ROADBLOCKS TO ACCOUNTABILITY:

Addressing the accessibility crisis in the Asian Infrastructure Investment Bank's review of its Project-affected People's Mechanism

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ROADBLOCKS TO ACCOUNTABILITY:
Addressing the accessibility crisis in the Asian Infrastructure Investment Bank's review of its Project-affected People's Mechanism

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Authors: Kate Geary, Recourse; Radhika Goyal and Stephanie Amoako, Accountability Counsel; Inclusive Development International.

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For further information on the issues raised in this report, please contact: kate@re-course.org, radhika@accountabilitycounsel.org

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ABBREVIATIONS

AM	Accountability Mechanism
AIIB	Asian Infrastructure Investment Bank
BWGED	Bangladesh Working Group on External Debt
CAO	Compliance Advisor Ombudsman
CEIU	Compliance, Evaluation and Integrity Unit
CLEAN	Coastal Livelihood Environmental Action Network
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EIB - CM	European Investment Bank - Complaints Mechanism;
E&S	Environmental and Social
ESF	Environmental and Social Framework
ESP	Environmental and Social Policy
FI	Financial Intermediaries
GRM	Grievance Redress Mechanism
IAM	Independent Accountability Mechanism
IFC	International Financial Corporation
IPAM	Independent Project Accountability Mechanism
IRM	Independent Review Mechanism
MDB	Multilateral Development Bank
PPM	Project-affected People's Mechanism
RofP	Rules of Procedure

1. EXECUTIVE SUMMARY

This report analyses the Asian Infrastructure Investment Bank's Independent Accountability Mechanism, the Project-affected People's Mechanism, now in its fifth year of existence and nearing its policy-mandated review. The objective of the report is to identify and set out the major challenges project-affected communities have faced in accessing remedy before the PPM so that they are addressed in the upcoming PPM review.

In particular, the report attempts to answer the question of why the PPM has not accepted a single complaint as eligible, despite the AIIB's large portfolio of projects over the past seven years and several instances of negative environmental, social, and human rights impacts related to AIIB's financing. The report finds that there is an accessibility crisis at the PPM where due multiple factors, such as excluding co-financed cases from the PPM's mandate, lack of sufficient disclosure in financial intermediary investments, and policies around eligibility, among others, have led to the PPM being nearly inaccessible for project-affected communities. Overall, the report aims to ensure the AIIB addresses its ongoing accessibility crisis and closes accountability gaps in order to enhance its development effectiveness.

In order to explore barriers to accessibility and accountability, the report reviews evidence from several sources: the AIIB's overall portfolio of projects, assessing which are eligible for the PPM and why many are not, comparing the portfolio before and after October 2021, when the AIIB's new Environmental and Social Framework (ESF) came into force; the AIIB's large and growing portfolio of financial intermediary projects, which pose particular challenges for accountability; three examples of AIIB projects and barriers to accountability that project-affected people have faced; and AIIB's policies relating to accountability – including the PPM Policy and the Environmental and Social Framework (ESF). The report also compares the AIIB's PPM to the accountability mechanisms of peer multilateral development banks on key policy areas around accessibility, independence, and remedy, proposing policy examples from international good practice at other multilateral development banks. Finally, the report makes practical suggestions for an inclusive and effective review process for the PPM.

It is essential that the PPM review recognise areas for reform both in the PPM policy and the Environmental and Social Framework, and other relevant policies such as the Policy on Public Information, as they relate to the issue of accessibility to and effectiveness of the PPM.

Headline recommendations based on the findings of this report include:

1. Recommendations based on an analysis of the AIIB's portfolio of investments
As of end August 2023, AIIB has invested over $43 billion in 227 projects – but still no cases have been accepted by the PPM: there is an urgent need to improve accessibility.

In recent years, AIIB has more standalone investments which means more projects can be found eligible for the PPM under the mechanism's rules. Of projects approved post October 2021, the majority of AIIB projects are now eligible for the PPM. However a large minority – 38% – are ineligible to access the mechanism. The main cause of ineligibility is co-financing; 93% of projects are ineligible for this reason. The remaining 7% are ineligible because they are capital markets projects.

The rules on the basis of which some co-financed projects are eligible for the PPM are very unclear (for example, investments co-financed with the International Finance Corporation or Asian Development Bank non-sovereign projects are eligible for the PPM)

Co-financed policy lending operates under different rules at the World Bank and Asian Development Bank: the ADB applies environmental and social standards to all investments, but the World Bank does not apply its Environmental and Social Framework to policy lending or its Program-for-Results, leaving an accountability gap.

- **Ensure all AIIB projects are eligible for the PPM:** This policy incoherence and obscurity is something the PPM review must address. It could be dealt with simply: by ensuring that all projects the AIIB finances are eligible for the PPM, as is standard practice at other MDBs.
- **Address accountability gaps:** The PPM review should address the relative lack of accountability when considering co-financing Development Policy Finance or Program-for-Results projects with the World Bank. Either the AIIB should ensure that its own ESP applies to these investments, since the World Bank's does not, or it should not co-finance such projects.

Of projects approved since October 2021, 62% of AIIB's projects are eligible for the PPM. For the first time, a majority of eligible investments - 56% - are through financial intermediaries. This has significant implications for accountability as FI investments are the least transparent, and may come with hidden risks.

- **Improve disclosure and risk manegement in financial intermediary lending:** Given financial intermediary investments now form the majority of projects eligible for the PPM, there is an urgent need to focus on ensuring disclosure and risk management policies are being adhered to, and to identify where FI standards could be further improved (see detailed recommendations below).

2. Reforms needed in financial intermediary lending

So far in 2023, FI investments comprise fully a third of AIIB investments overall. Given FI investments comprise the majority of projects eligible for the PPM, the PPM review must identify and address the specific barriers to accessibility posed by FI lending. Transparency is a critical issue in FI lending – without disclosure, project-affected communities cannot know that the AIIB is involved or the PPM available to them.

- **AIIB and FI client document disclosure:** The AIIB should enhance its disclosure of its own project documents, and in all cases, AIIB project summaries should provide a link to client sites as well as their portfolio, E&S policies, and grievance/communication mechanism.
- **FI client disclosure:** In all cases, FI clients should disclose their portfolio, making clear which projects involve AIIB funding as well as E&S policies and grievance/communication mechanisms, including the PPM.
- **AIIB subproject disclosure:** To enhance transparency and avoid confusion when FI clients have broad portfolios that AIIB is only partially exposed to, the AIIB should disclose full FI subproject lists on the project summary page. This should also disclose project categorisation, especially for any Category A and Higher Risk Activities.

- **Broadening disclosure of high-risk subprojects:** Broaden the disclosure requirement that currently only applies to private equity investments so that Category A and Higher Risk Activities funded under other types of FI project are disclosed.
- **Assess environmental and social information disclosure gap:** Given the lack of E&S document disclosure by both the AIIB and its FI clients, the AIIB should assess compliance gaps and remedy them by making all documents public as required under the ESF.
- **Ensure AIIB involvement is publicised:** In all cases, FI clients and subproject implementers should make clear that there is AIIB involvement on their websites and at the project site in a language and manner accessible to local affected communities.
- **AIIB should actively monitor that its clients include and implement in the ESMP** the provisions for the project's GRM as well as description of the PPM or other Bank-approved IAM and how they can be accessed pursuant to AIIB's ESF para. 42.[1]
- **Identify and remove policy barriers to disclosure:** Rules for information disclosure at the AIIB are set in both the ESF and the AIIB Policy on Public Information. The PPM review should identify and recommend reforms to barriers to information disclosure in other relevant AIIB policies.

Grievance Redress Mechanisms:

- **AIIB link to client GRM:** The AIIB must ensure in all cases that it provides an active link to all FI clients' GRM.
- **Ensure GRMs are accessible and clear:** FI clients must ensure that their portfolio GRM is easy to find online, that it states clearly how complaints can be submitted, and what the handling process is. The GRM page should make clear that confidential complaints are admissible, and that measures are in place to protect complainants from retaliation.
- **Ensure GRMs inform about the option of using PPM:** All GRM websites should explain the role of the AIIB in the project, and that people can also file a complaint with the PPM. This should provide a link to the PPM website.
- **Ensure locations of project-level GRMs are known:** AIIB and FI client webpages and project documents should specify where in-person project level GRMs can be located and what process they can expect.
- **Disclose availability of the GRM and PPM at the project site:** Affected communities should be given information about the PPM and the GRM in a manner and language accessible to them, for example during project consultations and on project signs. This should indicate AIIB's involvement, a link to its E&S protections and how to contact the GRM and PPM.

3. Policy barriers highlighted by cases

Recommendations in the Bhola gas IPP case, Bangladesh:

- It is unacceptable for there to be no clear definition of what 'good faith' engagement actually entails. **This 'prior engagement' requirement, which is not present in several IAMs' policies including the IFC, EBRD, EIB, Green Climate Fund and UN Development Programme, should be dropped entirely.**
- **The AIIB's Board should request a formal review of the PPM's ineligibility decision in this case,** with full consultation with the complainants.

- **The AIIB and its client must ensure full and fair redress** for the harms suffered by affected communities.

Recommendations in the InVIT case, India:

- Given the fact that the projects were constructed years before AIIB investment, the PPM and the IFC Compliance Advisor Ombudsman themselves should now **trigger an investigation into this case**, rather than relying on affected communities to file; the CAO's mandate enables it to trigger an investigation without waiting for a community complaint in certain circumstances, but the PPM does not have this facility, which is a gap the review should address.
- The nearly two-year delay in project disclosure and its impact on eligibility should also be addressed in the PPM review, with **an extension of complaint eligibility beyond 24 months in cases of delayed disclosure.**
- **Ensure full and fair redress for affected communities who have suffered harm as a result of the road construction**.
- **Suspend any further IFI investments into InvITs** while concerns about application of standards and barriers to accountability posed by this new financing model are addressed.

Recommendations in the Metro Bangalore case, India:

- **The requirement for engagement with Management and GRM should be voluntary:** Affected communities should be able to decide whether they want to place their trust in non-independent entities such as management and project-level grievance redressal mechanisms, and **it should not be mandatory for them to engage in 'good faith' before accessing the PPM.**
- **Removal of Co-Financing Exclusion:** The process of accountability is challenging and it often requires the combined leverage of both co-financiers to ensure remedy. Excluding co-financed cases from the mandate of the PPM prevents that and thus should be removed. Moreover, in this case, the affected students should be able to access the PPM to further use its processes to get redress for the harms suffered.

4. Recommendations in key policy areas to bring AIIB into alignment with peer MDBs

The PPM lags behind Independent Accountability Mechanisms (IAMs) at other MDBs and comparable financial institutions on key indicators around issues of accessibility, independence, and remedy. These issues go to the heart of PPM's functioning and in order for the PPM to be fit for purpose according to international good practice, the following changes are needed:

- Project-affected communities should be able to **access the PPM in co-financed cases** and co-financing exclusion from the PPM Policy should be removed.
- The PPM should be **directly accessible** and prior-engagement with project-level Grievance Redress Mechanisms and AIIB management should be made voluntary.
- Complaints where there are **ongoing judicial and arbitral proceedings should be eligible for the PPM.**
- Project-affected communities should be able to **freely choose their representatives without any restrictions**.
- The PPM should be empowered to **submit substantive recommendations (in consultation with project-affected communities)** along with compliance review reports that should inform the Management Action Plan.

- The PPM should have an **effective monitoring mandate** for the implementation of the Management Action Plan until all instances of non-compliance are addressed.

5. Recommendations for the review of the Project-affected People's Mechanism

- The review of the PPM should be based on principles of **meaningful consultation, independence, and transparency.**
  - The CEIU/PPM must conduct inclusive and meaningful consultations with a wide range of stakeholders including civil society organisations, community based organisations, project-affected communities.
  - The CEIU/PPM must lead its own review without the interference of management.
  - The CEIU/PPM must disclose all documents that inform its review of the PPM including any terms of reference, approach papers, external and internal reports, and comments received during consultations.
- The review should be underpinned by the **principle of 'no regression'** – the policy should not be weakened – and should be conducted with the **mandate of improvement.** In fact, the Board should set out certain reforms it expects on **accessibility, independence, and remedy.**

2. INTRODUCTION: WHY ACCOUNTABILITY MATTERS AT MULTILATERAL DEVELOPMENT BANKS

Before 1993, only shareholders could hold multilateral development banks (MDBs) to account for the negative environmental, social, and human rights impacts associated with their financing. Since the creation of the World Bank's Inspection Panel in 1993, in response to political and public pressure from civil society and communities negatively impacted by development finance, many development banks have set up their own independent accountability mechanisms (IAMs). This represents a fundamental change in the system of development finance governance by allowing communities harmed by MDB-funded projects to file claims through a formal accountability mechanism designed to address their grievances and seek remedy. In what has been a remarkable proliferation of the system, today, there are over 1800 complaints filed before 17 IAMs.[2]

The structure and procedures of these mechanisms vary between banks, but typically they offer *Dispute Resolution,* i.e., mediation between the complainants and the bank's client to resolve the conflict, and/or *Compliance Review,* i.e., investigation to determine if the bank's environmental and social policies have been violated. Since MDBs are for the most part protected from lawsuits, both due to legal immunity in various jurisdictions[3] and financial and technical barriers that effectively prevent communities from accessing courts, the accountability mechanisms are often the only available recourse for communities harmed by development projects. They currently represent one of the only means of holding the banks accountable to their environmental and social commitments. By addressing conflict between project implementers and local communities and helping to ensure the implementation of environmental and social policies, robust accountability mechanisms have proven to be central to MDBs' commitment to development effectiveness and upholding human rights, transparency and accountability as a cornerstone of effective development cooperation.

As such, the accountability mechanisms also serve as a way for development banks to learn from their mistakes. Finding out why and how things went wrong is vital in learning lessons at the systemic level. This systemic learning can help to prevent harmful impacts being repeated and can improve development outcomes. Without robust accountability, MDBs suffer reputational harm that undermines trust in their institutions.

> *From complainants' perspective, the success of a complaint often hangs on the effectiveness of the IAM's particular policies in facilitating an accessible, transparent, and accountable forum for addressing grievances."*
>
> **Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms, 2021[4]**

Following its inception in 2016, the AIIB began to develop its own accountability mechanism, in accordance with the bank's Articles of Agreement, which envisaged an oversight mechanism.[5]

After consultations with a range of stakeholders, in December 2018, the Board approved the Project Affected People's Mechanism (PPM), which came into operation in February 2019. The AIIB adopted an Environmental and Social Policy (ESP) in 2016, updated in 2019, 2021 and 2022, which provides safeguards to prevent harm in its investments. Together, the PPM and the ESP establish a means of holding the institution accountable to project affected communities.

The PPM receives "submissions from project-affected people who believe they have been or are likely to be adversely affected by AIIB's failure to implement the ESP".[6] Based on the submissions, the PPM's role is to verify whether AIIB management has adhered to the ESP, or to solve problems through the Dispute Resolution or Project Processing Queries (PPQ) function. The PPM also has a learning function: the PPM Policy states that: "The PPM shall […] systematically capture and share lessons learned to enhance effective implementation of the ESP." (PPM Policy 11.2).

BOX 1: The Evolution of the AIIB's Environmental and Social Framework and Policy

All complaints (or submissions) to the Project-affected People's Mechanism (PPM) must relate any harms to AIIB's failure to implement its environmental and social safeguards – known as the Environmental and Social Policy (ESP), contained within the Environmental and Social Framework[7] (ESF).

From its inception in 2016, the AIIB had put in place an ESF. Since 2016, there have been updates to the ESF as follows:

- 2022 ESF: Effective on 22 Nov 2022. Management may at its discretion continue to apply 2019 ESF to Projects that entered the investment pipeline prior to 1 Oct 2021.
- 2021 ESF: Applies to all Projects included in AIIB investment pipeline from 1 Oct 2021. It may be applied to Projects that are included in the investment pipeline prior to this date, at the discretion of Management.
- 2019 ESF: All other Projects are governed by the 2019 ESF (which was the revised version of the original 2016 ESF).

Issues of accessibility to the PPM stem from gaps or problems both in the PPM policy and the ESF itself. For example, the revised 2021 ESF formalises the exclusion of capital markets projects from application of the ESP and therefore from eligibility to the PPM. This report focuses on issues with the PPM policy and also highlights where problems stem from the ESF itself. It is therefore essential that the PPM review recognise areas for reform both in the PPM policy and the ESF.

While the creation of the PPM and its mandate to address complaints and learn from mistakes, were welcome steps, the PPM nevertheless has fundamental design flaws which limit its effectiveness. The AIIB needs the PPM to have a stronger mandate so it can effectively fulfil the goal of ensuring environmental and social policies are meaningfully applied. Despite 227 approved projects and $43.64 billion invested up to the end of August 2023,[8] the AIIB has yet to accept as eligible a single complaint by affected communities. This paper examines the AIIB's portfolio of investments, and its ESF and PPM policies, to explore why this may be the case.

We compare the AIIB's portfolio eligibility pre and post October 2021, when the new ESF came into force. With the help of case studies where communities negatively impacted by AIIB's financing have been unable to access the PPM, the report counters the narrative that PPM has not received complaints because issues either don't arise or are being satisfactorily resolved by project-level GRMs. It also identifies areas where the AIIB's PPM falls short of current good practice among peer institutions, especially in terms of its accessibility to project affected people. The report finds that there is an ongoing accessibility crisis at the AIIB's PPM that must be addressed to allow project-affected communities to access remedy and accountability from the AIIB. Based on these findings, the report provides suggestions to improve the PPM policy, and related institutional policies and practices.

Civil society has engaged constructively with the AIIB, its board and its Complaints-resolution, Evaluation and Integrity Unit (CEIU, in which the PPM sits) since the bank's creation with the aim of contributing to an effective and independent accountability mechanism. In the context of the forthcoming review of the PPM, this report aims to contribute to an evidence base for necessary reforms, to ensure the AIIB closes accountability gaps and improves its development effectiveness.

3. BARRIERS TO ACCOUNTABILITY:

I. An accountability analysis of AIIB's portfolio post October 2021 and comparison with pre October 2021 portfolio

Introduction

This section looks at the AIIB's portfolio of investments, to show how the AIIB has invested its money – into which kinds of projects and whether they are co-financed with another MDB. The analysis aims to uncover what proportion of AIIB projects are eligible for affected communities to take complaints to the PPM, should they have concerns or suffer harms. For those that are ineligible, it maps the reasons why.

The question of eligibility is key: if projects are ruled ineligible under the PPM's rules, it means that communities cannot raise their concerns with the AIIB's accountability mechanism. Eligibility restrictions are fundamental to the question of why, after nearly eight years of operation, 227 approved projects and $43.64 billion invested, the PPM has yet to accept a single complaint.[9]

The question of eligibility is two-fold. First, there is the issue of specific types of projects being ruled out of even being considered by the PPM for certain reasons. Then there is the issue of whether a complaint is considered eligible after it has been filed to the PPM. The CEIU, in its response to a draft of this report, argued that all projects are eligible: "It is not accurate to say that certain projects are eligible and others are not. No AIIB project is left without giving people access to an IAM."[10] To be clear, when this report uses the term ineligible, it means the project is not eligible for the AIIB's PPM; or as in the case of the Bhola complaint, has been considered by the PPM but ruled ineligible.

In October 2021, NGOs Recourse and Urgewald published an analysis of the AIIB's portfolio to date, which showed that the majority of the projects funded by the AIIB were in fact ineligible for the PPM. The following section revisits this analysis, supplemented by a comparison between 2016 to end September 2021 and the period October 2021 to end June 2023. October 2021 is a pivotal moment, as it marks when the AIIB's revised ESF came into operation. This comparison of pre and post October 2021 enables an assessment of whether and how accessibility to the PPM has improved or worsened with the introduction of the updated ESF, and of the new challenges that have emerged. The preliminary good news is that eligibility has increased slightly, with a small majority of projects now being eligible for the PPM. But accessibility and eligibility still remain a challenge.

In October 2021, the AIIB began to apply an updated ESF. In some cases, the updated framework increased transparency, for example, through improved disclosure requirements for financial intermediaries. However, in others it blocked accountability, for example, by codifying disclosure exemptions for certain projects, like capital market investments, which use Environmental and Social Governance (ESG) approaches instead, and formalising their status as ineligible for PPM complaints.

This comparative portfolio analysis aims to highlight issues the AIIB should address in its upcoming review of its PPM, to ensure improved access to the accountability mechanism.

Eligibility of projects to the Project-affected People's Mechanism

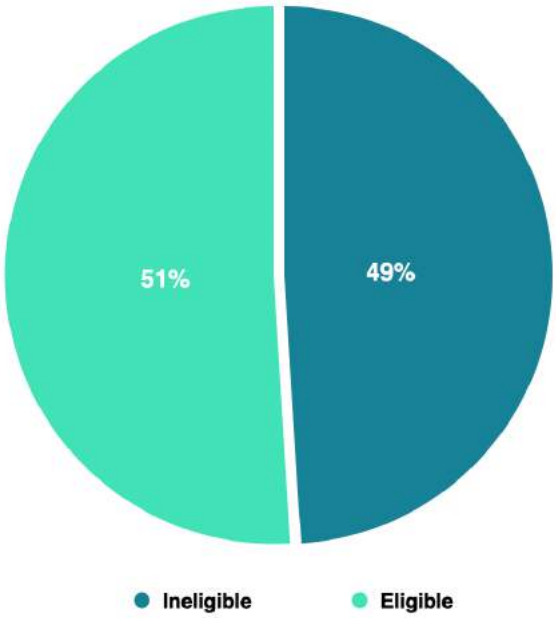
In each project document (called Project Summary Information - PSI) describing AIIB's investment, the AIIB has added a box at the end explaining whether the project is eligible

for consideration by the PPM. The main reason by far for ineligibility is that the project is co-financed with another MDB; the second most common reason is that the project involves a capital markets investment. These reasons for exclusion will be explored later in this analysis.

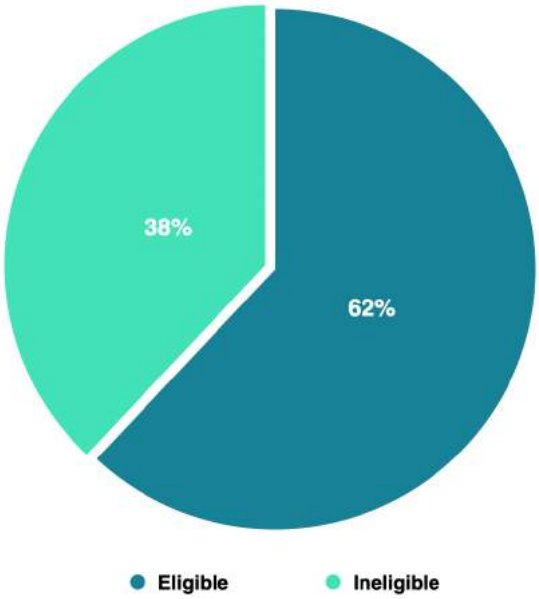
Of the total 77 AIIB project approvals since October 2021, **48 (62%) are eligible for the PPM and 29 (38%) are ineligible**. This is a positive shift from the period of AIIB's inception until September 2021, when the majority of projects (51%) were ineligible (see Figure 1) and reflects the increase in standalone projects and a decrease in co-financed projects over this period.

Figure 1: Comparison of projects eligible for the Project affected People's Mechanism

Eligible and ineligible projects 2016 to end Sept 2021



Eligible and ineligible projects Oct 21 to end June 23



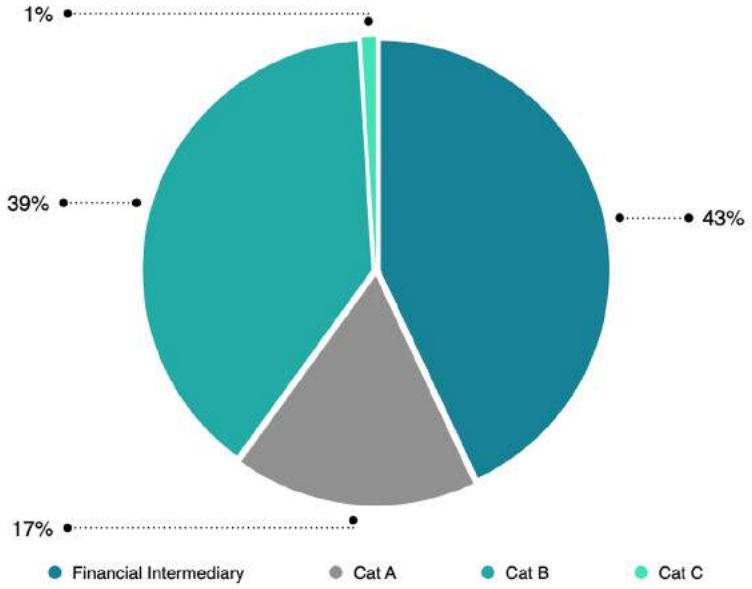
Eligible projects' environmental and social risk category

Of eligible projects approved since October 2021, the majority (27 out of 48) are financial intermediary (FI) investments, 11 are category A (high risk) investments, nine are category B (medium risk), and one is category C (low risk).

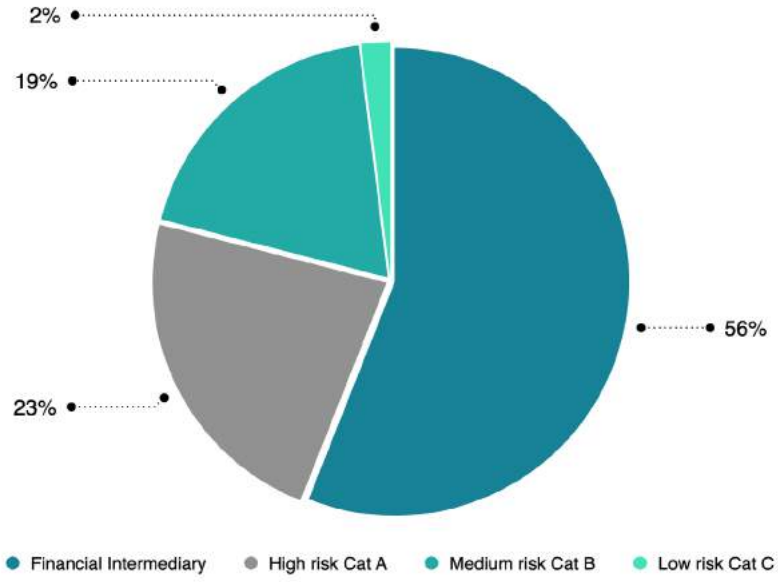
When looking at eligible projects, there is a marked rise over previous years in the proportion of FI investments (from 43% to 56%), and in high risk (Category A) projects (from 17% previously to 23%).

Figure 2: Comparison of risk categories of projects eligible for the Project affected People's Mechanism, pre and post October 2021 (to end June 2023)

E&S risk category of eligible projects 2016 to end Sept 2021



E&S risk category of eligible projects Oct 2021 to end June 2023



This rise in the proportion of FI investments has important implications for accountability. As section 2 below will detail, investments through intermediaries, such as private equity funds or banks, entail a longer investment chain than direct project finance, and outsources decision-making to FIs using an Environmental and Social Management System (ESMS) that is required to be aligned with AIIB's ESP. This can obscure transparency – the primary barrier to accountability – and delegate control over grievance redress and application of environmental and social standards away from the AIIB and to the FI client's subproject developers.

As the AIIB invests in more high risk Category A projects, it is all the more vital to ensure the PPM is fit for purpose. Already in the case of the Bhola gas power plant – a high risk project that was miscategorised as Category B – we can see how, when put to the test, the PPM has failed to ensure accountability to project-affected communities (see section 3 analysis of policy barriers at project level). In that case, concerning a greenfield gas power project in Bangladesh, affected communities' complaint to the PPM was rejected, despite well-documented harms.

Ineligible projects October 2021 to end June 2023

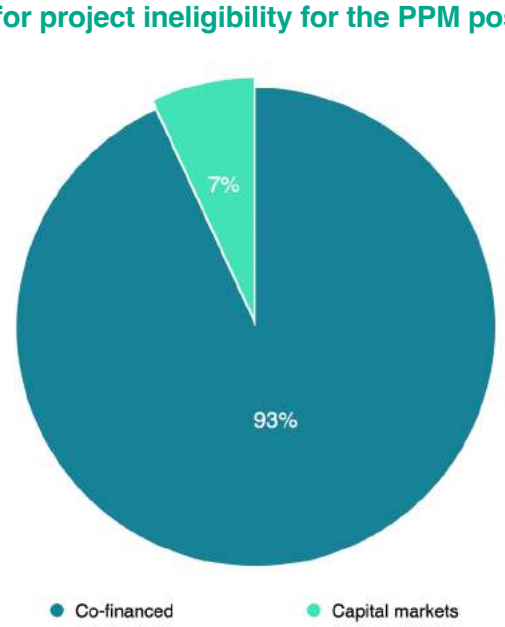
Of the total 77 AIIB project approvals between October 2021 and end of June 2023, 29 (38%) are ineligible. For 27 of these projects, the reason for ineligibility is co-financing – where the AIIB co-finances an investment with another MDB with which it has a formal agreement for use of this approach, that provides for the applicability of the cofinancier's IAM. The AIIB has such agreements with the Development Bank of Latin America and the Caribbean (CAF), Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD) and World Bank (WB) that direct complaints from project affected people to the accountability mechanisms of the other banks (thereby barring eligibility at the PPM). It has also entered into a project specific agreement with European Investment Bank (EIB) for the Bangalore Metro Project in India.[11]

In general, when AIIB co-finances a project, it relies on the environmental and social policies of the lead financier,[12] and in such cases stipulates that the co-financier's accountability mechanism applies, rather than the PPM.

Projects co-financed with the World Bank's private-sector arm, the IFC, are eligible for the PPM, and under the ADB's agreement with the AIIB, only sovereign projects are ineligible – complaints regarding private sector projects can be submitted to the PPM.

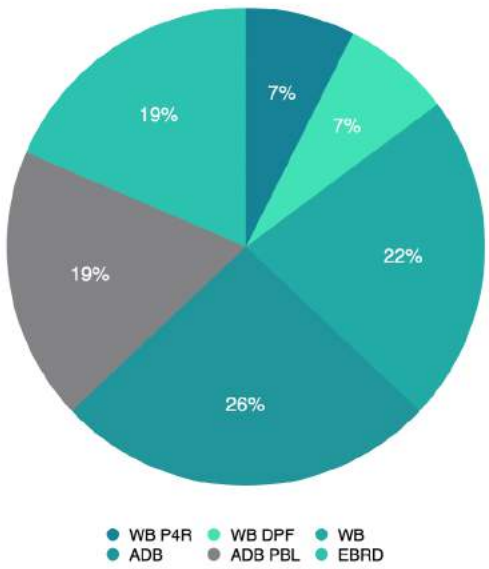
The remaining two investments are in capital markets, which under the ESF are not eligible for submissions to the PPM (see BOX 3).

Figure 3: Reasons for project ineligibility for the PPM post October 2021



Of the ineligible projects, five are co-financed with the EBRD, seven with the ADB, and six with the World Bank (WB). A further two are financed with the World Bank under Development Policy Finance (WB DPF) for COVID-19 support, and two under Program-for-Results (WB PforR); while five additional ADB projects are financed as Policy Based Lending (ADB PBL), again for COVID-19 support.

Figure 4: Type of co-financier for co-financed projects post October 2021



Co-financed projects – confusion around eligibility

AIIB management states that its ability "to rely, with the agreement of the co-financier on the latter's IAM [Independent Accountability Mechanism] is an important innovation that is designed to simplify and facilitate the implementation of Projects and the submission by affected parties of ES [environmental and social] related complaints."[13] The CEIU, in its response to a draft of this report, points to seven cases where the IAM of a co-financier has

handled a complaint from project-affected people, claiming that "this is a clear indication that people indeed have a recourse on AIIB-financed projects and are actively using the applicable IAM to resolve their concerns."[14]

Section 4 discusses why this justification for reliance on its co-financier's IAM does not hold merit and that AIIB is in fact an outlier among MDBs in this respect. This policy results in a significant portion of the AIIB's investment portfolio being ineligible for the PPM.

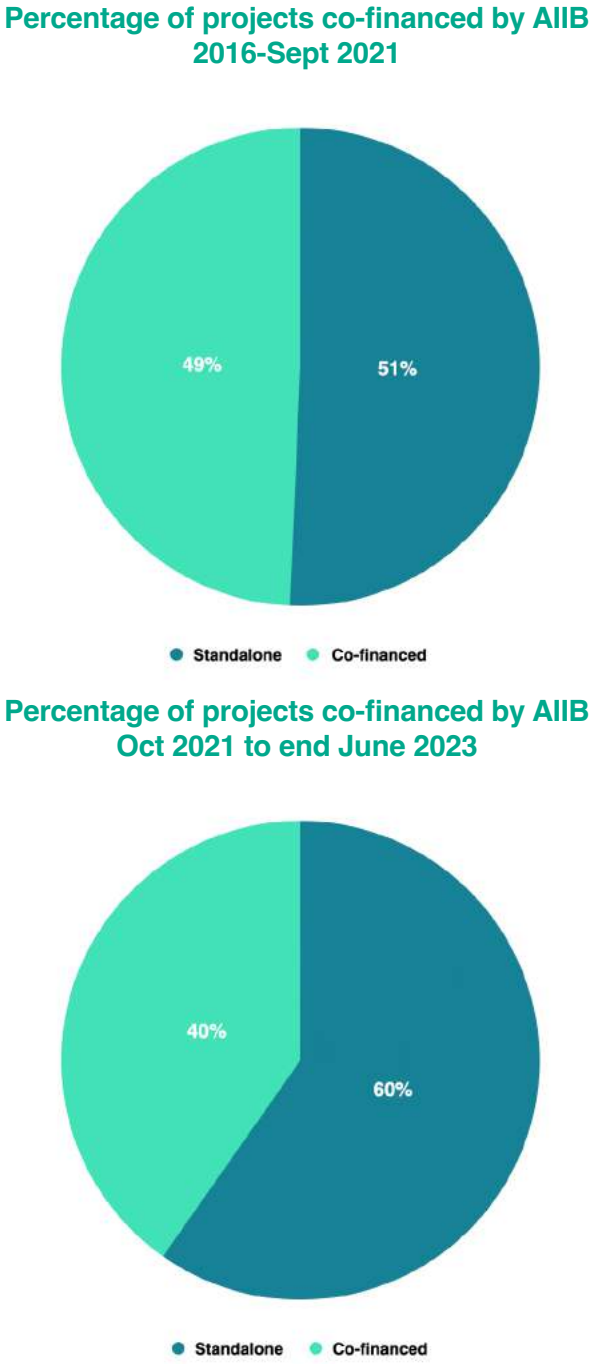
AIIB's co-financing exclusion depends on the existence of agreements with lead financiers and each of these MOUs are individually negotiated and may have specific limitations based on type of financing (sovereign/non-sovereign) or time period. As a consequence, the answer to whether a particular co-financed project is eligible for the PPM is never a simple yes or no and instead results in complicated eligibility rules that are not based on any justifiable principles or rationale. The table below demonstrates the complicated nature of eligibility for the PPM in co-financed cases.

Figure 5: Co-financed projects' eligibility and ineligibility for the AIIB PPM[15]

Co-financier	Eligible for the PPM: ✔ Ineligible for the PPM: ✘
Asian Development Bank	
All projects pre 2019	✔
Sovereign projects post 2019	✘
Non-sovereign projects	✔
World Bank Group	
IBRD/IDA projects	✘
International Finance Corporation projects	✔
European Bank for Reconstruction & Development	
Pre 2021 projects (eligible for PPM consideration except for one project)[16]	✔
Post 2021 projects	✘
European Investment Bank	
EIB IAM used in one specific case[17]	✘
Black Sea Trade & Development Bank	
AIIB PPM used in one specific case	✔
Development Bank of Latin America and the Caribbean	
All projects	✘

One reason why there has been a shift in the proportion of projects eligible for the PPM is the AIIB's move towards investing in more 'standalone' projects – those not co-financed with a development finance institution partner. In the bank's early days, management signalled its intent to co-finance projects with other MDBs in order to enhance learning and build up its portfolio, and then to go it alone more in the future as it began to find its feet. This evolution – from 51% of projects being standalone before October 2021 to 60% today – is perhaps not as rapid as might be expected. This can be explained by the AIIB's investments during the Covid-19 pandemic, when it co-financed financial and health relief programmes with other MDBs, primarily the Asian Development Bank (ADB) and the World Bank (WB).

Figure 6: Percentage of projects co-financed by the AIIB pre and post October 2021



However, the picture on co-financed projects is not simple or clear, particularly when viewed from the perspective of civil society organisations (CSOs) or communities trying to understand which projects are eligible for the PPM. Not all co-financed projects fall under the ineligibility policy. The AIIB states: "When the co-financier's IAM is not available for a co-financed Project, however, the affected parties may bring eligible complaints to the PPM."[18]

While PPM eligibility is included in project documentation, the overall PPM policy on eligibility is not spelled out, so it is difficult to grasp the underlying logic behind project eligibility decisions. For example, why should public sector projects co-financed with the ADB be ineligible for the PPM, but private sector projects financed with the same bank be eligible? The AIIB has recently made an effort to collate information on all projects, including co-

financed projects, disclosing which are and are not eligible for the PPM, in a published list on its website.[19] This is a welcome step; however, the logic for ineligibility in co-financed investments should be clarified at the policy, as well as the project, level.

Among the 77 projects financed since October 2021, four of the 48 eligible projects are co-financed – two with the ADB, one with the IFC and one with the Black Sea Trade and Development Bank (BSTDB). AIIB and PPM policies fail to make it clear why these particular co-financed projects are eligible when others are not.

This confusion is illustrated by looking at the different circumstances in which the four co-financed projects have been deemed eligible for the PPM since October 2021:

- The **Istanbul Waste to Energy Generation Project**, financed by the AIIB in 2021 with a $100 million loan, is co-financed with BSTDB as well as private financiers BNP Paribas and Société Génerale, plus Swiss Export Risk Versicherung (SERV). Instead of the AIIB's E&S standards, the IFC's Performance Standards (PS) apply because the BSTDB uses the PS for high risk projects. Presumably because the AIIB has no official agreement with the BSTDB, its IAM is "not available", and so the PPM is the accountability mechanism offered to affected communities.
- The AIIB's 2023 $70 million loan for the Singaporean **Regional Transport Connectivity Project** is co-financed with the IFC. As the AIIB has no agreement in place with the IFC, this project – although applying the IFC's Performance Standards – is eligible for the PPM.
- In contrast, the AIIB does have an agreement with the ADB, under which a large majority of its ADB co-financed projects are ineligible for the PPM. However, since October 2021, two ADB-AIIB projects are marked as eligible to the PPM. One of these is the **Monsoon 600 MW Cross-border Wind Power Project** in Laos, a Category A project, which according to the AIIB, "is likely to generate disproportionate effects on vulnerable groups, including women and ethnic minorities."[20] Recourse asked the AIIB why this project is eligible for PPM consideration and was told: "AIIB has a co-financing framework agreement with the Asian Development Bank (ADB) for sovereign operations only. Under this agreement, ADB's Accountability Mechanism is applicable on sovereign projects co-financed with ADB in which ADB's Safeguard Policy is applied. In case of non-sovereign projects co-financed with ADB, even if ADB's Safeguard Policy is applied, AIIB's PPM is the applicable independent accountability mechanism (IAM)."[21] This information is not specified anywhere in AIIB's or PPM's policies.
- The fourth co-financed eligible project since October 2021 is the **Chennai Metro Rail Phase 2 Project – Balance Corridor 5** in India**.** Again, this project is co-financed with the ADB, and in this case is a sovereign project, so the ADB's IAM would normally be the applicable mechanism. However, according to project documents: "AIIB's Policy on the Project-affected Peoples Mechanism (PPM) applies to this Project." But this does not hold for the entire project: "Submissions to the PPM under the activities financed by ADB will not be eligible for consideration by the PPM and such complaints will be handled by ADB's IAM." This is because the AIIB defines this project as financed "in parallel" with the ADB – separating out portions financed by the AIIB from those the ADB is supporting.

One further example of the confusing landscape are those investments co-financed with the EBRD. It took the AIIB some time to reach an agreement with the EBRD, so projects funded before the 2021 agreement *are* eligible for the PPM, while those funded after the agreement – which includes all five projects co-financed with the EBRD post-October 2021 – are ineligible for the PPM.

No other MDB has such a complicated set of criteria for accountability applying to the projects it funds (See section 4). The CEIU, in its response to a draft of this report claims that "We consider that the process of accessing the PPM is not complex compared to other MDBs. Rather, steps and time-lines are clearly spelled out in the Policy on the PPM and in greater detail in the PPM Rules of Procedure."[22]

- The policy incoherence and obscurity regarding co-financed projects is something the PPM review must address. It could be dealt with simply, by ensuring that all projects the AIIB finances, in whole or in part, are eligible for the PPM, leaving the choice of mechanism to affected communities, as is standard practice at other MDBs.

Varying standards of accountability in co-financed projects

In total, out of 77 projects approved since October 2021, nine involve policy or budget support to governments, as opposed to project-specific financing or investment. Five of these are contributions to ADB's policy-based lending projects (PBL), and two are contributions to the World Bank equivalent, called development policy finance (DPF) that were undertaken to provide support to governments to manage the COVID-19 pandemic. These are rapidly disbursing policy-based financing instruments to support a country's economic and sectoral policies and institutions. None of them are eligible for consideration by the PPM. This is problematic. As the civil society organisation, Reality of Aid, points out, MDBs' policy support can result in conditionalities to promote private sector-oriented policies, which impact people's rights and welfare.[23] When policy lending results in environmental and social harm in breach of bank policies, affected communities should be entitled to file complaints to bank accountability mechanisms to seek recourse. There is an important difference between ADB and WB policy lending. The former is subject to the ADB's environmental and social standards. However, the WB does not apply its Environmental and Social Framework to development policy finance – an omission civil society has long campaigned against.

From July 2015 to June 2021, DPF comprised over a quarter (26%) of total global WB lending. The WB standards that apply to DPF financing are much weaker than the WB's ESF, creating undue environmental and social risks and undermining accountability for harms suffered. The WB's own IAM, the Inspection Panel, has voiced its concerns over this lack of accountability: "The Panel also notes its concern that Development Policy Lending is being used for supporting activities which in earlier times have been financed as projects. This effectively bypasses the environmental and social safeguard policies that apply to projects … since DPLs are usually disbursed in a single tranche, it is difficult to ensure that attention is paid to environmental and social issues."[24]

Additionally, the disclosure window for DPF is much shorter than for investment projects, while disbursement is much more rapid. These factors also act as barriers to accountability, resulting in far fewer DPF cases being filed to the WB Inspection Panel than could be expected, given its relative size in the overall portfolio.

Two further ineligible co-financed investments by the AIIB are what the WB calls Program-for-Results (PforR). Again, there is a lack of accountability around these projects, which comprised 18% of the WB's overall portfolio in 2021. Since its creation in 2012, there has been a steady increase in the use of PforR by the World Bank, and as of March 2023, there were 146 active operations totalling $47.8 billion. Yet to date, the Inspection Panel has received only one complaint on a PforR project, which was resolved in the early stages. Again, the WB's ESF does not apply to PforR; instead, the much weaker environmental and social provisions of the PforR Financing Policy apply.

Regarding the application of a co-financier's E&S safeguards in lieu of its own, the AIIB's Complaints resolution, Evaluation and Integrity Unit (CEIU) stated: "AIIB assesses whether a cofinancier's E&S policies are materially consistent with AIIB's ESP and, in a second step, decides to apply the cofinancier's policies in lieu of the ESP."[25] In the case of DPF and PforR investments, the WB is applying environmental and social standards much weaker than the AIIB's ESP – creating undue risk that the AIIB should not accept.

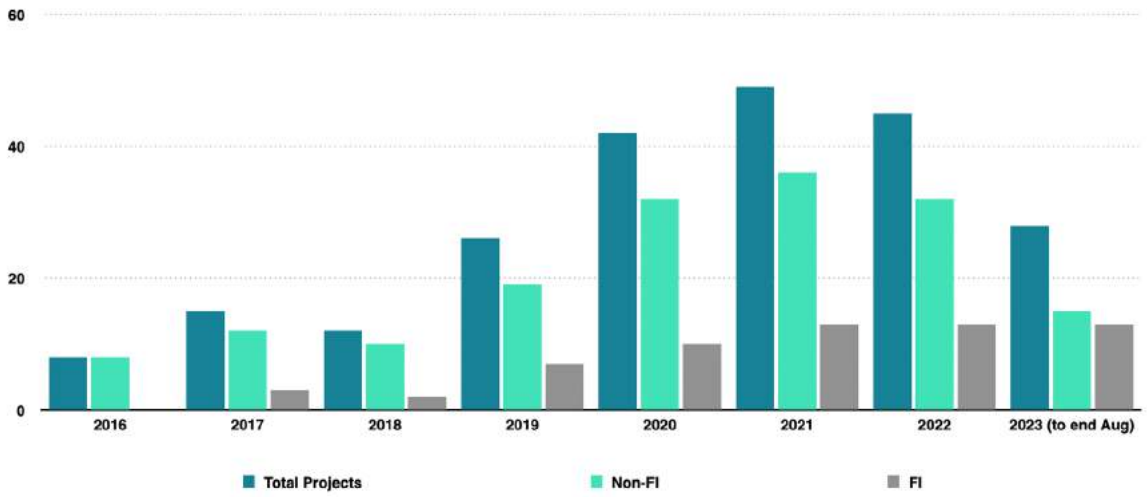
- The PPM review should address the lack of accountability regarding DPF and PforR projects co-financed by the AIIB and the World Bank. Either the AIIB should ensure that its ESF applies to these investments or it should not co-finance such projects.

II. Accountability challenges in financial intermediary lending

As discussed in the previous section, the majority of AIIB projects that are eligible for the Project-affected People's Mechanism (PPM) are financial intermediary (FI) projects. FI projects pose unique and specific challenges for accountability, especially relating to transparency and disclosure that must be addressed in order to safeguard communities' right to access the PPM. In order to ensure accountability for FI projects, we must first understand the specific challenges this type of lending poses. This section analyses AIIB's FI portfolio including how different modalities of FI lending affect accountability, and discusses the impact of 2021 ESF revisions on disclosure and transparency.

Financial intermediary lending is commonly used by multilateral and bilateral development banks as a way to maximise their reach. In the first three years of AIIB operations only a few FI projects were approved, but since 2019 they have represented over a quarter of projects approved each year. By the end of August 2023, over a third of projects approved this year were FIs, and at the time of writing there were two more in the pipeline.

Figure 7: Share of financial intermediary projects in AIIB's portfolio



Of a total 224 projects approved by the bank up to the end of August, 61 are categorised as FI. This includes 33 approved between 2016 and September 2021, and 28 approved after October 2021 under the revised Environmental and Social Framework (ESF).

All but six of the FI projects approved by the bank since 2016 are standalone projects, which means the AIIB ESF applies and affected people can file complaints about them to the PPM. One of the co-financed FI projects also applies the ESF. These 56 FI projects account for more than half of all AIIB projects that are eligible for the PPM, however, as outlined below, limitations in project disclosure potentially limit affected people's access to accountability.

The AIIB Financial Intermediary Portfolio

One-third of approved FI projects (21 of 61) are "multi-country", meaning that their portfolios cover several countries or have a regional focus. The majority of the remaining projects are in Türkiye, China and India. FI projects cover a broad range of infrastructure and infrastructure-related sectors, such as energy, transportation, housing, communications and health.

The framework for implementation, management and oversight of FI projects is set out in the bank's ESF, which is reflected in and supplemented by project specific agreements between the bank and each FI client. The AIIB delegates to the client the decision-making on the use of bank funds, which includes the selection, assessment, approval and monitoring of activities – usually referred to as "subprojects". Client decision-making must be based on "a sound environmental and social management system", or ESMS.[26] Prior to approval of a project, a key part of the AIIB's due diligence process is assessing a client's existing or proposed ESMS and determining if it aligns with the bank's ESF.[27] FI clients are required to monitor subprojects and report to the AIIB on their performance, including on environmental and social aspects. In some cases, the AIIB explicitly mentions that it will conduct a prior review of subprojects (usually of higher risk categories). There are 33 cases where prior review is mentioned.

In a meeting between CSO LatinoAmérica Sustentable and AIIB specialists, regarding the bank's first investment in Brazil into the development bank of Minas Gerais state, BDMG Renewables and Asia Connectivity Facility, the AIIB explained that it works with new clients to create an operating manual that aligns with AIIB's policies.[28] AIIB specialists stated that this occurs before any disbursement is made. This operating manual is however not made public.

The two most common types of FI platforms that the AIIB has invested in are private equity funds and on-lending facilities, which account for almost three quarters of approved projects. It has also invested in venture capital funds, a mortgage portfolio, and a social bonds programme, among others. The nature of the platform is important as this impacts the level of disclosure required.

The ESF adopted by the bank in 2016 was weak in terms of its coverage of FI projects. This was significantly improved in the 2021 revision of the framework, and a comparison of projects approved after the adoption of the revised ESF in October 2021 shows some important progress. These positive steps are elaborated below, along with the gaps that remain.

The Disclosure Gap

Information disclosure is a crucial foundation for accountability. At the most basic level, if people do not know that there is a financial link between a subproject and the AIIB, they will not know that AIIB policies apply, or that they could potentially have access to the bank's accountability mechanism. At the same time, if civil society groups are unable to see the scope of project portfolios, they will be less able to alert potentially affected people who may otherwise be unaware of AIIB exposure to a subproject.

There is a noticeable improvement in the detail of information disclosed by the AIIB over time, however, disclosure across the bank's FI portfolio is inconsistent and, in several respects, inadequate. This matters, given the majority of projects eligible for the PPM are FI investments.

Although disclosure rules are not part of the PPM review, unless the information gap is closed, the PPM will simply not be accessible to a large number of potentially affected communities. An important first step is for the AIIB to ensure that existing disclosure commitments are being upheld in FI investments. As this research demonstrates, FI clients and the AIIB itself are currently falling short.

The AIIB discloses various types of project documents on its website. This includes Project Summary Information (PSI), Project Documents, Project Implementation Monitoring Reports, and various E&S documents. For the majority of financial intermediary projects, the AIIB has published only PSIs. In a response from AIIB, the bank said it does not disclose Project Documents or Project Implementation Monitoring Reports for private sector projects, which make up the vast majority of its FI portfolio.

	Projects
Project Summary Information	61 (100%)
Project Document	12 (20%)
Project Implementation Monitoring Reports	10 (16%)
E&S documents	6 (10%)

Total 61 projects

There are some projects that are several years old for which only the PSI has ever been published. PSIs are typically three pages long and include the basics, whereas Project Documents can be upwards of 50 pages. Monitoring Reports are brief, but often include important information on project progress, the functioning of project-level grievance mechanisms, and if the bank has identified any 'red flags'.

AIIB project summaries often include links to FI client sites, but not always. The bank may link to the client's grievance or external communications mechanism, portfolio, ESMS summary, or more detailed E&S policies. However, the AIIB only links to the client's website in 31 out of 61 projects, and in 12 out of 61 projects we found that hyperlinks provided by the AIIB to important documents were dead. Disclosure by FI clients themselves is much better than that of the AIIB, and has improved over time, likely due to the improvements in the 2021 ESF disclosure requirements for FIs. More detailed information can often be found by going directly to their websites. It is unclear why the AIIB is creating an unnecessary barrier to accountability by not publishing or linking to project information that is publicly available. The ESF currently requires a higher standard of disclosure from AIIB's FI clients than from the bank itself, which is an anomaly that should be addressed.

	FI Client Disclosure	AIIB Disclosure
Project portfolio	25 (41%)	8 (13%)
ESMS summary	43 (70%)	19 (31%)
E&S policies	34 (56%)	15 (25%)
FI client complaint or comms mechanism	42 (69%)	20 (33%)

Total 61 projects

Recommendations

- **AIIB document disclosure:** The AIIB should enhance its disclosure of its own project documents, including Project Documents, and Project Implementation Monitoring Reports on its website. The AIIB should also disclose its operating manual agreed with FI clients after the AIIB's evaluation of the client's existing ESMS and portfolio.
- **AIIB disclosure of client information:** In all cases, AIIB project summaries should provide a link to client sites, as well as their portfolio, E&S policies, and grievance/communication mechanism. If PDF documents are available they should also be uploaded to the AIIB project page.
- **FI client disclosure:** In all cases, FI clients should disclose their portfolio, making clear which projects receive AIIB funding, as well as E&S policies and grievance/communication mechanisms.
- **Explain non-disclosure:** If any of the above information is not being shared due to regulatory constraints, market sensitivities, or other reasons, this should be clearly articulated in the AIIB project summary.
- **Identify and remove policy barriers to disclosure:** Rules for information disclosure at the AIIB are set in both the ESF and the AIIB Policy on Public Information.[29] The PPM review should identify and recommend reforms to barriers to information disclosure in other relevant AIIB policies.

Project Portfolios: Where is AIIB Money Going?

As noted above, the type of FI platform has a bearing on the level of disclosure required. Under the bank's ESF, FI projects involving equity funds are required to disclose the name, location and sector of the portfolio companies supported by AIIB financing within 12 months following financial closure of the investment. No such requirement is specified for other types of FI projects.[30] Unsurprisingly, disclosure by equity funds is therefore the strongest among the FI portfolio.

On the other hand, disclosure by FIs that operate on-lending facilities (where FI clients on-lend to other sub-clients) is much more limited, and we found only two cases where the client disclosed its portfolio. In some cases, disclosure of on-lending facility portfolios would be impractical. For example, the Sri Lanka COVID-19 Emergency and Crisis Response Facility extended short-term loans to over 2,000 sub-borrowers, mostly SMEs.[31] On the other hand, TSKB Sustainable Energy and Infrastructure On-lending Facility provided loans to eight projects, mostly in the energy sector. This was not disclosed by the client, and only appears in an AIIB project completion report now that the project is closed.

Where portfolios are disclosed, it can still be challenging to identify which projects are supported by AIIB funds, and information is often limited.

- **Partial portfolios**: Some clients appear to publish a partial portfolio, for example, LOK Capital, which manages the LOK Capital Fund 4 in India lists: "*Some companies* that our people are privileged to have invested in, learned from, and grown with." [emphasis added]
- **Broad portfolios**: Some FI clients manage numerous funds and publish information on their broader portfolio, without differentiating which fund each investment comes under. This means it is not possible to identify which investments AIIB is exposed to. For example, Global Infrastructure Partners publishes a portfolio of almost 50 projects, but it is unclear which, if any, come under the AIIB-funded GIP EM Fund I project.
- **Unclear investments**: Some clients publish portfolios in which AIIB funded projects can be identified, but the information is so basic that it is not adequate to identify either the company or project that the fund has invested in. For example, Pierfront Capital publishes the portfolio of the Keppel-Pierfront Private Credit Fund L.P, but this includes investments such as "Pluto" in Indonesia, "SHTQ" in Vietnam, "Inbound" in Malaysia, and "Walter" in India. With such limited information and no full company name, none of these disclosures are helpful in identifying the destination of these investments.
- **Inadequate information**: In some cases where portfolios are disclosed, the basic nature of the information available can obscure the ultimate destination of AIIB funds. This is illustrated well in the case of the Asia Investment Limited Partnership Fund. The portfolio originally included three telecoms companies in Cambodia, Myanmar and the Philippines. Soon after, it was revealed that one of these companies, MFOCN, had business links with the Myanmar military. Since then, the portfolio page has been updated and now these three companies are replaced by their parent company Hyalroute, with a location of Singapore. The two disclosures tell two very different stories.

Figure 8: Asia Investment Fund Management Ltd. June 2021 disclosure:

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- Philippines Fiber Optic Communication Network Ltd. Inc. (PFOCN), Cambodia Fiber Optic Communication Network Co., Ltd. (CFOCN), Myanmar Fiber Optic Communication Network Co., Ltd. (MFOCN): PFOCN, CFOCN and MFOCN invest, construct, operate and maintain telecommunications infrastructure in the Philippines, Cambodia and Myanmar, respectively.
- Dicastal: Dicastal is in the advanced manufacturing sector, producing aluminium-based products through facilities across Asia, North America and Africa, with headquarters in China.

Figure 9: Asia Investment Fund Management Ltd. August 2023 disclosure:

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Project	Sector	Country	Status
Cowarobot	Autonomous Vehicles	China	Current
Dicastal	Advanced Manufacturing	China, North America	Current
Hive Box	Logistics	China, Thailand	Current
Huisen Express	Logistics	China, Indonesia, Malaysia	Current
HyalRoute	Digital Infrastructure	Singapore	Current
Innovation Metal	Advanced Manufacturing	China	Current

The requirement for equity funds to disclose subprojects within 12 months was added to the bank's ESF in October 2021, but prior to this, disclosure requirements were included in some project agreements. For example, according to AIIB project summaries, for the SUSI Asia Energy Transition Fund (approved 2019), Lightsmith Climate Resilience Partners (2020), ADM Capital Emerging Asia Renewable Energy Fund (2020), and ISQ Growth Markets Infrastructure Fund projects, fund managers are required to "periodically disclose names, locations and sectors of subprojects that are being supported by AIIB's financing, subject to regulatory constraints and market sensitivities." However, as of August 2023 neither AIIB nor the client have disclosed any subproject portfolios.

Recommendations

- **AIIB subproject disclosure:** To enhance transparency and avoid confusion when FI clients have broad portfolios that AIIB is only partially exposed to, the bank should disclose full FI subproject lists on the project summary page. This should also disclose project categorisation, especially for any Category A, high risk Category B and Higher Risk Activities.[32]
- **Broadening disclosure of high-risk subprojects:** Broaden the disclosure requirement that currently only applies to private equity investments so that Category A and Higher Risk Activities funded under other types of FI project are disclosed.
- **FI clients clarify portfolio disclosure:** FI clients should publish equity portfolios that

clearly list all subprojects the AIIB is exposed to and identify them as such. Investments listed in the portfolio should provide adequate information for readers to be able to identify the actual destination of the investment.

- **Ensure AIIB involvement is publicised:** In all cases, FI clients and subproject implementers should make AIIB involvement clear on their websites and at project sites in a language and manner accessible to local affected communities.
- **Explain non-disclosure:** If any of the above information is not being shared due to regulatory constraints, market sensitivities, or other reasons, this should be clearly articulated in the AIIB project summary.

BOX 2: Co-financed financial intermediary projects

Co-financed FI projects are relatively rare, with only six approved to date. Four of these projects apply the co-financier's policies, one the AIIB policies, and one is unclear (AIIB project documents contradict each other, with the Project Summary saying that AIIB policies apply and the Project Document saying World Bank).

In these co-financed projects, AIIB disclosure is consistently weak. Only one of six project summaries links to the project page of the co-financier, and that link is dead. Two of the six projects share E&S documents, but only a fraction of the full project documentation is shared by the AIIB counterpart, and they do not consistently provide links to the grievance mechanism of co-financiers.

For more on the AIIB's approach to co-financing see Section 4.

Disclosing Environmental & Social Risk Management Systems and higher risk subprojects in FI investments

As noted above, all FI clients are required to have in place an Environmental and Social Management System (ESMS) that is aligned with the AIIB's ESF and applies to all activities supported by AIIB funds. In some cases, the client already has systems in place that are deemed adequate, but in others the AIIB requires additional provisions or enhancements to be adopted as part of the project agreement. Disclosure of these requirements could help to make the PPM more accessible to complainants as it would enable them to better understand the scope of the project, types of mitigation considered, and E&S risk management requirements.

There is no obligation under AIIB policy for disclosure of the ESMS, and the ESF states: "The ESMS is normally not disclosed."[33] FI clients are only required to disclose an "overview".[34] In some cases, these overviews are extremely basic and amount to vague commitments to environmental and social compliance.[35] In numerous cases, FI clients have in fact published more detailed E&S policies on their websites, but the AIIB often does not publish or link to them. In some cases, these policies include useful information on how grievances are handled, and it would be clearly beneficial for the AIIB to ensure access to them.

Project summaries published by the AIIB are inconsistent when it comes to identifying project risks. The bank only mentions project risks in 23 of the 61 approved FI project summaries. The first 15 projects were entirely silent on this issue, thereafter 23 project summaries provide a few sentences summarising the project risks observed by the bank during its due

diligence processes, with a noticeable increase in the period after the revised ESF was adopted in October 2021.

Under the bank's ESF, part of its FI due diligence process is identifying the extent to which projects equivalent to Category A and "higher risk" projects are present in the existing portfolio or likely future portfolio.[36] FI clients are required to apply the AIIB's Environmental and Social Standards if such projects are present.[37]

In discussions between civil society groups and the AIIB, bank management has stressed that it does not have a "hands-off" approach to FI lending, and monitors its clients' activities. The ESF states that FI clients are required to report on activities to bank management, and details of oversight and reporting requirements are summarised in project summary documents. This can involve quarterly, semi-annual, and annual reporting, as well as bank review of certain types of projects, and site visits. However, with bank disclosure of monitoring reports so limited and no disclosure of the evaluation criteria, it is largely impossible for the public to know how most FI projects are progressing.

Under the ESF, the client is required to disclose E&S documentation required under Environmental and Social Standard 1 (ESS1),[38] which the bank then discloses to "increase access" to project information.[39] ESS1 covers E&S assessment and management and is triggered if a project is likely to have adverse social or environmental risks and impacts. Under ESS1, for each Category A activity under an FI Project, draft E&S assessment reports and documents should be disclosed at least sixty calendar days prior to final approval of the activity for inclusion in the project. For "Higher Risk Activities," annual E&S documentation should be disclosed covering the preceding 12 months, unless such disclosure is subject to regulatory constraints, market sensitivities or consent of the sponsor, in which case, the reasons for nondisclosure should be made public.[40]

This disclosure should be done in a way that is timely, accessible, gender sensitive and inclusive, culturally appropriate in manner and location, and in a form and language(s) understandable to project-affected people other relevant stakeholders who may have specific needs (related to disability, literacy and/or language).[41] ESS1 states that this disclose should be done: (a) in English, together with summaries incorporating elements of the documentation that are relevant to stakeholders, including the Project-affected people, in language(s) understandable to them; and (b) on the client's website, with summaries also disclosed in an accessible manner in the project area.[42]

While we were unable to visit project sites of FI subprojects, we can see that AIIB's online disclosure of FI project E&S documentation is extremely limited, and where we could identify client portfolios, we found no such documents. This suggests that either FIs have invested in very few Category A or Higher Risk Activities, or that disclosure is lacking.

Recommendations

- **Ensure access to all public E&S policies:** The AIIB should ensure that it publishes or at the very least provides links to FI clients' E&S policies where they are public (not only the ESMS overview).
- **Identify project risks observed:** If the AIIB identifies project risks associated with a proposed FI project, these risks should be included in project summary documents. If a project is identified as low risk this should also be made clear. This is standard practice at other MDBs.[43] The AIIB should also take into account project risks identified by the

affected communities. The bank and its partners must also be transparent on how they plan to mitigate and address these risks, based on their consultation with the affected peoples.

- **Assess E&S disclosure gap:** Given the lack of E&S documents disclosure by both the AIIB and its FI clients, the AIIB should assess compliance gaps and remedy them by making all documents public as required under the ESF.

Availability and accessibility of grievance redress mechanisms

AIIB clients, including FI clients, are required to establish a project-level grievance redress mechanism (GRM).[44] Under the bank's Environmental and Social Standards, in the case of FI projects there should be both a mechanism to address concerns regarding the implementation of the FI's ESMS, and a GRM for bank-supported activities, i.e. subprojects of the FI.[45] People impacted by FI projects also have recourse to the AIIB's Project-affected People's Mechanism (PPM), and clients are required to inform affected people that this option is available.[46]

According to the UN Guiding Principles on Business and Human Rights' 'effectiveness criteria' for operational-Level grievance mechanisms, GRMs should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue (See Box 4).[47] Civil society groups have noted in several AIIB-funded projects that project-level GRMs have been found lacking. For example, when visiting the site of a cement plant in Myanmar that received investment from the AIIB through the IFC Emerging Asia Fund, researchers found that the GRM was a suggestion box at the company information centre, but nobody knew if and when it was emptied or what happened to its contents.

Shwe Taung Cement's suggestion box on the wall of its information centre: A GRM? Photo: Kris Genovese

The majority of the FI project summaries published by the AIIB specify that FI portfolio companies are required to establish project-level GRMs. However, due to the volume and geographical spread of subprojects, and the fact that their specific location is often unknown, it is beyond the scope of this paper to assess the extent to which this is happening, or the adequacy of these mechanisms. This may be assessed by the AIIB in its monitoring of FI clients, but very few monitoring reports are published.

Among AIIB's FI clients, we were able to identify some form of complaint or basic communication channel, referred to on their websites, in 69% of cases. There was a noticeable improvement over time. Among FI projects approved between 2016 and September 2021, we identified some type of communication channel in 61% of projects, whereas for projects approved after the ESF was revised in October 2021 this increased to 79%.

While it is positive that more FI clients have communication channels for affected people, the quality varies across the portfolio. Some FI's frame these as grievance or complaints receiving mechanisms, others as external communications mechanisms. Out of the 42 projects where we identified some kind of mechanism, 28 specifically state they receive grievances, whereas 14 were a basic 'Contact Us' page on the client website (accessed via links on the AIIB project summary pages), with no indication that a process to handle complaints had been established. 15 of these projects specify the process to some degree, with some but not all specifying that anonymity is possible and the complainants will be protected from reprisals.

Finally, of those FI projects with an identified mechanism, 11 make reference to the PPM and explain that if people are unsatisfied with the handling of their complaint they can make a submission to the PPM. This represents a small share of total FI projects, but there was a significant increase in the number of projects that mention the PPM (two out of 33 projects approved under the original ESF; 9 out of 28 projects approved from October 2021 under the revised ESF). The AIIB's Environmental and Social Standards state: "Information on the availability of the PPM is provided in an accessible and understandable manner in locally appropriate language(s), including on the Client's (or beneficiary's) Project-related website.[48] In the majority of cases, this standard is not being applied.

BOX 3: ESG approaches for capital market projects

In recent times, the AIIB has begun to expand its portfolio into capital markets and has now financed six of these investments. This type of project was not addressed in the bank's original ESF so capital markets investments received case-by-case approval from the board of directors to derogate from the ESP. The revised ESF[108] now formalises the exclusion of capital market projects from both the ESP safeguards and the PPM. The revised ESF states, "Bank financings involving investments in a portfolio of publicly traded securities using ESG approaches are different from the types of operations that are covered by the ESP, in that they are governed by the terms of the publicly traded securities". In these types of projects, the normal AIIB E&S safeguards do not apply, and instead each project uses a "specific ESG framework".

Because the ESP does not apply, and the PPM exists to hold AIIB accountable to its ESP, the AIIB policy states: "The Policy on the PPM would not apply to the operation."[109]

BOX 4: GRM Effectiveness Criteria

Legitimate
The GRM must be perceived as legitimate by potential affected stakeholders who seek a fair and effec-tive handling of grievances.

To maintain legitimacy, the GRM must have a sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of the process.

To maintain legitimacy, the GRM must be adequately staffed and resourced to deliver on its mandate to facilitate remedy without undue delay.

Accessible
Potential users must be made aware of the GRM and its procedures, and they should be able to easily navigate how to make a complaint.

Predictable
The GRM's procedures must be clear so that potential users are well aware of the key steps and options within the complaints process. The GRM process should be time-bound where appropriate and provide for agreed outcomes for monitoring.

Equitable
GRM users must be treated fairly and provided with information & resources to allow them to meaning-fully participate in the process. The GRM should seek to redress imbalances in power, knowledge and influence between the investor and its clients, and potential complainants to enable informed dialogues and a process based on respect.

Transparent
The GRM must operate transparently, keeping a registry of complaints and outcomes, honouring confi-dentiality where requested by users.

Rights Compatible
The GRM must ensure that outcomes and remedies are compatible with internationally recognised hu-man rights.

A Source of Continuous Learning
The GRM must function to help the investor to capture risks, learn from gaps and mistakes, and course correct. The investor should review cumulative lessons from complaints to identify necessary updates to institutional practice or the effectiveness of the GRM.

Based on Engagement and Dialogue
The GRM must be designed and periodically reviewed in consultation with its intended users to ensure it is effective to address and resolve grievances.

In its response to this report, the CEIU states that it regularly reviews the GRM for each project and has also completed an early learning assessment on the effectiveness of GRMs, making several recommendations to management for the improvement of GRMs.[49] None of this information is public however, so it cannot be assessed.

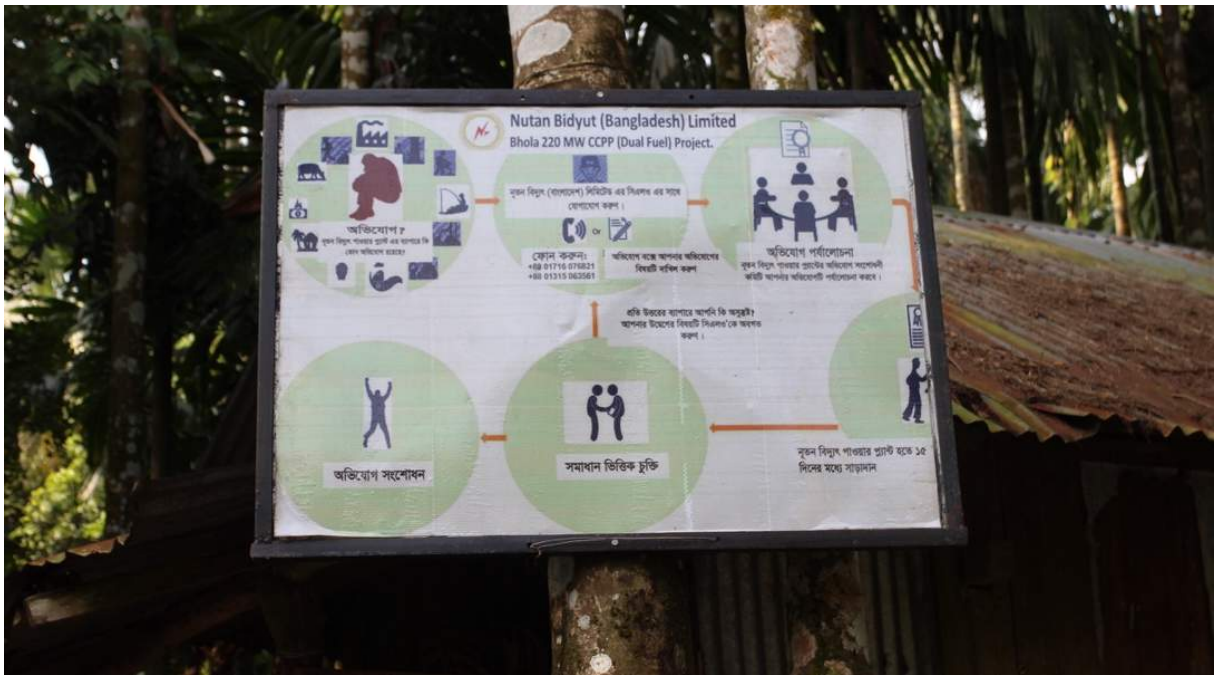
Recommendations

- **AIIB link to client GRM:** The AIIB must ensure in all cases that it provides an active link to all FI client's GRM.
- **Ensure GRMs accessible and clear:** FI clients must ensure that their portfolio GRM is easy to find online, that it states clearly how complaints can be submitted, and what the handling process is. The GRM page should make clear that confidential complaints are admissible, and that measures are in place to protect complainants from retaliation.
- **Ensure GRMs inform about the option of using PPM:** All online GRMs should explain the role of the AIIB in the project, and that people can also file a complaint with the PPM. This should provide a link to the PPM website.
- **Ensure location of project-level GRMs are known:** AIIB and FI client webpages and project documents should specify where in-person project-level GRMs can be located and what process they can expect.
- **Disclose availability of the GRM and PPM at the project site:** Affected communities should be given information about the PPM and the GRM in a manner and language accessible to them, for example during project consultations and on project signs. This should indicate AIIB's involvement, a link to its E&S protections and how to contact the GRM and PPM.

III. Analysis of policy barriers at project level

Analysing AIIB's portfolio provides many insights into why AIIB's PPM, now in its fifth year of existence, is facing an accessibility conundrum, i.e., while there are multiple reports of environmental, social, and human rights harms related to AIIB financing, the PPM has yet to receive a case it considers eligible for its purpose. The following section looks into examples of cases where AIIB-affected communities have been unable to benefit from the PPM and provides evidence for what CSOs and local communities have been saying for a long time, that AIIB's PPM Policy makes it challenging for project-affected communities to access accountability and remedy.[50]

To date, the AIIB's PPM has received only two complaints from affected communities, neither of which has been deemed eligible. The first, regarding the AIIB's support to *Mumbai's Metro Line 4 Project*,[51] was rejected as "the submission was made by less than two individuals" - and according to PPM Policy, a complaint must be filed by two or more people; and also because the project was not approved for consideration of AIIB financing.[52] The second relates to the *Bhola Independent Power Project* in Bangladesh, which is discussed in detail below. In addition, AIIB's co-financiers have received complaints in seven different co-financed projects.[53] This section also looks at two other cases where AIIB's investment has led to harm and yet communities have either been unable to access the PPM, as in the case of *India's Oriental Infratrust,* or not been allowed to as in the case of *Bangalore Metro Rail Project.* We further identify recommendations from these cases to improve accessibility to the PPM.



Sign in village close to the Bhola gas power plant explaining the complaints process.
Photo: Petra Kjell Wright

1. Arbitrary and unfair application of the 'good faith' engagement criteria: An examination of Bhola IPP, Bangladesh

Bhola is the largest island in Bangladesh, where the Meghna River meets the Bay of Bengal in the south. It is the eighth most deprived district in Bangladesh, with 16% of the population living in extreme poverty. The area is extremely vulnerable to climate change, experiencing devastating cyclones and storm surges.[54]

In February 2018, the AIIB approved a $60 million investment in the Bhola Independent Power Project. This is a $271 million, 220 megawatt (MW) greenfield dual-fuel gas and diesel combined cycle power plant, that was implemented by Nutan Bidyut (Bangladesh) Limited (NBBL). Construction started in late 2017 and the plant began operations in 2021.[55]

Engagement with the AIIB and Complaints-resolution, Evaluation and Integrity Unit

The complainants and their representatives filed the complaint only after engaging robustly with AIIB management, the local developer and the CEIU over the three years since the project was started. In their complaint, they state, "[we]would like to emphasise that numerous attempts to resolve these issues in good faith with NBBL and AIIB Operations and Management have been unsuccessful over the past three years."

Over the three years, AIIB management were receptive to meetings with CLEAN and supporting NGOs regarding the project, and as a result undertook some follow up, including support for a land audit review. In addition, following representations by CLEAN and others, NBBL accepted that both the ESIA and the consultation process were flawed.[56] NBBL also committed to re-excavate the canal before the monsoon, but this commitment was not fulfilled.

Filing a complaint

Seeing little progress on alleviating the harms they had suffered despite repeated engagement with the AIIB and the project developer, affected communities, supported by CLEAN and the NGO Forum on ADB, filed a complaint to the PPM in April 2022. The complaint detailed several issues,[57] including:

- **Information disclosure**: the AIIB and its client, NBBL, failed to disclose information in a timely manner to affected communities; key documents, such as the ESIA, were not translated accurately into local languages and in fact appear as nonsense symbols, incomprehensible and useless in communicating the impacts of the project to local communities. Complainants also allege that accounts of consultations held were inadequate and misleading.
- **Land acquisition:** complainants allege that middlemen acquired the land required for the gas plant with intimidation and coercion, and at lower than market rates. They claim the acquisition was in breach of national land laws, and that minority Hindu communities in particular feared retaliation if they raised concerns.
- **Grievance Redress Mechanism:** the complaint alleges that the local GRM where affected people apply to the project developer is ineffective and non-functioning.
- **Impacts on local environment and livelihoods:** the complaint details the social and environmental harms caused by the construction and operation of the gas plant. These include siltation of irrigation channels by construction waste, which has reduced water available for agriculture; the destruction of 400 betel leaf farms due to flooding caused by the siltation of the channels, which has displaced over 2,000 families who rely on agriculture for their livelihoods – local women are particularly affected as they used to grow vegetables and rear chickens in courtyards which are now being flooded; and impacts on local villagers caused by the discharge of waste, effluent and sewage from construction workers' camps. In addition, goat herders, many of whom are women, have been affected by the plant's construction on land they used for grazing the animals; the women are now forced to buy feed for their animals. Women who used to come to the area to bathe and wash dishes must now walk a kilometre to collect water.

The PPM's decision

Despite the well-documented harms caused by the project, and the lengthy engagements with the AIIB and the project developer to try to alleviate those harms, the PPM declared the affected communities' complaint ineligible in February 2023. The reason given for this rejection is as follows: "**Eligibility Assessment:** Ineligible. The Requestors have not made good faith efforts to resolve the issues with the AIIB Management and have not indicated to the satisfaction of the PPM why they have been unable to do so."[58] Moreover, despite the requirement that the "PPM eligibility reports for all submissions shall be disclosed on the PPM website,"[59] the ineligibility report for Bhola IPP containing the reasoning behind the decision, is yet to be disclosed thus compounding the arbitrariness of the PPM's decision.

On repeated queries by affected communities to the PPM, the PPM finally provided the reasoning behind the ineligibility decision, that was based on a strict, technical definition of the "good faith engagement criteria" that was also extraneous to the text of the PPM policy.

While in 2021, the CEIU stated[60] that the good faith engagement criteria was "a less formal and more efficient option" and one that is not an "unreasonable obstacle," the explanation provided by the CEIU in 2023 suggests something different.[61] It reads "Good faith efforts mean that the Requestors, having *exhausted the avenue* of Project-level GRM, escalate the

matter and *formally submit their specific complaints* to AIIB Management, for resolution. The purpose of these 'good faith' efforts is that project-level GRM and AIIB Management *should have a chance to resolve the issue* before it is escalated to PPM [emphasis added]." It is not disputed that the AIIB management was aware of the multiple issues and yet did not make an effort to resolve the issues that was to the satisfaction of the requestors. However, because the PPM is now reading the "good faith engagement" to mean (a) exhaustion of GRM avenue and (b) formal submission of their specific complaint to the management, the requestors are not technically in compliance with this standard.

It took the PPM 10 months – from the filing of the complaint in April 2022 to the ineligibility decision in February 2023 – to deliberate and reach this conclusion, a delay they explain due to the inability to organise site visits. However the question remains, since the reason for ineligibility did not depend on the site visit and only on a point of technicality, why did the PPM not inform the requestors sooner, thus giving them an opportunity to fulfill the technical criteria? This long delay in informing the affected- communities about the decision leaves much to be desired in the PPM's functioning and signals to local communities that the PPM may not respond adequately and urgently to their environmental and social concerns.

Instead of clarifying what is meant by good faith, this case exacerbates confusion around the 'good faith' standard and contributes to fears that this eligibility standards will be used to exclude legitimate cases by setting the bar unreasonably high - such as the Bhola IPP case where affected communities and CSOs made extensive attempts to resolve their issues before approaching the PPM.

Recommendations:

It is unacceptable for there to be no clear public definition of what 'good faith' actually entails. This 'prior engagement' requirement, which is not present in several IAMs' policies including the IFC, EBRD, EIB, Green Climate Fund and UN Development Programme, should be dropped entirely.

- **The AIIB's Board should request a formal review of the PPM's ineligibility decision in this case,** with full consultation with the complainants.
- **The AIIB and its client must ensure full and fair redress** for the harms suffered by affected communities.

2. The Oriental Infrastructure Trust and barriers to accountability - a case study from India

India's Oriental Infratrust (OIT) represents a risky new form of financing for infrastructure. Known as infrastructure investment trusts (InVITS), these new vehicles are being used to refinance existing infrastructure, such as roads and energy projects, to free up capital for further investments. The OIT InvIT bundled together five existing road projects and secured investment from the International Finance Corporation (IFC) and the AIIB among others.

The AIIB and IFC boards approved over $150 million funding into the OIT in 2018, intending for this new mode of financing to become a blueprint for future infrastructure investment.[62] It is important to look into how this new type of infrastructure finance poses barriers to accountability, especially as the AIIB hopes to replicate it more widely. Investing in infrastructure is particularly high risk, given the potential for large-scale resettlement, destruction of forests and rivers, impacts on communities' livelihoods and exacerbation of

gender inequalities. Data from Accountability Console, a database of 1804 complaints to independent accountability mechanisms, show that nearly 45% of all complaints relate to the infrastructure sector.[63] For this reason, International Financial Institutions (IFIs) have put in place environmental and social protections to help to ensure their investments do no harm. The problem with the InvIT model is that, because the IFIs only become involved after the projects are built, these vital protections were not applied during construction. To green light financing into an InvIT, such as OIT, the shareholders of the IFIs must believe a created fiction – that the standards to which they are committed can somehow be applied *in retrospect.*

According to detailed field research[64], the five toll-road road projects caused a number of harms to local communities and the environment: these include carving up biodiverse forests, home to tigers and pangolins; flawed consultations; the displacement of indigenous people (known as Scheduled Tribes in India); safety risks; obstruction of access to public services; disproportionate impacts on women and children; and problems with land acquisition and compensation.

Problems in terms of access to accountability for harms in the InVIT case include:

- **Too much time passed:** A decade or more has passed since the five road projects were built, most completed long before the AIIB invested in the infrastructure investment trust. According to Gaurav Dwivedi of Centre for Financial Accountability, with the massive time lapse, many of the affected communities have shifted homes or scattered, especially the affected Scheduled Tribe community. Because of this time lapse, it is difficult to investigate the social impacts faced by those communities almost a decade ago.
- **Delay in information disclosure:** Not only were the projects completed many years ago, but the AIIB (and its co-financier, the IFC) did not disclose publicly that it had invested in the InVIT until two years after the fact. Such a delay in disclosure directly obstructs access to accountability as there was no way for affected communities to know that the AIIB and IFC had invested in the projects which had impacted their lives and livelihoods. The timing also matters as the PPM policy states that complaints are not eligible "the date 24 months following the date of the last disbursement of AIIB's funds or, in the case of guarantees, the date 24 months following the date of the last disbursement under the underlying obligation or, in the case of equity funding, prior to AIIB's exit from its investment." In a letter to Recourse and CFA, the IFC and AIIB claimed that disclosure was delayed by one year for the InVIT to be listed on the stock exchange and then delayed again for "further revisions and finalisation of the environmental and social due diligence" – which is not a satisfactory explanation.[65]
- **Lack of Functioning GRMs:** Independent research[66] in villages affected by the InVIT road projects discovered that affected communities had no idea about the involvement of the AIIB or IFC in funding the projects, or about the availability of their accountability mechanisms. Grievance redress mechanisms were entirely lacking at the project level during construction – the IFIs' due diligence reports state that to bring the projects into compliance with their standards, GRMs will be required. This recommendation comes years after project completion and as such is wholly inadequate.[67]
- **No clear explanation of project eligibility**: The OIT InVIT project is co-financed, which would normally exclude it from the PPM. But because it is with the IFC, with which there is no formal agreement, this means that although the IFC's Performance Standards apply to the project, the AIIB can be held accountable through its PPM. "It took us – NGOs with communication access to the AIIB and understanding of accountability mechanisms

– a great deal of time to understand the project's eligibility criteria. How could you expect affected communities to know about these technicalities?," questions Anuradha Munshi, one of the co-authors of the InVIT case study.

- **Applying standards in retrospect:** Under the new investment trust model, the IFIs only become involved when existing infrastructure assets are bundled, in other words, after projects have already been completed. Whatever problems and harms were caused, happened before standards were in place since the project developers were not required to uphold IFI protections at the time of construction. Hypothetically, if a Scheduled Tribe community were to file a complaint to the IFC's Compliance Advisor Ombudsman or the PPM, alleging that their right to Free, Prior and Informed Consent had been violated, the project developer and its backers, the IFC and AIIB, could argue that the relevant standard (PS7) was not applicable when the road was built, and that therefore there is no violation. Even if non-compliance were established, it is impossible to see how a corrective action could address this issue since it is not possible to gain someone's consent in retrospect for an already-built project.

In an interview, case study co-author Gurav Dwivedi points out that AIIB is attempting to apply its existing standards to a completely new model of financing – one for which its standards are not fit for purpose.[68] He stresses that the case study research demonstrates both the severe impacts of this project and the huge gaps in accountability, which render it virtually impossible for affected communities to access justice; but that the AIIB and the CEIU have failed to respond with required urgency or gravity. The case further raises the question of whether new models of financing can be approved without understanding their impact both on how environmental and social safeguards are applied and how accountability for those safeguards can be protected. Without this understanding, the PPM's model of functioning stands to become increasingly redundant.

Recommendations:

- Given the difficulties in timing, the PPM and the CAO themselves should now **trigger an investigation into this case**, rather than relying on affected communities to file; the CAO's mandate enables it to trigger an investigation without waiting for a community complaint in certain circumstances, but the PPM does not have this possibility, which is an issue the review should address.
- The delay in project disclosure and its impact on eligibility should also be addressed in the PPM review, with **an extension of eligibility beyond 24 months in cases of delayed disclosure.**
- **Ensure full and fair redress for affected communities who have suffered harm as a result of the road construction.**
- **Suspend any further IFI investments into InvITs** while concerns about the application of standards, and barriers to accountability posed by this new financing model are addressed.

3. Bangalore Metro Rail Project, India: A missed opportunity for accountability

In 2017, AIIB and the European Investment Bank (EIB) co-financed an amount of approx. $879 million[69] for the expansion of the city metro in Bengaluru, Karnataka, India. The borrower, Bangalore Metro Rail Corporation Limited is a joint venture of the Government of India and the Government of Karnataka. In 2019, the Bangalore Metro Rail Project led to

the demolition of the Technical Training Centre for the Deaf (TTCD) for the construction of an underground station, which impacted at least 43 hearing impaired students enrolled in the institute for the 2018–2020 academic year and their teachers. Since December 2020, Growthwatch, a voluntary research and advocacy institution based in India, has represented the affected students through various informal and formal accountability processes, including through a dispute resolution process at the EIB Complaints-Mechanism, the lead financiers' IAM.[70] Among other things, the case highlights the limitations of the co-financing exclusion in AIIB's PPM Policy.

In late 2017, the borrower initiated discussions for the acquisition of the land with the Association for the Deaf of Bengaluru (Association) that was operating the TTCD. In 2019, the Association decided to discontinue the training school and in November 2019, the demolitions began. According to Growthwatch, the students of the TTCD had not been fairly rehabilitated prior to the demolition. In fact, electricity and water for the residential hostel was cut off a few weeks before the demolition, while the students were still living there.[71] In December 2019, 41 students and three teachers were transferred to another private educational establishment, the Ghousia Institute. The transfer to the new institution came with various challenges, (i) students were given accommodation in a hostel that was 16 kms away from the institution, a commute that proved to be extremely difficult for hearing impaired students from marginalised communities; (ii) the training in the new institute was sporadic and the students did not have a trainer who knew sign language and thus could effectively communicate with them; (iii) were unable to appear for examinations due to their inability to access documents from the previous TTCD management.

In August 2021, Growthwatch contacted AIIB management who first directed them towards the borrower and then towards EIB's Complaints Mechanism (EIB-COM) as the co-financier on 16 September 2021, Growthwatch formally wrote to the borrower requesting a meeting with the students and their parents. Nearly six months later and more than two years since the demolition, in February 2022, Growthwatch met with the borrower where the borrowers agreed to pay a monthly stipend of $30 to all students for a period of 12 months and to help students obtain skilled jobs relevant to their industrial training.

In March 2022, Growthwatch filed a complaint with EIB-CM raising issues such as irregularity of payment of the stipend, no training plan for the students, students being offered sweatshop jobs before the exams instead of actual industrial training and jobs that correspond to such training and lack of effectiveness of the project level GRMs. The complaint also raised the issue of financial compensation for the students, who lost over a year of their studies and experienced severe emotional and mental hardship. In response, the EIB-CM instituted a dispute resolution process that was closed in June 2023 without a full settlement due to the inability of the parties to agree on the issues of livelihoods and financial compensation. The EIB-CM further did not recommend a compliance investigation on the grounds that sufficient advancement had been made on issues of students completing exams and that "no clear causal link can be established between the project and the time lost by the students and the mental and emotional hardship faced."[72] Outlined below are some of the key challenges faced by students in their demand for accountability.

Challenges of accountability:

Lack of effective project-Level GRM: According to Growthwatch, the project-based grievance redress mechanism that they'd been directed to by AIIB and the borrowers was not effective. Initially there was no online form to file a complaint with the GRM, when the form

later became available, the complaints were forwarded to the general customer care service meant for metro rail passengers.[73] Thus, additional time and efforts were spent in attempting to locate and access the project-level GRM to no avail.[74]

Challenges with Filing a Complaint: This case also demonstrates the burden imposed on affected communities seeking redress when faced with complex co-financing rules. In this case, communities and their representatives first engaged with AIIB only to be informed months later that AIIB's PPM is excluded, and instead they should approach the EIB-CM. AIIB's co-financing exclusion also limits community choice by assuming that communities always prefer to file with the lead financier. In this case, while communities and their representatives preferred to engage with AIIB due to familiarity of rules and proximity,[75] they were only able to file a complaint to the EIB-CM.

Challenges with the Dispute Resolution process: Growthwatch reflected that while the dispute resolution process allowed students to meet with the borrowers and make small steps towards progress, nothing was achieved in terms of rehabilitation. Students were not provided with long term jobs with a living wage and/or financial compensation. Instead, the jobs accepted by the students were temporary apprenticeship contracts. The EIB-CM simply committed to following up with parties as part of its monitoring mandate.[76] According to Growthwatch, the affected students are still seeking remedy.

Lack of PPM's Support during the IAM process: Due to the co-financing exclusion, the AIIB's PPM was inaccessible to the project-affected people. According to the PPM Policy and Rules of Procedure, the PPM is supposed to closely coordinate with the co-financier's IAM on the handling of the submission and further report the outcome to the Board of Directors.[77] However there is no requirement to inform project-affected communities about this nor any provision for taking action if the process under the lead co-financiers CM does not result in redress for the project-affected communities. While the EIB CM acknowledges that AIIB's Project Team has also been following up with the borrowers on behalf of Growthwatch, they have not mentioned the type or purpose of engagement done by the PPM. The EIB-CM shared the Dispute Resolution Conclusions Report with the PPM on the request of Growthwatch. Furthermore, it is not clear whether the PPM shared the submissions with the Board of Directors, and even if they did, whether the Board of Directors can take any action on behalf of affected students. Thus in the absence of direct accountability to project-affected people, the AIIB's PPM was not proactive or supportive of the student's claim for accountability and redress. Moreover, the AIIB's PPM also missed out on using its leverage, alongside EIB's, to engage with Borrowers in this case.

Recommendations:

- **Pre-engagement with Management and GRM to be voluntary:** While the EIB process does not require access to the GRMs, the AIIB's PPM policy does. We recommend that affected communities should be able to decide whether they want to place their trust in non-independent entities such as management and grievance redressal mechanisms and **it should not be mandatory for them to engage in 'good faith' before accessing the PPM.**
- **Removal of Co-Financing Exclusion:** The process of accountability is challenging and it often requires the combined leverage of both co-financiers to ensure remedy. Excluding co-financed cases from the mandate of the PPM prevents that and thus should be removed. Moreover, in this case, the affected students should be able to access the PPM to further use their processes to get redress for the harms suffered.

4. HOW AIIB'S ACCOUNTABILITY MECHANISM COMPARES TO ITS PEERS

Through the creation of the Project Affected People's Mechanism (PPM) in 2018, the Asian Infrastructure Investment Bank (AIIB) became the latest major Multilateral Development Bank (MDB) to establish an independent accountability mechanism (IAM), continuing a practice that started in 1993. Unfortunately, the AIIB did not adhere to good practice of other MDBs and decided to approve a PPM policy that departed significantly from standard practice. Learning from other IAMs will allow the PPM to benefit from experiences of project-affected communities at other institutions, thus allowing for a stronger, more effective, and remedy-oriented PPM. An effective PPM is not only crucial for project affected people, but for the AIIB too, as unremediated harm results both in projects being unsustainable, and poses a reputational risk to the AIIB, thus undermining trust in the institution.

This section benchmarks AIIB's PPM Policy with the policies of IAMs at other multilateral international financial institutions on eight indicators around accessibility, independence, and remedy.[78] It demonstrates that on key indicators, the AIIB is falling short of international good practice. It further sets out why each of these indicators matter and provides examples of good policy practice.

Figure 10: Comparison with peer international financial institutions on nine key indicators:

S.No.		AIIB	IFC	EBRD	AfDB	EIB	IDB	WB	ADB	GCF	UNDP
1.	The Policy does not require prior engagement with the project level grievance redress mechanism and management.		✓	✓	✓	✓	✓	✓	✓	✓	✓
2.	The Policy does not require prior engagement with the project level grievance redress mechanism.		✓	✓	○	✓	✓	✓	✓	✓	✓
3.	The Policy does not mandate prior engagement with management.		✓	✓	○	✓*				✓	✓
4.	The Policy does not exclude co-financed projects from the mandate of the IAM.		✓	✓	✓	✓	✓	✓	✓	✓	✓
5.	The Policy does not bar complaints subject to parallel proceedings, either judicial or arbitral.		✓	✓	✓		✓	✓	✓	✓	✓
6.	The IAM is an independent unit of the bank.		✓	✓	✓		✓	✓	#	✓	#
7.	The Policy allows complainants to select representation of their choosing.		✓	✓	✓	✓	✓			✓	✓

S.No.		AIIB	IFC	EBRD	AfDB	EIB	IDB	WB	ADB	GCF	UNDP
8.	The Policy allows IAM to provide substantive remedial recommendations in response to findings of non-compliance.		✓	✓	✓	✓	✓			✓	✓
9.	The IAM has a monitoring mandate for all functions.		✓	✓	✓	✓	✓	■	✓	✓	✓

○-Complainants may approach either the project level grievance redress mechanism or management.

*- Unless under Project Appraisal

- Only the Compliance Function is independent

■ - The panel may verify implementation of Management Action Plans in some cases (subject to Board Approval)

Indicator 1: ***Requirement to engage in good faith with the Project-level GRM and Management prior to filing a complaint with the PPM.***

PPM Policy and Procedures[79]

5.1. A submission shall be ineligible to be considered by the PPM, if: [...]

5.1.8. The Requesters have not made good faith efforts to resolve the issues with the Project-level GRM and with Management or have not indicated to the satisfaction of the PPM why they have been unable to do so;

Why it Matters:

The PPM is an outlier among other IAMs for requiring that potential complainants engage in good faith with *both* the management and project-level grievance redress mechanisms as a pre-condition to filing a complaint or else risk their complaints being ineligible. Most IAMs in our comparison do not require engagement with project-level GRMs, and none require engagement with both GRMs and management. The AIIB's justification for requiring such pre-engagement is that project-level GRMs can provide "efficient and timely"[80] resolution. While this may be true in some cases, GRMs and management actors are not always well suited to effectively respond to environmental and social complaints. Project-level GRMs are not always available,[81] due to poor implementation by clients. Importantly, communities may not trust GRMs because of the lack of independence from the client and GRMs' perceived lack of expertise in addressing serious human rights and environmental concerns. Communities can also fear reprisals for using the GRM or raising concerns on the local level. Similarly, there is not always clarity on how potential complainants can contact Bank management, and communities often fear reprisals and are unwilling to raise issues directly with bank actors who they perceive to be engaged in environmental and social harms.

The PPM Rules of Procedures (RofP) itself acknowledges these fundamental concerns and identifies "nonexistence or nonfunctioning of the Project-level GRM or a legitimate fear of Retaliation if a Project-level GRM is used" as examples for when the PPM may waive of this requirement. However, even in such a situation, the burden is still on the affected community to investigate whether a GRM exists, which is hard in many cases due to lack of transparency, and to prove whether retaliation could result from raising a complaint. At minimum, this creates delays and adds an extra layer of uncertainty and confusion around accessing the PPM. At worst, it may expose communities to retaliation. AIIB needs to find a way to strengthen GRMs[82] and identify other avenues of resolving disputes during project

implementation that do not come at the cost of project-affected communities' access to accountability, thus leaving the bank unaware of and vulnerable to the unsustainable aspects of its projects. Other MDBs, like the IFC, strike a balance by making communities' access to GRMs and management voluntary and not a pre-condition for accessing the IAM.

Moreover, the pre-condition to engage in "good faith", is overly subjective and the PPM policy does not clearly state how communities can meet the standard or its exception. This overly subjective nature of this eligibility criteria was one of the factors that led to the ineligibility decision in the Bhola IPP case that has already been discussed in section 3.

Comparison with peer international financial institutions:

S.No.		AIIB	IFC	EBRD	AfDB	EIB	IDB	WB	ADB	GCF	UNDP
1.	The Policy does not require prior engagement with both the project level grievance redress mechanism AND management.		✓	✓	✓	✓	✓	✓	✓	✓	✓
2.	The Policy does not require prior engagement with the project level grievance redress mechanism		✓	✓	○	✓	✓	✓	✓	✓	✓
3.	The Policy does not mandate prior engagement with management.		✓	✓	○	✓*				✓	✓

○ - Complainants may approach either the project level grievance redress mechanism or management.
* - Unless under Project Appraisal

Good Policy Example:

Green Climate Funds's Independent Redress Mechanism Procedures, Para 25–26

"There are no formal requirements for filing a grievance or complaint ... [W]here possible a complainant may wish to include ... A description of other efforts including access to grievance/redress mechanisms of AEs or other dispute resolution processes, if any, that the complainant has pursued or intends to pursue to resolve the concerns, and redress, if any, already received from such efforts."

International Finance Corporation's Compliance Advisor Ombudsman Policy, Para 38

"Complainants and Clients/Sub-Clients are encouraged to make good faith efforts to resolve concerns in the most effective and efficient manner, at the Project-level where possible."

Indicator 2: ***Exclusion of co-financed projects from the ambit of the PPM.***

> ***PPM Policy and Procedures***[83]
>
> *5.1. A submission shall be ineligible to be considered by the PPM, if: [...]*
>
> *5.1.6. The Project is co-financed with another multilateral development bank (MDB) or bilateral development organization and AIIB has agreed to the application of the environmental and social policies and procedures and to rely on the Independent Accountability Mechanism (IAM) of such institution;*
>
> *10. Co-financing:*
> *10.1. In cases where the Project is co-financed with another MDB or bilateral development organization and AIIB has agreed to apply the environmental and social policies and procedures of such institution and to rely on the co-financier's IAM to handle submissions from Project-affected people under the Project, the PPM shall coordinate closely with the co-financier's IAM on the handling of the submissions and report to the Board of Directors on the outcome of the review by the co-financier's IAM of these submissions.*

Why it Matters:

Among other MDBs, AIIB is an outlier in that it is the only one that excludes co-financed projects from its mandate. This creates a pattern of unpredictability, uneven application of standards, and major accountability gaps as discussed in Section 3. While the AIIB considers this to be an innovation that simplifies the process of accountability for affected-communities seeking redress by limiting it to one IAM process,[84] in reality, AIIB is actually abandoning its responsibility under international business and human rights law and consequently its crucial leverage over the clients/borrowers that is necessary to provide such redress. As evidenced from the Bangalore Metro Rail Project, co-financing exclusions put additional burdens on communities to navigate through complex co-financing rules to determine which IAM to approach. Accountability is hard to achieve and, this case demonstrates that, pressure from both financiers may be necessary to hold borrowers accountable. The exclusion further goes against the principles outlined in the *United Nations Guiding Principles on Business and Human Rights*,[85] under which the AIIB has the duty to proactively provide redress when AIIB's financing causes or contributes to harm, and it cannot pass on that responsibility to third parties.

The CEIU's rationale for the co-financing exclusion rests on the idea that since the lead financier's environmental and social policies are being applied, that institution's IAM would be in the best position to evaluate whether said projects are complied with.[86] However, AIIB is still responsible for ensuring that "appropriate environmental and social arrangements and monitoring procedures are in place." Moreover as evidenced in AIIB's co-financed cases, AIIB staff and project teams also provide implementation support, organize monitoring visits, and engage with the borrowers when environmental and social issues arise[87] In such a case, we believe AIIB's PPM would be better placed to evaluate whether the actions of AIIB staff and their impacts are in compliance with requirements under the relevant environmental and social policy. Without direct accountability to the PPM, AIIB's actions in all co-financed cases are totally outside the purview of accountability and AIIB is able to minimize its responsibility in co-financed cases.

Further, the CEIU also claims that the co-financing exclusion supports affected-communities interests by reducing transaction costs and making it simpler for communities who now only have to familiarize themselves with one set of IAM policies. While it is important for IAMs to

coordinate to ensure that multiple processes do not impose undue burdens on communities - in fact, several IAM policies have provisions on facilitating cooperation - the CEIU's assumption is that affected communities prioritize transaction costs more than receiving remedy. IAMs are still evolving bodies and consequently neither are all IAMs the same nor are they constant over a long period of time. At any given time, an IAM can operate at different levels of effectiveness and offer different protections to affected communities, which can have an impact on whether communities want to approach them. Communities should thus have the choice and agency to decide which IAM (or in some cases both) to approach.

Moreover, an effective IAM is one that has a dual mandate of both preventing and redressing harm and achieving ongoing improvement to the financial institution's policies and processes. By excluding co-financed projects from the PPM's mandate, the PPM is unable to learn from specific environmental and social issues that arise in projects in a timely manner which can contribute to important institutional change. In the absence of such institutional learnings, AIIB is further risking its future investments. In order for the AIIB and the PPM to take true accountability for its financing, affected-complainants should have the right to seek redress from the PPM in all instances.

Comparison with peer international financial institutions:

S.No.		AIIB	IFC	EBRD	AfDB	EIB	IDB	WB	ADB	GCF	UNDP
1.	The Policy does not exclude co-financed projects from accessing the bank's IAM.		✓	✓	✓	✓	✓	✓	✓	✓	✓

Good Policy Example:

Asian Development Bank's Accountability Mechanism Policy, Para 207

"The Accountability Mechanism will also apply to ADB-administered cofinancing operations."

Indicator 3: ***Exclusion of cases due to parallel judicial or arbitral proceedings.***

PPM Policy and Procedures[88]

5.2. Further, a request for Compliance Review shall be ineligible if:

5.2.4. It relates to matters concurrently under arbitral or judicial review, save when the Board of Directors authorizes the PPM to process such request; or

6.8.5. If at any point during the Compliance Review the PPM learns of arbitral or judicial proceedings involving substantive issues raised in the submission, the PPM shall assess the implications of such parallel processes and submit a recommendation to the Board of Directors on whether to continue with the Compliance Review. As an interim measure, the PPM may suspend the Compliance Review until the Board of Directors decides on the matter

Why it Matters:

The PPM Policy's eligibility criteria excludes cases from undergoing compliance review if there are any concurrent arbitral or judicial proceedings involving the same issues. This exclusion can be overturned by an authorisation from the Board of Directors. Such an exclusion constitutes an unfair limitation on the PPM's mandate, and AIIB is one of only two MDBs who exclude such cases. The purpose of an IAM is to (i) enable project-affected people to access institutional remedy and (ii) to allow institutions to learn from their shortcomings to promote implementation in those cases and prevent any repetition of harm in other cases. This dual purpose is only fulfilled when an IAM is able to undertake a compliance review, as no other forum has the authority to assess a bank's compliance with its own policies. Moreover the processes and remedy available through an IAM are not meant to substitute judicial remedy nor is the often adversarial nature of judicial proceedings comparable to the IAMs functions. Thus the existence of a judicial review should not affect the availability of MDB accountability mechanisms. AIIB could further learn from the experience of the Inter-American Development Bank, where the Board of Directors repealed a similar rule excluding cases with parallel proceedings after its Office of Evaluation and Oversight (OVE) evaluated the mechanism, citing that this rule gave rise to countless disputes between the IAM and the bank's management, and it led to the "exclusion of important issues in the proper application of the IDB Group's environmental and social safeguards policies and standards".[89]

Comparison with peer international financial institutions:

S.No.		AIIB	IFC	EBRD	AfDB	EIB	IDB	WB	ADB	GCF	UNDP
1.	The Policy does not bar parallel proceedings, either judicial or arbitral.		✓	✓	✓		✓	✓	✓	✓	✓

Good Policy Example:

International Climate Initiative, Complaints Mechanism Policy, Para 3.7[90]

"The complaint mechanism will consider identical claims already being processed by comparable accountability mechanisms or courts (members of the Independent Accountability Mechanisms Network) on a case-by-case basis so as not to duplicate work already done or impede ongoing proceedings. This will not affect eligibility."

Indicator 4: Lack of Independence of the PPM.

PPM Policy and Procedures[91]

2.3. MD-CEIU: The Managing Director, CEIU (MD-CEIU) shall represent the PPM in all matters before the Board of Directors and the President. The MD-CEIU shall have unimpeded access to the Policy and Strategy Committee of the Board of Directors to report on the work of the PPM.

2.4. The President shall ensure that the PPM is adequately resourced and staffed in order to fulfill its functions.

Why it Matters:
Unlike most other IAMs, the PPM is not its own standalone unit of the AIIB. A differentiating characteristic of the CEIU is that it houses multiple functions, such as evaluation, integrity and accountability for environmental and social harms associated with Bank activities, including the PPM. The CEIU prides itself on being functionally independent while not allowing that to be a "barrier to its engagement with the rest of the Bank."[92] However, the issue arises when functional independence is compromised to achieve such engagement and synergism. It is important that the PPMs independence is strengthened while ensuring it continues to learn from and engage with other functions of the bank.

First, the PPM and other functions of the CEIU share a managing director (MD) who is the only PPM staff to have direct access to the board. This gives rise to significant capacity issues as only one head manages all functions, but this also creates the possibility and the impression of bias that affects the independence of the PPM, especially if projects have already been evaluated as part of CEIUs various assessments. The existence of a firewall[93] between all functions does not offset the fact that one MD is responsible for the unit as a whole,[94] which can contribute to a trust deficit from project-affected communities. The PPM should have a head whose sole responsibility is the PPM and who reports directly to the Board.[95]

Second, the PPM is not operationally and structurally safeguarded from the management. This is evidenced by the fact that the head of the PPM, the MD CEIU, reports not only to the board but also to the president, who in fact appoints the MD-CEIU.[96] And the president is responsible for resourcing and staffing the PPM. This could create situations where the PPM is not able to freely come to conclusions that are against the management's wishes. The PPM should also have measures in place to ensure that external stakeholders are involved in the appointment of the PPM's head to provide additional legitimacy. In addition, the PPM head should be barred from future employment within AIIB at the conclusion of their term. Post-employment bans for IAM staff promote their freedom to draw conclusions that may be critical of the Bank. Strengthening the functional independence of the PPM does not have to come at the cost of engagement with the rest of the Bank, and the AIIB would only benefit from engaging with a stronger, more independent PPM.

Comparison with peer international financial institutions:

S.No.		AIIB	IFC	EBRD	AfDB	EIB	IDB	WB	ADB	GCF	UNDP
1.	The IAM is an independent unit of the bank.		✓	✓	✓		✓	✓	#	✓	#

Only the Compliance Function is independent

Good Policy Example:

European Bank of Reconstruction and Development, Independent Project Accountability Mechanism Policy.

1.5. "IPAM operates independently, with a direct reporting line to the Board."

3.3. a. i. "The IPAM Head is responsible for running IPAM [including CR and DR functions], implementing this Policy, and making the decisions that are the responsibility of IPAM under this Policy."

3.3. c .i. "The IPAM Head manages IPAM staff, to which the Bank's Human Resources policies and procedures apply. The IPAM Head is free to make recruitment decisions within the limits of the approved budget, without Bank management or Board involvement."

"The IPAM Head shall prepare an annual budget (including any contingency funds) identifying a sufficient level of resources to ensure that IPAM can carry out all of the roles, responsibilities, and activities set out in this Policy in an effective way. The IPAM Head will be responsible for determining the allocation of resources within the IPAM department. The IPAM budget will be submitted to the Board for approval on a no objection basis, in the same timeframe as the Bank's general budget, but as a separate decision.

International Finance Corporation's Compliance Advisor Ombudsman Policy

18. "Upon conclusion of the appointment, the CAO [Director General] is restricted for life from obtaining employment with the World Bank Group."

15. "To maintain the independence of the CAO [Director General (DG)], a selection committee will be established to conduct an independent, transparent, and participatory selection process that involves stakeholders from diverse regional, sectoral, and cultural backgrounds, including civil society and business communities."

Indicator 5: *Limiting choice of representation*

PPM Policy and Procedures[97]

3.1. Two or more Project-affected people (Requesters) may file a submission. They may authorize an in-country representative (Authorized Representative) to file a submission on their behalf. In exceptional situations, when in-country representation is unavailable, the Requestors may designate an individual or organization outside of the country as their Authorized Representative to file a submission.

Why it Matters:

All IAMs recognise that affected communities have the right to effective representation to navigate the accountability process and thus allow authorised representatives of their choice to assist them. However, the PPM Policy effectively limits a community's choice of representation to in-country representatives. Only in an exceptional circumstance, "when in-country representation is unavailable" can communities designate representatives from outside their country. Communities before IAMs should have the unfettered right to choose representatives based on their needs in terms of expertise, resources, and capacity, and not based on nationality. Requiring communities to prove that no in-country representation is available is unfairly burdensome and an impingement on their right to representation. Moreover, national and international CSOs should not be thought of as alternatives to

each other, in fact research demonstrates that past the registration stage in the IAM process, cases with combined support from international and local CSOs have been most successful.[98] Removing restrictions on choice of representatives is also necessary to further equity as both the Bank and the Bank's clients have total freedom to choose and be advised by representatives and legal counsel of their choice, without having to justify it. The PPM is increasingly becoming an outlier on this subject; in fact, the African Development Bank's Independent Recourse Mechanism removed similar restrictions from its policy in 2021.[99]

Comparison with peer international financial institutions:

S.No.		AIIB	IFC	EBRD	AfDB	EIB	IDB	WB	ADB	GCF	UNDP
1.	The Policy allows complainants to select representation of their choosing.		✓	✓	✓	✓	✓			✓	✓

Good Policy Example:

***European Bank of Reconstruction and Development, Independent Project Accountability Mechanism Policy,* Para. 2.1(D)(VII)**

"If desired, Requesters may identify a Representative who will assist them in the Case handling process. In these cases, the Request must contain written proof (such as a signed letter by the Requesters) of the Representative's authority to act on behalf of the Requesters in relation to the Request."

Indicator 6: *Powers of the IAM for remedy and monitoring*

***PPM Policy and Procedures*[100]**

6.8.11. Management shall monitor and submit monitoring reports to the Board of Directors on the implementation of the MAP in accordance with timelines specified in the MAP. The PPM shall review Management's monitoring reports.

Why it Matters:

At the centre of the IAM process is its ability to provide redress to project-affected people. The PPM Policy fails to empower the PPM in doing that, in two key ways. *First*, it does not allow the PPM to provide substantive remedial recommendations along with its findings. As the institution that is closely engaged with the communities, the clients, and the environmental and social issues, the PPM is well-placed to understand both the failings and the solutions to the issues. By allowing the PPM to recommend substantive remedial measures, after consulting with local communities, the AIIB can benefit from its unique perspective and expertise and also have a standard against which to measure the Management Action Plan (MAP). This is of crucial importance to ensure that the remedy coming out of the PPM process is adequate. *Second*, the IAM should be empowered to monitor the implementation of the MAP. Under the current PPM Policy, the management is responsible for monitoring its own action plan in cases of compliance review, which could lead to inadequate monitoring that is not independent. Moreover, independent monitoring of the MAP should continue until all cases of non-compliance are remedied, rather than under pre-specified timelines.

Comparison with peer international financial institutions:

S.No.		AIIB	IFC	EBRD	AfDB	EIB	IDB	WB	ADB	GCF	UNDP
1.	The Policy allows IAM to provide substantive remedial recommendations in response to findings of non-compliance.		✓	✓	✓	✓	✓			✓	✓
2.	The IAM has a monitoring mandate for all functions.		✓	✓	✓	✓	✓	■	✓	✓	✓

■-The Panel may verify implementation of Management Action Plans in some cases (subject to Board Approval)

Good Policy Example:

European Bank of Reconstruction and Development, Independent Project Accountability Mechanism Policy, , Para. 2.7(D)(II)

"[T]he Compliance Review Report will:…ii. provide Bank Management with specific recommendations to address the findings of non-compliance: a. at the Project level, identifying Project-specific actions to bring the Bank into compliance and address the harm or potential harm associated with the findings of non-compliance; and b. at the procedural and systemic levels, identifying changes to EBRD practices, procedures, guidance or systems to bring the Bank into compliance and to avoid recurrence of such or similar situations on the Project at issue in the Request as well as in other Projects."

United Nations Development Programme, Social and Environmental Compliance Unite Investigation Guidelines, Para 50

"In cases where UNDP is found to be out of compliance and the Administrator directs staff to undertake remedial measures, SECU will keep the case open and monitor the situation until actions taken by UNDP assure SECU that UNDP is addressing the noncompliance."

5. RECOMMENDATIONS FOR THE REVIEW OF THE PROJECT-AFFECTED PEOPLE'S MECHANISM

AIIB's PPM lags behind peer institutions (see Section 4), and the PPM policy review must result in substantial improvements to meet international good practice.[101] To do so, the PPM policy review must provide robust opportunities for communities affected by AIIB financing, accountability experts, and other stakeholders to provide feedback on the policy at several stages in its development. It is therefore welcome that the AIIB's PPM policy explicitly commits to a review that includes "the views gathered through public consultations, including with Project-affected communities, AIIB's Members, clients and other stakeholders."[102]

We know from experience that a good review process supports a more effective and community-oriented accountability mechanism. In contrast, a weak review process poses the risk that key perspectives and recommendations will be missed and the mechanism will not improve in its functioning as a governance tool for the institution. There have been documented shortcomings with past AIIB consultations, including on the AIIB Energy Sector Update and other policies.[103] The 2017–2018 consultation process for the creation of the PPM likewise contained deficiencies, which resulted in the current policy and an ineffective complaints process.[104] While the consultation process contained some positive elements, including a two-phase structure that allowed civil society to provide preliminary recommendations before the draft policy was created, it suffered from defects, including:

- The draft policy was only released in English, limiting the ability of non-English speakers to engage in the consultation.
- The CEIU did not organize in-person consultation meetings.[105]
- The AIIB provided eight weeks to simultaneously comment on both the draft policy and the Policy on Public Information , which limited the ability to provide substantive feedback.

The AIIB must course correct and ensure that the PPM review process is strong. Here are minimal elements for a successful review process:

Principles

- The review of the PPM should be based on principles of **meaningful consultation, independence and transparency.**
  - Consultations must be wide, inclusive and meaningful, including affected communities and sectors, community-based organisations, people's organisations, human rights and environmental defenders. These consultations and meetings should ensure the security and safety of its participants. Moreover, CEIU/PPM should be held accountable to affected-community perspectives in the process of redrafting the PPM policy.
  - To safeguard independence, the CEIU/PPM should author the revised policy, with no interference from AIIB management.
  - The review should be transparent and ensure that all documents that inform the review process, including terms of reference, approach papers, reports, and comments received by external and internal reviewers are disclosed in a timely and accessible manner.

- The review should be underpinned by the principle of 'no regression' – the policy should not be weakened – and should be conducted with the mandate of improvement. In fact, the Board should set out certain reforms it expects, minimally that (1) the PPM applies to co-financed projects; (2) people no longer have to first contact the project-level GRM or management; (3) the PPM will recommend remedial actions in response to findings of non-compliance; and (4) the PPM will have an independent monitoring mandate.

First Stage:

- The CEIU/PPM should disclose any document that will inform the review process, such as an approach paper or terms of reference. CEIU/PPM should solicit comments from the public on these documents.
- The CEIU/PPM should commission an independent external review of the functioning of the PPM, consulting with project-affected communities and civil society organisations to gather perceptions on the PPM. This external review report should be disclosed to the public. As a part of the drafting of the review report, stakeholders should have the opportunity to provide feedback on the strengths and weaknesses of the existing policy.

Second Stage:

- The CEIU/PPM should hold a 90-day consultation on the draft PPM policy. The draft policy should be made available in multiple languages. As a part of the consultation, the CEIU/PPM should hold in-person and hybrid meetings with stakeholders, including civil society organisations, in regions where the AIIB operates.[106]
- The CEIU/PPM should release a matrix of all comments and recommendations received.

Third Stage:

- The CEIU/PPM should revise the policy based on the feedback received and release a second draft of the policy for a 90-day public comment period. The documents released as a part of this consultation should include a marked-up version of the first draft that shows the changes made after the first consultation[107] and a document that lists the recommendations received in the first consultation and the CEIU/PPM's response to these recommendations.
- As with the first consultation, the revised draft should be made available in multiple languages, and CEIU/PPM should hold in-person and hybrid consultation meetings.

Final Stage:

- The final draft policy should be released publicly before being submitted to the Board for approval.

ENDNOTES

1 The AIIB and the clients play a critical role in ensuring that project affected people are aware of the PPM and how it can be used. This function does not rely solely on the CEIU.

2 *See*, Accountability Console, a database of all publicly disclosed complaints filed before IAMs.

3 A challenge to the International Finance Corporation's immunity was launched by Earth Rights International, in the Jam vs IFC case at the United States Supreme Court - see https://www.supremecourt.gov/opinions/18pdf/17-1011_mkhn.pdf

4 Accountability Counsel et al (2021) Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms, December 2021

5 See Article 26(iv) of the Articles of Agreement: https://www.aiib.org/en/about-aiib/basic-documents/articles-of-agreement/index.html

6 AIIB Policy on the Project Affected People's Mechanism, December 2018: https://www.aiib.org/en/policies-strategies/_download/project-affected/PPM-policy.pdf

7 See https://www.aiib.org/en/policies-strategies/framework-agreements/environmental-social-framework.html

8 Figures correct as of 29 August 2023; see: https://www.aiib.org/en/projects/summary/index.html. The CEIU which hosts the PPM points out that when compared to the World Bank and other established MDBs, AIIB's scale of operations is still much smaller. See Response from AIIB's CEIU to Recourse et al, 15 September 2023, Page 1, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

9 Figures correct as of 29 August 2023; see: https://www.aiib.org/en/projects/summary/index.html

10 Response from AIIB's CEIU to Recourse et al, 15 September 2023, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

11 This information was provided by AIIB management in its response to Recourse el al, 15 September 2023.

12 AIIB ESF, section 10, Development Partner Co-financier's Policies, https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Environmental-and-Social-Framework_ESF-November-2022-final.pdf

13 Response from AIIB management to Recourse and urgewald, 14 October 2021.

14 Response from AIIB's CEIU to Recourse et al, 15 September 2023, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

15 This is based on cross checking project documents with the AIIB's own published lists: https://www.aiib.org/en/about-aiib/who-we-are/project-affected-peoples-mechanism/_common/_download/Approved-Co-Financed-Projects-Mid-2023-with-Applicable-ESP-and-IAM_15082023_Uploaded-on-Website.pdf

16 AIIB management response to Recourse et al, 15 September 2023

17 AIIB management response to Recourse et al, 15 September 2023.

18 Ibid.

19 See:https://www.aiib.org/en/about-aiib/who-we-are/project-affected-peoples-mechanism/_common/_download/Approved-Co-Financed-Projects-Mid-2023-with-Applicable-ESP-and-IAM_15082023_Uploaded-on-Website.pdf

20 https://www.aiib.org/en/projects/details/2022/_download/lao-pdr/AIIB-PSI-P000515-Monsoon-600-MW-Cross-border-Wind-Power-Project_20230501.pdf

21 AIIB response to Recourse information request dated 13 July 2023.

22 Response from AIIB's CEIU to Recourse et al, 15 September 2023, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

23 Reality of Aid (2021) Ties that bind: World Bank Conditionalities in Pandemic Response, 24 November 2021. See: https://realityofaid.org/world-bank-conditionalities-in-pandemic/

24 Inspection Panel (2007) Investigation report - Executive Summary: Transitional Support for Economic Recovery Grant Operation ("TSERO") development policy loan, see: https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/37-Investigation%20Report%20Executive%20Summary%20%28English%29.pdf

25 AIIB CEIU response to Recourse and urgewald, 14 October 2021.

26 AIIB ESP, 19.4. Reality of Aid's case study on the Regional Infrastructure Development Fund shows how this requirement can be poorly implemented. Before the AIIB invested in the RIDF, the World Bank itself assessed PT. SMI, the FI contracted for the road infrastructure, as weak in its management of involuntary resettlement and issues regarding Indigenous Peoples. See: https://realityofaid.org/wp-content/uploads/2021/10/Deep-Dives-AIIB.pdf

27 AIIB ESP, 28.1

28 Meeting between Latinoamérica Sustentable, Conectas, and GT Infraestructura, in June 2022 with AIIB's environmental specialists.

29 AIIB (2018) Policy on Public Information, https://www.aiib.org/en/policies-strategies/public-information/policy/index.html

30 ESS1 21.2

31 Similarly, the AIIB provided loans to microfinance institutions that have a track record of corruption and human rights violations. See: https://www.business-humanrights.org/en/latest-news/cambodia-eight-local-international-ngos-decry-asian-infrastructure-investment-banks-approval-of-loan-to-microfinance-institutions-with-alleged-human-rights-violations/. In Ecuador, the AIIB also provided COVID-19 financing to an FI, to be disbursed to MSMEs. See: https://realityofaid.org/wp-content/uploads/2023/01/Deep-Dives-LAC.pdf

32 Higher Risk Activities include the following activities financed by the Bank through the FI: (a) all Category A activities; and (b) selected Category B activities, as determined by the Bank, that may potentially result in: (i) Land Acquisition or Involuntary Resettlement; (ii) risk of adverse impacts on Indigenous Peoples and/or vulnerable groups; (iii) significant risks to or impacts on the environment, community health and safety, biodiversity, and/or cultural resources; (iv) significant retrenchment of more than 20 percent of direct employees and recurrent contractors; and/or (iv) significant occupational health and safety risks.

33 ESS1 21.4

34 ESS1 21.1

35 See for example, Asia Investment Capital and Keppel Asia Investment Fund.

36 ESS1 28.1

37 ESS1 28.2

38 ESP, 65.

39 ESP, 66.

40 ESS1, 21.3

41 ESS1, 19.

42 ESS1, 22

43 For example, see https://www.ifc.org/en/what-we-do/sector-expertise/sustainability/policies-and-standards/environmental-and-social-categorization

44 ESP, 72.

45 ESS1, 25

46 ESP, 73

47 UN Guiding Principles on Business and Human Rights, Principle 31.

48 ESS1, 24.5

49 Response from AIIB's CEIU to Recourse et al, 15 September 2023, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf.

50 SOMO *et al* (2018), "Comments on Second Phase of Draft Complaints Handling Mechanism", available at: https://www.accountabilitycounsel.org/wp-content/uploads/2018/05/march-2018-aiib-ppm-submission.pdf

51 https://www.aiib.org/en/about-aiib/who-we-are/project-affected-peoples-mechanism/submission/track-all-submission.html

52 CEIU response to Recourse et al, 15 September 2023, Page 9, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

53 CEIU response to Recourse et al, 15 September 2023, Page 2, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

54 Mehedi, H, Hossain Tuhin, S, and Alam Prince, M, (2018). Bhola IPP and its Impact on Local Communities: Voices from the Ground, A Civil Society Study Report. Bangladesh Working Group on External Debt and Coastal Livelihood and Environmental Action Network.

55 ERM, 2018. Environmental and Social Impact Assessment of 225 MW Dual Fuel (Gas and HSD based) Combined Cycle Power Plant (Bhola-II).

56 Meeting between CLEAN, BWGED, NBBL and AECOM, 25 April 2019

57 NGO Forum on ADB (2022) Annual Report 2022

58 https://www.aiib.org/en/about-aiib/who-we-are/project-affected-peoples-mechanism/submission/track-all-submission.html

59 PPM Policy, 8, https://www.aiib.org/en/policies-strategies/_download/project-affected/PPM-policy.pdf

60 CEIU response to Recourse and urgewald, October 2021.

61 CEIU response to Recourse et al, 15 September 2023, Page 11, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

62 The IFC invested over $100 million in a mix of debt and equity, and the AIIB $50 million equity. See: https://www.aiib.org/en/projects/details/2018/approved/India-OSE-InvIT.html

63 Accountability Console, Infrastructure Complaints, https://accountabilityconsole.com/complaints/visualize/?

64 Munshi, A, Dwivedi, G and Geary, K (2022) A new frontier in infrastructure financing: A case study of Oriental Infratrust, Centre for Financial Accountability and Recourse, October 2022.

65 Letter from IFC and AIIB to Recourse and CFA, dated 24 March 2023.

66 Munshi, A, Dwivedi, G and Geary, K (2022) A new frontier in infrastructure financing: A case study of Oriental Infratrust, Centre for Financial Accountability and Recourse, October 2022.

67 Mott Macdonald (2019) Final Environmental and Social Due Diligence Report, Etawah Chakeri Section September 2019.

68 Dwivedi, G. and Munshi, A. (2023) Interview with Recourse and Accountability Counsel, 24 July 2023.

69 AIIB: USD 335 million and EIB: € 500 million.

70 EIB Complaints Mechanism Dispute Resolution Report, Bangalore Metro Rail Project- Line 6 (India), SG/E/2022/06, 29 June 2023.

71 Dinker, V (2023), Interview with Accountability Counsel, 10 August 2023.

72 The Dispute Resolution Report refers to extraneous circumstances like COVID-19. EIB Complaints Mechanism Dispute Resolution Report, Bangalore Metro Rail Project- Line 6 (India), SG/E/2022/06, Page 8, 29 June 2023.

73 Dinker, V (2023), Interview with Accountability Counsel, 10 August 2023.

74 According to AIIB Monitoring Reports, as of December 2022, the project level GRM is functional and has received 539 complaints.

75 Dinker, V (2023), Interview with Accountability Counsel, 10 August 2023.

76 EIB Complaints Mechanism Dispute Resolution Report, Bangalore Metro Rail Project- Line 6 (India), SG/E/2022/06, FN 10, 29 June 2023.

77 In response to this report, the CEIU informed us that "AIIB PPM has held meetings and engaged with the EIB complaints mechanism on the two complaints handled by them on this project and has also informed the board that these cases are being handled." They also mentioned that the CEIU will schedule a practitioners dialogue in early 2024 (nearly a year after the release of the Conclusion Report) to learn lessons from these cases. *See* CEIU response to Recourse et al, 15 September 2023, Page 11, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

78 This is not an exhaustive list of all concerns with the PPM Policy and does not include important issues such as protection against retaliation, transparency and disclosure.

79 See also PPM Rules of Procedure, 5.1.8. "...A valid reason could include nonexistence or nonfunctioning of the Project-level GRM or a legitimate fear of Retaliation if a Project-level GRM is used."

80 CEIU (2021) Urgewald response letter, 14 October 2021, Para 5.i, Page 3.

81 According to Section 2: The Disclosure Gap], disclosures around GRMs for FI clients is particularly low.

82 Before GRM's can be declared fit for purpose, they must ensure security of complainants and have a zero tolerance policy towards reprisals. *Also See,* Coalition of Human Rights Defenders (2022), *Wearing Blinders: How Development Banks are Ignoring Reprisals Risk.*

83 *See also,* PPM Rules of Procedure, 10.3. "...The PPM coordinates closely with the co-financier's IAM on the handling of submissions. This may involve undertaking joint site visits (with the agreement of the co-financier and Client concerned) to better understand the issues presented in the submission. The PPM reports the outcome of the review of these submissions by the co-financier's IAM to the Board of Directors."

84 AIIB Management email to Recourse and Urgewald, Para 1, Page 1, 14 October 2021.

85 UNGP, Principle 22, Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

86 CEIU (2021) Urgewald response letter, 14 October 2021, Para 4.ii, Page 2; CEIU response to Recourse et al, 15 September 2023, Page 1-2, available at: https://www.accountabilitycounsel.org/wp-content/uploads/ceiu-comments-on-report-on-ppm-15092023.pdf

87 *See* AIIB's latest monitoring report in Bangalore Metro Rail Project , available here. *Also see* other reports that document the actions taken by AIIB staff, available here.

88 *See also,* PPM Rules of Procedure, Rule 5.2.4. And Rule 6.7.3.(j)

89 Independent Consultation and Investigation Mechanism (2021), *The clause that excluded the issues under judicial processes from a MICI process is rendered without effect*, available at: https://www.iadb.org/en/node/30986.

90 While the International Climate Initiative is not a multilateral institution, it is still a comparable international financial institution with an independent accountability mechanism.

91 *See also,* PPM Rules of Procedure, Attachment 1, "2. The PPM is headed by the Managing Director, CEIU (MD-CEIU). 3. The MD-CEIU represents the PPM in all matters before the Board of Directors and oversees the handling of submissions to the PPM, the issuance of PPM reports, and PPM's outreach, learning and training activities."

92 Message from AIIB President Jin Liquin

93 CEIU (2021) Urgewald response letter, 14 October 2021,Para 3(ii).

94 According to the PPM Rules of Procedure, Attachment 1, Point 4, the PPM is assisted by a secretariat, which is headed by a member of the CEIU staff.

95 The EIB Complaints-Mechanism, which has a similar structure and independence concerns as the PPM, allows communities that are not "satisfied with the outcome of the procedure before the EIB-CM" to access an external independent body, the European Ombudsman. *See,* EIB Complaints Mechanism Policy, Para 4.5.1.

96 AIIB, 2019, Terms of Reference for the Complaints-resolution, Evaluation and Integrity Unit

97 *See also,* PPM Rules of Procedure, Rule 3.2 and 3.3.

98 Sara Jaramillo (2023), Making IAMs Accessible to All Communities

99 African Development Bank, Independent Recourse Mechanism Policy, 15(iii) https://irm.afdb.org/sites/default/files/documents/IRM%20New%20Operating%20Rrules%20%26%20Procedures%20-%20July-2021.pdf#page=5

100 *See also, PPM Rules of Procedure* 6.7.3. (u) "MAP Monitoring. Management monitors the implementation of the MAP and submits monitoring reports to the Board of Directors in accordance with timelines specified in the MAP. The PPM reviews Management's monitoring reports and prepares a status report on MAP implementation, at least annually. The PPM's review involves seeking views from Management, the Client and Requestors and considering any information received from the public or other sources. The PPM forwards its draft periodic MAP status reports to the Board of Directors and considers any comments received before finalizing the report. The PPM discloses each report within ten (10) Working Days after its circulation to the Board."

101 A strong accountability mechanism also helps facilitate development effectiveness, *See*, (2005) The Paris Declaration on Aid Effectiveness, available at: https://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm

102 AIIB (2018) AIIB Policy on the Project-affected People's Mechanism, Section 11.4, 7 December 2018.

103 See, for example, Email to Jin Liqun, dated 28 June 2022, available at: https://89860407-3dfc-4c56-ada8-a42a9756a280.usrfiles.com/ugd/898604_47cd2bd3b6c744ad844e8d5fc601c9a7.pdf

104 AIIB (2017), *AIIB Invites the Public to Help Design Its Complaints Handling*, available at Mechanismhttps://www.aiib.org/en/news-events/news/2017/AIIB-Invites-the-Public-to-Help-Design-Its-Complaints-Handling-Mechanism.html

105 The CEIU did present the draft policy at three regional gatherings hosted by the NGO Forum on the ADB, where NGO Forum had to cover the expense of this engagement.

106 Example - https://www.ebrd.com/news/events/ebrd-good-governance-policy-consultation-kiev.html

107 For example, the World Bank Inspection Panel released a tracked-changes version of its Operating Procedures for its consultation on the procedures. https://www.inspectionpanel.org/sites/default/files/documents/Inspection%20Panel%20Draft%20Updated%202021%20Operating%20Procedures%20(with%20Track%20Changes).pdf

108 See https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf para 12.

109 See https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf para 13.

RECOURSE

Making finance accountable to people and planet

Kraijenhoffstraat 137A
1018 RG, Amsterdam
The Netherlands
www.re-course.org