Friends of the Earth US Comments on the amended Environmental and Social Framework

March 16, 2020

Friends of the Earth US appreciates the opportunity to provide feedback on the Asian Infrastructure Investment Bank's (AIIB) revised Environmental and Social Framework. As with many of our colleagues, we believe the originally proposed commenting period was extremely short, especially as it coincided with the Lunar New Year holiday. Although the AIIB ultimately extended the window, it did so belatedly and haphazardly, which suggests a lack of foresight and coordination on the bank's part. Nonetheless, we appreciate the AIIB responding to public concerns by extending the deadline. Doing so will undoubtedly improve the quality of submissions. Healthy and open dialogue and discussion lead to better outcomes, and so we hope this is another experience the bank can learn from as it undertakes its ESF review.

We understand that AIIB is taking a focused approach during this review process. We are unclear as to what this means in practice. However, in reviewing the latest ESF, we highlight the following areas which deserve the bank's focused attention and action[1].

General Feedback on the Bank's Vision Statement

We appreciate the inclusion of "gender equality", an "emphasis on implementation", and the supposition that "transparency" is essential for the design and implementation of projects (4). However, we are disappointed that the AIIB's vision statement reflects a continued lack of ambition in meeting the "challenges of sustainable development in Asia" (3). AIIB's ESF reads very much as "business as usual" for a multilateral bank, and offers very little thought leadership in imagining new modalities for addressing the global demand for sustainability and climate change action.

For instance, paragraph 16 describes the bank's climate change measures and commitments to support the Paris Agreement. While necessary, we believe Paris Agreement commitments alone are insufficient in realistically and actually addressing the global challenge of climate change. This paragraph ostensibly describes the project activities the bank should finance, but in order to cohesively and seriously address climate change, there must also be rules on what the bank *should not* finance in order to avoid the worst climate impacts. According to over 11,000 scientists, we are currently living in a "climate emergency", in which fossil fuels must remain in the ground and be replaced "with low-carbon renewables"[2]. As mentioned previously, fossil fuels, as well as high emissions and high pollution activities, should be explicitly excluded from bank activity. Although we understand that the bank may defer to host country government interest in fossil fuel investments, we point out that renewable, clean

[1] All in paragraph citations refer to page numbers of the AIIB's amended Environmental and Social Framework.
[2] William J Ripple, Christopher Wolf, Thomas M Newsome, Phoebe Barnard, William R Moomaw, "World Scientists' Warning of a Climate Emergency", *BioScience*, Volume 70, Issue 1, January 2020. https://academic.oup.com/bioscience/article/70/1/8/5610806

energy is the only, survivable way forward within the age of climate change; in the case of coal, senior UN energy official Rachel Kyte appropriately described the situation as such: "Dressing up coal as a salvation for poor people is offensive to poor people. There are cheaper ways to get power to people who do not have power, and that is what we should be focusing on"[3]. **If the AIIB is truly serious in addressing climate change, it should exclude all fossil fuel financing.**

Furthermore, the importance of timely action in addressing climate change is critically missing. **The next ten years are crucial in avoiding major "tipping points" which will accelerate if not catapult the planet towards a "point of no return"**; "tipping point" examples include the loss of West Antarctic sheet ice, extensive permafrost thaw, or the Amazon forest becoming a net contributor instead of net absorber of carbon[4]. This means that the next ten years are the most crucial, and **AIIB should not finance any projects which will worsen climate change**. **This is particularly relevant for projects classified as A or B, as no mitigation or alternatives may be feasible for "irreversible" and "cumulative" impacts in light of climate change. In fact, measures which may "minimize mitigate, compensate for adverse impacts" may no longer be relevant, if not possible, given the increasingly short window the world has in limiting carbon and greenhouse gas emissions to zero.** In other words, the increasingly urgent nature of climate change should preempt the assumption that future carbon, emission, or ecosystem impacts can be reversible or even mitigated, even if it was possible just a few years ago.

Furthermore, based on the ESF, the AIIB does not appear to be doing enough to ensure staff are appropriately incentivized to fulfill the principles listed in AIIB's Vision Statement, of which climate change is just one important albeit overarching issue. We note that paragraph 19 remains virtually unchanged since the ESF's previous version, and wonder if or how the bank has indeed explored or examined the use of incentives to improve environmental and social performance. Has the bank piloted any programs or learned from experience in the past three years? For instance, although the AIIB calls for the "use of incentives for supporting good performance", **it remains extremely unclear what metrics staff are measured by when it comes to ensuring environmental and social considerations are fully integrated into project preparation and supervision. What positive incentives are in place for staff to ensure good environmental and social performance? And in contrast, what are the negative consequences for failing to do so?** Without clear, measurable, and transparent metrics to assess staff by, it is extremely difficult to ascertain, if not impossible, how staff can implement policy into practice. In other words, the use of incentives is an extremely important (and overlooked) tool to meet AIIB's "emphasis on implementation" (4), and that the ESF is a useful, meaningful policy framework not just on paper, but in practice.

Project Categorizations

As mentioned earlier, climate change should force financiers to view and address project risks in a much more conservative and thoughtful manner due to the fact that the next ten years are the most crucial in mitigating the first and worst effects of climate change. One way AIIB can integrate this approach in

[3] James Kynge, Leslie Cook, "Development bank halts coal financing to combat climate change", Financial Times, December 12, 2018. https://www.ft.com/content/7d0814f0-fd6f-11e8-ac00-57a2a826423e

[4] Stephen Leahy, "Climate change driving entire planet to dangerous 'tipping point'", *National Geographic*, November 27, 2019. https://www.nationalgeographic.com/science/2019/11/earth-tipping-point/

their lending is to reconsider its definitions of "irreversible, cumulative, diverse, or unprecedented" environmental and social impacts. Within the next ten years, impacts which may have been "irreversible" in the past may no longer be. In fact, **we recommend that the AIIB rejects any projects with any negative irreversible or cumulative impacts, especially those related to climate or biodiversity**.

We further note that the ESF (understandably) places great weight on the findings of the environmental impact assessment (EIA) when reviewing the fundability of a project. In order to avoid subpar EIAs, however, **we recommend that the bank require all EIAs to be conducted according to international best practice, which include ensuring EIAs are credible, robust, transparent, and comprehensive.** In many cases, EIAs are conducted in a manner which skews towards the interests of those financing it (typically the client), resulting in EIAs which may overlook key project impacts, or at worst, contain erroneous or misleading information. As such, **we encourage the bank to retain for itself the option to veto a project if the EIA is not robust and conducted per international norms and best practices**.

Information Disclosure

In order to ensure transparency and accountability from all parties**, we strongly encourage the bank to publish key project documents to the public, including Strategic, Sectoral, and Regional Assessments (11), information on project changes (12), and any environmental or social loan covenants between the bank and client. We also continue to urge the bank to allow for public commenting on key project documents such as the EIA/ESIA within 120 days, and for those documents to be translated into the local language.**

Offsets

We are concerned with the continued use of offsets as a form of environmental mitigation. The use of offsets are referenced in the sections on Conserving Biodiversity (5), Environmental and Social Standards (13), Environmental and Social Assessments (28), and Biodiversity Impacts (31). As mentioned, key tipping points in slowing or accelerating the worst and first climate change impacts will likely occur in the next ten years. In regards to biodiversity and preserving forest ecosystems in particular, the use of offsets is especially harmful; this is because offsets give the illusion of sustainability while in fact causing direct and/or indirect harm to the environment and local communities. For instance, offsets used to address species specific threats may not be effective if negative impacts include root problems such as habitat loss or fragmentation. One cautionary example is the Batang Toru Hydropower Dam in Indonesia; although dam developers have claimed offsets (such as wildlife corridors, habitat rehabilitation, etc) could help conserve the newly discovered Tapanuli orangutan species and reduce forest loss, no amount of offsets could address the root problem of the negative biodiversity and environmental impacts, which is permanent habitat loss and fragmentation caused by the dam. According to scientists, no offsets or environmental mitigation could allow for both the dam and the survival of the Tapanuli orangutan. Furthermore, although the dam developers claim forest rehabilitation could be done, this should not be seen as an equal exchange. This is because old or mature forests provide more extensive or robust ecosystem services, such as better absorbing carbon

and greenhouse gas emissions. In contrast, rehabilitated forest or newly planted forests take time to establish and are less efficient at sequestering carbon[5]. Furthermore, offsets, particularly those in the forestry sector, are notorious for driving violence, fostering land grabs, and facilitating industrial actors to manipulate and obscure their actual emissions and carbon footprint[6]. As such, **we recommend that the AIIB remove all language regarding the use of environmental or social offsets.**

Public Consultations

We are disappointed that the Environmental and Social Standard 3 regarding Indigenous Peoples continues to advocate for Free, Prior, Informed Consultation. The decision to rely on community consultations versus obtaining community consent for a project heavily influences whether a project succeeds or fails. Having reviewed many controversial cases related to international financial institutions, Friends of the Earth US can confirm that a common theme for failed projects is the lack of free, prior, informed consent. **A major gap in the ESF is the failure to acknowledge the potential scenario that affected communities or indigenous peoples reject a particular project, and to provide specific details on how the bank or client should respond in those cases.**

For instance**, the ESF advises that the "Client addresses such concerns in the Project's design and ESMP and ESMPF" (21). However, there is no information or clarity regarding what actions the bank should or may take if clients fail to address "significant adverse environmental and social impacts", "Involuntary Resettlement", or "impacts on Indigenous Peoples" (21).**

We strongly recommend that the bank adopt free, prior, informed consent as the default process in conducting community consultations.

Greenhous Gas Emissions Accounting and Cap

We are encouraged that the bank may take steps to "finance measures for the Client to quantify and report to national authorities…direct and indirect emissions from Project-related facilities" (16). However, given the climate emergency, **we strongly encourage the bank to require all clients to account and publish their direct and indirect emissions from project related facilities, and further recommend that the AIIB catalog and monitor its own greenhouse gas footprint across its lending portfolio.**

In order to manage climate risks and impacts, the bank's climate impacts must also be measured. In essence, what gets measured, gets managed –this is particularly relevant to the bank's commitment to curbing climate change. As such, **we reiterate our previous recommendation that the bank establish an institutional wide cap on all greenhouse gas and carbon emission financed by the bank, and to publicly publish data regarding direct and indirect emissions financed by the bank across its lending portfolio.**

[5] Fen Montaigne, "Why Keeping Mature Forests Intact Is Key to the Climate Fight", *Yale Environment 360*, October 15, 2019. https://e360.yale.edu/features/why-keeping-mature-forests-intact-is-key-to-the-climate-fight
[6] "REDD and Forest Carbon Offsets", Friends of the Earth. https://foe.org/projects/redd-carbon-offsets/

Environmental and Social Management Plan, Client Monitoring System, and Bank Monitoring and Reporting

The bank commits that "If the Client has inadequate capacity to carry out the ESMP, the Bank requires that the Project include activities to strengthen that capacity" (16**). In order to ensure that capacity building activities are done, and that ESMPs are developed appropriately, we bring attention to the need for the bank to require punitive measures against the client should they fail to do so**; potential examples may include requiring immediate repayment of any disbursed funds, delaying the disbursement of funds, requiring additional collateral, cancelling any pledged financing, among others. Another means to ensure better environmental and social performance from clients, **we encourage the bank to include specific environmental and social loan covenants, and to make these public so as to encourage greater transparency and accountability.**

Furthermore, **should Client Systems be used in place of the bank's environmental and social management system, it is critical that those systems are also made public.** Failing to do so would render the Client System as inherently inconsistent with the bank's, as transparency regarding relevant policies is in it of itself a critical aspect of a robust environmental and social management system.

In terms of the bank's monitoring and reporting procedures, we again bring to your attention the lack of punitive measures for clients who fail to meet the bank's expectations, such as the failure to make or take corrective actions based on the bank's assessment. **Without clear punitive measures, there is less incentive for both the client (and the bank) to comprehensively and proactively meet key environmental and social expectations.** We find this to be a troubling gap which may foster poor environmental or social performance from clients and encourage the bank to include more clarity on this matter.

Exclusions List

Positively, we note that projects in primary tropical forests, old growth forests, vulnerable and protected marine biodiversity and habitats, and those which contravene World Heritage Convention, Ramsar Convention, Bonn Convention, and the Convention on Biological Diversity, are excluded from financing.

However, **we encourage the bank to go further by excluding investments located in buffer zones or nearby those sites or areas as well.** This recommendation takes into account that many harmful investments may sometimes be strategically located just outside protected areas in order to allow for development. For instance, an investment located outside a World Heritage site can still have negative impacts; one example is the Egiin Gol Dam.

Although located in Mongolia, the dam was located in the same river basin as the iconic Lake Baikal, meaning that the Mongolian dam would lead to negative downstream and transboundary impacts in Russia[7]. In another example, although gas and coal development was proposed to be developed

[7] Eugene Simonov, "Silk Road project suspended over threats to Lake Baikal", *China Dialogue*, June 24, 2016. https://www.chinadialogue.net/article/show/single/en/9040-Silk-Road-project-suspended-over-threats-to-Lake-Baikal

technically outside the Great Barrier Reef, geography would require that any ships would have to pass through the Great Barrier Reef in order to reach those gas and coal terminals, which would have transformed the ecologically sensitive Great Barrier Reef into a dangerous shipping highway[8].

Lastly, **we also recommend that the AIIB exclude investments in free, flowing river and critical habitats with endangered species (categorized as endangered, or critically endangered by the IUCN).** In light of the sobering IPBES Global Assessment on Biodiversity and Ecosystem Services report, biodiversity and ecosystems are in rapid decline, and the need for stronger protections is needed now more than ever[9].

In Conclusion

We recognize that the AIIB has taken steps to meet the global challenge of fostering investments which are sustainable in the age of climate change. We also acknowledge and are grateful that the bank continues to solicit the feedback of the public and civil society groups. As the newest multilateral bank, the bank can benefit by learning from the experience of its international peers and take a leadership role in re-imagining what sustainability should look like in a time of climate change and rapidly declining biodiversity. However, **this ESF portends to the AIIB's lack of creative ambition, leaning instead towards the status quo within the family of multilateral banks. We sincerely hope ours and other public feedback will inspire the bank to at last take more dramatic, inspired leadership in ensuring its investments truly are green.**

There is little time left to effectively address climate change and all its tragic impacts. We hope the bank can have the courage for the transformative change that the world desperately needs. Our current situation is perhaps best described by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services: "By its very nature, transformative change can expect opposition from those with interests vested in the status quo, but such opposition can be overcome for the broader public good. If obstacles are overcome, a commitment to mutually supportive international goals and targets, supporting actions by indigenous peoples and local communities at the local level, new frameworks for private sector investment and innovation, inclusive and adaptive governance approaches and arrangements, multi-sectoral planning, and strategic policy mixes can help to transform the public and private sectors to achieve sustainability at the local, national and global levels"[10]. We hope the AIIB can participate in the transformative change the world needs.

[8] ARC Centre of Excellence in Coral Reef Studies. "Coal shipping threat to Great Barrier Reef." ScienceDaily. *ScienceDaily*, 16 May 2016. https://www.sciencedaily.com/releases/2016/05/160516103242.htm

[9] "The Global Assessment report on Biodiversity and Ecosystem Services", Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), 2019. https://ipbes.net/sites/default/files/2020-02/ipbes_global_assessment_report_summary_for_policymakers_en.pdf

[10] Ibid.