RECOURSE
Making finance accountable to people and planet

RECOURSE SUBMISSION ON THE AIIB'S ENVIRONMENTAL AND SOCIAL FRAMEWORK REVIEW

9 NOVEMBER 2020

PREAMBLE

Recourse works for a world where people and planet are at the heart of development: we campaign to redirect international financial flows away from dirty, harmful investments, towards greener and more inclusive development, working with partners around the world to hold financial institutions accountable. The social and environmental standards adopted by public development banks form a crucial part of this accountability framework and help to ensure projects do no harm and promote development benefits.

Recourse welcomes this opportunity to make a submission to the AIIB's ESF review, following on from our first submission in March 2020 which drew attention to lessons learned from implementation of AIIB-funded projects.

While there have been some welcome improvements to the draft ESF – for example, the inclusion of more language on gender and retaliation and far-reaching reforms to financial intermediary investment standards – many concerns remain, not least the extremely disappointing absence of true progress with regard to climate change, and a failure to promote adherence to the Sustainable Development Goals (SDGs).

This submission builds on Do No Harm?: Recommendations for AIIB's ESF Review co-published in December 2019 by Recourse, NGO Forum on ADB and Gender Action, in anticipation of the ESF review and sent as Recourse's submission to Phase I in March 2020. In this second submission, we assess which of our recommendations were taken up by the AIIB in the revised draft and provide some analysis of the new language, as well as additional recommendations for Phase II.

As an Annex, we include recommendations from civil society representatives in Myanmar, based on the outcomes of a workshop in Myanmar on 4 November 2020, which Recourse organised.

KEY
To what extent does the new draft ESF meet Recourse and partners' Do No Harm recommendations:

✓	**Met**	%	**Partially met**	✗	**Not met**

CLIMATE CHANGE

Recourse Phase 1 recommendations

- Expansion of the exclusion list: The AIIB should be clear about the kinds of projects it views as misaligned with the Paris Agreement on climate change; this should include ending all support for fossil fuels by the next UN Climate Change Conference (COP26) in November 2021.

  ✘ The exclusion list does not specify any projects, sectors or investments that would be misaligned with the Paris Agreement.

- Positive list for climate finance: The AIIB should develop a definition of what would constitute a positive list of mitigation and adaptation investments and activities, which fully aligns with the Paris Agreement.

  ✘ There is no list or other indicators for what investments AIIB consider Paris aligned.

- Emissions benchmarks: The AIIB should introduce emission performance standards for electricity production, and for best available technology benchmarks.

  ✘ The ESF does not include any emission performance standards for electricity production.

⇒ Introduce GHG accounting and targets to cap and reduce emissions: The AIIB should require estimates of gross GHG emissions resulting from its projects and help clients with this estimation, using this information to set targets to cap and reduce emissions.

  % The ESF commits the AIIB to provide support to clients *"in their reporting on expected greenhouse gas emissions"* (2.12) from a project, if requested to by the client. But GHG accounting is not compulsory and there are no targets to cap and reduce emissions.

⇒ Develop a Climate Change Action Plan. While the ESF should include an exclusion list, GHG accounting, emissions benchmarks, and targets for emissions caps and emissions reductions, etc, the AIIB should detail those commitments, how they would be implemented in practice and application to various sectors in a Climate Change Action Plan.

  ✘ The AIIB continues to ignore calls for a Climate Change Action Plan, meaning that there is no clear institutional direction for how the AIIB will become Paris aligned.

Analysis and additional recommendations

PARIS ALIGNMENT

The AIIB continues to label itself as a 'green' bank and is part of the Multi-lateral Development Bank (MDB) Paris alignment group – but none of this is reflected in the draft revised ESF. The first ESF was launched just after the Paris Agreement was signed, but much of the content was drafted in the months before the Paris summit, allowing only marginal amendments at the time. The ESF review provides an important moment to clarify the AIIB's commitment to addressing the climate crisis and support carbon neutral development, and to align with the temperature goals of the Paris Agreement. However, while it is positive that additional language on climate change is included (such as 1.7.11 in relation to national and international commitments on climate change and 2.13 relating to climate related risks to biodiversity and ecosystems), disappointingly overall the language has changed only marginally in terms of clear requirements, leaving the AIIB far behind its peers. This sends troubling signals about the bank's stated commitment in the Energy Sector Strategy to align its activities with the Paris Agreement. It is particularly disappointing given the AIIB's lack of an institutional climate action plan or strategy, in contrast to other MDB peers.

For example, 2.34 on Climate Change requires the client to *"assess the proposed Project with respect to climate change, mitigation, adaptation, vulnerability and resilience"* and for the client to *"Design and implement the Project so as to minimize emissions in accordance with the aims of the Paris Agreement"*. However, this language has only changed marginally from the original ESF and there are no specific targets and caps attached to these requirements, nor more specific instructions on what the client is required to do. Moreover, caveats, such as *"where applicable"* and *"where technically and financially feasible"* remain. The first ESF has not sent the right signals to clients, evidenced by the fact that over half of the value of the AIIB's energy sector portfolio is dedicated to fossil fuels, in contrast to just a quarter for renewable energy. This flaw has not been addressed in the new draft.

We welcome the AIIB's new 50% climate finance target, which should now be referenced in the ESF, together with a definition and list of projects the bank aspires to support to reach this target – in line with our request for a 'positive list of climate finance'.

Overall, the AIIB would do well to consider the newly-developed Principles for Paris-Aligned Financial Institutions, which provide detailed recommendations on how to fully align with the 1.5 degree Celsius temperature goal of the Paris Agreement. As a public bank tasked with acting for the common good, the AIIB should far exceed these principles.

⇒ **RECOMMENDATION:** The ESF should go beyond simply referencing the Paris Agreement and risks of climate change and include strong signals in the form of clearly spelled out commitments, requirements, targets and caps, including for GHG emissions, that can also be monitored and reported on.

GHG ACCOUNTING

While there is welcome additional language on GHG accounting, overall the language remains weak and conditional on the *"client's request"* and to respond to national commitments rather than AIIB and ESF requirements (in particular in cases where Nationally Determined Contributions - NDCs - are not Paris aligned). For example 6.8: *"In order to support reporting on greenhouse gas (GHG) emissions for implementation of the Paris Agreement, the Bank may, at the Client's request, finance measures for the Client to quantify and report to national authorities, in accordance with internationally recognized methodologies and good practice, direct and indirect emissions from*

Project-related facilities." As there are no spelled-out AIIB targets or caps on GHG emissions, nor any clear requirement for GHG accounting, the AIIB's ESF fails to provide clients with any encouragement to put forward carbon neutral projects – as mentioned above, this has to date led to fossil fuel projects dominating the AIIB's portfolio.

Other MDBs, such as the IFC and ADB, usefully define projects expected to cause 'significant GHG emissions'. This enables the banks to ensure that projects estimated to have significant emissions according to a specified threshold receive specific attention, and must abide by provisions, including being required to measure and reduce annual emissions. The AIIB should adopt this approach in line with best practice, for example at the IFC. This should include direct and indirect emissions.

⇒ **RECOMMENDATION:** The AIIB should set specific portfolio and sector emissions targets and establish an institutional wide cap on GHG emissions across the portfolio. This should be accompanied with a requirement for GHG assessments (including direct and indirect emissions) of all projects expected to emit above a specified GHG benchmark, in line with best practice, to be quantified and reported annually. There should be a specific threshold for projects with significant emissions, with a requirement to measure and report emissions reductions on an annual basis. The AIIB's approach to energy efficiency GHG accounting should not extend the lifespans and absolute emissions of fossil fuels assets.

ENVIRONMENTAL AND SOCIAL EXCLUSION LIST (p73)
The AIIB should be clear about the kinds of projects it views as misaligned with the Paris Agreement. This should include coal, as well as oil and gas. Most MDBs include specific exclusions of fossil fuels in their policies, including in the ESF. For example, the European Investment Bank (EIB) has announced that it will no longer support fossil fuel energy from the end of 2021. AIIB management has argued that such issues should be dealt with in the Energy Sector Strategy, but this is not sufficient: other sectors are highly relevant to climate change and so should be addressed in the overarching ESF. One such recent example is the Inter-American Development Bank's (IDB) recent update to its ESF:

The IDB's recently updated safeguards contain the following exclusions:
⇒ Thermal coal mining or coal-fired power generation and associated facilities.
⇒ Upstream oil exploration and development projects.
⇒ Upstream gas exploration and development projects.

To be fully Paris aligned, in addition to these, the AIIB should also exclude all investments in midstream and downstream oil projects. Gas projects should be fully excluded in the case of upstream investments, and only allowed on a highly limited basis in the case of midstream and downstream investments, where climate-neutral alternatives have been proven to be infeasible, if not excluded altogether. In addition, associated facilities and fossil fuels for industrial use should be excluded, such as coal for cement production. Other environmentally damaging projects, such as greenfield hydropower plants and greenfield projects reliant on construction of new large dams, if these dams are affecting as yet unaffected river basins or river stretches in near-natural condition, should also be excluded.

⇒ **RECOMMENDATION:** Direct and indirect support for all investments in fossil fuels – coal, oil and gas (both upstream and downstream, as well as associated facilities and for industrial use) should be added to the ESL, in line with MDB best practice and beyond. Other environmentally damaging projects, such as greenfield hydropower and greenfield projects reliant on construction of new large dams should also be added to the ESL.

ALTERNATIVES FOR MINIMISING EMISSIONS

The language calling for alternatives to "*support Clients in meeting their NDC"* (2.35) remains weak, including the significant caveat to only implement "*technically and financially feasible and cost-effective options"*, related to the client's NDC, but without further guidance and incentives. This sends the wrong signal: that seeking alternatives is far from a priority for the AIIB in its investments and that the process is a one-stop-shop rather than a continuous assessment. It does not meet best practice either: for example, the European Bank for Reconstruction and Development (EBRD) adds that alternatives should be continuously assessed: "to avoid or minimise project-related GHG emissions during the design and operation of the project". Alternatives should also be assessed and acted upon for all projects with significant risks, without ambiguous caveats, such as "*where feasible"*, and without references to controversial mitigation methods, such as offsets.

⇒ **RECOMMENDATION:** The language on alternatives should be strengthened to make assessment mandatory and in line with best practice, should include the following language: 'to avoid or minimise project-related GHG emissions and other climate, environmental and social impacts, during the design and operation of the project.'

'MEASURES FOR CLIMATE CHANGE'

The ESF introduces new language related to future opportunities to mitigate climate change: *"The Bank also recognizes opportunities presented by changes in technologies, services and operating models in response to climate change, and supports their adoption by Clients in Projects it finances"* (2.12) While it is important that the AIIB is supportive of new and innovative approaches, there can also be significant risks associated with these, as proven in relation to methods, such as carbon offsets and carbon capture and storage. The ESF should clearly spell out that any such support for new approaches must be thoroughly assessed against social and environmental impacts, in line with the ESF.

⇒ **RECOMMENDATION:** Opportunities presented by *"changes in technologies, services and operating models in response to climate change*" must be thoroughly assessed against scientific evidence on climate change, associated social and environmental impacts, and in line with the ESF framework.

RENEWABLE ENERGY AND ENERGY ACCESS

The ESF is remarkably silent on renewable energy and energy access, despite the AIIB's support for the Paris Agreement and SDG 7 in the ESS – in fact, the ESF is remarkably silent on the SDGs overall, bar a single initial mention. Despite multiple references to Paris alignment, references to renewable energy are sparse and with caveats, eg *"where feasible"* (2.12) or *"where these are technically and financially feasible"* (2.34) – rather than more positive language indicating a preference.

In terms of energy access, it is concerning that 'universal access' is only mentioned in relation to building safety (2.48). However, some elements are included in 2.3 – Social Development and Inclusion, but only with reference to *"affordable energy"*. This is not in line with SDG 7's full objective to "Ensure access to affordable, reliable, sustainable and modern energy for all." In addition, as an MDB, the AIIB should include an explicit focus on access to the poorest and hardest to reach, so called 'last mile' communities for whom distributed renewable energy solutions are often the only and most suitable option.

⇒ **RECOMMENDATION:** The ESF should reference SDG 7's full objective to "ensure access to affordable, reliable, sustainable and modern energy for all", and explicitly prioritise support for low carbon clean renewable energy and distributed renewable energy options, with a particular focus on access for poor and vulnerable 'last mile' communities.

DAMS

Section E on Safety of Dams does not include a clear definition of what this safety entails. Any assessment of dam projects should include environmental and social safety, as well as potential impacts on and by climate change, for both the construction and operation phase and during possible dam failure. Large dam projects should require basin-wide strategic and regional environmental assessments. Dam projects on a water source that already has dams should be required to conduct basin-wide cumulative impact assessments. Any dam project considered by the AIIB should be thoroughly assessed for technological alternatives, such as nature-based solutions, in line with 2.13 on "Conserving Biodiversity". The option of dam removal should be considered for projects to renovate, modernise or repair dams. Climate change resilience should be incorporated in any dam-related project, including analysis of alternative means to provide desirable outcomes under extreme climate-change scenarios.

⇒ **RECOMMENDATION:** The ESF should strengthen its language on Safety of Dams to include requirement to assess against environmental and social safety and impacts of climate change, including basin-wide and regional assessments and cumulative impacts for larger projects. Alternatives must be thoroughly assessed for all projects. All dam construction must adhere to the recommendations of the World Commission on Dams.

RESETTLEMENT AND LIVELIHOODS

Recourse Phase 1 recommendations

- Progressive protections under ESS2 should be retained in the ESF, such as recognition of informal land rights, and the requirement to treat resettlement as a development project.
  - ✓ Positive protections have been retained in the draft ESF, for example in relation to informal land title (ESS 2: 2.1.13) and regarding resettlement as a development project (ESS2: 1.1)

- Resettlement Action Plans, Indigenous Peoples Plans, resettlement costs and budgets should be prepared and disclosed in advance of Board approval of a project.

  % Although some disclosure requirements have been improved, for example, time-bound project information disclosure ahead of Board approval, there are significant caveats to this that undermine this commitment. The first is that adherence to the time-bound commitments is at the discretion of Bank management (*"The prerogative to require a longer or shorter disclosure time in particular cases is exercised by the Bank's Management"*) and in 2.1.4, Land Acquisition and Resettlement Planning Frameworks are merely to *"be prepared as early as feasible during development of activities."*

  ✓ It is positive that there is now a requirement for budgeting of costs to be included in the Environmental and Social Management Plan (ESMP), for example: 2.7.8 stipulates an ESMP must include *"Implementation schedule and cost estimates, including environmental and social mitigation and monitoring costs, which are integrated into the Project's overall schedule and budget;"*

- Associated facilities' impacts must be included and made public in a timebound fashion, to ensure that all the costs and impacts of projects are fully acknowledged and understood before Board approval.

  % The ESF commits that associated facilities within the client's control must adhere to the ESF which includes timebound information disclosure and budgeting for impacts, but for those facilities outside a client's control, the client must merely identify impacts and mitigation measures.

- The ESF should guarantee the right to Free, Prior and Informed Consent, not FPIConsultation, for indigenous peoples.

  ✗ The draft ESF retains the reference to FPIConsultation – which is a term not recognised in international norms, and which does not represent best practice.

- The AIIB must ensure its ESF provisions apply equally to Category A and B projects.

  ✗ The draft ESF does not extend application of the ESF to Category B projects, despite the risk of mis-categorisation. The case of the greenfield Bhola gas power plant in Bangladesh, which the AIIB has classified as Category B, illustrates this problem.

Analysis and additional recommendations

Infrastructure investments, by their very nature, can have significant impacts on people and the environment, both beneficial and harmful. The AIIB, alone among the MDBs, has a specific mandate to focus on infrastructure.

Economic or physical displacement as a result of a development project can be one of the most devastating and traumatic impacts of infrastructure projects on local communities. It can lead to impoverishment, community breakdown, and loss of livelihoods, while the process of eviction can be coerced and violent. Gender-based violence is often a feature of displacement, with sexual intimidation and attacks used to intimidate communities into leaving. Environmental and social standards should protect against these impacts – though they too often fail. The AIIB's draft ESF has some important features, but there are worrying gaps where protections may not be sufficient.

ADDRESSING PAST HARMS

As demonstrated in Recourse's case study on the Tarbela 5 project in Pakistan, it is vital that past harms to communities be acknowledged and addressed by further projects in those areas. In this regard, it is positive that the AIIB's new ESF may offer to address past harms; but this is then caveated by weak wording, with 'potentially' added in.

"***6.19 Remediation Measures.*** *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 cases, the ESMP focuses on cost-effective measures to remediate and manage these problems, including* ***potential*** *compensation for past social grievances."*

⇒ **RECOMMENDATION:** Remove weak language, in this case the word *"potential"*. Also, remediation of existing harms should occur, as well as mitigation of expected harms from the new project (rather than as the new language puts it, being "*more important"*).

CONSULTATION

It is positive that the new ESF has strengthened language in regard to consultation, with "ensure" being changed to *"require"* twice as in the following text:

7.5.3: the Bank may participate in consultation activities to understand the concerns of the affected people and ***to require*** *the Client to address these concerns in the Project's design and ESMP or ESMPF (as applicable) or other Bank-approved documentation.*

7.5.4. The Bank ***requires*** *the Client to include a record of the consultations and list of participants in the environmental and social assessment documentation.*

However, it is unacceptable that indigenous peoples are still not granted their internationally-recognised right to Free Prior and Informed Consent. This is still weakened to FPIConsultation which is not a legally recognised or defined term.

⇒ **RECOMMENDATION:** Ensure this stronger language to 'require' is retained. Delete all reference to FPIConsultation and replace with the international norm of Free, Prior and Informed Consent.

GENDER

Recourse Phase 1 recommendations

- The new ESF must provide a freestanding gender standard and integrate gender dimensions into all other standards.

  ✘ There is no freestanding gender standard and while gender language has been added, it is not streamlined across the standards.

- The new ESF standards must require, not merely "encourage", clients to promote gender equality and prevent harmful gender impacts.

  ✘ The ESF continues to *"encourage"* rather than require clients to enhance project design *"in an inclusive and gender-responsive manner"*.

- Given the massive and differentiated impacts of large infrastructure projects on women, the ESF must contain requirements to disaggregate data; have clear and comprehensive gender indicators; seek to ensure women's voices and specific needs and concerns are heard in an atmosphere devoid of fear of intimidation at the time of project design; act on any retaliation and abuse; and assess the physical, economic, cultural and social impacts of projects on women.

  % The ESF includes a requirement to collect gender disaggregated data "where relevant" – which must be deleted since it undermines any new requirement; new language referencing measures to avoid GBV, intimidation, harassment, bullying and exploitation; and commits to "pay special attention to disproportionate gender impacts" – however, the language lacks enforceability and is not mainstreamed across issues.

- The AIIB must also institute strong measures to prevent sexual and gender-based violence in infrastructure projects.

  ✓ Sexual exploitation and abuse, sexual harassment and gender-based violence are included in the ESF.

- The AIIB should develop a standalone gender policy to ensure gender concerns are prioritised within all of AIIB's investments.

  ✘ The AIIB continues to resist calls for a standalone gender policy

Analysis and additional recommendations

This section builds on a more detailed submission, submitted by Gender Action in collaboration with Recourse and Both Ends. For further analysis of the AIIB's first ESF, in in comparison with other MDBs, please see Unmet Gender Promises: making IFI projects and policies deliver on gender-equal rights by Gender Action in collaboration with Recourse, NGO Forum on ADB and Oxfam, released in October 2020.

MAINSTREAM GENDER LANGUAGE

There are increased references to gender including some welcome improvements, for example, 5.5 *"[the Bank] pays special attention to disproportionate gender impacts"*. However, most gender references appear in isolated sections without mandatory requirements, rather than being mainstreamed throughout the ESF. Explicit references to gender are essential for raising awareness, increasing gender skills and bringing gender issues to the forefront of project prioritisation and design for the AIIB, clients and especially project-affected women, men and sexual and gender minorities (SGM). Gender issues should therefore be explicitly discussed throughout the ESF. This is particularly important as the AIIB has yet to develop a standalone gender policy. For example, gender references are missing in the section on Conserving Biodiversity (2.13), despite evidence of the important role of women in managing and protecting the environment, as well as in other parts of the ESF where explicit gender reference would strengthen the application, such as in 10.2.5 on Project Implementation, Monitoring and Reporting, where gender expertise must also be included.

⇒ **RECOMMENDATION:** The ESF should include comprehensive and mandatory gender references and requirements, which should be mainstreamed across the ESF.

RECOGNISE ALL HARMS TO WOMEN

The new language on gender-based violence is welcome (e.g. 2.1), but other forms of harmful impact of AIIB investments on women should also be incorporated. Issues such as water pollution, can have particular impacts on women, as they are often responsible for water collection for household needs. As a result, women will spend more time collecting water, leaving less time for other activities, such as tending livestock for subsistence and income. Alternatively, communities continue to use contaminated water, causing health issues. Labour influx presents another risk for women, and specific provisions should be in place to protect women against possible sexual harassment. Moreover, language on GBV-training must be added to 2.51 on security personnel, who have been found to violate women in World Bank projects.

⇒ **RECOMMENDATION:** Different forms of potential harmful impacts of AIIB projects on women should be spelled out, in addition to GBV. GBV training must be provided for security personnel and specific provision must be added regarding labour influx.

IMPROVE DATA COLLECTION

We welcome that the language on collecting gender disaggregated data has been improved, but it remains weak in several aspects (2.39). For example, qualifiers such as "*where relevant"* should be deleted and in addition to *"baseline"* data, "subsequent" data should also be collected throughout the project cycle, to ensure lessons are learned to improve project implementation. In addition, the language on project design should be strengthened to*: "consider* **and implement** *options to enhance the design of the project to promote equality of opportunity […]"* – this should be done on a regular basis throughout the project, based on the findings of the data collection.

⇒ **RECOMMENDATION:** The language on gender-disaggregated data collection should be strengthened to remove caveats and include regular collection throughout the project cycle, followed by associated revisions of project design where flaws are identified that undermine gender rights.

FINANCIAL INTERMEDIARIES

Recourse Phase 1 recommendations

- The ESF should require time-bound disclosure of sub-project information in advance of approval, in line with best practice.
  - % The draft ESF does make substantial improvements to disclosure of sub project information, but this disclosure is post investment (within 12 months), giving potentially affected communities little chance to engage at an early stage to help spot, manage and mitigate risk.
- The ESF should require the disclosure of the name, sector and location of higher risk sub-projects financed via FIs on the AIIB's website and on the client's website.
  - % The ESF does require the disclosure of name, sector and location of higher risk activities, but does not stipulate this needs to be on the AIIB's website as well as the client's.
- The ESF should require the disclosure of the AIIB's involvement in sub-projects at the project sites, ensuring that it is clearly visible and understandable to affected communities.
  - % The draft ESF does require that information be disclosed at project sites, which is commendable. But this requirement does not stipulate that the AIIB's involvement in financing the project be disclosed.
- The AIIB should commit to carrying out due diligence, monitoring and supervision itself in high risk sub-projects, and in infrastructure projects; and make sure it assesses the accuracy of FI clients' risk categorisation.
  - ✓ The draft ESF enhances the role of bank management in supervising high risk sub-projects financed through financial intermediaries. The bank would now require prior approval of higher risk activities, and the right to exclude higher risk sub-projects altogether. A welcome addition is the bank's increased commitment to site visits, since on the ground monitoring of projects is one of the best ways to find out what is happening and whether the ESF is being implemented effectively: for example, Footnote 15 states: '*In the case of an FI Project, the Bank also requires the Client to conclude arrangements with its clients to enable the Bank to have access to sites of activities financed by the Bank.*'
- The AIIB should default to application of its standards to Category B FI sub-projects, as well as Category A, to help avert risk and harms.
  - % The draft ESF stipulates that its standards will apply to all 'higher risk activities' which are specifically defined. However, this does not apply to <u>all</u> Cat B sub-projects, but those with more serious impacts are captured in this new language.
- The AIIB could usefully adopt a 'referral list' approach, where higher risk sub-projects are automatically flagged and given higher attention, including by bank staff.

- ✓ It is welcome that the draft ESF has specified a list of activities that it will consider "higher risk". Footnote 7 defines higher risk activities as *"(a) all Category A activities; and (b) selected Category B activities, as determined by the Bank, that may potentially result in: (i) Land Acquisition or Involuntary Resettlement, (ii) risk of adverse impacts on Indigenous Peoples and/or vulnerable groups, (iii) significant risks to or impacts on the environment, community health and safety, biodiversity, and cultural resources, (iv) significant retrenchment of more than 20% of direct employees and recurrent contractors, and/or (iv) significant occupational health and safety risks."*

- o The AIIB should implement ring-fencing of FI debt investments to support specific projects that are low-E&S risk and have genuine development impact and ensure this ring fencing is legally enforceable and traceable.
  - % The draft ESF does increase requirements regarding higher risk investments, including by debt clients; it also raises the possibility of the AIIB asking FI clients to exclude higher risk activities from their portfolios. However, there is no commitment to make such targeting of investments legally enforceable and traceable.

- o Climate provisions that apply in the ESF to direct investments must also be extended to apply to indirect investments through FIs or other financial instruments, aimed at ensuring the AIIB's FI portfolio is aligned with the temperature goals of the Paris Agreement on climate change.
  - ✓ Footnote 9 of the new ESF clarifies that *"Provisions on climate change that apply to the Bank's direct financing also apply to Higher Risk Activities under FIs"* (It would be helpful and aid clarity if this Footnote were combined with Footnote 7 detailing the definition of high risk activities.) For such a climate provision to be effective, however, it is important that the ESF goes further in its climate commitments as outlined earlier in this document, to ensure the AIIB's FI portfolio is aligned with the temperature goals of the Paris Agreement on climate change.

Analysis and additional recommendations

We welcome the many reforms in the draft ESF with regard to FI investments. In particular:

ENHANCED DUE DILIGENCE

We welcome the requirement in the draft ESF regarding the AIIB's enhanced due diligence of higher risk activities and recommend that such requirements be retained in the final draft. For example: 5.12.2. ***Prior Approval of Higher Risk Activities.*** *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.7 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.*

DISCLOSURE OF SUBPROJECT INFORMATION

The enhanced sub-project information disclosure is a good step forward.

⇒ **RECOMMENDATION:** Given the bank can have advance knowledge of the social and environmental impacts of FI clients' higher risk activities, it would make sense to disclose this information as well, in order for affected communities to be able to engage with the sub-projects. If the point of disclosure, according to the AIIB, is to *"enable the consideration of relevant views of people affected by the Project and other concerned stakeholders in decision-making"* (see 2.19), then waiting 12 months to disclose the name, sector and location of sub-projects – as proposed in the current draft – makes no sense.

⇒ **RECOMMENDATION:** The ESF should require the disclosure of the AIIB's involvement in sub-projects and the availability of the PPM, **at the project sites**, ensuring that it is clearly visible and understandable to affected communities.

EXCLUSION OF HIGHER RISK ACTIVITIES

It is welcome that the AIIB states it may exclude high risk activities, for example: *"**Equity Funds.** 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 may 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."* This is a perfect opportunity for the AIIB to emulate the IFC's Green Equity Approach which is explicit about excluding coal-related projects from support.

⇒ **RECOMMENDATION:** The new ESF could usefully incorporate elements of the IFC's new Approach to Greening Equity, which, in addition to excluding clients that do not have a plan to phase out coal support, commits to work with equity clients to reduce coal exposure to zero by 2030 and specifies ring-fencing for debt clients.

ACCESS TO REMEDY

It is a positive that the draft ESF stipulates enhanced access to grievance redress mechanisms (GRM): "*For FI Projects, establish: (a) procedures for employees (and contractors) to submit grievances, including anonymously; (b) a mechanism to address concerns of relevant Project stakeholders related to the FI's ESMS implementation; and (c) a requirement that a GRM be established for Bank-supported activities as described above in Sections 2.20, Project-level Grievance Redress Mechanisms, and 2.21 of this ESS 1.*"

However, communities must also have access to the PPM for FI sub-projects. This is a recommendation highlighted in the independent review of IFC/MIGA: that the IFC ensure its client "provide information to affected communities both about the client's grievance mechanism and about CAO {IFC's accountability mechanism]" *including* for "FI sub-projects". And that furthermore, "IFC/MIGA supervision should **ensure that clients are meeting this responsibility**, in part by surveying diverse community members regarding their awareness of the client's grievance mechanism and the existence and work of CAO." One of the most significant negative impacts of investing through intermediaries is when lack of disclosure prevents communities from knowing they have access to remedy, so the inclusion of this recommendation in the new ESF is of fundamental importance.

⇒ **RECOMMENDATION:** As well as providing enhanced access to the GRM, the new ESF should require disclosure of the PPM at the project site, and also ensure bank supervision that this requirement is met by clients, as the IFC/MIGA review recommends.

CAPTURING RISKS OF FINANCIAL INTERMEDIARY INVESTMENTS

It would be more realistic and appropriate if, as well as highlighting the potential advantages of investing through intermediaries, the new draft ESF also highlighted common risks. At present, for example at 2.15, the new draft only highlights the benefits and not the risks of FI lending; it is important to recognise both, in order to avoid, manage and mitigate risk: *"**Use of Financial Intermediaries.** Financial Intermediaries (**FIs**) are an increasingly important instrument for promoting and expanding the reach of sustainable growth and lasting improvement in people's living conditions, through Bank financing for economic activities in infrastructure and other productive sectors. The Bank works with a variety of financial service providers, including, among others, banks, private equity funds and the managers of these funds. FIs are engaged in a wide range of activities, ranging from medium- to long-term corporate or project finance, to lending to small and medium enterprises, trade finance, housing finance and microfinance. The Bank's approach under FI operations is adapted to the nature of the activities supported."*

⇒ **RECOMMENDATION:** The new ESF should include mention of the risks of FI lending: including regarding, for example, lack of client capacity to manage E&S risk; the need for enhanced due diligence and supervision by the bank to ensure implementation of ESF standards; and the lack of transparency and accountability caused by the longer chain of investments.

INFORMATION DISCLOSURE

Recourse Phase 1 recommendations

- The AIIB ESF must require time-bound information disclosure, in line with best practice at other MDBs.
  - % The draft revised ESF includes time-bound disclosure, but it is not on par with MDB best practice and application should not be at the discretion of management.

Analysis and additional recommendations

Information is the absolute bedrock of promoting meaningful consultation and inclusion of local communities in projects which affect them. Without timely disclosure of important project information – such as Resettlement Action Plans and ESIAs – in relevant languages, local people will lack opportunities to participate or to challenge any mistakes, and for its part, the project developer and its financiers will miss a chance to spot and avert risks at an early stage.

The new ESF's commitment to time-bound information disclosure is welcome: *"(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."* (7.2.2). However, it fails to align with best practice from the IFC, World Bank and GCF, which disclose project documents between 120 days to 60 days in advance. It is unclear why the AIIB should stipulate less notice than these other MDBs. Moreover, the references to time bound disclosure are immediately undermined by leaving it up to bank management to decide whether these requirements apply: *"The prerogative to require a longer or shorter disclosure time in particular cases is exercised by the Bank's Management"*.

⇒ **RECOMMENDATION:** Time bound disclosure should be amended to 120 days prior to consideration of approval for high risk projects, and the caveat allowing management to amend this time period should be removed (7.2.2).

ACCOUNTABILITY

Recourse Phase 1 recommendations

- It is essential that the ESF is fit for purpose and can be applied to all of AIIB's investments, whether direct or indirect, and regardless of the complexity of the financial instrument.
  - ✘ Disappointingly, the draft ESF applies to fewer AIIB investments, rather than more.

- The ESF must ensure that the AIIB bears responsibility for the social and environmental outcomes of co-financed projects and guarantee affected communities' access to the Project-affected People's Mechanism.
  - ✘ The ESF excludes co-financed projects, which means affected communities cannot access the PPM.

Analysis and additional recommendations

ESF EXEMPTIONS
It is extremely disappointing to see the number of exclusions from the ESF application has increased rather than decreased. Co-financing remains excluded: "*If the Project is co-financed with another MDB, bilateral development organization or other development finance institution, and AIIB agrees to the application of the environmental and social policies and procedures of the co-financier (in lieu*

of the ESP) to the Project, the Bank may also agree to rely on the IAM of such co-financier (in lieu of the PPM) to handle submissions of Project-affected people." (7.10) The AIIB is the only MDB that allows this exclusion, making the AIIB out of line with best practice.

Moreover, Environmental, Social and Governance (ESG) approaches, called "*a new and dynamic frontier"* in the ESF, are now explicitly excluded: "*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"* (2.16).

According to the ESF (2.17), the AIIB "*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."* However, besides a reference to a besides a reference to an *"ESG framework"* there is little detail on how these "risk management approaches" are monitored and evaluated in practice – nor why this cannot be incorporated under the ESF*: "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."* (3.6)

ESG funds are operating outside of public oversight with minimal transparency. According to analysis by Inclusive Development International ESG rating agencies have on numerous occasions given all clear to damaging projects. We also understand that the AIIB will only disclose portfolio overviews, without individual project data. Even if this can be requested, the level of opacity means that people negatively affected by these investments are unlikely to know where the financing comes from. Even where it is possible to link concerns, any investment not covered by the ESF is also not covered by the PPM: *"the Policy on PPM would not apply to the operation"* (3.6). This is a dangerous flaw and the CEIU has confirmed that they share this concern.

Another form of financing, *"Results-based Financing Approaches"* (2.18) is also explicitly excluded, introducing an option for the bank to *"adopt its own self-contained policy framework to govern these operations"*. This introduced another giant loophole for potential high-risk projects slipping through the net of thorough and transparent checks and balances.

In addition, the ESF introduces a huge new caveat regarding future financing models – further undermining the ESF. *"Other Innovative Financing Approaches"* (2.19) allows the bank to "*co-finance with other MDBs, bilateral development organizations and other development finance institutions that have developed other innovative financing approaches and apply their policies applicable to such approaches, in lieu of the Bank's operational policies, including the ESP"* and to *"(b) develop other innovative financing instruments designed to support Projects for which the ESP is not well suited, including a specific policy framework for assessing environmental and social risks and impacts associated with such operations*". This sets a dangerous precedent, indicating that an increasing number of AIIB projects will not fall under the jurisdiction of the ESF – nor will project affected people be able to access the PPM.

For both of these latter exemptions, the ESF states that the respective 'policy framework' should be *"consistent with the objectives of this ESF"* – however, this allows a piecemeal approach, avoiding vital checks and balances. Instead they should be covered by the ESF.

⇒ **RECOMMENDATION:** The ESF should reverse Article III exemptions, and apply to ALL projects, meaning that the AIIB is also accountable for all projects it invests in and guarantee all project-affected people access to the PPM, in line with best practice. Loopholes providing possible exemptions for future projects must be closed.

WEAKENING OF LANGUAGE OR PROVISIONS

Instead of strengthening and clarifying protections, there are many examples where language in the draft ESF has been weakened. For example, in 1.7.3. the original ESF's "Ensure" has become the much weaker *"**Facilitate** the environmental and social soundness and sustainability of Projects."*

It is also questionable why the words *"**applicable** ESS"* have been added to all requirements to comply. This could result in the unintended consequence that if the bank/client doesn't identify a specific ESS as applicable, then it will not be held accountable to that protection, for example, in relation to a PPM complaint. For example, in 5.10.2: *"If the Bank determines that the assessment and planning processes or the documents require further work to comply with the requirements of the ESP or **applicable** ESSs,"*

⇒ **RECOMMENDATION:** The language needs to be strengthened, to enhance clarity, rather than weakened, and the word *"applicable"* should be removed.

In addition, it is concerning to see the use of *"or other Bank-approved document"* as a replacement for the widely-accepted ESMP or ESMPF. Without definition of what such other Bank-approved documents are, this vague provision could be used to circumvent the clear requirements of an ESMP or ESMPF.

⇒ **RECOMMENDATION:** Enhance clarity by retaining the use of clearly-defined requirements, such as ESMP and ESMPF, and remove *"other Bank-approved documents."*

The new draft ESF also seems to downplay the role the AIIB must play in supervising projects' adherence to the ESF. The requirement for the bank to supervise projects has been diluted to the weaker 'monitoring'. For example, according to 54 in the old ESF: "*The Bank reviews and approves the environmental and social documentation for the Project and maintains its **supervisory** role in Project implementation.*" In the new draft, this becomes the less proactive: "*The Bank reviews and approves the environmental and social documentation for the Project and maintains its **monitoring** role in Project implementation."*

⇒ **RECOMMENDATION:** Reinstate the requirement for the bank to supervise project implementation, as it makes its responsibility clear.

HUMAN RIGHTS
The ESF states that it "*Support Clients, through Bank financing of projects, to implement their obligations under national environmental and social legislation (including under international agreements adopted by the Member) governing these Projects*". However, specific references to human rights and human rights obligations are absent or weak, for example, referencing *"these human rights"* (2.3), rather than all human rights.

The ESF should set out to identify, prevent and mitigate human rights related risks. This should be done through social and environmental due diligence at the country level, including assessment of the client country's human rights record and obligations, as well as through human rights due diligence at the project level. It should also introduce a public sanction list, including clients, sub-clients and implementing agencies that have engaged in or have been repeatedly associated with human rights abuses.

⇒ **RECOMMENDATION:** The ESF must make human rights obligations explicit, and human rights considerations should be incorporated into environmental and social due diligence at the national and project level. It should also introduce a public sanction list related to human rights abuses.

RETALIATION
The new language on retaliation is welcome, for example 2.8: *"In the context of a Project in which the Bank determines that there are risks of retaliation against the Project's stakeholders, or of other threats to their safety, it seeks to work with the Client to minimize such risks"*, the references to confidentiality and other provisions in terms of access to GRMs (7.8.2) and the introduction of a specific section dedicated to retaliation (7.11).

However, the text needs to be strengthened, to remove dangerous caveats that could seriously undermine rather than protect project complainants and human rights defenders. Most significantly the ESF statement that the bank will review *"credible allegations"* (7.11) infers a judgement call, which could imply bias. Instead, the bank should promptly review all allegations. Moreover, the ESF puts responsibility on the client to develop measures against retaliations, but this ignores the fact that more often than not reprisals are carried out in favour of the client. Instead the bank should develop mitigation measures that include leverage points, proactive engagement with project affected communities and proactive monitoring of the situation. These risk assessments should be carried out prior to project approval.

The bank should prioritise and use its leverage to safeguard defenders and their rights, including utilising divestment or disengagement where this is effective for risk mitigation or where continued engagement poses a risk of exacerbating adverse impacts to affected communities.

⇒ **RECOMMENDATION:** The ESF language on retaliation must be strengthened, including risk assessment prior to project approval, adding a review of all allegations of retaliation, and prioritising the safety of affected people and human rights defenders, including considering options for divestment or disengagement.

ANNEX: Myanmar civil society recommendations for the AIIB ESF review

Recourse coordinated with Myanmar CSO colleagues to organise a half day CSO workshop on the AIIB and the ESF review, which took place on 4 November 2020. The workshop was held online and was attended by 20 CSO representatives, representing a diverse range of Myanmar-based organisations, including those covering international advocacy and those operating in ethnic areas. Most of the participants had some prior knowledge or experience of monitoring IFIs and social and environmental accountability, related to their respective area of expertise.

The following set of recommendations is the output of the workshop, with agreement from the participants for Recourse to submit as an input to the AIIB ESF review:

Accountability
The AIIB must be held accountable for any project it invests in and the language on accountability overall must be strengthened. For example, it is essential that the ESF requires the AIIB and clients to inform project affected people about their involvement in a project. The government's role should also be stated; this is particularly important where MDB projects fail.

Climate change
The ESF should include stronger commitments for the AIIB to align with the Paris Agreement and respond to NDC targets. It should also include other climate-related treaties, such as the Kyoto Protocol. Any project submitted to the AIIB should be assessed against these treaties and targets. Relevant CSOs should be consulted before approval, so that harms can be prevented before they occur.

Dams
Large greenfield dams should be excluded from AIIB funding. The section on 'dam safety' needs further elaboration and should include potential impacts of climate change.

Land issues
Country-specific land-related laws must be checked for any project, and should be pushed to meet international standards. No investment should involve resettlement until the country has a standard land acquisition law. In Myanmar, land acquisition laws are outdated, which has led to forced land-grabbing.

Resettlement
There should be a clear definition of 'involuntary resettlement' in the ESF, with associated procedures. There is no such case as 'voluntary' resettlement. If resettlement must occur, it has to be budgeted for all the impacts on a community for the coming years – including assets, livelihoods and cultural values, including long term impacts.

Retaliation
The ESF needs to clearly acknowledge and state how to prevent and protect against retaliation. In Myanmar, we have seen minor threats to the community and CSOs who are raising concerns about projects, and we are concerned that this could increase in the future.

Labour
We have encountered many labour rights exploitations in World Bank funded projects (such as child labour in road construction projects). Therefore, it is important that language to prevent using child labour remain and to specify repercussions for failure to comply.

GRM
The ESF should clearly identify the complaints handling process, and all complaints should be comprehensively dealt with, regardless of who submits them.