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International Accountability Project

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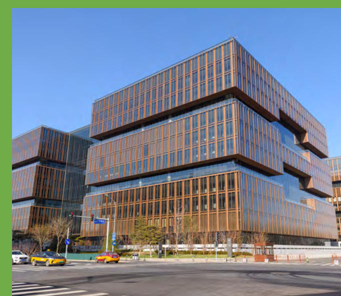

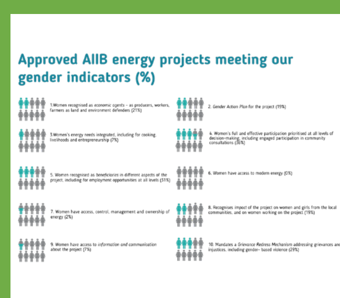
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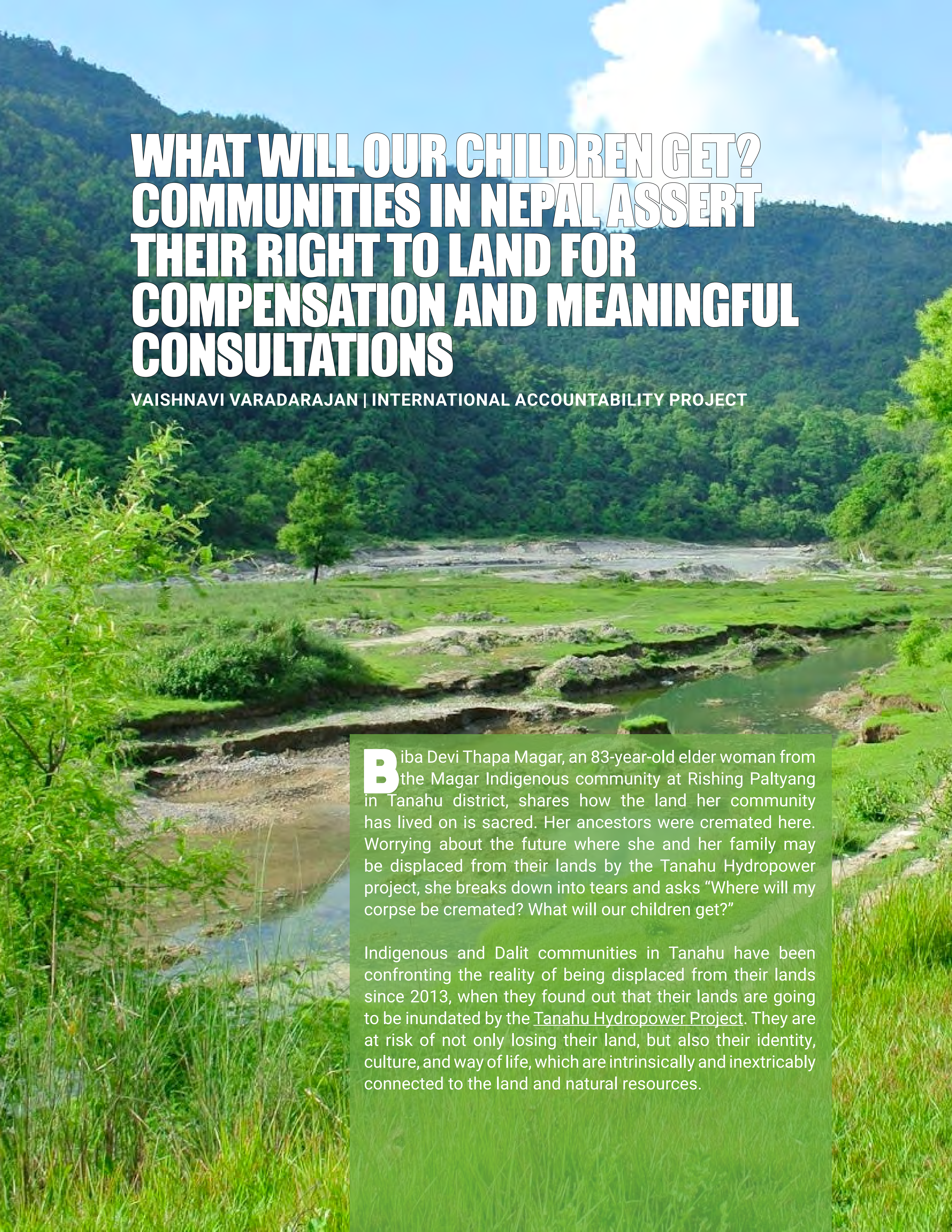


WHAT WILL OUR CHILDREN GET? COMMUNITIES IN NEPAL ASSERT THEIR RIGHT TO LAND FOR COMPENSATION AND MEANINGFUL CONSULTATIONS

VAISHNAVI VARADARAJAN | INTERNATIONAL ACCOUNTABILITY PROJECT

Biba Devi Thapa Magar, an 83-year-old elder woman from the Magar Indigenous community at Rishing Paltyang in Tanahu district, shares how the land her community has lived on is sacred. Her ancestors were cremated here. Worrying about the future where she and her family may be displaced from their lands by the Tanahu Hydropower project, she breaks down into tears and asks “Where will my corpse be cremated? What will our children get?”

Indigenous and Dalit communities in Tanahu have been confronting the reality of being displaced from their lands since 2013, when they found out that their lands are going to be inundated by the Tanahu Hydropower Project. They are at risk of not only losing their land, but also their identity, culture, and way of life, which are intrinsically and inextricably connected to the land and natural resources.

Indigenous communities in Tanahu mostly belong to the Magar group, the largest group of indigenous peoples in Nepal. They are among the first settlers and cultivators in the region and have been preserving their culture and traditions across generations. The project has threatened to displace them from their agricultural lands where they grow rice, maize, and other crops, their grazing lands where they graze their animals, their forests where they get their firewood and collect wild vegetables and herbs, and also their ceremonial lands where they worship their gods and ancestors. With the loss of their lands, they fear they will not be able to pass on their knowledge to future generations.

In addition, the Dalit community has been historically marginalised by the hierarchical caste system followed by Hinduism and have been one of the most vulnerable groups in Nepal. They already face discrimination due to their caste identity and if the project leaves them landless tomorrow, they may face double oppression.

A False Climate Solution

The Tanahu Hydropower Project is being developed by Tanahu Hydropower Limited (THL), a subsidiary of Nepal Electricity Authority. The Project is co-financed by multiple international financial institutions, including the Asian Development Bank (ADB), the European Investment Bank (EIB), Japanese International Cooperation Agency (JICA), and KfW Development Bank. The Project will construct a 140m high concrete gravity dam with a crest length of 215m on the Seti River, which will create a reservoir 18 km long along the river with a surface area of 7.26 km.

The construction of the Project has been contracted to a Chinese state-owned entity Sino Hydro Corporation and Song Da-Kalika JV which is a joint venture between a

Magar and Dalit communities gather in solidarity after the community training workshop in Bhimad district, Tanahu.

Vietnamese construction company, Song Da Corporation and Nepal's Kalika group.

According to the latest Environment Monitoring Report shared by the company in January 2022, the physical civil pre-construction activities such as building access roads, drainage channels, etc. have been completed and the construction of the hydropower project and transmission lines are underway.

Large hydropower projects have caused adverse impacts on indigenous and rural communities all over the world and have immense climate risks yet development banks continue to promote hydropower as a false climate solution. The investments in the Tanahu Hydropower Project have been justified by the European Investment Bank and Asian Development Bank as a renewable energy project and a solution to the energy crisis in Nepal.

Communities' Grievances with the Project

Affected communities that have been experiencing the harmful impacts of the Tanahu Hydropower Project on their land, resources, and livelihoods demand that such development should happen with meaningful consultations, adequate compensation, and equitable energy justice.

The Magar and Dalit communities affected by the hydropower project have filed multiple complaints since 2018 with the independent accountability mechanisms of the Asian Development Bank and the European Investment Bank, namely the Office of the Special Project Facilitator (OSPF) and European Investments-Complaint Mechanism (EIB-CM), respectively. Throughout the complaint processes, they have been supported by NGO advisors from various civil society organizations including Community Empowerment and Social Justice Network (CEMSOJ), Indigenous Women's Legal Awareness Group (INWOLAG), International Accountability Project (IAP), and NGO Forum on ADB.

With their complaints, they have asserted their right to free, prior and informed consent (FPIC) and for land-for-land compensation, among other demands such as benefit sharing and alternative environment and socio-cultural assessments to be conducted. They have been participating in the dispute resolution facilitated by the independent accountability mechanisms in the hope that they will be involved in the decision-making process and will be adequately compensated for the loss of their ancestral land and resources.

Timeline and Process of Complaints filed to OSPF and EIB-CM

Filing complaints with the independent accountability mechanisms of the Asian Development Bank and the European Investment Bank has been a time-consuming and tiring experience for the communities as they navigate through the complex and often inaccessible procedures of the mechanisms of two different banks.

The number of complainants that have filed grievances against the Tanahu Hydropower project has been increasing as more community members find their land and livelihoods impacted by the construction of the project. Initially, there were 32 families from the Magar indigenous community belonging to Palytang and Rishing Patan, who organized themselves within a collective called 'Directly Inundation Affected Peoples

Magar community leader Til Bahadur Ji showing the land affected by sand mining activities.

Collective Rights Protection Committee' and filed a complaint with the Office of Special Project Facilitator (OSPF) — which conducts dispute resolution — in August 2018 and also filed a complaint with the EIB-CM in February 2020. Later, there were new complainants from the Magar (15 families), Newar (1 family), and also from the Dalit community (10 families) who live on or have their lands next to the inundation area in Wantangitaar and Jalbire Khet. They found themselves threatened by the reservoir but they were not considered as affected and were not consulted for the studies and assessments conducted by the project promoter such as the Environment Impact Assessment and Resettlement and Indigenous Peoples Plan. These new complainants filed a separate complaint to the ADB's Accountability Mechanism in February 2021 and a complaint with the EIB's Complaint Mechanism in June 2021.

With the complaints filed to OSFP, both the set of complainants faced obstacles with meeting the eligibility criteria as they were deemed ineligible due to a lack of good faith effort with the ADB management to resolve their grievances. The initial complainants then wrote to the ADB management and the company and filed another complaint with the OSPF which was accepted in February 2020. The complaint filed by the new complainants was forwarded to the ABD management who have been conducting a separate assessment of the case.

Magar complainants gathered to participate in an online meeting in Paltyang.

While both the complaints faced delays due to COVID-19, the construction of the project continued amidst the pandemic. During this time, the increase in online meetings with the independent accountability mechanisms also made participation challenging for the complainants due to technical difficulties and translation issues. However, with the support of the NGO advisors, the complainants received digital training and participated actively online. Once the restrictions of COVID travel eased, the OSPF, the ADB, and the EIB-CM organized missions from December 2021 to February 2022 to the site to meet with the community in person and understand their issues and demands.

As of now, the OSPF has been conducting the problem-solving process for the initial complainants after a two-year-long assessment, which included a land valuation and socio-cultural assessment by independent evaluators. Parallelly, the EIB-CM is also conducting a joint collaborative resolution process for the two complaints filed by the new complainants with them.

A meeting among initial and new complainants on the land next to the river in Bandarkuna village, Tanahu which may be inundated by the project.

Energy injustice and challenges faced by complainants

The complainants have regularly communicated to the company and independent accountability mechanisms that for their Free, Prior and Informed Consent (FPIC) to be respected, information has to be given in advance and has to be translated in their local languages, Nepali and Magar so that they can understand the information and participate effectively. However they found that FPIC was not always complied with as they often received communication about field missions and meetings at the last minute or were not properly consulted. The initial complainants had earlier raised concerns about the appointment of the land evaluator by the OSPF, who was chosen without their consent, and that there was minimal community participation in the process of land valuation. While the OSPF and the EIB-CM claim to uphold FPIC, the complainants feel they have had to reiterate their protocols for consultation and self-determination according to FPIC at each stage of the complaint process.

The complainants also do not feel confident that Tanahu Hydropower Limited is willing to proceed with land-based compensation. "***In their communications till now, the company has dismissed their demand for land for land and requested them to consider cash-based compensation, which according to them is more compliant with the legal procedures in Nepal***," said Prabindra Shakya of CEMSOJ. ***"In doing so, the company has ignored their obligations to comply with the Safeguards of the ADB and the EIB."***

A cash-based compensation however would not be enough for communities to buy land, restore their living conditions, and preserve their cultural identity. ***"It has been almost five years and THL and the government have not given us proper attention. The price of land has spiked. We cannot buy land in other areas with the compensation they are offering"*** said Tej Bahadur, a complainant from the Magar community. Complainants have also been demanding that the company comply with the ADB's Safeguard Policy Statement and the EIB's Environment and Social Standards, which give priority to land-based compensation in cases of involuntary resettlement.

The new complainants are further distressed as the determination of the buffer zone (i.e the land next to the river, which the dam will inundate) has not yet been initiated so as to confirm if they are considered as project-affected. Through their complaints, they have demanded an immediate definition of the buffer zone of the inundation area which has been continuously delayed by the company and they fear if they will even be provided with their due compensation.

Over the past five years, the affected communities along the inundation area of the project have been prone to more climate-induced disasters with increased landslides in the area. Since 2019, there has also been extraction of sand and stone from the riverbanks in the inundation area; which has been growing progressively. These extraction activities have been an environmental hazard as they have led to the pollution of the river water and deterioration of the agricultural lands of the communities located next to the river. The communities living in this area complain of regular dust and noise pollution from the extraction site. Community leaders who opposed or spoke out against the extraction activities have also faced intimidation and received threats.

The sand mining extraction site on the Seti river banks in Bandarkuna. The land next to it has been uncultivable since 2018.

"According to an interim order passed by the Supreme court of Nepal last year, sand mining activities were to be stopped in the seven provinces of Nepal but still sand mining has continued here" said Advocate Indira Shreesh from INWOLAG.

Affected communities have been addressing their concerns about sand mining and the climate risks they have been facing since the project construction began. The company however has denied that these climate risks are linked to the project and neither has there been any proper climate impact assessment conducted.

The project being constructed without affected communities being rehabilitated and consulted properly has intensified the violations faced by the complainants as they engage with the independent accountability mechanisms. In light of the multiple challenges and risks that local Indigenous and Dalit communities have been facing, the complainants are now raising the demand that the project construction be stopped until their grievances are adequately addressed.

Ongoing Struggle and Solidarity

As the complainants received communication about the dispute resolution meetings by the independent accountability mechanisms of the ADB and the EIB, they requested the NGO advisors for a capacity-building training. From 5th to 7th July 2022, INWOLAG, CEMSOJ, and IAP co-organized a community training program in Bhimad municipality, supported by the Community Resource Exchange. The training created a space for the complainants to come together and share about the success and challenges they have faced in their long struggle and collectively mobilize for the next steps. Various interactive activities and in-depth sessions were conducted to strengthen their understanding of accountability mechanisms and reinforce their demands in the dispute resolution process.

Participants take part in interactive group activities such as Columbian hypnosis and power mapping during the workshop on dispute resolution in Bhimad, Tanahu.

Magar and Dalit affected communities in Tanahu continue to strongly raise their demands for land-based compensation and free, prior, and informed consent, by asserting the rights provided to them in the safeguard policies of the ADB and the EIB, as well as international human rights instruments such as the UN Declaration on the Rights of Indigenous People and the ILO Convention 169. Their struggle reminds us that for the energy transition to be just and sustainable, it has to be centered on development that is led by communities. It is time that the investors, contractors, and promoters of the project also recognise this, by respecting their rights and putting people and ecosystems before profit.

To learn more about the community-led response in Tanahu, you can read this detailed timeline compiled by CEMSOJ and watch this moving documentary 'Land Older than the Government' produced by INWOLAG.

Want to see more of IAP's publication?

- **Community-Led Approaches for a Just Transition**
  IAP highlights how community-led approaches are necessary for a just transition. Read the summary of IAP'S work on climate justice which includes the harmful mining and fossil fuel industry and so-called green projects.

- **Indigenous Communities in Indonesia Integrate Community-led Development with Customary Practices**
  Lenny Patty, a Global Advocacy Team (GAT) member, shared an exciting story about community-led research that helps indigenous communities in Haruku Island, Indonesia, to identify their development priorities as coastal and small island communities.

- **Community-Led Development Booklet Series**
  The complete Community Action Guide series on community-led research is now available in 13 languages. Check out the latest translations in Armenian, Bahasa Indonesia, French, and Tagalog.

- **IAP Newsletter**
  Climate change and why community-led approaches are needed for a just transition, social movements in 5 countries presenting their community-led research, and community-led training in Cambodia and Malawi. Read the updates on #IAPNewsletter.

WHO IS WHO NO. 3 – CHINESE COMMERCIAL BANKS: AN NGO GUIDE

URGEWALD

To understand the function and organization of Chinese lending landscape urgewald initiated a series of briefing papers. The No.1 Who is who in the Chinese institutional lending landscape explains f.e. where the AIIB is located in the overall political structure of the Chinese state and which other financial institutions fullfill which roles. In the newly published **"Who is who No 3"** we focus on the commercial banking sector of the Peoples Republic of China, a sector which is mainly serving the Belt-and-Road initiative investments of China.

Civil society organizations around the world are becoming more aware of the role Chinese banks play in financing companies and projects that can cause human and environmental harm. This report was produced to help interested communities and civil society organizations to better understand the commercial banking sector in China, including how major Chinese commercial banks operate and how they are regulated. The report also provides some entry points for organizations seeking engagement with the Chinese commercial banks. To this end, we provide an overview of recent and future developments in China's policies on climate and energy, as well as the evolving sustainability requirements for the commercial banking sector.

The report is authored by Yin Beibei from Bambu consulting.

RAISING RED FLAGS OVER MULTILATERAL DEVELOPMENT BANK FUNDING FOR NEW MODEL OF INFRASTRUCTURE FINANCE

ANURADHA MUNSHI AND GAURAV DWIVEDI | CENTRE FOR FINANCIAL ACCOUNTABILITY (INDIA) & KATE GEARY | RECOURSE

This article looks into the new infrastructure investment mechanisms such as Infrastructure Investment Trusts (InvITs) in financing infrastructure projects in India. The article is based on a study in India, where the Oriental Infra Trust (OIT) InvIT bundled five existing road projects and secured investment from international financial institutions (IFIs): the International Finance Corporation (IFC), Asian Infrastructure Investment Bank (AIIB) and the German DEG.

The study from Centre for Financial Accountability (CFA) and Recourse, A new frontier in infrastructure financing: Analysis of Infrastructure Investment Trusts - A case study of Oriental InfraTrust, raises red flags about a risky new form of financing for infrastructure. Known as InvITs (infrastructure investment trusts), these new vehicles are being used to refinance existing infrastructure, such as roads and energy projects.

The AIIB and IFC boards approved over $150 million into the OIT in 2018, intending for this new mode of financing to become a blueprint for future infrastructure investment.[1] They were joined by the German development finance agency DEG[2] in 2019, which provided a further 34 million euro in equity. The AIIB stated that its aim was a "demonstration of a proof-of-concept that infrastructure investment trusts are a new type of financing vehicle", while IFC stated, "Successful financing of the Project would demonstrate the feasibility and sustainability of large scale de-risked infrastructure assets in the country. The InvIT structure has a potential to be replicated in various other sectors in India and could help in attracting investments from large pension funds and insurance companies."

The study calls into question the role of IFIs in supporting this type of investment, especially as they hope 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. For this reason, IFIs have put in place environmental and social protections to help ensure their investments do no harm. The problem with the InvIT model is that, because the banks 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. Our study questions whether this is possible: a question banks must address before they continue to expand this new financing model, bringing further harm to communities.

Infrastructure investment trusts: A new model of financing

There has been a fundamental shift in infrastructure financing over the last two decades. Before the global financial crisis of 2008, it was more common for International Financial Institutions (IFIs), such as the World Bank and Asian Development Bank (ADB), to fund infrastructure projects like roads and power plants directly. Since the 1990s, this has included facilitating an increasing role for the private sector through public-private partnerships (PPPs) to deliver projects the state used to provide.

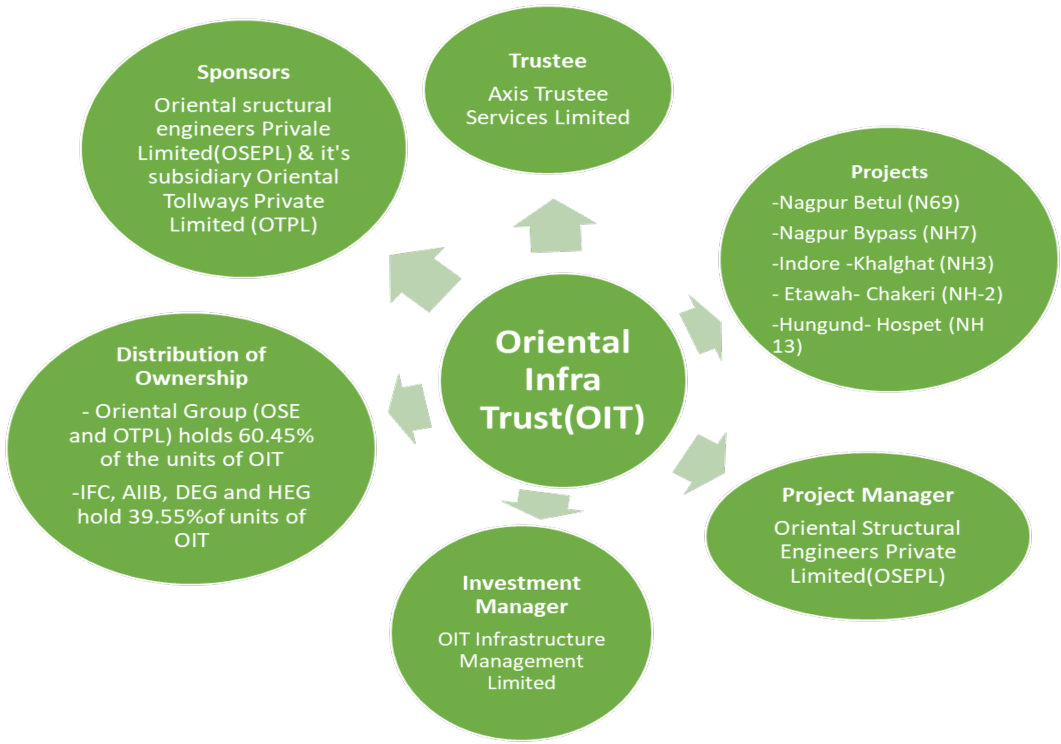
In the wake of the global financial crisis, increasingly, IFIs began to channel their funds not directly to projects but indirectly via financial intermediaries (FIs), such as private equity funds or commercial banks. This move saw the advent of a trend for the creation of infrastructure as an asset class. The private sector became a more important actor in not only building and operating infrastructure, but also financing it.

In India, private investment in infrastructure tripled from 2005 to 2009, reaching $159 billion, and by 2012, the Indian government was predicting that 50% of its energy finance and 70% of transport infrastructure finance would come from the private sector.

Now we are witnessing a further shift, adding a new layer to the investment chain that ends in roads, power, and other forms of infrastructure. Essentially, InvITs allow for the monetisation of existing infrastructure: they construct a bundle of infrastructure PPPs as an asset class[3] (). This latest shift – of IFIs funding infrastructure investment funds - could open yet another era in private finance mobilisation: that of monetising PPPs as investments – in other words, bundling existing projects together under a trust as a means to earn further revenue and extract profit. This marks another step in the financialisation of aid, and a step further away from direct IFI project oversight, involvement and application of standards.

The risk with InvITs is that with an even longer investment chain, the chance of IFIs ensuring protections are applied is diluted yet further. This is in fact part of the model: to 'de-risk' private investments, transferring costs to the state, citizens and nature in order to maximise profit. Civil society has already documented the heightened risks of 'outsourcing development' through FIs, where a longer investment chain can end up divorcing projects from the environmental and social protections IFIs are supposed to ensure. In FI investing, the IFI delegates responsibility for assessing and managing social and environmental impacts of sub-projects to FI clients, with often disastrous results including forced evictions and other human rights abuses, forest destruction, environmental pollution disasters and destructive coal mines and powerplants. The remodelling of infrastructure as an asset class has attracted concern and criticism from civil society groups, with UK-based think tank, The Corner House, calling the new model a "platform for profit-seeking."

The Oriental InfraTrust, India



Concerns:

Social and environmental impacts and application of standards in retrospect.

In January and February 2022, an independent researcher visited villages along the route of the road projects (Nagpur Bypass project, Indore - Khalghat project and Nagpur - Betul project) to assess residual social and environmental (E&S) concerns. The research, which involved interviews with individuals, focus groups, review of local media, and interviews, revealed a number of ongoing impacts which call into question whether E&S standards and laws were upheld. The study details the environmental, social and economic impacts of the road projects, built in the last decade across the states of Madhya Pradesh, Karnataka, Uttar Pradesh and Maharashtra. 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, and problems with land acquisition and compensation.

Normally, IFIs would be involved in road projects in two ways: either through direct finance or, as is increasingly the case since the financial crisis, via an intermediary such as a private equity infrastructure fund. In both cases, the IFIs would require their environmental and social standards be applied before, during and after the project. 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 at the time required to uphold IFI protections.

To give the green light to IFI financing into an InvIT, such as OIT, the shareholders must believe a created fiction - that the standards to which the IFIs are committed can somehow be applied in retrospect. To do this, the IFIs commission a gap analysis through environmental and social due diligence (ESDD) reports, which identify which standards have not been met and how to mitigate that. The problems with this are twofold: first, the quality of the ESDD reports may be woefully inadequate, as in the OIT case - with fundamental information missing and scant one-day visits to affected people; second, there are some standards that cannot be applied after the fact: for example, Free, Prior and Informed Consent for indigenous peoples must be given before (prior to) project construction as well as during project implementation. This is not something that can be tacked on afterwards.

If IFIs are to expand further into this mode of financing – their stated intention - they must be able to address this simple question: how can they guarantee that their standards will be applied in retrospect?

Accountability

Linked to this issue of retroactive application of standards is the question of accountability. Unusually, despite the InvIT project being co-financed by both the AIIB and the IFC, the project is eligible for complaint to both the AIIB's PPM and the IFC's CAO. This is a rare exception to the AIIB's usual policy of excluding co-financed projects: the AIIB has memoranda of understanding (MoU) in place with IFIs, such as the World Bank, European Investment Bank, Asian Development Bank and European Bank for Reconstruction and Development, to say that in the case of complaint, affected communities must approach the IAM of the lead financier's accountability mechanism, not the AIIB. The exception is the IFC, which for unknown reasons does not have such an MoU with the AIIB. This means that, although the IFC is the lead financier, affected communities do have the right to file a complaint at both the Compliance Adviser Ombudsman (CAO) and the Project affected People's Mechanism (PPM).

This anomaly results in a curious situation for the AIIB. Although as the lead financier, the IFC's safeguards – the Performance Standards (PS) – apply to the project, the AIIB can nevertheless be held accountable for any failures in their implementation. Although the AIIB's standards are largely similar or equivalent to the IFC's, there are crucial differences. One of these relates to how the banks require their borrowers to relate to indigenous peoples – or in the case of India, scheduled castes and tribes. The IFC recognises the right of indigenous peoples to give or withhold their Free, Prior and Informed Consent (FPIC) for a project (PS7) in line with international law. The AIIB's Environmental and Social Policy, however, dilutes this right to the weaker Free, Prior and informed Consultation (FPICon).

Such a distinction could be crucial for any complaint over the InvIT project, where Scheduled Tribes and Castes have potentially been severely affected, and whose consent was likely not gained for the acquisition of their land and property based on local people's testimonies.

The IFC and AIIB are clear that in this project, the affected communities have the right to access their respective accountability mechanisms, the CAO and the PPM respectively. The compliance functions of the accountability mechanisms investigate whether an IFI has abided by its own standards (or in the case of the AIIB and the OIT project, the delegated IFC Performance Standards) in the preparation and delivery of a project. Hypothetically, if a scheduled tribe community were to file a complaint to the CAO and PPM, alleging that their right to Free, Prior and Informed Consent had been violated, the project developer, IFC and AIIB could argue that standard (PS7) was not applicable when the road was built, and that therefore there is no violation. Even if non-compliance were established, how could a corrective action address this issue? It is not possible to gain someone's consent in retrospect for a project already constructed.

Such fundamental questions around accountability must be addressed by IFIs if they wish to expand their use of InvITs to deliver infrastructure.

Information disclosure

Communities reported that there had been inadequate information disclosure at the time the road projects were constructed. However, beyond the immediate issue of project information disclosure – which should be assured under IFC PS 1 – the IFIs must address the critical issue of why disclosure about their decision to fund this project was delayed for two years. The Boards of both IFC and AIIB approved this investment in 2018 but did not inform the public about this until 2020. Why such a lag in disclosure? The access to information policies of both banks allow for such delayed disclosure in cases of commercial sensitivity. But to delay disclosure for two years on an investment which breaks new ground, where large, high risk infrastructure projects have caused harms to local communities, where there is allegedly post-facto application of environmental and social standards, where accountability is in question, is not acceptable.

Inadequate due diligence

The IFC hired consultants Mott MacDonald to provide a third party review of the five road projects, to determine whether the roads could meet IFC Performance Standards requirements. In March 2018, the consultants finished the first draft of their ESDD reports on the road projects, with final drafts not ready until September 2018 - months after the IFC and the AIIB took the decisions to approve over $150 million in development finance for the InvIT.

A review of the ESDD report for the Etawah Chakeri road, one of the roads with the fewest environmental and social impacts – for example, reportedly no indigenous peoples were affected – reveals a disturbing lack of evidence on which the IFC and AIIB boards took the decision to approve finance for the InvIT.

Mott MacDonald reviewed project documents and talked to the developers, local authorities – including forestry department and National Highways Authority of India staff – and visited two villages affected by the road on 19 January 2018. The 160 km stretch of road was converted into a six-lane motorway, with construction starting in 2013 and completed November 2016. NHAI acquired over 100 hectares of land for the road, compensating 103 villages for impacts, and affecting 7,461 land title holders as well as those without land titles, who are most likely undocumented.

The consultants concluded their review

despite not having access to crucial information. Given their job was to determine whether the projects could comply with the IFC's Performance Standards, it is difficult to understand how the consultants could do this. It appears that they did not review the following:

- the Environmental Impact Assessment,
- the Resettlement Action Plan
- Traffic Accident data
- Land acquisition data
- Details of the number of people physically or economically displaced by the road
- Records of community consultations
- Details of compensation disbursed and received by project affected people
- Annual environmental monitoring reports

Despite failing to obtain this crucial data, the consultants concluded that the project posed a "moderate risk" of non-compliance with the Performance Standards. A decision not to proceed with the investment can only be taken if the risk is categorised as high.

Recommendations

In this unusual case, the above mentioned standards were not applied when the projects were built, and evidence presented in our report suggests that huge gaps remain between what those standards promise and what communities on the ground have experienced. In light of this, we call on the IFIs involved to:

- Suspend any further IFI investments into InvITs while concerns about application of standards, the balance of risks and benefits in public private partnerships (all five roads are PPPs), and wider social and economic impacts are addressed.
- Launch an immediate investigation into the harms caused by the five road projects, identifying where gaps exist between the Performance Standards and impacts on the ground. This investigation must be of sufficient quality, including extensive consultations with affected communities, and published in full;
- Ensure full and fair redress for affected communities who have suffered harm as a result of the road construction;
- Develop lessons learned to inform future investments. This must include consultations with civil society and take into account not just the economic context of InvIT investments, but their social and environmental impacts as well.

Shareholders of AIIB, IFC and DEG

Ultimately, it is the IFI shareholders and the Board members who represent them who decide both on whether an IFI's policies are delivering effective development and who approve individual investment proposals. We call on the IFIs' shareholders to:

- Ensure IFC, AIIB and DEG review the lessons learned from the OIT InvIT, provide adequate redress to affected communities, and suspend further activity as per the recommendations above;
- Reject any further InvIT project proposals until a wider policy review is carried out and the risks and challenges of InvITs are fully understood and addressed;
- Share lessons on the risks of InvITs with other IFIs' shareholders;
- Reorient IFI policies and practices to deliver inclusive, sustainable and equitable investments that put people and planet at the heart of development.


Poorly constructed service roads


Lack of waiting area, students having to wait on highway (NH-69)

Endnotes

1 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

2 Deutsche Investitions- und Entwicklungsgesellschaft

3 an asset class is a grouping of investments that exhibit similar characteristics and are subject to the same laws and regulations

THE ASIAN DEVELOPMENT BANK SUPPORTS AFFORDABLE BUT UNLIVABLE RURAL HOUSING IN UZBEKISTAN: FINDINGS FROM PUBLIC MONITORS

GULNOZ MAMARASULOVA | UZBEKISTAN
NINA LESIKHINA | CEE BANKWATCH NETWORK

Background information

In 2017, the Asian Development Bank (ADB) approved a USD 500 million loan to support the government of Uzbekistan's Affordable Rural Housing Program (ARHP). Under the ARHP, three state-owned banks have provided loans for the construction of at least 29,000 dwelling units in nine regions of the country. The program is being implemented through Ipoteka Bank, the National Bank of Uzbekistan, Qishloq Qurilish Bank and the state engineering company Qishloq Qurilish Invest.
During 2022, CEE Bankwatch Network and civil society organisations in Uzbekistan have received many complaints about the poor quality of the houses constructed under the ARHP.

Since 2019, more than 10 project monitoring reports and financial statements have been published by the ADB in English, but very limited project-related information has been disclosed in Russian and nothing in Uzbek.

Unfortunately, the request by Uzbek civil society organisations to provide project monitoring reports in Uzbek to ensure ongoing and meaningful stakeholder engagement remains unaddressed. Project monitoring reports are documents that should be disclosed to stakeholders to ensure public oversight.

The ADB's ARHP project team referred to the fact that English is the ADB's working language and said the relevant documents can be provided in the local language only at the request of the government. However, according to the ADB translation framework, 'documents or relevant information should be translated when ADB consults with external stakeholders who cannot read English'.

Public monitoring findings

In October and November 2022, three Uzbek civil society activists and journalists, in cooperation with Bankwatch, conducted a range of interviews with the final beneficiaries of the ADB program for affordable rural housing in Uzbekistan.

The public monitors visited the houses constructed with ADB support under the ARHP in the Fergana, Khorezm and Tashkent regions and interviewed 28 residents. All the interviewed residents signed mortgage agreements in 2018-2019: 50 per cent with Qishloq Qurilish Bank, 39 per cent with Ipoteka Bank and 11 per cent with the National Bank of Uzbekistan.

All the interviewees were asked the same questions about the availability of information on the ADB project, procedures for enrolling in the program and overall satisfaction with the houses.

Based on the replies of the interviewees and the public monitors' observations, we've noted the following concerns around the ARHP's implementation:

1. ***The residents are unaware of the ADB's involvement in funding the ARHP and relevant complaint mechanisms.***
   All of the interviewees confirmed that no information on ADB support for the program had been disclosed to them when they signed their mortgage agreement with the national banks. Moreover, around 50 per cent of the interviewees said they had complained to the construction company, local authorities or the mass media, but their concerns had not yet been addressed. Everyone we interviewed shared their disappointment and despair at the lack of effective mechanisms for addressing their grievances.

2. ***Low-quality building materials have been used for the construction of houses with no oversight from authorities.***
   Around 57 per cent of interviewees mentioned the poor quality of sanitary installations, 17.8 per cent complained of problems with windows and doors and 28.6 per cent informed us about cracks in the walls and problems with their heating system.

3. ***Sanitation and hygiene requirements for the construction and operation of water and sewage systems have been violated.***
   Half of the interviewees experienced significant problems with water supply and sewage systems in the houses, including cases where no sewage system has been in operation for some years already.

4. ***The houses offer limited accessibility for disabled people, there is a lack of infrastructure for children (playgrounds) and pavements are of poor quality.***
   Moreover, some interviewees raised their concerns about corruption and nepotism, which could mean that certain people get houses on preferential terms. They also highlighted that they were asked by local authorities to sign an acceptance

certificate without being able to check the place in advance.

Retaliation risks

The Uzbek public monitors and Bankwatch presented the monitoring findings at the meeting with the ARHP project team in November 2022. The ADB claimed that it had already significantly improved the project performance since the funds were disbursed only after independent verification of the results. However, the project team committed to incorporating the recommendations based on this study in Program Review Mission.

Additionally, the public monitors and CSOs raised an issue of retaliation risks. In Uzbekistan, a country with a serious democratic deficit, public participation is extremely challenging due to the shrinking space for civil society and high retaliation risks. Nevertheless, the ADB ignored the retaliation risks this time and invited the representatives of the Uzbek government to the meeting with public monitors without even prior notification. It significantly increased the reprisal risks for the activists as it immediately disclosed their identities to the government representatives. The ADB justified it to provide a comprehensive response since the ADB's loan finances are a part of the government's program but ignored the potential risks for human rights defenders.

The ADB claimed that it is a safe space for all members of society to voice their perspectives and has zero tolerance for reprisal and retaliation, but it is not always the case in Uzbekistan. Thus, in 2021 blogger Miraziz Bazarov criticized the Uzbek government for mismanaging COVID-19 funds. He wrote a public letter to the Asian Development Bank as the most significant contributor, which loaned $ 600 million, urging the bank to stop providing aid until clear anti-corruption and transparency mechanisms are in place. He was later publicly smeared, savagely beaten and sentenced to 3 years of limited freedom, apparently in retaliation for his activism.

Recommendations for the ADB:

- Make sure that the final beneficiaries of ADB projects are informed about the ADB's involvement, in particular its accountability mechanisms;
- Make project monitoring reports available in the Uzbek language and ensure that findings and corrective measures are communicated to the final beneficiaries;
- Investigate cases of low-quality construction standards and violations of sanitation and hygiene requirements, and take required measures to remedy any damage caused;
- Improve quality control and oversight over the construction of houses and disclose information about tenders and suppliers;
- Ensure that the houses comply with the best available construction standards in terms of their accessibility for disabled people;
- Provide an effective grievance redress mechanism at the project level;
- Develop a community/residents-based monitoring system and regularly engage with civil society activists and journalists to ensure that information provided by clients is verified.
- Ensure a safe space for engagement with civil society organizations and raising complaints about the project implementation.

AIIB, ENERGY & CLIMATE: THE MISSING GENDER DIMENSION

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The Asian Infrastructure Investment Bank (AIIB) officially launched in January 2016, just a few months after the United Nations Sustainable Development Goals (SDGs) were adopted and only weeks after the Paris Agreement on climate change was approved. In its 2020 Corporate Strategy, the AIIB committed to support efforts to achieve the SDGs, including SDG 5 on gender equality, SDG 7 on energy access and SDG 13 on climate action.

The energy sector is the largest contributor to global greenhouse gas emissions, and therefore holds an important key for combating climate change. Women and girls are often particularly adversely affected by lack of access to clean renewable modern energy. For example, access to energy can lessen the time and effort women spend on tasks, such as fuelwood and water collection. This in turn leaves more time for productive activities, such as education and income generation. Women also need access to clean renewable energy as workers, entrepreneurs, farmers and producers to support all their economic activities. This will simultaneously increase women's ability to adapt to climate change. Women also have the knowledge and skills to play a critical role in mitigating climate change, by facilitating the shift to renewables, in particular in leading and supporting the delivery of off-grid renewable energy solutions. Women should therefore be at the centre of both climate change mitigation and adaptation efforts and must be meaningfully included in determining energy sector project plans and development models, as well as have access to gender-sensitive and responsive grievance mechanisms.

In the Corporate Strategy, the AIIB commits to "enhance its contribution to gender equality in Asia by increasingly incorporating gender considerations into projects, which can be mapped against SDG 5". However, in its Sustainable Development Bonds Impact Report 2021, the AIIB admits that "gender is not currently the primary driver for AIIB's investment decisions." While AIIB enhanced the gender language in its updated Environmental and Social Framework, approved in 2021, its first Energy Sector Strategy (ESS), approved in 2017, was weak on gender and the results are telling. Research by BRICS Feminist Watch and Recourse shows that almost half of all of AIIB's approved energy sector projects since 2016 lacks any mention of gender commitments in its project documentation.

The roots of this gender-blindness may lie in the fact that, in contrast to other MDBs, the AIIB has to date not developed a gender policy, strategy or action plan. It is high time that the AIIB takes the next step to make this happen, to enable accountability for its action (or inaction) on meeting important SDGs, such as SDG5 and SDG 7. In the meanwhile, it is fundamental that all AIIB's policies and strategies fill this considerable gap. The AIIB finally reviewed its first ESS in 2022, which brought hope that the new version would bring a much stronger gender language than its predecessor. However, the new ESS is equally disappointing, committing to taking gender "into account", but without including any targets, indicators or other measures to allow monitoring and accountability.

AIIB's Energy Portfolio – A Gender Analysis

BRICS Feminist Watch and Recourse analysed all 42 approved projects in AIIB's energy portfolio as of end of 2022, totalling over $7 billion in investment, measured against a list of ten gender indicators developed by BRICS Feminist Watch (see next page). The 42 projects included seven completed projects and seven financial intermediary (FI) projects. An FI investment effectively 'outsources' funding decisions to a third party, such as an infrastructure fund or private equity fund, which in turn invests the capital in sub-projects or sub-clients. We also analysed ten energy projects in the pipeline of proposed projects for AIIB funding.

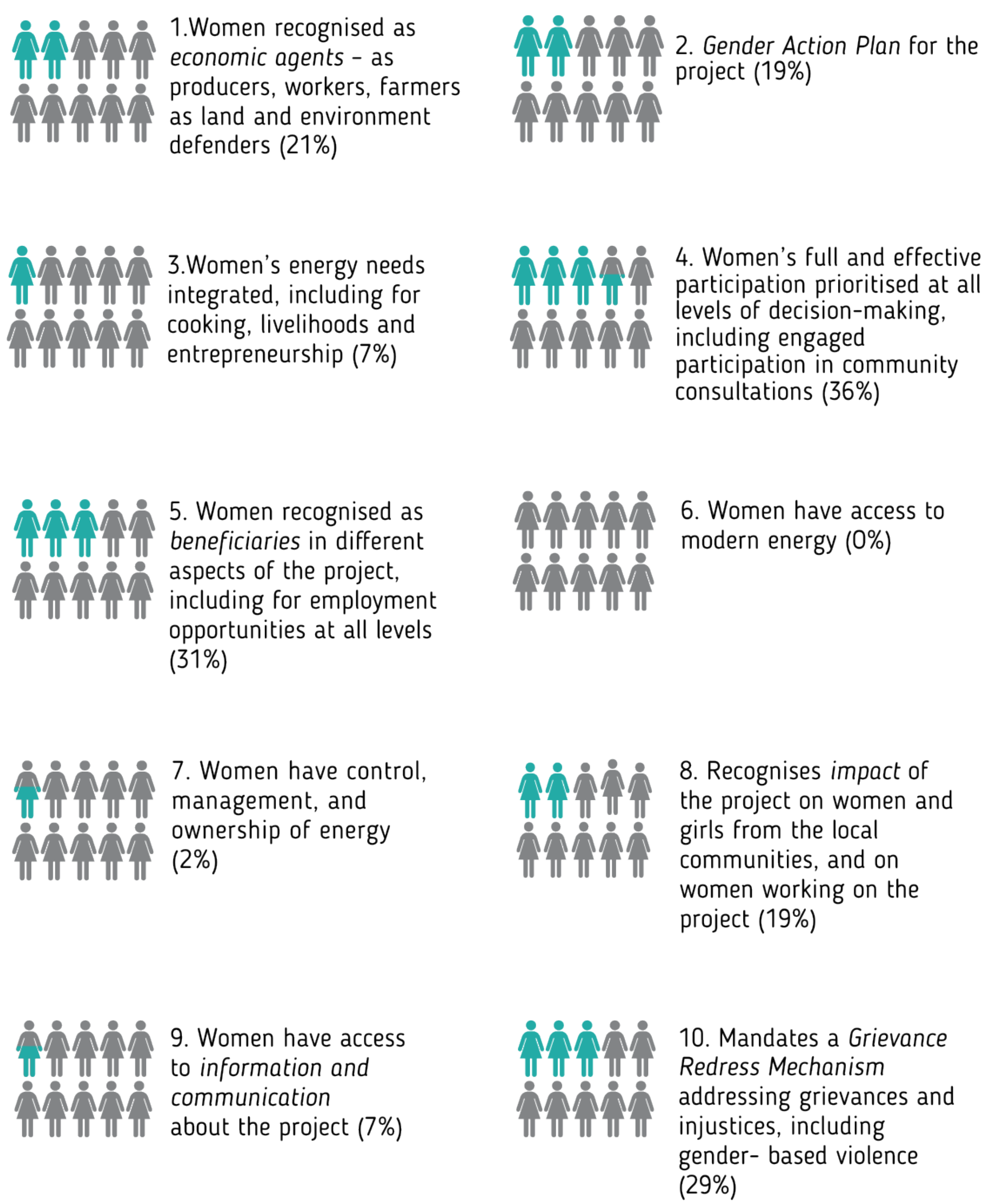
Out of these 42 projects, almost half – 17 projects worth almost $2.4 billion - did not match against any of our gender indicators. By matching, we mean that AIIB's own project document or summary included language on gender or women. We then categorised these mentions against our ten gender indicators. Out of the 25 projects that did match, none did so against all indicators. In fact the highest scoring project met only seven of the ten indicators, with most approved projects meeting no more than two to three indicators. Based on this analysis, we draw the conclusion that none of the approved energy projects can be deemed to contribute to SDG 5 in a meaningful way.

It is important to note that our analysis is drawn from desk-based research. Field based research of these projects might show a very different reality and lower the number of projects matching our indicators further. For example, field research by BRICS Feminist Watch of an AIIB-funded rural roads project in India found that women and girls were not benefitting equally to men, and hence the project was actually contributing towards increased gender inequalities. The research revealed that project due diligence documentation had missed serious gender related issues, including violence against women, unequal pay and other forms of discrimination. It is therefore plausible that even where gender concerns are listed in the project documentation, the reality on the ground is very different, and can be to the detriment of women and girls.

There is no clear pattern of how projects delivered against the indicators, depending on when they were approved. Nor is there a particular trend in terms of projects in specific countries matching considerably better than others against the indicators. It is noticeable, however, that only one out of seven FI projects included gender references in the publicly available project documentation.

Of the different indicators, it is concerning that none of the projects included specific language on energy access for women. We therefore conclude that the projects do not contribute meaningfully to SDG 7 on energy access for all either. Also, only three of the approved projects referred to women's specific energy needs. The most common reference to women was in relation to participation, such as in consultations. References to Gender Action Plans were available for only eight of the projects that scored against the gender indicators, but

Approved AIIB energy projects meeting our gender indicators (%)



this is wholly inadequate. All projects should have Gender Action Plans as standard and these should be made public.

AIIB's new Energy Sector Strategy and gender – old wine in new bottle?

In 2022, the AIIB reviewed its first ESS from 2017. As the analysis of the energy sector portfolio above proves, the original ESS did not incentivise strong gender commitments, hence gender is not systematically considered across the energy sector portfolio. The ESS review presented an opportunity for the AIIB to rectify this flaw by strengthening the gender language, including introduction of clear gender related targets and indicators. During the consultation process for the revised ESS, gender was highlighted as an area of specific concern by several stakeholders, including BRICS Feminist Watch and Recourse.

However, an analysis of the new ESS proves that disappointingly little has changed from the 2017 version to the 2022 version. In fact, gender or women are only mentioned in six paragraphs (out of 75 paragraphs in total). While this is more than in the 2017 ESS, the changes are largely superficial. The focus is also largely on 'do no harm', rather than how to 'do some good', including proactively promoting women's empowerment and gender equality.

Overall, it seems that the AIIB has only included three substantive gender related additions in the revised ESS. This includes a new commitment for the AIIB to "build staff capacity and work with its clients with a view to developing a consistent approach to designing, implementing and measuring the impact of energy sector projects so that they promote gender equality." This commitment was added to a section formerly called "Taking gender into account", now called "Promoting gender equality". This section also includes a new commitment to "support project specific measures to address gender gaps with respect to access to energy". Apart from these amendments, the section looks largely the same as before. While these new commitments are welcome, there is no further explanation of what the 'approach' to energy projects in terms of gender means in practice, or what the energy access 'measures' are or how they will be implemented and monitored.

There is also a tendency to reduce women's energy needs to domestic chores, such as cooking. While this is essential to address, not the least since the AIIB has to date not given any support in this regard despite similar language in the 2017 ESS, women should also be recognised as economic agents, as producers, farmers, energy managers and as climate champions - as well as managers of land, water and forests. It is also noteworthy that while the AIIB includes a narrative on energy access for women in the revised ESS, to date no energy sector project approved by the AIIB includes commitments on this, as found by our portfolio analysis. The gendered impacts of climate change are also not recognised in the ESS. The ESS does recognise women as a vulnerable group that disproportionately bears costs due to the adverse impacts of development projects. However, without an integrated approach to gender such efforts are *ad hoc*, and are mostly reduced to mere checklist exercises.

Most concerningly, the revised Results Monitoring Framework (RMF) does not have a single mention of 'gender' or 'women'. The RMF is the main vehicle through which the AIIB will monitor the impact of the ESS, and without any gender related targets and indicators, this revised ESS runs a high risk of repeating the poor gender performance of projects approved under the old ESS.

The AIIB needs a Gender Policy

As the AIIB starts to implement and approve projects under the updated ESS it is essential that it bears these stark and disappointing findings in mind. For the ESS to champion gender equality in a meaningful way, gender needs to be integrated in all aspects of all energy projects, including putting women's needs, rights and capabilities at the front and centre. This means making gender action plans compulsory, and these need to be comprehensive and implemented throughout the project cycle. Robust gender indicators are also crucial, to be able to monitor impact. It is therefore important that the RMF should be reviewed and amended. Ultimately, at the heart of the problem lies the lack of a Gender Policy. This could have raised the bar for the AIIB's gender ambitions and the AIIB must now set out to address this vital gap as a matter of urgency.

Indonesia power distribution project – gender-neutral assumptions risk undermining benefits for women

AIIB approved $310 million towards the PLN East Java & Bali Power Distribution Strengthening Project in January 2021. The project aims to support the implementation of Indonesia's 10-year Electricity Business Plan to increase access and improve the quality of power distribution through infrastructure development in Java and Bali. The AIIB estimates that approximately 13 million residents would benefit from the project in the form of a reliable stable power supply, including 920,000 new customers.

AIIB's project document includes a reference to 'Gender Aspects', concluding that improved electricity supply "will contribute to reducing the drudgery of domestic work and alleviate the time-poverty of women who are responsible for these tasks." The project's Environmental and Social Management Planning Framework (ESMPF) also mentions gender issues in a few places, but mainly ad hoc without commitments, apart from one to improve the project's complaints system to accommodate women and vulnerable groups better. There are no processes or indicators listed in available project documentation for ensuring that women benefit from this project in any other way. Without clear processes, targets and monitoring, it is impossible to assess how women will benefit. The project seems to apply gender-neutral assumptions that everyone will have equal access to all benefits. But men and women do not necessarily have the same energy needs, and circumstances - such as lack of property ownership - can undermine access.

Women are also presumed to have equal access to any job and entrepreneurial opportunities arising from the project, since there are no related targets. The AIIB and its project developers need to take proactive steps to assess gender gaps and remove barriers to ensure equal access and benefits.

India solar project – no gender considerations

The AIIB and the World Bank's private sector lending arm, the International Finance Corporation (IFC), are jointly supporting the Enel Green 300 MW Solar Project in Rajasthan. AIIB approved a $50 million loan towards the project in July 2021. The financing will contribute to the development, construction and maintenance of the solar power project. AIIB will measure results by solar energy capacity installed, GHG emissions avoided and additional electricity generation. As a co-financed project, project developers will apply IFC's Performance Standards, rather than AIIB's Environmental and Social Framework.

Despite a primary focus on increasing electricity generation, there is no information in available project documentation on who will benefit from the energy generated and how, nor are there targets for energy access. As with the Indonesia project, there again seem to be underlying assumptions that both men and women have equal access to energy and energy-related employment. Unless these weaknesses are addressed, this project risks contributing to gender inequality rather than working towards women's empowerment and gender justice.

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