Inclusive Development International

Submission to Phase 2 of the Environmental and Social Framework Review of the Asian Infrastructure Investment Bank

9 November 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 Asian Development Bank, adopt policies to ensure that people required to resettle to make way for infrastructure projects are not forced into poverty. We have also examined IFC's financial intermediary portfolio and identified many controversial projects that received indirect financial support from IFC. We engaged with IFC on this issue, and the bank has since improved its policies and lending practices in this area, closing loopholes that exposed it to destructive investments. Since 2015, we have been actively engaging with the Asian Infrastructure Investment Bank via public consultation processes and discussions on 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. We engaged in phase 1 of the ESF consultation process earlier this year, and are pleased to submit these more detailed observations based on the updated draft circulated in September.

We have noted that the draft ESF is significantly expanded from the original, with new sections added (such as dam safety), existing areas expanded (such as financial intermediaries), and additional text added in several key areas which adds clarity and more precision. In addition to this added detail, the structure of the ESF is improved from the first version and is much more readable. With this in mind, we submit the following focused observations on several key areas.

2. Capital Markets and Environmental, Social and Governance (ESG) Approaches

The AIIB's investments in private capital market projects is a new and developing direction for the bank. Three such projects have been approved so far, worth over $1 billion: the ESG Enhanced Credit Managed Portfolio, Infrastructure Private Capital Mobilization Platform, and Climate Bond Portfolio. The board approved a derogation from the ESF when approving each of the above projects, which instead apply “ESG Frameworks”. Inclusive Development International drew attention to this approach in our phase 1 submission, and we were hoping to see detail in the revised ESF that created increased transparency and ensured alignment with the ESF. Unfortunately, the draft appears to formalize the current parallel approach (2.1.6-2.1.7.), which we believe is not up to the task of preventing harm to local communities and the environment.

The draft ESF states in its Vision section (2.1.2.) that the bank seeks to provide “innovation”. One such area of innovation is exploring opportunities to mobilize private capital for infrastructure. In exploring new approaches, it is crucial that AIIB carefully considers the environmental and social risks and whether it can put in place measures to ensure that AIIB stays true to its principles and commitment to environmental and social sustainability. We believe that this is not possible with regard to capital market operations under the current framework. Below are some of our key concerns, which we believe make the ESG Frameworks currently adopted an inadequate substitute for the ESF:

- **ESG ratings look at institutional track records, not project risk:** ESG ratings do not perform the same function as Environmental and Social Management Systems, which require the application of processes and standards to identify, mitigate and address specific project risks on an ongoing basis. ESG ratings are predominantly based on company policies and disclosures, and often do not capture realities on the ground in project implementation.

- **ESG ratings can be unreliable:** When comparing ESG ratings for the same company across third party ratings agencies, results can differ. As different agencies use different methodologies, ratings for the same company can sometimes diverge significantly. It is also common to find companies linked to highly controversial and harmful projects receiving high ratings due to undue weight given to strong policies relative to a company’s practices and impacts. The industry actors that use these ratings have publicly questioned their reliability. For example, one research report published by the financial services giant 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 impact.”[1]

- **Limited coverage of ESG ratings in Asia:** The bank acknowledges that poor disclosure and data availability has limited the ESG ratings coverage of companies in Asia. As stated in the published ESG Frameworks: “When it comes to norms-based exclusions, it is both difficult to obtain information and to assess what qualifies for exclusion.”[2] We acknowledge that as part of its ESG projects, the bank plans to work with stakeholders to promote better market wide transparency and disclosure, but this is a long-term mission, and in the meantime, approved ESG funds will be actively investing.

- **Limited information on process:** The ESG Frameworks provide basic information on how asset managers will identify and manage portfolios, but key process information is

[1] 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/

[2] Asian Infrastructure Investment Bank (2019), *Asian ESG Enhanced Credit Managed Portfolio ESG Framework - Version 1, July 2019*. https://www.aiib.org/en/projects/approved/2018/_download/regional/ESG-enhanced-credit-managed-portfolio.pdf

lacking. This includes which ESG ratings agencies will be used, and if/how results will be crosschecked and ground-truthed. The basic information provided on the "escalation process" leaves much discretion with asset managers in how they handle ESG performance issues.

- **Limited transparency on investments:** The bank does not plan to disclose specific portfolio investments, and instead will share broad datasets. ESG Frameworks state that the AIIB may "receive enquiries" from individuals or organizations to examine specific ESG issues, but if portfolios are not made public there is no way to know where funds are flowing and therefore no way to assess if any such issues exist. This is contrary to AIIB's commitment to transparency, and the rationale for not disclosing portfolio investments is unclear: we do not see any good reason that the ESG asset manager, and therefore AIIB, should not disclose the underlying companies/securities' issuers in which they invest.

- **Absence of grievance mechanism:** Not only are these projects exempt from the ESF, the draft ESF states that these projects are not subject to the Project-affected People's Mechanism. Even if civil society groups do identify concerns and raise them with the bank, there is no process to formally register grievances and for those grievances to be transparently addressed. In effect the capital market operations exist entirely outside AIIB's accountability system.

It is important to note that the International Finance Corporation (IFC) also has capital market projects through which it works with asset managers to build portfolios. In particular, its Distressed Assets Recovery Program (DARP), through which it acquires non-performing loans with the aim of securitizing them for sale. However, IFC categorises these projects as "FI", its Performance Standards apply and people affected by the underlying assets have access to the IFC's grievance mechanism, the CAO.[3]

We reiterate our recommendation from phase 1 of the ESF consultation and urge the AIIB to reconsider its approach to capital market operations. The use of ESG funds does not replace the necessity for risk management through the application of the ESF, which should be adapted so that it can be meaningfully applied to these funds and the projects they invest in. 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 ESG funds.

Recommendations

Section of draft ESF	Suggested edit/addition
ESP 2.16. Mobilization by development finance institutions of financial resources for infrastructure development through investments in publicly traded securities using environmental, social and governance (ESG) approaches is a new and dynamic	The last sentence should be amended to require capital market operations to apply the ESF. The ESF should be adapted to apply to capital market operations in a similar way that it applies to FI investments. Asset managers should be required to establish

[3] See for example, DARP SPV Altus Regional Facility: "The Project has been therefore classified as a Category FI-2 project according to the IFC Sustainability Policy. The Project will be required to ensure the financing and serving activities supported by the facility are consistent with the requirements of the IFC FI Exclusion List, applicable national laws and, where applicable, the relevant IFC Performance Standards." https://disclosures.ifc.org/#/projectDetail/SII/41035

frontier. The Bank recognizes the importance of applying sound, transparent ESG risk management approaches to these types of investments to facilitate environmentally and socially sustainable investments whose ESG performance can be measured. In view of the special and rapidly evolving nature of this type of resource mobilization, as well as the evolving practice of development finance institutions in applying such approaches, the Bank intends to support operations involving investments in a portfolio of publicly traded securities that adopt ESG approaches by establishing for each such operation a framework against which environmental and social risks can be addressed.	ESMSs and assess and monitor conformity with the ESSs in relation to higher risk companies/projects supported through its ESG funds. In cases where an asset manager's leverage is limited, it should be required to screen such investments against key requirements and objectives of the ESSs and make a "go or no go" decision based on the results of the screening. The screening can take into account but should not exclusively rely upon ESG scores and ratings. Consistency with ESS key requirements and objectives should be monitored for all higher risk investments and leverage used to prevent, mitigate and address problems that are identified, in a manner consistent with the ESSs' key requirements and objectives. As a last resort, when the company refuses to conform to the ESSs, the asset manager should divest and publicly disclose its reasons for divesting, which should be posted on both the asset manager and AIIB websites. In such cases, the company should be barred from receiving AIIB support, including through FIs and capital market operations, until demonstrable changes are made by the company including remediation.
ESP 2.17. The ESG framework would be applied, normally by an asset manager, to a proposed investment of the Bank's funds in publicly traded securities, in order to evaluate and monitor the environmental and social risks and impacts associated with these investments. The asset manager would apply an ESG approach based on an analysis of publicly available information and targeted engagement with securities' issuers, with the objective of enhancing the ESG performance of the beneficiary of the proceeds raised through such capital markets transactions, against established criteria.	The ESF should detail the role of the AIIB in working with asset managers, including the nature of bank staff involvement in reviewing and signing off potential investments. The ESF should explicitly state that asset managers should investigate and utilize information regarding the track record and past conduct of companies/projects it is considering investing in, in order to validate information gathered from ESG ratings agencies and company disclosures.
ESP 3.6. The ESP is designed to apply to Projects, where the financing is governed by private, bilateral agreements between the Bank and the Client that require compliance with specific environmental and social	The ESP should apply with specific tailored provisions included for these types of operations, as has been done for FI operations. The underlined sentence in ESP 3.6 should be amended so that the ESP

undertakings. Bank financings involving investments in a portfolio of publicly traded securities using ESG approaches are different from the types of operations that are covered by the ESP, in that they are governed by the terms of the publicly traded securities established by the securities regulator; the environmental and social assessment of any potential investment is made on the basis of publicly available information; reporting is made to all securities holders in the same manner; and environmental and social performance is more suitably assessed at the corporate rather than asset level, by measuring publicly available ESG information against widely acknowledged benchmarks. For this reason, <u>in lieu of applying this ESP, the Bank would establish for each such operation a specific framework against which environmental and social risks could be addressed consistent with the spirit and vision of the ESF</u>. Each Bank financing for this type of operation would be submitted to the Board of Directors for approval. At the same time, the Policy on PPM would not apply to the operation.	applies as appropriate, including the requirement for asset managers to establish ESF-compliant ESMSs that are equipped to ensure that the key requirements and objectives of applicable ESSs are met by higher risk portfolio companies (as set out above). The last sentence in ESP 3.6 should be deleted. It is crucial that all AIIB investments, including capital market operations, be subject to accessible grievance mechanisms for project affected people. The ESF should require (i) that asset managers have in place project grievance mechanisms, and (ii) that people harmed by portfolio companies that have received AIIB support through ESG funds have access to the PPM.
Addition	The AIIB and asset managers should publicly disclose lists of all portfolio companies and maintain these lists in order to reflect changes in portfolio composition as a result of new investments/divestments. This should be added to sections of the ESF related to disclosure.

3. Financial Intermediaries

Financial intermediary lending has become an important part of the AIIB's project portfolio. Currently, financial intermediary projects account for 17 of 100 approved projects. Of these 17 projects, four are co-financed and follow the safeguard policies of other institutions. The remaining 13 apply the AIIB's ESF.

We are pleased to see that sections of the ESF relating to financial intermediary projects have been expanded considerably. As noted in the ESF Vision section (2.15), the AIIB sees financial intermediaries as "an increasingly important instrument". With this part of the bank's portfolio expanding, it is essential that the bank has in place systems that at least match those of its peers. The current ESF lags far behind AIIB's peers with regards to FIs, but the revisions do much to bring it closer to best practice.

Recommendations

Section of draft ESF	Suggested edit/addition
ESP 5.12.2. The Bank requires the FI to furnish to the Bank for the Bank's prior approval the FI's detailed environmental and social due diligence assessment and instruments for all Higher Risk Activities. If, after the Bank has reviewed the FI's assessment and instruments for a suitable number of investments involving Higher Risk Activities the FI has demonstrated to the satisfaction of the Bank, that the its assessment and management of the environmental and social risks of the Bank-supported activities are sufficiently robust not to continue to require the Bank's prior approval of all Higher Risk Activities, the Bank may require the FI to furnish to the Bank only a subset of such activities for approval. Alternatively, the Bank may exclude Higher Risk Activities from Bank support under the Project.	It should be made explicit that the due diligence assessments and instruments should demonstrate how the sub-project will comply with applicable Environmental and Social Standards; and that the due diligence assessments and instruments should be publicly disclosed.
ESP 5.12.4. In FI Projects where the Bank provides financing for a private equity fund that invests in sub-funds, and prior approval of Higher Risk Activities is not feasible, the Bank <u>may</u> instead require that the fund exclude investments in Higher Risk Activities or that the Bank retain an excuse right to decline to participate in such investments.	In cases where the AIIB is unable to assess higher risk projects by sub-funds, it should ensure that AIIB funds do not go to Higher Risk Activities. Here the word "may" should be changed to "will".
ESP 6.10.4. For Category FI Projects, the Bank requires the FI to develop and apply an appropriate ESMS that is proportional to the environmental and social risks associated with the Bank-supported portfolio, is consistent with this ESP, excludes from Bank support activities covered in the ESEL and incorporates applicable provisions of the ESSs.	This article should make it explicit that it is a requirement for FIs to require, including in financing covenants, that higher risk sub-projects apply the relevant ESSs. The AIIB should also require FIs to apply their ESMS across their portfolios, not just the bank-supported portfolio. This is the position of several other development finance institutions, including FMO and DEG, and would translate into a positive catalytic effect of AIIB's investment by strengthening financial institutions' environmental and social management systems more broadly.

ESP 6.11.4. In some cases, particularly for Category FI Projects or other Projects where the Bank's financing covers all activities of the Client, the Bank may require that the Client use for the Project an environmental and social management system (ESMS) consistent with this ESP. The ESMS excludes from Bank support activities covered in the ESEL and incorporates applicable provisions of the ESSs (see ESS 1, Section 2.13, Environmental and Social Management System (ESMS)).	This should be the approach for all FI projects. Even when FI investments are intended to support particular projects such as SMEs, "ring fencing" is rarely traced and legally enforced, so in effect AIIB funds could be used throughout an FI's portfolio. The AIIB can add value by broadening ESS coverage and advance standards in the finance sector in Asia to improve ESMSs across the board.
ESS1 2.12. Environmental and Social Action Plan (ESAP). If required by the Bank, prepare (or require the beneficiary under an FI Project, as applicable, to prepare) an ESAP setting out: (a) commitments to implement corrective actions to address these gaps in accordance with an appropriate time-bound action plan, in conformity with the ESP, ESEL and applicable ESSs; (b) estimates of the resources required; and (c) responsibilities for implementation of the actions. If required by the Bank under an FI Project, prepare an ESAP to be agreed with the beneficiaries, in order to mitigate identified risks and impacts within their operations in accordance with the applicable environmental and social requirements.	This is an important addition, but should end instead with: "…in accordance with applicable ESS requirements."
ESS1 2.13. Environmental and Social Management System (ESMS). ***ESS1 2.14.*** The ESMS applies to activities within the defined scope of the Project that are supported by the Bank's financing, which could be an identified subset of activities under or component of the Project.	As noted above, ESMSs should apply to the FI's whole portfolio. Both of these provisions should be amended accordingly.
ESS1 2.17. In the case of an FI Project, disclose: • ***ESS1 2.17.2.*** In the case of an FI project involving a private equity fund, the name, location and sector of the Client's portfolio companies supported by the Bank's financing within 12 months following financial closure of the investment; and	Clients should be required to disclose name, location and sector of its portfolio companies and projects as a pre-requisite contract condition for new client on-boarding and for all new project-finance transactions. The 12-month gap in the current draft creates a window during which affected people will be denied access to information and grievance mechanisms. The same rule should apply to all FI clients, not just those that involve

• ***ESS1 2.17.4.*** The ESMS is normally not disclosed.	equity funds. Details of the FI's ESMS should also be publicly disclosed.
Addition	Projects with significant climate change risks should be added to the definition of "Higher Risk Projects".

4. Involuntary Resettlement

NGOs monitoring the implementation of AIIB projects have documented resettlement-related concerns associated with specific projects. 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.[4]

Beyond direct AIIB project experience, the significant socio-economic impacts of displacement 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 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.

We note some positive additions in the ESF, including an explicit requirement on bank clients to address any land acquisition and/or involuntary resettlement that was undertaken prior to identification of the Project for possible Bank financing (ESP 6.5.5). Read alongside paragraph 6.19, which requires remediation measures for environmental and social problems when the AIIB is financing, inter alia, the rehabilitation, upgrading or expansion of existing facilities, these provisions go some way in addressing legacy land issues, a common problem in infrastructure projects. However, as we explain in the table below, we recommend that these safeguards be further strengthened to more clearly align with the objectives of the ESSs.

As we noted in our phase 1 submission, the risk remains that the objectives of ESS2 on involuntary resettlement will not be met in practice without significantly stronger and more detailed requirements than those it currently contains. Unfortunately, we note that our key recommendations are not reflected in the revised ESF and we restate them again here:

- While ESS2 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

[4] 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

land taken. This measure is perhaps the most important in any resettlement policy and practice as it is critical to preventing impoverishment that so often occurs when displaced farmers or herders are resettled to inferior land that is infertile or otherwise unproductive.

- While ESS2 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 involuntarily resettled to areas where agriculture is the only economic opportunity. Additionally, ESS2 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.

Recommendations

Section of draft ESF	Suggested edit/addition
ESS2 6.5.5. Land Acquisition and Involuntary Resettlement Prior to the Project. The Bank requires the Client to address any Land Acquisition and/or Involuntary Resettlement that was undertaken within three years prior to identification of the Project for possible Bank financing and is directly linked to the Project.	As noted, this is a positive addition but requires expansion. Projects that require acquisition of land or natural resources are often linked to resettlement or displacement during the period prior to implementation of the project or bank involvement. For example, a dam site may be identified and cleared years before a borrower presents the project to the bank for appraisal. In some cases, resettlement and displacement will have occurred in anticipation of bank involvement for the specific reason of avoiding compliance with bank safeguard policies. The World Bank Sourcebook on Involuntary Resettlement states: “If resettlement for the project begins before initial discussions with the Bank and the acquisition of the area is directly linked to the Bank project, then the substantive aspects of [the resettlement policy] apply retroactively. In other words, if an area is being cleared in anticipation of, or

	preparation for, a project, [the policy] would apply."[5] It should be made explicit in the revised ESF that in such cases, AIIB's ESS2 applies. During project appraisal, the bank should be required to determine whether displacement has already occurred to make way for the project. When this circumstance arises, the Bank should assess whether the objectives of ESS2 have been met for those displaced prior to approving funding for the project. To the extent that policy objectives have not been met, the implementation of a comprehensive remedial action plan should be required as a precondition to allowing disbursement of funds for the project.
ESP 6.7.1. Associated facilities (Associated Facilities) are activities that are not included in the description of the Project set out in the Legal Agreements governing the Project, but which, following consultation with the Client, the Bank determines are: (a) directly and materially related to the Project; (b) carried out, or planned to be carried out, contemporaneously with the Project; and (c) necessary for the Project to be viable and would not be constructed or expanded if the Project did not exist.	The definition of associated facilities should be amended to include facilities carried out "reasonably" contemporaneously with the Project (to include, for example, a cement factory constructed a year after an AIIB-supported limestone mine has been developed or vice versa). We recommend that last sub-clause (c) be replace with, "necessary to achieve the Project's objectives." This would include, for or example, a situation where the AIIB is financing an energy generation project, and transmission lines are constructed reasonably contemporaneously to the project, but the transmission lines will also transport electricity from a second non-AIIB supported energy project. If an AIIB client controls or has influence over the transmission lines, the AIIB should require the client to apply the ESSs.
ESP 6.19. If the Project involves rehabilitation, upgrading, expansion or privatization of existing facilities, or a merger or acquisition of a business with existing facilities, remediation of existing environmental and social problems may be more important than mitigation and monitoring of expected impacts. In such	The additions here are positive, but it should be made explicit that the aim of remediation measures should be to meet the objectives of the applicable ESSs.

[5] World Bank Sourcebook on Involuntary Resettlement (2004), page 8.

cases, the ESMP focuses on cost-effective measures to remediate and manage these problems, including potential compensation for past social grievances.	
ESS2 1.4. ESS 2 does not apply to voluntary, legally recorded market transactions in which the Client demonstrates to the Bank's satisfaction that the seller has been given a genuine opportunity to retain the land and to refuse to sell it, is fully informed about the Project and available choices regarding the land transaction and their implications, including refusal to sell the land, and there is no evidence of intimidation or abuse of power in connection with the transaction. <u>ESS 2 similarly does not apply to voluntary, legally documented donations of land without payment of full compensation, where the Client demonstrates to the Bank's satisfaction that the donor has been fully informed about the Project and available choices regarding the land and their implications, including refusal to donate the land, and has confirmed in writing their willingness to proceed with the donation; the amount of land is minor and will not reduce the donor's remaining land area below that which is required to maintain the donor's livelihood at current levels; no household relocation is involved; and the donor is expected to benefit directly from the Project.</u> However, where such voluntary land transactions may result in the displacement of persons, other than the seller (or donor), who occupy, use or claim rights to the land in question, ESS 2 applies.	The following should be added: Special care must be taken with respect to voluntary transactions of significant areas of land (for example in the case of large-scale transfers of land for agricultural investment purposes) to ensure: (a) that land and land use rights of all affected people have been respected; (b) that individuals, groups or communities affected by the transfer are informed of their rights, have full access to reliable information concerning environmental, economic and social impacts and have the capacity, including through access to legal advice and representation, to negotiate fair value and appropriate conditions for the transfer of their land; (c) that appropriate benefits-sharing and grievance redress mechanisms are put in place; and (d) that terms and conditions of the transfer are transparent. The underlined sentence should be deleted as it can be easily manipulated, and full compensation should always be provided, no matter how small the loss.
ESS2 2.1.6. Use of Land Aggregators. (a) If the Client wishes to use the services of a local land aggregator or other third party to acquire land needed for the Project, address the proposed process in the LARP and/or LARPF. Any such land acquisition activities are subject to prior Bank approval. The Client may require the third party to pay the costs of land acquisition and compensation; but the Client is required to assume all the other costs associated with the environmental and social impacts of the land acquisition, as	This article should make explicit that third-party land aggregators must abide by ESS requirements, and this should be set out in legal agreements with the third party. It should also make clear that even when a third-party is engaged, responsibility remains with the bank client to ensure full application of the ESS.

required under this ESS 2, including, but not limited to, livelihood restoration and resettlement, and assumes responsibility for establishing and maintaining the GRM.	
ESS2 2.1.8. Establish a suitable Project-level grievance redress mechanism (GRM) to receive and facilitate resolution of the concerns of persons displaced by the Project and inform them of its availability. Scale the GRM to the risks and impacts of the Land Acquisition or Involuntary Resettlement (or both, as applicable). The GRM may utilize existing formal or informal GRMs, provided that they are properly designed and implemented, and determined by the Bank to be suitable for the Project; these may be supplemented, as needed, with Project-specific arrangements. Design the GRM to address displaced persons' concerns and complaints promptly, using an understandable and transparent process that is gender-sensitive, culturally appropriate and readily accessible to all affected people. The GRM may take the form of customary dispute settlement mechanisms, <u>which may entail less reliance on written procedures and more use of verbal reporting channels</u>. Include provisions to protect complainants from retaliation, to be granted confidentiality and to enable them to remain anonymous, if requested. Disclose reports on grievance redress and outcomes in accordance with the applicable provisions of ESS 1, Sections 2.15 through 2.18.	It should be made explicit that when verbal methods are used [see underline], they should *complement* written procedures, and verbal methods should be fully documented by clients.
ESS2 2.1.10. Improve, or at least restore, the livelihoods of all persons displaced by the Project through: (a) where feasible, land-based resettlement strategies when affected livelihoods are land-based or where land is collectively owned; or cash compensation at replacement value for land, including transitional costs, when the loss of land does not undermine livelihoods; (b) prompt replacement of assets with assets of equal or higher value; (c) prompt compensation at full replacement cost for assets that cannot be restored; and (d) capacity building programs to support improved use of livelihood	We reiterate our phase 1 recommendation that this should explicitly state that replacement land must be of equal or higher value, and alternative livelihood options must match the existing skillsets of the displaced.

resources and enhance access to alternative sources of livelihood. Make equally available to all Project-affected people and in a manner adapted to their respective needs, assistance for livelihood improvement or restoration, such as, skills training, access to credit, entrepreneurship and job opportunities and improvement of existing agricultural activities. Include transaction costs in determining compensation. Examine the opportunities for provision of additional revenues and services through benefit-sharing, as the nature and objectives of the Project may allow.	
ESS2 2.1.11. Provide persons displaced by the Project with needed assistance, including the following, as applicable: (a) if there is relocation, security of tenure (<u>with tenure rights that are as strong</u> as the rights the displaced persons had to the land or assets from which they have been displaced) of relocation land (and assets, as applicable), proper housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities and extension of Project benefits to host communities to facilitate the resettlement process; (b) transitional support and development assistance, such as land development, credit facilities, training or employment opportunities; (c) civic infrastructure and community services, as required; and (d) special assistance to woman-headed households and vulnerable households.	Tenure rights *at least* as strong as former rights should be required, but when those tenure rights were insufficient to protect against forced eviction, the tenure rights at the new site should be stronger to provide legal protection against eviction. The term “proper housing” should be replaced with the term “adequate housing”, which is recognized under international human rights covenants.
ESS2 2.1.13. Make persons displaced by the Project who are without title to land or any recognizable legal rights to land, eligible for and provide them with resettlement assistance and compensation for loss of non-land assets, in accordance with cut-off dates established in the LARP. Include them in the consultation process. Do not include compensation to these people for the illegally settled land.	It should be made clear here, or elsewhere in the ESF, that information on the cut-off date and impending eviction should be appropriately publicized. Information regarding the cut-off date, and a warning that persons settling in the project area will be subject to eviction, should be clearly posted around the area in accessible language, and information should be disseminated at regular intervals in written and non-written forms.

ESS2 2.1.17. Pay compensation and provide other Land Acquisition or Involuntary Resettlement entitlements (or both, as applicable) before any related physical or economic displacement under the Project. <u>Take gender issues into account in determining and paying compensation and providing other entitlements. Under circumstances in which national law and tenure systems do not recognize the rights of women to hold or exchange property, make provision, to the extent feasible, for women to gain security of tenure.</u> Include provisions to address loss of livelihood during Project implementation.	AIIB clients should be required to ensure that titles, leases or other land tenure documentation is issued in the names of both spouses, or equivalent. Clients should also be required to pay compensation to both spouses, for example through joint bank accounts.

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, which is recognized in the United Nations Declaration on the Rights of Indigenous Peoples. In our Phase 1 submission we noted that 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. We reiterate this call here.

Recommendations

Section of draft ESF	**Suggested edit/addition**
ESP 7.6. Free, Prior and Informed Consultation (FPICon) with Indigenous Peoples	This should be replaced with Free, Prior and Informed Consent (FPIC), as enshrined in the United Nations Declaration on the Rights of Indigenous People.
ESS3 2.12. The GRM may take the form of customary dispute-settlement mechanisms, which may entail less reliance on written procedures and more use of verbal reporting channels.	It should be made explicit that when verbal methods are used, they should *complement* written procedures, and when verbal methods are used, they should be fully documented by clients.

6. Climate change

Despite its commitment to being an innovative and "green" bank, the AIIB was slow to develop its portfolio of renewable energy projects and the bank's energy portfolio has leaned more heavily towards gas generation projects and infrastructure for energy transmission and distribution than it has to renewable energy projects.[6] We note and are encouraged that the number of projects targeting renewable energy are increasing, and that in the recently adopted Corporate Strategy the bank committed to a 50% target for climate finance by 2025. However, the bank still needs to make progress on putting in place the systems that will ensure it is able to live up to its climate changes commitments and Paris alignment. References to climate change throughout the ESF have increased, which is important, but we are disappointed to see that coal projects have not been added to the exclusion list, as called for by numerous civil society groups, including Inclusive Development International.

7. Disclosure and access to information

Civil society groups have consistently raised concerns about weaknesses in the AIIB's information disclosure policies and practices. The current ESF makes references to the importance of information disclosure, but lacks strong and 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 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.

We note that the revised draft of the ESF includes additional details on information disclosure, which represents a step in the right direction, but as noted below, it is important that these provisions are strengthened and made less discretionary. In addition to the recommendations below, it is imperative that the AIIB continues to improve the level of disclosure on its project pages. This includes publishing all project documents (PSIs and full project documents) and environmental and social documents, regardless of whether the project they concern is standalone or co-financed, and regardless of the type of project. In the case of co-financed and financial intermediary projects, the bank must post documents or at the very least include active links to all relevant documents on co-financier and intermediary websites.

Recommendations

Section of draft ESF	Suggested edit/addition
ESP 4.3. The Client: (a) assesses the Project and its environmental and social risks and impacts; (b) prepares the Project's required environmental and social documentation, in accordance with this ESP and applicable	The reference to "timely disclosure" here and in all other sections of the ESF should be replaced with specific, timebound and enforceable disclosure requirements.

[6] Recourse & NGO Forum on ADB (2020), *AIIB's Climate Scorecard*. https://www.re-course.org/wp-content/uploads/2020/07/AIIB%E2%80%99s-Climate-Scorecard-0720.pdf

ESSs; (c) engages with Project-affected people and other relevant stakeholders, through: (i) timely disclosure of the Project's environmental and social information; …	
ESP 7.2.2. <u>Indicative</u> deadlines for disclosure by the Bank of the draft documentation required to be disclosed by the Client pursuant to ESS 1, *Section 2.16.1*, *Draft Documentation* are: (a) for Category A Projects, 45 calendar days prior to consideration of the Bank's financing for approval; and (b) for Category B Projects, 30 calendar days prior to consideration of the Bank's financing for approval. Depending on the nature and scope of the environmental and social risks and impacts, some financings may require longer disclosure times, whereas others may require shorter lead times. The prerogative to require a longer or shorter disclosure time in particular cases is exercised by the Bank's Management, and the disclosure period so approved by Management is reported to the Bank's Board of Directors.	As is the case at the AIIB's peers, disclosure deadlines should be clearly defined, not indicative. At present this puts broad discretion in the hands of bank management. The term "indicative" should be removed, as should management discretion, and timeframes adjusted to match best practice at other MDBs, such as the World Bank and IFC, which disclose project documents for high risk projects 120-60 days in advance of approval.
ESP 7.2.3. The Bank discloses the documentation referred to in ESS 1, Sections 2.16.2 through 2.16.6 and in Sections 2.17.2 and 2.17.3 in a timely manner following disclosure by the Client.	As noted above, ill-defined terms such as "timely" should be removed and replaced with defined and enforceable timeframes.
ESS1 2.15. Make available the information listed below in Sections 2.16, Environmental and Social Information Disclosed, and 2.17, Environmental and Social Information Disclosed under FI Projects, about the environmental and social risks and impacts of the Project in the Project area during the Project's preparation and implementation. Do so in a timely, accessible, gender inclusive and culturally appropriate manner and location, and in a form and language(s) understandable to the Project-affected people, other relevant stakeholders …	As noted above, ill-defined terms such as "timely" should be removed and replaced with defined and enforceable timeframes.
ESS1 2.16.6. If the Project involves a large infrastructure investment financed directly by the Bank, and if required by the Bank, appropriate information at the Project site	The term "large infrastructure" is subjective and not defined. Additionally, as the AIIB mandate is to invest in infrastructure and "other productive sectors", only publicizing

about the Bank's involvement that is clearly visible and understandable to Project-affected communities and other relevant stakeholders.	AIIB involvement in infrastructure projects is not appropriate. The term "if required by the Bank" is also problematic as it creates broad and vague discretion. This section should be re-written. AIIB involvement in all projects should be publicized in order for affected people to access necessary information and to be made aware of their right to access grievance mechanisms if they choose to.
ESS1 2.18. Disclose the environmental and social documentation: (a) in English together with summaries incorporating elements of this documentation that are relevant to stakeholders, including the Project-affected people, in language(s) understandable to them; and (b) on the Client's website, with the summaries disclosed in an accessible manner in the Project area.	It should also be made clear that all documents should be posted on the AIIB project page. The AIIB has a dedicated disclosure platform which is user-friendly and accessible, this is an important platform for stakeholders seeking project information, and documents (or at least active links to specific client website pages) should also be provided here.

8. Language at the AIIB

Although it is an Asian-led bank, the AIIB's Articles of Association state that its working language is English, and the ESF itself is only available in English. We reiterate our call from phase 1 that at the conclusion of the ESF review process, the document be translated into other languages, starting with those that are spoken in countries where AIIB is most active. 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. In terms of project documentation, at the very least, summary documents should be made available for standalone projects and published or linked on the relevant AIIB project page.

9. 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, are interdependent. The PPM has now been in place since December 2018, but remains untested. One potential reason for the lack of complaints is the lack of awareness about the existence of the PPM. We are therefore encouraged to see explicit reference in ESS1 making clear that publicizing the availability of the PPM is a requirement of the Environmental and Social Management Plan (2.7) and community consultation (2.19), and that clients must share information on the PPM on project level websites and that local level GRMs should publicize the availability of the PPM (2.20).

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. The PPQ aims to enable project-affected people to obtain rapid resolution of 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, however, is the lack of time-bound and early disclosure. As stated above, amendments to the current ESF are a step in the right direction, but more needs to be done to strengthen these requirements and ensure time-bound disclosure in line with best practice, which will also have the impact of improving the effectiveness of the PPM.

Recommendations

Section of draft ESF	Suggested edit/addition
ESP 6.32. Adoption by the Client of a Development Partner's Environmental and Social Policy. If the Client has adopted as part of its own environmental and social management system the environmental and social policies and procedures of an MDB, bilateral development organization, other development finance institution or other international organization, the Bank will permit the use of such policies and procedures, provided that the Bank is satisfied that they are consistent with the Bank's Articles of Agreement and materially consistent with the ESP, ESSs and ESEL, and that appropriate monitoring procedures are in place for the purpose.	This article should add "This does not preclude access to PPM".
ESS1 2.7. Once the Project's risks and impacts are identified and the mitigation hierarchy has been applied, establish the measures to mitigate, monitor and manage the impacts and reflect them in an ESMP (or other document) approved by the Bank. Include in the ESMP the proposed: … • ***2.7.5.*** Provisions for the Project's grievance redress mechanisms (GRM), as well a description of the PPM or other Bank-approved independent accountability mechanism (IAM) and how it can be accessed	An ESMP, including proposed provisions for the project's GRM and a description of the PPM, should be required for all Category A and B projects. For all other projects, a description of the PPM should be presented in other relevant project documentation.

10. Due Diligence

Recommendations

Section of draft ESF	Suggested edit/addition
ESP 5.1.2. In its categorization, the Bank takes into consideration the type, nature, location, sensitivity and scale of the Project, so that the Client's assessment is proportional to the significance of the Project's potential environmental and social risks and impacts.	Categorization should also consider the track record of potential clients.
ESP 5.10.1. The Bank's due diligence responsibilities include, as appropriate: (a) reviewing the information provided by the Client relating to the environmental and social risks and impacts of the Project, and requesting additional and relevant information where there are gaps that prevent the Bank from completing its due diligence; and (b) providing guidance to assist the Client in developing appropriate measures to address environmental and social risks and impacts in accordance with the ESP, applicable ESSs and ESEL.	Due diligence measures should extend beyond information provided by the client. The AIIB should seek a range of views from a variety of sources, including project affected people, civil society groups, and independent third-party specialists such academics, local think-tanks, etc. when relevant.
ESP 10.3. The Bank reviews Project performance against the Client's obligations set forth in the Legal Agreements for the Project. Monitoring of environmental and social aspects of the Project are integrated into the Bank's monitoring plan for the Project. The Bank monitors the environmental and social aspects of the Project on an ongoing basis during Project implementation. In monitoring implementation of the environmental and social aspects of the Project, the Bank …	As part of its monitoring, the bank should obtain the views of affected communities. This should be made explicit in the text of the ESF here.

11. ESF Review

As is the case with current version of the ESF (and the basis for this review), we recommend that a review timeframe be written into the updated ESF. We note that the ongoing review was described by the AIIB as a "focused exercise", as the bank is still developing and has limited experience in the application of the ESF. A more thorough review should be envisioned in the coming years, and this should be made explicit in the revised ESF.