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Subject: Submission: ESF Review

Recommendations on the AIIB ESF Review Consultation Process and comment on the scope, content and implementation of the Environmental and Social Framework

The Asian Infrastructure Investment Bank (AIIB), after four years of its operations, is undertaking a review of its environmental and social standards. It is important for institutions like AIIB to have a robust, comprehensive Environment and Social Framework (ESF) with strong emphasis on the implementation and monitoring of these policies and projects. The fact that the review process is happening after four years of AIIB being operational, gives AIIB an opportunity to review its own projects and take feedback from stakeholder community and CSOs in order to make the review and the process meticulous.

As one of the biggest recipients of AIIB's funding, this process has significant meaning for India especially, given the context and trajectory of development followed. India, in recent times, has focussed on developing massive infrastructure which require enormous investments. This resulted in India opening itself to mega projects financed by international, national and private financial institutions. To drive home this agenda, policy reforms are being made for Foreign Direct Investments, improving rankings in Ease of Doing Business charts, promoting public private partnerships, and privatisation etc. This is implemented by giving tax benefits to corporates and diluting all environmental, labour and social laws, making it easier for financiers and corporates to invest and build infrastructure, neglect and violate community rights with least regard to the environment. This has very clearly undermined the checks and balances and of democratic and legislative processes. Changes in laws overnight through ordinances and government orders is a very common procedure for the government these days while these actions are usually taken during a state of emergency!

In recent times, India has seen a curb on democratic spaces to dissent. Archaic laws are being used to curb dissent. Anti-development and anti national tags are being used to threaten anyone opposing the government over their policies. One of the blatant examples is a case of the now cancelled Amaravati Capital City Project, when it was under consideration for approval as a co-financier along with the World Bank. The then Chief Minister of the state threatened people and stated that criminal cases will be filed against them, through a public statement for filing any complaint with the accountability mechanism available through the financial institutions. This is just the tip of the iceberg, opposition to most of the projects of the state is met with iron fist.

In these circumstances, it is essential for Multilateral Development Banks like AIIB to develop robust, comprehensive and strong environmental and social policies which are implemented and monitored well. To merely rely on the country systems is not enough; rather the ESF should go beyond the country system to strengthen them further. At a time when other MDBs are also undergoing review of their policies, AIIB should take a progressive leap as the first MDB from the global south to show its commitment towards building infrastructure through robust policies and with entire commitment towards protecting people and the environment.

I. Concerns with the consultation process:

1. **Timeframe:** Given the global health crisis that is posed in front of the world, the timeline of sending the comments by March for the first phase is unrealistic. A number of meetings planned at local level by CSOs with different stakeholders to give collective feedback had to be cancelled due to the health threat and travel curbs. This current crisis has disallowed CSOs and targeted communities to provide meaningful feedback.

2. **Language:** The fact that English is chosen as the only language for the review process is highly problematic. It will affect participation of targeted communities in the consultation process. It is important that regional languages are accepted to make the consultations meaningful to the community.

3. **Lack of meaningful consultation with impacted communities and CSOs:** The fact that this review is happening after four years of undertaking projects has provided AIIB with an opportunity to have consultations with the impacted communities. Also, with no regional/local presence it was important that AIIB should have physical consultations with CSOs, the impacted communities at local, regional and sub- regional levels**.**

4. **Information only via electronic medium:** According to a report by Internet and Mobile Association of India (IAMAI), only 36 percent internet penetration[1]. In terms of absolute numbers, urban India with 192 million users had almost the same number of users as rural India. However, in terms of percentages or penetration, given the disparity of population distribution in urban and rural India, rural India had a considerably lower penetration level. This leaves a huge chunk of population where the projects are located out of the purview of Internet usage. Coupled with the fact that all internet users are not familiar with electronic mails or have accounts. Also, in recent times India has seen a maximum number of Internet shutdowns on the pretext of national security every time there is dissent to the government. The Indian government has shut down the Internet in various parts of the country 374 times since 2012[2]. More than a hundred of those shutdowns took place in 2019 alone. India also now holds the notorious record of holding the longest shutdown in a region. It's been more than 200 days since seven million residents of Kashmir had regular access to the Internet beyond a handful of government-controlled outlets. It is important that the information should be made available through newspapers

[1] https://economictimes.indiatimes.com/tech/internet/india-has-second-highest-number-of-internet-users-after-china-report/articleshow/71311705.cms?from=mdr
[2] https://scroll.in/article/947880/in-charts-india-shut-down-the-internet-than-100-times-in-2019

and other mediums to ensure the affected communities and concerned individuals/ field organisations are aware of this process.

Recommendations

1. The review process needs to include physical consultations. The consultations should be held at regional and sub regional levels targeting the impacted communities and other relevant stakeholders to make the process meaningful. The consultations need to be documented and shared on the AIIB website.

2. The language of consultation should not be limited to English which will discourage/ disallow people to send their feedback. Regional/ national languages need to be accepted as a means of communication.

3. The Internet and AIIB website should not be the only medium information and awareness of the ESF review process. It needs to be through other mediums as well.

4. The timeframe of the consultation process needs to be reviewed. The fact is that the global health crisis has shifted the attention of the world in one direction. The next couple of weeks will be crucial for India and South Asia in general. With near total lockdowns, it is important that the timeframe of the review process is extended to make the process genuine and meaningful for all stakeholders.

II. Expand the scope of ESF to co-financed projects and Financial Intermediary projects fully

A. Concerns with regards to the Co- financed projects:

In the four years of operation, AIIB's membership has grown to 102 approved members worldwide and has funded 64 projects across Asia to the tune of USD12.24 billion. India alone has received investments close to USD 3 billion for the 14 approved projects. These projects include investments in energy, transport and water sectors. Of the 14 approved projects 4 are financial intermediary projects and 4 are co-financed projects. That means of the current approved portfolio for India, 33.33% projects are co-financed.

Andhra Pradesh 24x7 – Power For All, Bangalore Metro Rail Project - Line R6, West Bengal Major Irrigation and Flood Management, Madhya Pradesh Rural Connectivity are all co-financed projects. Even though mentioned as a stand alone project Rajasthan 250 MW Solar Project–Hero Future Energies project on the AIIB website, once the person gets into the project details on the website it clearly mentions, "this Project will be co-financed with the International Finance Corporation (IFC), and in order to ensure alignment of the policies applicable to the Project, IFC's Environmental and Social Sustainability Policy (IFC ESSP) and related Environmental and Social Performance Standards (IFC PSs) will apply to this Project"[3]. There seems to be no clear assessment of what is a co-financed project and what is not. There is total ambiguity over why the

[3]https://www.aiib.org/en/projects/approved/2019/_download/india/summary/PSI-Rajasthan-250MW-Solar-Project-12062019.pdf

project financing type has been categorized as a stand-alone project despite clear indication that it is a co-financed project.

The most important question that AIIB needs to address regarding the co-financed projects is the matter of accountability. AIIB needs to take responsibility for the environmental and social implications of projects it is financing and allow affected communities to access its grievance redressal mechanism. **For example in the Bangalore Metro Rail Project - Line R6**[4] where AIIB is the co-financier and European Investment Bank (EIB) has been marred with serious environmental and social concerns. Despite the project being categorized as an A risk category project, AIIB's own ESF is not applicable in this case. The Bank has decided to use the EIB's Statement of Environmental Principles and Standards 2009 (Statement) because EIB's policies are consistent with AIIB's ESP and environmental and social standards. **Only a Project-level Grievance Redress Mechanism has been set up to assist affected people to resolve their queries and complaints. AIIB's own grievance redressal mechanism is not available for the impacted community.** They can access the accountability mechanism of EIB. This is a total travesty of justice that the institution is not even accountable for the damages that have been caused by the project they have financed even if partially. This is a very dangerous precedent to set when most of the projects are being co-financed by MDB's. In the Bangalore metro case, a complaint has been filed with the accountability mechanism of EIB in September, 2019 and was found admissible. The complaint was on the ground of damages caused on the architectural and natural environments[5].

The co-financing model that serves AIIB well, particularly if other institutions, such as the World Bank and Asian Development Bank, do not charge the AIIB all the costs they incur for due diligence and oversight. With low-cost co-financing fees, the AIIB can make significant profits since its own loan charges can easily cover its low administrative expenses. The other institutions, with their full suite of safeguard policies, also protect the AIIB from reputational risks associated with infrastructure projects. The policies, due diligence applicable are the responsibility of the lead financier. There is no clarity on the role and liability of AIIB.

In one of the proposed co-financed project **Chennai Metro Rail Phase 2 Project - Corridor 4, risk category A project**, it is clearly stated that the AIIB ESF will be applicable to the components of the project they are financing, "Each co-financier is expected to apply its own environmental and social policies, as well as its own independent accountability (or recourse) mechanism to the component financed by it. The AIIB's Environmental and Social Policy (ESP) will therefore be applicable to the AIIB Components of the Project"[6]. This model is a total failure, it is next to impossible to break down the environmental and social impacts based on components of the project. This approach will harm in achieving protection for the affected community. For the community to break down the project into components and reach AIIB's accountability mechanism only for the environmental and social implications of those is rather unreasonable. The ESF needs to be applicable to the project in its entirety if the intent really is to provide environmental and social protection.

[4] https://www.aiib.org/en/projects/approved/2017/_download/india/summary/Bangalore-Metro-Project.pdf
[5] https://www.eib.org/en/about/accountability/complaints/cases/bangalore-metro-rail-project-line-r6-sg-e-2019-14
[6] https://www.aiib.org/en/projects/proposed/2019/_download/india/PSI-000301-Chennai-Metro-Corr-4-Concept-12.13.pdf

The now scrapped **Amravati Sustainable Capital City Project** which was being considered by AIIB for financial support as a co-financer with World Bank as the lead financier, also speaks volume for the need to have multiple checks and balances. The financiers need to be accountable for the finance they provide. The reasoning that applying systems and policies of one institution to avoid difficulty, double work and save resources of implementing agency in developing countries is inherently flawed. It rather makes it even more important to have several checks and balances when moving ahead with the projects in developing economies where livelihoods are based on land and environment. Amaravati Capital City project, plagued with socio-economic damages, land transactions affecting thousands of agricultural, coastal and pastoral labourers, tenants, landless families, dalits who have undergone severe pressure and fear due to the land acquisition and displacement process, financial non-viability, massive land-grabbing of the fertile land in the name of voluntary land-pooling were raised time and again with the government and both AIIB and World Bank by affected communities, people's movements and civil society organisations[7]. Complaint was filed with the World Bank's Inspection panel since it was the lead financier. Both the World Bank and AIIB eventually pulled out of the project. With AIIB looking at funding mega infrastructure it should be incumbent upon them to take responsibility for the implications of its projects. The manner in which the co-financed projects are being dealt with, show total lack of accountability of AIIB and complete ambiguity in policies with regards to applicability of AIIB's ESF.

Recommendations:

1. AIIB needs to be completely accountable for the co- financed projects. The ambiguity regarding the applicability of ESF on a case-to-case basis needs to end.

2. AIIB ESF and accountability mechanism needs to be applicable for all co-financed projects.

3. The ESF of AIIB should be applicable to the project in its entirety and not alone for the components they have financed.

B. Financial Intermediary Projects

Currently, AIIB has four approved FI projects in India National Investment and Infrastructure Fund Phase I , India Infrastructure Fund(IIF), Tata Cleantech Sustainable Infrastructure Facility and L&T- Sustainable Infrastructure on-lending Facility which means 33% of the approved portfolio is FI projects. The AIIB's current ESF is not adequate to prevent risk and harm arising from this form of lending. The current policy is inadequate and needs to be relooked.

Lack of information disclosure: The AIIB does not include information about sub-projects funded through any client FIs on its website. For example, though the AIIB invested in four (mentioned above) FI projects in India there are no details available as to the subprojects. Specifically with relation to the NIIF and IIF, both of which were in 2018 and 2017 respectively. It has been more than 2and half years now, no information has yet been made available on the website or otherwise regarding the subprojects. This

[7] https://www.cenfa.org/publications/encroachment-of-nature-people-and-livelihoods-a-case-of-the-abusive-greedy-and-failing-amaravati-capital-city-project-2014-2019/

is despite AIIB having committed to release information 'within 12 months' of such projects' approval.

Excessive powers lie with the FI clients: From delegation of decision-making around risk classification and environmental and social (E&S) management entirely, to setting up of including appropriate processes to disclose E&S information, to conducting stakeholder engagement activities, and establishing subproject-level grievance redressal mechanism to address concerns and grievances from both project workers and external stakeholder all the roles lie with the FI client. The Bank delegates the decision-making on the use of the Bank funds, including the selection, appraisal, approval and monitoring of investments. There is a complete lack of oversight from the Bank and this can result in huge lapses and complacency from the client's end.

FI investments in renewables and need for stringent monitoring

The common thread between all the approved projects all these projects is their objective to mobilise private capital for investments in subprojects that will support an increased supply of renewable energy generation. This would also include support for large renewable energy projects. Another common thread is an absolute lack of information on any of the sub-projects of these FI investments, even for the ones that were approved two years back.

Currently, in the Indian context the central government has claimed there would be 40,000 MW capacity in solar parks by March 2022, twice as high as the earlier target. This target means solar parks alone would contribute to 40% of India's installed solar capacity in the next three years. The government has so far approved 42 solar parks with a capacity of 23,449 MW. Some of the parks have a proposed capacity of less than 500 MW[8]. There have already been concerns regarding the solar sector being pushed for land-intensive utility-scale projects rather than focus on decentralized, rooftop or building-integrated small-scale solar. There has been slow progress in the governments over-ambitious and unsustainable plans of setting up solar parks owing to land acquisition issues. Solar parks in Bhadla (Rajasthan), Anantapur (Andhra Pradesh) and Pavagada (Karnataka) are hosts to over 2 gigawatts (GW) solar parks have already seen protests on issues of land acquisition. In an article, Priya Sreenivasan from Down to the Earth points out that, "Most parks, developed by nodal Government agencies identify low-yield land and lease it from the farmers on 25-to 28-year-agreements, a win-win situation for everyone involved as the farmer has a steady flow of income. But in practice, the land acquired by developers isn't always "barren". With no clear penalties and regulations that draw the line on land quality, fertile cultivable land is often procured to build solar power plants[9]. "

In this context, it would not be incorrect to assume that there is a high probability of AIIB finance being invested in some of the big Solar Projects through its FI investment which seems to focus around large renewables too. With its current non-transparent policies, lack of information on projects, are we heading for the same disaster that we have seen in India with FI projects funded by IFC in the past? It almost seems that these institutions have not learnt lessons from their predecessor institutions like IFC whose support through FI investment to a coal-fired power plant GMR Kamalanga Energy

[8] https://economictimes.indiatimes.com/industry/energy/power/governments-solar-park-push-is-running-into-land-acquisition-and-transmission-challenges/articleshow/69074597.cms
[9] https://www.downtoearth.org.in/news/energy/large-scale-solar-needs-tighter-land-regulations-62948

Ltd,[10] a company set up to develop and operate a large coal-fired power plant near Kamalanga village in Odisha, led to the first FI complaint ever with their accountability mechanism. This complaint had far-reaching implications with regards to policy changes. Today, IFC discloses information depending on the type of FI client.

Transparency and accountability is not a choice. It is the basic set of principles for any financial institution that has to comply with, while making investments, especially for development projects. The assumption of renewable projects not having any environmental and social implications is problematic. Large projects have impacts on land, ecosystems and environment even if they are renewable. In countries like India, where land remains the main source of livelihood, lack of stringent, transparent policies will end up in the same trap as for fossil fuel-based energy projects. Land acquisition and loss of commons remain issues of concern for the community, and lack of information on projects will raise questions regarding the projects' development effectiveness even if it is a renewable energy project.

Recommendation:

1. AIIB needs to make a commitment to transparency and information disclosure with regards to FI investments in a time bound manner. The details of subprojects should be provided on the AIIB website along with that of the clients. This is essential to ensure transparency and accountability with all stakeholders. The information regarding subprojects is critical for the impacted communities and will also push the client to comply with environmental and social standards.

2. Ensuring that FI clients require sub-projects to comply with all AIIB policies especially the Environmental and Social Framework (ESF), Complaints Handling Mechanism (CHM), Public Information Policy, and all relevant pectoral strategies and guidelines to enable FI sub-projects to be accountable to AIIB oversight and due diligence at all stages of the project cycle.

3. People impacted by the sub-projects should have access to AIIB's grievance redressal mechanism apart from the project level grievance mechanism set up by the FI client. The redressal mechanisms at sub-project level could easily be impacted by the local situation and can potentially end up creating complications for the local impacted communities

4. FI investments into renewable sub-projects require proper risk assessment and applicability of relevant policies as these can be land and resource intensive having serious impacts on communities and environment.

Other Recommendations for On ESF:

Timely disclosure of information and in a language whether regional/national language is critical for the affected community. Specifically, with regards to information, education and communication on socio-environmental aspects of the projects, material must not only be web-based but in other forms that are accessible to communities who have limited access to information tools. Information access to all is a critical factor for effective implementation of ESF. Language is one barrier AIIB has not been able to

[10] http://www.cao-ombudsman.org/cases/case_detail.aspx?id=165

cross. For most Asian countries English is not a language of the masses and even if information were available in English, it would not make much sense.

The most significant aspects of the ESF are its intent and effective implementation of the policies. If one looks at India's current portfolio of investments, almost 60% of projects financed have either partial applicability of ESF or have policies which delegate this responsibility to the client. Even for the stand-alone projects, AIIB's ESF will be applicable for the parts of the project they fund. If this remains the case, then the entire process of ESF loses its meaning. The intent to safeguard the people and environment does not stand out. This needs to change. A robust ESF is non negotiable and so is it applicability for all projects.

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