

Comments on Phase 1 of the Environmental and Social Framework Review



28 February 2020

1. Introduction

Inclusive Development International is a non-governmental organization that works to advance social, economic and environmental justice by supporting communities around the world to defend their land, environment and human rights in the face of harmful investment projects. Through research, casework and policy advocacy, we hold corporations, financial institutions and development agencies accountable to their human rights and environmental responsibilities and promote a more just and equitable international economic system.

Inclusive Development International's team has extensive experience working to ensure that development finance institutions, including the World Bank and the Asian Development Bank (ADB), adopt policies to ensure that people required to resettle to make way for infrastructure projects are not forced into poverty. Since 2015, we have been actively engaging with the Asian Infrastructure Investment Bank via public consultation processes and discussing specific project and policy related issues directly with bank management and board members, both during and outside of the bank's annual meetings.

In our 2015 submissions on the current version of the Environmental and Social Framework (ESF), we welcomed the AIIB's commitment to adopting policies for dealing with the social and environmental impacts of its operations. While we found that the ESF incorporates good standards in a number of important areas, we raised concerns about the overall quality and operationalization of the draft in comparison to the policies of the bank's multilateral peers. A number of those concerns still stand, and we therefore appreciate the opportunity to engage in this review process.

2. Note on consultation process

We welcome the two-stage process designed for this review. However, we are again concerned about the overall adequacy of the review process. The review was announced in late January with the deadline for phase 1 set for 28 February. This is already a short window of time for civil society groups to draft their submissions, as this often requires gathering data and inputs from grassroots partners and network members who are geographically spread.

The short period of time for the preparation of submissions was exacerbated by the limited public announcement and outreach about the process. At the time of writing, the consultation process has not been posted on the AIIB home page. In contrast, the consultation for the AIIB's Digital Infrastructure Strategy, which was announced around the same time, features heavily on the bank's website and is the first thing readers see when opening the home page. With the whole process being run in English, and the burden of translation into local languages falling on CSOs, the window for local civil society groups and others to engage in the process is restrictive.

For the above reasons, we have joined calls from our Asian and European partners for the process to be extended in order to allow time for local voices to be heard. We hope that this

request is received positively by the bank, and once again we urge the AIIB in future to conduct meaningful consultations, befitting of a world-class development finance institution.

3. The need for a strong ESF meeting international best practice

According to our assessment of the AIIB's project portfolio, during its first three and a half years of operations, the AIIB approved more category B projects than anything else, accounting for 42% of all projects. This has now begun to shift, with the majority (around 55%) of pipeline projects classified as category A, which pose far greater risk to people and the environment. This shift makes the review of the ESF particularly timely. With the AIIB developing and now taking on more high-risk projects, the need for a strengthened and well-implemented ESF is increasingly important.

Another important shift that has taken place is the move towards more standalone projects. At present, 45% of projects are co-financed, and in the almost four years since the ESF was adopted, it has been applicable to less than half of the bank's portfolio. There is, however, a clear trend towards standalone projects. In its first year, the AIIB approved just two standalone projects. This increased to four in 2017, six the following year, and sixteen in 2019. The bank has also approved nine financial intermediary projects that apply AIIB safeguard policies. In the current proposed project pipeline, standalone projects account for 75% of all projects. Alongside this shift, it is striking that there is an increase in the number of proposed standalone projects that have been classified as category A.

With the bank's approval of more standalone projects, the ESF and the bank's capacity to ensure its implementation will be put to the test. We recommend that, in addition to strengthening the framework, AIIB expand its team of environmental and social specialists responsible for assessing proposed projects, supporting clients to implement the ESF, and monitoring their environmental and social performance.

4. Involuntary resettlement

NGOs monitoring the implementation of AIIB projects have begun to document concerns associated with specific projects; however, given the fact that the bank focused largely on co-financed projects in its early years, there is so far a relatively small set of case studies. We acknowledge that this represents challenges for the AIIB as it goes into the ESF review process, but the case studies that are available and have been shared with the bank provide important data on some of the shortcomings in ESF implementation on the ground. This includes the Bhola gas power plant in Bangladesh, where NGOs have documented evidence that local people were pressured to sell land, compensation rates were unclear and inconsistent, and potentially fraudulent land claims were made by individuals unknown to the affected communities.¹ We urge the bank to carefully review available case studies and ensure that lessons learned from these cases are reflected in the ESF review.

Beyond direct AIIB project experience, the significant environmental and social impacts associated with large-scale infrastructure projects are well-documented, and valuable lessons have been learned in the implementation of such projects at other multilateral banks. It is now

¹ Coastal Livelihood and Environmental Action Network (2018), *Bhola Integrated Power Plant (Bhola IPP) and its Impact on Local Communities: Voices from the Ground: A Civil Society Study Report*. https://www.researchgate.net/publication/328980276_Bhola_Integrated_Power_Plant_Bhola_IPP_and_its_Impact_on_Local_Communities_Voices_from_the_Ground_A_Civil_Society_Study_Report

well recognized that any international finance institution committed to sustainable development must have in place robust policies and procedures to safeguard against the devastating impacts of physical and economic displacement.

The risk remains that the objectives of ESS 2 on involuntary resettlement will not be met in practice without significantly stronger and more detailed requirements than those it currently contains. For example:

- 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 explicitly 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, for example, displaced farmers are resettled to inferior land that is infertile or otherwise unproductive.
- 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
- In line with best practice at other institutions, Resettlement Action Plans, resettlement costs and budgets should be prepared and disclosed in advance of Board approval of a project. For example, the Green Climate Fund requires 120 days’ notice for high risk and 30 days for lower risk projects.
- Under the current ESF, protections apply to Category A projects but only on a “case by case basis” for Category B projects. Category B projects by definition still have adverse impacts on land and livelihoods, and thus the protections should apply. As was the case in the Bhola project, miscategorization is a risk, and this can be avoided by applying provisions of the ESF to both category A and category B projects.

5. Indigenous Peoples

The first draft of the ESF that was released in 2015 required that Free Prior Informed Consent (FPIC) must be obtained in cases where projects would impact upon the land and natural resources of indigenous peoples, cause their relocation or have significant impacts on their cultural heritage. In the final draft of the ESF adopted in 2016, this was diluted to Free Prior Informed Consultation (FPICon). The ESF acknowledges that there is no internationally agreed definition of FPICon, but it is widely believed by civil society groups and indigenous peoples’ movements to be a weaker standard than FPIC. The review of the ESF creates an important opportunity to address this, and replace FPICon with the higher standard of FPIC, as used at other institutions, such as the IFC.

5. Financial Intermediaries

Financial intermediary lending is becoming an important part of the AIIB's project portfolio. Currently, financial intermediary projects make up just under 20% of the AIIB project portfolio. Of these 12 projects, three are co-financed and follow the safeguard policies of other institutions. The remaining nine apply the AIIB's ESF. However, the ESF contains only basic provisions for financial intermediary lending, lagging behind the policies and procedures of its peers. To date, intermediary lending has taken place in a somewhat ad hoc manner as the bank developed its approach, and no documents have yet been published that shed light on the bank's assessment and monitoring processes for this type of lending.

The ESF review represents an important opportunity to enhance the AIIB's safeguards around financial intermediary lending. Other institutions, including the International Finance Corporation (IFC), have learned difficult lessons about the risks of using a "hands-off" approach to financial intermediary lending, after it was revealed that the IFC was exposed to a range of harmful projects across the globe, including coal mines and coal plants.² These lessons should be heeded and incorporated into the AIIB's revised ESF. Inclusive Development International monitored the AIIB's first financial intermediary project, the IFC Emerging Asia Fund (EAF), and although the fund is managed by the IFC and does not apply the AIIB's ESF, it provides important lessons on the risks the AIIB will face in other such projects. We documented a number of issues, including poor information disclosure on the part of one sub-project in Bangladesh, and exposure to coal mining and industrial coal use, poor community consultation, weak grievance mechanisms and unaddressed adverse environmental impacts of a sub-project in Myanmar.³

Inclusive Development International and its partners has communicated with the AIIB several times over the past three years with specific concerns and recommendations regarding financial intermediary lending. These include:

- *Lack of information disclosure:* The AIIB does not include information about sub-projects funded through any client FIs on its website. This leaves potentially affected communities in the dark about their rights to know both who is behind the project affecting them, and that the AIIB's E&S standards should be applied. Though we have heard from the AIIB that it is committed to release information 'within 12 months' of sub-project approval, this is too late to help third parties and potentially affected people to identify and raise concerns up front, and lags behind best practice at other institutions. To address this, the ESF should require time-bound disclosure of sub-project information in advance of approval, in line with best practice at other institutions. The ESF should also require the disclosure of the name, sector and location of higher risk sub-projects on the AIIB website and on the client's website, and disclosure should be required at sub-project sites in a manner that is visible and understandable to affected communities.

² Nezir Sinani, David Pred (2019), *Opinion: Can the World Bank clean up its fossil fuel problem?*, Devex. <https://www.devex.com/news/opinion-can-the-world-bank-clean-up-its-fossil-fuel-problem-95254>

³ For more information see: BIC Europe, *SOMO & Inclusive Development International (2018), Financing development in Myanmar The case of Shwe Taung Cement*. <https://www.inclusivedevelopment.net/wp-content/uploads/2019/01/Financing-development-in-Myanmar-FINAL.pdf> and BIC Europe & Inclusive Development International (2018), *Moving beyond rhetoric How the AIIB can close the loophole on fossil fuels*. https://www.inclusivedevelopment.net/wp-content/uploads/2018/09/Moving-beyond-rhetoric_FINAL.pdf

- *Exposure to fossil fuels:* Though the AIIB aims to be a ‘green’ bank, there is a significant risk of FI investments ending up backing fossil fuels, as evidenced in the case of the IFC Emerging Asia Fund. For example, one client, Summit Power in Bangladesh, has a portfolio that is 100 per cent fossil-fuel based. The AIIB should extend ESF climate provisions for direct investments so that they apply to indirect investments through FIs or other financial instruments, and ensure that the AIIB’s FI portfolio is aligned with the temperature goals of the Paris Agreement on climate change.
- *Delegation of control to FI clients/co-financiers:* The AIIB delegates decision-making around risk classification and E&S management to the FIs in which it invests. This can lead to risks being ignored or overlooked, as has happened at the IFC. The AIIB should therefore commit to actively conducting due diligence, monitoring and supervision itself in high risk sub-projects in order to verify the accuracy of FI clients’ risk categorization. In order to further reduce the risk of harm, the application of AIIB standards should extend to Category B FI subprojects, as well as Category A. A referral list system could be used so that higher risk subprojects are automatically flagged and given higher levels of attention.
- *The need for ringfencing:* The AIIB should implement ring-fencing of FI debt investments to target specific projects that have low environmental and social risk and have clear development impacts.

6. ESG Funds

In December of 2018, the Bank approved its first investment in an “ESG fund”. A further two funds were approved in 2019. These three funds now account for almost 10% of the bank’s portfolio in terms of value (over US\$1 billion). However, unlike all other AIIB investments, the ESF is not applicable to ESG funds. The bank’s board approved a derogation from the ESF for these projects, on the grounds that the ESF is not “fit for purpose” for application to capital markets or debt and equity security instruments.⁴

In place of the ESF, these projects have developed (or will develop) specific ESG frameworks that are “consistent with the spirit and vision of the AIIB’s Environmental and Social Framework”.⁵ These frameworks remain untested and have not been subject to public consultation.

The shortcomings in the quality of ESG ratings systems is well known – our own research at IDI has identified high risk “ESG” projects with serious adverse environmental and social impacts – and the need for strong safeguards around these investments is clear. For example, one research report published by State Street found that “the current state of ESG data – single sourced, low correlation and confusing terminology – is a hindering factor to accurately assessing the credentials of underlying companies and their portfolio-level

⁴ AIIB (2019), *Project Summary Information: Infrastructure Private Capital Mobilization Platform*.
<https://www.aiib.org/en/projects/approved/2019/download/infrastructure-private-capital-mobilization-platform.pdf>

⁵ AIIB (2019), *AIIB Asia ESG Enhanced Credit Managed Portfolio*.
<https://www.aiib.org/en/projects/approved/2018/download/regional/Asia-ESG-Enhanced-Credit-Managed-Portfolio.pdf>

impact.”⁶ In particular, challenges are most pronounced in relation to environmental and social measurements.

The challenges associated with ESG funds mean that a robust set of environmental and social safeguards are required in the same way as any other AIIB-supported project. We therefore urge AIIB to reconsider its approach to ESG funds and use the opportunity of the review to adapt the ESF so that it can be meaningfully applied to these funds and the projects they support. This will help ensure transparency and consistency in the way AIIB-backed projects are assessed, monitored and implemented. Importantly, AIIB’s grievance mechanism should be accessible to people adversely affected by projects supported by AIIB’s ESG funds.

7. Climate change

Despite its commitment to being an innovative and “green” bank, the AIIB has been slow to develop its portfolio of renewable energy projects. To date the bank’s energy portfolio has leaned more towards gas generation projects and infrastructure for energy transmission and distribution than it has to renewable energy projects.⁷ In terms of project value, four times as much funding flows to natural gas projects as to renewables.

There was a shift during 2019, with three renewable energy projects approved, as well as two lending facilities, a climate bond portfolio, and an energy transition fund. However, the bank has yet to live up to its professed green promises. Despite symbolic commitments, the current version of the ESF is weak in terms of concrete measures to mitigate climate change (i.e., reduce carbon emissions), and lacks requirements to consider renewable alternatives, and put in place adaptation safeguard measures for the now inevitable impacts of climate change. The green-gap must be tackled in the ESF review process, with the framework updated to include specific climate targets, consistent with the goals of the Paris Agreement, with clear targets for the percentage of the bank’s portfolio that will focus on climate finance and renewable energy projects.⁸ At a minimum, the AIIB should commit to not financing coal.

8. Disclosure and access to information

A major weakness of the ESF concerns information disclosure. Although it makes multiple references to disclosure, the ESF does not include time-bound requirements for the release of important project documents. This shortcoming was unfortunately not addressed in the Policy on Public Information. Without timely disclosure of project documentation, including for sub-projects via financial intermediaries and funds, potentially affected people and civil society groups may not even be aware of AIIB involvement in a project, and therefore also unaware of entitlements under the ESF and the grievance mechanisms that may be available to them. If project assessment and planning documents are not disclosed in a timely manner and in a format that is accessible to affected people, opportunities to avoid or mitigate harms will be lost.

⁶ State Street Global Advisors (2019), *Into the Mainstream: ESG at the Tipping Point*.

<https://corpgov.law.harvard.edu/2020/01/13/into-the-mainstream-esg-at-the-tipping-point/>

⁷ BIC Europe (2019), *AIIB’s Climate Loopholes*. <https://www.re-course.org/wp-content/uploads/2019/12/AIIB-Climate-Loopholes-Dec-19-FINAL-1.pdf>

⁸ For more detailed recommendations on this issue, see: Bank Information Center Europe, NGO Forum on ADB & Gender Action (2019), *Do No Harm? Recommendations for the review of the Asian Infrastructure Investment Bank’s Environmental and Social Framework*. <https://bic-europe.org/wp-content/uploads/2019/12/Do-no-harm-Recommendationsfor-the-review-of-the-AIIBs-ESF.pdf>

The ESF review presents an important opportunity to address these concerns by following the best practice of other multilateral banks and requiring time-bound disclosure of project related documents. In cases where projects are co-financed, the AIIB should provide links to lead financier websites; at present the vast majority of AIIB project pages for co-financed projects have no links to co-financing partner websites. This should be required by the ESF. In the case of standalone projects, all documents should be posted in a timely manner, as per best practice at other multilateral banks, such as the World Bank and IFC, which disclose project documents for high risk projects 120-60 days in advance of approval.

9. Language at the AIIB

Although it is an Asian bank, the AIIB's Articles of Association state that its working language is English, and the ESF itself is only available in English. Likewise, the policy and rules of procedure for the Project-affected People's Mechanism are only available in English. These crucial documents create the foundation for protecting people from the environmental and social impacts that could in some cases irreversibly affect their lives. As such, it is essential that the bank begins to translate these foundational documents into the languages of member countries, beginning with those countries that are most represented in the bank's project portfolio and pipeline.

With regards to projects, disclosure of local-language documents is inconsistent, and a review of the AIIB approved projects page shows that out of 64 approved projects, only 13 have published documents in local languages. Just 2 of 29 co-financed projects have translated documents posted on their project pages. It may be the case that such documents are available on the page of the co-financier, but for the most part, no links are provided. Standalone project pages provide much more information, and 11 of 19 projects have posted translated documents. In most cases they are summaries of longer English language documents. While there is an encouraging trend for increased project information being posted on the AIIB website, disclosure is inconsistent across the portfolio, which further supports the case for the ESF to include time-bound disclosure and language requirements for project documents.

In order to ensure that the public is fully informed about AIIB projects and policies, and the environmental and social protections the bank has in place, it is crucial that the bank moves beyond its English-centric approach, especially given the fact that so few of its projects are located in countries where English is widely spoken. Given the high portion of projects in India, Bangladesh and Indonesia, these countries represent a potential starting point for translating important Bank policies including the ESF and complaints mechanism. In terms of project document, at the very least, summary documents should always be made available for standalone projects and published or linked on the relevant AIIB project page.

10. Gender

The ESF states that the bank "recognizes the importance of gender equality for successful and sustainable economic development and the need for inclusiveness and gender responsiveness". However, the bank has no dedicated gender policy, and the ESF contains only basic direction for both the bank and its clients when it comes to ensuring projects appropriately consider and mitigate gender-specific impacts and maximize benefits for women and girls. The impacts of infrastructure projects are felt differently by women and girls, and failures to adequately integrate gender considerations in project planning and

implementation can result in missed opportunities to bring benefits to women, and in some cases can cause serious harm.

In India, failures to address important gender considerations in a rural road project supported by the AIIB in Gujarat have been documented and raised with the bank. As stated in one CSO report: “The project did not establish mechanisms for women to inform or shape the project. Many fewer women were hired than men to work on the project. Work sites did not have gender-safe bathrooms or housing facilities for women workers. Project road construction reinforced gender inequalities and violated labour and human rights, especially those of tribal peoples.”⁹ The ESF should be revised to make it a clear requirement that clients promote gender equality and prevent harmful gender impacts in bank-supported projects. Implementation guidance for clients should be set out either in a dedicated standard or within a broader bank strategy on gender. The AIIB must also institute strong measures to prevent sexual and gender-based violence in the projects that it supports.

11. The Project-affected People’s Mechanism

The ESF and Project-affected People’s Mechanism (PPM) are the two main components of the AIIB’s environmental and social accountability system and as such, the two are interdependent. The PPM has now been in place since December 2018, but at this stage remains largely untested. The PPM plays a vital role in ensuring that the ESF is implemented, and that any failures to do so are investigated and addressed. From the early stages of the development of the PPM, the Complaints-resolution, Evaluation and Integrity Unit made clear that it aimed to create a mechanism that was proactive and able to address problems before they become full-blown complaints, whenever possible. One measure that has been put in place is the innovative Project Processing Query (PPQ) option, in addition to the dispute resolution and compliance functions that most other grievance mechanisms have. This aims to enable Project-affected people to obtain rapid resolution of their concerns about simple matters that arise during the environmental and social due diligence stages of a project. A major impediment to the effectiveness of this function is the lack of time-bound and early disclosure. As stated above, the ESF review should bring in such requirements, which will also have the impact of improving the effectiveness of the PPM.

⁹ Programme on Women’s Economic, Social and Cultural Rights (2019), *AIIB’s Roads to Inequality: A gender case study from Gujarat*.
<https://www.pwescr.org/AIIB%20Roads%20to%20Inequality,%20Report%20from%20Gujarat.pdf>