



## 2021 Approved review of environmental and social safeguards of AIIB

Comment by Urgewald, June 2021

In January 2016, the Asian Infrastructure Investment Bank (AIIB) began operations. For the first time, China is at the helm of a multilateral bank in which Western countries such as Germany also participate. The bank, as its name suggests, lends to infrastructure projects, mainly in Asia. So far, it has invested \$10 billion in 18 countries, mainly financing costly infrastructure projects in the energy and transport sectors under the Belt and Road Initiative (BRI).

Infrastructure, esp. mega infrastructure causes deep interventions into the ecosystem-loss of biodiversity, air and water pollution, irreversible destruction of habitats of wild animals, plus huge displacement of communities and loss of livelihoods.

Therefore, a bank specialized on such risk bearing mega infrastructure projects needs strong social and environmental safeguards. Local communities and local as well as international CSOs need to be heard when it comes to the design and implementation of safeguards.

The environmental and social standards were approved in 2016 and revised in February 2019. These were to be reassessed and adjusted after three years based on practical experience with them. The review of the implementation and effectiveness of the standards was done in consultation with civil society which took place from fall 2019 until May 2021.

In the [press release](#) of the AIIB, the now approved amended ESF is celebrated as follows:

“Key changes in the revised ESF include:

- Strengthened language on **climate change** reflecting AIIB’s climate change financing target of 50% of approved financing.
- Enhancing transparency by **adding deadlines for the disclosure of environmental and social documentation** and adding more clarity on the disclosure of financial intermediary operations.
- New measures to address environmental, social and governance (**ESG**) approaches in capital markets operations.
- Elevated importance of **gender equality** and commitment to addressing gender-based violence.
- Enhanced language to protect **biodiversity** and to exclude **asbestos** from AIIB-financed projects.

The revisions will take effect in October 2021.”

Good, but not good enough. We would define the steps taken as “first steps”. In the five years the bank operates, it did violate most safeguards as documented by the [AIIB watch](#). As a triple A-rated FI with shareholders who signed core UN declarations on human rights, the bank needs to do more than basic requirements. For a multilateral bank working on development issues, it should be mandatory to act in favor of the well-being of people and nature. This new ESF will stay for at least the next three years.

The ESF consists of four parts: The introduction incl. the vision, the Environmental and Social Policy (ESP), The Standard 1 on environmental and social assessment and management, the Standard 2 on land acquisition and involuntary resettlement, and the Standard 3 on indigenous people. The following paragraphs highlight the shortcomings and loopholes:

### **Implementation of standards**

Our first criticism is directed against the fact that almost none of the standards are legally binding or mandatory. In an online consultation with the bank, the management pointed to the Environmental and Social Management Plan (ESMP) in the ESF which should include legally binding commitments. However, neither in the Management Plan nor in the whole document is there a mention of “legally binding” commitments.

On the contrary, the amended ESF uses the limitation “if/ as appropriate” 120 times and “viable/ if feasible/deferral” is used over 60 times.

In contrast, mandatory is only used 5 times in the introduction to the policy, which points out that the standards and requirements are mandatory (p. 1, p. 11).

This leaves loopholes for practices that can result in harm to the environment and the people. Shareholders who ratified the ILO 169 convention on indigenous people, the Protocol to the ILO Forced Labor Convention (No 29) and fully support the requirements of the UN Guiding Principles on Business and Human Rights, cannot stop here. As for the lessons learned during decades of experiences with voluntary CSR requirements and other environmental or sustainability concerned commitments, new supply chain acts as already passed by the French and German legislatures suggest that it is necessary to have **mandatory rules** and effective leverage in case of non-compliance. Nothing of this kind can be found in the ESF. We are aware that the ESF is not on the level of national legislatures, but it should incorporate lessons learned over the past 20-30 years on environmental and social standard settings.

### **1) Information disclosure is at the core**

ESP VII, 64-67 (P. 32-33)

AIIB claims to follow best practices. The gold standard for information disclosure is the Pelosi Amendment which restricts the US ED to approve a project without the publication of the environmental impact assessment (EIA) and a comprehensive project summary 120 days *before approval* consultations. So far, the ADB is adopting this rule and thereby is setting a good example.

a) The AIIB had no deadlines for disclosure for 6 years now. [AIIB Watch](#) shows the consequences of that practice. The 60 days for Cat. A and 30 days for Cat. B projects now introduced is a success but merely a minimum standard. Peer bank like the Asian Development Bank already applies the Pelosi Amendment. The responsible people for designing the AIIB standards formerly served at the World Bank and/ or the Asian Development Bank. We could expect, that this bank could be a forerunner, not a laggard.

b) In the ESF policy it reads “The Bank’s management may decide that a longer or a shorter disclosure period is appropriate”, and the decision on that will only be reported to the shareholders (BoD). This said, it is hoped that the years of fierce argument for timebound disclosure regulations by CSOs and some shareholding constituencies will be silenced. In fact, adding this sentence makes the new fixed minimum days deadlines meaningless.

c) For indigenous communities, the 30 days period for Cat. B projects is much too short if the documents are not translated in one of the regional languages.

d) Information disclosure for financial intermediaries:

AIIB falls short recently announced [unified standards](#) by China Securities Regulatory Commission (CSRC) for the mandatory disclosure of climate and environmental information by listed companies. Financial authorities started working on a unified system of green finance standards such the Green Industry Guiding Catalogue (2019), a standardized set of primary ESG disclosure indicators are under way.

The AIIB only requires FI's to apply "**appropriate** criteria and procedures for the selection, assessment, approval and monitoring of Bank-supported activities." The further specified criteria in the ESP Sec. 27 does only include "(c) timely disclosure of environmental and social information on, and prior Bank approval of, Higher Risk Activities" and under ESS 1 Sec. 21 only requires the 60 days period for Cat. A projects, there are no regulations for Cat. B projects.

During the consultation phase, CSOs requested the mandatory duty to disclose a project list of the projects funded by the FI. Nothing in this respect can be found in the reviewed ESF.

## **2) Resettlement and land acquisition:**

Land acquisition is an issue all over the place in the new ESF, not only in ESS 2. That's why it takes some time to analyze it. Compared to the former ESF nothing really substantive has changed. Some wording has become better, but in connection with all the possible loopholes we expect no real change regarding the implementation.

What should be considered is an improvement, is the *ex-ante* rule that makes land acquisition already before the approval of a project subject to scrutiny by the AIIB. All prior land acquisitions in a three-year time slot have to be proven as being compliant with the ESF. But like always we need to see how this will be implemented and how transparent the scrutiny will be. If it relies on self-reporting as it is in almost all assessments this regulation is nice to have, but worthless in practice.

In ESS 2 II.13 the resettlement action plan can be reduced, if fewer than 200 people are affected. But still, fewer than 200 people means that a whole neighborhood or village can be affected. The number should be much lower. Also, the definition of 'minor' is not acceptable. If for example a subsistence farmer loses 10 % of his productive assets, his livelihood is heavily under pressure, if not already destroyed.

Regarding ESS 2 II 16, transferring the management of land acquisition to 'land aggregators' installs another layer of possible mismanagement. It is unclear how a strict supervision can be achieved given the 'lean' approach of the Bank and the complete reliance on client reporting.

Paragraph II 20 looks rather comprehensive, but there is an important piece missing. In (b) and (c) the replacement or replacement cost of assets are mentioned. What is missing is the loss of income through the loss of assets like e.g. palm trees or other trees, bushes, crops or aquatic installations like fishponds which need a longer time to provide the same income like before the resettlement/land acquisition. Also, the credit facilities mentioned here and in II

21 must not serve as an alternative to the loss of income. It can only serve as an additional means to develop a better livelihood than before.

### 3) Indigenous People:

ESS 3 (p. 71)

For the first time FPIC is being mentioned. The ESF states that if national law requires an FPIC process this will be done according to the national procedures. But for all the rest the AIIB sticks to the self-invented FPICon, which is a clear deviation from international law and an offense to all Indigenous Organizations. Countries, who have ratified ILO169 and/or signed the UN Declaration on the Rights of Indigenous Peoples, should be compelled to act accordingly, and insist on FPIC.

### 4) Labor:

In Sec. ESS 1, 51-61.3 the amended ESF improved small parts on labor standards as f.e. the regular review of occupational safety and health performance. It is good that lessons learned from past abuses of security personnel are now in the social standards. But again, the client can decide if international labor standards of the ILO are applied or not (ESS 1, 52). The bank wants to be seen in line with other MDBs like the Worldbank and applies all relevant health and safety provisions of internationally recognized standards such as the Worldbank Group's EHSs (Environmental, Health and Safety Guidelines), and, as appropriate, industry-specific EHSs, but it is not specified on **how or when** the "relevant information" on the health and safety risks are reported. Also, the language on the security personnel, an important issue since this group of people will have to deal with strikes or possible protests from the workers side, is very weak: "apply the principles of proportionality and good international practice, and comply with applicable law relating to hiring, rules of conduct, training, equipping, and monitoring of Project security workers" (ESS 1, 56).

In ESS 1, Sec. 52 the very specific labor rights standards are defined, but again it is up to the client if standards are applied or working conditions are reported: „.....report work situations that they believe are not safe or healthy" , "The Client may, at its option, apply the relevant International Labour Organization's Labor Standards (ILO) relating to occupational health and safety." The application of ILO standards is purely optional and too vague to meaningfully guide borrower actions and AIIB monitoring. There should be a commitment to always apply the ILO fundamental conventions and relevant standards including those on health and safety.

Additionally, ESS 1

- lacks provisions protecting the fundamental rights of supply chain workers
- provisions on **child and forced labour**, on safety, and on additional areas of protection for private sector workers are significantly weaker than comparable safeguards.

### 5) PPM/ GRM:

The PPM as well as GRM appear more prominently in the new ESF, which is an important step forward. Unfortunately, it has not been achieved to provide the quantitative progress with the necessary qualitative substance. There is still a lack of clear deadlines as to when GRM must be practicable at the project level and in what timeframe grievances must be addressed. The language remains vague so that reviews will hardly be possible: „Establish a suitable Project-level GRM **as early as feasible**" (p. 50, Sec. 24.1) or „is required to be operational by the

time implementation **of the relevant Project activities** commences“ (p. 35, Sec. 71.2) and „so that the concerns of the Project-affected people are brought to the attention of the GRM, and the GRM records, responds to, and resolves or escalates these concerns **in a timely manner**“ (p. 50, Sec. 24.4). What is „feasible“? What are the „relevant project activities“? What does „in a timely manner“ mean? The language continues to leave room for interpretation.

There is also a lack of clear standards regarding the design of a GRM. Statements such as: „The GRM is **scaled to the risks and impacts of the Project**“ (p. 35, Sec. 71.2), „may utilize existing formal or **informal complaint-handling** mechanisms“ (ibid.), „and **deemed by the Bank to be suitable** for the Project“ (ibid.), leave a lot of room for maneuver, to say the least.

For ESS 2 and ESS 3, the following also applies: „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; in such cases, verbal reporting is complemented by written procedures and is fully documented **by the Client**“ (p. 74, Sec. 14.2). These formulations also avoid verifiable standards.

On a positive note, the requirement for all clients to inform people in project areas of the availability of the PPM. The description of the requirement contains a few verifiable features: „The Bank requires **all Clients** to inform Project-affected people about the availability of the PPM. Information on the availability of the PPM is provided in an accessible and understandable manner **in locally appropriate language(s)**, including on the Client’s (or beneficiary’s) **Project-related website**“ (p. 35 Sec. 72). It remains to be seen whether this requirement will also be incorporated into the contracts and thus become mandatory.

More than 25 years after the creation of the first accountability mechanism, it is clear that implementing robust and effective grievance channels for project-affected populations requires much more than good language. The test of the practicability of any policy only becomes evident in its application. However, in the absence of even clearly quantifiable standards and deadlines, one risks not only negative impacts on people and nature, but also accepts that grievances won’t be heard and institutions cannot be held accountable.

Sassenberg, 14.6.2021