation and resettlement plans for potential risks, if any;
- e) Effective, accessible and gender-sensitive redress mechanisms at the project level with explicit option to use other redress mechanisms;
- f) 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;
- g) Clause for renegotiation of the economic provisions;
- h) List of responsibilities of the company (Client) and the affected community
- i) Inclusive dates/duration of agreement;
- j) Transparency mechanism on transfer and disbursement of funds (from the Bank to the Client);
- k) Detailed measures to protect Indigenous Peoples' rights and value systems;
- l) Detailed measures to conserve/protect any affected portion of the indigenous territories critical for watersheds, mangroves, wildlife sanctuaries, forest cover, and the like;
- m) 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);
- n) 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 Oversight Mechanism. Technical support for use of grievance mechanisms and/or Oversight Mechanism 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.

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

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 to 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.

10. Information Disclosure and Other Issues

Point 48. Information Disclosure: *“AIIB requires the Client to ensure that relevant information about environmental and social risks and impacts of the Operation is made available in a timely and accessible manner.....on its external website.”*

There is NO commitment to ascertain proposed projects are announced X number of days in advance, and X number of days allocated for public consultation and the process that will ensue following each consultation.

Safeguard requirements apparently to be developed on a project by project case, negotiated between the AIIB and the Client and placed in contract between AIIB and Client. There is NO mention in the ESF or NO requirement for any portion of the contract, including safeguard portions, to be made public. So it may be that safeguard requirements differ from project to project and impacted communities have no access to this information. Client performance is solely measured against “obligations set forth in the legal agreement” instead of against all safeguards. Despite safeguards, the draft seems to expect “significant adverse impacts” from AIIB activities – meaning that the mitigation hierarchy is not designed to prevent significant adverse impacts:

Point 49. Monitoring and Reporting: *“AIIB reviews Operation performance against the Client’s obligations set forth in the legal agreement between AIIB and the Client governing the Operation. Monitoring and supervision of environmental and social aspects of the Operation are integrated into AIIB’s supervision plan for the Operation. AIIB monitors the Operation on an ongoing basis until it issues a completion report. In supervising and monitoring implementation of the environmental and social aspects of the Operation AIIB:*

- *Conducts periodic site visits if the Operation has adverse environmental or social risks and impacts;*
- *Conducts comprehensive field-based reviews if the Operation has significant adverse environmental and social risks and impacts.”*

There is NO clear guideline or binding requirement in this Monitoring and Reporting, especially for Clients that are non-compliant with ESMP.

11. Timing of Documentation and Phased Approach

The draft ESF states that all environmental and social documents are required before the approval of the Operation. However, the draft ESF then goes on to state (paragraphs 37 and 58) that Resettlement Action Plans and other important ESIA requirements such as plans for impacts on indigenous peoples may also be developed *subsequent* to Board approval. As the AIIB will be financing large infrastructure projects that may have significant adverse environmental and social impacts, it is essential that adequate due diligence be carried out before *appraisal* of the investment – as is the best international practice -- in order to ensure that the appraisal, itself, is based on complete data and to ensure a significant period of public comment on environmental and assessment, resettlement, Indigenous People's plans well prior to a project coming before the Board for approval.

The absence of a minimum 120-day public commenting period, as required by other IFIs, from the ESF would mean that potentially impacted communities would be denied the ability to respond to and provide detailed input on assessments done by others of likely risks and impacts to their lives and livelihoods and the AIIB's Board would not know at the time of its consideration of the project the full environmental and social impacts, including displacement – including the viewpoints of affected communities -- and costs of mitigation, which must be factored into the economic analysis of the project to determine its viability.

Recommendation: Ensure Resettlement Action Plans, Resettlement Planning Frameworks, Indigenous Peoples Plan and Indigenous Peoples Planning Frameworks are completed prior to appraisal of a project or programme, as is currently the case at the ADB and the World Bank.

12. Exclusion: Forced Eviction and footnote 13 Caveat

Footnote 13 calls for Involuntary Resettlement with the *“avoidance of the use of unnecessary, disproportionate or excessive force”*. We perceive this is not an outright ban on the use of violence to obtain land for an AIIB project and this vague standard appears instead to allow the “necessary” use of force for land grabbing. AIIB ESF in its vague use of terminology has made allowance of the use of violence against local communities. This is completely unacceptable.

Recommendation: We expect a full rewrite of this section clearly indicating that there will be NO ‘use of force’ or any form of ‘coercion’ for land or property acquisition. AIIB at this point is clearly jeopardizing/risking its reputation on the issue of ‘forced eviction’ in this current draft.

13. Unclear Language

There are vague, undefined terms throughout the draft which means that there is no clarity for project-affected communities regarding their rights in the context of AIIB-sponsored projects. For example:

Point 22. Environmental and Social Assessment. *“AIIB requires the Client to assess and prepare its Operation so that it meets the requirements of the applicable ESSs in a manner and a reasonable time frame acceptable to AIIB.”*

14. Deferred Compliance

There is widespread use of deferred compliance, which defeats the process of requiring protective measures prior to implementation. For example, the draft stipulates the following:

- **Point 58. “Use of a Phased Approach”** to safeguards for all categories of projects; and
- Introduces use of an ESMP Framework for cases where impacts are not known – including for projects with IR or IP impacts.

15. ESS1. Biodiversity. Forests. Forest-dependent Communities⁹

Compared to other MDBs, this draft elimination of “no go” zones and all areas, protected areas, critical habitat, natural habitat, can be destroyed. This also includes protected areas i.e., those nationally or internationally designated areas can be harmed as long as “mitigated”. There are very weak rules for “biodiversity assessment” e.g. “consider impacts” instead of “prevent impacts” etc., leading to concerns about substantial harm to communities and their environment. The AIIB can further improve the language on this by recognizing internationally accepted conventions on biological diversity.

The **Objective of ESS1** does not include a “do no harm” commitment. This is of significant concern, given the association of large scale infrastructure investments with significant environmental and social impacts. It is important to ensure a commitment to “avoid impacts” and, where unavoidable, to ensure mitigation so that the affected communities better off than pre-project levels.

The version of a “mitigation hierarchy” in ESS1 is far weaker than that of ESS3. ESS3 has a section titled “Avoidance of Impacts”. ESS1 should have a similar “Avoidance of Impacts” section.

ESS1 on Environmental and Social Assessment Process:

“Apply a mitigation hierarchy in the environmental and social assessment process, by identifying measures to avoid creating environmental or social impacts from the outset of the Operation, or where this is not possible, implementing additional measures that would minimize or mitigate them to acceptable levels and offset or compensate for any potential residual adverse impacts.”

ESS1 on Address Impacts:

“Avoid, and where avoidance is not possible, minimize, mitigate, offset or compensate for adverse impacts and enhance positive impacts by means of environmental planning and management.”

ESS3 on Avoidance of Impacts:

“Avoid, to the maximum extent possible, any restricted access to, and physical displacement from, protected areas and natural resources. Where avoidance is not possible, ensure that the affected Indigenous Peoples communities participate in the design, implementation and monitoring and evaluation of management arrangements for such areas and natural

⁹ Sources include Ecological Justice (Indonesia) and their partners.

resources, and that benefits are equitably shared.”

ESS3 is a more robust commitment than that found in ESS1, which should also commit to: *“Avoid, to the maximum extent possible environmental and social impacts” including “any restricted access to, and physical displacement from, protected areas and natural resources.”*

Compared to ESS3, ESS1 moves directly from avoid to “minimize or mitigate” – “minimize” and “mitigate” do not appear to be in any apparent hierarchical order. ESS1, although it refers to environmental and social impacts, does not ensure the participation of affected communities in design, implementation, monitoring and evaluation of management areas, nor of benefit sharing. The ESS1 mitigation hierarchy should not only clearly be aimed at (1) avoiding harm wherever possible but (2) then ensuring participatory design of methods to minimize harm to a level of no significant harm and (3) for small scale impacts remaining after “avoid” then “minimize” ensure affected communities participate in design, implementation, monitoring and evaluation of mitigation efforts.

Offsets should not be used for critical habitat, including habitat of importance to communities. Currently the “mitigation hierarchy seems to equate “offset” and “compensate” in no particular order. Of concern, also, is the concept of mitigation to “acceptable levels” (“acceptable” to whom?) instead of “to a level of no significant harm”.

It should be noted that “mitigation of potential adverse impacts to the level of no significant harm” and “polluter pays principle” are listed as “key considerations” for “ESMP preparation” in ESS1. Therefore, it would be important to ensure that avoidance of impacts, followed by “mitigation of adverse impacts to the level of no significant harm” are likewise listed as objectives and mandatory requirements of ESS1. *“Key considerations for ESMP preparation include mitigation of potential adverse impacts to the level of no significant harm, and the polluter pays principle. Such plan may take a variety of forms, as determined by AIIB.”* (ESF Draft, page 22)

The 7 components listed for an ESMP are:

- a) *“mitigation measures;*
- b) *environmental and social monitoring and reporting requirements;*
- c) *related institutional or organizational arrangements;*
- d) *capacity development and training measures;*
- e) *implementation schedule;*
- f) *cost estimates; and*
- g) *performance indicators.”*

A Meaningful Consultation and implementation of a consultation plan are not listed as an item within the ESMP 7 – component list and it should be listed as a core component of ESMP design. Meaningful Consultation is referred to after the description of the components of an ESMP and an ESMPF. Unlike the World Bank and other MDBs, there is no requirement to begin public consultation and information disclosure as early as possible in the preparation stage.

Biodiversity (Continued Analysis)

The draft ESF opens the door to the significant degradation of natural habitats, of strong concern to resource-dependent peoples. In the “Environmental Coverage” section, the draft ESF specifies that biodiversity offsets may be used, although “as a last resort.” At the same time, the draft ESF allows operations in critical habitats and “legally protected areas” as long as impacts are “mitigated” (page 23). Conversion and significant degradation of “natural habitats” can occur if “(a) alternatives are

not available; (b) the overall benefits from the Operation substantially outweigh the environmental costs; and (c) any conversion or degradation is appropriately mitigated.” (page 24). The draft ESF proposes that infrastructure operations be located, “where feasible” on land that is “already converted or highly degraded.” The use of the term “degraded” is often shorthand for lands used and occupied by local communities and the declaration of “degraded land” has often been used as an excuse for substantial resettlement operations.

Resource efficiency and the reduction and quantification of Greenhouse Gas emissions are only to occur where “technically and financially feasible” so if a client doesn’t want to bear the cost, this won’t be necessary. Coverage of social risks and impacts include direct and indirect impacts, but not cumulative or associated impacts.

17. Involuntary Resettlement (ESS 2)¹⁰

We fully endorse the critique of Inclusive Development International (IDI) on ESS 2. For AIIB’s commitment towards Involuntary Resettlement to be meaningful, ESS 2 must be significantly strengthened and harmonized with the international human rights law standards governing evictions. The objectives of the proposed ESS 2 are “to avoid involuntary resettlement (IR) wherever possible; to minimize IR by exploring Operation and design alternatives; to enhance, or at least restore, the livelihoods of all displaced in real terms relative to pre-Operation levels; and to improve the standards of living of the displaced poor and other vulnerable groups.”

Yet, these objectives will simply not be met in practice without significantly stronger and more detailed requirements. In its current state, the draft ESS 2 is a hollowed out version of the resettlement safeguards of other multilateral development banks, including the World Bank and the Asian Development Bank.

For example:

- It should be clearly stipulated that baseline socioeconomic studies must be conducted, including on all assets, productive resources and livelihood opportunities expected to be lost or affected as a result of displacement. Baseline data is also indispensable to an evaluation of whether policy objectives have been achieved.
- While ESS 2 calls for the preparation of a resettlement plan or resettlement planning framework, it is essential that the necessary components of these documents are clearly described. The World Bank’s current policy and proposed standards on involuntary resettlement contain this description in an Annex, as does the ADB’s Safeguard Policy Statement, in its Outline of Resettlement Plan.
- In relation to the use of resettlement frameworks, while they may have utility in specific circumstances, where it is impossible to identify the displacement impacts at the time of project approval, ESS 2 must make clear that this should occur in limited circumstances only where absolutely necessary and that a full resettlement plan is required as soon as potential displacement impacts can be identified, for approval by AIIB following a full consultation with affected persons. Experience shows that the use of planning frameworks very often

¹⁰ Inclusive Development International (IDI). Comments on the Asian Infrastructure Investment Bank Draft Environmental and Social Framework. 12 October 2015.

results in a failure to ever develop and implement full resettlement plans, leaving displaced households uncounted and unprotected.

- While ESS 2 requires meaningful consultations with affected persons, host communities and NGOs, it does not specifically require consultations on alternatives to eviction and resettlement.
- While ESS 2 requires support for “the social and cultural institutions of displaced persons and their host population”, and a “social support phase” for highly complex resettlement, much greater detail is needed about what this means and what a process of social support should entail
- While ESS 2 requires clients to improve or at least restore the land-based livelihoods of displaced persons through land-based resettlement where possible, it does not stipulate that replacement land must be of equal or higher quality and productive value as land taken. This detail is critical to preventing impoverishment that so often occurs when displaced farmers are resettled to inferior land that is infertile or otherwise unproductive. While ESS 2 calls for cash compensation for land at replacement value when loss of land does not undermine livelihoods, it does not contain the accepted definition of replacement value, including transitional costs.
- While ESS 2 requires “better housing” at resettlement sites, it should call for “adequate housing” as defined under international law standards. ESS 2 should also require that affected households are provided opportunities to participate in planning and implementation of the resettlement process, including the opportunity to choose from different resettlement site options.
- While ESS 2 requires that resettlement sites have “comparable access to employment and productive opportunities”, it should stipulate that the livelihood opportunities must match the skill-base of those being displaced. For example, affected urban families skilled at running small retail businesses should not be resettled to farming plots on the outskirts of the city or areas where employment in factories is the only option. Fisher folk should not be resettled to areas where agriculture is the only economic opportunity. Additionally, ESS 2 lacks instructive detail on livelihood support to be provided to displaced persons in order to restore or improve their livelihoods.
- While ESS 2 requires clients to “ensure that displaced persons without title to land or any recognizable legal rights to land are eligible for resettlement assistance, it does not clearly explain the type of resettlement assistance that should be provided or the consultative process for providing it.

18. Risks to Community Health and Safety, Working Conditions

This section (page 26) appears to allow adverse risks and impacts on the health and safety of local communities. There is no prohibition on such impacts. The goal is to “avoid, or where avoidance is not possible, to minimize adverse risks and impacts of the Operation on the health and safety of local communities.” This section provides no language mandating full disclosure prior to project appraisal of any “risks to the health and safety of local communities” posed by a proposed project.

The section on Labor Management Relationships in Private Sector Operations does not apply to non-private sector projects. Unlike the IFC and the AfDB, the AIIB ESF fails to require compliance with ILO Core Labor Standards.

19. Grievance Mechanism¹¹

There has been hardly any elaboration on AIIB's Grievance Mechanism in the ESF. Normally MDB grievance mechanisms are based on violations of safeguard provisions. If provisions are not clear, what will grievance mechanism and adjudication process be based on? Grievance Mechanism must be submitted for public comment, given that it is meant to respond to public concerns. The Grievance Mechanism should also ensure that the complainants will be kept anonymous to ensure their safety on the ground. The mechanism should ensure an objective and transparent mechanism where AIIB Management and/or Client will not exert any coercion or bias on the investigation of the complaint. The remedial action to ensue post complaint viability should be participatory, ensuring the complainants with adequate time for assessment and input.

Furthermore, it is important to note that any Grievance Mechanism initiated under ESS1 must not hamper, in any way, the direct access of affected communities and civil society to the overall AIIB Grievance / Accountability mechanisms. Citing CIEL's analysis and experiences and lessons learned on the WB, IFC and ADB models we urge you to develop an accountability framework that incorporates the AIIB Oversight Mechanism and Operational-Level Grievance Mechanisms. Due to the limited consultation period the scope of this submission is limited to: (1) concerns regarding the consultation process; (2) the AIIB Oversight Mechanism; (3) operational-level grievance mechanisms; and (4) ensuring accountability in the use of Country and Corporate Systems.

1) Concerns regarding the Consultation Process on Accountability Mechanisms

In developing the Oversight Mechanism, it is equally important that the AIIB hold meaningful public consultations—particularly with civil society and project-affected communities that will potentially be the users of the mechanism—on the Mechanism's mandate, operating procedures, and guidelines for its staff. This will help establish both the AIIB's and the Oversight Mechanism's credibility and legitimacy.

2) The AIIB Oversight Mechanism

Paragraph 51 of the draft Environmental and Social Policy states that the AIIB will have an "Oversight Mechanism" to which people can submit complaints when they have been adversely affected by the environmental or social impacts of an AIIB-funded Operation. In a footnote, the AIIB notes that the Oversight Mechanism is currently being developed and will be reviewed by the Prospective Founding Members (countries) before the Policy is finalized. As stated above, we encourage the AIIB to hold meaningful public consultations on the mechanism's policy and procedures. To maximize the benefits that an independent accountability mechanism can provide, the AIIB should ensure that the Oversight Mechanism is based on best practices.¹² An accountability

¹¹ Center for International Environmental Law (CIEL), Accountability Counsel and American University Washington College of Law. Letter to Mr. Jin Liqun, AIIB President-Designate. 23 October 2015.

¹² The International Finance Corporation's Compliance Advisor/Ombudsman is often cited as an accountability mechanism that has adopted a number of best practices.

mechanism that is poorly designed or implemented not only diminishes its value to the IFI, but it also risks compounding grievances among affected people and overlooking project deficiencies.¹³

The UN Guiding Principles on Business and Human Rights set forth criteria for best practices among grievance mechanisms:

- **Legitimacy:** The Oversight Mechanism should have an independent governance structure to ensure that the process is fair and has the trust of the affected communities. It should be able to function independently of political influence or pressure from the AIIB's management, whose actions may be the source of grievances. The mechanism should also have sufficient authority to handle grievances and make redress decisions objectively. The Oversight Mechanism must be housed, staffed, and granted authority in a manner that promotes its ability to maintain independence from AIIB management. In this regard, the AIIB should draw from the best practice of members of the Independent Accountability Mechanisms Network, which is composed of the mechanisms established by multilateral and bilateral development finance institutions. For instance, the Compliance Advisor/Ombudsman, the accountability mechanism of the IFC and MIGA, requires post-employment "cooling off" periods for its staff. Notably, the CAO Vice President is independent from the operational management of IFC and s/he is not only prohibited from obtaining employment with the World Bank Group for life, but the selection committee tasked with her/his appointment includes a representative from civil society. Additionally, the Oversight Mechanism's reporting lines can further bolster its independence and effectiveness. The Oversight Mechanism should report findings and recommendations directly to the Board, rather than to Management.
- **Accessibility:** In order to serve as a reliable forum for providing access to remedy, the Oversight Mechanism should be well known to all potentially affected people and provide adequate assistance to help them overcome barriers to accessing it, including "language, literacy, costs, physical location and fears of reprisal."¹⁴ In order to ensure direct access to the mechanism, the filing requirements for complaints must be simple and not burdensome, which is best practice for existing IAMS.¹⁵ To further increase access to the mechanism, the AIIB should include a requirement (for instance in the project loan agreement) that project management clients inform affected people of the existence of the mechanism and its functions. Equally important, the Oversight Mechanism should not impede access to remedy through other means, whether non-judicial or judicial, or require affected people or their representatives to use the Mechanism before pursuing other avenues for remedy.
- **Predictability:** The Oversight Mechanism should have clear and known procedures with timeframes for each stage of the process. The timeframes should be explicit and clearly communicated to potentially affected people, and the mechanism should have a way to monitor that the process and parties are respecting those timelines.

¹³ UN Guiding Principles on Business and Human Rights, *Implementing the United Nations "Protect, Respect and Remedy" Framework*, Principle 31 Commentary (providing, in part, that "[poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process...]").

¹⁴ *Id.* at Principle 31(b) and Commentary.

¹⁵ By way of further illustration, there are no format requirements for filing a complaint to the CAO – other than they be in writing; complaints can be in any language. Additionally, an individual can file a complaint.

- **Equitability:** To ensure that affected people can engage in a process on fair and equitable terms, they must receive non-biased information and advice. Affected people are often not well informed of their rights or options for recourse, and may be severely disadvantaged in their access to resources and information compared to IFIs. In order to facilitate an equitable and fair process and maintain trust, the mechanism should provide information on the process and inform affected people of their right to consult with and be accompanied by counsel and/or advisors at any time during the process. Complainants should have an equal opportunity to review and comment on draft reports as bank management.
- **Transparency:** Transparency is key to building and maintaining confidence in the Oversight Mechanism within affected communities, as well as with shareholders and the general public. Transparency includes keeping parties to a complaint process informed about its progress and reporting to the public regarding the mechanism's activities. The mechanism should maintain a publicly available case register, including an online version, in addition to any other culturally appropriate means of disseminating this information. The complaints registry should publicize information on each complaint filed, whether closed or open. Additionally, Oversight Mechanism communications and materials should be available in multiple languages. The Oversight Mechanism should not require parties to agree to a blanket confidentiality agreement as a prerequisite to participate in the complaint process. However, it should protect the identity of any party that requests confidentiality.
- **Rights-compatibility:** In order to be considered effective and legitimate, the Oversight Mechanism must provide outcomes and remedies that align with internationally recognized human rights. Outcomes and remedies should respect applicable rights under national and international law. Any monitoring and evaluation efforts of the mechanism should also include a review of these outcomes and remedies for their rights compatibility. Further, the Oversight Mechanism should have the mandate to make recommendations to suspend an AIIB-funded project, where there is imminent harm. In addition, the Oversight Mechanism should allow for confidential complaints to ensure that complainants are protected from reprisal or fear of reprisal for filing a grievance. Finally, we recommend that the Oversight Mechanism adopt protocols in place based on best practices to prevent and address reprisals against complainants.
- **A source of continuous learning:** In addition to resolving individual grievances, the Oversight Mechanism can serve a valuable role by providing feedback for the project cycle and the AIIB's operations in general. The AIIB should develop and make public a process for identifying lessons learned from the Oversight Mechanism, implementing improvements, and monitoring progress to avoid harm to project-affected peoples in future projects. There should also be a monitoring and evaluation process of the mechanism itself to verify that it is fully carrying out best practices. Finally, similar to the CAO, the Oversight Mechanism should also have the mandate to analyze, document, and publish lessons learned from cases for both the AIIB and the Mechanism.
- **Based on engagement and dialogue:** The Oversight Mechanism should standardize the public consultation process for review of the design, performance, and monitoring and evaluation of the Oversight Mechanism. This will ensure that it maximizes value to the AIIB in the form of useful feedback and that it meets the needs of communities. The participation of potentially affected communities and the public is critical to the development of a culturally appropriate mechanism that can respond effectively to their concerns and address harm caused by a project.

Based on our experiences, for the Oversight Mechanism to be effective, it must incorporate these criteria and develop appropriate and robust operating procedures that are publicly available. Additionally, the AIIB should conduct public consultations on these procedures.

3) Operational-Level Grievance Mechanisms

The AIIB requires clients to establish Operational-Level Grievance Mechanisms to receive concerns from “people who believe they have been adversely affected by the Operation’s environmental and social impacts.”¹⁶ Of note, the Environmental and Social Policy says that it will receive “concerns” not “complaints” and it does not specify the parameters for what the grievance mechanisms should look like.¹⁷ The Policy says that they have to be “suitable”;¹⁸ however, this remains undefined.

The AIIB’s Environmental and Social Standards (ESS) on Involuntary Resettlement (ESS2) and Indigenous Peoples (ESS3) require the Client to establish a grievance mechanism that is culturally appropriate and gender-sensitive. As highlighted in the overarching policy language, the ESS specifies that the mechanism should be “suitable” for receiving and addressing concerns of operations-affected people. Additionally, it allows for the grievance mechanism to use existing formal or informal grievance mechanisms so long as they are “properly designed and implemented, and deemed by AIIB to be suitable for the Operation.”¹⁹ However, there is nothing in the policy that provides guidance to clients for developing them. The AIIB should develop requirements based on the criteria above for Clients’ operational-level grievance mechanisms.

Without establishing clear requirements in the ESF based on best practice, project-level grievance mechanisms can increase reputational and legal risk, undermine project outcomes, and deteriorate the legitimacy of the AIIB. Accordingly, we strongly discourage the AIIB from relying on operational-level grievance mechanisms, particularly without appropriate precautions.

It warrants emphasis that many of these mechanisms suffer from the following fatal flaws: (1) they are often inappropriate for remedying serious environmental and human rights abuses; (2) they lack independence and the trust of affected communities; (3) there is no oversight or accountability for the mechanism’s actions; (4) they can be used to create barriers to other forms of remedy; (5) they do not provide protection against reprisals; and (6) there is a lack of community consultation and participation in the design, implementation, and monitoring of the mechanism’s process and outcomes.

Furthermore, the draft ESF does not define the roles of the Oversight Mechanism and Operational-Level Grievance Mechanisms. In developing the Oversight Mechanism and requirements for Clients’ mechanisms, the AIIB should ensure that affected people are clearly informed that they have the option to select the mechanism they want to use without any restriction and that they are not precluded from going to both if they so choose, or of switching from the Operational-Level Grievance Mechanism to the Oversight Mechanism at any point in time.

The AIIB should also include provisions to protect complainants from retaliation for raising concerns and complaints. These provisions should include, but not be limited to, allowing for complainants to remain anonymous, if so requested.

¹⁶ AIIB Environmental and Social Policy, para. 50.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ AIIB Environmental and Social Policy, ESS 1, 2, and 3.

4) Ensuring Accountability when using Country and Corporate Systems

Strong Country and Corporate Systems are crucial to ensure the adequate management of environmental and social risks of projects. It is, therefore, critical for development institutions and financial institutions, such as the AIIB, to support the strengthening of these systems in line with international best practices. However, it bears emphasis that many of the countries in which the AIIB will operate have weak regulatory and governance frameworks, insufficient institutional capacity to implement environmental and social policies, and/or the absence of a functioning, independent, and impartial judiciary. We caution against this approach being the default.

Additionally, we have serious concerns about the lack of clarity around the use of Corporate Systems. Our experience has shown that many companies (or clients) involved in developing mega-infrastructure projects, including those financed through financial intermediary lending, have failed to adequately manage the environmental and social risks of projects. Accordingly, reliance on Corporate Systems could lead to weakened protections for the environment and project-affected communities. We caution against this approach.

Where Country or Corporate Systems is used, the AIIB should ensure that the ability of local communities to access accountability is not reduced under this approach. To this end, the policies and procedures of the AIIB and the Oversight Mechanism should be explicit that the use of Country and Corporate Systems does not preclude access to the Oversight Mechanism.

Moreover, we urge the AIIB to provide greater detail on the methodology that will be used to assess a Country or Corporate System,²⁰ along with the measures to monitor implementation. As part of its methodology, AIIB should conduct an assessment of the availability, credibility, independence, and track record of local and national authorities to implement an Operational-level Grievance Mechanism. Where the client does not have a positive track record or where gaps exist in grievance mechanism capacity, this analysis should then inform an action plan to implement and strengthen grievance capacity. This action plan should be in place prior to the appraisal of any project support before using Country and Corporate Systems. Further, the AIIB should provide clear guidelines and practical tools to support grievance mechanism implementation and borrower capacity. Grievance mechanism implementation, including budgetary allocation and capacity building, should also be included in the AIIB's assessment and action plan.

20. Exclusion List

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, 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:

²⁰ See, i.e., World Bank OP 4.00 and Table A1 as an example of a methodology for assessing the equivalence of a borrower system to bank safeguards.

- “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.

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 standards²¹, 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.”²²*

No to Financing Projects in Conflict Zones²³

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.

²¹ 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>

²² Bank on Information Center (BIC). Letter to Mr. Jin Liqun, AIIB President-Designate

²³ With inputs from North East Peoples Alliance (India).