



THE ROLE OF INTERNATIONAL FINANCIAL INSTITUTIONS IN SHAPING INFRASTRUCTURAL PROJECTS AND CONFLICT RESOLUTION MECHANISMS IN ASIA.



INTRODUCTION



In many parts of the world, international financial institutions (IFIs) play a major role in the social and economic development programs of nations with developing or transitional economies. This role includes advising on development projects, funding them and assisting in their implementation.

Characterized by AAA-credit ratings and a broad membership of borrowing and donor countries, each of these institutions operates independently. All however, share the following goals and objectives:

- to reduce global poverty and improve people's living conditions and standards;
- to support sustainable economic, social and institutional development; and
- to promote regional cooperation and integration¹.

IFIs achieve these objectives through loans, credits and grants to national governments. Such funding is usually tied to specific projects that focus on economic and socially sustainable development. IFIs also provide technical and advisory assistance to their borrowers and conduct extensive research on development issues. In addition to these public procurement opportunities, in which multilateral financing is delivered to a national government for the implementation of a project or program, IFIs are increasingly lending directly to non-sovereign guaranteed (NSG) actors. These include sub-national government entities, as well as the private sector.

This section seeks to analyse the impact of other international financial institutions by studying two international banks, the New Development Bank and the Asian Development Bank and their intervention in Asia.

NDB AND AIIB APPROACH TO DEVELOPMENT

The creation of the New Development Bank (NDB) and the Asian Infrastructure Investment Bank (AIIB) has generated a great deal of attention and controversy in the development community and beyond. The New Development Bank (NDB) was founded by Brazil, Russia, India, China and South Africa (collectively the BRICS countries) during the fifth BRICS Summit in Fortaleza in July 2014 and launched a year later. In October of the same year, China and 20 other Asian nations signed an agreement to create the Asian Infrastructure Investment Bank (AIIB). The declared aim of both banks was to mobilize resources to fill the large gap in infrastructure investment and to promote sustainable development in developing countries. Both attracted a great deal of attention in the development community and beyond. The intensity of the reactions — hopes, fears, pride and anxieties — reached a level rarely seen in the rise and fall of international financial institutions. The initial excitement has subsided somewhat in the last couple of years, but these new MDBs remain near the spotlight on the international stage.

Both the banks were set as an answer to the western governed banks like World Bank and International Monetary Fund who follow conditionalities while lending and try to make policy changes in the borrower country, bringing bureaucracy and emphasizing on 'poverty alleviation and good governance'. The NDB and AIIB on the other hand were established to prove these 'right' by the western banks while emphasizing on infrastructural development. Even if there has been Chinese prominence in both the banks, NDB is more multi-lateral in approach having the BRICS in decision making role with development as a central theme but relies heavily on Chinese capital, while AIIB has more Chinese prominence and most its members belong to developed nation's group hence is financially more charged and equipped in comparison to the NDB.

The two banks also differ in how they approach social and environmental safeguards. In September 2015 the AIIB made public its first draft Environmental and Social Framework, although many non-governmental organizations (NGOs) inside and outside China were critical of its lack of detail and enforcement mechanisms and the very short and superficial consultation process (Liu, 2016³). The NDB has received even harsher criticisms in this regard. It published a much less detailed framework in March 2016 (25 pages, against AIIB's framework document of 54 pages)⁴. Civil society actors have complained of not understanding the NDB's application of its environmental and social safeguards and of not being consulted (Santos, 2016⁵). In its 2017–2021 Grand Strategy report, the NDB emphasizes the importance of using and strengthening country systems — the legal framework in the borrowing countries — for social and environmental protection (NDB, 2017a⁶).

NDB's founding members have set out ambitious goals, and achieving them will require commitment from staff combined with the humility to learn from others. NDB will engage with development finance institutions, think tanks, academia, civil society and the clients themselves to learn from successful experiences. At the same time, NDB will remain flexible and ready to innovate, in comparison to the AIIB, recognizing that circumstances change and development is an extraordinarily complex process. However, some of the approach adopted by the NDB looks nowhere adhering to its own principles as mentioned in the paragraphs below.

DB's approach to the country system was also flaunted by the management team during the CSO meeting in Shanghai in November, 2018⁷. The Bank shared that it conducts assessment of borrowing countries' national systems and addresses gaps, builds capacity and provides technical support. The Bank presented how it relied on country systems for project preparation and implementation and also shared the Bank's commitment to expand the scope of country systems approach after the review of local instruments. While adopting country systems is seen as a desired step in the evolution of the MDBs, the activists, practitioners, and scholars have also pointed to the pitfalls of such an approach. The issues they raise include, with the MDBs abdicating responsibility for any failure to meet global standards in social and environmental safeguards as the burden shifts to the borrower⁸, it may incentivise deregulation as countries will be motivated to attract investments, and may lead to a path of “downward harmonisation” of project standard⁹. The analysts and researchers warn of inadequate implementation safeguarding systems followed while improvements to the national safeguards systems of borrowing countries are proposed.



Country systems may be weakened by changes in the regulatory frameworks – for example, diluting environmental laws to ease the running of industrial activities and the hollowing out of institutions that play watchdog roles.

PWESCR10 in partnership with BRICS Feminist Watch monitored two NDB funded projects in India. This included:

- The Major District Roads in Madhya Pradesh
- Rajasthan Water Sector Restructuring Project for Desert Areas (RWSRPD)

While there is some research on the use of country systems, there is little gendered analysis of the implications of using this approach. The primary questions that BFW explored are – How is the country system approach used by the NDB? What are its impact and effect on the most vulnerable economic actors and decision makers, – especially, women? Will the use of country systems allow for greater participation of marginalized groups especially women? Will it make it easier for affected communities especially within the context of infrastructure megaprojects, to raise their concerns?

A huge gap was found between NDB policies, project planning, and measures to strengthen national systems especially in displaying complete transparency and accountability while implementing the projects.



AIIB LOAN SANCTION

With respect to loans sanctioned till now, and those in pipeline, India has been the biggest beneficiary of AIIB (see Table 9). Out of the 24 projects assisted by the AIIB till now, India tops the list with five, followed by Bangladesh, Indonesia and Oman, with three each. India's five projects account for total AIIB assistance of around \$1.1 billion¹¹

IMPACTS OF ADB PROJECTS

ADB-funded projects in the region have largely caused displacement of peoples from their ancestral lands, homes and places of work. The Nam Ngiep I Hydropower in Laos, a 290-megawatt hydropower infrastructure project to provide electricity, was pursued by the bank in the provinces of Bolihamsai and Xaysombone. While ADB claims the dam is a part of its poverty-reduction strategy for Laos, 90% of the generated electricity will be exported to Thailand¹³. Among those forcibly relocated from their ancestral lands are the Hmong and Khmu Indigenous Peoples. Military campaigns are also being used to drive out the Hmong in order to ensure the smooth implementation of foreign investment projects and other government-backed initiatives on their lands¹⁴.

In the case of Sri Lanka, With the infrastructure project, the 524th division of the Sri Lankan army has been stationed in the area, establishing their base. Amid continuing tensions between Tamils and Sinhalese, land is being taken away from the indigenous population in Kilinochchi to expand a military town with houses for military personnel, the construction of new Buddhist temples, fields and an airstrip. Furthermore, indigenous Tamil lands have been used by the military to establish their own businesses. Leaders of Fishers' Associations have accused the project as a "genocidal 'development' of fishery harbors¹⁵." Militarized 'Development' Projects.

The ADB's infrastructure projects disturb the traditional way of life and the environment of Indigenous Peoples. For instance, the ADB-funded SASEC Road Connectivity Investment Program (SRCIP) is a project under the South Asia Subregional Economic Cooperation (SASEC) that aims to improve about 500 kilometers of a priority road section in North Bengal and North Eastern Region (NB-NER) of India. The Indigenous Peoples in Manipur have argued that these road infrastructure would affect at least 400 hectares of agricultural land in the Western and Eastern regions of Imphal and displace hundreds of households. Furthermore, the bank's negotiations for the SRCIP with the Indian government are taking place against a backdrop of indigenous struggles for self-determination. The aggressive promotion of the road project by the Indian government served to escalate tensions among the Indigenous Peoples in the area¹⁶.

Meanwhile in Bangladesh, the ADB is supporting a number of infrastructure projects in the Chittagong Hills Tract (CHT), a province that historically experienced genocide and ethnic cleansing of the Jumma Indigenous Peoples in the 1960s and 1970s. During this time, Indigenous Peoples were expelled and their land was used to build reservoirs and hydroelectric power plants. Despite the ongoing aggression against the Jumma, the bank has continued to pursue projects in the Chittagong Hills Tract. Without addressing the ongoing conflict and violence against the Indigenous Peoples, it has continued to profit from infrastructure projects in the area. From the water reservoirs, the bank has pursued projects to profit from water supplies in Chittagong, which has also affected access to water by the Bangladeshi population. In addition, the bank has launched rural and community "development" projects in the area, funding institutional development, capacity building and rural access in the form of roads and markets, village infrastructure, and the development of micro-agribusinesses¹⁷.

Despite the Chittagong Hill Tracts Peace Accord in 1997 that recognizes the right of the Indigenous Peoples to their lands, the government of Bangladesh, with the help of the military, has forcibly settled the area with Bengalis, who have been harassing the Indigenous Peoples using the military. According to Amnesty International, violence, particularly sexual violence, against the Jumma people is routinely carried out by settlers and the military alike. In 2014 alone, the figures make for a repugnant reading, with 117 indigenous women having faced physical and sexual abuse, with a majority (57%) of these being children¹⁸.

In the face of increasing violence and exploitation of Indigenous Peoples and women in the Chittagong Hills Tract, ADB remains unscathed and unaccountable. The Asian Development Bank has ensured that they would be given immunity by the Bangladesh government through the President's Order No. 3 of 1973 or The Asian Development Bank Order, 1973. Citizens of Bangladesh are incapable of suing a case against the ADB, its management or employees for its projects and initiatives. The bank's immunity has served to violate basic human rights and Indigenous Peoples' rights and has shrunk civic spaces, leading to continued attacks on local communities, human rights activists and environmental defenders.

CONFLICT RESOLUTION ALONG BELT AND ROAD

The existing dispute settlement mechanisms in the treaties concluded by China and under Chinese domestic law are insufficient to resolve all disputes related to the 'One Belt, One Road (OBOR)' Initiative. It is critically important for China to design dispute settlement mechanisms and infrastructure to facilitate the OBOR Initiative¹⁹. Although the BRI risks the usual characteristics of large-scale infrastructure development—corruption, environmental degradation, social instability, and debt—it also promises an array of economic benefits to the region's diverse economies, not least by addressing the region's massive infrastructure deficit and potentially jump-starting industrialization in less developed countries there²⁰.

For example, more than \$500 billion in BRI-related capital has flowed into Cambodia, Indonesia, Malaysia, Singapore, and Vietnam alone, over the first five years of the initiative²¹. Much of this capital comes from Chinese sources for developing transportation links. These links, like the pan-Asia railway network, will connect to Chinese cities—one of the many ways the BRI is weaving the Chinese and regional economies and societies together.

Myanmar Coup

The military will likely undo some NLD policies that have acted as a starting point for improving transparency and fairness in Myanmar's business environment, such as carrying out stricter scrutiny policy for inward investment. Unclear standards and weak enforcement are key challenges for businesses in Myanmar, and rolling back reforms will worsen already-significant ESG risks for foreign investors. For example, Myanmar is already ranked as the 5th highest risk country globally in our Strength of Auditing and Reporting Standards Index for 2021-Q1. We expect the US to restrict foreign assistance to Myanmar and impose new sanctions on those involved in the coup, particularly military officials and associated entities. Yet, additional sanctions will likely have limited impact because many relevant individuals and entities were already sanctioned by the Trump administration in 2019 over the Rohingya crisis. Instead, any new sanctions would make it harder for responsible companies adhering to international best practice to keep operating in Myanmar due to reputational and Environmental, Social and Governance (ESG) considerations.

THE COST OF INFRASTRUCTURAL DEVELOPMENT

Inequality and exclusion manifest most palpably in disputes related to land and extractive resources. Asia's economic dynamism has increased the demand for land and infrastructure investment. Better roads and bridges are needed to connect markets; dams must be built to power factories and bring light to shopping centers. Land must be freed for large scale development projects and industrial needs. These pressures have reduced the security of land tenure for many of Asia's rural poor and led to mass displacement and environmental damage. Neglecting the rights of those affected fuels a narrative of injustice that can lead to violent conflict.

Infrastructure projects planned in conflict areas prove particularly sensitive. Development is a contested process: what the state calls "progress," local residents may regard as abuse or oppression. In Myanmar in 2016, twelve out of 26 existing hydropower dams, and 42 out of 50 planned dams, were located in areas affected by subnational conflict (The Asia Foundation, 2017a). In the states of Kayin, Kayah, Kachin and Shan, where vast areas remain disconnected from the national electricity grid, hydropower dams have become a symbol of state exploitation and have become targets of frequent attacks by ethnic armed groups (The Asia Foundation, 2017a).

In land-scarce regions of India with high population density, the acquisition of land for infrastructure and commercial needs has led to mass displacement, often without compensation. Those particularly affected include poor peasants, lower castes, and indigenous people from the mineral-rich and forested areas of Orissa, Andhra Pradesh, Jharkhand, Meghalaya, and Assam. Their anger and frustration fueled the Naxalite insurgency.



DIBANG DAM, INDIA'S LARGEST HYDROPOWER PROJECT- SETTLE SINO-INDIA BORDER DISPUTE

This super ambitious project has received all the approval and clearances despite the potential risk and threats to the environment, biodiversity, and huge flooding of the agricultural lands. In September 2014, the FAC bowed to the government's pressure, particularly by the power ministry, and cleared the project by overlooking these issues. It is also being counted in some media reports as a reactionary measure by the India government against the Chinese's damming of the Brahmaputra at its source in Tibet. By building a dam on Dibang, India is likely creating grounds for its user rights in the river system²².

SHAHTOOT DAM PROJECT - AFGHANISTAN - PAKISTAN BORDER DISPUTE

The Afghanistan-Pakistan border region is defined by its complex maze of transboundary rivers and there is no legal framework in place to avoid major conflict between the nations. The Shahtoot dam project in the Chahar Asiab district of Kabul²³, on a tributary of the Kabul River, the Maidan, was scheduled to begin soon . This ambitious development also fuelled fears downstream in Pakistan that the new dam will alter the flow of the Kabul River and reduce the water flows into Pakistan that could severely limit the country's future access to water. The Pakistani media reported that there could be a 16 to 17 percent drop in water flow after the completion of the Shahtoot Dam and other planned dams.

Beyond reducing water flow to Pakistan, the Shahtoot Dam would escalate tensions in the region due to its funding from India. However, with the Taliban coming back into power , only time will decide the future of this ambitious project.



POTENTIAL RISKS AT MAINTAINING PEACE

However, China's expanding trade and investment ties in ASEAN make it a major stakeholder in a region where Beijing also pursues contentious national interests with respect to maritime rights and sovereignty in the South China Sea. China is likely to use its influence to promote its regional interests, as it did in 2012, when Cambodia—a favorite target of Chinese aid and investment—used its position as ASEAN chair to block efforts to include references to disputed South China Sea territory. As a result, the ASEAN meeting failed to produce a joint statement for the first time in the bloc's forty-five-year history²⁴.

In BRI-participating countries—particularly those where China is the dominant economic player, such as Cambodia and Laos—greater Chinese influence risks reinforcing authoritarian governance and reducing progress on human rights and transparency. China's export of its big data computing and artificial intelligence technologies to create a Digital Silk Road could reinforce these trends by offering powerful surveillance tools to participating states, such as Laos, which was among China's partners in launching this digital endeavor. Other concerns about BRI projects across the region include the environmental repercussions, the potential to increase transboundary crime and corruption, and the disruptive impact on local communities, which may or may not have their interests and rights protected by national laws.

Only the civil society groups have reached to extend their help both within and from foreign countries whereas the bilateral agencies like the UN systems have not been of much help as they work in bureaucratic ways. According to UNCTAD's 2021 World Investment Report, FDI inflows to Nepal declined by 32 percent from USD 185 million in 2019 to USD 126 million in 2020, due to the economic and health crisis triggered by the Covid-19 pandemic and the subsequent effects on the tourism sector. It was felt that the pre IFI's investments were indigenous practices which were more environmentally friendly and helped the indigenous community. However, big dams or infrastructure projects mostly under BRIs do not respect the local voices and practices.

RECOMMENDATIONS

- No environmental social safeguard framework considers social reproduction, or un- paid work by women. This should be an important element at the time of assessment of compensation arising from impacts – especially, the loss and damages from the implementation of the funded projects by these entities. This is missing and should be addressed. In day-to-day commercial life, insurance companies are able to take some of this into account while deciding claims. Many of the ESSs, i.e., the MDBs – the Bank, the ADB, the IDB, have been very good at facilitating women's participation in consultation and encouraging women's participation in some jobs/positions at project implementation level. But, none of them take into consideration childcare or transportation and how that may impact women and men in issues related to resettlement, whether forced or voluntary.
- The recommendation from many CSOs is that instead of framing the ESG as 'not doing harm', they should be framed in terms of 'doing good'. Gender sensitises them to consider issues of unpaid work, issues of men and women's access to resources; raw and natural resources and linking eco systems and natural systems and more such concerns. If climate funds can have a stand-alone gender policy and gender mainstreaming, there is no reason why the WB, which for years has been telling us about gender and women's rights and so forth, cannot have ESS that has a robust gender dimension integrated internally, as well as a complementary stand-alone policy. These dimensions should include unpaid work, access to childcare, and other relevant gender specific issues, as part of looking at issues of resettlement and compensation.
- The NDB, the AIIB , national development banks and other global financial institutions should have a normative core; they should start with the rights framework. This means grounding all safeguards into all the various rights frameworks that already exist. There are rights instruments for indigenous people, the elderly, women, youth, and people living with disability. They are part and parcel of a whole host of both global conventions and regional conventions. The ESS approach should be grounded in those rights, then it will be on a very firm footing.



- For the ADB to veer away from being a driver of fragility and to truly contribute to a prosperous, inclusive, resilient and sustainable Asia , it must genuinely uphold development effectiveness principles in its projects and policies. Observance of the principles of country ownership, focus on results, inclusive partnerships, and transparency and mutual accountability ensures the attainment of a rights-based and people-centred development.
- Country Ownership - The ADB must end conditionalities and cancel debts that further impoverish developing countries and fragile states. Assistance to the country should proceed from the main principle that the resources belong to the people. In this regard, the ADB must end the corporate capture of development that discards the democratic rights of the marginalized and vulnerable, in order to uphold a rights-based and people-centered approach to sustainable development.
- Focus on Results - ADB projects must not be pursued based on the interest of their major shareholders and the private sector, but based rather on the needs of the people. Development aid must not be used for the shareholders' economic and political interests. ADB must ensure its infrastructure projects truly address the needs of the people, especially of the vulnerable and marginalized sectors. Development projects must not lead to additional burden on the people, in terms of increasing debt and the negative impacts these cause.
- The bank's policies and projects must not threaten the state of peace and security in the region. It must stop financing authoritarian states that violate human rights. ADB must not be a driver of fragility in the region, and it should secure the exercise of rights of the people, especially those of the vulnerable and marginalized.
- Transparency and Mutual Accountability - Its transparency and accountability policies must be rigorously reviewed and audited with CSOs and people's organizations to develop effective country accountability mechanisms for achieving truly inclusive and sustainable results. Information and records about ADB projects in DMCs must be made public, for further transparency and accountability. The bank must also support and engage with civil society mechanisms that undertake monitoring of its projects, such as the CSO Aid Observation.
- It is important for investors to have the right tools to manage any accompanying risks in order to benefit from BRI opportunities. International arbitration, with its many benefits and advantages, unquestionably should be at the top of parties' minds as a preferred choice of dispute resolution mechanism. With the multiplicity of institutions vying for a share of the BRI dispute resolution pie, parties are well advised to study the rules of the different institutions carefully as well as the law of the seats where the institutions commonly operate to fully understand the pros and cons of choosing any particular institution. This is fundamentally important to successful risk management for BRI projects²⁵.

CAPACITY BUILDING

- Local CSOs needs to be strengthened further to play the role as the front line human rights defenders / civic rights agents
- Rights based agendas need to be supported to strengthen systems instead of providing services that run parallel to states
- Commitments of ODA should be adhered fully
- Putting the most vulnerable at the centre of developmental actions would be helpful to ensure leaving no one behind.

TRANSPARENCY AND MUTUAL ACCOUNTABILITY

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