

A joint civil society submission on AIIB ESF review phase one by VedvarendeEnergi (Denmark), Les Amis de la Terre (France), Verein für sozial-ökologischen Wandel (Germany), Infrastructure Monitoring Coalition (Indonesia), Green Alternative (Georgia), Crude Accountability, Bankwatch Romania and with support from Green Voice (China).

## **Comments to Asian Infrastructure Investment Bank's Environmental and Social Framework review – phase one**

**March 20, 2020**

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### **Introduction**

In our view, there are three key elements to the process for the effective and meaningful review of ESF implementation: 1) an opportunity for external stakeholders to provide input on a Terms of Reference or Approach Paper; 2) the appointment of a qualified external consultant to conduct the review, in order to ensure the impartiality, objectivity, technical expertise, and solid understanding of AIIB; and 3) an opportunity for external stakeholders – including the public and especially project-affected people and community - to provide input during the review process.

As the Terms of Reference or Approach Paper of the ESF review were not disclosed to the public despite repeated requests, neither has there been an option for civil society organizations to provide input on the appointment of a qualified external consultant to conduct the review, **the organizations of this submission reiterate that the phase one of the so-called Environmental and Social Framework review fails to factor in the overall framework of public consultation as inscribed in the ESF.**

Consultation with and participation of project-affected people and communities is an integral part of the design of the ESF and its implementation and for this, provide details on how to engage the broader public in improving the design and future implementation of projects AIIB finance.

We are therefore very concerned by how the outright consideration of the rights of project-affected people and communities are undermined in this process, when the Bank decided not to consult in phase one in languages accessible and culturally appropriate to project-affected people across Asia and AIIB project recipient countries, when many of the AIIB's financed projects – both standalone and co-financed - since the ESF came into effect in February 2016 have been documented as not meeting environmental and social compliance by the Bank, and for causing ongoing environmental and social harm.

Thus, in the absence of 1) a clear methodology and 2) public disclosure of assessments and evaluations of ESF implementation since the ESF became effective in 2016, this raises serious concerns about the desired outcome of the review. **Specifically, how does the ESF review best address the inconsistencies of provisions scattered across different policy documents and improve the implementation of ESF at the project level which should be at the core of any such safeguards review.**

### **Key issues highlighted in this submission:**

**Project processing (appraisal)**  
**Use of country/client/borrower system**  
**Involuntary resettlement**  
**Project implementation and quality control**  
**Financial intermediaries**  
**Information Disclosure**  
**Use of security personnel and FPIC**

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## 1. Project processing

The review should evaluate the quality of due diligence documents prior to Board/Bank approval of a project and evaluate due diligence documents for each approved project against each point of the ESFAIIB's own assessments – along with the project documents prepared by the client should be made public as practiced by the ADB and other IFIs prior to Board/Bank approval. In order to assess the quality of project due diligence documents, the AIIB should include in the ESF review the requirements for assessing borrowing countries' legal requirements and institutional capacities in the context of project processing.

**For normal project preparation and review processes, the ADB undertakes due diligence to identify requirement gaps between the borrowing countries' legal framework and ADB's safeguards, and assesses the implementation capacities of executing agencies to prepare social and environmental plans, draft loan covenants, and develop targeted capacity-building measures<sup>12</sup> Such assessments are instrumental in identifying the likely weaknesses of the project documents the client/borrower have prepared, and the mitigating measures as per ESF requirements.**

Quality project processing is key to minimizing adverse and irreversible environmental and social impacts, and when the upstream appraisal is not done properly, not only do infrastructure investments cause harm to the environment and communities, but also risk enabling corruption and indebtedness while serving to purpose to the goal set out by the bank.

**Two prominent deficiencies identified in AIIB project preparation illustrate the need to improve project processing (appraisal) and make public AIIB's evaluation of project documents against each point of the ESF prior to Board/Bank approval.**

- Social issues (as examples):
  - Assessing adequacy of measures to address issues affecting “disadvantaged and vulnerable groups”—women, people with disabilities, children is desperately needed in the ESF review. Gender-disaggregated resettlement action plan and livelihood restoration data has not been disclosed ahead of project approval, as evidenced in the projects in Indonesia and elsewhere.
  - Assessing affordability analysis of services and other infrastructure anticipated, including livelihood restoration and resettlement action plan to guarantee “**at least pre-Project level or better**” required by ESF as an outcome of land acquisition and involuntary displacement necessary for infrastructure. This has been an issue in Beijing Gas, and the so-called “urban improvement” and “urban slum upgrading projects” in Sri Lanka and Indonesia.
- Project categorization: The Directive on Environmental and Social Policy (March 2019) details how the Vice President responsible for Policy and Strategy is responsible for approving E and S categorization and the proposed use of country or corporate system under the project, as well as the environmental and social documentation required for use of such systems. However, the ESF is silent on 1) information disclosure on when the use of country or

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<sup>1</sup> Such assessments are usually limited to the project level and systematic and rigorous analysis of the country system safeguard (CSS) is often lacking.

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corporate system is triggered as required by ESF para. 58, and 2) if the reviews of the country's legal system and the fitness of client's performance as required in para. 52 of the ESS would be disclosed prior to project appraisal (reference to ESF para 58, too). More on this in the 'Information Disclosure' section. Most importantly, **the ESF is silent on the need to change categorization should design change or impacts arising from project implementation lead to averse environmental and social impacts.**

## 2. The use of client/corporate system (*H. Use of Country and Corporate Systems*)

Recognizing that the use of IFI funds often led to larger projects than otherwise possible, and, in many instances omits the serious and environmental and social impacts for the so-called "associated facilities" and "associated projects", therefore, to larger environmental and social risks for local communities, compared to the "no project" scenario. Safeguard policies – such as AIIB's ESF - are designed to guarantee certain internationally accepted standards of environmental and social protection in IFI projects, even if these protections are not provided in national law.

AIIB's project documents – which should entail the full range of environmental and social impact assessments and management plans - do not routinely assess the impacts and mitigation measures in project recipient countries where the national law denies project-affected people and community public consultation and compensation for those without land titles or ownership, thus resulting in violent eviction, involuntary resettlement without consultation and adequate compensation and/or livelihood restoration.

The ESF, however, only requires an undefined type of "review" (components undisclosed) of a client's "practices, capacity and commitment" to achieve "desired environmental and social outcomes" and "in a manner broadly consistent with the ESSs". At the same time, the AIIB requires the client to assess, review and disclose project documentation, without noting AIIB's requirement to assess the equivalency of client's due diligence assessments against the ESF requirements.<sup>3</sup>

➤ **The ESF review should include detailed requirements for the assessment methodology designed to ensure that a borrower system meets the AIIB safeguard requirements and stipulates that client/borrower/corporate system may not be used until assessed and approved.**

The AIIB dedicates a mere five paragraphs (below) to its description of the use of client systems, including scope, due diligence requirements not only for "Country Systems" but also for "Corporate Systems" – a category to which the ADB does not delegate full authority.

ADB Safeguard Policy Statement (SPS) dedicates five pages to the details of assessment of the use of Country Systems, alone (not including "Corporate Systems"), requires public consultation and review of equivalence assessments (and to "seek agreement" on any proposed gap-filling measures) and bans the use of client systems for "highly complex and sensitive projects. The SPS notes that "ADB will be responsible for assessing and determining the equivalence of the Country System Safeguards (CSS) and the acceptability of the borrower's implementation practice and capacity."<sup>4</sup>

The World Bank (OP 4.00, Table A1) has a six-page mandatory check list of due diligence requirements for assessment of borrower systems.

<sup>3</sup> Notes on Asian Development Bank Safeguards in the Context of the Asian Infrastructure Investment Bank's Draft Environmental and Social Framework, Dr. Stephanie Fried, Ulu Foundation (November 2015).

<sup>4</sup> Ibid.

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ADB safeguards, like those of the World Bank, include detailed requirements for the assessment methodology designed to ensure that a borrower system meets the ADB safeguard requirements, and stipulates that CSS may not be used until assessed and approved. The ADB clarifies that legal agreements will allow ADB to suspend the use of CSS and revert to its own if the borrower stops implementing the action plan” (gap filling measures). The ADB notes that “the use of CSS will not obviate ADB’s responsibilities for safeguard review before Board approval of proposed projects” and states that if the CSS is changed in a manner inconsistent with the legal agreement between the borrower and ADB, “ADB’s contractual remedies apply.”

### 3. *Involuntary Resettlement and land acquisition*

Early into its operations and the financing of large scale infrastructure projects in Indonesia, the **AIIB’s Vice President Joachim von Amsberg stated that the bank would take into account land procurement issues more seriously in assessing its infrastructure funding for Indonesia, and that land acquisition was indeed “a pretty challenging issue and quite critical for most infrastructure projects.”**<sup>5</sup>

Four years into AIIB’s operations, civil society organizations and project-affected communities have witnessed and documented evidence of violent and illegal eviction, involuntary displacement and forced loss of livelihoods as the direct outcome of land acquisition required by the projects – both standalone and co-financed.

Research and findings from several projects<sup>6</sup> demonstrate significant gaps with respect to the implementation of the AIIB’s Environmental and Social Framework, which AIIB should have identified during its pre-approval review of the project and during monitoring of the project’s implementation. **AIIB’s July 2019 Project Implementation Monitoring Report states that “the compliance with ESMF of proposed subprojects needs to be verified”, while providing zero data – (“Slum Area Alleviated (Ha)” – blank ) on involuntary resettlement and land acquisition in 2019**, when the Bank’s document and independent investigation confirmed eviction – and subsequent land acquisition – had taken place in several project sites in that year alone. Resettlement action plans – gender-disaggregated as required by the ESF - and the so-called land surveys which are key to the physical and economic restoration were not made public prior to Board/Bank approval of the project.

The AIIB ESF requires compensation for loss of access to resources or restrictions on land use. And that when economic impacts occur as an outcome of Project activities, the Bank is required to “develop and implement a plan to restore the livelihoods of affected persons to **at least pre-Project level or better**”.<sup>7</sup> In the ESMF of one project document<sup>8</sup>, it is stated that "compensation" was only given for one harvest season for agricultural crops and products, which does not meet the requirements of the ESF.

- ESF review must include clear provisions on the disclosure of social-economic impact assessment or project cost benefit analysis in terms of its impacts on communities, gender-disaggregated assessments and livelihood restoration plans for all affected women and men owning, living on or utilizing the area claimed by the project and as defined by the ‘Project’s area of influence’ defined by the AIIB ESF<sup>9</sup>, including

<sup>5</sup> <https://www.urbangateway.org/news/aiib-highlight-land-issues-loans-assessment> (assessed March 2, 2020).

<sup>6</sup> Indonesia: National Slum Upgrading Project and Mandalika Tourism Project (Field findings and reports by the Indonesia Infrastructure Coalition, 2018-2020).

<sup>7</sup> ESS 1: Environmental and Social Impact Management, para. 36 Loss of Access to Assets or Resources or Restrictions on Land Use.

<sup>8</sup> Indonesia: Mandalika Tourism Project

<sup>9</sup> “Project area of influence includes the area likely to be affected by the Project, including all its ancillary aspects, such as power transmission corridors, pipelines, canals, tunnels, relocation and access roads, borrow and disposal areas, and construction camps, as well as unplanned developments induced by the Project (e.g., spontaneous settlement, logging or shifting agriculture along access roads). The area of influence may include, for example, (a) the watershed within which the Project is located; (b) any affected estuary and coastal zone; (c) off-site areas required for resettlement or compensatory tracts; (d) the airshed (e.g., where airborne pollution such as smoke or dust may enter or leave the area of influence; (e) migratory routes of humans,

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those whose livelihood depend (or depended on) agricultural cultivation, livestock raising and merchants/traders, and **at least restore the livelihoods of affected persons to pre-Project level or better as required by ESF. Such assessments should be disclosed prior to Board/Bank approval of the project.**

AIIB's ESF defines involuntary displace as the follows: “..**physical displacement** (relocation, loss of residential land or loss of shelter) and **economic displacement** (loss of land or access to land loss of assets or access to assets, income sources or means of livelihood) as a result of: (a) involuntary acquisition of land; or (b) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers such displacement whether such losses and involuntary restrictions are **full or partial, permanent or temporary (ESS 2 and 3).**

**As part of its due diligence**, the AIIB reviews the Client's environmental and social assessment and documentation in order to determine the extent to which a) **all key potential environmental and social risks and impacts of the Project have been identified**; b) effective measures to avoid, minimize, mitigate, offset or compensate for the adverse impacts are incorporated into the Project's design and ESMP (para. 17).

- As land acquisition required for infrastructure projects is most high-conflict and high-risk , and has been documented to leave project-affected communities worse off than the “no project scenario”, the review needs to retain the current ESF requirements on involuntary resettlement and evaluate Client's assessments against ESF requirements and the Bank's assessments prior to Board/Bank approval of the project.

#### 4. Project implementation, and quality control.

The “project implementation monitoring reports” for sovereign projects available on AIIB's website do not consistently report on ‘environmental and social compliance’ against the requirements of ESF, even though the reports often note the need to integrate certain action plans in order to remedy the environmental and social impacts. This is very worrying considering how in many AIIB projects – irrespective of the sector – in Asia are causing involuntary resettlements, land acquisition, thus making the most vulnerable of communities homeless and poorer as a result.

The review should evaluate the quality of Bank supervision of stand-alone and co-financed projects. Guiding questions should include:<sup>10</sup>

- Is the frequency and intensity of project monitoring sufficient to ensure ESF implementation?
  - Is the extent of support from E&S specialists on field visits sufficient to support clients in ESF implementation?
  - What are the challenges in producing and releasing regular project monitoring reports, and how can they be addressed? (e.g., [2014 ADB safeguards operational review](#) found that **low quality of consultants and clients' reporting resulted in significant staff time needed to improve reports before publicly disclosing the reports, resulting in delayed public disclosure**).
- **The AIIB ESF review should include ‘Adequacy of ESMS and application of ESMS’ in high-risk projects, both prior to Board approval and during project implementation.**

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wildlife or fish, particularly where they relate to public health, economic activities, or environmental conservation; and (f) areas used for livelihood activities (hunting, fishing, grazing, gathering, agriculture, etc.) or religious or ceremonial purposes of a customary nature.”

<sup>10</sup> Note on ESF Review, Elizabeth Summer (Bank Information Center) and Wawa Wang (Verein für sozial-ökologischen Wandel), January 2019.

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It is critical to increase of capacity and human resources: The review should evaluate the opportunities to strengthen Bank and client capacity for meeting the requirements of the ESF and advancing the ESF's vision for sustainable development. Guiding questions should include:<sup>11</sup>

- How are staff and clients identifying best practices to ensure consistent and effective ESF implementation? Is there a need for more detailed guidance for staff and clients on implementing ESF?
- How is client capacity being built to ensure consistent and effective ESF implementation?
- Are there adequate staff resources within AIIB to conduct E&S due diligence and oversight, and are additional training and resource documents needed?

## 5. Financial Intermediaries

A Financial Intermediary (FI) essentially assumes the role of a public financial institution and acts as an extension of the institution, yet often safeguard policies and disclosure requirements do not fully apply to FI projects. **AIIB's ESF currently do not have any requirement for disclosing, publicly, the name, location, and other critical information about all portfolio companies or subprojects. This has created tremendous loopholes, and as a result, affected people and community have been left without access into information and remedy, without being able to identify 1) source of FI funding, 2) safeguards requirements that apply to the projects, and) accessing both project-level grievance mechanism and AIIB's accountability mechanism.**

- **For Category FI projects, the ESF review should describe provisions for disclosure of sub-projects, and specifically reference the requirement noted in the following section 'Information Disclosure' regarding a 120-day disclosure period for Category A sub-projects**

To date, the AIIB has not disclosed any assessments on how it appraises potential FI investments, or the details of FIs projects and sub-projects. The AIIB "delegates to the FI the decision-making on the use of the Bank funds, including the selection, appraisal, approval and monitoring of Bank-financed subprojects". **The ADB, in contrast, assists Financial Intermediaries with appraisal of any subprojects with potential for significant environmental or social impacts, and must review due diligence information and determine additional information needed. Borrower are required to submit EIA, resettlement plans and IPPs to ADB for management clearance prior to subproject approval, etc. The ADB's standard safeguards apply, including the 120-day public comment requirement for projects with significant impacts.**

*15. Where the subprojects financed by the FI using ADB funds, through either credit-line, other loans, equity, guarantee, or other financing instruments, have potential for significant environmental or social impacts, the FI will be required to ensure that such subprojects **meet ADB's requirements specified in Safeguard Requirements 1–3, including information disclosure and consultation.** In such cases, the FI will refer these subprojects to ADB early in its due diligence process. ADB will assist the FI with the appraisal of these subprojects. ADB will review the due diligence information collected by the FI, determine any additional information needed, assist with determining appropriate mitigation measures, and specify conditions under which the subprojects may proceed. For such subprojects, the borrower/clients will submit EIA, resettlement plan and/or IPP to ADB for clearance before subproject approval. ADB may also set additional requirements for the FI's activities more generally depending on the its portfolio and the host country's safeguard systems. ADB will monitor the FI's performance on the basis of its environment and social management system<sup>12</sup>.*

<sup>11</sup> Ibid

<sup>12</sup> Ibid, Appendix 4, para 15, p.68

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### **ADB Requirements for Category A FI subprojects, 120 day requirement:**<sup>13</sup>

*“Where the subprojects financed by the financial intermediary using ADB funds, through either credit-line, other loans, equity, guarantee, or other financing instrument, will likely be classified as category A for any of their environment, involuntary resettlement, or Indigenous Peoples impacts, the ESMS incorporates relevant provisions that such subprojects meet ADB’s requirements specified in Safeguard Requirements 1–3 in addition to national laws and standards. In such subprojects, the project team requires the financial intermediary to refer those subprojects to ADB early in its due diligence process. The operations department assists the financial intermediary in appraising these subprojects. ADB (i) reviews the environmental and social information collected by the financial intermediary, (ii) determines any additional information needed, (iii) assists with determining appropriate mitigation measures, and (iv) specifies conditions under which the subprojects may proceed. For such subprojects, **ADB clears the EIA, resettlement plan, and/or IPP before subproject approval, and the project team ensures that the following documents are made publicly available: (i) the draft EIA report at least 120 days before the approval of the subproject, and (ii) the draft resettlement plan and draft IPP before the approval of the subproject.**”<sup>14</sup>*

## **6. Information Disclosure**<sup>15</sup>

The AIIB’s standards on transparency and public access to information are of key importance. They are the foundation stone of accountability to the Bank’s shareholders and the public. The time-bound public release of draft environmental and social assessments and resettlement plans is indispensable to public consultation processes and obtaining input from affected communities and other third parties to minimize project risks, reformulate its design or find alternatives. Transparency of detailed project information is also essential to preventing that large-scale infrastructure investments turn into swamps of corruption and mountains of debt, while serving little or no purpose.

**We reiterate our previous concerns that the current language in AIIB policies – ESF, PPI, the Directive on Sovereign-backed and Non-Sovereign Backed Financing – have inconsistent approach to project information disclosure.** It will be critical for the ESF review to provide clarifications about the Bank’s implementation of these obligations.

Certain kinds of information such as those related to personnel and business confidentiality are not made public and this is justified and common practice. However, on the **specific location** (commonly referred to as “sub-projects” or “project sites”) and **details about projects, including their direct and indirect environmental and social impacts, do not fall into this category.** There can be no justification to keep this type of vital information confidential. However, to this date, the AIIB has failed to disclose specific location and project sites for a number of projects – including but not limited to – such as the Regional Infrastructure Development Fund (Indonesia), the National Investment and Infrastructure Fund (NIIF), Beijing Coal-to-Gas (China), National Slum Upgrade Project (Indonesia).

**The AIIB’s approach to public access to information is scattered in two main policy documents, none of which provides the needed clear-cut rules:**

<sup>13</sup> For ADB Category A FI sub-projects, environment and resettlement planning documents and frameworks are available:

<http://www.adb.org/Projects/summaries.asp?query=&browse=1&ctry=ALL&type=5&year=ALL>

<sup>14</sup> See, “Top Four Minimum Disclosure Requirements for Financial Intermediaries and Associated Subprojects”, Ulu Foundation and NGO Forum, July 8, 2010 and “IFC’s draft revised Sustainability Policy and Performance Standard: Comments on Financial Intermediaries”, Bank Information Center – CIEL – Ulu Foundation, June 17, 2010

<sup>15</sup> Analysis of AIIB’s Public Information Policy by Dr. Korinna Horta and Wawa Wang ([www.vsow.eu](http://www.vsow.eu)), December 2019.

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(1) The Environmental & Social Framework (ESF) of 2016 includes two paragraphs related to information disclosure. Paragraphs 57 and 58 of the ESF refer to information disclosure requirements by the client and by the AIIB respectively. While they contain the right vocabulary, they do not include the essential time-bound requirements for the public release of documents, such as environmental and social impact assessments. Instead they call for the “timely” release of documents. In the case of sovereign-backed loans this ought to occur prior to appraisal, while loans to the private sectors should do so **as early as possible during appraisal** according to the Environmental and Social Framework approved in February 2016.<sup>16</sup>

However, in February 2019, a technical amendment to these paragraphs, which was decided on behind closed doors, further weakened their already vague provisions.<sup>17</sup> The amendment now instructs the client to make information public **“as soon as it becomes available.”** This is a further downgrade from the previous provision of publishing information **prior to appraisal** (public sector loans) or **as early as possible during appraisal** (private sector loans).

Furthermore, the technical amendment allows Bank management to postpone disclosure to an undefined future date in situations such as commercial sensitivity or where the financial worth or assets of a corporate entity could be affected.

(2) The Policy on Public Information (PPI), which adopted in September 2018, does nothing of the sort. It again contains all the right buzzwords and emphasizes its intention to provide a maximum of disclosure and transparency. But the PPI is a “principles-based” as opposed to a “list-based” policy. This means that it is focused on overarching principles and on listing exceptions of where the principles do not apply. It does not include a list of specific documents to be disclosed and the timing of the disclosure.

## **7. Use of security personnel and disclosure of security management plan and the Free, Prior and Informed Consultation for Indigenous Peoples**

The ESF requires meaningful consultation with communities and Indigenous Peoples to be “undertaken in an atmosphere free of intimidation or coercion”, although **unlike the other IFIs which have clear provisions on Free, Prior and Informed Consent, the AIIB ESF is silent on the need for consent. The AIIB’s ESF’s ‘FPIC Consultation’ therefore undermines the best international practices for FPIC and needs to be corrected.**

The ESF also requires that special attention is to be paid to “the needs of vulnerable groups, the landless, and those without legal title to land, and ensure their participation in the consultation”<sup>18</sup> and such an objective cannot be achieved without the ‘consent’ of indigenous peoples.

On the use of security personnel, the ESF requires **“assessments of risks posed by the security arrangement to persons within and outside the Project site and monitoring of Project Security workers.”** The Client is required to **“disclose security arrangements for the Client’s facilities to the public”**.<sup>19</sup> In 2018 and 2019 independent civil society organizations have through monitoring activities video documented violent eviction and excessive use of security forces within the project area of influence and brought these incidents to AIIB’s attention. The AIIB management has to date not been able to disclose data or methodology for confirming there had been no use of security forces and simply issued a blanket statement.

<sup>16</sup> AIIB, Environmental and Social Framework, Paragraphs 57 and 58, February 2016.

<sup>17</sup> <https://www.aiib.org/en/policies-strategies/download/environment-framework/Final-ESF-Mar-14-2019-Final-P.pdf>

<sup>18</sup> ESS 2: Involuntary Resettlement and ESS 3: Indigenous Peoples.

<sup>19</sup> ESF Para 43.