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The Environmental and Social Conditionality
of the Asian Infrastructure Investment Bank:
A "race to the bottom" by the multilateral development banks?

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Abbreviations

AIIB	Asian Infrastructure Investment Bank
BP	Bank Procedure
BRI	Belt and Road Initiative
CRF	Compliance Review Function
CRP	Compliance Review Panel
DRS	Dispute Resolution Service
EA	Environmental Assessment
ESA	Environmental and Social Assessment
ESAM Management	Environmental and Social Assessment and Management
ESF	Environmental and Social Framework
ESMF Framework	Environmental and Social Management Framework
ESP	Environmental and Social Policy
ESS	Environmental and Social Standard
FPIC	Free, Prior and Informed Consent
IMF	International Monetary Fund
MDB	Multilateral Development Bank
OP	Operational Policies
PSF	Problem-solving Function
SPS	Safeguard Policy Statement
SR	Safeguard Requirement

UNDRIP Indigenous Peoples	United Nations Declaration on the Rights of
WB	World Bank
WBAM	World Bank Accountability Mechanism
WBESF Framework	World Bank Environmental and Social
WPR	What's the Problem Represented to be

Chapter One: Introduction

1.1 Literature Review

1.1.1 The Implications of the establishment of the Asian Infrastructure Investment Bank for global governance

The Asian Infrastructure Investment Bank ('AIIB') is the first multilateral development bank initiated by China to foster economic growth and promote regional cooperation. Focusing on the development challenges in Asia, the Bank also receives much attention from countries outside the region. Of the fifty-seven founding members, twenty are non-regional, most of which are Western countries.

Much is expected of AIIB. "It will bring along a better investment environment and more job opportunities and trigger greater medium- to long-term development potential on the part of developing members in Asia. This, in turn, will give impetus to economic growth in Asia and the wider world"¹, said Chinese President Xi Jinping at the Bank's opening ceremony. A joint statement made by Italy, France and Germany said that "the AIIB will thus promote economic and social development in the region and contribute to global growth."² Jim Yong Kim, the former president of the World Bank, welcomed the establishment of AIIB, "we believe the AIIB has great potential to help Asia build power plants, roads, bridges, schools, and clinics that will create jobs and boost economies."³

But AIIB is not welcomed by all. The major skeptics are the US and Japan. In a joint press conference, then President Obama and Prime Minister Abe raised their concerns over the new Bank⁴. While the demand of Asia for an effective infrastructure investment institution was well recognized, they appeared uncertain about whether AIIB would follow the best practices developed by the World Bank and IMF in terms of governance, transparency, and environmental and social safeguards. After the UK applied for a founding membership in AIIB, a senior Obama administration official expressed suspicion that "constant accommodation of China" was not sensible⁵. It might be geo-political considerations that motivated Obama and Abe's stance on AIIB, but issues related with governance, transparency, and environmental

¹ XINHUA (2016).

² YAJIMA (2015).

³ KIM (2015).

⁴ GARDEN (2015).

⁵ DYER & PARKER (2015).

and social safeguards are real sources of skepticism. AIIB could disturb the order established by its predecessors.

Bretton Woods institutions, the World Bank and IMF, have been dominating global economic governance since the end of the Second World War. They regulate the international monetary system and promote development across countries. A series of best practices with regard to economic growth, poverty reduction, and environmental and social security are developed from their operations. Yet, the institutions adapt themselves to the changing reality so sluggishly that complaints and challenges are abundant. The dominance of US voting status in Bretton Woods institutions is well preserved despite the changing reality. Recent reforms have increased shares of voting rights to developing countries, but the current voting rights distribution is far from commensurate with the economic reality⁶. China is among those seriously under-represented countries. Aside from the lack of adaptability, Bretton Woods institutions are also criticized for conditionality attached to their assistance programs. In order to receive the assistance, borrower countries usually need to fulfill the policy conditions prescribed by the World Bank and International Monetary Fund ('IMF'). The disaffection with conditionality is derived from multiple reasons, which is beyond the scope of this dissertation. Stubbs and Kentikelenis reviewed the various negative impacts of conditionality on health rights, labor rights, and civil and political rights⁷; Brunswijck argued that World Bank conditionality mars borrower country ownership of projects⁸, which indicates the declining control of projects by borrower countries; a report published by the Independent Evaluation Office of IMF said the conditionality was "felt to be intrusive"⁹. There are many unsolved problems in global governance. In such a background, AIIB was established.

Arguments about the implications of AIIB for global governance can be categorized into three groups. First, AIIB does not matter at all. Hameiri and Jones argue that AIIB is a minor actor and is marginalized in Belt and Road Initiative ('BRI')¹⁰. The evidence they provide is twofold: according to the estimate of Chinese bilateral foreign aid by the US-based AidData project, grants and loans given by China from 2000 to 2014 amount to US\$354.4 billion, which outnumber outright the total amount of AIIB financing as of September 2017; AIIB is hardly involved in BRI in that only around 30 percent of its lending is related to BRI projects at the time of their writing. Their arguments are not without flaws. First, they calculate the amount of

⁶ WEISBROT & JOHNSTON (2016).

⁷ STUBBS & KENTIKELLENIS (2019: 359-380).

⁸ EURODAD (2019).

⁹ LAMDANY & HAMANNI (2007).

¹⁰ HAMEIRI & JONES (2018: 573-593)

Chinese bilateral foreign aid as a whole and do not differentiate between regions, which makes the amount of AIIB financing in Asia apparently negligible. On the one hand, the money that really matters is not that huge. According to the estimate of the same AidData project, financing in Asia is US\$116 billion, around 8 billion per year. On the other hand, the financing activities of AIIB are rapidly expanding. For now, AIIB has committed around US\$20 billion to Asia over the past five years. But it had lent only US\$3.46 billion as of September 2017. Second, bilateral foreign aid and financing activities of AIIB serve their respective purposes, which makes the comparison in terms of the amount of money likely to yield a misjudgment. Bilateral foreign aid is often used by the lending country to advance its own foreign policy agenda and entails a large amount of money due to the exclusion of other financial sources which could interfere in the foreign policy agenda of the richer country in a bilateral project¹¹¹². AIIB's lending activities are motivated by a different logic. According to its Articles of Agreement, AIIB should collaborate with other multilateral and bilateral development institutions, and one of the core functions of AIIB is to encourage private investment. That said, instead of shouldering the cost alone, AIIB takes an inclusive approach to project financing. The same amount of money used in bilateral foreign aid and financing activities of AIIB might not reflect the same significance. Third, the current evidence suggests that the loose engagement of AIIB with BRI projects is an intentional choice made by the Chinese government instead of the outcome of the domestic contestation. "I got a very clear message from the Chinese authorities – that this [AIIB] is going to be an international bank, it is not a Chinese bank, and that I would do it independently," said Jin Liqun, President of AIIB. Jin also said that BRI and AIIB are independent from each other, the latter operating according to the international standards¹³. Marginalization of AIIB might not be the most appropriate way to portray the reality. This thesis thus does not accept the opinion that AIIB is not important and believes that the Bank is able to evoke consequences on global governance.

Second, AIIB is both a partial challenge to and a partial compliance with the current order. The discussion on implications of AIIB for global governance was initially framed in a challenge-or-status-quo dichotomy during the early days of the Bank. But the mainstream view now is that AIIB does not pose a direct challenge to the *status quo* of global governance. Since one of the purposes of AIIB is to promote cooperation, many of the AIIB's projects are co-financed with other Multilateral Development Banks ('MDBs'). At the time of writing (May 2021), AIIB has cooperated on 63 out of its 122 projects with other MDBs. The proportion of co-financed projects can fluctuate each

¹¹ BINDRA (2018: 126-127).

¹² MILNER & TINGLEY (2012: 313-316).

¹³ ANONYMOUS (2019a).

year, but the current close cooperation with other MDBs shows that at least AIIB has not yet started to challenge other banks if it really intends to. AIIB also recruits many of its staff with working experiences in other MDBs such as the World Bank: Natalie Lichtenstein, a former World Bank lawyer, was a legal expert for AIIB Multilateral Interim Secretariat who drafted the AIIB charter. Furthermore, AIIB retains a great degree of autonomy from foreign policies of China and can operate as a multilateral institution according to international standards¹⁴¹⁵. Articles contending that AIIB is a challenge to the system of global governance assume that China is a predominating power in the new Bank and can manipulate the Bank to promote its own interests¹⁶. China indeed holds a substantial part of the whole capital subscriptions, which gives it a veto power. The Bank is still impervious to the manipulation of China due to the above-mentioned facts which demonstrates international stakeholders' active participation in the design and operation of the Bank and the Chinese government's indifference in interfering.

Nevertheless, scholars do not simply conclude that AIIB will maintain the *status quo*. They take a more nuanced approach to the possible influences of AIIB. Overall, they agree that AIIB conforms to global models in principle, but the Bank bears particularities that could lead to change. Gu and Wu maintain that AIIB is established as an alternative institution for development, especially for Asian countries, and will facilitate reforms in the Bretton Woods institutions that rebalance the voting rights in favor of the under-represented developing economies and undermining the US hegemony¹⁷ ¹⁸. Others focus on the Chinese characteristics of AIIB. China has for a long time prioritized norms as such sovereignty and non-interference. ¹⁹A China-initiated Bank could enhance the role of the State in development and differentiate itself from the liberal Bretton Woods institutions. Stephen and Skidmore argue that AIIB signals the worldwide promotion of China's non-liberal and State-led model of political economy *vis-à-vis* the liberal international order²⁰. Ong and Vanhullebusch also discuss the different approach taken by AIIB to decision making process. Ong calls the AIIB approach collectivist and Vanhullebusch thinks it is relational governance. Ong points out that this approach is based on the prioritization of group or community goals and emphasize consensus-based and deliberative decision-making process²¹. The consensual and deliberative decision-making process embodies equality between members and allows for a fine balance between democracy and efficiency. To make a

¹⁴ CHIN (2019: 569-572).

¹⁵ ANDORNINO (2019: 604-606).

¹⁶ STEPHEN & SKIDMORE (2019: 61-70).

¹⁷ GU (2017: 137-142).

¹⁸ WU (2018: 542-545).

¹⁹ MIAN & MENEGAZZI (2018: 47-63).

²⁰ STEPHEN & SKIDMORE (2019: 61-63).

²¹ ONG (2017: 540-545).

decision, members do not use their votes but discuss and then reach a consensus. In another word, this approach does not discriminate against members according to their respective voting rights which are mainly based on capital subscriptions, but treats them as equals in a community. Ong argues that the consensual decision-making adopted by AIIB is part of the “Asian values” approach to global economic governance which could be “a welcome difference” to Western international institutions with strong individualistic orientation²². Vanhullebusch argues that relational governance “focuses predominantly on the relationships between regional and global actors in various fields.”²³ Unlike the rules-based approach, relational governance builds rules to create an environment conducive to cooperation and negotiation instead of constraining the behaviors of members. Relational governance is underpinned by principles of “sovereign equality”, “mutual benefit” and “peaceful coexistence”, the respect for which could build trust between developed and developing countries²⁴.

Third, the establishment of AIIB is one event that reinforces a much broader trend. The global governance is experiencing fragmentation, integration and decentralization. Fragmentation refers to the co-existence of heterogeneous international institutions in a common policy domain²⁵. Morse and Keohane propose a framework of contested multilateralism to understand the phenomenon, arguing that dissatisfied actors build their alternative multilateral institutions to increase their bargaining power *vis-à-vis* the status quo institution. The establishment ADB marked the early fragmentation in the international development domain in Asia. And now Asia witnesses a severe fragmentation in this policy domain. The fact that Asia has three operating regional MDBs with disparate characteristics is outstanding. AIIB drives the trend towards fragmentation further^{26 27}. Integration are both regional and global. Regionally, there is an ongoing process by which States cooperate with each other to achieve a certain goal. There are already many arrangements or institutions that provide platforms for regional integration in Asia. AIIB will accelerate that process²⁸. Globally, the regional MDBs integrate themselves into the architecture designed by the World Bank, which consolidates a set of universal principles. Take the environmental and social protection as an example, the best practices of the World Bank are emulated by other banks²⁹. After the formal establishment of World Bank’s Safeguard Policies and Inspection Panel, ADB and other regional Banks built similar mechanism to

²² ONG (2017: 540-545).

²³ VANHULLEBUSCH (2019: 195).

²⁴ VANHULLEBUSCH (2019: 198)

²⁵ BIERMANN ET. AL (2009: 14-40).

²⁶ ACHARYA (2016: 453-460).

²⁷ LUCKHURST (2018: 216-246).

²⁸ CHEN (2017: 226-248).

²⁹ DEMOERLOOSE (2018: 94-98).

mitigate the negative effects of their projects on the local environment and society. This demonstrates the global integration of considerations for sustainable development³⁰. It is likely that the new Bank initiated by China and ADB lead by Japan bring further global integration through cooperation with the World Bank³¹. Decentralization describes the shifting of authority and the absence of a central authority. Decentralization is both due to the emerging powerful economies that eclipse the established authority and the dysfunction of the arrangements made by the established authority, take the Great Recession as an example^{32 33}. AIIB reflects and adds to the decentralization in global governance^{34 35}.

The first type of arguments about AIIB's implications for global governance has been rejected by this thesis and the other types of arguments have their own insufficiencies. Both of the views that AIIB is a partial compliance and a partial challenge and that AIIB is one event reinforcing a much broader trend are primarily concerned with what AIIB is instead of what AIIB does. They focus on analyzing remarkable qualities of AIIB, its mission of promoting cooperation, collectivist approach to decision making or relational governance, and manifestation of the emerging economies' disaffection with the *status quo* institutions, etc. Their arguments about the implications of AIIB for global governance are based on those qualities it has, while citing a few things AIIB does to confirm their conclusions. This research, while providing a useful guide, has to be complemented by more insights into what AIIB does. This thesis, focusing on the environmental and social conditionality practices of AIIB in particular, will make a contribution to the general discussion about AIIB and the future of global governance.

1.1.2 Environmental and Social Conditionality of Multilateral Development Banks

In order to finance a project, a MDB should ensure that necessary environmental and social conditions are met as dictated by its own policies in order to avoid serious harm on the area where the project is implemented. The environmental and social conditionality consists of safeguard policies and accountability mechanism. The safeguard policies stipulate the obligations of a MDB in the environmental and social dimension, while the accountability

³⁰ *IBIDEM*.

³¹ LUCKHURST (2018: 216-246).

³² LUCKHURST. (2018: 185-206).

³³ BARDHAN (2002: 185-205).

³⁴ YANG (2016: 754-778).

³⁵ CHIN (2016: 11-26).

mechanism compensates people for the MDB's noncompliance with the safeguard policies. Further explanation of the environmental and social conditionality will be provided in the next section. This section aims to briefly review the extant research on the environmental and social conditionality of MDBs with a specific focus on the three Banks this dissertation is studying.

Probe into the environmental and social conditionality of MDBs is of great value, because it marks the transformation of MDBs in global governance. Researching AIIB from the environmental and social angle will be rewarding. Traditionally, MDBs always shunned the discussion of their obligations concerning the negative impact of their projects on the human rights landscape, which is exemplified by the environmental and social issues, by referring to the "non-interference in political affairs" doctrine in their Articles of Agreement^{36 37 38}. Yet, in the 1980s, the connection between the human rights protection and the economic development was recognized by MDBs and safeguard policies were first introduced by the World Bank to handle the human rights ramifications in the borrower countries resulting from its projects. ³⁹In 1993, the World Bank set up the Inspection Panel to secure the compliance with safeguard policies and other MDBs followed suit. MDBs no longer refrain from environmental and social issues in their efforts to boost economic growth, as is shown by their institutional design which incorporates environmental and social considerations. They are moving towards "sustainable development"⁴⁰ and transforming from lender to norm-setter in terms of human rights protection in the global governance⁴¹.

The extant research has several branches. First, some scholars are interested in exploring the reasons for the establishment of safeguard policies and accountability mechanism. Pereira et al. argue that the pressure from the civil society actors for World Bank reforms was so intense that the Bank's Management had to incorporate their appeal for accountability in order to prevent the social movements from inflicting more loss on the Bank⁴². Anders Uhlin argues that the monitoring, criticism and challenging from the civil society organizations influenced the ADB's decision to set up an accountability mechanism⁴³. Susan Park adopts a constructivist perspective to explain both the establishment of the Inspection Panel of the World Bank and its institutional structure. She argues that the normative ideas such as democracy, transparency and participation were prominent with the end of the

³⁶ BRADLOW & FOURIE (2020: 317-318).

³⁷ CRIPPA (2010: 557-558).

³⁸ FUJITA (2013: 20-21).

³⁹ MOERLOOSE (2018: 96).

⁴⁰ HANDL (1998: 642-643).

⁴¹ DANN & RIEGNER (2019: 537-559).

⁴² PEREIRA ET. AL (2017: 11-14).

⁴³ UHLIN (2015: 58-77).

Cold War and that they were brought to the policy debates by civil society organization to shape the discussion over reforms of the World Bank⁴⁴. Dann and Riegner, and Susan Park note that US used its power of purse to strengthen the environmental and social protection and accountability across MDBs so that it could control and increase the efficiency of those institutions^{45 46}. Based on institutional isomorphism, Susan Park tries to explain the creation of accountability mechanism in ADB whose organizational culture seemed incompatible with the mechanism. She argued that, first, US coerced the Bank to build accountability mechanism like other functionally similar Banks so as to enhance its efficiency, second, ADB emulated the World Bank's response to an uncertain environment where the opposition against the MDBs' projects was rampant so as to preserve legitimacy⁴⁷.

Second, others also try to elaborate the obstacles to the efficiency of accountability mechanism. Suresh Nanwani, focusing on the World Bank and ADB, listed some barriers that project-affected people who use accountability mechanism as the last resort to raise their grievances could encounter. First, linguistic problems hinder the local people's access to information on projects; second, procedural technicalities set a high threshold for the filing of complaints; third, the possibility of retaliation frightens away some people; fourth, limited inclusion of claimants in the process of investigation could lead to an unsatisfactory outcome; fifth, the independence of accountability mechanism is questionable in some Banks; sixth, monitoring in the outcomes of investigations is absent; seventh, accountability mechanism is not empowered to render a legal redress to project-affected people.⁴⁸ Sovacool et al. argue that the politics within the World Bank influence the efficiency of the Inspection Panel whose independence and authority are undermined by the Management.⁴⁹ Susan Park argues that the impediments faced by ADB's Accountability Mechanism include feeble internal advocacy for accountability, a unfriendly organization culture and the Management's interference in the works of the Accountability Mechanism.⁵⁰ Sovacool analyzed five factors that shackle the Inspection Panel: first, the complexities involved in the procedure to file a complaint; second, the lack of mandate for the Panel to overwhelm the opinion of the Management and to provide legal relief; third, resistance from the Management; fourth, chances of retaliation against complainants; fifth, the Bank's loan approval culture⁵¹.

⁴⁴ PARK (2010: 24-29).

⁴⁵ *Id.* (2017: 776-801).

⁴⁶ DANN & RIEGNER (2019: 537-559).

⁴⁷ PARK (2014: 217-239).

⁴⁸ NANWANI (2008: 199-226).

⁴⁹ SOVACCOL ET. AL (2018: 867-895).

⁵⁰ PARK (2014: 231-234).

⁵¹ SOVACCOL (2017: 893-903).

Third, the environmental and social conditionality of MDBs is also approached from a legal perspective. Meerssche argue that World Bank's new Environmental and Social Framework demonstrates the solipsism of the Bank.⁵² This argument is based within a debate about the source of ultimate legal authority for the operations of international organizations⁵³. Meerssche argue that, instead of subject to an exogenous normative framework, the Bank's policy and practice are based on the endogenous process where member states dominate and outside actors, e.g. civil society organizations, only produce indirect political pressures⁵⁴. The content of the new ESF only makes subtle references to general sources of international law⁵⁵. Dann and Riegner state that the new ESF embodies three shifts: more open to the use of country legal systems in addressing the impact of projects, enhancing the borrower autonomy; accentuating the role of individuals whose rights should be protected from violations and who can hold the Bank accountable; the expansion of the original thematic coverage of safeguard policies, which makes references to other international regimes.⁵⁶ Houghton notices that the extensive consultation process, which is perennial and involves engagement with various actors, challenges states' monopoly of the international law-making.⁵⁷ She argues that this participatory approach taken by the World Bank is an attempt to introduce democracy into the decision making process in global governance⁵⁸. Suzuki and Nanwani conduct a comprehensive elaboration on the legal aspects of accountability mechanisms of MDBs⁵⁹. They contextualize the establishment of accountability mechanism in both a debate over the immunities of international organizations and the global decision process which not only reflects the preferences of the powerful member states but also is influenced by civil society actors⁶⁰. They state that the structural limitation on an individual's access to accountability mechanism is the power of state⁶¹. Daugirdas and Schuricht regard accountability mechanism as the acknowledgement by MDBs of their obligations under customary international law to provide remedies to people negatively affected by their activities⁶².

While research about the World Bank and ADB is abundant, the academic investigation AIIB has received is disproportionate to the attention it has

⁵² MEERSSCHE (2017: 157-158).

⁵³ MEERSSCHE (2017: 175).

⁵⁴ MEERSSCHE (2017: 175-176).

⁵⁵ MEERSSCHE (2017: 176-177).

⁵⁶ DANN & RIEGNER (2019: 537-559).

⁵⁷ HOUGHTON (2019: 466-468).

⁵⁸ HOUGHTON (2019: 481-482).

⁵⁹ SUZUKI & NANWANI (2005: 210-211).

⁶⁰ SUZUKI & NANWANI (2005: 182-189).

⁶¹ SUZUKI & NANWANI (2005: 200).

⁶² DAUGIRDAS & SCHURICHT (2020: 54-87).

captivated. One crucial reason might be that data about AIIB's environmental and social conditionality in practice is very limited. In comparison with the World Bank and ADB who publish much information on their websites, AIIB currently hold much in secrecy. Most of the current research is based on the policy documents published by AIIB. The mainstream view is that AIIB is not apparently divergent from the norms of other MDBs. Hanlon states that AIIB's environmental and social framework reinforces the current sustainability norms⁶³. Marsden said that AIIB's safeguard policies emulated the international best practices⁶⁴. Gransow and Price compared AIIB's ESF as a policy of social risk management with China's domestic policies in social stability risk assessment and concluded that AIIB deviates from Chinese experiences and is aligned with the existing international standards⁶⁵.

Nevertheless, AIIB's compliance with its policies is still an enigma. Radavoi and Bian, through their critical discourse analysis, point out that words in AIIB's safeguard policy documents are "carefully deprived of their dimension of action", confirming the real risks of AIIB operating with less environmental and social considerations⁶⁶. Many also express their worry about the ripple effects of AIIB's possibly less stringent environmental and social practices on other MDBs, which is encapsulated in "race to the bottom"^{67 68 69 70}. Their suspicion is yet not substantiated by evidence drew from AIIB's performances in implementing its safeguard policies. The view that AIIB would trigger a race to the bottom is no more solid than the view that AIIB follows international norms⁷¹. To make a contribution and engage with the current research on AIIB's environmental and social conditionality, this thesis will examine AIIB's policies in practice.

1.2 Definitions

1.2.1 Environmental and social conditionality

To define environmental and social conditionality, a general definition of conditionality is necessary. MDBs provide help to the development of

⁶³ HANLON (2017: 541-554).

⁶⁴ MARSDEN (2016: 1-20).

⁶⁵ GRANSOW (2019: 289-311).

⁶⁶ RADAVOI & BIAN (2018: 1-18).

⁶⁷ BESSLER (2016).

⁶⁸ LAURANCE (2016).

⁶⁹ CHEN (2020: 697-727).

⁷⁰ WIHTOL (2015).

⁷¹ STEPHEN & SKIDMORE (2019).

countries, usually in the form of loans. Conditionality refers to the conditions that shall be fulfilled in the process of the international development cooperation and encompasses a wide range of subject matters such as governance, economics, environmental and social matters, etc. Conditionality is usually imposed on the borrower countries so that the governments are restrained from adopting policies abusive of the money they borrow and detrimental to the long-term development⁷². In the past, the World Bank required of borrower countries implementation of numerous conditions, such as reform of the financial system and restraint on central government expenditures⁷³. Those conditions are legally binding, which can influence the disbursement of loans. But, in practice, the breach of conditionality does not necessarily lead to the suspending of loans or any other forms of remedial measures. For instance, the Wapenhans Report in 1992 found overwhelming noncompliance with loan agreements by borrower countries and linked this phenomenon to the World Bank's approval culture, namely, the Bank staff who were evaluated based on the disbursement efficiency were incentivized to ignore noncompliance⁷⁴.

While environmental and social conditionality is also legally binding and vulnerable to the possibility of being violated without consequences, it here refers to conditions imposed on both the MDBs and the borrower countries. The domains covered by environmental and social conditionality include biodiversity, rights of the indigenous people, involuntary resettlement. The MDBs are responsible for screening out projects that are likely to have serious environmental and social impacts on the local area, preventing environmental and social damage during implementation of the projects, and carrying out remedial measures when the Banks fail to comply with relevant policies in the former two phases to mitigate the harms. That the MDBs do not, at least currently, sanction the borrower countries in the breach of environmental and social conditionality reflects the "political prohibition" doctrine in their Articles of Agreement⁷⁵.

1.2.2 Safeguards and accountability mechanism

Environmental and social conditionality is composed of two parts, safeguards and the accountability mechanism. The purpose of safeguards is to avoid or mitigate adverse impacts of projects financed by the MDBs on environment and society. The safeguards delineate the obligations of the MDBs and the

⁷² KOEBERLE (2005: 20).

⁷³ DREHER (2009: 161-192).

⁷⁴ The Wapenhans Report of the Portfolio Management Task Force of the World Bank, 22 September 1992, 11536, *Effective implementation: key to development impact*.

⁷⁵ SUZUKI & NANWANI (2005: 210-211).

borrower countries throughout a project cycle in environmental and social risks assessment, mitigation of adverse impacts, and consultation with indigenous people, etc.

While safeguards prescribe the obligations of the MDBs, accountability mechanism is a regime set by the Banks themselves enabling people affected by the adverse impacts associated with projects financed by the Banks and demand compensation. The emergence of accountability mechanism is tightly associated with the expansion of the activities of the MDBs which brings increasing interactions between the MDBs and non-state actors such as individuals, civil society organizations, and indigenous people, etc. For those whose rights are violated by the projects financed by MDBs, the accountability mechanism provides a forum to file complaints.

Yet, the accountability mechanism is not a court running in the orbit of international law. It is an internal governance tool to enhance the operational effectiveness and discipline of the organization and must abide by the internal policies. The accountability mechanism accepts a case of complaint according to the Bank's policies. And filing a complaint through the accountability mechanism is a means of last resort. People who believe they have been adversely influenced by the projects should first exhaust all the tools the Management and the borrower countries have provided them to address their concerns. If not satisfied, they can then appeal to the accountability mechanism. Furthermore, the accountability mechanism is not mandated to give a legal redress. The approval of the Management and the Board of Directors is indispensable for the addressing of the complaints. Therefore, the accountability mechanism cannot always offer protection. If the Management or the Board rejects the evidence of noncompliance presented by the accountability mechanism and refuses to assume responsibility for the injuries sustained by the people, harms will not be redressed.

The independence of the accountability mechanism is institutionally guaranteed. Independence here means that the accountability mechanism can stick to environmental and social concerns despite the influences from the Management or the Board. The members are selected based on their expertise in developmental issues. They are also hired on a non-renewable term and cannot be recruited unless a certain period, depending on the respective policies of MDBs, has passed since their service within the Bank.

Moreover, there is a crucial caveat. AIIB did not have an accountability mechanism in effect until March 2019, which in reality is not different from the trajectory of environmental and social conditionality in other MDBs who set up safeguards first and the accountability mechanism later.

1.3 The research questions and methodology

To understand the implications of the establishment of AIIB for global governance, this dissertation aims to test the veracity of the “race to the bottom” argument. The argument opines that MDBs operating in Asia will undermine their environmental and social standards as a response to the competition brought by AIIB who leverages its lower standards as the attraction for borrowers. To test the argument, this research tries to answer two specific questions. First, is AIIB operating in a lower environmental and social standard in comparison with the World Bank and ADB? Second, have the World Bank and ADB lowered their environmental and social standards as a response to the competition AIIB has brought about in Asia in attracting borrowers?

To address the questions, this research conducts a comparative analysis on the environmental and social standards of the three Banks. The relative level of the environmental and social standard is deduced from a comparison made by a qualitative probe into how much protection is offered by each MDB. The comparison involves critical evaluation of the policy documents of safeguards and the accountability mechanism and the environmental and social conditionality practices.

The comparison is both horizontal (across institutions) and vertical (across time periods). The horizontal comparison addresses the first question and the vertical the second. The timeframe of the vertical comparison is from 2010 to 2020. The first time period ranges from 2010 to 2015, encompassing the environmental and social standards of the World Bank and ADB in the aftermath of the global financial crisis. The second period ranges from 2016 to 2020, encompassing the environmental and social standards of the World Bank and ADB in the context of the creation of AIIB.

The comparison of policy documents is related with both research questions, while it is primarily concerned with the first one. The policy documents of the current safeguards and accountability mechanism adopted by AIIB are horizontally compared with those of the World Bank and ADB to investigate the first question. And a vertical comparison is conducted on the World Bank with regard to safeguards. The World Bank updated its safeguards right around the time when the AIIB was established, which necessitates a vertical comparison so as to ponder over the second question. However, ADB does not have any updated version of safeguards or accountability mechanism which can reflect the new circumstances brought by AIIB.

The comparison of policy documents needs a critical analysis of policy documents, which, in this thesis, is based on the “What’s the problem

represented to be?” (‘WPR’) approach proposed by Bacchi⁷⁶. This approach, informed by discourse analysis, treats the “problems” which the policy aims to solve not as fixed and exogenous to the policy making process, but as products of the creative activities in the policy making process. It calls into question the constitution or the representation of problems. This approach quite fits the research of the environmental and social conditionality. As MDBs are shackled by the “political prohibition” doctrine stipulated by their Articles of Agreement, the definition of the environmental and social problems within their institutional mandate is highly contested. As mentioned before, environmental and social issues transformed from “domestic political affairs” to integral parts of “sustainable development”. Therefore, using the WPR approach is appropriate and helpful for evaluating the environmental and social standards. Based on the WPR approach, the analysis of policy documents focuses on three aspects: clarification of the representation of problems; the presuppositions or assumptions underlying the representation of problems; and what is left unproblematic by the representation of problems. In the original WPR approach, the analysis of policy documents should also include the study of the history of the represented problems, alternative representations of the problems, and effects of the representation of the problems. This thesis makes modifications on the original method based on two considerations. First, the purpose of this part of the research is differentiating the policies *per se* across institutions, indifferent to both the temporal development of certain policy issues and how the policy problems may be represented in another way. Second, the analysis of the effects generates repetition. According to the WPR, the analysis of the effects is based on the explication of the hidden assumptions of the representation of problems. Three types of effects are involved, discursive effects, subjectification effects, and lived effects. Discursive and subjectification effects refer to the limitations imposed on what could be thought as problematic and the way subjects are constructed in the policy. Both of them are tightly connected with the hidden assumptions of the representation. In order not to make repetition and make the thesis more concise, analysis of these two is left out. Lived effects deal with the material impact of the policy, which is not relevant to this part of the research. The comparison of policy documents is concerned about the environmental and social standard set by policies, not its impact on the reality.

The comparison of the environmental and social conditionality practices focuses on whether the accountability mechanism can effectively handle allegations of harms, and it is conducted both horizontally and vertically. The primary indicators for mishandling are clashes in viewpoints between critical stakeholders in the process of complaints addressing and cases of popular

⁷⁶ BACCHI (2009: 1-24).

protesting or criticism from civil society organizations to the projects financed by the MDBs. Since information that directly signals the performances of the accountability mechanism in reality is lacking, this thesis has to gauge it indirectly. If there are many clashes and protests, the accountability mechanism probably is not contributing to the redressing of harms, implying a low level of environmental and social standards. The usage of the indicators is based on three reasons. First, a qualitative probe into the outcomes of each complaint sent to accountability mechanism through viewpoint clashes fits the purpose of the research. Agreement between relevant parties is always the requisite for successful resolution of grievances. For instance, the consensus between the Management or the Board and the accountability mechanism is the procedural core in carrying out recommendations presented by Inspection Panel in the World Bank's case. If the reports of the accountability mechanism are denied of their validness, the chances of harms not remedied are high. Second, protesting has been an important tool for the project-affected people. It is thus a useful indicator when there is malfunction of the accountability mechanism. Third, criticism from civil society organizations often demonstrates evidence of MDB's noncompliance. It is also a useful indicator for the MDB's failure to properly redress grievances. This thesis draws upon the documents published by MDBs to collect data about viewpoint clashes and news reports to collect data about project-related protests.

The research on the World Bank and ADB is primarily based on the examination of viewpoint clashes, while supplemented by a search for cases of protesting. Since these Banks have built an institutional channel for complaints, it is wise to pay attention to their official documents. Yet, a search for cases of protesting is also necessary. When the accountability mechanism rejects a case of complaint or the Management or the Board substantially disagrees with the accountability mechanism, the institutional channel is blocked. In such circumstances, the project-affected people, if they still believe they are harmed by the projects, could protest. Therefore, protesting is a supplementary but still important indicator.

However, the research on AIIB is solely based on cases of protesting and criticism from civil society organizations. Reasons are twofold. First, protesting, for a long time, might have been the most practical tool the project-affected people have at hand when they believe they are harmed by AIIB's noncompliance with safeguards. AIIB didn't built its accountability mechanism until March of 2019. There was not an institutional channel for the grievances which the tools provided by the Management fail to address. Second, after the establishment of the accountability mechanism, AIIB currently does not publish any information on its website concerning the working of the mechanism. The examination of the performance of AIIB's mechanism has to rely on cases of protesting and criticism from civil society organizations.

The originality of the thesis lies in using a WPR approach to analyze and compare the policies of the three Banks and going beyond policy documents to study the policy practices.

Chapter Two: The Asian Infrastructure Investment Bank environmental and social conditionality

2.1 The Environmental and Social Framework of AIIB

The “race to the bottom” argument, contending that MDBs with operations in Asia will lower their environmental and social standards, is based on the fact that MDBs can have varying obligations under general international law whose implementation depend on the ratifying State. Besides, the Articles of Agreement of the three banks only give clear mandate in the economic development while not mentioning any environmental and social protection or sustainable development. AIIB, as a new Bank established in a world where the need for sustainable development is widely recognized, only shyly states in its Articles of Agreement that it shall foster “sustainable economic development”. MDBs’ commitment to environmental and social issues or sustainable development that covers economic, social and environmental dimensions in a balanced manner is voluntary and varies in degrees. The thesis looks at the safeguard policies and the independent accountability mechanisms of the Banks to compare their environmental and social standards. This section focuses on the Environmental and Social Framework (‘ESF’) of the AIIB. The ESF is the safeguard policy of the AIIB. Its substantive part is composed by Environmental and Social Policy (‘ESP’) and Environmental and Social Standards (‘ESS’). Both of ESP and ESS stipulate the mandatory requirements for the Bank and the borrower countries, while ESS deals with more specific matters which include Environmental and Social Assessment and Management, Involuntary Resettlement, and Indigenous Peoples.

At the time of writing, the AIIB published two versions of the ESF, one in 2016 and the other in 2019. They show similar content except that the latter version is supplemented with procedural details for the implementation of the ESF. The present dissertation does not differentiate between them in the policy analysis, in that the added procedural details do not make the latter version substantially different from the former.

The overarching problem represented by the ESF is the compatibility between environmental and social sustainability of projects and economic development through investing in infrastructure. According to its Articles of Agreement, ensuring environmental and social sustainability of projects is not within the mandate of the AIIB. While the ESF can be regarded as the efforts of the AIIB in environmental and social governance (ESG), it treats economic development through infrastructure financing, the institutional purpose of the AIIB, as the first-tier priority. The first objective stated by the ESF is to

“reflect institutional aims to address environmental and social risks and impacts in Projects”⁷⁷.

The overarching problem summarizes the commonality of the more detailed and operational problems included by the ESF. While these problems are derived from the same source, they are allocated to two different actors, namely, the Client and the Bank. The Client is expected to assume a leading role in the resolution of problems. It bears the main responsibility for the success of projects. The leadership problem for the Client is operationalized to be the assessment and management of the environmental and social risks and impacts of projects. The ESF requires the Client to identify potential risks and design countermeasures. While the assessment and management cover broad issues, the involuntary resettlement and the rights of indigenous peoples, which are usually embroiled in infrastructure construction, are of particular concern for the Client. When acquisition of land is necessary for the infrastructure project, the Client is responsible for drafting a plan of compensating the loss of the people who are involuntarily removed from their original place of residence. If indigenous peoples live in the area where the project is financed, the Client is also required to ensure that the project fully respects the rights of indigenous peoples and yield benefits for them.

The problem for the Bank is represented to be guiding and supervising the Client. On the one hand, the guiding is operationalized as categorization of projects. By categorization, the Bank assigns a project into a three-leveled hierarchy of potential environmental and social risks and impacts. The category of a project determines the expected degree of efforts to meet the requirements of the ESF from the Client. The ESF states, “the Bank screens and categorizes each proposed Project to determine the nature and level of the required environmental and social review, type of information disclosure and stakeholder engagement for the Project.”⁷⁸ The scale and depth of the Client’s assessment and management are required to be consistent with the status of the project in the hierarchy. On the other hand, the Bank supervises the Client’s compliance with the requirements under the ESF and should properly deal with the Client’s noncompliance. Environmental and Social Due Diligence is an important part of the supervision. By undertaking Due Diligence, the Bank supervises the Client’s performances in the assessment and management. Documents submitted by the Client are supposed to be rigorously reviewed by the Bank in order to prevent the Client contravening the ESF.

⁷⁷ Policy Document of Asian Infrastructure Investment Bank, 13 March 2019, *Environmental and Social Framework*. No number available for the document.

⁷⁸ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

The representation of problems is underpinned by a particular understanding of development and a MDB's role in development by the AIIB, as is manifested in the ESF. The sustainability of development is split into economic, environmental, and social dimensions. Environmental and social sustainability is the condition with which sustainable economic development is achieved. The ESF is aimed at addressing environmental and social issues that could jeopardize economic development, instead of propelling environmental and social development in parallel with economic development. The burden of reaching the objective is on the Client instead of the Bank who acts as a facilitator. By guiding and supervising the performances of the Client, the Bank pushes the Client to fulfill its obligations as the leader and stops at proactively supporting environmental and social development of projects.

Instead of adopting a holistic perspective to advance sustainable development, the AIIB's safeguard policy is based on compartmentalization of development into economic, environmental, and social.

Sustainable development is a subtly defined and all-inclusive concept that, if applied to practice, demands actions in multiple dimensions in a comprehensive manner. The Brundtland Report from the World Commission on Environment and Development defines it as meeting "the needs of the present without compromising the ability of future generations to meet their own needs"⁷⁹. The report associates the development challenges, which include the expansion of starvation, illiteracy, inequality and the deterioration of the natural environment, to the mentality that compartmentalizes development into economic, environmental and social dimensions and is narrowly preoccupied with economic growth⁸⁰. By proposing sustainable development, the report appeals for an integrated approach that requires policies pursuing economic growth, environmental protection, democratic institutions, and international cooperation simultaneously⁸¹. That the promotion of sustainable development entails a holistic mentality is a global consensus. The Sustainable Development Goals promulgated by the United Nations reflects precisely the spirit of the Brundtland Report. That said, MDBs, highly aware of the significance of sustainable development, should expand their institutional mandate which currently is economic, if they intend to incorporate "sustainable development" into their operations. One outcome of the mandate expansion is the interference in controversial political activities, such as the building of democratic institutions and the making of laws that prevent economic growth at the cost of environmental protection. Few Banks would transform the concept into reality.⁸² So does the AIIB. The ESF

⁷⁹ BRUNDTLAND ET. AL (1987: 16).

⁸⁰ BRUNDTLAND ET. AL.(1987: 17).

⁸¹ BRUNDTLAND ET. AL (1987:37).

⁸² BRUNDTLAND ET. AL (1998: 645).

mentions “sustainable development” rarely and the term is used aspirationally. As described in the ESF, the AIIB endorses sustainable development. Yet, how the actions required from the Bank and the Client by the ESF are measured against sustainable development is not clear. Instead, the ESF states that “the Bank subscribes to the principles of sustainable development”⁸³ without detailing how the principles are operationalized.

In substitution for sustainable development, assumptions about compartmentalization of economic, environmental, and social elements in development dominate the policy document. Both of compartmentalization and a holistic perspective accept that development has multiple inter-related dimensions and economic development should be achieved without adverse impacts in other dimensions. The Client is required to “integrate environmental and social considerations into policies, plans and programs and evaluate their inter-linkages with economic considerations”⁸⁴ in the environmental and social assessment. In addition, the Bank expresses its willingness to integrate environmental and social elements in its decision-making process⁸⁵. The distinction between the two approaches is that compartmentalization builds a hierarchy of importance for these dimensions and treats economic development as the top priority while putting environmental and social dimension into the secondary level. The ESF says that the Bank “supports infrastructure and interconnectivity to promote economic growth”⁸⁶, but it never mentions how environmental and social development is boosted. In place of “development”, “soundness”, and “sustainability” are used to indicate that the Bank has a lesser expectation on its role on environmental and social dimensions of projects. In another word, the safeguard policy is a mere restraint on the Bank financial activities to foster economic growth so that risks could be robustly managed. By compartmentalizing development, the ESF is able to dictate the approach to economic development without making a commitment to environmental and social development. This particular way of conceiving the relationship between economic, environmental and social elements in operations is equivalent to the principle of “do no harm”. The principle of “do no harm” is derived the World Bank’s own explanation of the objectives of its former safeguard policies. The document states that “the objective of these policies is to prevent and mitigate undue harm to people and their environment in the development process”. Like these policies, the ESF helps to reduce and

⁸³ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

⁸⁴ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

⁸⁵ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

⁸⁶ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

manage the risks associated with projects financed by the Bank, not intending to make improvements on environmental and social conditions. The biggest advantage in comparison to the holistic perspective for a MDB is that the Bank is able to depoliticize its operations. The compartmentalization is a distortion of the holistic perspective on sustainable development that is deprived of political contents. Refraining from incurring change on the client's environment and society denotes that the Bank does not impose policy conditions which are highly political⁸⁷.

As established by the ESF, the problem of the compatibility between environmental and social sustainability and economic development is subdivided to the leadership problem of the Client and the guidance and supervision problem of the Bank. Such a problematization strengthens the ownership of projects by the Client and squeezes out the Bank's influences on the Client. The Client is empowered to command its projects. As a result, environmentally and socially risky projects might be more likely to be approved by the Bank, which is left unproblematic.

In the preparation, the *ex ante* screening of projects are highly flexible, which is conducive to the approval of risky projects. First, projects are ambiguously categorized, implying that the real environmental and social risks are not accurately demonstrated by the category of a project. The ESF states that "a Project is categorized A if it is likely to have significant adverse environmental and social impacts that are irreversible, cumulative, diverse or unprecedented."⁸⁸ Words like "likely" suggest freedom of interpretation and manipulation. Second, the categorization has to be substantiated with the environmental and social assessment (ESA) prepared by the Client, which is vulnerable to the manipulation of the Client. The ESA submitted by the Client is the main reference used by the Bank. Once the risks and impacts are identified by the ESA, the Client must prepare its plans of managing those risks and impacts. Yet, a finished management plan is not a mandatory requirement for a project to be approved by the Bank⁸⁹, which demonstrates high flexibility and adds uncertainty about whether the risks and impacts can be appropriated managed by plans designed afterwards.

In the implementation, the ESF emphasizes the use of country system (UCS), which may incur results materially inconsistent with the objectives of the ESF. The UCS refers to the application of part or the whole of the Client's existing environmental and social management system, instead of the operational policies under the ESF, to the project. The emphasis on UCS is problematic

⁸⁷ SKEBBA (2019).

⁸⁸ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

⁸⁹ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*

in two ways. First, the UCS is not itself without risks. Since the 2005 Paris Declaration⁹⁰, donors and developing countries have been rallied around a consensus: more use of country systems in international development cooperation⁹¹. But donors can be reluctant to commit themselves to the agenda of the Declaration. They are often concerned that countries who need international aid to promote development usually do not have a robust country system to ensure wise use of the money⁹². The weaknesses in country systems is a daunting factor,⁹³ and the environmental and social safeguards may be compromised.⁹⁴ Second, the Client, whose country system may be flawed, takes a leading role in the UCS. The Client is encouraged to use its own system. “The Bank believes that, in many cases, the best way to strengthen these systems is to use them at the operational level.”⁹⁵ The ESF recognizes the need to design gap filling measures for a better UCS. But the power of designing is at the hand of the Client. Not only the details about the measures, but also the monitoring approach of the Bank shall be defined by the Client⁹⁶. It is problematic because the Bank is confronting the risks of the Client disabusing its leadership.

2.2 Policy on the Project-affected People’s Mechanism

The Project-affected People’s Mechanism (PPM) is the accountability mechanism of the AIIB, the other part of the environmental and social conditionality of the AIIB. The PPM is effective as of 31 March 2019. It is not a separate institution, but one of the functions of the Complaints-resolution, Evaluation and Integrity Unit (CEIU) which belongs to the Bank’s Oversight Mechanism (OM). The OM is an instrument with which the Board of Directors supervises the management and operation of the Bank. The CEIU is a constitutive institution of the OM, in charge of evaluation of the Bank’s investment portfolio, investigation of fraud and corruption, and project complaints handling. According to AIIB’s policy, the CEIU handles ESF-

⁹⁰ OECD (2005).

⁹¹ OECD (2011).

⁹² DEUTSCHER ET. AL (2010: 49).

⁹³ KNACK (2014: 839).

⁹⁴ MOERLOOSE (2018: 169).

⁹⁵ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

⁹⁶ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

related complaints “initiated by Project-affected People alleging environmental and/or social harm from AIIB-financed operations⁹⁷.”

For a proper functioning of the CEIU, the Bank respects its independence. Although the staffing and budget components of the CEIU are subjected to the general regulations of the AIIB, the Bank clearly states that it protects its independence with regard to evaluation of the investment portfolio and complaints handling by providing an adequate budget for these functions⁹⁸. Provisions on the appointment of the head of the CEIU also value independence. The CEIU is headed by a Managing Director (MD) who is appointed by the President in consultation with the Board⁹⁹. The MD-CEIU serves on a single nonrenewable five-year term. He or she shall not be a former Staff Member or Consultant, nor shall be eligible for future job opportunities in the Bank¹⁰⁰.

The CEIU handles complaints in accordance with the PPM-policy. The problem in the policy is the failure of the Management to deal with environmental and social risks and impacts according to the ESF. Essentially, the policy is aimed at a managerial problem. The complaints of project-affected people are not represented to be the real problem, which are instead always included in the technical description of the functions of the PPM. The policy states that the mechanism will “receive submissions from Project-affected people”¹⁰¹ and provide “an independent and impartial review of submissions from Project-affected people¹⁰².” The real focus is represented to be the management of environmental and social risks and impacts as a whole. Before introducing the functions of the PPM, the policy first relates the PPM to the Environmental and Social Policy (ESP), an element of the ESF, which guides the management of the environmental and social risks and impacts of projects¹⁰³. It is implied in the statement about the connection between the ESP and PPM that the mechanism is established as an integrated part of the management of risks and impacts. The PPM not only provides remedies for

⁹⁷ Policy Document of Asian Infrastructure Investment Bank, 10 July 2019, *Terms of Reference for the Complaints-resolution, Evaluation and Integrity Unit*. No number available for the document.

⁹⁸ Policy Document of Asian Infrastructure Investment Bank, 10 July 2019, *Paper on the Oversight Mechanism*. No number available for the document.

⁹⁹ Policy Document of Asian Infrastructure Investment Bank Terms of Reference for the Complaints-resolution, Evaluation and Integrity Unit.

¹⁰⁰ *IBIDEM*.

¹⁰¹ Policy Document of Asian Infrastructure Investment Bank, 7 December 2018, *AIIB Policy on the Project-affected People’s Mechanism*. No number available for the document.

¹⁰² Policy Document of Asian Infrastructure Investment Bank *AIIB Policy on the Project-affected People’s Mechanism*.

¹⁰³ Policy Document of Asian Infrastructure Investment Bank *AIIB Policy on the Project-affected People’s Mechanism*.

affected people in cases of serious noncompliance by the Bank, but also mends the gaps in the Management's risk control.

The problematization is sustained by a presupposed priority on finding a solution that can smooth the project implementation. The complaints of the project-affected people are portrayed as risks and impacts instead of injustices that the Bank may or may not be responsible for. The problem is deprived of moral imperatives. The PPM is not a platform established primarily for the people to seek justice for the harms they suffer. By problematizing the policy issue as a problem in the managerial dimension, the PPM-policy implies that the complaints are manageable and that a solution can be found for projects to proceed. The orientation for a solution enabling project implementation is implicated both in the functions of the PPM and the effect of a submission on a project. First, the functions allow for a high degree of flexibility which is conducive to a solution. The PPM has three functions. Through Project Processing Queries, the people submit their concerns over simple matters, such as noise and dust caused by the project, and the Management shall include in its feedback the solution. The people can also request for Dispute Resolution where a dialogue is arranged between the AIIB, the people and/or the Client on the purpose of reaching agreement on actions to redress people's concerns. The people can also ask for Compliance Review which is aimed at investigating the Bank's noncompliance with its obligations under the ESF and designing action plans to redress the harms resulting from the noncompliance. While Compliance Review must be associated with the Bank's obligations, Project Processing Queries and Dispute Resolution only need to find a solution to the complaints made within the policy realm of the ESF. Apparently, people are encouraged to use the highly flexible Project Processing Queries and Dispute Resolution. Unlike Compliance Review, they circumvent the tricky question of whether the safeguard policy is appropriately implemented or who should be responsible for the harms. As long as the people find the solution provided by the Bank and the Client satisfying, the risks and impacts are successfully managed. Second, a submission does not necessarily prevent the project from proceeding. The policy states, "the fact that a submission has been found eligible shall not affect ongoing Project preparation or implementation; the review by the PPM of an eligible submission shall not prevent Management from addressing the issues it raises directly with the Requestors or the Client." Not only the project will not be halted unless the PPM concludes that the stop is necessary in order to prevent irreversible material adverse impacts, the Management is allowed to address the issue ahead of the PPM.

The solution-oriented PPM may turn out to be effective with regard to project implementation, but it left the asymmetric power structure embedded in the main function of the PPM unproblematic. Given that Project Processing Queries only deal with simple matters and Compliance Review offers

narrower scope of available solutions, Dispute Resolution will be the main function used by project-affected people. Dispute Resolution entails a negotiation process between the Management, the Client and the people, where the people seem to be constrained in a structural political asymmetry. Whether the PPM can effectively implement the action plans agreed by each actor in the dispute depends on the AIIB; the negotiation process and implementation also need the support of the Client's state institution which exerts sovereign power over the area where disputes arise¹⁰⁴. As a contrast, the people are not on equal terms with the Bank and the Client politically, but must be given an equal standing by the PPM during the negotiation to defend their own interests. Compliance Review is free from the political asymmetry, because in this function the Board of Directors' oversight institution is in charge of investigation into the Management's compliance with the safeguard policy. Although people can withdraw from the Dispute Resolution process once they find it unsatisfactory, chances that Compliance Review, the last function available, will yield a better solution might not be promising. First, under Compliance Review, the harms alleged by the people must be associated with the Bank's failure to carry out its ESF obligations. Proving causality is not a trifle. Second, the PPM has no authority to recommend compensation plans for the adverse impacts caused by the Client's noncompliance. Although, the PPM can investigate the Bank's responsibility in maintaining the compliance of the Client, the policy clearly states that anything "beyond the reasonable control of AIIB"¹⁰⁵ exceeds the scope of the responsibility. Third, the commencement of Compliance Review needs the approval of the Board of Directors which might not be readily available. Take the Inspection Panel, the accountability mechanism of the World Bank as an instance. From 1993 to 1999, only one out of fourteen requests for a similar compliance review function was finally approved¹⁰⁶. Dispute Resolution is thus overburdened with the hard task to give a solution. Last but not the least, there is potential conflict of interest in the process of compliance review. Since the PPM is in the charge of CEIU which is also responsible for evaluation of the Bank in other aspects, the findings of an investigation may not be congruent with the other reports written by CEIU.

2.3 Environmental and social conditionality practices of AIIB

¹⁰⁴ SUZUKI & NANWANI (2005: 200).

¹⁰⁵ Policy Document of Asian Infrastructure Investment Bank *AIIB Policy on the Project-affected People's Mechanism*.

¹⁰⁶ FUJITA (2013: 201).

Policy documents are important indicators for the environmental and social governance (ESG) of the AIIB. Yet, focusing solely on these documents will only yield an unreliable analysis. The promises given on paper may not be necessarily be transformed into reality. To complement the analysis of AIIB's policy on safeguards and accountability mechanism, this section will be dedicated to the environmental and social conditionality practices. The purpose of this section is to discover the status quo of the AIIB's application of relevant policies in ESG.

As is discussed in the first chapter, the analysis of the environmental and social conditionality practices revolves around whether the accountability mechanism can effectively handle the complaints raised by project-affected people. This paper has brought up two plausible strategies for analysis. Yet, the strategy of examining the viewpoint clashes between the PPM and the Management in the process of complaints handling cannot be applied here. Though the PPM became effective in 2018 and its website is live, there is no recorded submission of complaints till now. No submission does not mean no complaint. Multiple factors have led to the absence of complaints on the PPM website, such as AIIB's lack of presence in borrowing countries and the repressive political context where projects are implemented¹⁰⁷. It is worthwhile to explore the underneath causes, but it has obviously exceeded the scope of the research. Given this inconvenience of using the first strategy, the research has to unilaterally rely on the other one. Protests and criticism from civil society organizations are the main indicators used by this section to analyze the environmental and social conditionality practices of AIIB.

Of all the 107 projects approved during 2016 and 2020, only 49 are eligible for the AIIB ESF and PPM. Among them, the most controversial projects include Bangladesh Bhola IPP, India National Investment and Infrastructure Fund, Beijing Air Quality Improvement and Coal Replacement Project, Support to Colombo Urban Regeneration Project, Mumbai Urban Transport Project. In those cases, the current evidence suggests that either the AIIB fails to effectively handle the complaints or that the possibility of AIIB's failure in grievance redressing is high. Based on the details of the controversy around these projects, they can be categorized into three types, representing three types of environmental and social risks the AIIB has to tackle in the future.

The first type of project is Bangladesh Bhola IPP, whose environmental and social risks are underestimated by the AIIB. The project falls under Category B because "its impacts are similar to those induced by the existing adjacent BPDB power plant, limited in number and localized to the project area."¹⁰⁸

¹⁰⁷ GEARY & SCHAFER (2021: 10).

¹⁰⁸ Policy Document of Asian Infrastructure Investment Bank *AIIB Policy on the Project-affected People's Mechanism*.

Nevertheless, “the existing adjacent BPDB power plant”, a 217.9 MW Gas-Fired Combined Cycle Power Plant to be specific, is categorized into A for its outstanding risks when it was approved for financing by the ADB in 2012¹⁰⁹. Coercion from political groups, religious tension, fragile natural environment, manipulation during land transaction are all part of the risks involved in this project, but might be fully considered in AIIB’s categorization of the project.

Bhola IPP is born in a policy environment that is favorable for construction of power plants and private participation in it. Two examples of the policy incentives in the energy industry are the Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act 2010 and Policy Guidelines for Enhancement of Private Participation in the Power Sector 2008 issued by the government of Bangladesh. Both of the policies are effective today. The Act of 2010 exempts actions taken according to this Act from charges of any court¹¹⁰. The Guidelines of 2008 provides momentum for private actors to invest in construction of new power plants and rehabilitation of the existing ones¹¹¹. It in this policy environment where the proposal for investment in Bhola IPP, which is be under the direct command of Nutan Bidyut Bangladesh Limited (NBBL), is approved by the AIIB.

Accompanying the auspicious policy environment are the risks of environmental and social harms. With the deregulation in energy supplies and the immunity bestowed to certain actions, shirking responsibilities with regards to social and environmental matters becomes more operable. NGOs during a meeting at a Manila-based forum on ADB accused the AIIB of safeguarding environment and human rights, citing findings from Bhola IPP. The violation of provisions in the ESF is in three aspects: lack of meaningful consultation, improper process of land acquisition and informational barriers.

The AIIB requires the borrower to conduct “meaningful consultations with persons to be displaced”¹¹² and “ensure their involvement in planning, implementation, monitoring and evaluation”¹¹³ when involuntary resettlement is involved. However, this provision is not strictly observed. Some stakeholders NBBL has claimed to consult with do not exist. According to the annex of the ESIA report provided by NBBL, NBBL had consulted with 12

¹⁰⁹ Draft Environmental Impact Assessment for ADB projects, August 2012, *Draft Environmental Impact Assessment of BAN: BHOLA GAS POWER PROJECT*. No number available for this document.

¹¹⁰ Energy Policy of the Government of Bangladesh, 2010, Act No. LIV of 2010, Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act 2010.

¹¹¹ Energy Policy of the Government of Bangladesh, 2008, *Policy Guidelines for Enhancement of Private Participation in the Power Sector 2008*. No number available for this document.

¹¹² Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

¹¹³ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

fishing households in Chhota Manika village on 6th January 2017¹¹⁴. And local suppliers to a nearby Chinese Village Labor Camp were also asked for their opinions on 8th January 2017¹¹⁵. However, a field research group organized by civil society organizations in 2017 found no fishermen in Chhota Manika who were said to have already diverted their profession due to small catfish in that area¹¹⁶. Besides, the group also found that the China Village already left the area after the completion of another power plant project here in 2015¹¹⁷. Under the pressures exerted by local political groups, the communities within the project area were also fearful of divulging information about the project to anyone else¹¹⁸. As a matter of fact, Bhola does have history of human rights violations. A journalist associated with Odhikar, a Bangladesh-based human rights organization, was shot by police when he was surveying the illegal aberrations in a local government election in Bhola¹¹⁹.

During the process of land acquisition, local land owners were unduly compensated for the displacement. The ESF requires that the borrower should “improve, or at least restore, the livelihoods of all persons displaced by the Project,”¹²⁰ and “develop procedures in a transparent, consistent and equitable manner”¹²¹ during negotiation with the displaced people. NBBL asserted in its ESIA report that land sale agreements had been executed based on land owners’ consent on the price negotiated between them¹²². Yet, the land was sold at a basically market price, without money added for compensation. The land owners claimed that they were given 20, 000 Bangladesh Taka for each decimal of land¹²³. The price per decimal was around 30, 000 to 40, 000 in 2012 in the same district when a gas power project was implemented¹²⁴. The religious tension between Hindu and Muslim communities also had contributed to the injustice during land acquisition. A Hindu land owner disclosed that he was threatened to surrender the documents that proved his

¹¹⁴ Environmental and Social Impact Assessment for AIIB projects, 2017, Environmental and Social Impact Assessment of 225 MW Dual Fuel (Gas and HSD based) Combined Cycle Power Plant (Bhola-II): Burhanuddin, Bhola District, Bangladesh, Annexures to the Final Report. No number available for this document.

¹¹⁵ *IBIDEM*.

¹¹⁶ MEHEDI ET. AL (2018: 34).

¹¹⁷ MEHEDI ET. AL (2018: 35).

¹¹⁸ MEHEDI ET. AL (2018: 33).

¹¹⁹ ANONYMOUS (2018a)

¹²⁰ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

¹²¹ *IBIDEM*.

¹²² Environmental and Social Impact Assessment for AIIB projects Environmental and Social Impact Assessment of 225 MW Dual Fuel (Gas and HSD based) Combined Cycle Power Plant (Bhola-II): Burhanuddin, Bhola District, Bangladesh, Annexures to the Final Report.

¹²³ MEHEDI ET. AL (2018: 37).

¹²⁴ Draft Environmental Impact Assessment for ADB projects Draft Environmental Impact Assessment of BAN: BHOLA GAS POWER PROJECT.

private ownership of the land¹²⁵. There are also fake names in the list of land owners provided by NBBL¹²⁶.

The informational barriers have also prevented the local communities from utilizing the PPM in their favor. The client is required by ESF to ensure the publication of information about environmental and social risks about the project in a timely and accessible manner¹²⁷. However, according to the field research group, most of the local people had never heard the name of NBBL or anything about Bhola IPP which was even mistaken by them as the continuation of the existing power plant completed in 2015¹²⁸. The most unnecessary fault in information disclosure is the wrong translation frequently appearing in the documents provided by NBBL¹²⁹.

All of the above-mentioned violation of ESF provisions is not detected when the AIIB undertook its environmental and social due diligence. The inadequate implementation of the ESF and the Bank's unsatisfactory performance in due diligence responsibilities are connected to the low number of free-standing projects financed by the AIIB. Given that the majority of AIIB's projects are co-financed with other MDBs who provide alternative safeguard policies and accountability mechanism to the ESF and PPM, deficit in practice of its relevant policies is a major challenge for the AIIB. As a step to enhance its environmental and social performance, the Bank has been responsive to the criticism around Bhola IPP from civil society organizations and has taken some remedial measures¹³⁰. But the outcome of the remedial measures is unknown and they are not even propelled by the investigation of PPM.

The second type of project are India National Investment and Infrastructure Fund (NIIF) and Beijing Air Quality Improvement and Coal Replacement Project. The disputes about this type of projects revolve around information disclosure. NIIF is a financial intermediary (FI) with the delegated power to decide the usage of the money from AIIB. The inability of PPM of effectively handling complaints about NIIF, also a representative of other FIs, is due to the fact that local grievances, who are ignorant about AIIB's role behind NIIF, are unable to find an institutional outlet. National Investment and Infrastructure Fund was created by the government of India to attract and manage investment in infrastructure in 2015. Protests and criticism of AIIB's financing of NIIF are abundant. During the third annual general meeting of

¹²⁵ MEHEDI ET. AL (2018: 37-38).

¹²⁶ MEHEDI ET. AL (2018: 49).

¹²⁷ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

¹²⁸ MEHEDI ET. AL (2018: 34).

¹²⁹ MEHEDI ET. AL (2018: 42-43).

¹³⁰ ANONYMOUS (2019).

AIIB in 2018, activists organized a protest near the conference hall in Mumbai against the pending approval of financing for NIIF¹³¹. Demonstrators gathered during AIIB's annual general meeting in Luxembourg, questioning the Bank's portfolio on climate change funding along with their opposition against NIIF¹³². The acid comments on AIIB's financing for NIIF are mainly about the information policy of the Bank. Although the AIIB requires its borrowers to ensure the availability of relevant information to the public¹³³, no information is disclosed on the AIIB website about the sub-projected financed by NIIF, except the environmental and social policy of the FI. The definition of relevant information is tricky. Since the ESF does not explicate the content constituting relevant information, the details about sub-projects of NIIF, and other FIs financed by AIIB, seem to be classified as irrelevant. As a contrast, it is stated clearly in the World Bank's environmental and social policy that the information about sub-projects of FI should be disclosed to the public¹³⁴. The NGO Forum on ADB called for timely release of information about sub-projects of all FIs in its correspondence to the leaders of AIIB on January 2018¹³⁵. Although then AIIB Vice-President von Amsberg promised both of AIIB and FIs' commitment to the publication of information about sub-projects¹³⁶, nothing can be found on the AIIB's website till now. The tight control of information has left project-affected people tremendously vulnerable and the PPM is reduced to a nominal grievance redress mechanism in the case of NIIF whose connection to AIIB and sub-project activities local communities are oblivious of.

Near half of the free-standing projects in the current portfolio of AIIB are categorized as FI¹³⁷, but NIIF stands out because of its mandate to recover stalled projects. Infrastructure projects usually get postponed because of high environmental and social risks and impacts. A research report published by the Rights and Resources Institute and the Bharti Institute for Public Policy in 2016 had studied the causes behind the delaying of infrastructure projects in India and found that disputes around land acquisition should be to blame¹³⁸. Srikakulam Thermal Power Station in Andhra Pradesh, one of which NIIF may revive, got stalled after massive protests against the Indian government's policy of land acquisition in this project¹³⁹. In another word, the public

¹³¹ ANONYMOUS (2018B).

¹³² GEARY (2019).

¹³³ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

¹³⁴ Policy Document of World Bank, 1 October 2018, *The World Bank Environmental and Social Framework*. No number available for the document.

¹³⁵ GEARY & MUNSHI (2018).

¹³⁶ *IBIDEM*.

¹³⁷ GEARY & SCHAFER (2021).

¹³⁸ ANONYMOUS (2016).

¹³⁹ GEARY & MUNSHI (2018).

attention on AIIB's financing of NIIF is an exception. For other FI projects whose sub-project activities are unknown to the outside, the risks and impacts are yet to be found out.

Beijing Air Quality Improvement and Coal Replacement Project is castigated for the same problem. The project aims to improve the air quality through the substitution of gas for coal as the energy source, upon whose completion the local households are expected to reduce their consumption of coal¹⁴⁰. During the project, civil society organizations, Greenovation Hub being one of them which is registered in Beijing Civil Affairs Bureau, through their field survey found that information disclosed to the locals was insufficient and complaints raised by the affected communities towards the project received no replies¹⁴¹. Again, NGOs argued that information was a key factor blocking the locals from voicing their concerns.

The third type of project include Support to Colombo Urban Regeneration Project and Mumbai Urban Transport Project. The financing for the two projects were approved in 2019. Since the date for approval is later compared to that of other projects mentioned above, disputes around AIIB's implementation of ESF have not yet emerged so far. The selection of the two projects for the probe into the efficacy of PPM is based on the significant risks epitomized in them which will enormously complicate PPM's processing of complaints. Both of the projects are imprinted with contentious history.

Before the proposal to AIIB for financing, Colombo Urban Regeneration Project was wide criticized for the forced eviction. The project is part of the reconstruction after the ending of civil war in 2009 in Sri Lanka. Gotabaya Rajapaksa, the incumbent president of Sri Lanka, advertised the project as beautification of Colombo which was intended to attract tourism and international business in 2013. The government euphemistically describes the forced eviction as a process of "eliminating slums, shanties and other dilapidated housing"¹⁴² and "relocating dwellers"¹⁴³. According to a work of academic research published in 2017, the astounding amelioration of housing conditions of the city is built upon the traumatic process of forced dislodgment of powerless and poor individuals¹⁴⁴. Dhammika Herath and others found that affected communities were ordered by the government to hand over their deeds without any negotiation¹⁴⁵. When the project was in the pipeline of

¹⁴⁰ Project Information of Asian Infrastructure Investment Bank, 9 December 2017, *Project Summary Information of Beijing Air Quality Improvement and Coal Replacement Project*. No number available for this document.

¹⁴¹ HIRSCH ET. AL (2019: 42).

¹⁴² See the homepage of Colombo Urban Regeneration Program, available online.

¹⁴³ *IBIDEM*.

¹⁴⁴ COLLYER ET. AL (2017: 16).

¹⁴⁵ HERATH ET. AL (2017: 568).

AIIB's financing, the displacement process had almost been finished, as is indicated in the project summary published in the AIIB's website¹⁴⁶.

Mumbai Urban Transport Project has similar records on land acquisition and involuntary resettlement. It is a perennial project which started in 2002 and received funding from the World Bank. With the goal improving the transportation condition in the Mumbai metropolitan region, the project fared badly in the initial stage. To proceed with the project, a tremendous number of people had to be evicted. Complaints about the project's policy on resettlement sprung up, which triggered investigation by the Inspection Panel of the World Bank. Compelled by serious allegation of noncompliance with safeguard policies, the World Bank had suspended the project in 2005 which was resumed later¹⁴⁷.

Projects with contentious history are tests for the PPM. The CEIU has to deal with not only the complaints resulting from the current project activities, but also those associated with the legacy of the former disputes around the project. When affected people bring their cases in front of the PPM, the agency may find them very intractable due to the association of the current and the past harms.

To sum it up, this section has look at three types of projects where PPM's handling of complaints was or could be problematic. Three types of projects embody three kinds of difficulties the PPM has been trapped in. Underestimation of risks and insufficient information disclosure have prevented the PPM from properly executing its mission. Under such circumstances, complainants are either suppressed or unable to communicate themselves institutionally. Moreover, projects with controversial records also bring thorny issues to the PPM which may have to decide boundary between the impacts of the current activities and of the history on the alleged harms.

¹⁴⁶ Project Information of Asian Infrastructure Investment Bank, 17 May 2021, *Project Summary Information of Support to Colombo Urban Regeneration Project*. No number available for this document.

¹⁴⁷ GONSALVES (2011: 83-84).

Chapter Three: The Asian Development Bank environmental and social conditionality: a comparative perspective

3.1 Safeguard Policy Statement of ADB and Environmental and Social Framework of AIIB

Approved in 2009, the Safeguard Policy Statement ('SPS') integrates the Asian Development Bank's previous safeguard. There are four operational policies, which the SPS term Safeguard Requirement ('SR'). The SR is comparable to the ESS of AIIB. The issues covered by the SR include the environment, involuntary resettlement, indigenous people and special requirements for different finance modalities. While the former three SRs apply to all the finance activities of the ADB, the last SR is only applicable to investment instruments other than direct project loans. The AIIB has not yet formulated provisions as such in the ESF, because currently its operations are still dominated by project loans. This section is dedicated to the analysis of the SPS and the comparison between it and the ESF.

The overarching problem of SPS is represented to be the harms caused by projects on the environment and people. As stated in the policy, "the goal of the SPS is to promote the sustainability of project outcomes by protecting the environment and people from projects' potential adverse impacts¹⁴⁸." Compared to the ESF of AIIB, the problematization of SPS is pragmatic. The compatibility problem in the ESF is a strategic problem, which not only points to the environmental and social issues but also concerns itself with the relationship between the three dimensions of sustainability development. In contrast, the SPS grudges discussion about strategic problems and concentrates on where outcomes beneficial to environmental and social sustainability are tangible. The distinction between realistic and aspirational objectives made by the SPS confirms its pragmatism. As stated in the policy, aspirational objectives such as integration of environmental considerations into economic development should be delivered through the ADB's corporate-level strategy instead of the safeguard policy which is narrowly related to the environmental and social harms overshadowing the project area¹⁴⁹. The indifference to aspirational objectives indicates a limited contribution made by the policy to sustainable development, and connotes that rigorous

¹⁴⁸ Institutional Document of Asian Development Bank, June 2009, *Safeguard Policy Statement*. No number available for this document.

¹⁴⁹ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

implementation of the provisions is expected by the policy which yearns for the seizure of realistic outcomes.

Similar to the ESF of AIIB, from the overarching problem derives the role problem for the ADB and the client. As a substantial difference from the ESF which envisions the leadership of the client, the SPS inherits the basic principle from the ADB's previous safeguards which accentuates the legal obligations of the client as a contracting party. The client shall be responsible for nothing but the implementation of provisions listed in the SPS. The provisions that should be implemented by the client in the SPS resemble those in the ESF. Whether the implementation can effectively resolve the potential harms or even lead to the success of projects is cloaked in uncertainty. The role for the client is clearly process-oriented. However, the client in the ESF is responsible for the success of projects, with management of the environmental and social activities as a necessary part¹⁵⁰. Besides the implementation of provisions in the ESF, the client is also obliged to overcome uncertainties for the successful culmination of projects. The hefty burden is in line with the leading role assumed by the client in accordance with the ESF.

The represented problem for the ADB includes guiding and supervising the client. In fact, the provisions in the SPS on how the ADB provides guidance and supervises the performances of the client is almost the same as those in the ESF. The SPS builds a three-leveled hierarchy of potential environmental and social risks and impacts. The categorization of a project decides the scale and depth of the following efforts. The ADB as demanded by the SPS carries out Due Diligence to ensure the validness of the documentation submitted by the client and monitors the client's implementation. Once violation of the provisions by the client is detected, the ADB is responsible for putting corrective measures into effect. Since the AIIB recruits former employees in ADB, the similarity between their safeguard policies is totally reasonable.

Nevertheless, the SPS adds a new problem for the Bank. Both of the AIIB and ADB have promised to strengthen the use of country system in their development projects, but the capacity of the client's system to meet the objectives of the safeguard policy is problematic. Country system is a core issue for the ADB. The SPS has clarified the ADB's endorsement of the 2005 Paris Declaration which promotes more use of country system in order improve aid efficiency¹⁵¹. Encouraged to use its domestic management system, the client needs not rigidly enforce the provisions in the safeguard policy and is able to adopt a more familiar approach as long as desirable results can be

¹⁵⁰ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

¹⁵¹ INSTITUTIONAL DOCUMENT OF ASIAN DEVELOPMENT BANK SAFEGUARD POLICY STATEMENT.

guaranteed. Although a proper use of country system is mutually beneficial, the capacity of the client to obtain prescribed outcomes with its own system is often inadequate. The AIIB has not promised any efforts to strengthen the capacity of the client in the ESF. Although in 2016 the AIIB established the Project Preparation Special Fund open to applicants who need support in capacity building¹⁵², none of the approved fourteen grants is associated with the improvement of the client's domestic management system¹⁵³. In contrast, the ADB include the capacity building as one of the problems the Bank should attend to¹⁵⁴.

The capacity building for the client is represented by the SPS as a key problem that has tremendous impact on the delivery of stated objectives. The domestic systems of some clients, as the SPS put it, "remain weak and require significant improvement and capacity development efforts."¹⁵⁵ It is believed that ameliorating the abilities of the client to manage environmental and social issues is conducive to effective implementation of the safeguard policy and hence less harms. According to the SPS, the effectiveness of the safeguard policy relies "on the degree to which the safeguard policy principles and requirements are rooted in DMCs' culture and socioeconomic context of decision making."¹⁵⁶ Hence, in reality, capacity building means that the ADB actively facilitates the internalization of the safeguard provisions by the client into its legal frameworks, policies and institutions which are judged by the ADB to be lax.

By problematizing the capacity of the client, the ADB justifies its strictness on the use of country system. Before using the country system, the ADB conducts equivalence and acceptability assessment of the system. The assessment is aimed to determine whether the use of country system will yield results materially consistent with the objectives of the safeguard policy and whether the track record of the client in using the system to safeguard the environment and people is convincing. There are similar provisions in the ESF of AIIB¹⁵⁷, but the client is under more stringent requirements in the SPS. Once the ADB decides that the country system is to be used on the condition that measures addressing the gap between the country system and the safeguard policy must be taken, the client should strengthen its capability with the assistance and prescriptions of the ADB before it starts implementation of

¹⁵² Policy Document of Asian Infrastructure Investment Bank, June 2016, *AIIB Project Preparation Special Fund Toolkit*. No number available for this document.

¹⁵³ See AIIB's website about approved Project Preparation Special Fund grants.

¹⁵⁴ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

¹⁵⁵ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

¹⁵⁶ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

¹⁵⁷ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

relevant project activities¹⁵⁸. Besides, the use of country system is prohibited in highly complex and sensitive Category A projects where the safeguard policy is the only system applicable¹⁵⁹.

Although differences stand out in the representation of problems between the ESF and SPS, they are equally underpinned by the compartmentalization of development. The SPS has confined itself to the “do no harm” principle¹⁶⁰ and makes no promise to environmental and social development. Economic growth is still the stated priority for the ADB.

In the case of the AIIB, risky projects might be more likely to be approved, which is left unproblematic by the ESF. The ADB has less chances of financing projects whose risks are high and cannot be effectively controlled. The categorization of projects is ambiguous and the environmental and social assessment prepared by the client is vulnerable to maneuver, as is the same with the ESF. Yet there is no provision permitting the client to complete its management plan for risks and impacts after the approval of projects in the SPS. The ADB has been putting significant attention on the ex ante assessment to avoid risky projects¹⁶¹.

The point of substantial variance between the ESF and SPS in what is left unproblematic is about the use of country system. The AIIB risks abusing of the country system as it grants much sway to the client. With proactive participation in the capacity building of the client’s domestic system, the use of country system in ADB-financed projects is more restrictive. While the AIIB’s approach respects the sovereignty of the client, the ADB’s attempt to engineer the improvement of country system is bank-centric, which is left unproblematic.

The supportive stance of the AIIB and ADB on the use of country system signals the consensus among the international development aid community in the significance of country ownership for aid effectiveness. To synthesize the definitions of country ownership proposed in the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, ownership means that the aid recipient countries have more sway in projects. The corollary of the enhancement of country ownership is more use of country system in place of the provisions stipulated by the safeguard policies of the MDBs. The use of country system is thought to reduce the transaction cost generated in the strenuous process where the client tries to understand and implement the

¹⁵⁸ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

¹⁵⁹ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

¹⁶⁰ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

¹⁶¹ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

safeguard provisions which differ from its own national system¹⁶². Strengthening country ownership through more use of country system can also increase the aid recipient countries' commitment to projects, which is conducive to project success¹⁶³.

Yet, the use of country system is paradoxically tied with conditionality. The rationale behind setting conditionality is that measures should be in place to prevent the often inadequate country system of developing countries from failing to meet the objectives desired by the MDBs. The ADB is well aware of the risks underlying the use of country system¹⁶⁴. The eligibility and acceptability assessment required under the SPS if the use of country system is requested by the client constitutes a selectivity conditionality that only permits the use of qualified system. The criteria of selectivity is based on the SPS which revolves around the value judgments of the ADB.

The current selectivity conditionality adopted by the ADB is unattractive for most of its clients. The eligibility and acceptability assessment is ADB-centric and cannot reconcile the safeguard provisions with the status quo of country system, which makes it hard for the client to align their systems with the SPS principles and procedures¹⁶⁵. Over the ten years where the SPS is in effect, there is only one request for the use of country system from the client triggering the assessment which results in only one approval¹⁶⁶. The Power Grid Corporation of India, financed by the ADB and approved to use its own system, is a unique case. In this project, the corporation's safeguard system instead of the Indian national system is used and the corporation is well familiar with MDBs' safeguard provisions¹⁶⁷. Little room of capacity building is left for the Corporation. A stringent assessment which evaluates country system against an unrealistically high benchmark naturally scares away those whose systems are inadequate and need capacity building¹⁶⁸. It is contradictory that the client must have developed a safeguard system markedly aligned with good international practices as represented by the safeguard provisions if it intends to use its own system which will receive the

¹⁶² Institutional Document of Asian Development Bank, February 2015, *Promoting the Use of Country Systems in ADB's Operations*. No number available for this document.

¹⁶³ SANTISO (2001: 9).

¹⁶⁴ Evaluation Document of Asian Development Bank, 15 May 2020, *Effectiveness of the 2009 Safeguard Policy Statement*. No number available for this document.

¹⁶⁵ Evaluation Document of Asian Development Bank Effectiveness of the 2009 Safeguard Policy Statement.

¹⁶⁶ Evaluation Document of Asian Development Bank Effectiveness of the 2009 Safeguard Policy Statement.

¹⁶⁷ Evaluation Document of Asian Development Bank *Effectiveness of the 2009 Safeguard Policy Statement*.

¹⁶⁸ Background Document to the OECD-European Commission Seminar, 28 April 2017, *Development assistance and conditionality: Challenges in design and options for more effective assistance*. No number available for this document.

aid from the ADB through capacity building. Furthermore, not all clients are willing to go through the assessment that will be disclosed to the public and they may just prefer implementation of the safeguard provisions in projects rather than modifying or even overhauling their systems with external intervention¹⁶⁹.

With the bank-centric mentality, ADB's efforts in capacity building confront difficulties. The Bank's relevant activities have diverged from the stated objective in the SPS. Technical Assistance (TA), an important instrument used by the Bank to support the client's capacity building activities, is originally aimed at facilitating the use of country system in accordance with the SPS requirements, which however turns out to be focused on capacity building without near term use in project to substitute for the safeguard provisions¹⁷⁰ or immediate implementation needs without capacity building¹⁷¹.

Using and strengthening country system of the client is achievable in long term, which needs endeavors outside the safeguard policy. Besides TA, the ADB has organized regional workshops, created learning platforms and established databases sharing information to strengthen and promote the use of country system. Sri Lanka and Indonesia, who have participated in the ADB initiatives¹⁷², have submitted their requests for the use of country system in two projects after the power grid project in India. The prospect for the use of country system depends on the continuous efforts of the ADB. Yet, one thing is certain. The bank-centric approach, which is left unproblematic, is making the use of country system and capacity building a much aspired but rarely practiced policy matter.

3.2 Accountability Mechanism of ADB and Project-affected People's Mechanism of AIIB

The current Accountability Mechanism (AM) of ADB evolves from the Inspection Function established in 1995 which imitated the Inspection Panel

¹⁶⁹ Evaluation Document of Asian Development Bank, 16 October 2014, *Safeguards Operational Review ADB Processes, Portfolio, Country Systems, and Financial Intermediaries*. No number available for this document.

¹⁷⁰ Evaluation Document of Asian Development Bank *Safeguards Operational Review ADB Processes, Portfolio, Country Systems, and Financial Intermediaries*.

¹⁷¹ Evaluation Document of Asian Development Bank *Effectiveness of the 2009 Safeguard Policy Statement*.

¹⁷² These initiatives for capacity building include Asian Environmental Compliance and Enforcement Network, The Asian Judges Network on Environment, and other regional workshops.

of World Bank. The AM was introduced in 2003 and revised in 2012. Although the mechanism went through a revision, it kept the basic functions, only with improvements that increase the efficacy of the functions. The AM is designated with two functions: the problem-solving function, where a Special Project Facilitator (SPF) handles the problems of the project-affected people with informal and flexible methods that are solution-oriented; the compliance review function, investigating the alleged violation of the operational policies by the ADB which has caused or potentially brings harm on the local people. In terms of function, the AM is not very different from the PPM of AIIB. But there is abundant evidence of dissimilarities in the policy document which suggests rather different approaches taken by each mechanism to the exercise of the similar functions.

The problem in the AM policy is constituted to be the complaints of the project-affected people. Unlike the PPM policy which associates its functions with the management of risks and impacts, the AM policy stresses the concerns of the local people. The policy document explicitly states that the objectives are to provide an independent and effective forum for people to file complaints, demand solutions and request compliance review¹⁷³. It labels itself as a demand-driven mechanism. That said, the mechanism should center on the people with its activities organized to respond to the demand in their compliant submissions.

Such problematization makes it possible for the policy to impose certain responsibilities, which are omitted in the PPM policy, on the Bank staff so that the mechanism can be fully responsive to demand. Same with the PPM, the AM is supposed to be a last resort for the people who are required by the Bank to make prior good faith efforts to solve their concerns at other grievance addressing mechanisms. If a compliant is considered ineligible for the AM functions, it will be forwarded by the AM to operations departments of the Bank for a solution¹⁷⁴. In the case of PPM, however, there is no provision requiring what the institution shall do when it decides a submission is ineligible for its functions except rejection. Operations departments of ADB should also track the process and results of those rejected complaints and write reports based on their tracking efforts¹⁷⁵, contributing to the objectives of the AM even though their operations falls outside the remit of the accountability institution. The coordination between different levels of grievance mechanisms on the purpose of addressing the complaints more effectively is absent in the PPM policy.

¹⁷³ Institutional Document of Asian Development Bank, March 2012, *Accountability Mechanism Policy 2012*. No number available for this document.

¹⁷⁴ Institutional Document of Asian Development Bank *Accountability Mechanism Policy 2012*.

¹⁷⁵ Institutional Document of Asian Development Bank *Accountability Mechanism Policy 2012*.

In the demand-driven mechanism, institutional independence is assumed to be of critical value in its operations. There are elements in the PPM policy reflecting the Bank's seriousness on institutional independence, as argued before. Yet, independence is enshrined in the AM policy in a manner substantially different from the PPM. First, it is a separate institution, enabled to concentrate their resources on the local people's complaints without the burden of multi-policy domains. The PPM of AIIB is part of the institutional responsibilities discharged by the Complaints-resolution, Evaluation and Integrity Unit. In addition to receiving and handling complaints, the CEIU also evaluates the investment portfolio and investigate integrity issues. The division of labor within the CEIU is not clear, because the head of the department participates in all of the functions the unit is mandated with and shall represent the viewpoint of the institution on all policy matters^{176 177 178}. How much energy will be spent on the PPM by the head of the unit is uncertain. Moreover, resources allocated to this department might not be distributed to each function in a balanced manner, which could hamper the CEIU's ability to deal with complaints. That the PPM is integrated, along with other relevant functions, into a single institution is in line with the AIIB's promise to be lean. The AM of ADB, however, is completely different. Since it is stated to be a demand-driven mechanism, in the service of the local people, it is separated from other departments of the Bank whose operations does not involve direct communication with the local people and which are more concerned with the supply-side issues. Second, the AM is also independent from influences of Management. Although the CEIU is one of the instruments used by the Board of Directors to monitor Management, the institutional relationship between CEIU and Management seems not to enhance the Board's oversight of the Management. The President appoints the head of CEIU; CEIU should regularly communicate with the Management; the performance assessment of CEIU is conducted by the President in consultation with the Board; the President can terminate the head of CEIU¹⁷⁹. The AM has a more reliable stronghold sheltering it from the inordinate interventions of Management. Since the two functions of the AM have different focuses, the AM differentiates the degrees of independence from Management each one needs. The SPF is appointed and reports to the President who also evaluates its performances annually¹⁸⁰. The Compliance Review Panel (CRP), in the charge

¹⁷⁶ Policy Document of Asian Infrastructure Investment Bank, 7 December 2018, *AIIB Policy on the Project-affected People's Mechanism*. No number available for this document.

¹⁷⁷ Policy Document of Asian Infrastructure Investment Bank, 19 May 2021, *Learning and Evaluation Policy*. No number available for this document.

¹⁷⁸ Policy Document of Asian Infrastructure Investment Bank, 8 December 2016, *Policy on Prohibited Practices*. No number available for this document.

¹⁷⁹ Policy Document of Asian Infrastructure Investment Bank, 10 July 2019, *Terms of Reference for the Complaints-resolution, Evaluation and Integrity Unit*. No number available for this document.

¹⁸⁰ Institutional Document *Accountability Mechanism Policy 2012*.

of the Board of Directors, operates without operational connections to Management and is not subject to the formal performance evaluation for other staff¹⁸¹.

Independence of the AM is necessary when the internal staff of the Bank is critical of the shock the mechanism could exert on the Bank's lending. ADB staff is strongly incentivized to lend money and have tried to sabotage the investigation of the AM which brings uncertainties to the life of a project¹⁸². The work of the Inspection Function, the predecessor of the AM, is regarded by some project staff as a painful interrogation who might be more risk-averse in the future¹⁸³. Under such an unfriendly circumstance, the policy necessarily assumes independence is indispensable.

With independence secured, the AM can perform its demand-driven functions. But it is not demand driven in essence, which is left unproblematic by the policy. In fact, the AM is established by and has to grapple with the supply side forces. The supply side here refers to policy makers of the Bank and member countries.

The AM was created in a power structure where the project-affected people can only borrow the power of oversight from the Bank through the AM to defend their interests instead of commanding the AM at their pleasure. The structural limitation on the AM's intimacy with the demand side is also ubiquitous in the accountability mechanisms of other MDBs. To generalize, all mechanisms like the AM providing diagonal accountability confront the same dilemma. The term, diagonal accountability, is tightly associated with other two types of accountability, vertical and horizontal accountability. Vertical accountability originally means that citizens express their demands to public officials and reprimand them for their wrongful acts through election¹⁸⁴. In the context of global governance and MDBs, vertical accountability refers to the supervision of the stakeholders on the organization. Member countries can change the composition of the Board of Governors or Directors using their votes to voice their concerns. Horizontal accountability focuses on the empowerment of agencies to oversee other agencies within a same institution¹⁸⁵. The AM of ADB, which is responsible for evaluating ADB staff's compliance with the Bank policies, is a typical agency for horizontal accountability. Diagonal accountability, also called social accountability, involves the direct participation of civil society organizations and media in holding public officials accountable through horizontal accountability

¹⁸¹ Institutional Document *Accountability Mechanism Policy 2012*.

¹⁸² FUKUDA (2003).

¹⁸³ PARK (2015: 463).

¹⁸⁴ O'DONNELL (1998: 112-113).

¹⁸⁵ O'DONNELL (1998: 119).

mechanism instead of voting¹⁸⁶. In the case of MDBs, the local people cannot vote. Consequently, to file a complaint or accuse the Bank, the local people has to use the power authorized to the AM. Whether they could receive compensation for the alleged harms is eventually out of their control. The requests of the local people trigger the commencement of the AM's work. It is the interactions between the AM and other agencies within the Bank that drive the process of consultation and investigation and decides the outcome. For this reason, mechanisms like the AM and PPM are quasi-independent. To make them truly independent and demand-driven, it is proposed that non-institutional mechanisms of accountability, which shall be detached from the jurisdiction of the MDB and solely based on human rights considerations, be established for substitution¹⁸⁷. Yet, there are so far arguments rather than actions. The AM and others are still shackled by their respective institutions.

To be specific, the constraints, which are attributable to the supply-side essence of the AM, on the mechanism are twofold. First, policy makers of the ADB try to limit the AM's influences on policies of the Bank, making it an administrative institution strictly adhering to the extant policies of the organization. By emphasizing the need to clarify the roles played by the CRP, policy makers of the Bank euphemistically expresses their concern about the mission creep of the AM. "The CRP recommendations are sometimes too broad, touching upon the adequacy and suitability of ADB policies and procedures."¹⁸⁸ Second, members countries can boycott the AM by rejecting its request for site visit. The permission of site visit, which can be essential in the CRP's investigation, is at the mercy of member countries' opinions. In 2009, several people in Fuzhou, China, submitted an eligible request for compliance review of the Bank's performances in the Fuzhou Environmental Improvement Project. However, it was an abortive investigation due to the Chinese government's rejection of site visit. During the review of the AM, a proposal that would legitimize the site visit by the AM through conditionality in loan agreements was discussed. It was vehemently opposed by member countries. They considered it as a violation of sovereignty¹⁸⁹ and argued that the Bank "has no basis to mandate site visits through loan agreements because the compliance review is about ADB's compliance with its own policies and procedures, not about a borrower's breach of any obligations."¹⁹⁰ Although the ADB has promised in the AM policy efforts to facilitate the consent of the member country on site visit, the acceptance of site visit is not compulsory.

¹⁸⁶ Working Paper of the World Bank, December 2004, 31042, *Social Accountability: An Introduction to the Concept and Emerging Practice*.

¹⁸⁷ WAHI (2013: 361-362).

¹⁸⁸ Institutional Document of Asian Development Bank *Accountability Mechanism Policy 2012*.

¹⁸⁹ FUJITA (2013: 207).

¹⁹⁰ Institutional Document of Asian Development Bank, February 2012, *Review of the Accountability Mechanism Policy: R-paper*. No number available for this document.

The PPM policy does not mention the AIIB's active role in site visit issues, but it is not different from the AM in principle.

3.3 Environmental and social conditionality practices

The AM's claim of being a demand-driven mechanism needs to be compared with how the mechanism handles complaints in reality. Since the Safeguard Policy Statement is applicable to all ADB projects¹⁹¹, every project could be a test for the efficacy of the AM. Focusing on practices, this section will try to answer a specific question. Did the performance of the AM deteriorate after the establishment of AIIB?

Unlike PPM of AIIB, relying on protests and criticism from civil society organizations is not a wise approach to the performances of AM of ADB. The viewpoint clashes between critical stakeholders in the process of complaints handling will be the primary strategy used by this section to study the environmental and social conditionality practices of ADB, or in another word, the performance of AM. Reasons are twofold. First, the ADB has published sufficient data online for this research to qualitatively analyze the performance of AM through viewpoint clashes between critical parties. Second, institutionally established, AM is an accessible tool for project-affected people. Since ADB has country offices in its member countries and every project with ADB participation falls within the purview of AM, local communities can easily approach AM. Resorting to institutional instrument is obviously the first considered option for affected people. Yet, this section will not exclude protest and criticism from the analysis. When resolution of complaints through AM functions is blocked, outburst of protests or flooding of criticism could ensue, signaling that the Bank may have bungled its environmental and social conditionality.

As AM has two functions, the forms of viewpoint clashes are different in each function. In the problem-solving function ('PSF'), the collision in opinions that could impede substantial progress occurs between complainants and borrowers. When the two parties cannot agree on the course of action to be implemented in order to resolve disputes, the concerns raised by the complainants are not likely to be settled. In the compliance review function ('CRF'), conflicting standpoints between the Management or the Board and the compliance review panel ('CRP') endangers the prospect of successful resolution of harms resulting from noncompliance of the Bank. With the

¹⁹¹ Institutional Document of Asian Development Bank *Safeguard Policy Statement*.

different forms of viewpoint clashes in AM, this section will examine the problem-solving function and the compliance review function separately.

Given the total number of projects of ADB from 2010 to 2020, cases brought to the CRF were quite few. Each year there were more than three hundred projects financed by ADB. As a sharp contrast, there were in total eighteen complaints recorded in the ADB website during the time range and the projects each complaint is concerned about sometimes overlap. The CRF is assumed by the CRP which is a fact-finding body. Once the request from affected people for investigation of noncompliance of ADB is considered eligible, the CRP commences its work and then presents its investigation report and makes recommendations for response from the Management and the Board's approval. Judicial-type remedies are not offered by the CRP which only recommends measures for bringing back the Bank into compliance.

From 2010 to 2015, the CRP had received six cases all of which were eligible for investigation. From a particular perspective, all of these cases culminated in a fiasco for the complainants. What the affected communities expect from the CRP is substantially different from what the CRP is capable of. While the CRP is designed to ensure compliance of the ADB with its policies, complainants always state in their requests for investigation their demand for remedial actions or compensations for the alleged loss. On the CAREC Transport Corridor I (Bishkek-Torugart Road) Project 1, the affected villagers asked the ADB to compensate for their loss¹⁹². On the Visayas Base-Load Power Development Project, the ADB was asked to carry out a series of remedies¹⁹³. In the complainants' imagination of the CRF, this function of AM should provide help for the hardship they encounter. The priorities of the CRF are clearly reversed in their imagination. Relieving the harms the complainants have or are likely to endure is only a collateral benefit of the restoration of Bank compliance.

Although the demands of the complaints for compensations could be partly satisfied in the reinstating of Bank compliance, the recommendations made by the CRP usually did not touch substantial issues complainants were most concerned about and the Management often fiercely disagreed with the conclusions of the CRP's report.

In most cases, the recommendations of the CRP only provide broad guidelines for the future movements the ADB is expected to take in order to comply with its own policies. The CRP only investigates noncompliance which generates

¹⁹² Progress Report of Asian Development Bank Compliance Review Panel, 23 May 2011, *KGZ - Compliance Review Request Grant 0123 English*. No number available for this document.

¹⁹³ Progress Report of Asian Development Bank Compliance Review Panel, 25 May 2011, *Visayas Base Load Power Devt Project Compliance Review Request*. No number available for this document.

material adverse impacts. However, the recommendations paradoxically exclude the formulation of plans for managing the already existent material adverse impacts when the substantial content is predominated by measures for the reestablishing of compliance. On the Visayas Base-Load Power Development Project, the complainants demanded that the ADB should suspend financing until resolution of problematic issues and provide relief once the project was proved to incur health hazards through environmental damage¹⁹⁴. After investigation, the CRP recommended the ADB to enhance its research on environmental impacts of this project and ensure the representativeness of the local communities consulted¹⁹⁵. On the Integrated Citarum Water Resources Management Investment Program Project 1, all of the requests made by the complainants were related with pecuniary compensation¹⁹⁶. The CRP frustrated the complainants' expectation by recommending the ADB to conduct due diligence and dialogue with stakeholders early and revise the resettlement framework of this project where the grievances are derived from¹⁹⁷. Above are the cases where the CRP fostered compliance without immediately meeting the original demands of the complainants. There is a case where the CRP suggested that the complainants should be compensated, but the responsibility of ADB on compensation was indirect and the process was long. On the Rehabilitation of the Railway in Cambodia Project, the local households who had to be replaced due to the project deemed the compensation received during the resettlement process which brought economic and physical impacts inadequate¹⁹⁸. While the appeals of the replaced households were recognized by the Board, the ADB, instead of carrying out the remedies by itself, was recommended to consult with the borrower government which was primarily responsible for the injustices suffered by these people and should execute the payment scheme,

¹⁹⁴ Progress Report of Asian Development Bank Compliance Review Panel, 11 April 2012, *Review Panel Final Report on Compliance Review Panel request No. 2011/1 on the Visayas Base-Load Power Development Project in the Republic of the Philippines*. No number available for this document.

¹⁹⁵ Progress Report of Asian Development Bank Compliance Review Panel *Review Panel Final Report on Compliance Review Panel request No. 2011/1 on the Visayas Base-Load Power Development Project in the Republic of the Philippines*.

¹⁹⁶ Progress Report of Asian Development Bank Compliance Review Panel, 10 April 2013, *Final Report on Compliance Review Panel Request No. 2012/1 on the Integrated Citarum Water Resources Management Investment Program Project 1 in the Republic of Indonesia*. No number available for this document.

¹⁹⁷ Progress Report of Asian Development Bank Compliance Review Panel *Final Report on Compliance Review Panel Request No. 2012/1 on the Integrated Citarum Water Resources Management Investment Program Project 1 in the Republic of Indonesia*.

¹⁹⁸ Progress Report of Asian Development Bank Compliance Review Panel, 7 February 2014, *Final Report on Compliance Review Panel Request No. 2012/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia*. No number available for this document.

once finalized, within 12-18 months¹⁹⁹. Even such recommendations fell short of the complainants' expectation. A request for investigation was submitted again in 2015 on the same issue of the project, which was however rejected as ineligible according to the policy of the AM²⁰⁰.

The Management's opposition against the CRP's conclusions in terms of noncompliance also played a role in the incapability of the CRP to fulfill the requirements of the complainants in its recommendations for compliance. Although the Board's approval is essential for the implementation of recommendations, the review of the CRP's report by the Board seems to be a no-objection process. There is no case where the Board disapproves the final report. That said, the opposition presented in the Management's reply to the draft report could undermine the validity of the recommendations made by the CRP. The responses from the Management to the report can be categorized into three types. First, it imputed the material adverse impacts to the fault of the borrower. Provisions on the "differentiated responsibilities of ADB and its borrowers"²⁰¹ stipulated by the SPS were used by the Management to defend itself. According to its argument, the unintended outcomes of a project could not be automatically attributed to the Bank which was only responsible for making requirements to the borrowers. Second, it argued for its compliance with evidence. The most prevalent reply of the Management was outright rejection of the CRP's findings on noncompliance. For instance, on the Integrated Citarum Water Resources Management Investment Program Project 1, the CRP contended that the Management made an incomplete analysis of the borrowers' documents concerning involuntary resettlement²⁰². But the Management argued that it "did assess and understand the complexity of" the relevant issues²⁰³. In some cases, the Management would also argue that the noncompliance was not proved by the CRP to result in material adverse impacts and hence irrelevant. Needless to enumerate each refutatory response, there were abundant examples where the Management made rebuttals substantiated with its own evidence. Third, it mildly admitted noncompliance. When the findings with regard to noncompliance were hardly

¹⁹⁹ Progress Report *Final Report on Compliance Review Panel Request No. 2012/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia*.

²⁰⁰ Progress Report of Asian Development Bank Compliance Review Panel, 16 November 2015, *Report on Eligibility to the Board of Directors on Compliance Review Panel Request No. 2015/1 on the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*. No number available for this document.

²⁰¹ Progress Report *Final Report on Compliance Review Panel Request No. 2012/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia*.

²⁰² Progress Report *Final Report on Compliance Review Panel Request No. 2012/1 on the Integrated Citarum Water Resources Management Investment Program Project 1 in the Republic of Indonesia*.

²⁰³ Progress Report *Final Report on Compliance Review Panel Request No. 2012/1 on the Integrated Citarum Water Resources Management Investment Program Project 1 in the Republic of Indonesia*.

deniable, the Management would acknowledge its fault. But the tone of confirmation was far from strong. The Management would euphemistically confess its noncompliance by saying that “Management considers that ADB could have been more proactive”²⁰⁴ and “lessons can be learnt from this experience.”²⁰⁵ Moreover, it was very unusual for the Management to cower behind its euphemistical expressions in front of the conclusions of the CRP.

In summary, from 2010 to 2015, except on the Rehabilitation of the Railway Project in the Kingdom of Cambodia, demands presented by complainants with regards to each project were not directly satisfied by the Bank. Even on the case where the ADB agreed to design a compensation scheme with the borrower, complainants still felt that there were unresolved issues.

The outcomes of the submissions to the CRP from 2016 to 2020 were no more satisfactory than those from 2010 to 2015. There were twelve cases in total. Only one was approved and ten were rejected, with the remaining one voluntarily withdrawn before determination on eligibility. While the number may suggest a downturn of the performance of the CRF, the reality was much more complex.

Of those disapproved requests for investigation, three were rejected on the basis of their repetition of a previous submitted complaint in this period which was already under the processing of the CRP. Besides the three, there were another two requests for investigation, though eligible, which were disapproved due to the particularities of the context where they were submitted. On the Nenskra Hydropower Project, the Board Compliance Review Committee, the interlocutor between the Board and the CRP, recommended the Board not to approve the investigation. Instead of investigation, the Committee presented an alternative which could address the concerns of the affected people in a more responsive and immediate way²⁰⁶. On the Promoting Economic Use of Customary Land Project and Samoa Agribusiness Support Project, the Committee also blocked the commencement of compliance review. According to the Committee, the borrower government would carry out reforms which would effectively reduce the harms, which rendered the investigation unnecessary²⁰⁷. In short,

²⁰⁴ Progress Report of Asian Development Bank Compliance Review Panel, 9 August 2012, *Final Report on Kyrgyz Republic: CAREC Transport Corridor 1 (Bishkek–Torugart Road) Project 1*. No number available for this document.

²⁰⁵ Progress Report of Asian Development Bank Compliance Review Panel *Final Report on Kyrgyz Republic: CAREC Transport Corridor 1 (Bishkek–Torugart Road) Project 1*.

²⁰⁶ Progress Report of Asian Development Bank Compliance Review Panel, 7 March 2018, *Report of the Board Compliance Review Committee and Compliance Review Panel’s Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia)*. No number available for this document.

²⁰⁷ Progress Report of Asian Development Bank Compliance Review Panel, 18 August 2016, *Report on Eligibility: Compliance Review Panel Request N. 2016/2 on the SAM: Promoting*

the disapproval of investigation did not automatically indicate that issues would be left unsettled. As for the remaining disapproved requests, they were ineligible at the beginning in that they fell outside of the mandate of the CRP which only investigates Bank noncompliance. For instance, on the Guangxi Southwestern Cities Development Project, an anonymous complainant asked the ADB to prevent the delay of project in order to ensure his or her own commercial interests²⁰⁸. On the Power Distribution Enhancement Investment Program in Pakistan, complainants accused an implementing agency, called the Lahore Electric Supply Company, of misconduct which brought ramifications on the environment and health²⁰⁹. Their complaint concerning the project in Pakistan, were transferred to another department of the ADB.

While the results of these disapproved requests were not so daunting, the approved one ultimately ended with an extraordinary remedial action plan. It was about the third tranche of the Sustainable Urban Transport Investment Program in Georgia. The complainants claimed that the Bank failed to fully comply with its due diligences, as a result of which the construction and operation of road in the project would damage their living environment and disrupt their lives²¹⁰. Complainants even repeatedly sent their requests on the same project which were eligible but disapproved by the Board. Exceptionally, the Management and the CRP reached agreement on some key issues. For instance, the Management admitted that the borrower used questionable standards for noise which should have conformed to the SPS provisions²¹¹. With regard to vibration impacts of road construction, the Management was willing to hiring a third-party expert to review the existent study so that possible harms on people could be precisely diagnosed and efficiently mediated²¹². The agreement between the Management and the CRP has facilitated the formulation of remedial measures.

In conclusion, there is not an apparent negative change of pattern in how the CRP handles complaints before and after the establishment of AIIB. The

Economic Use of Customary Land Project and Samoa Agribusiness Support Project in Samoa.
No number available for this document.

²⁰⁸ Progress Report of Asian Development Bank Compliance Review Panel, 16 February 2017, *Request for Compliance Review: Guangxi Fangchenggang ADB project about the existence of complaints.* No number available for this document.

²⁰⁹ Progress Report of Asian Development Bank Compliance Review Panel, 16 February 2017, *Request for Compliance Review: Guangxi Fangchenggang ADB project about the existence of complaints.* No number available for this document.

²¹⁰ Progress Report of Asian Development Bank Compliance Review Panel, 7 March 2017, *Final Report on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program (Tranche 3) in Georgia.* No number available for this document.

²¹¹ Progress Report *Final Report on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program (Tranche 3) in Georgia.*

²¹² Progress Report *Final Report on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program (Tranche 3) in Georgia.*

period from 2010 to 2015 did witness a bigger number of approved investigations, but the CRP hardly made recommendations that could substantially and directly resolve the issues the complaints were most concerned about. From 2016 to 2020, there was only one investigation. Nevertheless, either the complaints were not within the mandate of the CRP, or the issues presented by the complainants were resolved in an alternative approach. And the only investigation had led to remedial measures.

The same conclusion can also be applied to the performance of the PSF from 2010 to 2020. While there are differences in the general characteristics of the outcomes of each complaint sent to the PSF between the two time ranges, evidence of an obvious downturn of the performance of the PSF after 2015 is not found.

Unlike the CRF, the PSF, led by Special Project Facilitator (SPF), focuses on the resolution of disputes between the complainants, borrowers, project implementing agencies and ADB. The PSF is also distinguished from the CRP in that the demands of complainants are prioritized. Aimed to directly address the issues plaguing the affected people, this function does not ultimately depend on a fact-finding process. Instead, the cooperative willing of different parties is critical. Through various methods of communication, the SPF seeks the concurrence of the relevant parties in order to formulate a course of actions addressing the complaints. The impediment to the settlement of disputes is the conflict between viewpoints of relevant parties which sometimes were not reconcilable with each other.

From 2010 to 2015, there were twenty-six complaints submitted to the PSF. Nineteen were not accepted. The main reason for their rejection was that prior good faith efforts were not made by the complainants. As an essential part of the determination on eligibility, the SPF should “review whether the complainants made prior good faith efforts to solve the problems with the operations department concerned.”²¹³ For all of those which were eligible, the outcomes can be categorized into three types. First, through the efforts of the SPF, disputing parties had ultimately reached agreement on which action should be taken to address the relevant issues. Thanks to the facilitated rapport between different parties, the grievances of affected people were quelled by a series of actions that directly remedied the harms. On the CAREC Transport Corridor 1 Project, office of the SPF confirmed that compensatory payments were implemented and that complainants were content with the final result achieved with the contribution of the SPF²¹⁴. On the Decentralized Rural Infrastructure and Livelihood Project in Nepal, an affected family who

²¹³ Institutional Document *Accountability Mechanism Policy 2012*.

²¹⁴ Complaints Registry of the Office of the Special Project Facilitator, 2 November 2011, *Final Report of the Special Project Facilitator on Kyrgyz Republic: CAREC Transport Corridor 1 (Bishkek–Torugart Road) Project*. No number available for this document.

complained about the lack of consultation on land acquisition received compensation from the borrower government²¹⁵. Second, the disagreement between parties were so implacable that the complainants chose to abandon their case in the SPF. The Samoa Agribusiness Support Project was the example. The complainants felt that consultation process facilitated by the SPF was still restrictive and they decided to drop their case which was resubmitted to the CRF. Third, the consensus between parties was not solid enough to solve all issues. On the Rehabilitation of the Railway Project in Cambodia, a limited course of actions was executed to compensate for the loss of the complainants who still were not in accord with the borrower government and the ADB on some matters at the closing of their case²¹⁶.

From 2016 to 2020, there were fifty-three cases received by the SPF. Thirty-six cases were considered ineligible by this function. They were rejected for a *cliché* reason that prior good faith efforts were not made. Most of them were transferred to operations department. For those which were eligible, agreement between parties was often reached. According to the final reports of those eligible submissions, complainants stated that they were satisfied with the results facilitated by the PSF. Irreconcilable viewpoints between parties were absent. Although on the Batumi Bypass Road Project of Georgia the project implementing agency whose compensation for the loss of complainants was alleged to be unfair refused to participate in the conversation with the affected people, the parties under the assistance of the SPF had finally reached agreement on the necessary course of action²¹⁷.

To sum it up, evidence of racing to the bottom by the SPF is absent. From 2010 to 2015, the picture of viewpoint clashes between parties was slightly different on each eligible cases. Overall, whether it was limited or comprehensive, the agreed course of action had directly addressed the issues bothering the complainants. There was only one abortive case. From 2016 to 2020, complainants in most of eligible cases had received satisfactory results according to their own statements in final reports of the SPF. The concord between parties, under the facilitation of the SPF, was a rule. Moreover, the SPF handled more eligible cases from 2016 to 2020 than during the former period. The evidence gathered in this section leads to a conclusion opposite of “racing to the bottom”. In fact, the performance of the SPF turned out to be

²¹⁵ Complaints Registry of the Office of the Special Project Facilitator, 3 February 2015, *Final Report of the Special Project Facilitator Nepal: Decentralized Rural Infrastructure and Livelihood Project (Additional Financing)*. No number available for this document.

²¹⁶ Complaints Registry of the Office of the Special Project Facilitator, 9 April 2014, *Final Report of the Special Project Facilitator Kingdom of Cambodia: Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*. No number available for this document.

²¹⁷ Complaints Registry by the Office of the Special Project Facilitator, 3 September 2019, *Final Report of the Special Project Facilitator Georgia: Batumi Bypass Road Project*.

better after the establishment of AIIB, in terms of the number of eligible cases and cases which ended with agreed course of action.

Furthermore, the AM of ADB is different from the PPM of AIIB. The expression and resolution of complaints concerning environmental and social matters are generally institutionalized in ADB. In the case of AIIB, for instance, the injustices inflicted upon the local communities during the project cycle of Bangladesh Bhola IPP were remedied not through an institutional channel. If not for the participation of civil society organizations, the AIIB would have neglected the adverse impacts of this project and the local communities would have not known which party was accountable for their losses. The PPM, since its inception, have not solved a single case. Admittedly, the AIIB as a new international organization has a much smaller number of projects. Yet, the case of Bangladesh Bhola IPP has demonstrated that complaints are just not submitted to the PPM instead of inexistent. As a contrast, complaints' entry to the AM of ADB is regular. There is indeed protest or criticism from the civil society organizations concerning ADB financed projects. But the extra-institutional expression of complaints is paralleled by a resort to institutional tools of the AM. For instance, when NGO groups sent a letter to the ADB accusing its project of labor violations²¹⁸, a formal request for compliance review on the same project was also under the process of the CRF²¹⁹. And protest did not occur after the AM's final decision on each case.

²¹⁸ This letter, with signatures of many NGO groups, is titled as "ADB funded project committing labor violations", published on the website of NGO forums on ADB on 6 September 2019.

²¹⁹ Progress Report of Asian Development Bank Compliance Review Panel, 24 July 2019, *Request for Compliance Review on Accelerating Infrastructure Investment Facility in India - Tranche 1*. No number available for this document.

Chapter Four: The World Bank environmental and social conditionality: a comparative perspective

4.1 Environmental and Social Framework of World Bank

4.1.1 Comparison of Environmental and Social Framework and the previous safeguards of World Bank

In 1989 the World Bank ('WB') introduced Operational Policies ('OP') and Bank Procedures ('BP') to address the environmental and social impacts from their financing activities. After that, the WB revised their OPs and BPs which constitute its safeguard policies in a piecemeal approach and labeled them "do no harm" policies in 1997. The safeguard policies were the innovation of the WB before which there was no MDB formulating separate policies to incorporate environmental and social impacts. They marked a role shift of the WB from lender to norm-setter²²⁰. Not only the borrower countries are bound by the safeguards which could be different from their own managing systems, but also other MDBs emulated the WB to create their own safeguard policies²²¹. The themes covered by the WB safeguards include natural habitats, pest management, indigenous people, involuntary resettlement and etc. Borrower countries are obliged to conduct environmental impact assessment in areas prescribed by safeguards and present their findings in an Environmental Assessment ('EA'). To address the problems identified, the client should also prepare and include an environmental management plan in the EA. While the main responsibilities should be assumed by the client, the WB also has its important share of duties according to the safeguard policies.

In 2018 a new version of safeguard policies, called the Environmental and Social Framework ('WBESF'), was adopted by the WB. Unlike the piecemeal OPs and BPs, the WBESF is "significantly more coherent and cohesive"²²². The basic structure of the requirements under the WBESF for borrower countries is unchanged. They still have to compose an assessment and management document which is renamed as Environmental and Social Assessment ('ESA'). Nevertheless, the WBESF is a far cry from the OPs and

²²⁰ DANN & RIEGNER (2019: 538).

²²¹ IEG Independent Evaluations & Annual Reviews, 2010, 63896, *Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience*.

²²² LEWIS & SODERBERGH (2019: 78).

BPs in many other aspects. This section is dedicated to the illustration of the differences between them from a WPR perspective.

The problems in the old safeguards include environmental and social harms caused by projects and the inadequacy of integration of environmental and social aspects into the decision-making process²²³. To manage the harms, the old safeguards created a mitigation hierarchy. “Prevent and, where not possible to prevent, at least minimize, or compensate for adverse project impacts”²²⁴. While the Bank states in its policy that it prefers preventive measures over mitigating measures²²⁵, the priority is mitigation of adverse impacts²²⁶. According to the Bank policy, the task team of the Bank should evaluate and supervise “particularly the implementation of environmental mitigation”²²⁷. The priority on mitigation implies the Bank’s belief in the unavoidable nature of most of the risks contained by projects and its. Besides the problem of harms caused by projects, the integration of environmental and social aspects into the decision-making process is also a highly relevant problem in the policy. Given that environmental and social issues had long been excluded from the policy area of WB, reinforcing the awareness of the decision makers about the importance of environmental and social aspects of projects was urgent at the inception of safeguards. Furthermore, there is an important caveat to be noted about both of the problems. Nominally, the problems represented by the policy are environmental and social. One of the stated objectives of the policy is “to help ensure the environmental and social soundness and sustainability of investment projects”²²⁸. However, the policy is actually skewed towards environmental issues. The document encompassing the substantive commitments of the Bank and clients to environmental and social issues is after all named Environmental Assessment. The bias towards the environmental is reflective of the Bank’s evasion of political sensitivities associated with social matters.

Compared with the ESF of AIIB and the SPS of ADB, the previous safeguards of WB are unique in that they do not clearly differentiate between the responsibilities of the Bank and the clients. Although the policy clearly

²²³ Operational Manual of World Bank, 1 July 2005, *OP 4.00 - Table A1 - Environmental and Social Safeguard Policies – Policy Objectives and Operational Principles*. No number available for the document.

²²⁴ Operational Manual of World Bank *OP 4.00 - Table A1 - Environmental and Social Safeguard Policies – Policy Objectives and Operational Principles*.

²²⁵ Operational Manual of World Bank, January 1999, *OP 4.01 - Environmental Assessment*. No number available for the document.

²²⁶ IEG Independent Evaluations & Annual Reviews *Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience*.

²²⁷ Operational Manual of World Bank, January 1999, *BP 4.01 - Environmental Assessment*. No number available for the document.

²²⁸ Operational Manual of World Bank *OP 4.01 - Environmental Assessment*.

expresses that the primary responsibility should be taken by the clients²²⁹, the exact responsibilities are not clearly distinguished between the Bank and the clients. For instance, the policy stipulates that the Bank is an advisor in the service of the clients for their preparation of EA²³⁰, but the actual requirements imposed on the Bank have exceeded the competencies of an advisor. The Bank should not only identify the imperfections in the draft EA. Furthermore, it should also materialize the compliance of the clients with its policy on EA. “The Bank reviews the EA to ensure its consistency with this policy²³¹.” That said, the authorship of a satisfactory EA is shared between the Bank and the clients. The two parties are responsible for and can be held accountable to the same thing, namely, the final EA’s full alignment with the requirements under the policy. Another example concerns the Bank’s safeguard policy on involuntary resettlement. The Bank and borrower staff are required to collaborate to address the risks of a project on involuntary resettlement, without any division of labor prescribed by the policy²³². The blended and holistic approach on the allocation of responsibilities is a distinguishing characteristic of the previous safeguards of WB.

The problem in the WBESF is represented to be the adverse impacts of projects. Requirements under the WBESF are supposed to “avoid, minimize, reduce or mitigate the adverse environmental and social risks and impacts of projects”²³³. A significant change from the previous safeguards is that the WBESF does not consider the extent to which environmental and social aspects of projects have been merged into decision making process problematic. In fact, the policy mentions nothing about the extent of integration which is problematized by the previous safeguards. Apparently, this difference from the previous safeguards implies the WBESF’s conviction that environmental and social considerations have been routinized in the Bank operations. Another equally significant change is the comprehensiveness of the harms the WBESF has problematized. Two limitations imposed by the previous safeguards on the substantive content of harms are lifted by the WBESF. On the one hand, the previous safeguards’ priority on mitigation is removed. The focus on mitigation had rendered the Bank staff preoccupied with adverse impacts directly produced by projects²³⁴. Issues such as climate change and gender equality that are not in a causal relationship with project activities but constitute the background of the Bank operations were rightfully

²²⁹ Operational Manual of World Bank *OP 4.01 - Environmental Assessment*.

²³⁰ Operational Manual of World Bank *OP 4.01 - Environmental Assessment*.

²³¹ Operational Manual of World Bank *OP 4.01 - Environmental Assessment*.

²³² Operational Manual of World Bank, December 2001, *BP 4.12 - Involuntary Resettlement*. No number available for the document.

²³³ Policy document of the World Bank, 2017, *The World Bank Environmental and Social Framework*. No number available for the document.

²³⁴ IEG Independent Evaluations & Annual Reviews *Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience*.

excluded from the mandate of the Bank's policy. The WBESF, however, does not eschew those exogenous issues. The significance of gender equality and climate change issues is acknowledged in the preamble of the new policy²³⁵. There is also substantive change in the Bank's commitment to them. According to the new policy, the Bank will require the borrowers to pay particular attention on the impact of projects on gender equality in areas of labor and working conditions, involuntary resettlement and indigenous peoples²³⁶. Previously, gender equality was only mentioned in the Bank's safeguard policy relating to indigenous peoples²³⁷. On the other hand, the problematization is no longer lopsided towards environmental dimension. The WBESF expresses directly its vision for sustainable development which was almost never alluded to in the previous safeguards whose partiality for environmental issues naturally stood opposite to the comprehensiveness embedded in the philosophy of sustainable development. As is suggested by the renaming of Environmental Assessment into Environmental and Social Assessment, a decreased imbalance between environmental and social issues is well registered in the new policy.

Another sharp deviation from the previous safeguards is that the WBESF explicitly differentiates between the respective responsibilities of the Bank and the borrowers. In the WBESF, the requirements for the Bank and the borrowers are clearly separated. Consequently, this differentiation connotes two remarkable properties of the WBESF in a comparative manner. First, the new safeguard policy is less interventionist. As mentioned before, together with the borrowers, the Bank is obliged by the previous safeguard policies to actively participate in the process of designing and implementing mitigation measures. The previous safeguards are thought to be process-oriented, which empower the Bank to closely supervise the borrowers and put greater emphasis on the compliance of the borrowers rather than a better development outcome²³⁸. Criticism of the Bank's meddling has not been scarce. Under the WBESF, more discretion is granted to borrowers. For instance, the Bank has promised to strengthen the use of country system in the new policies²³⁹. Second, the stringency of the requirements for both of the Bank and borrowers is watered down. As the borrowers gain more independence in the process of fostering environmental and social sustainability of projects, the Bank's control over the behavior of borrowers and consequently the outcome is attenuated. The linguistic features of the WBESF is an illustrative example of this change. Since the Bank's role in the previous safeguard policies was very intrusive, the words used by those policies demand action in a strong way. The

²³⁵ World Bank Policy *The World Bank Environmental and Social Framework*.

²³⁶ World Bank Policy *The World Bank Environmental and Social Framework*.

²³⁷ Operational Manual of World Bank, July 2005, *OP 4.10 - Indigenous Peoples*.

²³⁸ PASSONI, ROSENBAUM & VERMUNT (2017: 932-933).

²³⁹ World Bank Policy *The World Bank Environmental and Social Framework*.

Bank was obligated to “ensure” the occurrence of a desirable outcome²⁴⁰. In the WBESF, there is, however, a transition from “ensure” to “require”²⁴¹. Unlike “to ensure”, “to require” does not force the Bank to make certain of the borrowers’ compliance with policies. As a result, both of the Bank and borrowers are constrained by less strings.

While the WBESF and the previous safeguards differ in their problem representations, their problems are based on similar assumptions. Both of the previous safeguards and the updated version are created in response to the environmental and social concerns about economic development facilitated through the Bank’s projects. The relation between the environmental, social and economic development is at the core of the assumption behind the problematization. Both versions of the safeguard policies have compartmentalized the concept of development into three dimensions. As is suggested by the name, the previous “do no harm” policies were not aimed at contributing to the development in the environmental and social dimensions. The compartmentalization of the concept of development by the safeguard policies is embodied in the previous safeguard policies’ usage of the word, “development”. One of the operational principles of the policies is to design and implement projects in a way that indigenous peoples do not suffer adverse effects during the development process²⁴². The principle would be a tautological expression if the policies took a holistic approach to the concept of “development” here. After all, the expectation that the life of indigenous peoples will not only be exempted from harms but also be improved is embedded in the sustainable development mentality. Economic development is, however, likely to endanger the life of indigenous peoples. By using “development”, the policies have in fact compartmentalized the concept and leaned towards the economic dimension.

Based on the compartmentalization of development, the WBESF is different from the previous policies in that the sustainable development mentality also has underpinned its problem representations in a distinct way. The environmental and social standards in the new policies are “are designed to avoid, minimize, reduce or mitigate the adverse environmental and social risks and impacts of projects²⁴³,” which is consistent with the previous safeguards’ assumptions about how environmental and social problems should be dealt with in the face of economic development. Yet, there is a remarkable change. Whereas the previous polities shy away from mentioning about sustainable development, the WBESF is a concrete example of the incontrovertible

²⁴⁰ World Bank Policy *The World Bank Environmental and Social Framework*.

²⁴¹ World Bank Policy *The World Bank Environmental and Social Framework*.

²⁴² Operational Manual of World Bank *OP 4.00 - Table A1 - Environmental and Social Safeguard Policies – Policy Objectives and Operational Principles*.

²⁴³ World Bank Policy *The World Bank Environmental and Social Framework*.

importance of sustainable development. “Sustainable development” is a key word that runs throughout the whole WBESF. Whether in the requirements for the Bank or in the environmental and social standards tied to the borrowers’ behavior, “sustainable development” is often referred to as a desirable objective that justifies the content of the policies²⁴⁴. It may seem contradictory that both of the compartmentalization and the holistic approach are present in the current policies, but the sustainable development mentality is used in a distinct way so that it does not conflict with the compartmentalization of development. As argued in the second chapter, to substantially promote sustainable development entails actions in a comprehensive manner. In another word, the current World Bank safeguards cannot be qualified as sustainable development policies unless they go beyond the “do no harm” approach to do something good, which the policies are well aware of. Admittedly, the current policies have covered a broader area of issues. But there are no corresponding comprehensive measures aimed at improving the status quo of those comprehensive issues. What the WBESF can do is “recognize” the importance of sustainable development and have a “vision” for it²⁴⁵. Sustainable development in the policies is an aspirational objective rather than an operationally feasible goal.

As for what is left unproblematic, the previous and current safeguard policies are also very different. On the one hand, in the previous safeguards’ attempt to address environmental and social problems of project, both of the Bank and borrowers are severely restricted in order to prevent project-related harms. Two consequences of the severe restrictions imposed by the policies are left unproblematic. First, the ownership of projects by borrowers is marred. When the policies intend to ensure the occurrence of a certain thing, the borrowers have to compromise their ownership of projects in order to be in compliance of the policy requirements. Second, the previous safeguards are a prescriptive framework that excludes consideration of many other risks and impacts. The narrowness of issue area is naturally attributable to the rigorousness of the previous policies. To make the restrictions viable, the scope of risks and impacts involved in the policies has to be sacrificed. On the other hand, the current WBESF has lifted up the restrictions and covered issues that had been ignored in the past. While it seems that the WBESF has resolved what is left unproblematic by its predecessor, new problems are created and left unproblematic. First, more uncertainty about the environmental and social conditions is a corollary of flexibility and less stringency. When “require” is substituted for “ensure”, borrowers face less interference from the Bank in terms of environmental and social risks and impacts. With more ownership of projects, borrowers are able to take more actions that are based on their own

²⁴⁴ World Bank Policy *The World Bank Environmental and Social Framework*.

²⁴⁵ World Bank Policy *The World Bank Environmental and Social Framework*.

priorities and judgments. Moreover, project-affected people may encounter more troubles when they resort to the accountability mechanism of the World Bank for help. It is harder to establish a causal link between harms and Bank responsibilities for project-affected people when the Bank responsibilities have become softer. Second, in alignment of the increasing of flexibility, risks cannot be avoided that some key concepts are diluted. For instance, it is lauded that the principle of non-discrimination concerning labor standards and Free, Prior and Informed Consent ('FPIC') concerning indigenous peoples' rights is included in the WBESF²⁴⁶. Yet, the policies have distorted their original meaning to give borrowers more flexibility. The vision of the policies about a working based on equal opportunity and nondiscrimination could be frustrated by the different realities in different countries who have their own regulations concerning labor standards. Confronting the possible incompatibility between the policies' standards and the borrowers' legal framework, the policies respect the sovereignty of borrower countries and choose not to impose the strict requirements embedded in the original meaning of the principle of nondiscrimination which is defined by the International Labor Organization. According to the policies, "where national law is inconsistent with this paragraph, the project will seek to carry out project activities in a manner that is consistent with the requirements of this paragraph to the extent possible."²⁴⁷ Moreover, the principle of FPIC is rearticulated in order to suit the policies' inclination to flexibility. The International Labor Organization is the trailblazer of the principle of FPIC which is afterwards promulgated by the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP'). The strictness of this principle manifests itself in the interpretation that a veto right for each member of the indigenous community is implicated. However, the FPIC is defined by the WBESF in a way that enhances flexibility and rejects the interpretation which advocates a veto right. The definition by the WBESF focuses on the consultation process by stating that FPIC is established through "good faith negotiation"²⁴⁸, and stresses that unanimity is not necessary²⁴⁹.

4.1.2 Different Frameworks in AIIB and World Bank

The problems constituted in the ESF of AIIB and the current safeguard policies of World Bank are very similar. Both policies of AIIB and WB treats the damages upon the environmental and social conditions associated with the

²⁴⁶ PASSONI, ROSENBAUM & VERMUNT (2017: 940).

²⁴⁷ World Bank Policy *The World Bank Environmental and Social Framework*.

²⁴⁸ World Bank Policy *The World Bank Environmental and Social Framework*.

²⁴⁹ World Bank Policy *The World Bank Environmental and Social Framework*.

activities of economic development as the problem. Their differences lay in the comprehensiveness of the harms. While the ESF has three separate environmental and social standards ('ESS'), the WBESF has included ten ESSs. The design of the three ESSs in the ESF resembles that of the SPS of ADB. One is Environmental and Social Assessment and Management ('ESAM') and the others are related with involuntary resettlement and indigenous peoples. In the ESAM, issues like climate change, natural habitats, gender equality, working conditions and etc. are recognized as relevant risks and impact. But how these risks and impacts should be assessed and managed are very briefly described by the ESF which only spend one paragraph on each topic. As a contrast, the ten ESSs of the WBESF are ten essays.

With similar problematizations, the ESF and WBESF also are buttressed by similar assumptions about the relation between economic development and environmental and social protection. They share the practice that inserts the compartmentalization of development into the operations and at the same time aspirationally uses the holistic idea of sustainable development.

There are also resemblances in what is left unproblematic by the ESF and WBESF. First, the uncertainty about the environmental and social conditions of projects rises as there is high flexibility. The flexible ex ante screening of projects under the ESF, which is conducive to approval of projects with high risks, also appears in the provision of the WBESF. In common with the ESF, the WBESF does not necessitate the identification of all risks of a project before implementation²⁵⁰. Both of the ESF and WBESF requires borrowers to submit an environmental and social management framework ('ESMF') as a guidance to deal with those unidentified risks. In fact, the practice of ESMF is inherited from the previous safeguards of the World Bank by the WBESF. And it seems that the former staff for the World Bank have brought it into AIIB. Second, key concept is diluted in both of the ESF and WBESF. While the WBESF has rearticulated the principle of FPIC, the ESF does not even adopt the principle by its original name. In the ESF, borrowers are required to uphold the principle of free, prior, and informed consultation ('FPICon'), which demonstrates a more detached position the ESF has taken from the idea promulgated by the UNDRIP.

Nevertheless, there is a giant difference. The unproblematics of the WBESF reflect the enhancement of ownership of projects by borrowers, while those of the ESF in AIIB indicates the leadership assigned by the policies to borrowers. As stated in the second chapter, the ESF clearly wants the borrowers to take a leading role and be responsible for the success of projects during which the Bank bears cooperative and supportive functions. In the case of WBESF, the responsibilities in terms of the operation projects between the Bank and

²⁵⁰ World Bank Policy *The World Bank Environmental and Social Framework*.

borrowers are explicitly separated, but they share the responsibility for the success of projects. Powerful evidence of this difference is their respective stance on the role of national law in the implementation of their own safeguard policies. In the WBESF, the tension between national law and Bank standards is ubiquitous. Concerning the rights of indigenous peoples, if the stated objective of the policies cannot be materialized under national law, the borrowers are required to come up with measures to fill the gap in their domestic systems²⁵¹. In another place about the involuntary resettlement, forced eviction is defined by the WBESF as the exercise of eminent domain without compliance with national law or the provisions of the WBESF²⁵². National law and Bank standards are simultaneously triggered whenever a potential harm emerges. The ESF of AIIB is, however, an opposite. It prioritizes the application of national law. According to the glossary written in the ESF, it is not considered a forced eviction “providing it complies with the requirements of national law, and is conducted in a manner consistent with basic principles of due process.”²⁵³ On the same issue, besides national law and basic principles of due process, the WBESF also adds “the provisions of this ESS”²⁵⁴. With regard to the treatment of labor, as is mentioned before, the WBESF requires actions to be taken when the provisions about the principle of nondiscrimination cannot be fully realized under national law. But the ESF merely “believes” that a sound labor management relationship-based nondiscrimination and other relevant principles which should be consistent with national law contributes to the quality of projects²⁵⁵. Moreover, when workers’ organizations are strictly regulated by national law, the WBESF does not restrict project works from establishing alternative mechanisms and prohibits the borrowers from sabotaging²⁵⁶. Nevertheless, according to the ESF of AIIB, a labor management system should comply with “national law relating to workers’ organizations and collective bargaining.”²⁵⁷ There are indeed conditions where both national law and applicable provisions are simultaneously triggered in the ESF²⁵⁸, but the priority of the application of national law is still a clear feature of the ESF.

²⁵¹ World Bank Policy *The World Bank Environmental and Social Framework*.

²⁵² World Bank Policy *The World Bank Environmental and Social Framework*.

²⁵³ Policy Document of Asian Infrastructure Investment Bank, February 2019, *Environmental and Social Framework*.

²⁵⁴ World Bank Policy *The World Bank Environmental and Social Framework*. No number available for the document.

²⁵⁵ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

²⁵⁶ World Bank Policy *The World Bank Environmental and Social Framework*.

²⁵⁷ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

²⁵⁸ Policy Document of Asian Infrastructure Investment Bank *Environmental and Social Framework*.

The difference in the problematics between the WBESF and ESF indicates that they may serve for different purposes. The ESF is more a framework which constrains the behavior of both the Bank and the borrowers so that economic activities can progress with the least environmental and social harms, which is true of the WBESF. But the WBESF is something more. With the tension between national law and Bank standards pervasive in the operations, the WBESF tries to import its standards into the domestic systems of its borrowers. Admittedly, the sovereignty of borrower countries is duly respected because the provisions does not stipulate that Bank standards should override national law. But the borrowers always have to face the influences from the World Bank. Apart from a framework for development cooperation, the WBESF is also a package of global governance policies that is more likely to change borrowers than the ESF.

4.2 Accountability Mechanism of World Bank

4.2.1 Comparison of Accountability Mechanism and the precedent Inspection Panel

The Inspection Panel (hereafter referred to as the Panel) was created in 1993 by the World Bank as its independent accountability mechanism that addresses the complaints of the project-affected people who believe they have been or are likely to be harmed by project activities due to noncompliance of policies by the Bank. In 1996 and 1999, the Executive Directors (the Board) reviewed the experiences of the Panel and clarified its functions based on the original resolution that has established it. In 2014, after a process of review and consultation, the Panel adopted new operating procedures. The operating procedures of 2014 have consolidated the original resolution and the reviews of 1996 and 1999, and enhanced the Panel in terms of its accessibility, transparency and independence, without any substantial change. But in 2020, five years after the establishment of the AIIB, the World Bank ratified a resolution that has rearranged the institutional structure of its accountability mechanism and added new functions. The new mechanism is called Accountability Mechanism ('WBAM') which includes the Panel and the Dispute Resolution Service ('DRS'). This section is dedicated to the comparison of the Panel and the WBAM from the WPR perspective.

The problem for the Panel is represented to be the complaints of project-affected people who could be harmed by the noncompliance of the Bank with its own policies during the project cycle. It is stated clearly that the Panel is "an as an independent forum to provide accountability and recourse for people affected by IBRD and IDA-financed projects" and reports to the Board on

whether the harms can be attributed to “failure of the Bank to comply with its policies and procedures.”²⁵⁹ Harms on people and Bank noncompliance have a symbiotic relationship in the problem representation.

Behind the problematization, there are assumptions about the harms on the project-affected people and the Management behavior. First, the harms on project-affected people are thought to significantly hamper project activities, which are thus needed to be resolved. Second, the Management is likely to implement economically beneficial projects at the intentional violation of relevant policies or the failure to effectively implement Bank policies could be an unintended consequence of unexpected factors out of the Management’s control such as the borrower’s noncompliance with the legal agreement with the Bank. Hence, the Panel policy needs the Management to give a response when a compliant is officially registered on its compliance with relevant policies²⁶⁰.

On the one hand, the assumption about the significance of the harms on project-affected people is not something built-in. Rather, it is constructed into the institution. If the World Bank, at its inception, had recognized the necessity for it to build a Bank-level mechanism dealing directly with project-affected people, the Panel would not have been created only after more than forty years of Bank operations. As is argued by other researches mentioned in the first chapter, the protests of civil society organizations and the advocacy of the US with its power of purse, combined with other factors, have made the Bank realize that the adverse impacts in environmental and social aspects can severely encumber project activities.

On the other hand, following the assumption about the Management behavior, independence of the Panel from the Management is critical and an educational function is undertaken by the Panel. The independence is enhanced in two senses. First, the communication and interaction between the Panel and Management is reduced to minimum. Members of the Panel are appointed by the Bank for a non-renewable five-year term²⁶¹, which is also a common practice in the AIIB and ADB. There is no daily interaction between the Management and the Panel who reports directly to the Board, except when it is about the handling of complaints. The Panel is established exclusively for the investigation of Bank noncompliance that generates adverse impacts on people, which is therefore isolated from the Bank businesses around projects.

²⁵⁹ Mandate and Procedures of Inspection Panel of the World Bank, February 2016, *The Inspection Panel at the World Bank Operating Procedures April 2014*. No number available for the document.

²⁶⁰ Mandate and Procedures of Inspection Panel of the World Bank *The Inspection Panel at the World Bank Operating Procedures April 2014*.

²⁶¹ Mandate and Procedures of Inspection Panel of the World Bank *The Inspection Panel at the World Bank Operating Procedures April 2014*.

Members of the Panel are not required to work full-time, with the exception of the Chairperson²⁶². Second, the focus of the Panel is narrowed down on environmental and social matters which are not the specialties of the Management that is preoccupied with economic affairs. The split in professional knowledge between the Panel and Management enables the Panel to look at the complaints from a perspective distinct and hence independent from the Management. All of the current members of the Panel are basically laymen in economics. The Chairperson's major is anthropology and the other two members' expertise includes gender & development and environmental pollution control²⁶³.

In addition to the independence from the Management, the Panel is also given an educational function. Since the Management is assumed to be a delinquent, the policy stipulates that the Panel should help the Management learn its lessons from the investigation of noncompliance. The experience of the Panel is thought to be "useful to the Board and Management in establishing good development practice and in identifying and eliminating factors that lead to harm²⁶⁴." Moreover, the Management is supposed to be a proactive learner. In the policy, the Management should actively advance publicity for the Panel in project areas²⁶⁵.

In the problematization of the harms on project-affected people and the Management misbehavior during project cycle, there are three issues left unproblematic. First, since the terms of reference for the Panel is limited on environmental and social matters and Bank noncompliance, the professional division between it and the economically preoccupied Management whose daily operations the Panel could find unfamiliar may render the Panel obstructive in terms of project implementation. An example of this unproblematic is the Qinghai anti-poverty project in China approved by the World Bank in 1999. It was an extremely controversial project which came into the limelight due to the underlying political tension between the Tibetan government in exile and the Chinese government. A request from International Campaign for Tibet for inspection was submitted to and registered by the Panel then. After investigation, the Panel disclosed its report on the project to the Bank staff who strongly disagreed with the findings. It was alleged that the inspection criteria used and conclusions reached by the Panel were basically perfectionist, which, once taken by the Management, would make the cost for project surge; and there is said to be an unpublished

²⁶² Resolution of the World Bank, 22 September 1993, Resolution No. IBRD 93-10/ Resolution No. IDA 93-6, *The World Bank Inspection Panel*.

²⁶³ See the official website of Inspection Panel.

²⁶⁴ Mandate and Procedures of Inspection Panel *The Inspection Panel at the World Bank Operating Procedures April 2014*.

²⁶⁵ Mandate and Procedures of Inspection Panel *The Inspection Panel at the World Bank Operating Procedures April 2014*.

internal report that had blasted the report of the Panel for its misunderstandings and factual errors²⁶⁶. Second, the Panel, as an accountability mechanism of the Bank, is incapable of giving solutions when harms are exclusively attributable to the borrower's faults. The request for inspections will be considered ineligible if there is adequate evidence suggesting that harms or potential harms are "exclusively attributable to the borrower or to other factors external to the Bank²⁶⁷." The policy also accentuates that "the Panel process focuses on the Bank²⁶⁸." Third, the Panel takes no role after the investigation is done. After the action plans are given by the Management on how the noncompliance should be corrected and the harms be remedied, the Panel does not perform any monitoring function.

After the establishment of AIIB, there are two policy updates on the accountability mechanism of the World Bank. The first was in 2016, which added an annex to the then existing policy. The second was in 2020, which substantially changed the institutional structure and designated Accountability Mechanism (hereafter referred to as the WBAM) as its new official name.

The annex in 2016 has alleviated the problem of lack of monitoring from the Panel's side on the action plans presented by the Management. Aside from presenting progress reports to the Board on the implementation of action plans, the Management is also supposed to create tables showing "the submission and implementation of progress reports²⁶⁹."

The substantial change in 2020 has added a grand new function, which is helpful in resolving the problem of exclusive focus on the Bank. The WBAM includes two separated functions. One is taken by the previous Panel and the other is Dispute Resolution Service. The DRS is not a fact-finding agency like the Panel. The problem representation of the DRS is essentially different from the Panel. Instead of portraying the harms experienced by project-affected people as a consequence of the delinquency of the Bank, the DRS sees them as the manifestation of the reality where the parties, mainly the borrower and the project-affected people, have conflicting interests. The conflict of interests between borrowers and project-affected people is constituted to be the real problem for the DRS. Thus, there is no compliance or noncompliance, right

²⁶⁶ BOTTELIER (2001: 52-53).

²⁶⁷ Mandate and Procedures of Inspection Panel *The Inspection Panel at the World Bank Operating Procedures April 2014*.

²⁶⁸ Mandate and Procedures of Inspection Panel *The Inspection Panel at the World Bank Operating Procedures April 2014*.

²⁶⁹ Mandate and Procedures of Inspection Panel *The Inspection Panel at the World Bank Operating Procedures April 2014*.

or wrong, delinquent or educator. The DRS is to “to facilitate a voluntary and independent dispute resolution option for Requesters and borrowers.”²⁷⁰

In alignment with problematizing the conflict of interests, there is an assumed priority on facilitating project implementation through the resolution of disputes rather than finding facts. Consequently, the institutional independence of the DRS is secured in a different way from the Panel. Instead of the Management, it is the Panel that is prohibited from interfering the work of the DRS²⁷¹. On the table for dialogue, the imperative is to reach an agreement. The participation of the Panel with its introduction of facts could disrupt the negotiation process in that the facts may change both parties’ perception of the interests at stake. Besides, given that the Panel is committed to the investigation of significant Bank noncompliance, the borrower might be less willing to participate in the dispute resolution process if it is informed by the Panel that the Bank noncompliance can be a scapegoat for the apparent conflict of interests.

The only thing left unproblematic in the DRS is that serious misconduct really exists. By representing the problem as conflict of interests, the dichotomy between right and wrong is made impossible. Yet, violation of operational policies does constitute a wrongful conduct. The delinquent, whether it is the Bank or the borrower, gets appeased due to the conciliative nature of the DRS. When misconduct is grave, it needs to be diagnosed and corrected. The unproblematic in the DRS is a major problem for the Panel. Hence, in the WBAM, the Panel and the DRS is complementary to each other.

4.2.2 Accountability Mechanism of World Bank and Project-affected People’s Mechanism of AIIB

The current accountability mechanisms of the World Bank and the PPM of AIIB differ in their representation of problem. For the PPM, the complaints from project-affected people signify a malfunction of the Management during project cycle with regard to social and environmental risks and impacts. Although the PPM is an independent mechanism from the Management, its connection with the overall management of social and environmental risks and impacts of projects is tight. However, the problem for the WBAM is exclusively social and environmental.

²⁷⁰ Resolution of World Bank, 8 September 2020, Resolution No. IBRD 2020-0005 Resolution No. IDA 2020-0004, *The World Bank Accountability Mechanism*.

²⁷¹ Resolution of World Bank *The World Bank Accountability Mechanism*.

The divergence of the PPM and WBAM is more explicit in the assumptions behind problem representation. As argued in the second chapter, the finding of a solution to the risks in the form of complaints from people on the purpose of facilitating project implementation bears presupposed urgency in the PPM. Evidence of this assumption is the relationship between the CEIU performing the functions of the PPM and the Management. It is stated that “a key consideration in designing CEIU was to ensure it could exercise relevant functions independent of Management while ensuring that CEIU remains engaged with and contributes to the rest of AIIB.”²⁷² Aside from handling environmental and social matters, the CEIU should also “understand the background and issues related to decisions made by Management and to play a constructive role in expeditiously raising concerns with Management for resolution.”²⁷³ Clearly, while claiming to be an independent agency, the CEIU is not detached from the businesses that concern the Management. The PPM is one of the CEIU efforts to make the Management more effective. While the WBAM also includes learning process for the Management as one of the key functions, there is no regular engagement between them. Although “knowledge and experience of the Bank's operations will also be desirable”²⁷⁴, the WBAM is not expected to maintain any form of connection with the Management.

The power asymmetry left unproblematic in the PPM is also present in the DRS function of the WBAM. As long as it is negotiation between individuals and sovereign entities, this problem has no easy solution.

From a WPR perspective, the WBAM seems to surpass the PPM in terms of environmental and social governance. The PPM is in the charge of an agency that regularly engages with the Management, hence susceptible to the opinions of the Management. Yet, with ample knowledge about the operations of the Bank, the PPM is able to come up with realistic solutions for complaints and is not likely to fall into perfectionism concerning environmental and social matters. The accountability mechanism of World Bank, however, may not reach a balance between environmental and social protection and the operations of the Bank in each complaint. When the opinions of the staff in the WBAM and the Management are irreconcilable, the Board has to intervene to secure internal harmony.

²⁷² Policy Document of Asian Infrastructure Investment Bank, 10 July 2019, *Paper on the Oversight Mechanism*. No number available for the document.

²⁷³ Policy Document of Asian Infrastructure Investment Bank *Paper on the Oversight Mechanism*. No number available for the document.

²⁷⁴ Resolution of World Bank *The World Bank Inspection Panel*.

4.3 Environmental and social conditionality practices

This section will analyze the environmental and social conditionality of the World Bank in practice. For the similar reasons elaborated in Chapter Three when conducting the research on the practice of ADB, this section will primarily rely on examination of the outcomes of complaints submitted to the accountability mechanism of the World Bank through the viewpoint clashes between relevant parties. Information concerning protests and criticism from civil society organizations will complement the findings elicited from the forgoing examination. The study will be exclusively based on Inspection Panel (hereafter referred to as 'IP'), because the WBAM became effective after 2020. This section tries to answer a specific question. Did the performance of IP deteriorate after the establishment of AIIB?

The entire process of IP includes four procedural steps. First, after the receipt of complaint, IP decides whether to register the complaint based on *prima facie* evidence. Second, once the complaint is registered, the Management needs to reply to the issues in the complaint and then IP evaluates the technical eligibility of the complainants' request for investigation. Taking full account of the Management's reply and the technical eligibility, IP decides whether to recommend the investigation. Third, investigation will begin after the Board's approval. Finally, the Management needs to comment on the investigation report of IP and submits its action plan concerning the noncompliance which has led to material adverse impacts.

As with the AM of ADB, approved request for investigation is rare. From 2010 to 2015, IP had received nineteen complaints from Asia. Only two of them finally resulted in investigation. The denouement for the rest was threefold: not registered, technically ineligible for investigation, or eligible but without recommendation for investigation.

For those which were not registered, viewpoint clashes could not be found. It depended on the unilateral decision of IP whether the complaint should or not be registered. Reasons for the rejection were multiple but hardly variable. The decision on admission of complaint strictly abided by the criterion set by the policy on the operating procedures of IP. Cases were not registered for the lack of apparent link between the adverse impacts and Bank activities in project²⁷⁵. Or the blamable source of harms was other than the Bank²⁷⁶. Or the

²⁷⁵ Documents of Inspection Panel of the World Bank, 2 February 2016, IPN REQUEST RQ 15/06, *Memorandum to The Executive Directors Request for Inspection India: Andhra Pradesh & Telangana Road Sector Project and National Highways Interconnectivity Improvement Project Notice of Non-Registration*.

²⁷⁶ Documents of Inspection Panel of the World Bank, 6 February 2015, JPN REQUEST RQ 15/01, *Memorandum to The Executive Directors Request for Inspection Haiti: Mining Dialogue*

complainant was a single individual²⁷⁷ (the policy stipulates that the minimum number of complaints is two²⁷⁸). Or the Bank's financing of the project in question had or would have stopped in the imminent future when the complaint was submitted²⁷⁹. The above-mentioned reasons for rejection all relate to the criterion in the policy.

In another word, viewpoint clashes between relevant parties only emerged in registered complaints. For registered complaints without recommendation for investigation, the clashes mainly occurred between the Management and complainants. As is suggested by the procedures of IP, the Management must give reply to the complaint after the registration. Based on the Management response and the complaint, IP will decide whether or not the investigation is warranted. That said, the communication between the Management and complainants through the evaluation of IP on the eligibility of the request for investigation is the main process where significant clashes occur. Registered complaints which finally led to investigation were dominated by another type of clashes. After investigation, as is suggested by the procedures of IP, the findings of IP and response from the Management combined will decide whether the complaints could be effectively addressed. If the Management and IP fail to reach consensus concerning Bank noncompliance and the significance of the ensuing material adverse impacts, the issues raised by affected people could hardly be fully resolved.

From 2010 to 2015, there were twelve cases registered in total. Only two of them led to an investigation. The rest were not recommended for investigation by IP after it evaluated the content of complaints and the Management response in the second procedural step. In those cases with a premature end in the complete process of IP, the Management would usually oppose the allegations raised by complainants. The rebuttals of the Management came in two types. First, the Management would argue that it had made every effort to comply with relevant policies. On a transportation project in Kazakhstan where there was a complaint about the harms resulting from the Bank noncompliance with regards to road construction, the Management replied that policies were strictly observed²⁸⁰. Second, the Management would attack

Technical Assistance Notice of Non-Registration and Observations Regarding the Policy Framework Applicable to Technical Assistance.

²⁷⁷ Documents of Inspection Panel of the World Bank, 23 June 2014, *Request for Inspection on Kazakhstan: South-West Roads: Western Europe-Western China International Transit Corridor - CAREC-1b & 6b (2014)*. No number available for the document.

²⁷⁸ Mandate and Procedures of Inspection Panel *The Inspection Panel at the World Bank Operating Procedures April 2014*.

²⁷⁹ Documents of Inspection Panel of the World Bank, 22 January 2015, IPN REQUEST RQ 14/08, *Memorandum to The Executive Directors Request for Inspection India: Second Tamil Nadu Road Sector Project (Proposed) Notice of Non-Registration*.

²⁸⁰ Documents of Inspection Panel of the World Bank, 28 June 2010, Report No. 55259-KZ, *Report and Recommendation on Request for Inspection KAZAKHSTAN: South West Roads*

the causal link between project activities financed by the Bank and the harms established by the complainants. And as a matter of fact, this strategy of rebuttals was the most used one. On a water supply project in Lebanon, the Management straightforwardly rejected the claims of the complainants by stating that the complainants were not even qualified as project affected persons on the ground that the link between project activities and harms was not solid²⁸¹. On other complaints whose request for investigation was not recommended, the Management frequently utilized similar arguments substantiated with their own evidence to attack the weaknesses of the causal link established by complainants. Both types of rebuttals were strong, since they were supported by abundant evidence from the Bank. That said, a chasm existed between the complainants and the Bank in terms of professional knowledge about project activities. The complainants could hardly convince IP of the necessity of investigation in front the arguments of the Management. Otherwise, the number of approved requests for investigation should not have been small.

Strong as the Management's opposition against the claims of the complainants, the Management proactively sought the resolution of the concerns raised by people. Action plans aimed to address problems or at least announcing formal commitment to the issues bothering the complainants would be normally included in the Management's response. On the Second Rural Enterprise Support Project in Uzbekistan, the Management, considering the labor issues raised by the complainants, stated its continuous commitment to the improvement of issues of forced child and adult labor²⁸². On a mining project in Mongolia, the Management had made adjustments to the project after the registration of a compliant about it, although the claims about Bank noncompliance were rejected by the Management²⁸³. In fact, according to IP's report, ensuring commitment or practical solutions to relevant issues from the Bank by requesting for compliance review could be the main goal of the complainants. On a complaint about a transportation project in Kazakhstan, the final report of IP showed that the complainants resorted to the Panel out

Project: Western Europe-Western China International Transit Corridor (CAREC IB & 6B) (IBRD Loan No. 7681-KZ).

²⁸¹ Documents of Inspection Panel of the World Bank, 13 December 2010, *Management Response to the Request for Inspection Panel Review of the Proposed Lebanon: Greater Beirut Water Supply Project*. No number available for the document.

²⁸² Documents of Inspection Panel of the World Bank, 5 November 2013, *Management Response to the Request for Inspection Panel Review of the Republic of Uzbekistan: Second Rural Enterprise Support Project*. No number available for the document.

²⁸³ Documents of Inspection Panel of the World Bank, 28 July 2017, Report No. 117391-MN, *Third and Final Report and Recommendation on a Request for Inspection Mongolia: Mining Infrastructure Investment Support Project (P118109) and Mining Infrastructure Investment Support Project - Additional Financing (P145439)*.

of distrust for project implementing agency²⁸⁴. Their goal was not investigation, but official statement and action plans from the Bank on the issues they were concerned about²⁸⁵.

As for approved requests for investigation, the engagement in opinions mainly occurred between the Management and IP. In this period, there were only two cases of investigation. Unlike the CRP of ADB where the Management was often prosecuted for serious noncompliance and where the Management would fiercely refute the conclusions of the CRP, the engagement between the Management and IP in the World Bank tended to be moderate. In one case, IP pointed out many imperfections on the Bank's side during the project cycle. The Management agreed with the findings of IP. For instance, the Management said that it "agrees with the Panel that there were weakness."²⁸⁶ Or that it "agrees that there were significant delays in the delivery of compensation payments."²⁸⁷ In the other case, there were five issue areas, on four out of which IP concluded that the Bank was in compliance with its policies²⁸⁸. In accordance with the Management's general support of the views of IP, it would actively promote action plans to address the harms that could not be isolated from noncompliance. The harmony between the Management and IP was a positive factor that could facilitate the resolution of problems associated with Bank noncompliance.

From 2016 to 2020, the same with the first period, there were nineteen complaints submitted to IP. Thirteen were registered and only one case of approved investigation which is still ongoing. In its response to the requests for investigation, the Management disagreed as usual with the allegations of serious noncompliance raised by complaints as usual, which did not prevent the formulation of action plans or official commitment to address the concerns of people. On the Irrigation System Enhancement Project in Armenia, while denying the existence of harms, design changes were made on the Bank's evaluation of irrigation schemes in this project and the Management promised

²⁸⁴ Documents of Inspection Panel of the World Bank *Report and Recommendation on Request for Inspection KAZAKHSTAN: South West Roads Project: Western Europe-Western China International Transit Corridor (CAREC 1B & 6B) (IBRD Loan No. 7681-KZ)*.

²⁸⁵ Documents of Inspection Panel of the World Bank *Report and Recommendation on Request for Inspection KAZAKHSTAN: South West Roads Project: Western Europe-Western China International Transit Corridor (CAREC 1B & 6B) (IBRD Loan No. 7681-KZ)*.

²⁸⁶ Documents of Inspection Panel of the World Bank, 30 March 2015, INSP/93722-NP, *Management Report and Recommendation in Response to the Inspection Panel Investigation Report of the Nepal: Power Development Project (LOAN NO. P043311)*.

²⁸⁷ Documents of Inspection Panel of the World Bank *Management Report and Recommendation in Response to the Inspection Panel Investigation Report of the Nepal: Power Development Project (LOAN NO. P043311)*.

²⁸⁸ Documents of Inspection Panel of the World Bank, 13 August 2014, INSP/89109-IN, *Management Report and Recommendation in Response to the Inspection Panel Investigation Report of India: Vishnugad Pipalkoti Hydro Electric Project (LOAN NO. 8078-IN)*.

continuous engagement with affected communities²⁸⁹. On two projects about water supply in Lebanon, although the Management argued for its compliance with relevant policies, it came up with action plans dealing with the concerns of affected people and promised to enhance the consultation with stakeholders²⁹⁰.

But there was a change of pattern in the Management's response to complaints near the end of this time period. There were three registered complaints in 2019 and 2020. The Management in its response to the complaints attacked the causal link established by complaints without any action plans, which may be attributed to the then ongoing restructuring of the accountability mechanism of the World Bank. A separate dispute resolution function was in the development. Consequently, IP may be expected to stay focused on its compliance review function.

Overall, IP's performance was satisfactory and did not take a bad turn after 2015. Viewpoint clashes between the Management and complaints were persistent, but the Bank would still offer measures to directly deal with the concerns of people. And in approved requests for investigation, the Management and IP could reach agreement on noncompliance, which was conducive to the implementation of following actions to address problems.

^{a289} Documents of Inspection Panel of the World Bank, 24 July 2017, Report No.: 116942-AM, *Inspection Panel Final Report and Recommendation REPUBLIC OF ARMENIA Irrigation System Enhancement Project (P127759)*.

²⁹⁰ Documents of Inspection Panel of the World Bank, 16 November 2018, Report No. 132119 – LA, *The Inspection Panel Report and Recommendation On a Request for Inspection Lebanese Republic Water Supply Augmentation Project (P125184); Greater Beirut Water Supply Project (P103063) and its Additional Financing (P165711)*.

Chapter Five: Are the multilateral development banks racing to the bottom?

5.1 Not a racing to the bottom

Since its inception, much skepticism has been dwelling on the environmental and social standards adopted by the AIIB. Many worry that the new Bank predominated by China would detach itself from international good practices. It is suspected that the assumed undermining of environmental and social standards by the AIIB, which is thought to be attractive to borrowers, will trigger a race to the bottom by other MDBs with operations in Asia which have to respond to the new competition introduced by the AIIB.

Persistent as skepticism is, after the comparison across the AIIB, ADB and World Bank in terms of policy documents and practices, this research does not find convincing evidence indicating a race to the bottom in Asia. Instead of converging at pushing the environmental and social standards downward in order to attract borrowers, differences are conspicuous across the three institutions. Back to the core research question raised in the first chapter, this section will summarize the findings in the preceding three chapters.

In terms of the safeguard policies, the research does not find evidencing of racing to the bottom after the horizontal and vertical comparison. Each Bank has its distinct shortcomings in their own safeguard policies. For the AIIB, the weakness of the ESF exists in the overemphasis on the role of borrowers. The leadership of borrowers is actualized through a highly flexible *ex ante* screening of projects, encouraging the use of country system and the eclipse of ESF provisions by national laws. Since the borrowers are mostly developing countries in Asia, excessive trust for their domestic system on the management of environmental and social risks and impacts could incur consequences disadvantageous to development. A highly flexible *ex ante* screening of project could lead to the approval of projects whose risks could be underestimated during the pipeline. Without proactive and strong supervision by the Bank, the use of country system, if approved, could be exploited by borrowers in their favor. And when national laws of borrowers are flawed on some matters, the ESF is even not allowed to intervene. For ADB, the drawbacks of SPS lay in the pragmatism of ADB and the bank-centered approach in capacity building. Due to the ADB's pragmatism stated in the SPS, the issue areas tend to be restricted. As a contrast to the WBESF which lists subordinate standards for borrowers in ten different issues, the SPS expects the borrowers to focus on three issue areas. And the bank-centered approach in capacity building renders the Bank's efforts to help improve country system of borrowers vain in most cases. The rigorous equivalence and

acceptability assessment discourages borrowers from proposing the use of their systems. Even though the proposal for the use of country system is approved by the ADB, the borrowers will still be under the influences of the Bank which will advise the actual use of country system according to its own preferences. Given the tremendous conditionality attached to the use of country system, the actual application of country system in project activities is scarce. For the World Bank, the defects of its current safeguard policies derive from the watered-down language on the responsibilities of the Bank and the diluting of some key concepts in the context of the broadening of issue areas. Instead of “ensuring”, the Bank only “requires” borrowers to obey their responsibilities. Moreover, key concepts such as the principle of Free, Prior and Informed Consent and nondiscrimination in labor relations are deprived of their original degree of stringency. With all of those shortcomings of the current WBESF, the current policies are still not inferior to the predecessor. Compared with the previous policies, more issues get covered and official commitment to the aspirational vision of sustainable development is explicitly made in the WBESF. Admittedly, the rigorousness of provisions is sacrificed for the comprehensiveness of issues, and the aspirational use of the concept of sustainable development is detached from actual operations, which are in accordance with the compartmentalization of the concept of development. The changes on the WBESF are more a trade-off the World Bank has made concerning environmental and social conditionality than a dent in the environmental and social governance of this Bank.

With dissimilar shortcomings, the safeguard policies of the three Banks share their assumptions about the concept of development. And the common assumptions embody the boundedness of the environmental and social governance of the three Banks. All of the safeguard policies are essentially “do no harm policies”. The implementation of the safeguard policies relies on their avoidance of proactive interference in the improvement in environmental and social dimensions. As is already argued in Chapter one, to participate in environmental and social improvement is to participate in politics, which is against the MDB’s institutional spirit of political neutrality. Through compartmentalization of the concept of development, the safeguard policies of the three Banks are able to constitute a practical vision for economic development without environmental and social harms. Otherwise, the objective of the safeguard policies would be economic development alongside with environmental and social improvement. In the portfolio of the three Banks, the majority of projects is never associated with themes such as pollution reduction, social services, air quality improvement and etc. After all, the mandate of the Banks is tightly concerned about economic development without explicit commitment to environmental and social issues.

In terms of the policies on accountability mechanism, the research does not find evidencing of racing to the bottom after the horizontal and vertical

comparison, either. Yet, the PPM of AIIB is indeed operating at questionable standards. The PPM, compared with the other mechanisms, is the least independent one. The PPM is only partly independent from the Management. Unlike the mechanisms of ADB and World Bank, the communication between the head of PPM and the Management on issues unrelated with complaints is not prohibited. In fact, the AIIB expects to establish and preserve a balance between independence and engagement. The problem representation in the PPM also suggests that the mechanism is an integral part of the Bank's management of environmental and social risks and impacts. Moreover, the head of PPM, instead of devoting all time to complaints addressing, is also responsible for providing evaluation on other aspects of the Bank. With partial independence, the PPM's ability to effectively address complaints could be jeopardized. The accountability mechanism of AIIB is completely an outlier among its counterparts in ADB and World Bank. The mechanisms of ADB and World Bank are flawed in their own ways, but both of them have retained formal independence from the Management. Members of AM of ADB and IP of World Bank are only allowed to communicate with the Management on issues related with complaints and they have no other businesses to worry within their respective Bank. And World Bank and ADB did not show signs of weakening their own mechanisms after the establishment of AIIB. The World Bank even improved the services yielded by its accountability mechanism by adding a dispute resolution function.

With regards to environmental and social conditionality practices, evidence of racing to the bottom is still not found. While the practices in the case of AIIB are problematic, ADB and World Bank's records on the resolution of complaints concerning harms resulting from Bank noncompliance did not take a bad turn after the establishment of AIIB. In the case of AIIB, the abundance of extra-institutional criticisms is an ironic contrast against the nonexistence of submission of complaints on the official website of the PPM. With information about most of the subprojects of financial intermediaries financed by AIIB in secrecy, affected people might not even know which party should be held accountable. And it seems that civil society organizations may have usurped the role of PPM in addressing the adverse impacts of projects financed by AIIB, as is suggested in the case of Bhola IPP in Bangladesh. In the case of ADB, the Management's opposition against the findings of the CRP is persistent. Throughout the whole-time range, the recommendations made by the CRP normally did not touch the substantial concerns of affected people. But the performance of the SPF is relatively satisfactory. The viewpoints between relevant parties were usually reconcilable during the process of PSF and the remedial plans agreed by parties directly addressed the concerns of complainants. Besides, no apparent change is detected on the performance of AM of ADB after the establishment of AIIB. In the case of World Bank, the Management was proactive in solving the concerns of complainants even when it disagreed with the allegations of serious noncompliance. Although

approved requests for investigation were few, people were not rejected the opportunities of voicing their concerns and seeking remedies. As with AM of ADB, IP of World Bank did not take a downward turn after the establishment of AIIB, either.

In conclusion, the “racing to the bottom” argument is invalid. The institutional design of PPM of AIIB and the environmental and social conditionality practices of the new Bank are indeed problematic. But there is no sign implying that the other MDBs operating in Asia have lowered their environmental and social standards to attract borrowers as a response to the competition brought by AIIB. And in the long run, even the relative shortcomings in the environmental and social conditionality of AIIB found in this research could be overcome.

5.2 Why is not there a racing to the bottom?

As is stated in the first chapter, the research is mainly concerned about the soundness of the “racing to the bottom” argument. Exploring the reasons why there is not a racing to the bottom is beyond the scope of the study. Yet, as a conclusion part of the thesis, this section will touch on the reasons for the nonexistence of racing to the bottom.

The vital flaw in the “racing to the bottom” argument is the over-simplification of reality in its portrayal. Certainly, the AIIB may choose to operate with less stringent environmental and social conditionality. Yet, the choice may not be practically feasible given that other actors such as civil society organizations may intervene. In fact, CSOs’ participation is ubiquitous. All of the drafting and updating of safeguard policies of the three Banks have to go through a process of consultation with civil society organizations. The accountability mechanisms normally allow complainants to designate their representatives from CSOs which are usually actively involved in the process of complaints addressing. For instance, in the case of the CRP of ADB, most of the letters of request for investigation are written by representatives from CSOs. If problematic environmental and social conditionality was adopted by AIIB, the opposition from CSOs, as the stakeholders in environmental and social governance, could be strong enough to hinder the project activities of AIIB. As a matter of fact, the annual meeting of AIIB is already a hot spot for protests from CSOs against the AIIB’s policies on environmental and social dimensions of its projects.

Besides, even if the AIIB was indeed adopting dubious environmental and social standards to attract borrowing, the other MDBs might not follow suit. Both of World Bank and ADB are fond of exporting their ideas about

environmental and social governance. The World Bank claims to be a knowledge-sharing institution and the ADB clearly intends to create alignment between good international practices and the domestic system of borrowers through its capacity building projects and initiatives. In another word, to tarnish their current environmental and social standards is to forgo one of their competitive advantages in the realm of international development.

Moreover, other international organizations such as the United Nations and International Labor Organization are advocating for environmental and social sustainability of projects financed by MDBs. Their influences are conspicuous. For instance, in the WBESF, the World Bank has expressed its support for human rights principles enshrined in the Universal Declaration of Human Rights. Labor standards of ILO are also used for reference in the WBESF.

In conclusion, the *status quo* is not conducive to a racing to the bottom. The assumptions made by the current “racing to the bottom” argument about the reality are pretty flimsy. Ultimately, racing to the bottom is an artificially constructed scenario where the relevance of multiple actors should be included. The strategic preferences of MDBs alone may not be enough to trigger a racing to the bottom.

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Summary

This thesis aims to test the veracity of the “race to the bottom” argument. The argument opines that MDBs operating in Asia will undermine their environmental and social standards as a response to the competition brought by AIIB who leverages its lower standards as the attraction for borrowers. To test the argument, this research tries to answer two specific questions. First, is AIIB operating in a lower environmental and social standard in comparison with the World Bank and ADB? Second, have the World Bank and ADB lowered their environmental and social standards as a response to the competition AIIB has brought about in Asia in attracting borrowers? To answer the questions, this research conducts a comparative analysis on the environmental and social standards of the three Banks. The relative level of the environmental and social standard is deduced from a comparison made by a qualitative probe into how much protection is offered by each MDB. The comparison involves critical evaluation of the policy documents of safeguards and the accountability mechanism and the environmental and social conditionality practices. The comparison is both horizontal(across institutions) and vertical(across time periods). The horizontal comparison addresses the first question and the vertical the second. The timeframe of the vertical comparison is from 2010 to 2020. The first time period ranges from 2010 to 2015, encompassing the environmental and social standards of the World Bank and ADB in the aftermath of the global financial crisis. The second period ranges from 2016 to 2020, encompassing the environmental and social standards of the World Bank and ADB in the context of the creation of AIIB. The comparison of policy documents adopts a critical analysis of policy documents, which, in this thesis, is based on the “What’s the problem represented to be?”(WPR) approach proposed by Bacchi. The comparison of the environmental and social conditionality practices focuses on whether the accountability mechanism can effectively handle allegations of harms, and it is conducted both horizontally and vertically.

Chapter two is about AIIB. By adopting the WPR approach, this chapter has analyzed the policy documents of the Environmental and Social Framework and Policy on Project-affected People’s Mechanism in terms of the problematization, assumptions behind the problematization and what

is left unproblematic. Also, this chapter have looked at the AIIB's environmental and social conditionality practices.

The overarching problem represented by the ESF is the compatibility between environmental and social sustainability of projects and economic development through investing in infrastructure. The overarching problem summarizes the commonality of the more detailed and operational problems included by the ESF. While these problems are derived from the same source, they are allocated to two different actors, namely, the Client and the Bank. The Client is expected to assume a leading role in the resolution of problems. It bears the main responsibility for the success of projects. The problem for the Bank is represented to be guiding and supervising the Client. The representation of problems is underpinned by a particular understanding of development and a MDB's role in development by the AIIB, as is manifested in the ESF. Instead of adopting a holistic perspective to advance sustainable development, the AIIB's safeguard policy is based on compartmentalization of development into economic, environmental and social. As established by the ESF, the problem of the compatibility between environmental and social sustainability and economic development is subdivided to the leadership problem of the Client and the guidance and supervision problem of the Bank. Such a problematization strengthens the ownership of projects by the Client and squeezes out the Bank's influences on the Client. The Client is empowered to command its projects. As a result, environmentally and socially risky projects might be more likely to be approved by the Bank, which is left unproblematic. In the implementation, the ESF emphasizes the use of country system (UCS), which may incur results materially inconsistent with the objectives of the ESF.

The Project-affected People's Mechanism (PPM) is the accountability mechanism of the AIIB, the other part of the environmental and social conditionality of the AIIB. The problem in the policy is the failure of the Management to deal with environmental and social risks and impacts according to the ESF. Essentially, the policy is aimed at a managerial problem. The problematization is sustained by a presupposed priority on finding a solution that can smooth the project implementation. The complaints of the project-affected people are portrayed as risks and impacts instead of injustices that the Bank may or may not be responsible for. The solution-

oriented PPM may turn out to be effective with regard to project implementation, but it left the asymmetric power structure embedded in the main function of the PPM unproblematic.

Overall, AIIB's environmental and social conditionality practices are problematic. Of all the 107 projects approved during 2016 and 2020, only 49 are eligible for the AIIB ESF and PPM. Among them, the most controversial projects include Bangladesh Bhola IPP, India National Investment and Infrastructure Fund, Beijing Air Quality Improvement and Coal Replacement Project, Support to Colombo Urban Regeneration Project, Mumbai Urban Transport Project. In those cases, the current evidence suggests that either the AIIB fails to effectively handle the complaints or that the possibility of AIIB's failure in grievance redressing is high. Based on the details of the controversy around these projects, they can be categorized into three types, representing three types of environmental and social risks the AIIB has to tackle in the future. The first type of project is Bangladesh Bhola IPP, whose environmental and social risks are underestimated by the AIIB. The second type of project are India National Investment and Infrastructure Fund (NIIF) and Beijing Air Quality Improvement and Coal Replacement Project. The disputes about this type of projects revolve around information disclosure. The third type of project include Support to Colombo Urban Regeneration Project and Mumbai Urban Transport Project. Both of the projects are imprinted with contentious history.

Chapter three is about ADB. By adopting the WPR approach, this chapter has analyzed the policy documents of the Safeguard Policy Statement and Accountability Mechanism in terms of the problematization, assumptions behind the problematization and what is left unproblematic. Also, this chapter have looked at the ADB's environmental and social conditionality practices. Comparison is made between ADB and AIIB.

The overarching problem of SPS is represented to be the harms caused by projects on the environment and people. Compared to the ESF of AIIB, the problematization of SPS is pragmatic. The compatibility problem in the ESF is a strategic problem, which not only points to the environmental and social issues but also concerns itself with the relationship between the three dimensions of sustainability development. In contrast, the SPS grudges discussion about strategic problems and concentrates on where outcomes beneficial to environmental and social

sustainability are tangible. Similar to the ESF of AIIB, from the overarching problem derives the role problem for the ADB and the Client. A substantial difference from the ESF which envisions the leadership of the Client, the SPS inherits the basic principle from the ADB's previous safeguards which accentuates the legal obligations of the Client as a contracting party. The Client shall be responsible for nothing but the implementation of provisions listed in the SPS. The represented problem for the ADB includes guiding and supervising the Client. In fact, the provisions in the SPS on how the ADB provides guidance and supervises the performances of the Client is almost the same as those in the ESF. Compared with AIIB's ESF, the SPS adds a new problem for the Bank. Both of the AIIB and ADB have promised to strengthen the use of country system in their development projects, but the capacity of the Client's system to meet the objectives of the safeguard policy is problematic. The capacity building for the Client is represented by the SPS as a key problem that has tremendous impact on the delivery of stated objectives. Although differences stand out in the representation of problems between the ESF and SPS, they are equally underpinned by the compartmentalization of development. The point of substantial variance between the ESF and SPS in what is left unproblematic is about the use of country system. The AIIB risks abusing of the country system as it grants much sway to the Client. With proactive participation in the capacity building of the Client's domestic system, the use of country system in ADB-financed projects is more restrictive. While the AIIB's approach respects the sovereignty of the Client, the ADB's attempt to engineer the improvement of country system is bank centric, which is left unproblematic. The use of country system is paradoxically tied with conditionality. The rationale behind setting conditionality is that measures should be in place to prevent the often inadequate country system of developing countries from failing to meet the objectives desired by the MDBs. The ADB is well aware of the risks underlying the use of country system. The eligibility and acceptability assessment required under the SPS if the use of country system is requested by the Client constitutes a selectivity conditionality that only permits the use of qualified system. The criteria of selectivity is based on the SPS which revolves around the value judgments of the ADB. With the bank centric mentality, ADB's efforts in capacity building confront difficulties.

The problem in the AM policy is constituted to be the complaints of the project-affected people. Unlike the PPM policy which associates its functions with the management of risks and impacts, the AM policy stresses the concerns of the local people. The policy document explicitly states that the objectivities are to provide an independent and effective forum for people to file complaints, demand solutions and request compliance review. Such problematization makes it possible for the policy to impose certain responsibilities, which are omitted in the PPM policy, on the Bank staff so that the mechanism can be fully responsive to demand. Same with the PPM, the AM is supposed to be a last resort for the people who are required by the Bank to make prior good faith efforts to solve their concerns at other grievance addressing mechanisms. In the demand-driven mechanism, institutional independence is assumed to be of critical value in its operations. There are elements in the PPM policy reflecting the Bank's seriousness on institutional independence, as argued before. Yet, independence is shined in the AM policy in a manner substantially different from the PPM. With independence secured, the AM can perform its demand-driven functions. But it is not demand driven in essence, which is left unproblematic by the policy. In fact, the AM is established by and has to grapple with the supply side forces. The supply side here refers to policy makers of the Bank and member countries. The AM was created in a power structure where the project-affected people can only borrow the power of oversight from the Bank through the AM to defend their interests instead of commanding the AM at their pleasure. To be specific, the constraints, which are attributable to the supply-side essence of the AM, on the mechanism are twofold. First, policy makers of the ADB try to limit the AM's influences on policies of the Bank, making it an administrative institution strictly adhering to the extant policies of the organization. Second, members countries can boycott the AM by rejecting its request for site visit.

Overall, the environmental and social conditionality practices of ADB were satisfactory during the time period set by this research and did not take a bad turn after the establishment of AIIB. As AM has two functions, the forms of viewpoint clashes are different in each function. In the problem solving function (PSF), the collision in opinions that could impede substantial progress occurs between complainants and borrowers. When the two parties cannot agree on the course of action to be implemented in order to resolve disputes, the concerns raised by the complainants

are not likely to be settled. In the compliance review function (CRF), conflicting standpoints between the Management or the Board and the compliance review panel (CRP) endangers the prospect of successful resolution of harms resulting from noncompliance of the Bank. Given the total number of projects of ADB from 2010 to 2020, cases brought to the CRF were quite few. Each year there were more than three hundred projects financed by ADB. As a sharp contrast, there were in total eighteen complaints recorded in the ADB website during the time range and the projects each complaint is concerned about sometimes overlap. The CRF is assumed by the CRP which is a fact-finding body. Once the request from affected people for investigation of noncompliance of ADB is considered eligible, the CRP commences its work and then presents its investigation report and makes recommendations for response from the Management and the Board's approval. Judicial-type remedies are not offered by the CRP which only recommends measures for bringing back the Bank into compliance. From 2010 to 2015, the CRP had received six cases all of which were eligible for investigation. From a particular perspective, all of these cases culminated in a fiasco for the complainants. Although the demands of the complaints for compensations could be partly satisfied in the reinstating of Bank compliance, the recommendations made by the CRP usually did not touch substantial issues complainants were most concerned about and the Management often fiercely disagreed with the conclusions of the CRP's report. In most cases, the recommendations of the CRP only provide broad guidelines for the future movements the ADB is expected to take in order to comply with its own policies. The Management's opposition against the CRP's conclusions in terms of noncompliance also played a role in the incapability of the CRP to fulfill the requirements of the complainants in its recommendations for compliance. Although the Board's approval is essential for the implementation of recommendations, the review of the CRP's report by the Board seems to be a no-objection process. There is no case where the Board disapproves the final report. That said, the opposition presented in the Management's reply to the draft report could undermine the validity of the recommendations made by the CRP. The responses from the Management to the report can be categorized into three types. First, it imputed the material adverse impacts to the fault of the borrower. Second, it argued for its compliance with evidence. Third, it mildly admitted noncompliance. The outcomes of the submissions to the CRP from 2016 to 2020 were

no more satisfactory than those from 2010 to 2015. But there is not an apparent negative change of pattern in how the CRP handles complaints before and after the establishment of AIIB. The period from 2010 to 2015 did witness a bigger number of approved investigations, but the CRP hardly made recommendations that could substantially and directly resolve the issues the complaints were most concerned about. From 2016 to 2020, there was only one investigation. Nevertheless, either the complaints were not within the mandate of the CRP, or the issues presented by the complainants were resolved in an alternative approach. And the only investigation had led to remedial measures. The situation on the problem solving function of AM was nothing different. Evidence of racing to the bottom by the SPF is absent. From 2010 to 2015, the picture of viewpoint clashes between parties was slightly different on each eligible cases. Overall, whether it was limited or comprehensive, the agreed course of action had directly addressed the issues bothering the complainants. There was only one abortive case. From 2016 to 2020, complainants in most of eligible cases had received satisfactory results according to their own statements in final reports of the SPF. The concord between parties, under the facilitation of the SPF, was a rule. Moreover, the SPF handled more eligible cases from 2016 to 2020 than during the former period. The evidence gathered in this section leads to a conclusion opposite of “racing to the bottom”. In fact, the performance of the SPF turned out to be better after the establishment of AIIB, in terms of the number of eligible cases and cases which ended with agreed course of action. Furthermore, the AM of ADB is different from the PPM of AIIB. The expression and resolution of complaints concerning environmental and social matters are generally institutionalized in ADB. In the case of AIIB, for instance, the injustices inflicted upon the local communities during the project cycle of Bangladesh Bhola IPP were remedied not through an institutional channel. If not for the participation of civil society organizations, the AIIB would have neglected the adverse impacts of this project and the local communities would have not known which party was accountable for their losses. The PPM, since its inception, have not solved a single case. Admittedly, the AIIB as a new international organization has a much smaller number of projects. Yet, the case of Bangladesh Bhola IPP has demonstrated that complaints are just not submitted to the PPM instead of inexistent. As a contrast, complaints’ entry to the AM of ADB is regular. There is indeed protest or criticism from the civil society

organizations concerning ADB financed projects. But the extra-institutional expression of complaints is paralleled by a resort to institutional tools of the AM. For instance, when NGO groups sent a letter to the ADB accusing its project of labor violations , a formal request for compliance review on the same project was also under the process of the CRF. And protest did not occur after the AM's final decision on each case.

Chapter four is about World Bank. By adopting the WPR approach, this chapter has analyzed the policy documents of the World Bank Environmental and Social Framework, the previous safeguards and accountability mechanism in terms of the problematization, assumptions behind the problematization and what is left unproblematic. Also, this chapter have looked at the World Bank's environmental and social conditionality practices. Comparison is made between World Bank and AIIB.

In 2018 a new version of safeguard policies, called the Environmental and Social Framework (WBESF), was adopted by the WB. Unlike the previous safeguards, the WBESF is significantly more coherent and cohesive. The problems in the old safeguards include environmental and social harms caused by projects and the inadequacy of integration of environmental and social aspects into the decision making process. To manage the harms, the old safeguards created a mitigation hierarchy. Compared with the ESF of AIIB and the SPS of ADB, the previous safeguards of WB are unique in that they do not clearly differentiate between the responsibilities of the Bank and the clients. The problem in the WBESF is represented to be the adverse impacts of projects. Requirements under the WBESF are supposed to "avoid, minimize, reduce or mitigate the adverse environmental and social risks and impacts of projects". A significant change from the previous safeguards is that the WBESF does not consider the extent to which environmental and social aspects of projects have been merged into decision making process problematic. Apparently, this difference from the previous safeguards implies the WBESF's conviction that environmental and social considerations have been routinized in the Bank operations. Another equally significant change is the comprehensiveness of the harms the WBESF has problematized. Two limitations imposed by the previous safeguards on the substantive content of harms are lifted by the WBESF. On the one hand, the previous safeguards' priority on mitigation is removed. On the other hand, the problematization is no longer lopsided

towards environmental dimension. Another sharp deviation from the previous safeguards is that the WBESF explicitly differentiates between the respective responsibilities of the Bank and the borrowers. While the WBESF and the previous safeguards differ in their problem representations, their problems are based on similar assumptions. Both of the previous safeguards and the updated version are created in response to the environmental and social concerns about economic development facilitated through the Bank's projects. Both versions of the safeguard policies have compartmentalized the concept of development into three dimensions. As for what is left unproblematic, the previous and current safeguard policies are also very different. On the one hand, in the previous safeguards' attempt to address environmental and social problems of project, both of the Bank and borrowers are severely restricted in order to prevent project-related harms. Two consequences of the severe restrictions imposed by the policies are left unproblematic. First, the ownership of projects by borrowers is marred. Second, the previous safeguards are a prescriptive framework that excludes consideration of many other risks and impacts. On the other hand, the current WBESF has lifted up the restrictions and covered issues that had been ignored in the past. While it seems that the WBESF has resolved what is left unproblematic by its predecessor, new problems are created and left unproblematic. First, more uncertainty about the environmental and social conditions is a corollary of flexibility and less stringency. Second, in alignment of the increasing of flexibility, risks cannot be avoided that some key concepts are diluted.

The problems constituted in the ESF of AIIB and the current safeguard policies of World Bank are very similar. Both policies of AIIB and WB treats the damages upon the environmental and social conditions associated with the activities of economic development as the problem. Their differences lay in the comprehensiveness of the harms. With similar problematizations, the ESF and WBESF also are buttressed by similar assumptions about the relation between economic development and environmental and social protection. They share the practice that inserts the compartmentalization of development into the operations and at the same time aspirationally uses the holistic idea of sustainable development. There are also resemblances in what is left unproblematic by the ESF and WBESF. First, the uncertainty about the environmental and social conditions of projects rises as there is high flexibility. Second, key concept is diluted in both of

the ESF and WBESF. Nevertheless, there is a giant difference. The unproblematics of the WBESF reflect the enhancement of ownership of projects by borrowers, while those of the ESF in AIIB indicates the leadership assigned by the policies to borrowers. As stated in the second chapter, the ESF clearly wants the borrowers to take a leading role and be responsible for the success of projects during which the Bank bears cooperative and supportive functions. In the case of WBESF, the responsibilities in terms of the operation projects between the Bank and borrowers are explicitly separated, but they share the responsibility for the success of projects. A powerful evidence of this difference is their respective stance on the role of national law in the implementation of their own safeguard policies. In the WBESF, the tension between national law and Bank standards is ubiquitous. The ESF of AIIB is, however, an opposite. It prioritizes the application of national law.

The current accountability mechanisms of the World Bank and the PPM of AIIB differ in their representation of problem. For the PPM, the complaints from project-affected people signify a malfunction of the Management during project cycle with regard to social and environmental risks and impacts. However, the problem for the WBAM is exclusively social and environmental. The divergence of the PPM and WBAM is more explicit in the assumptions behind problem representation. The power asymmetry left unproblematic in the PPM is also present in the DRS function of the WBAM. As long as it is negotiation between individuals and sovereign entities, this problem has no easy solution. From a WPR perspective, the WBAM seems to surpass the PPM in terms of environmental and social governance. The PPM is in the charge of an agency that regularly engages with the Management, hence susceptible to the opinions of the Management. Yet, with ample knowledge about the operations of the Bank, the PPM is able to come up with realistic solutions for complaints and is not likely to fall into perfectionism concerning environmental and social matters. The accountability mechanism of World Bank, however, may not reach a balance between environmental and social protection and the operations of the Bank in each complaint. When the opinions of the staff in the WBAM and the Management are irreconcilable, the Board has to intervene to secure internal harmony.

Overall, the environmental and social conditionality practices of World Bank were satisfactory during the time period set by this research and did not take a bad turn after the establishment of

AIIB. From 2010 to 2015, there were twelve cases registered in total. Only two of them led to an investigation. The rest were not recommended for investigation by IP after it evaluated the content of complaints and the Management response in the second procedural step. In those cases with a premature end in the complete process of IP, the Management would usually oppose the allegations raised by complainants. The rebuttals of the Management came in two types. First, the Management would argue that it had made every effort to comply with relevant policies. Second, the Management would attack the causal link between project activities financed by the Bank and the harms established by the complainants. Strong as the Management's opposition against the claims of the complainants, the Management proactively sought the resolution of the concerns raised by people. As for approved requests for investigation, the engagement in opinions mainly occurred between the Management and IP. In this period, there were only two cases of investigation. Unlike the CRP of ADB where the Management was often prosecuted for serious noncompliance and where the Management would fiercely refute the conclusions of the CRP, the engagement between the Management and IP in the World Bank tended to be moderate. From 2016 to 2020, the same with the first period, there were nineteen complaints submitted to IP. Thirteen were registered and only one case of approved investigation which is still ongoing. In its response to the requests for investigation, the Management disagreed as usual with the allegations of serious noncompliance raised by complaints as usual, which did not prevent the formulation of action plans or official commitment to address the concerns of people. But there was a change of pattern in the Management's response to complaints near the end of this time period. There were three registered complaints in 2019 and 2020. The Management in its response to the complaints attacked the causal link established by complaints without any action plans, which may be attributed to the then ongoing restructuring of the accountability mechanism of the World Bank. A separate dispute resolution function was in the development. Consequently, IP may be expected to stay focused on its compliance review function.

In conclusion, the "racing to the bottom" argument is invalid. The institutional design of PPM of AIIB and the environmental and social conditionality practices of the new Bank are indeed problematic. But there is no sign implying that the other MDBs operating in Asia have lowered their environmental and social standards to attract borrowers as a response to the competition

brought by AIIB. And in the long run, the shortcomings in the environmental and social conditionality of AIIB found in this research could even be overcome.