



Comments on the Second Draft of the Asian Infrastructure Investment Bank Environmental and Social Framework

Submitted : 24th February 2016

1. Consultation on draft Environmental and Social Framework (ESF)

In addition to concerns raised regarding the process of consultation on the first draft of the ESF, Oxfam would like to stress that it is essential that the **second draft ESF be released for public consultation** before it is agreed at the Board.

Recommendation: Oxfam urges member governments of the AIIB to encourage the public release of the second draft as soon as possible and before Board approval, its translation into appropriate languages, and an inclusive and accessible consultation process in line with our recommendations on Draft 1.¹

2. Involuntary resettlement

Extension of protection

Oxfam warmly welcomes the addition of a crucial protection for communities economically or physically displaced by AIIB-supported projects not covered by ESS2. The requirement to restore or improve the livelihoods of those affected is absolutely key to ensuring communities are not impoverished as a result of displacement.

Recommendation: Draft 2's addition of the following paragraph into both ESS1 (social coverage p 27) and ESS 2 (para 3. Scope and application p 31) is crucial and Oxfam urges that it be retained in the final ESF:

"If adverse environmental, social or economic impacts from Project activities involving loss of access to assets or resources or restrictions on land use that do not fall within the definition of Involuntary

¹ See: <http://www.oxfam.org/hk/en/RecommendationsontheAsianInfrastructureInvest.aspx>

Resettlement are identified, such impacts are avoided, or at least minimized, mitigated, or compensated for, through the environmental and social assessment under ESS 1. If these impacts are found to be adverse at any stage of the Project, the Client is required to develop and implement a management plan to restore the livelihoods of affected persons to at least pre-Project level or better.”

Resettlement as sustainable development

Another very welcome improvement from Draft 2 compared to Draft 1 is the inclusion of a sustainable development objective for resettlement and for sharing of project benefits (ESP para 30).

“Where it is not feasible to avoid Involuntary Resettlement, the Client is required to ensure that resettlement activities are conceived and executed as sustainable development programs, providing sufficient resources to enable the persons displaced by the Project to share in Project benefits.”

Recommendation: retain the new wording of para 30 in the final ESF.

Vulnerability of communities without title

Oxfam notes the addition of a new paragraph concerning people without formal or legal title to land in the ESF Draft 2:

Para 32 p 9

“The Bank does not endorse illegal settlement; however, it recognizes that significant populations already inhabit both urban and rural land without title or recognized land rights in its countries of operation. Given this situation, the Bank requires the Client to ensure that displaced persons without title to land or any recognizable legal rights to land, are eligible for, and receive, resettlement assistance and compensation for loss of non-land assets, in accordance with cut-off dates established in the resettlement plan, and that they are included in the resettlement consultation process.”

It is vital that **those without formal or recognized rights to land be adequately covered by ESS2**. People are immensely vulnerable to being defined as 'squatters' or 'encroachers' if they lack legal title to their land. World Bank research (“Securing Africa’s Land for Shared Prosperity”) shows that 90% of rural land in Sub-

Saharan Africa is unregistered for example. Oxfam has direct experience of communities being labelled as squatters or encroachers, even though they had settled on land for years and established community structures such as school and health clinics, as well as farms and markets. But because they have no formal title to the land, and the land is wanted by others - often much more powerful - it can be both convenient and cheap to deny them their rights and classify them as squatters. Such a definition can also strip people of their humanity and leave them vulnerable to abuse. Those in urban slums may also be defined as squatters, but their livelihoods are no less vulnerable for being poor and their rights to decent treatment and fair compensation should be protected.

Recommendation: Protections should include livelihood restoration and compensation for lost land and livelihoods of those without legal, formal or recognised rights and not remain limited to compensation for non-land assets as the AIIB draft 2 ESF proposes.

3. Free Prior and Informed Consent

It is highly disappointing to see the removal of the requirement for Free Prior and Informed *Consent* with indigenous communities in Draft 2 of the AIIB ESF. FPIConsent has now become the much weaker FPIConsultation:

(para 9 p v) ESS 3 - Indigenous Peoples. Note the revision of text on Free, Prior and Informed Consent to refer to Free, Prior and Informed Consultation leading to broad community support.

Recommendation: Oxfam urges that this dilution be reversed and that the AIIB recognise the definition of Free Prior and Informed Consent enshrined in the UN Declaration on the Rights of Indigenous Peoples.

4. Financial Intermediaries (FIs)

Due Diligence

Oxfam welcomes the additional details provided in the second draft related to FI client reporting requirements (Para 61, p 16) yet the language on due diligence should be strengthened further. We are glad to see the AIIB recognize the potential role for third parties in monitoring FI subprojects in Para 24, p 7 “The Client may use a suitably qualified and experienced third party approved by the Bank to monitor subprojects” yet in high risk sub-projects this should be a requirement. This is especially important given the lessons emerging from the International Finance Corporation’s FI lending.

Recommendation: We recommend that the AIIB commit to carrying out due diligence, monitoring and supervision of all high risk sub-projects, and strengthen the language to ensure that independent third party (including civil society) is used in high risk FI subprojects. This is especially important given the lessons learnt from recent reviews of IFC's FI lending.

Transparency and Accountability

Oxfam notes the lack of information around the issue of disclosure and accountability of FI subprojects. Based on the challenges in oversight and risk management of FI subprojects we've seen in the IFC's portfolio, transparency would go a long way in ensuring that FIs are managing environmental and social risk effectively across their portfolios. This also ties directly to the ability of communities impacted by FI subprojects to access the AIIB's grievance mechanism if they believe they have been harmed.

Recommendation: We recommend that the AIIB require that all FI clients publicly disclose all sub-projects – and at minimum Category A and B subprojects - that receive AIIB financing. At minimum this information should include project name, location and sector. We also recommend that the AIIB make it clear that communities impacted by FI subprojects can access the AIIB's grievance mechanism.

5. Country and Corporate Systems

Stakeholder engagement in reviewing client's systems

Oxfam is pleased to see some important changes in the second draft with respect to the use of Country and Corporate Systems which we called for in our comments on the first draft. Specifically, AIIB's proposal to consult with project stakeholders in the review of a client's systems (Para 52, p 13), as well as the proposed public disclosure of the reviews findings (Para 57, p 15) is very welcome.

Recommendation: Both additions should be retained in the final draft and include further specifications indicating that project stakeholders consulted in the review include civil society and potentially affected communities.

Access to redress

We welcome the AIIB's explicit statement that the "use of a client's system does not preclude access of affected stakeholders to the Bank's oversight mechanism or Project-level grievance mechanisms" (Para 53, p 14). Given that it is ultimately AIIB financing which will be used for a project regardless of the systems used, there absolutely 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.

Recommendation: We recommend that the AIIB retain this important new addition explicitly providing communities access to the AIIB’s grievance mechanism even when a client’s systems are used.

6. Climate change

Oxfam is pleased to see the ESF will reflect the outcome of the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (“COP21/CMP11”) in Paris, specifically that of supporting the global adaptation goal of enhancing adaptive capacity strengthening resilience and reducing vulnerability to climate change. We applaud the Bank assisting clients in achieving their nationally determined contributions (NDCs) through mitigation, adaptation, finance, technology transfer and capacity building. To that end, several areas on climate change assessments within the ESF need to be strengthened for all Bank lending to be consistent with these plans, and the Paris outcome.

Quantification of Greenhouse Gas emissions

The removal of the quantification of greenhouse gas (GHG) emissions requirement from the previous draft, based on the justification of this now being a government led activity under the COP21/CMP11 agreement, is a missed opportunity by the Bank, and the provision should be reinstated. While governments are required to report all emissions by sources, this does not necessarily serve the immediate needs of stakeholders of a specific project who would benefit from the previous reporting requirement. For example, affected communities, investors, and project implementers would not have the information available to implement mitigation measures at the needed timeframes during project planning, implementation and monitoring, that a national inventory could provide. Furthermore to be consistent with Article 2(c) of the COP21/CMP11 agreement in “Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate- resilient development,” the quantification of GHG emissions will help show the extent to which the Bank’s finance flows are contributing towards this goal.

Recommendation: As part of best practice on access to information, and information disclosure, the quantification of GHGs needs to be reinstated with such GHG quantification done in line with international best practices while still being fully consistent with NDCs and the COP21/CMP11 agreement.

Assess the resilience of local communities

It is essential that people’s needs and livelihoods in the face of climate change impacts be assessed pre-project approval and designed into the life-cycle of the project to ensure that they too are protected against the impacts of climate change, and that their benefits of the projects are not impacted upon. Assessing the

project's impact on climate change, and the impact of climate change on the project are welcome, yet it needs to be broadened.

Recommendation: Include specific provisions for measuring and protecting the resilience of host communities and ecosystems, beyond just that of the project.

Alternatives analysis that take into account full externalities

It is pleasing that the ESF makes commitments to design and implement projects so as to minimize emissions, while identifying alternative opportunities for low-carbon use. Yet it incorrectly concedes that these may not be technically or financially feasible, and to only be implemented in supporting NDCs in such instances. The full cost benefits analysis of other externalities such as land, health, employment, and gender considerations should be considered with attempts made to quantify their benefits into the financial calculations across the life-cycle of the project, allowing for the full picture of the pro-development benefits to be realized when assessing alternatives and low carbon options.

Recommendation: Include the full costs of all environmental and social externalities when assessing alternatives, particularly low-carbon options, when deeming their technical and financial feasibility.

In addition to Oxfam's reaction to these changes present in draft 2 of the AIIB ESF, Oxfam reiterates its recommendations on draft 1 that remain applicable to draft 2:

Recommendations

1. 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.
2. The AIIB should release plans for the AIIB Grievance Mechanism for public comment before the draft ESF is finalised and approved.
3. AIIB should require mandatory ESIA's for both Category A and B projects. Provide criteria and examples of Category A and B projects and lay out strong procedures of determining equivalence of the Client's systems to the AIIB's own ESSs.
4. AIIB should 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.

5. AIIB should 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 ESP and ESS requirements, not just with the ESP and ESS Objectives.
6. 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.

ENDS