

ANNEX

Special Procedures of the United Nations Human Rights Council¹

Comments on the Draft Environmental and Social Framework of the Asian Infrastructure Investment Bank

Submitted by

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Independent Expert on the promotion of a democratic and equitable international order, Special Rapporteur on the right to education, Special Rapporteur on extreme poverty and human rights, Special Rapporteur on the right to food, Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on the rights of indigenous peoples, Special Rapporteur on the human rights of internally displaced persons, Special Rapporteur on the human rights of migrants, Special Rapporteur on minority issues pursuant to Human Rights Council resolution 25/17, 26/22, 27/9, 26/17, 26/3, 22/9, 25/16, 24/6, 24/9, 23/8, 26/19, 25/5 respectively.

This document expresses the views and observations of the above mentioned Special Procedures mandate holders on the draft Environmental and Social Framework (ESF) of the Asian Infrastructure Investment Bank (AIIB) and the three environmental and social standards (EES) it includes. They do not reflect a comprehensive analysis of the ESF, but rather reflect some key views, suggestions and concerns. To facilitate appraisal our comments follow closely the structure of the consultation draft dated 3 August 2015.²

I. General Comments

We appreciate the efforts being made by the Multilateral Interim Secretariat of the AIIB to initiate consultations on the draft ESF of the Bank and welcome the opportunity to provide our comments. We commend the steps taken to establish mandatory environmental and social standards before the bank becomes operational and note that in a number of respects the proposed ESF standards appear to be sound.

However, in our view, improving references to human rights and international labour standards contained in the draft would be of outmost importance. The respective responsibilities of AIIB and its clients, whether public or private, could be clarified in a number of areas or better spelled out, in particular in relation to the use of financial intermediaries or country and corporate systems.

¹ The Special Procedures of the United Nations Human Rights Council are independent experts appointed to on human rights from a thematic or country-specific perspective. The Office of the High Commissioner for Human Rights (OHCHR) provides support to their mandates and acts as Secretariat to these mechanisms. The views expressed in this document reflect the views of the independent experts, and do not necessarily reflect OHCHR's views.

² Available at: <http://www.aiibank.org/uploadfile/2015/0907/20150907061253489.pdf>

While we are not at all against local ownership, including support for the strengthening of national or client due diligence procedures, we would like to see better clarification on the role of the AIIB in comparison to its clients.

We would like to stress the importance of independent experts or independent boards providing advice. They should bring the required expertise in relation to the local context, national and international environmental, social and human rights standards to be considered. AIIB's own oversight mechanism for grievances should also ensure that complaints can be handled in a responsive way by experts that have necessary independence, expertise and standing within the AIIB to be able to effectively address such complaints.

The institutional policies of AIIB could incorporate more visibly international standards relating to responsible lending and borrowing, such as the UNCTAD Principles on responsible Lending and Borrowing or the Guiding Principles on Foreign Debt and Human Rights. This could be done either as part of the ESF or in its general lending policies.

II. Comments on the consultation process

We welcome the decision by the Interim Secretariat and its prospective founding members to undertake a public consultation process on the draft ESF. We support that the ESF will also include the principle of stakeholder participation in paragraph 12. The draft ESF highlights that meaningful consultation” is “inclusive, timely and undertaken in an open manner” and that “it conveys adequate information that is understandable and readily accessible to stakeholders and in turn, enables the incorporation of stakeholders’ views into decision-making”.

We strongly support this language in the draft ESF, but would suggest that what is foreseen for particular future operations and projects should guide more robustly the consultation process on the ESF itself. Currently the consultation on the ESF is limited to a period of less than two months including a series of video conferences.

Recommendation 1: We suggest the following aspect for your consideration: a) extending further the period for receiving comments; b) advertising the consultations more broadly; c) ensuring that inputs received by various stakeholders are made publicly available on the website of the Interim Secretariat; d). translating the draft into additional languages; and when possible also in minority and indigenous languages, including those most widely spoken in the Asian region. We would like to stress the importance of making the final ESF available in several languages.

Recommendation 2: We suggest considering face-to-face multi-stakeholder meetings to ensure meaningful engagement. While we see the value in using modern video-conferencing technology, face-to face meetings of various stakeholders including AIIB management, representatives of States, civil society and minority groups and Indigenous Peoples may enhance the process and outcomes, particularly for a multi-lateral development bank that intends to

develop new, inclusive and sustainable approaches to meet Asia's infrastructure challenges.

Recommendation 3: We recommend that the AIIB's draft operational procedures and its future information disclosure policy also be submitted for public consultation. In our view, assessing the ESF without these other instruments may be partial.

III. Comments on Part 1: Environmental and Social Framework

We welcome the aim to establish mandatory environmental and social requirements for all Operations. Most notably, we welcome the inclusion of mandatory standards relating to involuntary resettlement and Indigenous Peoples that will be applied by AIIB before it begins financing any operations (see paragraphs 2 and 3). We take note that the draft ESF sets out in a Vision statement certain "aspirations" relating to its environmental and social responsibility.

Recommendation 4: We would suggest strengthening the text by adding after aspirations "and obligations", as several key environmental, social or human rights standards go beyond voluntary commitments.

Recommendation 5: We would like to recommend more robust references in appropriate areas of the mandatory Environmental and Social Policy and its ESSs of international legal obligations that AIIB, its member States and Clients are bound by. These references are currently mentioned in the vision statement. In our view, the policy should as a minimum clarify that respect for binding national and international human rights law and standards, as well as labour, social security or environment will form part of AIIB's due diligence obligations and should therefore also be included in its binding environmental and social policy and environmental and social impact assessments, as set out in ESS1.

Objectives of the ESF

We commend the fact that the AIIB will "support Clients in the implementation of their national environmental and social legislation and related international agreements to which they are parties." (see paragraph 4, bullet point 9 on page 2). However, we wish to note that this should include international human rights and labour standards to which Clients are parties or which corporate Clients have to respect and protect. This would not place additional obligations on Clients, but rather recall their existing obligations.

Recommendation 6: We recommend rephrasing paragraph 4, bullet point no. 9 in the following way (*suggestion in bold*):

"Support Clients (defined below in paragraph 4 of the Environmental and Social Policy) in the implementation of their national environmental and social legislation and related international agreements, **including international human rights and labour standards**, to which they are parties."

Recommendation 7: An additional bullet point should be considered for corporate clients, which have different responsibilities compared to States or public entities:

“Assist corporate Clients in respecting national environmental and social legislation and related international agreements ratified or adhered to by the respective State in which they operate.”

Integration of Environmental and Social Sustainability

We welcome the fact that the Vision statement reiterates that the “integration of environmental and social sustainability [is] a core element of AIIB’s policies and the Operation it finances” and includes a commitment to “operate in a transparent manner to promote institutional and individual integrity as key values of development”.

Recommendation 8: We would suggest rephrasing the last sentence of paragraph 6 as follows to ensure inclusion of international labour and human rights standards:

“AIIB recognizes that it is the responsibility of Clients, in their activities, to comply with their legal obligations **under national** and international law in the **field of environmental, social, labour, human rights law** and is prepared to assist Clients in meeting these obligations in its areas of focus.

Social Development and Inclusion

We welcome the commitment to social inclusion, empowerment, participation and human rights in paragraph 7. We would recommend adding a explicit reference to the principle on non-discrimination as contained in all international human rights treaties. We further suggest adding some relevant sectors that the AIIB could potentially support in its future lending. In addition, we suggest replacing the term “vulnerable groups” by “groups in situation of vulnerability” under the definitions provided in the Environmental and Social Standard 1 section on page 25.

Given that human rights are universal, interdependent and indivisible we suggest avoiding any misunderstanding that AIIB may only seek to encourage respect for certain rights in detriment of others (for example certain civil and political rights at the expense of social, economic and cultural rights or vice versa). We also note that some critical human rights issues, such as the explicit reference to adequate housing or access to safe drinking water and sanitation are lacking. Drawing on Principle 11 of the United Nations Guiding Principles on Business and Human Rights and the language included in the safeguards of the European Bank on Reconstruction and Development, we would suggest adding a sentence to paragraph 7 clarifying the scope responsibility of AIIB’s responsibility to respect human rights means.

Recommendation 9: We would like to recommend the following improvements by rephrasing paragraph 7 as follows (*suggestions in bold*):

“Social Development and Inclusion. AIIB believes that social development and inclusion are critical for sound development. For AIIB, inclusion means

empowering all citizens to participate in, and benefit from, the development process in **a non-discriminatory manner making use of local opportunities consistent with local conditions**. Inclusion encompasses policies to promote equity of opportunity ~~and non-discrimination~~ by improving the access of ~~persons living in poverty poor and disadvantaged and social exclusion~~, people including marginalised groups, to quality education, health, adequate housing, social protection, infrastructure, affordable energy, safe drinking water and sanitation, employment, financial services and productive assets. It also embraces action to remove barriers against those who are often excluded from the development process, such as women, children, persons with disabilities, Indigenous Peoples minorities and other groups in situations of vulnerability, and to ensure that the voice of all citizens can be heard. In this regard, AIIB's operations seek to be supportive will support the realisation of these internationally recognized human rights and encourage respect for them in a manner consistent with its Articles of Agreement and the obligations its Members have assumed under international law.”

Strengthening of Country and Corporate Systems

We support the commitment to field based supervision and institutional strengthening of clients in the effective implementation of environmental and social management plans both at country and corporate level.

Recommendation 10: In paragraph 11 we recommend to also include a reference to efforts to strengthen corporate systems of management of environmental and social risks, which should be informed by the United Nations Guiding Principles on Business and Human Rights³ which provide a global authoritative framework to prevent and address adverse human rights risks and impacts.

Gender equality

We would encourage including in paragraph 13 on gender equality the following language to ensure that Clients make efforts to assess whether projects have any gender-specific impacts.

Recommendation 11: Revise text in paragraph 13 as following (*suggestion in bold*)

“AIIB requires considers it desirable for that its Clients to identify potential gender-specific adverse impacts and develop mitigation measures to reduce these.”

Treatment of Labour

All States belonging to the International Labour Organisation, including AIIB prospective founding members, must respect the ILO Declaration on Fundamental Principles and Rights at Work, setting out universal standards and rights of all workers

³ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

including migrant workers. The Declaration “applies to all persons in all States regardless of their economic development and is binding upon all ILO member States irrespective of whether or not they have ratified the relevant eight fundamental Labour Conventions.” In addition, relevant norms contained in international human rights treaties, including the Convention on Protection of the Rights of All Migrant Workers and Members of Their Families, should be respected.

Recommendation 12: In paragraph 14 we would recommend adding the following sentence:

“Operations financed by AIIB should respect fundamental rights, principles and Freedoms of Work as set out by the respective Declaration⁴ and the eight fundamental labour conventions of the International Labour Organisation, in addition to applicable national law and international human rights law. Relevant international human rights norms include the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Covenant on Economic, Social and Cultural Rights.”

IV. Comments on Part 2: Environmental and Social Policy and Environmental and Social Standards

We welcome the fact that the ESP applies to all operations and would propose that this is extended to all migrant workers, regardless of their status. However, AIIB requires clients to manage the environmental and social issues associated with its Operation only “over a reasonable period of time” (paragraph 6), giving scope to go ahead with projects and operations that even at the time of completing the environmental and social assessment may not meet the requirements of the ESSs. This could give scope for dilution of the requirements outlined in the ESSs.

Recommendation 13: We propose that usually each Client should manage the environmental and social issues associated with its Operation from the outset in a manner designed to meet the ESSs. In case a Client falls below the ESSs in certain areas, the contractual agreements between AIIB and its Clients should explicitly specify the time frame according to which the Client would be required to bring its management in line with the AIIB’s environmental and social policy and standards.

Additional country requirements

We would recommend that the ESP explicitly requires Clients to fulfil the national standards in the field of social, environmental, labour or human rights law. This would protect AIIB against accusations of circumventing those standards.

Recommendation 14: Paragraph 8 should make clear that national legal requirements should always be fulfilled, even if they may be more stringent than AIIB’s own environmental and social standards.

⁴ <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

Reliance on co-financing partners to carry out environmental and social assessments

AIIB's ESP allows the use of co-financier's environmental and social policies on a case to case basis provided that they are "broadly consistent with the ESP and the ESSs, and that acceptable monitoring procedures are in place" (paragraph 9).

Recommendation 15: We suggest that the ESP clarifies and includes detail criteria regarding what is considered as "broadly consistent". For example the policies of these institutions should also include explicit transparency and consultation requirements.

Recommendation 16: A sentence should be added to paragraph 9 to enable AIIB to carry out its own analysis of whether a Client complies with AIIB's policies and procedures, in case doubts arise that co-financing partners are not adequately applying or monitoring their environmental and social policies and standards.

Independent advisory panels and experts

To ensure that advisory panels and experts established or appointed for complex and sensitive operations (paragraph 21) are fully independent, Clients should not be able to choose alone or block their appointment. If they are selected and/or paid by the Client only, their independence may be limited. Instead we would propose that all concerned stakeholders, including affected communities have the opportunity to propose suitable independent experts, and should be consulted before their appointment. In addition we would suggest including a sentence indicating that independent experts should have knowledge about national and international law in the field of environment, labour and human rights.

Recommendation 17: We suggest replacing the last sentence of paragraph 21 with the following text:

"AIIB, Clients and other stakeholders, including affected population groups and their representatives, shall be able to propose independent experts or members of independent advisory panels. Independent experts and members of advisory panels should have expertise in relevant and applicable environmental, social and human rights standards at national and international level."

Recommendation 18: We would suggest that any highly complex and sensitive projects affecting Indigenous Peoples, advisory panels should require the inclusion of an expert, familiar with Indigenous Peoples issues as well as with national and international law protecting Indigenous Peoples rights, as is the case with similar standards established by the ADB.

Use of Corporate and Client Systems

Recommendation 19: We suggest that the ESP should spell out in more detail criteria regarding when a Client or Corporate system for the management of social and environmental risks is considered as broadly consistent with the ESF of the AIIB. Capacity assessments of Clients should be disclosed.

Recommendation 20: We suggest that this section of the ESP set out in more detail how AIIB will be assisting its clients to strengthen their environmental and social management systems, including the support AIIB will provide in the implementation of national and international environmental, social and human rights law, as mentioned earlier under the broad objectives of the ESF (paragraph 4).

Recommendation 21: We recommend that the use of client and corporate systems should be ruled out for category A Operations that are highly complex and sensitive.

Consultation and Participation

We welcome the language in paragraph 46 requiring AIIB Clients to engage in meaningful consultation with stakeholders. We would however suggest that for operations with significant adverse environmental and social impacts, involuntary resettlement or impacts on Indigenous Peoples AIIB should *always* participate in consultation with affected groups and peoples to understand the concerns of the affected people and to ensure that the Client addresses such concerns in the Operation's design and the Environmental and Social Management Plan. For this reason, it should also be incumbent on AIIB to gather information from sources other than the Client, as overreliance on information from clients has shown in other contexts or in previous occasions that it can lead to the financing of projects with significant environmental or social risks. It is therefore of particular importance that AIIB consults directly with affected or potentially affected groups, civil society organisations and human rights defenders as part of its own due diligence assessment. The UN Guiding Principles on Business and Human Rights would be a useful guide for AIIB on how to ensure adequate participation and consultation with affected stakeholders at all stages of the project.

Recommendation 22: AIIB should take part in all consultations in relation to Operations with significant adverse environmental and social impact, involuntary resettlement or impacts on Indigenous Peoples.

Free, Prior and Informed Consent

We welcome the reference in paragraph 47 to Free, Prior and Informed Consent (FPIC) by Indigenous Peoples. Free, prior and informed consent is a right clearly stipulated in 6 Articles of the UN Declaration on the Rights of Indigenous Peoples (Articles 10, 11, 19, 28, 29 and 32). FPIC is linked directly with the right to self-determination (Article 3) and the right of indigenous peoples to lands, territories and resources (Articles 25-29) and their right to culture and development (Article 32). The Free Prior and Informed Consent of indigenous peoples is required before the approval of any project affecting their lands, territories and resources.

However, the language contained in the last two sentences of the paragraph is ambiguous. While the ESP states that if "AIIB is unable to ascertain that such FPIC is established, it does not proceed further with the aspects of the Operation that are relevant to those Indigenous Peoples." In the following sentence it is indirectly

suggested that an Operation may nevertheless be continued by an AIIB Client, even if FPIC is not established, as the ESP says that “in such case, AIIB requires the Client to ensure that the Operation will not have adverse impacts on such Indigenous Peoples”, meaning that projects lacking FIPC could be undertaken, even if there was no free, informed, prior consent, as long as “adverse impacts” on Indigenous Peoples are not existing or potentially mitigated.

Recommendation 23: We suggest improving the language of paragraph 47 of the ESP to clarify better that Clients should not go ahead with any operations without the FPIC of affected Indigenous Peoples.

Information disclosure

We note general requirements for information disclosure contained in paragraph 48, but understand that a more comprehensive information disclosure policy will be drafted that should as well be subject to consultation. Therefore we limit our remarks on this topic to the following recommendation.

Recommendation 24: Following other multilateral development banks (MDBs), documentation relating to Category A Operations with significant environmental or social impacts should be disclosed 120 days prior to consideration by AIIB board.

Monitoring and reporting

We welcome the fact that the Environmental and Social Policy foresees periodic site visits, not only by Clients, but also by AIIB in cases where an operation has adverse environmental or social risks and impacts, including comprehensive field-based reviews. If the Operation has significant adverse impacts, the AIIB foresees in this context consultation with the Client on ways for the Client to rectify any failures to comply with its environmental and social obligations.

Recommendation 25: We recommend that affected populations and other relevant stakeholders be able to receive and participate in periodic and comprehensive assessments on how social and environmental risks and impacts have been addressed and mitigated during an operation.

Grievance mechanisms

We also welcome efforts to ensure that clients are required to establish operational-level grievance mechanisms to receive and facilitate resolution of the concerns of people who believe they have been adversely affected by the Operation’s environmental and social impacts.

Recommendation 26: We recommend adding a reference that such grievance mechanisms should be in line with the United Nations Guiding Principles on Business and Human Rights, which stress that grievance mechanisms should be able to provide an effective remedy for individuals and communities adversely affected by an Operation.

Oversight mechanism

We also welcome the suggestion that AIIB intends to establish its own oversight mechanism. We would like to stress that an appropriate structure would be necessary to ensure its full independence, but we will only be able to properly comment on this mechanism when more details about the envisaged structure and the functions of the AIIB Oversight Mechanism become known.

Recommendation 27: We would like to reiterate that AIIB's oversight mechanism should be fully independent and able to receive complaints on all operations AIIB finances. Submissions should as well be possible relating to Operations that AIIB has not yet approved, but is considering to finance.

AIIB's roles and responsibilities

We would like to reiterate that AIIB should seek information from independent sources beyond the Client's information on environmental and social risks, including with respect to possible adverse human rights impacts. In our view, it is important to underline that AIIB should not only be responsible for what it knows, but also for what it should have known.

Hence, we would suggest including a general due diligence requirement to collect information from external sources about potential environmental, social or human rights impacts. This would be necessary in particular if the operation is likely to involve significant environmental and social impacts or take place in a high risk environment. In doing so the AIIB would actually be ensuring that it carries out its work efficiently, as it would allow for the early identification of potential risks or likely negative environmental, social or human rights impacts and ensure that they can be avoided, minimised or mitigate in a timely manner.

We welcome that agreements between the AIIB and clients will include specific provisions to ensure compliance with all applicable ESSs and contractual remedies available to AIIB in the event such actions are not taken (paragraphs 53 and 59).

Recommendation 28: We recommend the inclusion in paragraph 52 on AIIB's Roles and Responsibilities the general requirement that AIIB should collect information from external sources about potential environmental, social or human rights impacts.

Recommendation 29: We would recommend having more specific language in relation to contractual remedies, which could also include withholding further financing or return of funds if the Client repeatedly fails to undertake corrective measures to ensure compliance with the ESF in an appropriate time frame.

Roles and responsibilities of clients

We recommend to include, under due diligence, explicit requirements for Clients (for example in paragraph 54) in order to ensure human rights-compliant behaviour of private security personnel employed by them. Respect for the International Code of

Conduct for Security Service Providers⁵ should be ensured. In particular references should be made that such personnel should be adequately trained and comply at least with international norms applicable to regular law enforcement officials including with the standards expressed in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

Recommendation 30: The Client should be required to ensure that private security personnel employed in relation to the Operation abide by the relevant international standards and are human rights-compliant.

Exclusions

We welcome the commitment that the AIIB does not knowingly finance an Operation that either involves or results in forced evictions (paragraph 60) or activities and items specified its Environmental and Social Exclusion list. However we recommend that the footnote makes explicit reference to the Basic principles and guidelines on development-based evictions and displacement.⁶ In our view the reference included in Footnote 13, which notes that “the exercise of eminent domain, compulsory acquisition or similar powers, will not be considered as forced eviction, provided it complies with the requirements of national law and the provisions of ESS2: Involuntary Resettlement” is not fully aligned with the definition of forced evictions under international law.⁷

Forced evictions or other activities banned from financing could only become known to AIIB after a project or operation has already been approved or started. There should be more detailed policies on how to respond in such situations to clients, including possible punitive consequences and regulations ensuring that potential victims are appropriately compensated by clients. In addition the policy should outline what measures AIIB will undertake to prevent non-compliant conduct by its clients going beyond the generic references included in paragraph 53.

Recommendation 31: Align the definition of forced evictions with its definition under international law, which specify *inter alia*, that forced evictions are “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

Recommendation 32: The future Environmental and Social Policy should clearly set out the consequences if AIIB becomes aware, after the approval of a project or operation, that the client have engaged or are engaging in non-compliant conduct.

Environmental and social exclusion list

We welcome the fact that Appendix 1 includes an environmental and social exclusion list. While several international environmental agreements are listed we are missing here references to core international labour and human rights standards, in particular violations of fundamental principles and rights at work embodied in the eight core ILO

⁵ The text is available at: http://www.icoca.ch/en/the_icoc

⁶ A/HRC/4/18, Annex.

⁷ See in particular the definition of forced evictions contained in general comment No.7 of the Committee on Economic, Social and Cultural Rights, (1997), UN Doc. E/1998/22 (1997), Annex IV, paras 113ff.

conventions (ILO Conventions No. 29, 87, 98, 100, 105, 111, 138 and 182) and core international human rights treaties.⁸) The exclusion list as it stands could give rise to the misperception that the protection of individuals is less important to the AIIB than the protection of the environment, while both are equally important.

Recommendation 33: Include references to core international human rights and labour standards in the environmental and social exclusion list.

VI. Comments on Standard 1: Environmental and Social Assessment

Social coverage

We welcome language referring to meaningful consultation, about the process of consultation, grievance mechanism and information disclosure, while reiterating that grievance mechanisms should be “effective” by providing effective remedies to individuals and communities affected by an Operation – and not just “suitable.”

In our view proposed language on gender should be retained. We suggest, however, replacing the term “vulnerable groups” by “groups in situation of vulnerability.” We are missing, however more meaningful reference to the principle of non-discrimination contained in all international human rights treaties.

Recommendation 34: References to risks related to the enjoyment of human rights and human security should be added. In the past infrastructure investment projects have occasionally contributed to the escalation of personal, inter-ethnic, communal or inter-state conflict or other forms of violence. Such potential risks should be explicitly included in the analysis of social risks.

Recommendation 35: Operations should also be screened for impacts on livelihoods, food security and the right to food, and relating to adverse health and well-being beyond the direct operational area, including impacts relating to the right to safe and clean drinking water and sanitation.

Recommendation 36: We suggest inserting references to the principle of non-discrimination. into the paragraphs on groups in situation of vulnerability (currently referred to as vulnerable groups in the document), on gender, on working conditions and labour, This should be in addition to screening Operations whether they contribute to the “promotion of equal opportunity.”

Child Labour and Forced Labour

⁸ These include the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racism, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ,the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

Recommendation 37: We recommend strengthening the text on working conditions, community health, well-being and safety, child labour and forced labour by referring to relevant international ILO conventions and aligning use of language, for example by referring to “forced and compulsory labour” (ILO Conventions Nos. 29 and 105) instead of “involuntary and compulsory labour”.

Recommendation 38: EES1 should not only “avoid” but “prohibit” the employment of children under 18 in connection with the Operation in a manner that is likely to be hazardous or interfere with the child’s education or be harmful to the child’s health, development and well-being. In addition there should be explicit prohibition of employing children under the minimum legal age for employment, as specified by national law.

Labour Management Relationships in Private Sector Operations

All principles outlined in the last paragraph also apply to public sector workers or workers employed by public owned enterprises, with only few exceptions. There may only be certain limits for civil servants to engage in industrial action, but such action is not at all mentioned in the paragraph. For example timely payment for Operations’ work, adequate periods of rest, and others, apply to private and public sector workers alike. The ESF may give the impression that an entire category of workers would be excluded from the scope of coverage.

Recommendation 39: We strongly suggest deleting “in private Sector Operations” and the associated Footnote 4 in the last paragraph of ESS1, as in our view standards listed in this paragraph apply equally to all public sector workers, including civil servants.

Recommendation 40: Labour management systems for Operation workers should not only be consistent with “national law” but also with “fundamental international human rights and labour standards.”

Recommendation 41: We suggest that the paragraph on Labour Management further implies “(e) employment on the basis of the principle of **non-discrimination**, equal opportunity and fair treatment.”

V. Comments on Standard 2: Involuntary Resettlement

We welcome the fact that ESS2 makes it clear that AIBs objective is to avoid involuntary resettlement whenever possible, to minimise it and to ensure that equal or better standards of living are provided in real terms and in comparison to pre-operation levels; and that it should strive to improve the standards of living of all persons who have been displaced, in particular those living in poverty and social exclusion.

Language in the standard text should stress that involuntary resettlement is an exceptional measure, only to be considered if there are no other reasonable alternatives.

Resettlement, if it is unavoidable, should not only be based on a risk management approach, to protect communities and individuals from harm – but also aim to improve development outcomes, such as enhanced security of tenure for all displaced, in

particular for persons living in poverty and social exclusion.⁹ Security of tenure is an important element of the right to an adequate standard of living, the right to adequate housing and the right to adequate food.

We believe in particular that the following areas require improvement:

Recommendation 42: We recommend including the following objectives at the end of the text:

“in line with international standards governing involuntary resettlement, such as the Basic principles and guidelines on development-based evictions and displacement.¹⁰ Involuntary resettlement must be a) authorized by law; b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting general welfare; (d) reasonable and proportional and (e) regulated so as to ensure full and fair compensation and rehabilitation.”

Recommendation 43: Clients should be required to demonstrate that involuntary resettlement is necessary and cannot be avoided and that no viable alternatives could be found. The client should also be required to show that by failing to undertake resettlement the Operation would either be impossible or result in disproportional efforts.

We are also concerned that the standard has an overly narrow scope, as it is restricted to involuntary acquisition of land or involuntary restrictions on land use or on access to legally designed parks and protected areas. Limiting the scope in that way may leave countless individuals and communities unprotected who may in the future be indirectly affected by AIIB-financed infrastructure. For example, downstream impacts of a hydropower dam would not be covered, although certain people living in such areas may no longer sustain their livelihoods because of changes to the ecosystem or depletion of fish catch.¹¹

Recommendation 44: The standard should cover all physical and economic displacement that occurs as a result of project activities.

The use of resettlement frameworks may in certain situations be of assistance if at the time of a larger phased infrastructure project, displacement may not yet be possible to fully identify and the number of persons that would be required to resettle at operation sites may still change. Nevertheless, the experience with planning frameworks by other development banks has shown that frequently such resettlement plans are neither developed nor implemented, leaving displaced households without any protection, adequate compensation, alternative accommodation or adequate housing and livelihoods. .

⁹ See report of the former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, A/HRC722/46 (2013) and Guiding Principles on security of tenure for the urban poor at A/HRC/25/54 (2014)

¹⁰ [A/HRC/4/18, Annex](#).

¹¹ Oxfam, Recommendations on the Asian Infrastructure Investment Bank Environmental and Social Framework Consultation (15 October 2011), p. 2.

Recommendation 45: ESS2 should clarify that a full resettlement plan is required as soon as potential displacement impacts can be identified.

Recommendation 46: EES2 should specify in more detail the type of social support to be provided prior to developing compensation and resettlement decisions schemes.

Recommendation 47: The paragraph referring to Livelihood Restoration, which requires that livelihoods should be improved or at least restored, should specify that replacement land should be of equal or higher quality and productive value as land taken.

Recommendation 48: We recommend that cash compensation should be specified in the same paragraph noting that it “be at replacement cost for the land, including transitional costs, when the loss of land does not undermine livelihoods.”

The right to adequate housing includes various components such as access to services, materials, facilities and infrastructure, including potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage; as well as location and accessibility for disadvantaged groups and persons with disability.¹²

Recommendation 49: We suggest that the language on Resettlement Assistance be improved by referencing not only to “better housing”, but “better, adequate and affordable housing”.

Recommendation 50: In relation to “employment and production opportunities”, a reference to accessing quality health-care services, schools, childcare centres and other social facilities, and the right to culturally appropriate housing should be included.

Recommendation 51: In relation to “comparable access to employment and production opportunities”, the standard should specify that livelihood opportunities must also match the skill-base of those displaced. For example, fisher folk should not be resettled to areas where agriculture is the only economic opportunity.

VII. Comments on Standard 3: Indigenous Peoples

We are encouraged by the Bank’s commitment to pay particular attention to Indigenous Peoples and their human rights through the adoption of a stand-alone policy on Indigenous Peoples. This is particularly important considering the disadvantages that Indigenous Peoples often face across a wide range of economic and social indicators. Furthermore attention to their situation is warranted given that they are often particularly affected by development programs, and their marginalised economic, social

¹² See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1992) on the right to adequate housing; and general comment No. 20 (2009) on non-discrimination and economic, social and cultural rights.

and legal status frequently restricts their capacity to defend their rights to their lands, territories and natural and cultural resources or to participate in and benefit from development projects on their lands.

The UN Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007, represents a global consensus among Governments and indigenous peoples worldwide, and establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of indigenous peoples. The Declaration has been widely endorsed by Governments across the Asia region and, in keeping with the practice of other multi-lateral development banks, explicit reference should be made to the Declaration in the final document. In addition a number of Asian states have ratified ILO Conventions Nos. 107 and 169 covering rights of Indigenous Peoples.

Recommendation 52: Include explicit reference to the UN Declaration on the Rights of Indigenous peoples¹³ and ILO Conventions Nos. 107 and 169 in the paragraph outlining the objectives of the standard.

We remain concerned that the draft standard proposes that responsibility for initial screenings to determine whether indigenous peoples are present in, or have collective attachment to, the proposed project area rests with the Client. We therefore recommend that, in line with other MDBs' standards on indigenous peoples, the AIIB retains responsibility for the initial social screening process to better safeguard indigenous rights, and ensures that application of the standard is not jeopardized by any reluctance on the part of a Client to recognize the presence of Indigenous Peoples in the project area.

Recommendation 53: AIIB should retain primary responsibility for determining whether Operations it intends to finance affect or impact upon Indigenous People and their lands and territories.

We welcome the emphasis accorded to consultation with Indigenous Peoples and, in particular, the inclusion of the principle of Free, Prior and Informed Consent (FPIC). The Standard should ensure participation of and consultation with Indigenous Peoples through all stages of the operations, including during initial social assessments, in the design of Operation activities or mitigation measures. We would therefore suggest deleting some unnecessary limitations included in the text.

Recommendation 54: Consultation with Indigenous Peoples should be included in the text on Social Assessment in Paragraph 3, and in the text on Special Considerations in Consultations we recommend removing “where applicable.”

However, we are concerned that the draft standard appears to focus more on outcome than on the character of the principles of consultation and consent as they have developed in international human rights law. As has been elaborated by the UN Special Rapporteur on the Rights of Indigenous Peoples, the principles of consultation and free, prior and informed consent are designed to build a dialogue in which both States (as well as other relevant stakeholders, including Multilateral Development Banks and business enterprises) and indigenous peoples work in good faith towards consensus and

¹³ General Assembly resolution [61/295](#)

try in earnest to arrive at a mutually satisfactory agreement.¹⁴ In keeping with the partnership-based model of development that the UN Declaration on the Rights of Indigenous Peoples calls for, in all cases and stages of decision-making in which Indigenous Peoples' particular interests are affected by proposed measures, obtaining their consent should be the objective.

Recommendation 55: The social standard should clarify that securing indigenous peoples free, prior and informed consent should be the objective of all consultation processes as highlighted *inter alia* by Articles 10, 19, 32 (2) of the United Nations Declaration on the Rights of Indigenous Peoples.

On the topic of Indigenous Peoples' land and resource rights –we note that the standard accords emphasis to the centrality of land to indigenous peoples, but consider that this recognition needs to be strengthened further. Under international human rights standards and practice, Indigenous Peoples have the right to communal ownership to the land, territories and resources that they have traditionally used or occupied, in accordance with their culturally distinct patterns of use and occupation. As experience shows, if indigenous peoples rights to their traditional lands, territories and resources are not recognized and respected, efforts to alleviate their poverty and to achieve sustainable development are severely undermined and Indigenous Peoples will remain disadvantaged in the development process.

Recommendation 56: The standard should clarify that Indigenous Peoples are entitled to full legal recognition of their traditional or customary land tenure systems and where their FPIC is given, have the right to benefit from the development of their lands and natural resources.

*** END ***

¹⁴ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34 (2009), 36-57