



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
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**Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Independent Expert on the promotion of a democratic and equitable international order, Special Rapporteur on the right to education, Special Rapporteur on extreme poverty and human rights, Special Rapporteur on the right to food, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on the rights of indigenous peoples, Special Rapporteur on the human rights of internally displaced persons, Special Rapporteur on the human rights of migrants, Special Rapporteur on minority issues**

26 October 2015

Dear Mr. Jin Liqun,

Following on from our meeting in Beijing on 1 July 2015, I have the honour to transmit, in my capacity as Independent Expert on foreign debt and human rights, on behalf of my mandate and co-signing Special Procedures of the United Nations Human Rights Council, a joint submission on the draft Environmental and Social Framework (ESF) of the future Asian Infrastructure Investment Bank (AIIB), attached to this letter as an Annex.

In our view, the AIIB has the potential to make a positive contribution to the realization of economic, social and cultural rights, as well as the right to development in Asia, by addressing the infrastructure backlog in the Asian region. The AIIB could also play a pivotal role in achieving some of the recently adopted Sustainable Development Goals (Agenda 2030).

The vision statement outlined in the draft ESF underscores that social development and inclusion are critical for sound development and that inclusion means empowering all citizens to participate in, and benefit from, the development process. The draft draws on language included in international human rights treaties and the United Nations Declaration on the Right to Development. We welcome this commitment and the conviction that the fruits of development should be enjoyed in a non-discriminatory manner by all, as required under international human rights law. Such commitment is of paramount importance in all projects to be financed and co-financed by the AIIB, especially in cases involving large-scale infrastructure projects that the AIIB would finance or co-finance, as they will inevitably affect individuals and communities in one way or another.

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In this regard, we appreciate the efforts being made by the Multilateral Interim Secretariat of the AIIB to initiate consultations on the draft ESF of the Bank and welcome the opportunity to provide our comments. We commend the steps taken to establish mandatory environmental and social standards before the bank becomes operational and note that in a number of respects the proposed ESF standards appear to be sound. On certain issues they compare favourably to most recent safeguards released by the World Bank<sup>1</sup>. Yet, we perceive certain gaps in their coverage and would like to recommend that human rights standards be more rigorously integrated within the ESF.

We would also like to share some observations about the consultation process itself. Due to time constraints we have not been able to undertake a comprehensive assessment of the proposed ESF, but wish to highlight some key issues.

We would like to recall that we - or our respective predecessors - have engaged with concerns with other multi-lateral development banks, including in relation to the safeguards currently under revision by the World Bank or the environmental and social policy of the European Bank for Reconstruction of Development.<sup>2</sup> Our aim is to strengthen safeguards across multi-lateral and national development banks to ensure that international human rights standards are fully respected and protected.

While we do not wish to enter into a comprehensive legal discussion as a means of underscoring our view that multi-lateral development banks, including the future AIIB, have an independent obligation to respect human rights. Suffice to say that lending and borrowing States must comply with human rights obligations under international law and that private clients have human rights responsibilities in their own capacity. In this sense, we consider that the AIIB should aspire to become a bank of the XXI century governed by environmental, social and human rights policies reflecting current international standards.

All prospective founding members have acceded to, or ratified, several binding international human rights treaties, notably the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the Convention on the Elimination of all Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racism; and the Convention on the Rights of Persons with Disabilities.<sup>3</sup>

The international obligations provided for in the above mentioned treaties are binding for the vast majority of prospective founding members, including prospective lenders and borrowers. These obligations remain equally binding on States when they act jointly with others in international institutions. There should therefore be no question that international

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<sup>1</sup> On the World Bank safeguards review, see our joint letter from 12 December 2014, available at: <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf>. For a more comprehensive critique of the human rights policy of the World Bank, see the report of the Special Rapporteur on extreme poverty and human rights to the General Assembly, UN doc. [A/70/274](#).

<sup>2</sup> See the joint letter of 28 Special Procedure mandate holders to the President of the World Bank relating to the World Bank's safeguards review from 12 December 2014, available at: <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf> and the letter by our predecessors to the President of the European Bank for Reconstruction and Development from 5 May 2014, available at: [https://spdb.ohchr.org/hrdb/27th/public - OL\\_EBRD\\_05.05.14\\_\(4.2014\).pdf](https://spdb.ohchr.org/hrdb/27th/public - OL_EBRD_05.05.14_(4.2014).pdf).

<sup>3</sup> For the status of ratification or accession to these international human rights treaties, as well as the text of each of these instruments, please consult : <https://treaties.un.org/>

human rights norms apply to AIIB's own business conduct. In our view, one way to further recognize this is to anchor human rights into the institutional policies of the future bank. Doing so would not be understood as turning a bank into an international human rights monitoring body; nor would this create the expectation that the AIIB would become an environmental protection or a labour inspection agency by adopting an environmental and social framework.

Rather, it is our view that the AIIB could play an important and constructive role in assisting its clients, whether they are Governments or private actors, in meeting their own obligations and provide them, if necessary, with support and advice on how projects could be developed in compliance with national and international environmental, social and human rights standards. This would in particular be important in the context of projects an operations leading to displacement or affecting Indigenous Peoples.

Without aiming to be comprehensive, we wish to highlight other key international human rights standards of particular relevance to the ESF. These include the UN **Guiding Principles on Business and Human Rights**<sup>4</sup> summarizing human rights obligations of States to regulate business conduct and human rights responsibilities of businesses themselves – including corporate clients of AIIB, the UN **Guiding Principles on foreign debt and human rights**, setting out human rights obligations of lenders and borrowers, including multi-lateral development banks, public and private borrowers<sup>5</sup>, the UN **Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities**<sup>6</sup>, the **Guiding Principles on Internal Displacement**<sup>7</sup>, the **Basic principles and guidelines on development-based evictions and displacement**<sup>8</sup> and the **Declaration on the Rights of Indigenous Peoples**.<sup>9</sup> The two latter standards are of particular relevance to the draft Environmental and Social Standards (ESS) 2 and 3 on involuntary resettlement and Indigenous Peoples.

Ensuring that the institutional policies of the future AIIB are informed by international human rights norms would not only assist in establishing its reputation as an environmental, social and human rights responsible development bank, it would also help to distinguish AIIB in a positive manner from other multi-lateral development banks that have in recent years been repeatedly criticised for failing to ensure that projects and programmes financed by them comply with environmental, social and human rights norms.

It is our view that sound environmental, social and human rights practices are not only a tool for reducing operational or reputational risks, they are also crucial to ensure successful and sustainable project outcomes that have positive long-term impact. Investing in social, environmental and human rights due diligence actually pays off. It will help to achieve what the AIIB is aiming for: sustainable and social inclusive development. While there are undeniably some initial upfront costs, the benefits reaped will be far greater in the long run.

In addition to this utilitarian argument much can be said for simply doing the right thing. Indeed we see this intention in the efforts being undertaken by the Interim Secretariat

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<sup>4</sup> UN doc. A/HRC/17/31, Annex, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>5</sup> UN doc. [A/HRC/20/23, Annex](#), endorsed by resolution 20/10 of the Human Rights Council

<sup>6</sup> General Assembly [resolution 47/135](#)

<sup>7</sup> UN doc. [E/CN.4/1998/53/Add.2](#)

<sup>8</sup> UN doc. [A/HRC/4/18, Annex](#)

<sup>9</sup> See General Assembly resolution [61/295, Annex](#)

of the AIIB to develop an ESF that reflects similar policies of other multi-lateral development banks. Costs or efficiency arguments should never override respect for human rights. Individuals or communities should not be denied their human rights in the name of development. Investments ignoring economic, civil, cultural, social or political rights would lose their legitimacy and not be sustainable.

Finally, we would like to stress that AIIB should also consider in its institutional policies – whether in its ESF or in its lending policies – the need for fair, transparent and efficient rules to deal with situations in which clients are unable to pay back loans, whether caused by natural disasters, health epidemics, or other unforeseeable economic shocks. In this way AIIB could make certain that unsustainable debt does not undermine the capacity of its clients to ensure respect for human rights as articulated in the Guiding Principles on Foreign Debt and Human Rights.

Attached are a number of specific suggestions on how the draft Environmental and Social Framework (ESF) of the AIIB could, in our view, be further strengthened. We intend to share our comments with prospective founding members of the AIIB and intend to make them public. We look forward to continuing our engagement with you and prospective member States of the Asian Infrastructure Investment Bank, in constructive dialogue on issues of common concern.

Yours sincerely



Juan Pablo Bohoslavsky

Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights



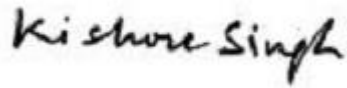
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Alfred De Zayas

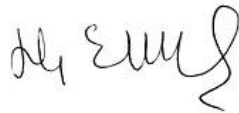
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Special Rapporteur on the right to education



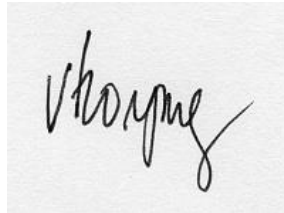
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A handwritten signature in black ink, appearing to read 'Izsák Rita'.

Rita Izsák  
Special Rapporteur on minority issues