



Recommendations on the Asian Infrastructure Investment Bank Environmental and Social Framework Consultation

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General Comments

Oxfam welcomes the opportunity to comment on the draft Environmental and Social Framework ('ESF'). We commend the Asian Infrastructure Investment Bank ('AIIB') for putting in place environmental and social requirements that guide its investments. We also welcome that the AIIB has taken the step to seek public comments on the draft framework. Environmental and social standards and consultative processes are key to ensuring responsible successful investment.

The draft framework and the consultation process are a step in the right direction. However, Oxfam believes that the AIIB has an opportunity to enhance its processes and ultimately its investment outcomes by further integrating best practices for social and environmental impacts and by further expanding its consultation process on the draft ESF.

The draft ESF treats environmental and social impacts as operational and reputational risks that the AIIB seeks to mitigate (para 4), although it does recognise the benefits of social inclusion (para 7). Environmental and social safeguard policies have traditionally been treated as risk mitigation approaches by investors. However, there is growing recognition that sound environmental and social practices are crucial for successful investments and long-term sustainable project outcomes. Oxfam encourages the AIIB to consider the benefits of environmental and social policy requirements in supporting long-term project outcomes.

Consultation Process

The ESF emphasises the importance of consultations in relation to social and environmental impacts. This is welcome. Considering the process in regard to the draft ESF, however, the AIIB's approach to consultations raises concerns. While it is understood that the AIIB may want to trial new innovative methods, such as video conferencing adopted in the commenting process on the draft ESF, there are established practices which must be upheld in order to conduct meaningful consultation. These include:

- timely information about the consultation process and consultation on timelines and format
- timely release of all relevant draft documents
- translation of draft documents into key languages and formats suitable for affected/involved stakeholders
- transparent and mutually agreed record-keeping and transcripts of consultation proceedings and comments provided.

1. Recommendation:

Expand the consultation process to include face-to-face meetings between AIIB management and multiple stakeholders, including governments, private sector, civil society organisations and indigenous

peoples representatives. Translate the draft into key languages to be identified in consultation with governments and civil society organisations. Provide drafts of the operational procedures, without which the framework cannot be fairly assessed. Extend the date for providing written comments on the draft ESF and allow for commenting on the draft operational procedures.

Involuntary Resettlement

The inclusion of a standard on involuntary resettlement in the draft ESF is welcome, given the potential of large infrastructure investments to require the economic or physical displacement of affected populations. At present, while there is encouraging language in the draft ESF, there are several worrying loopholes which would leave affected communities at risk of impoverishment.

Additionally, moving beyond a risk management approach - which aims to protect communities from harm - to a framework which also seeks to improve development outcomes, should entail further measures to support and improve the tenure security of poor and marginalised groups. Security of tenure is a crucial foundation for poverty reduction and the enjoyment of rights, including the right to an adequate standard of living, the right to adequate housing and the right to food.¹

The following recommendations seek to address each concern – both to ensure the Safeguards offer adequate protections and promote tenure security.

2. Recommendation:

The draft ESF Standard 2 (“ESS2”) should explicitly include the objective to strengthen, secure and prioritize the tenure rights of vulnerable and marginalized people and to promote more equitable use of, access to and control over land, housing and natural resources, with particular attention to the rights of women. Some measures to enable this include²: a tenure security assessment; participatory and transparent identification and recording of all existing forms of tenure, including tenancy and subsidiary use and access rights, within the project’s area of influence and an action plan for the conferral of legal security for the range of existing forms of tenure and, in cases in which it is necessary to meet the objectives of these safeguard measures, the legal recognition of the tenure rights of each affected person, household or community. The means used to confer legal tenure security should, to the fullest extent possible, be based on tenure systems that are familiar to affected persons and locally legitimate as well as legally valid. Measures to promote and secure women’s tenure rights regardless of their marital, civil or social status with the aim of achieving non-discrimination and gender equality in land tenure systems.

Loopholes in the protections afforded in draft ESF Standard 2

The current draft ESS2 is restricted to economic or physical displacement caused by: (a) involuntary acquisition of land; or (b) involuntary restrictions on land use or on access to legally designated parks and protected areas. Such a limited scope of application will leave millions without the assurance that their livelihoods will be improved or at least restored following displacement – and therefore vulnerable to impoverishment. For example, people who are physically or economically displaced due to the downstream impacts of dam construction, such as fisherfolk, would not be covered under the current ESS2. The experience of displacement for affected people is no different, and the protections set out

¹ See: Committee on Economic, Social and Cultural Rights, General Comments 4 (1991) and 12 (1999); and “Access to Land and the Right to Food”, Report presented to the 65th General Assembly of the United Nations by the Special Rapporteur on the Right to Food (A/65/281), 21 October 2010.

² For a fuller exploration of measures which could help to ensure stronger tenure security for affected populations, please see: Inclusive Development Internal and Oxfam, A Proposal for New World Bank Safeguards on Tenure of Land, Housing and Natural Resources April 2013, http://www.inclusivedevelopment.net/wp-content/uploads/2013/04/World-Bank-Tenure-Safeguards-Submission_FINAL.pdf

under ESS2 are necessary to restore their livelihoods and living standards. In addition, resettlement under the draft ESS2 does not have a sustainable development objective, nor does it refer to benefit-sharing - as in current best practice.

3. Recommendation:

Extend the application of ESS2 to all those who are physically or economically displaced by Bank-assisted projects and programmes. Include an explicit benefit sharing and sustainable development objective in the provisions of ESS2.

Grievance Mechanism

The draft ESF does not currently provide adequate information about the AIIB's plans for its grievance mechanism. It is vital to elaborate these plans further and allow public comment, in order to ensure that from the start of the Bank's operations, affected communities have the opportunity to raise grievances – both to ensure redress, but also to support institutional learning from mistakes.

4. Recommendation:

Release plans for the AIIB Grievance Mechanism for public comment before the draft ESF is finalised and approved.

Food Security

The AIIB's commitment to social development is welcome. In particular, Oxfam commends the AIIB's interpretation of inclusion as "empowering all citizens to participate in, and benefit from, the development process in a manner consistent with local conditions". In order to ensure that infrastructure operations do not lead to exclusion, it is important to consider the livelihood impacts of the project on people in the project's vicinity. In particular, in today's global context, it is essential to ensure that infrastructure projects do not inadvertently contribute to food insecurity. Food security at a household and individual level is an essential prerequisite to social development, as it is at this level that people experience exclusion or inequality.

5. Recommendation:

Include requirement in ESF to screen proposed projects for adverse impacts on food security.

Indigenous Peoples

The draft ESF is ambiguous in regard to requirements for Indigenous Peoples. Para. 47 claims that "if AIIB is unable to ascertain that such Free, Prior and Informed Consent ('FPIC') is established, it does not proceed further with the aspects of such Operation that are relevant to those Indigenous Peoples. In such case, AIIB requires the Client to ensure that the Operation will not have adverse impacts on such Indigenous Peoples". The last sentence indicates that an operation would go ahead, even if FPIC has not been granted by Indigenous Peoples. This undermines the purpose of having safeguards in place to protect the rights of Indigenous Peoples. Furthermore, the draft ESF erroneously states that there is "no universally accepted definition of FPIC". The principle of FPIC is enshrined in the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). The draft ESF puts in place a newly created definition of FPIC, which is inconsistent with the commitment to recognise international law.

6. Recommendation:

Recognise the definition of FPIC as enshrined in UNDRIP. Before finalising the ESF, it is essential that meaningful consultation with Indigenous Peoples' representatives on the requirements relating to FPIC and Indigenous Peoples takes place.

Environmental Classification

The draft ESF only calls for mandatory environmental and social impact assessment (ESIA) Category A projects, and allowing for a case-by-case approach for ESIA for Category B projects. In addition, the ESF allows for “equivalent” ESIA in Category A projects. This approach is unclear and has the potential for environmental and social impacts to go unmitigated. The language in the ESF should not allow for ambiguities but provide clear requirements. In keeping with best practices, it is also advisable that the AIIB retains mandatory ESIA for Category B projects.

7. Recommendation:

Remove the provision for “equivalent” ESIA for Category A projects and call for mandatory ESIA for both Category A and B projects. Provide criteria and examples of Category A and B projects.

Financial Intermediaries

Lending through intermediaries can enable better reach for limited development finance; however, it is all the more difficult to ensure effective implementation of environmental and social protections through third parties, especially for high risk projects or sectors. Oxfam has documented such problems at the International Finance Corporation, which has enacted many reforms in response.³ It is of concern that the AIIB’s proposed due diligence for FI clients will stop at the client and portfolio level. Oxfam’s work on FI lending has shown that due diligence is required also for the client’s high-risk sub-projects to enable risks to be spotted and managed.

8. Recommendation:

Commit to due diligence, monitoring and supervision measures of high-risk sub-projects financed through third parties. Additionally, the ESF should state explicitly that the AIIB’s social and environmental policies will apply to sub-projects financed through financial intermediaries.

Country Systems

Oxfam supports the use of country systems as a cornerstone of aid effectiveness, promoting best practice in borrower capacity to develop their own systems and regulations, to maximize development outcomes. We also welcome the opportunity for strengthened environmental and social systems in the private sector.

We are nonetheless concerned about the criteria that would be used to determine when a client in either the public or private sector would be able to apply its own systems in part or in whole. While the ESF does have some positive provisions of assessing systems including looking at not only policies but also implementation practices, the language lacks specificity in defining how policies, “implementation practices, capacity and commitment” would be assessed and is unclear as to whether or not the AIIB’s ESSs are the benchmark for reviewing the Client’s systems. Without establishing the assessment criteria, the AIIB risks making arbitrary, inconsistent and potentially harmful decisions in applying these systems.

In addition, there is little to no information on responsibilities of AIIB and Clients in the oversight and accountability mechanisms required for a project using a client’s systems in whole or in part. Ensuring strong due diligence and accountability is critical for ensuring strong environmental and social outcomes, and is particularly important when using the systems of a private sector client.

³ See: Oxfam et al (2015) “The Suffering of Others: The human cost of the International Finance Corporation’s lending through financial intermediaries.” <https://www.oxfam.org/en/research/suffering-others>

9. Recommendation:

Lay out strong procedures of determining equivalence of the Client's systems to the AIIB's own ESSs. It is essential that this comparison be between a Client's systems and the AIIB's ESS requirements, not just the "desired environmental and social outcomes" (and not just the ESS Objectives). Additionally, in reviewing the Client's systems, the AIIB should consult with a broad group of stakeholders including civil society.

The ESF must make clear the respective responsibilities of the AIIB and the Client in monitoring and supervising projects that use Client's systems in part or in whole. The AIIB should also seek third party (including civil society) verification in the monitoring of projects that use Clients' systems, particularly when using those of a corporate client.

Given that it is ultimately AIIB financing which will be used for a project regardless of the systems used, there should be an explicit provision which allows communities who believe they have been harmed as a result of an AIIB-financed project to access and seek redress through the AIIB's grievance mechanism.

Phased Approach

The ESF states that all environmental and social documents are required before the approval of the Operation. However, the ESF then goes on to state (paragraphs 37 and 58) that Resettlement Action Plans and other important ESIA requirements such as plans for impacts on indigenous peoples may also be developed *subsequent* to Board approval. As the AIIB will be financing large infrastructure projects that may have significant adverse environmental and social impacts, it is essential that adequate due diligence be carried out before any approval of the investment. The absence of this requirement from the ESF would mean that the AIIB's Board would not know at the time of its consideration of the project the full displacement impacts and costs of mitigation, which must be factored into the economic analysis of the project to determine its viability.

10. Recommendation:

Ensure Resettlement Action Plans, Resettlement Planning Frameworks, Indigenous Peoples Plan and Indigenous Peoples Planning Frameworks are completed prior to Board approval of a project or programme.

Due Diligence and Staffing

The draft ESF clarifies the AIIB's role responsibility as a) screening of environmental and social category; b) undertaking due diligence in the operation; c) reviewing the client's required social and environmental documents; d) determining feasibility of the operation; and e) monitoring and supervising client compliance with environmental and social requirements (para. 52). At the same time, the draft ESF relies heavily on the client and envisions the AIIB's role as providing expert advice and financing specialized consultants. In order to ensure that the AIIB can fulfil its outlined responsibility it is essential for the AIIB to put in place environmental and social specialists as staff and not rely on consultants. Other multi-lateral and bilateral agencies have recognised and acted on the need for dedicated staff resources to ensure safeguard policy implementation.

11. Recommendation:

Make a commitment in the ESF to dedicated staff resources of environmental and social specialists and key positions, such as Chief Compliance Officer, in the ESF and provide budgeting and resourcing plan.

Information Disclosure

Timely disclosure of information, especially that associated with investments that will have significant social and environmental impacts, is essential to ensure fully-informed decision-making.⁴ At present, the draft ESF is vague on the timing of disclosure of key documents; for example, crucial information such as final Resettlement Action Plans will be released ‘on receipt’ and Indigenous Peoples Plans ‘in a timely manner’.

When considering the use of a client’s systems, the AIIB must also make certain documentation around this process available to the public in a timely manner.

12. Recommendation:

Disclosure of information should be timebound, to enable input ahead of Board approval. Environmental impact assessments, social impact assessments, indigenous Peoples Plans and Resettlement Action Plans for Category A projects should be released to the public 120 days in advance of Board approval. For projects where country or corporate systems are to be used, the AIIB must disclose the main findings from its review/assessment of the client’s systems.

⁴ The World Bank, in the introduction to its Information Disclosure Policy, states; “The sharing of information is essential for sustainable development. It stimulates public debate on and broadens understanding of development issues, and enhances transparency and accountability in the development process. It also strengthens public support for efforts to improve the lives of people in developing countries, facilitates collaboration among the many parties involved in development, and improves the quality of assistance projects and programs.”