

## The Beijing-led Asian Infrastructure Investment Bank (AIIB):

### *Global leader in infrastructure finance, at what cost?*

The AIIB's Approach to Transparency and Public Access to Information.

A study by Dr. Korinna Horta and Wawa Wang,  
VedvarendeEnergi for the Heinrich-Böll-Stiftung

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## List of Abbreviations

<b>AIIB</b>	Asian Infrastructure Investment Bank
<b>BRI</b>	Belt and Road Initiative
<b>CEIU</b>	Complaints-Resolution, Evaluation and Integrity Unit
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EIA</b>	Environmental Impact Assessment
<b>ESF</b>	Environmental and Social Framework
<b>ESGS</b>	Environmental, Social, Governance System / Standards
<b>ESMS</b>	Environmental and Social Management System
<b>FI</b>	Financial Intermediary
<b>G7</b>	Group of Seven - intergovernmental organisation (Canada, France, Germany, Italy, UK, Japan and US)
<b>ITDC</b>	Indonesia Tourism and Development Corporation
<b>IFC</b>	International Finance Corporation
<b>MCDF</b>	Multilateral Cooperation Center for Development Finance
<b>MOU</b>	Memorandum of Understanding
<b>PPI</b>	Policy on Public Information
<b>PPM</b>	Project-Affected People's Mechanism

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# **The Beijing-led Asian Infrastructure Investment Bank (AIIB): Global leader in infrastructure finance, at what cost?**

The AIIB's Approach to Transparency and Public Access to Information

## **Overview**

The climate emergency and the alarming loss of the planet's biodiversity are closely related to ill-conceived large-scale infrastructure projects. These include power plants and infrastructure for natural gas that lock in greenhouse gas emissions for decades to come, large hydro dams, mining projects and export corridors that slice through the world's remaining wild areas and intact forests. In addition to the globally felt consequences, there are often severe impacts on local communities affected by pollution, loss of livelihoods and forced resettlement.

Beyond the environmental and social impacts of large-scale infrastructure projects, they often serve as magnets for corruption and lead to the accumulation of unsustainable levels of debt that undermine longer term development prospects.

The AIIB's business is financing large-scale infrastructure, which by its very nature carries significant environmental and social risks. This is why its standards on transparency and public access to information are of key importance. They are the foundation stone of accountability to the Bank's shareholders and the public.

The time-bound public release of documents such as draft environmental and social assessments and land acquisition and resettlement plans is indispensable to public consultation processes. It is critical to obtaining input from affected communities and other third parties to minimize project risks, possibly reformulate project design or find alternatives. Transparency of detailed project information also supports anti-corruption efforts and helps avoid the built-up of debt that serves little or no purpose.

Within a period of about 5 years, the AIIB established itself as major actor in multilateral finance. Its membership stands presently at 82 member states with a further 21 states waiting to be approved as members. Its rapid evolution speaks to the diplomatic skills of its President and his team who were able to build on many years of experience gathered while working at the World Bank Group or other multilateral development banks.

The United Kingdom, Germany, France and Italy, the largest European economies, became founding members of the AIIB in open defiance of the Obama Administration's request not to join the AIIB. Driving a wedge between the traditional G 7 allies represented a major diplomatic victory for Beijing, demonstrating the pull of attraction coming from China and a fragmented West.

While the United States and Japan have to date not joined the AIIB, the membership of Western countries in the AIIB has been critical to the institution gaining international credibility and obtaining the much coveted Triple-A credit rating from the world's leading credit rating agencies. This enables the AIIB to raise additional funds on international capital markets beyond its initial subscribed capital stock of US\$ 100 billion.

As the AIIB positions itself to become the global leader in infrastructure finance, this paper provides an overview of why clear and mandatory provisions for transparency gain added importance in the AIIB context.

As the driving force behind the AIIB, China is fashioning a new form of multilateralism where it defines the rules. The governance model adopted by the AIIB represents a radical departure from the established procedures at other multilateral development banks. In the name of efficiency, it increasingly concentrates decision-making power in the hands of the AIIB's President.<sup>1</sup> The assumption seems to be that a fast and flexible (efficient) approach to finance will attract clients and move the AIIB towards its stated goal of becoming the world's lead financier in infrastructure finance from 2021 onwards.<sup>2</sup>

Adhering to time-bound rules on information disclosure, public consultation and the implementation of environmental and social standards are time-consuming and likely to be perceived as unnecessary red tape.

The broader risk is that the AIIB's approach encourages weaker environmental and social standards across the board as international financial institutions compete and scramble for business and investment opportunities. This occurs at a time when the political space for civil society organisations is shrinking in many countries or has disappeared entirely, while the climate emergency and the irreversible loss of biodiversity have reached critical levels.

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1 AIIB, Paper of the Accountability Framework (no date), p. 1, paragraph 3, became effective in January 2019.

2 AIIB, Strategy on Mobilizing Private Capital for Infrastructure, February 9, 2018.

Following an overview of the broader AIIB context, this paper reviews the AIIB's provisions for transparency and public disclosure of information. These are stated in its Policy on Public Information (PPI), which became effective in September 2018, and its Environmental and Social Framework (ESF). The currently applicable ESF was adopted at the inception of AIIB's operations in January 2016, amended in February 2019 and will remain in force until July 2021. The paper then reviews the provisions in the Draft Review of the ESF, which was made public in September 2020. This draft is currently in public consultation and a final version of it is scheduled to be approved by the AIIB's Board in February 2021. It would then replace the existing in ESF in July 2021.

The AIIB's policy provisions include the 'right' language and buzzwords on transparency. They appear to be tailored to the sensitivities of some of its European and other shareholders. Yet, even the most recent Review Draft of the ESF falls short where it really matters. It does not include clear mandatory requirements for the time-bound disclosure of documentation pertaining to projects that carry high environmental and social risks. Unless the Review Draft undergoes fundamental changes, a critical opportunity to promote transparent governance, fairness and environmental sustainability in AIIB projects will have been lost.

The context of the pandemic further accentuates the drive to efficiency and reduced oversight. The AIIB's COVID-19 Crisis Recovery Facility plans to support the public and private sectors with up to USD 13 billion on regular financing terms within the period of April 2020 – October 2021. This compares to about a total in USD 20 billion of loans approved during the AIIB's entire existence.

According to the AIIB, the Facility will include faster and more flexible disbursement of funds and a scaling up of activities in the areas of traditional infrastructure projects and lending through Financial Intermediaries. The need for environmental and social impact information will be determined on a case-by-case basis and adopt a phased approach, which allows for the deferment of environmental and social requirements.

While the devastating impact of the Pandemic may justify the acceleration of disbursements, transparency is critical in order to prevent that the COVID Facility is little else but the extension of business-as-usual with less oversight.



## Why the AIIB's specific context matters

### Fashioning a new type of multilateralism

**In his opening remarks at the 2020 AIIB Annual Meeting, President Xi Jinping stated:** *"In late 2013, I proposed on China's behalf the establishment of the AIIB. The initiative is designed to develop infrastructure and connectivity in Asia and deepen regional cooperation for shared development. On 16 January 2016, the AIIB was officially launched. In the ensuing years or more, the AIIB has followed the operating model and principles of multilateral development banks and acted as a truly international, rule-based and high standard institution. .... With more good friends and partners getting on board for higher quality cooperation, the AIIB has established itself in the world as a new type of professional, efficient and clean multilateral development bank."*<sup>3</sup>

This concise overview by President Xi of the development of the AIIB offers an important entry point into our understanding of the AIIB. It indirectly calls attention to the fact that China's Belt and Road Initiative (BRI) and the AIIB were initiated by the same leadership, in the same year and for the same purpose.

In its early years while it was still consolidating itself as an international actor, the AIIB insisted on being distinct from the BRI and that some overlap was merely coincidental as both are investing in large-scale infrastructure. More recently in well-chosen words, the AIIB insisted that it is an international institution as opposed to the BRI, which was established by the Chinese government.<sup>4</sup>

Given its membership, the AIIB is indeed an international institution. But in light of the nature of President Xi's tight control over all matters pertaining to China, it is difficult to conceive that a bank he initiated, that is based in Beijing and where the Chinese government holds the majority of shares, would be an independent internationally governed entity separate from China's larger geo-political and economic strategies.

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3       Remarks by H.E. Xi Jinping President of the People's Republic of China At the Opening Ceremony of the Fifth Annual Meeting of the Asian Infrastructure Investment Bank, Beijing, 28 July 2020.

4       <https://www.oav.de/iap-32018/artikel-915.html>

In view of growing European concerns that BRI projects might be undermining Europe's internal cohesion and might have broad potential implications for Europe's political, economic and security future, European members of the AIIB must redouble their efforts to closely scrutinize AIIB investments. Ensuring transparency and time-bound information disclosure play a paramount role in their ability to monitor the Bank they are supporting.

Transparency and public access to information are essential to all infrastructure investments whether the financing banks are located in Washington, Frankfurt, Manila or elsewhere. Freedom of the press, freedom of the internet and of civil society to organize provide a measure of checks and balances. When a Washington-based bank created problems for villagers in India, they were able to put their case to the U.S. Supreme Court. The German Parliament frequently raises questions that are meant to hold the German government's participation in multilateral banks to account. None of this is perfect, but it is essential to the values of democratic systems.

The political culture of the AIIB's largest shareholder leaves little or no room for freedom of expression, public questioning or dissent. President Xi continues to tighten his grip over the country's media and civil society, including those involved with human rights, environmental and public health issues. This cannot but increase the responsibility of the AIIB's shareholders to closely scrutinize AIIB projects and their impacts.

In his opening remarks, President Xi stated that in the years following its inception, the AIIB followed models and principles of multilateral development banks. Indeed, the AIIB showed great strategic intelligence by hiring officials from countries that were important to building the institution's international credibility and who had extensive previous experience in other multilateral development banks for AIIB senior management positions. Not surprisingly, its founding constitution, the Articles of Agreement, and several of its policies largely mirror, in an almost cut and paste fashion, the corresponding policies of existing banks. But as President Xi indicates in his remarks, the AIIB has now entered a new chapter. He states that following the initial years of consolidating its membership ("..... With more good friends and partners getting on board for higher quality cooperation..."), the AIIB has now established itself in the world as a new type of more efficient institution.

## A New Governance Model: Concentration of Decision-Making Power

With the goal of being perceived as more efficient, faster & more flexible than other banks, the AIIB has adopted a new model of governance designed to expedite financing decisions. Known as the “Accountability Framework”,<sup>5</sup> it formalizes the delegation of decision-making power on project financing from the Board of Directors to the AIIB’s President. It took effect in January 2019 and initially only applies under certain conditions. The first project in a given sector or a given country, as well as projects in non-regional countries still require the approval of the Board. Other than that, the AIIB President can decide on the financing of projects for up to USD 200 million for the public sector, USD 100 million for the private sector and USD 35 million for equity investments. Both the amounts of lending and the proportion of projects that the President can approve on his own are set to increase over time.

Review of the AIIB’s Accountability Framework is scheduled for next year. It should take into account the evaluation report by the European Bank of Reconstruction and Development (EBRD) which identified serious problems on the delegation of project approval decision power for much smaller amounts.<sup>6,7</sup>

The AIIB’s Board of Directors, which contrary to the wishes of Germany and other shareholders, is a non-resident Board, appears to have been swayed by the AIIB’s efficiency arguments. They agreed to the “Accountability Framework” in the absence of clear rules on public access to information on projects. Even the level of detail of information made available to the Board is unclear. The Board will have access to a revolving two-year pipeline of proposed projects, which is limited to basic information about the name, sector, country and loan amount of the project. At a later stage, the Board will be provided with a Project Summary Document. The

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5 AIIB, Paper of the Accountability Framework (no date), p. 1, paragraph 3, became effective in January 2019.

6 The EBRD allowed the Management to approve projects by way of Delegated Authority (DA) for the threshold of EUR 25 million raised from EUR 10 million in a pilot project. In ensuring institutional checks and balances, EBRD’s Evaluation Department assessed the delegation of project decision power and found the quality to have suffered. For instance, the vague description of the use of funds, and shortcomings on the quality of project design, approval, and reporting documents. Further, the evaluation highlighted the lack of a system for informing the EBRD Board about material changes to projects approved by delegation.

7 Special Study on Delegated Authority by EBRD’s Evaluation Department, March 2019.

question is whether a brief summary is sufficient to reflect the significant risks associated with large-scale infrastructure development. None of this information is disclosed to the public prior to the financing.

Under the “Accountability Framework” the Bank has approved as of October 2020 four large scale infrastructure projects in the energy and transport sectors<sup>8</sup> for the combined loan amount of over USD 456 million. According to brief project summaries disclosed on the day of or one day after project approval, at least two of the four approved projects would require major land acquisition and resettlement. However, the late – and miniscule – disclosure of project environmental and social impact assessments means that neither the Board nor independent monitors have had an opportunity to suggest improvements to project design prior to approval.

The term “Accountability Framework” is an example of the AIIB’s adoption of the terminology used by other banks, but imbuing it with a different meaning. At the World Bank Group, the Asian Development Bank and at other multilateral banks the term “accountability” has become closely associated with their “Accountability Mechanisms.” These have become important pillars of governance at these institutions over the past 25 years. They represent bottom-up accountability since they are charged with independently investigating local complaints about a lack of compliance with environmental and social policies and with facilitating mediation. The AIIB’s Accountability Framework is at best a top-down arrangement.

The fact that the AIIB concentrates decision-making power in the hands of its president to an extent unknown at traditional multilateral banks, makes adherence to clearly spelled out mandatory rules on transparency and the time-bound disclosure of project documentation even more important.

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8 Dhaka and Western Zone Transmission Grid Expansion Project (Bangladesh, January 2020), Power System Upgrade and Expansion Project (Bangladesh, March 2019), Karachi Bus Rapid Transit Project (Pakistan, November 2019) and Rajasthan 250 MW Solar Project (India, December 2019)

## Towards Global Leadership in Infrastructure Finance

During its initial years, the AIIB mostly contributed funds to investments made by other multilateral banks, where the environmental, social and transparency policies of the leading bank apply. It used this time for institutional consolidation and building its capacity.

Now the AIIB is preparing to enter a new stage in its development, where it will increasingly focus on developing its own lending pipeline without referrals from other banks. According to its Strategy on Maximizing Private Finance, the goal is to become the global leader in infrastructure investments from 2021 onwards.<sup>9</sup> These investments are not to be limited to Asia, but also target Africa, Latin America and Europe.

One example of AIIB's efforts at mobilizing private capital is its investment of USD 150 million in April 2020 in the Keppel Asia Infrastructure Fund, a Singapore-based private equity fund created by the Keppel Corporation.<sup>10</sup> Another of the Corporation's offshoots, Keppel Offshore & Marine, was fined USD 422 million in December 2017 for paying USD 50 million in bribes to obtain lucrative deals in Brazil's oil sector.<sup>11</sup>

The AIIB delegates decision-making on sub-projects to be funded by financial intermediaries (FIs), such as the Keppel Fund, to the Keppel Fund's managers, who are also in charge of implementing and monitoring environmental and social impacts according to an Environmental, Social, Governance System (ESGS) that they themselves put in place for each sub-project.<sup>12</sup> While the AIIB claims that all will be done in accordance with its own Environmental and Social Policy and that it will retain an environmental and social review function in initial sub-projects, this is not convincing in the absence of even basic public information of FI sub-projects.

The AIIB is especially active when it comes to developing its investments in publicly traded securities, including climate bond markets, that use ESG (Environmental, Social and Governance) Standards. ESG standards are notoriously ill-defined. A recent article in the Financial Times emphasizes

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9 AIIB, Strategy on Mobilizing Private Capital, February 9, 2018.

10 TEMSAK, Singapore's State Fund, holds ca. 20% of the shares in its parent company, the Keppel Corporation.

11 <https://www.channelnewsasia.com/news/business/keppel-o-m-bribery-case-what-you-need-to-know-9836154>

12 <https://www.aiib.org/en/projects/details/2020/approved/Multicountry-Keppel-Asia-Infrastructure-Fund.html>

the need for independent data to support ESG claims and for much better oversight, if they are not to turn into wasted money and a wasted opportunity to achieve something positive.<sup>13</sup> The AIIB maintains that it protects the ESG funds clients' confidentiality over information disclosure and accountability, insofar that the information may be available on the "datasets" on portfolio (sector and company), but not investment specific and not in real time due to the evolving nature of the portfolio. This intentional withholding of information on how the portfolio develops in concrete sub-project forms could hinder those who are negatively affected from accessing any type of accountability measures and redress.

Another example of the AIIB's expansion is that it will serve as the administrator and host of the Multilateral Cooperation Center for Development Finance (MCDF). The MCDF is meant to coordinate and mobilize financing for infrastructure and connectivity which would then be administered and presumably invested by the AIIB. The MCDF is characterized as functionally independent of the AIIB, i.e. it does not respond to the AIIB's Board, but to a separate governing body. But while the MCDF will have its own governance body, there is no indication that it will have its own staff to work on preparing projects for financing. We have to assume that these tasks will be carried out by AIIB officials based on AIIB procedures and policies.

This MCDF was established at the initiative of China's Ministry of Finance and according to Chinese governmental reports, is one of the deliverables of the 2017 Belt and Road Forum for International Cooperation held in Beijing.<sup>14</sup> While Chinese media refer to the MCFD as a platform for BRI investments, a Memorandum of Understanding (MOU) signed with 8 multilateral financial institutions in 2019 makes no mention of BRI.<sup>15</sup>

The MOU refers to cooperation, but does not include a commitment to funding. So far, in addition to China, five other countries have contributed funding to the MCDF, Egypt, Saudi Arabia, Hungary, Cambodia, and the Philippines for a total of USD 180.2 million.<sup>16</sup> All of them are known for their questionable records of governance.

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13 Financial Times, Sustainable Funds must work harder to vet their investments, August 4, 2020.

14 [http://www.xinhuanet.com/english/2017-05/15/c\\_136286376.htm](http://www.xinhuanet.com/english/2017-05/15/c_136286376.htm)

15 Memorandum of Understanding on Collaboration on Matters to Establish the Multilateral Cooperation Center for Development Finance, March 25, 2019.

16 <http://www.chinadaily.com.cn/a/202007/08/WS5f0582c6a3108348172581cf.html>

As the AIIB expands increasingly into lending for stand-alone projects, into lending to and investing in financial intermediaries, in publicly traded securities and private equity funds, as well as its role in administering the MCDF, it is fundamentally important to ensure that shareholders and the public have the ability to monitor the environmental and social impacts of AIIB-supported investments. This requires the time-bound disclosure of project information.

## The AIIB's Transparency-Related Policy Provisions

Certain kinds of information, such as those related to personnel and business confidentiality, are not made public. This is justified and common practice. However, information on the specific location and details about projects, including their direct and indirect environmental and social impacts, do not fall into this category. There can be no justification to keep this type of vital information confidential.

The German Government, which is the largest non-regional shareholder in the AIIB and former chair and presently deputy chair of the constituency representing the Euro-Zone on the AIIB's Board, set out a clear bottom-line. In a letter from the Ministry of Finance to the German Parliament in 2017, it stated that the German position would require the AIIB's Information Policy to include *clearly spelled out time frames for the public release of project information in order to make active stakeholder participation possible*.<sup>17</sup>

Similarly, the Office of the United Nations High Commissioner for Human Rights recommended that the AIIB adopt specific time frames for the early release of social and environmental information about projects prior to their approval.<sup>18</sup>

Both statements reflect concerns that public input and scrutiny of large-scale investments that can transform entire regions and countries will be difficult, if not impossible, in the absence of clear timebound rules on information disclosure.

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17 German Federal Ministry of Finance, Letter addressed to the Chairman of the Finance Committee of the German Bundestag, 24 January 2017. The original text in German reads: "In ihrer Kommunikationspolitik soll die Bank Kommunikationsfristen und Zeiträume eindeutig benennen, um eine aktive Stakeholder-Kommunikation zu ermöglichen."

18 Office of the United Nations High Commissioner for Human Rights, Recommendations for AIIB Policy on Public Information, March 16, 2018.



## Policy on Public Information (PPI)

Upon the Bank's adoption of the Policy on Public Information (PPI) in 2018 the AIIB President said, "Transparency and accountability are the two main pillars of AIIB's governance."<sup>19</sup>

The PPI emphasizes its intention to provide a maximum of disclosure and transparency. However, the PPI is a "principles-based" as opposed to a "list-based" policy. This means that it is focused on what it refers to as "overarching intentions", on governing principles and on a list of exceptions of where the principles do not apply. It does not include a list of specific documents to be disclosed and the timing of the disclosure.

While the key principle listed in the PPI (*Presumption in Favor of Disclosure*) is welcome, it is insufficient. What needs to be added to the principle is a detailed list of documents that are disclosed and those that are subject to exceptions.<sup>20</sup> The principle on its own does not affect the current practice of keeping documents confidential that would clearly be in the interest of an informed dialogue between all stakeholders. These include documents that are clearly in the public interest, such as the monitoring reports<sup>21</sup> for all of AIIB's projects and its Early Learning Assessments, which were meant to inform the review of the AIIB's Environmental and Social Framework.

The overarching intentions include an exception concerning "*Due Regard to the Efficiency of the Bank*".<sup>22</sup> This translates into a loophole where efficiency and cost considerations may override the stated intention of maximum transparency. Leaving it to the discretion of AIIB management to prioritize efficiency can only weaken incentives for implementation and ultimately justify the confidentiality of information that is of public interest.

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19 <https://www.aiib.org/en/news-events/news/2018/AIIB-Modernizes-its-Policy-to-Increase-Transparency.html>

20 It is the prerogative of the AIIB President to issue directives on the implementation of policies. The Directive on Public Information issued in November 2019 includes a list of some documents to be made public, but no time frames for environmental and social documentation. [https://www.aiib.org/en/about-aiib/who-we-are/role-of-law/.content/index/\\_download/Directive-on-Public-Information.pdf](https://www.aiib.org/en/about-aiib/who-we-are/role-of-law/.content/index/_download/Directive-on-Public-Information.pdf)

21 AIIB's Directive on Sovereign-backed and Non-sovereign-backed Financings (July 10, 2019) stipulates that the Bank discloses its implementation monitoring reports for Sovereign-backed Financing and is silent on the disclosure of implementation monitoring reports for Non-sovereign-backed projects. At the same time, the Bank discloses "the full Project Document promptly following the approval of the Financing."

22 AIIB, Policy on Public Information, September 2018, Paragraph 4.3.

The PPI also includes an exception that allows for the non-disclosure of information that might “...*compromise the international character of the Bank, in accordance with Article 31 of the Articles of Agreement, or is inconsistent with the Bank’s duty of due respect to national laws and regulations.*”<sup>23</sup>

The international character of the AIIB and its obligation not to interfere in the internal affairs of its member countries is clearly laid out in its Articles of Agreement and it is left unclear of how this relates to implementing the PPI.<sup>24</sup>

Including in the PPI an exception concerning due regard for national laws and regulations opens the doors to non-disclosure of information on AIIB-supported projects if a government deems this to be sensitive.

Contrary to the expectations that had been raised, the PPI does not address information related to environmental and social impacts. It refers to paragraphs 57 and 58 of the AIIB’s Environmental and Social Framework of 2016 as dealing with this matter.

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23 AIIB, Policy on Public Information, September 2018, paragraph 8.1.6

24 This point is also raised by the Office of the United Nations High Commissioner for Human Rights, Recommendations for AIIB Policy on Public Information, March 16, 2018.

## The Environmental & Social Framework (ESF) of 2016.

The ESF, as noted in the PPI, includes two paragraphs addressing information disclosure. These refer to the obligations of the client (Para. 57) and those of the AIIB (Para. 58). While they contain the right wording, they do not include the essential time-bound requirements for the public release of documents, such as environmental and social impact assessments and resettlement plans. Instead they call for the **“timely”** release of documents. In the case of sovereign-backed loans this ought to occur prior to appraisal, while loans to the private sector should do so as early as possible during appraisal.<sup>25</sup>

In February 2019, a technical amendment to these paragraphs was decided behind closed doors. This amendment further weakened these already vague provisions.<sup>26</sup> The amendment instructs the client to make information public **“as soon as it becomes available.”** This is a further downgrade from the previous provision of publishing information prior to appraisal (public sector loans) or as early **as possible during appraisal** (private sector loans).

Furthermore, the technical amendment allows Bank management to postpone disclosure to an undefined future date if there is commercial sensitivity or the financial worth or assets of a corporate entity could be affected. This means that commercial or corporate interest can outweigh the public interest in the release of information on environmental and social impacts that may potentially cause irreversible harm locally and contribute to global emergencies.

Bank Management has a self-interest in making loans. Yet the policy provision leaves it to its potentially arbitrary decision-making to determine whether and when information is made public.

Already prior to the introduction of the technical amendment to the ESF, some European shareholder governments had considered the two existing paragraphs on information disclosure as too vague. In meetings with civil society they expressed their conviction that the final version of a new

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25 AIIB, Environmental and Social Framework, Paragraphs 57 and 58, February 2016.

26 [https://www.aiib.org/en/policies-strategies/\\_download/environment-framework/Final-ESF-Mar-14-2019-Final-P.pdf](https://www.aiib.org/en/policies-strategies/_download/environment-framework/Final-ESF-Mar-14-2019-Final-P.pdf)

AIIB Policy on Public Information (PPI), which was then being developed, would fill the gaps and provide clear rules on time-bound requirements for information disclosure. As we have seen in the review of the PPI above, these expectations were not met.

The ESF of 2016 is currently in effect and is scheduled to remain so until July 2021.

### ***Info Box: Examples of Weak implementation of the current ESF***

#### ***1. A Project on the AIIB's Doorsteps: Beijing Gas***

An example of the lack of the AIIB's responsiveness to requests for information is the free-standing AIIB project loan of \$ 250 million to Beijing Gas, a private company, in 2017. The project's goal is to improve air quality in Beijing by replacing coal with natural gas in surrounding villages, affecting more than 200,000 mainly poor households. The documentation omits crucial information, notably the list and location of the 510 affected villages. Given the project's location on the doorsteps of AIIB headquarters, this information should have been easily available. But when European shareholders requested this information, the AIIB declined the request with the argument that as a private company Beijing Gas was not required to release detailed project information. When some information was eventually disclosed more than one year later, it was limited to the villages where implementation of the project had already taken place, but there was no information on the remaining villages where implementation would take place.

There are no transcripts of any concerns raised by the villagers about the design and operations of the project. There are no indications about the affordability of the gas for the more than 200,000 mainly poor households that are affected. For many, it may simply mean that access to energy for heating and cooking will be beyond reach.

Despite the earlier controversy surrounding Beijing Gas, in September 2019 the AIIB listed a new loan proposal of \$ 500 million for Beijing Gas to build extensive Liquefied Natural Gas infrastructure. As a high risk category A project, it will have significant environmental and social impacts both locally and as a further contributor to global greenhouse gas emissions.

In the same vein, there are many projects for which critical information has been lacking during both the early planning phase when projects were approved by the Bank, including where the project is sited or gender-disaggregated detailed documentation on resettlement and livelihood restoration plans.

## **2. Tourism Development on Lombok Island, Indonesia: The Mandalika Project**<sup>27</sup>

*AIIB's Vice President Joachim von Amsberg stated that the Bank would take land procurement issues more seriously into account in assessing its infrastructure funding for Indonesia, and that land acquisition was indeed "a pretty challenging issue and quite critical for most infrastructure projects."*<sup>28</sup>

One such example is the Mandalika Urban Development and Tourism project, a category "A" project due to the nature of project activities and significant and irreversible impacts to the environment and communities, including Indigenous People. As AIIB's first standalone project in Indonesia, the so-called environmental and social due diligence assessment failed to disclose the most critical aspects relating to resettlement, land acquisition and livelihood restoration critical to protecting the rights of the people impacted by the project. Further, the Bank's own project monitoring report did not disclose the deployment of military and security personnel for the involuntary land acquisition between 2018 and 2020,<sup>29</sup> in spite of land acquisition taking place at an increased rate shortly after civil society dialogue with the AIIB at its annual meeting in Luxembourg, July 2019.<sup>30</sup>

Both the AIIB and its client for the project, the Indonesia Tourism and Development Corporation (ITDC) claimed that 92.70% of the land to be acquired for the project was "Clean and Clear", as in free of land title or disputes. However, land grabbing and involuntary displacement have occurred in the Mandalika region on the island of Lombok for many years leading up to project approval, including in the planning of the AIIB project

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27 Contains excerpts from Infrastructure Monitoring Coalition of Indonesia and Verein für sozial-ökologischen Wandel's Mandalika project monitoring reports (2019 and 2020)

28 'AIIB to highlight land issues in loans assessment' via <https://www.urbangateway.org/news/aiib-highlight-land-issues-loans-assessment> (accessed in September 2020)

29 Institute for National and Democracy Studies (2019): AIIB Financial Support for Indonesia's Mandalika SEZ Deprives People's Rights

30 Reported in 2018 by rri.co.id. (an Indonesian media outlet) and independent monitors who conducted several site visits between 2018-2020.

areas and areas of project influence. The provincial government of West Nusa Tenggara (Lombok) , where the project is sited, published a notice urging the ITDC to resolve land conflicts and livelihood restoration as a direct result of the Mandalika project in October 2018, two months before the project was approved by the AIIB.<sup>31</sup>

The environmental and social impact assessment documents failed to address how the AIIB's ESF requirement for public consultation and compensation **prior to** forced resettlement and involuntary land acquisition has routinely been circumvented via the use of Indonesia's Law 2/2012 on Land Acquisition for Public Interest. The AIIB's disclosure of the client's revised but still incomplete resettlement action plan (RAP) was first disclosed 15 months after project approval.

Where livelihood restoration is concerned, the AIIB greenlighted the ITDC to use an unilaterally-decided sum - devoid of meaningful public input - instead of providing land-for-land replacement for those with land-based livelihoods whose lands have been seized. The ESF requirement to provide compensation that is equivalent to and/or adequate for asset replacement costs has clearly not been met.

In not disclosing a 'gap analysis' on the client's social due diligence which is largely reliant on the use of country legal framework (known as the "country system" or "client system"), the AIIB omits making transparent which measures it is taking to overcome such gaps to ensure that its minimum environmental and social safeguard requirements are met. The consequence is thus felt by project-affected communities, who have been deprived of any protection measures.

Communities have as late as September 2020 reported that the land acquired through the buying and selling process has been done under conditions of intimidation and coercion. Closely monitoring the escalations at the project level, Indonesia's Human Rights Commission issued a public statement criticizing the ITDC for perpetrating an act of arbitrary land acquisition without any legal basis.<sup>32</sup> The Commission's attempt to intervene in the unauthorized land grabbing in late August 2020 call

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31 Government of West Nusa Tenggara Province Regional Secretariat, 29 October 2018. Number (120/230/Pem/2018)

32 Komnas HAM RI Dorong Perlindungan Hak atas Tanah Warga Terhadap Pratik Penggusuran Paksa di Kawasan Ekonomi Khusus Mandalika, NTB. Komisi Nasional Hak Asasi Manusia Republik Indonesia (Keterangan Pers, Nomor: 036/Humas/KH/IX/2020)

33 Bank's response conveyed by the German government in a parliamentary inquiry (IC3-BIF5059/15/10044:001, DOK 2020/0864354), September 8, 2020

attention to the strategy on the part of AIIB's client to evict by force, contrary to claims of the Bank.<sup>33</sup>

The findings highlight why the mandatory early disclosure of the Bank's assessment of the client's track record and its own environmental and social due diligence documents prior to project approval is key to mitigating risks and reduce impacts painfully felt by the already impoverished communities. These include the Indigenous communities who the AIIB promises to lift out of poverty through its financing.<sup>34</sup> Upon completion, the Mandalika project will deliver five-star hotels with sea view on the beaches and shoreline from which the fisherfolk and women made a living. The project will also include a "Grand Prix" motorcycle race circuit, none of which will meet needs for sustainable development for the largely involuntarily displaced peasant<sup>35</sup> communities.

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34 [https://www.aiib.org/en/projects/approved/2018/\\_download/indonesia-mandalika/Indigenous-Peoples-Development-Plan.pdf](https://www.aiib.org/en/projects/approved/2018/_download/indonesia-mandalika/Indigenous-Peoples-Development-Plan.pdf)

35 Defined by the UN Declaration on the Rights of Peasants (2018)

## Review Draft of the Environmental and Social Framework (September 2020)

The Review draft was published in September 2020, is scheduled for Board approval in February 2021 and to become effective in July 2021.<sup>36</sup>

As in the existing ESF, the section on information disclosure is divided into obligations by the client and by the Bank.

### ***Delegating the disclosure responsibility to the client***

**Disclosure by the client (7.1)** refers to the requirements listed in the Environmental and Social Standards (ESS) 1, which asks the client to make Environmental and Social information ***available in a timely manner (2.15)*** and to disclose draft documentation, final documentation changes to the project and monitoring reports ***as early as feasible (2.16)***.

When the client is a *Financial Intermediary* (FI), the FI will disclose an overview of its environmental and social policy and of its ESMS - Environmental and Social Management System **(2.17.1)**, but the ESMS would normally not be disclosed **(2.12.4)**. When it comes to Private Equity Funds, the FI will only have to reveal the name, location and sector of the client's portfolio supported by AIB financing within 12 months of financial closure of the investment **(2.17.2)**.

In case an FI is investing in Higher Risk Activities, documentation will only have to be provided for projects financed in the preceding 12 months, or it may not be disclosed at all, if there are regulatory constraints or market sensitivities, or if the project sponsor does not consent (ESS1 / 2.17.3).



## Summarizing the client's disclosure obligations:

- There are no specific time frames for the public disclosure of information, including the environmental and social assessment, land acquisition and resettlement plans, indigenous peoples plans, etc.
- Concerning FIs, there is no requirement to publish documentation on sub-projects being financed by the AIIB, even when those involve high risk activities.
- Concerning Private Equity Funds only the name, location and sector of the client's portfolio companies supported by the AIIB are to be made public within 12 months after financial closure of the investment.

The ESF largely delegates the disclosure responsibility to the client, but is stays silent on the Bank's duties to ensure that its clients disclose essential project information in a time-bound manner, thus not meeting the said "high multilateral standards" it claims to have put in place.

**Disclosure by the Bank (7.2)** requires the Bank to disclose the documentation provided by the client as per the requirements of the client listed above (7.1). "**Early Disclosure**" would take place "**as early as feasible**" during the Bank's due diligence assessment of the project (7.2.1).

A novelty when compared to the existing ESF is a paragraph addressing public disclosure requirements in cases where the AIIB uses the **client's environmental and social systems**, instead of the ESF. Here the Review Draft refers to **indicative disclosure deadlines**. These state that draft documentation for Category A projects (i.e. those with irreversible, cumulative, diverse or unprecedented high risks) is to be made available 45 calendar days, and category B projects (i.e. those with substantive but limited risks) 30 calendar days prior to the consideration of the Bank's financing (7.2.2).

This is the only place where time frames are spelled out. But they are only indicative and subject to an immediate caveat: "*The prerogative to require longer or shorter disclosure time in particular cases is exercised by the Bank's Management, and the disclosure so approved by Management is reported to the Bank's Board of Directors*" (7.2.2).

The next paragraph refers to **Deferral of Disclosure** which allows the Bank to defer the timing of disclosure to an undefined future point in time. Such a deferral would be justified by legal or regulatory requirements or

by commercially sensitive information. The prerogative to defer disclosure is again exercised by Bank Management and then reported to the Bank's Board of Directors (7.3).

**To prevent and mitigate harm, the AIIB's environmental and social safeguards should provide for the full disclosure of project documents entailing the entire range of environmental and social impact assessments and management plans prior to project approval, when there are still opportunities to influence the design and mitigation measures. However, the Review Draft of the ESF demonstrates the Bank's intention to shift the responsibility for accountability to its future clients.**

## **Financial Intermediaries**

The AIIB's strategy of mobilizing private capital for infrastructure investments relies on vastly expanding its lending through Financial Intermediaries (FIs). The information disclosure requirements for FI investments are notoriously weak.

For example, even for high risk activities, there is no requirement to publish the name of the sub-project financed by the AIIB. The Financial Intermediary is only required to report annually about environmental and social documentation covering the preceding 12 months. But again, there is a caveat: This will not be necessary if the information is subject to regulatory constraints or if the project sponsor does not consent.

When inquired about a client's questionable disclosure track record and the locations of sub-projects of AIIB's FIs projects, the AIIB claimed that the FIs can voluntarily submit regular monitoring reports to the Bank, which is a "relatively new practice".<sup>37</sup>

In the case where the AIIB's client for FI projects is found to have a poor track record in information disclosure,<sup>38</sup> the Bank has not required the client to commit to proactive disclosure practice. In refusing to disclose

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37 In an exchange between AIIB management and civil society on FIs in September 2020.

38 The AIIB co-financed Regional Infrastructure Development Fund, an FI project implemented by Indonesia's state entity PT. Sarana Multi Infrastruktur (PT. SMI), was found by the Green Climate Fund (GCF) to have no Disclosure Policy, which normally institutions implementing projects with high social and environmental risks would have. In addition, the GCF found that, despite being established in 2009, PT SMI "has not provided evidence of its track record for large-scale procurement"

assessments of the FI's track record against AIIB's own safeguard requirements, the bank is essentially consigning the responsibility of upholding accountability to the client to "self-report" on the fulfillment of Bank's environmental and social standards.

Given AIIB's inclination to increase FI lending, including through COVID 19 Crisis Recovery Facility,<sup>39</sup> it is concerning that the Bank does not want to adopt a "list-based" approach which is favored by the European shareholders and other multilateral development banks. A list-based approach is when high-risk activities are spelled out so that the financing of FIs in environmentally and socially high-risk activities need to be referred to the bank, leaving no space for second guessing. This approach is practiced by the EBRD. The "referral list"<sup>40</sup> defines clearly what high risk activities are, for example, involuntary resettlement, for one, and activities within, adjacent to, or upstream of land occupied by Indigenous Peoples and/or vulnerable groups, as well as the construction of mini-hydro cascades, just to name a few.

### **Summarizing the AIIB's disclosure obligations:**

- **There are no specific time frames for the public disclosure of information, including the environmental and social assessment, land acquisition and resettlement plans, indigenous peoples plans, etc.**
- **The AIIB provides Indicative Disclosure Deadlines for cases where it uses the client's environmental and social systems instead of the ESF. However, these are only indicative and can be changed by Bank Management at will.**
- **Bank Management may defer the disclosure of information to an undefined future date when legal or regulatory requirements or commercial sensitivity are involved.**
- **Although lending through FIs is set to vastly increase, FIs are not required to publish information on the specific sub-projects supported by the AIIB.**

Both the client's and the AIIB's obligations to disclose information leave us empty handed. The Review Draft does not include the much-anticipated rules for the mandatory time-bound disclosure of project documentation.

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<sup>39</sup> <https://www.aiib.org/en/policies-strategies/COVID-19-Crisis-Recovery-Facility/index.html>  
<sup>40</sup> Performance Requirement 9, Annex 2 [the European Bank of Reconstruction and Development]: The financing by FIs of the following environmentally or socially sensitive business activities is subject to the referral to the EBRD.

Yet such rules are essential if stakeholders are to engage in good faith with the AIIB in relation to decisions that directly affect them. They are also essential to the functioning of the AIIB's Project Affected People's Mechanism (PPM), which, analogous to the Accountability Mechanisms at other multilateral development banks, is meant to provide a measure of recourse to communities negatively affected by the failure of the AIIB fails to implement its Environmental and Social Policy.<sup>41</sup>

Compare the Review Draft's provisions with the unambiguous clarity provided by the International Finance Corporation (IFC), the World Bank Group's branch lending to the private sector. The IFC's Access to Information Policy (January 2012) states "IFC makes the Summary Investment Information and Environmental and Social Review Summary publicly available no later than sixty days, in the case of category A projects, and thirty days, in the case of all other projects, prior to consideration of the investment for approval by the IFC's Board of Directors (or other relevant internal authority)."<sup>42</sup>

Although frequently not codified, Multilateral Development Banks that lend to the public sector have developed the good practice of publishing environmental impact studies for high risk projects 120 days in advance of their institutions' Board approval date in order to ensure public participation. This was based on a legal requirement of 1989 passed by the U.S. Congress for U.S. participation in these banks, known as the Pelosi Amendment, named after its sponsor, then Congresswoman, Nancy Pelosi.

## **Vague Policies & Hollow Standards**

European and other like-minded governments justified their membership in the AIIB by stating that they would work for the adoption of the best international standards and practices at the AIIB. The AIIB has responded by using language and terminology in its policies and standards that appear to mirror institutions, such as the World Bank. But upon closer inspection, it becomes clear that while the language is carefully tailored to Western sensibilities, its substantive contents is often shallow, abstract and lacks precise instructions.

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41 [https://www.aiib.org/en/policies-strategies/\\_download/project-affected/PPM-policy.pdf](https://www.aiib.org/en/policies-strategies/_download/project-affected/PPM-policy.pdf)  
42 International Finance Corporation, Access to Information Policy, January 1, 2012, Paragraph 34.

Clear requirements for the time-bound disclosure of information in large-scale infrastructure development make for better long-term investments and development results, while reducing opportunities for political capture and corruption.

The AIIB's primary focus on efficiency makes such requirements appear as unnecessary red tape. Yet these rules were the hard won victories of struggles by civil society in India, Brazil and other countries of the Global South. With the support of lawmakers the rules were translated into policies designed to ensure transparency, environmental protections and access to redress.

Competitive pressure from the AIIB, tough competition of "no strings attached" loans from other Chinese financial institution and the growing influence China in the existing multilateral development banks, will make it increasingly difficult to work for better implementation of policies designed to protect the environment and vulnerable communities.

This requires a redoubling of efforts to stem the race to the bottom that appears to unfold in front of our eyes. The need to uphold democratic values can hardly be overstated given the prospect of the spread of "efficient" authoritarianism as the model for 21st century governance.

The participation of European governments was essential to the AIIB gaining international credibility, including a Triple A credit rating by the world's leading rating agencies. After all, Europe would ensure transparency and high standards. Now European and other like-minded governments have the responsibility to ensure that the public has time-bound access to information about the often irreversible environmental and social impacts of large-scale infrastructure projects supported by the AIIB. Otherwise they should draw the consequences and not become the unwitting accomplices in high risk ventures the public knows little about.

Oversight by the appropriate Parliamentary Committees in the AIIB's shareholding countries is vitally important. Such oversight helps set incentives for the government ministries directly engaged with the AIIB, such as the Federal Ministry of Finance in Germany. Demands by parliament can help strengthen their resolve in negotiations at the AIIB.

In addition to requesting regular reporting back on AIIB-financed projects, parliamentary committees have the opportunity to weigh-in as AIIB shareholders on the development of AIIB policies. They include the

Environmental and Social Framework which is being reviewed and which should be changed to include a mandatory requirement for the time-bound public release of vital project information, including environmental impact assessments and monitoring reports concerning the implementation of measures to protect communities and the environment.<sup>43</sup> Given the expected growth of lending to Financial Intermediaries (FIs), there must be clear rules on public information on FI sub-projects supported by the AIIB.

As experience at the AIIB to date has shown, this will not happen without overcoming resistance. The AIIB plays an important role in China's efforts to fashion a new form of multilateralism where it sets the tone and defines the rules. Shareholders must fully employ their political capital if there is to be progress on a critical issue such as the transparent and time-bound release of vital information on large-scale infrastructure projects. Otherwise they risk becoming complicit in investments that are incompatible with the rule of law and human rights, as well as the protection of the earth's life support systems.

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**43** The ESF Review public consultation process is scheduled to end on 9 November 2020, but the AIIB's Board of Directors, representing its shareholders, is only scheduled to approve the revised ESF in February 2020.



