



- **Consultations on Draft Public Information Policy of the Asian Infrastructure Investment Bank – Written Comment**

Vienna, 12 March 2018

Dear Madam or Sir,

the Austrian Platform for Development and Humanitarian Aid (Global Responsibility) and the Coordination Office of the Austrian Episcopal Conference for International Development and Mission (KOO) represent Austrian NGOs active in the fields of development cooperation, development education and policy work as well as humanitarian aid and sustainable global economic, social and ecological development. Together we represent more than 50 member organisations. Many of them are actively cooperating with partners in Asia.

As Austria is one of the founding members of the Asian Infrastructure Investment Bank (AIIB), we appreciate to be able to comment on the draft of the Public Information Policy (PIP).

The AIIB has a strong focus on regional integration and economic development and invests in infrastructure development for this purpose. Since infrastructure projects potentially have negative and irreversible impacts on local communities, the environment and the climate as well as corruption risks, we consider a transparent Public Information Policy and, in turn, an effective Complaints Handling Mechanism as particularly important. We welcome that the AIIB has initiated public consultations on drafts covering both areas, providing Civil Society Organisations and other stakeholders with an opportunity to raise concerns and suggest improvements.

### **Introducing Time-Bound Disclosure Requirements**

We appreciate that the draft PIP is based on a “*Presumption in Favor of Disclosure*” (Principle 1) and acknowledges a “*Duty of Proactive Disclosure*” (Principle 2). Unfortunately, the draft is silent on the exact time-frame when specific project documents are to be made publicly available. Information such as documents on projects under preparation or draft environmental and social assessments including stakeholder engagement plans and resettlement plans need to be publicly released at early stages of project development when corrective action is most feasible. The time-bound public release of specific project documentation and regular reports on the implementation status are an indispensable precondition for affected communities to raise their concerns – and thus the functioning of the AIIB’s Project Affected People’s Mechanism (PPM) currently also being reviewed. Importantly, the “presumption in favor of disclosure” should also apply to reviews and investigations conducted under the PPM.

We strongly recommend including clear rules for time-bound public disclosure of project documentation in the PIP. A list of documents to be disclosed and the time frames for disclosure should be part of the PIP. Best practice for publishing draft environmental and social assessments is 120 days before the scheduled date of Board approval.

### **Limiting Exceptions from Information Disclosure**

Exceptions from information disclosure are legitimate and common practice of multinational development banks (MDBs). The exceptions defined in the draft PIP leave, however, ample room for ambiguity and have the potential to undermine Principle 1 “*Presumption in Favor of Disclosure*” if they are not further clarified.

*Principle 4* states that “The Bank shall have due regard to the operational efficiency, administrative capacity and financial resources of the Bank when implementing this Policy”. Time-bound release of documents takes time and resources. Leaving the door open for justifying exceptions from public information disclosure with efficiency, administrative capacity and financial resources is highly problematic, in particular when considering the AIIB’s ambition of being a “lean” bank. The PIP should therefore state explicitly that *Principle 4* does not justify exceptions from the time-bound release of information relating to environmental and social impacts, including resettlement plans.

Similarly, *Exception 3* allows withholding information from public disclosure that might “prejudice the administrative, deliberative or decision-making discretion of the Bank”. This is problematic since, for example, public knowledge about harmful social and environmental impacts or forced resettlement might be perceived as prejudicing the Bank’s decision-making discretion. Again, we recommend the PIP to state clearly that all information related to environmental and social impacts are not covered by *Exception 3*.

*Exception 5*, which seeks to protect the international character of the bank and exempts disclosing information which might “interfere in the political affairs of any of the Members of the Bank”, sparks a similar concern. *Exception 5* should be explicit about not covering environmental and social impacts of AIIB-supported projects, even if this information is considered to be politically sensitive.

*Exception 2* allows the Bank to refrain from disclosing information if “doing so would prejudice the commercial or financial autonomy” or “the financial worth or competitiveness” of the Bank or its clients. It is unclear whether and how this exception applies to AIIB lending to financial intermediaries (FI). This form of third-party lending comes with significant risks regarding the implementation of environmental and social standards. In a letter to the AIIB from January 2018, 30 Civil Society Organizations have called on the AIIB to put in place robust policies and systems around FI investments to ensure transparency and accountability. This would include that the AIIB contractually requires its FI clients to comply with the Bank’s PIP and the AIIB itself discloses the respective information about FI sub-projects and the AIIB’s assessment of the FI’s environmental and social management system on its website. The PIP should state explicitly that *Exception 2* is not applicable to information regarding the Bank’s FI clients.

With respect to the exceptions listed in the draft PIP, we encourage the AIIB to be more specific about the scope of the exceptions. Most importantly, we invite the AIIB to explicitly exclude information related to environmental and social impacts of its own projects and those of its FI clients from being covered by the exceptions.

### **Transparent Decision-Making and Clear Rules for Information Disclosure**

In our view, the draft PIP provides a problematic concentration of discretionary decision-making by the AIIB's president: The president determines the timetable for dealing with requests by external parties to disclose information (paragraph 7.3, 8.2); the president decides on the disclosure of information upon requests for information that has not been disclosed in accordance with the PIP (paragraph 8.3); and the president determines what kind of information is made publicly available in case of exceptions (paragraph 9.2).

We strongly recommend the AIIB to review the necessary extend of discretionary decision-making concentrated by the AIIB's president and to aim for a more transparent decision-making processes for information disclosure.

### **Feasible Requests for Information Disclosure**

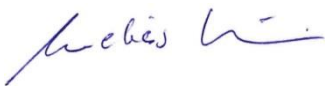
While we welcome the appointment of a Chief Information Disclosure Officer who can be approached in case the Bank does not disclose information in line with its PIP, we are concerned that it is up to the requestor to demonstrate that the bank has failed to comply with its own Policy (paragraph 8.2 (i)) – in particular in light of the ample range of exceptions and the lack of clear time-bounds for information disclosure outlined above.

We therefore recommend the AIIB to mitigate the burden for the requestors. It should be sufficient for the requestor to state the information that was not disclosed.

To comply with *Principle 1 "Presumption in Favor of Disclosure"*, we also encourage the AIIB to make all request for information disclosure publicly available on their website, including the written explanations sent to the requestors in case information disclosure is denied.

We hope to be able to contribute with our comments to the elaboration of a strong Policy on Public Information for the AIIB.

Sincerely yours,



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