Comments on the Asian Infrastructure Investment Bank
Draft Environmental and Social Framework
October 12, 2015

I. Introduction

Inclusive Development International (IDI) is a human rights organization working to make the international economic system more just and inclusive. IDI supports and builds the capacity of grassroots organizations and affected communities to defend their land and human rights in the face of harmful trade, development and investment projects. Through research, casework and policy advocacy, IDI works to strengthen the human rights regulation and accountability of corporations, financial institutions and development agencies.

IDI's team has extensive experience working to ensure that development finance institutions, including the World Bank and the Asian Development Bank (ADB), as well as governments in Asia, adopt policies to ensure that people required to resettle to make way for infrastructure projects are not forced into poverty. We also have many years of experience working with communities who are resettled to ensure that responsible agencies comply with the policies and standards meant to protect people from harm.

We commend the AIIB for its prompt attention to the need to adopt a set of policies for dealing with the social and environmental impacts of its future operations. On reviewing the draft framework, we note that in a number of respects it incorporates good standards, and on some issues, it exceeds the proposed ESF recently released by the World Bank. Yet, we have significant concerns about the overall quality and operationalization of the draft and by the AIIB's failure to engage civil society in an adequate and meaningful consultation process.

The inadequate time period for the consultation has precluded IDI, like many other organizations, from carefully reviewing the draft AIIB framework and providing detailed comments to support the AIIB in developing effective safeguard policies. Nonetheless, in these comments we raise a number of broad concerns. Our comments relate to the draft Policy and ESS 2 on Involuntary Resettlement. They touch on a few key issues only, and do not exhaustively reflect IDI's opinion on the draft ESF.

II. Consultation Process

The public consultations were announced only days prior to the commencement of a series of video consultations that took place over a period of two weeks with only a handful of civil society groups. The use of videoconferencing is an inappropriate format for stakeholders in many parts of Asia where the bank is likely to be operational, particularly in remote regions where internet connections are unreliable. Limiting the consultations to English–language is also problematic, as it effectively excludes the participation of many Asian civil society groups in the majority of the countries covered by AIIB's operations. This exclusion of Asian civil society is antithetical to AIIB's mission of creating an Asian-led bank that supports development in Asia. By any measure – including the draft ESF's own definition of meaningful consultation – this consultation process is woefully inadequate. We believe this

will seriously undermine the legitimacy of the AIIB as a development finance institution in the region, and we urge the AIIB to conduct meaningful consultations, befitting of a world-class organization, on an improved draft.

In addition, for all future policies, we strongly urge the AIIB to conduct genuine consultation processes that are inclusive of international and local civil society organizations and the citizens of countries impacted by AIIB activities. Under the AIIB's Articles of Association, the bank is to establish a policy on the disclosure of information in order to promote transparency in its operations,[1] as well as an oversight mechanism,[2] which according to the draft framework document is currently in process. We urge the AIIB to make the draft documents regarding these important policies and mechanisms publicly available in multiple Asian languages and open the drafts to a thorough process of public review and comment.

III. Draft Environmental and Social Framework

The draft ESF recognizes that "environmental and social sustainability is a fundamental aspect of achieving outcomes consistent with [AIIB's] mandate."[3] The proposed standards are meant to "avoid, minimize or mitigate adverse environmental and social risks and impacts of the Operations."[4] Yet, as currently proposed, the ESF is not fit for purpose. Essential aspects of a solid and coherent set of environmental and social safeguard policies and standards are missing from the proposed ESF.

Unless thoroughly revised and augmented, the proposed ESF would fail to ensure that AIIB-financed operations do no harm. Instead, the AIIB may quickly find itself complicit in forced evictions, violations of the rights of indigenous peoples and environmental degradation, and facing attendant reputational, financial and legal liabilities. By making mega-infrastructure projects possible through its financing, the AIIB, like all development finance institutions, bears a responsibility to protect affected people and must adopt a set of safeguard policies fit to meet this responsibility. The AIIB will not be successful at claiming a place among respected multilateral development finance institutions unless it adopts serious and comparable policies to protect people and the environment from the significant risks of harm posed by the construction of mega-infrastructure and other projects.

Environmental and Social Policy (ESP)

As mentioned above, in some respects the ESP exceeds the World Bank's proposed framework. We are pleased that the ESP applies to all AIIB Operations, without exception; that in the case of very complex and sensitive operations AIIB will require the client to engage an independent advisory panel; and that there is a default requirement to provide Environmental and Social Management Plans (ESMPs), including resettlements plans, prior to AIIB's approval of the operation. We support the explicit responsibility on the client to ensure the operations comply with international treaties and conventions to which the country is a party, and we urge the AIIB to include this in all legal agreements for the provision of AIIB financing and in its own due diligence of operations.

[1] AIIB, *Articles of Association*, article 34.
[2] AIIB, *Articles of Association*, article 26.
[3] ESP, para 1.
[4] ESP, para 2.

However, in other respects, the ESF needs to be significantly strengthened. Some of these problematic aspects are described below.

Use of client systems: IDI agrees that strong country and corporate systems are crucial for the management of environmental and social risks, and it is important for development agencies and multilateral institutions to support the strengthening of such systems. However, reliance on client systems in countries with weak rule of law and poor governance risks exposing people and the environment to serious harms. Many countries that may be affected by AIIB operations have weak or incomplete legal frameworks governing compulsory land acquisition in the public interest and provision of fair and just payment of compensation and resettlement support to those affected. Likewise, many also have a disturbing track record of forced evictions leading to homelessness, landlessness and impoverishment, even when laws meant to prevent these harmful impacts and human rights violations are in place. The draft framework does not provide adequate details on how and when client systems will be used or how any gaps in country systems will be addressed to ensure that the objectives of the standards are met and, at a minimum, no harm is done. Clear criteria for the use of client systems that ensure project affected people will be fully protected from adverse impacts, including harms from economic and physical displacement, must be clearly articulated, along with measures for closely monitoring implementation and applying corrective measures whenever necessary to meet the objectives.

Ambiguous language regarding application of standards: The draft framework includes ambiguous language regarding the application of environmental and social standards. The draft states, for example, "AIIB requires each Client to manage the environmental and social issues associated with its Operation in a manner designed to meet the ESSs *over a reasonable period of time*, as reflected in the agreement between AIIB and the Client."[5] It later states: "AIIB requires the Client to assess and prepare its Operation so that it meets the requirements of the applicable ESSs *in a manner and a reasonable time frame acceptable to AIIB*."[6] This lack of precision and broad discretion vastly diminishes the accountability of both the client and the AIIB for compliance with the standards and realization of the objectives. Along with many other civil society organizations, IDI has raised the same concerns with the World Bank in relation to a similar formulation in its proposed Environmental and Social Framework, which rolls back thirty years of clear and binding safeguard policies. There are other areas of considerable ambiguity in the draft. For example, it is unclear whether the standards would apply to Category B Operations.[7]

The "Phased Approach": As stated above, we are pleased to see that there is a default requirement for a resettlement plan, prior to project approval if an operation would result in involuntary resettlement.[8] A resettlement planning document would be necessary in order for the client to provide to the AIIB the capital and recurrent cost estimates for implementing the ESMP as required in paragraph 35 of the ESP. We also support the requirement that these cost estimates be integrated into the total budget of the operation.

However, the draft framework also states that the AIIB "may determine that the timing of its environmental and social appraisal of selected activities under an Operation, and the Client's environmental and social assessment of such activities, may follow a phased approach that

[5] ESP, para 56 (italics added).
[6] ESP, para 22 (italics added).
[7] ESP, para 29.
[8] ESP, para 25.

takes place following AIIB's approval of the Operation."[9] It is not clear when such a phased approach would be permitted or how it would be implemented. Approving an operation without appraising environmental and social risks and assessments would expose the AIIB to reputational and financial risks and potentially violate the international human rights legal obligations of Member States for failure to conduct due diligence. The quality of social and environmental assessments, and the demonstrated ability and commitment of the client to avoid and mitigate risks through appropriate instruments, such as resettlement plans, should be a principle consideration in the AIIB's decision to approve a proposed operation. A phased approach should only be permitted in exceptional and clearly defined circumstances.

Financial intermediaries: Over recent years, there has been alarming evidence of the high environmental and social risk associated with financial intermediary (FI) lending. The Oxfam publication, *The Suffering of Others: The human cost of the International Finance Corporation's lending through financial intermediaries*, which was co-authored by IDI, describes case after case that illustrates the serious harms that communities can be exposed to through inappropriate lending to FIs.[10] The brief paragraph in the draft ESF on due diligence of FIs[11] needs to be significantly expanded and strengthened if the AIIB intends to use this indirect and highly risky model of financing. We point you to relevant parts of the IFC's 2012 Sustainability Framework and ADB's 2009 Safeguard Policy Statement which we recommend be used as a baseline for AIIB's policies for all of its FI operations. In addition, it is crucial that AIIB require that all FI clients publicly disclose all sub-projects that receive AIIB financing. Transparency around the use of AIIB funds on the ground is critical to accountability and ensuring the application of the environmental and social standards in practice. *The Suffering of Others* sets out clear recommendations to the IFC to ensure its financial sector portfolio does no harm, and should also serve as recommendations to the AIIB in formulating its policy on FI lending.

ESS 2: Involuntary Resettlement

Every year, millions of people in Asia are forcibly evicted from their homes and land in the name of 'development'. Forced displacement is inherently discriminatory, as with few exceptions it is the poor and marginalized who are required to move out of the way for mega-infrastructure and other projects. The impact on families and communities is devastating: displacement and loss of resources have led to impoverishment, food insecurity, psychological trauma, diminished access to basic services such as schools and health facilities and the breakdown of social networks and cultures. Land seizures and forced evictions have often been accompanied by destruction of property and violence.

It is by now well recognized that any international finance institution committed to sustainable development must have in place robust policies and procedures to safeguard against the devastating impacts of physical and economic displacement.

We appreciate AIIB's awareness of the need to ensure that any project to which it contributes financing does not cause forced displacement and commend the commitment not to knowingly finance an operation that "either involves or results in forced evictions."[12] We

[9] ESP, para 58.
[10] Oxfam International (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.
[11] ESP, para 20.
[12] ESP, para 60.

understand this to mean that AIIB recognizes its responsibility to, inter alia, conduct rigorous due diligence prior to approving an operation to assess the risk that forced evictions will occur.

But, for this commitment to be meaningful, ESS 2 must be significantly strengthened and harmonized with the international human rights law standards governing evictions.

The objectives of the proposed ESS 2 are "to avoid involuntary resettlement (IR) wherever possible; to minimize IR by exploring Operation and design alternatives; to enhance, or at least restore, the livelihoods of all displaced in real terms relative to pre-Operation levels; and to improve the standards of living of the displaced poor and other vulnerable groups." Yet, these objectives will simply not be met in practice without significantly stronger and more detailed requirements. In its current state, the draft ESS 2 is a hollowed out version of the resettlement safeguards of other multilateral development banks, including the World Bank and the Asian Development Bank. For example:

- While a survey or census of displaced people is required, much more detail is needed to develop an effective resettlement plan that will meet ESS 2 objectives. For example, it should be clearly stipulated that socioeconomic studies must be conducted, including on all assets, productive resources and livelihood opportunities expected to be lost or affected as a result of displacement. These studies and data are crucial to resettlement planning and to ensuring that affected people are not impoverished, and are instead supported to improve their living standards and livelihoods. Baseline data is also indispensible to an evaluation of whether policy objectives have been achieved.
- While ESS 2 calls for the preparation of a resettlement plan or resettlement planning framework, it is essential that the necessary components of these documents are clearly described. The World Bank's current policy and proposed standards on involuntary resettlement contain this description in an Annex, as does the ADB's Safeguard Policy Statement, in its Outline of Resettlement Plan.
- In relation to the use of resettlement frameworks, while they may have utility in specific circumstances, where it is impossible to identify the displacement impacts at the time of project approval, ESS 2 must make clear that this should occur in limited circumstances only where absolutely necessary and that a full resettlement plan is required as soon as potential displacement impacts can be identified, for approval by AIIB following a full consultation with affected persons. Experience shows that the use of planning frameworks very often results in a failure to ever develop and implement full resettlement plans, leaving displaced households uncounted and unprotected.[13]
- While ESS 2 requires meaningful consultations with affected persons, host communities and NGOs, it does not specifically require consultations on alternatives to eviction and resettlement.
- While ESS 2 requires support for "the social and cultural institutions of displaced persons and their host population", and a "social support phase" for highly complex resettlement, much greater detail is needed about what this means and what a process of social support

[13] See, for example. World Bank Resettlement Portfolio Review II (2014), paragraph 14:
"Across all regions, only a fraction of RPFs are used to prepare RPs during project implementation. Of 172 projects for which a RPF was prepared…only 31 (18%) also had a RP filed in the Bank's electronic records."

should entail.

- While ESS 2 requires clients to improve or at least restore the land-based livelihoods of displaced persons through land-based resettlement where possible, it does not stipulate that replacement land must be of equal or higher quality and productive value as land taken. This detail is critical to preventing impoverishment that so often occurs when displaced farmers are resettled to inferior land that is infertile or otherwise unproductive. While ESS 2 calls for cash compensation for land at replacement value when loss of land does not undermine livelihoods, it does not contain the accepted definition of replacement value, including transitional costs.
- While ESS 2 requires "better housing" at resettlement sites, it should call for "adequate housing" as defined under international law standards. ESS 2 should also require that affected households are provided opportunities to participate in planning and implementation of the resettlement process, including the opportunity to choose from different resettlement site options.
- While ESS 2 requires that resettlement sites have "comparable access to employment and productive opportunities", it should stipulate that the livelihood opportunities must match the skill-base of those being displaced. For example, affected urban families skilled at running small retail businesses should not be resettled to farming plots on the outskirts of the city or areas where employment in factories is the only option. Fisher folk should not be resettled to areas where agriculture is the only economic opportunity. Additionally, ESS 2 lacks instructive detail on livelihood support to be provided to displaced persons in order to restore or improve their livelihoods
- While ESS 2 requires clients to "ensure that displaced persons without title to land or any recognizable legal rights to land are eligible for resettlement assistance, it does not clearly explain the type of resettlement assistance that should be provided or the consultative process for providing it. (Does it refer to the preceding paragraph?)

These are merely a sample of the many components of a serious resettlement policy that are missing from the draft ESS 2. We urge the AIIB to significantly develop ESS 2 so that it contains all the requisite components and detail to make it a practical operational set of standards that will effectively achieve the objectives. Incorporating the requisite detail should not be viewed as creating additional burdens on clients, but rather as providing the kind of operational instruction necessary to ensure the effective application of the standards.

In addition, we are particularly concerned about the overly narrow scope of ESS 2, which is limited to displacement caused by involuntary land acquisition or restrictions on land use or access to legally designated parks and protected areas. The limited scope means that countless people directly affected by AIIB-financed infrastructure would not be protected from harm, including impoverishment. For example, economic displacement caused by the downstream impacts of a hydropower dam would not be covered. This means that fisher folk who live downstream of a dam and can no longer sustain their livelihoods because of the change in the river's ecosystem and depletion of fish catch are not entitled to the protections of ESS 2 despite the impoverishment risks they face as a direct result of an AIIB-financed project. The scope of ESS2 should be extended to cover all physical and economic displacement that occurs as a result of project activities.