

20 July 2017

Dr. Shakeel Khan  
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Asian Infrastructure Investment Bank  
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Dear Dr. Khan:

Thank you for your detailed response to our communication regarding the Duqm Port Commercial Terminal and Operational Zone Development Project. We appreciate that AIIB has responded to our concerns seriously, and that AIIB staff have engaged in dialogue with SEZAD about these issues. In order to better understand AIIB's efforts to ensure that its investments have positive social impacts, we request AIIB's response to a few additional questions on these matters. For clarity, we have included the text of your response alongside our questions:

*"The AIIB is actively engaged in a dialogue with the management and staff of the Special Economic Zone Authority at Duqm (SEZAD), concerning the environmental and social aspects of the project, and recently conducted a mission to Oman to support SEZAD's efforts to enhance its environmental and social procedures, documentation and dissemination of information. The Preliminary Environmental Impact Assessment (PEIA) provided limited coverage of labor, health and safety issues, which are not always covered in environmental and social assessments in many parts of the world. These issues, however, are covered in other documentation prepared by SEZAD for the overall development of Duqm Port. The construction environmental management plan (CEMP) will make reference to these issues and the complementary documentation being used by SEZAD."* We respectfully request that AIIB disclose the "other documentation" referenced. In this regard, we note that AIIB's ESF requires the Bank to disclose such information "prior to, or as early as possible during the Bank's appraisal of the Project."<sup>1</sup> The AIIB Board approved the Project over seven months ago, which marked the completion of the Bank's appraisal of the Project. We also request that AIIB clarify whether the Bank has approved the "final" CEMP that is posted on the Duqm website,<sup>2</sup> which focuses exclusively on environmental issues and does not address the issues that we raised in our previous submission dated 1 May 2017.

*"Regarding your first point on foreign workers and working conditions, all contractors in Oman are legally responsible to comply with Omani Regulation Royal Decree-35/2003, the labor law, which includes conditions for employment of foreign workers, contract of employment, salaries, leave, work hours, industrial safety, labor disputes, representative committees, etc.; and Ministerial Decision-286/2008, which covers regulations on occupational health and safety. Any form of forced employment or labor or any form of servitude is prohibited by law. SEZAD has advised the AIIB that passports of workers are not held."* We appreciate that AIIB has taken our concerns about treatment of foreign workers seriously and has engaged SEZAD on these issues. Despite the Omani regulations mentioned in AIIB's response, of the foreign workers who "migrate

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<sup>1</sup> Asian Infrastructure Investment Bank, *Environmental and Social Framework* (2016), para.58.

<sup>2</sup> Available at <http://duqm.gov.om/uploads/publications/oman-port-project-ipfinal-document.pdf>

to Oman willingly and legally with the expectation of employment in domestic service or in the construction, agricultural, and service sectors[,] some are subjected to conditions of forced labor, including excessive work hours, passport confiscation, non-payment of wages, food deprivation, and psychological and sexual abuse.”<sup>3</sup> The existence of these abuses indicates that compliance with AIIB’s ESF requires additional steps to ensure contractors’ compliance with existing national legislation, as well as to identify and implement specific measures to mitigate risks posed by gaps in national legislation. Gaps include “the sponsorship-based employment scheme that renders expatriate workers vulnerable to exploitative labor;” the lack of “formal procedures to identify trafficking victims among vulnerable populations, such as migrant workers;” and a lack of efforts to “impose dissuasive penalties on employers who withhold their employees’ passports.”<sup>4</sup> We also reiterate our recommendation to ensure that an internal complaint procedure is available and accessible to all workers, including foreign workers.<sup>5</sup>

*“SEZAD has confirmed that it is committed to the employment of Omani personnel at a variety of levels, consistent with national policy on increasing the participation of nationals in the work force. To maximize in-country value and localization of human resources, following are some steps which SEZAD is initiating for all projects under its purview: (a) it is expected that 10 percent of the workforce will be allocated to Omanis and specifically to locals from the Duqm area, where the experience is available; (b) in line with Small and Medium Enterprises (SME) and Tender Guidelines, 10 percent of project contracts will be allocated to local SMEs across different industries; (c) contractors will be encouraged to train local talent as part of a capacity building strategy; and (d) SEZAD also recommends that contractors provide training to recruit potential local staff under 30 years of age, and unskilled jobs to locals above 40 years of age, both in consultation with SEZAD.”* We appreciate AIIB’s commitment to employment of Omani personnel. Given that AIIB highlights job creation as one of the key benefits of the Project,<sup>6</sup> we request that AIIB work with SEZAD to exceed the ten percent ‘Omanisation’ target, which is the minimum required under national law. In addition, in line with AIIB’s commitment to social development and inclusion, we recommend identifying specific steps to ensure that job opportunities extend to marginalized groups, including women and people with disabilities.

*“The SEZAD health, safety and environment (HSE) team will monitor project progress frequently to ensure that all commitments made by the contractor are adhered to. In addition, the contractor will be required to submit monitoring and audit reports periodically which show compliance with Omani regulations, the CEMP and permit conditions. AIIB is continuing its discussions with SEZAD concerning labor, health and safety provisions. The CEMP will provide coverage of these issues and make reference to SEZAD’s HSE manual and other relevant management documents.”* We remain concerned that Client and contractor self-reporting is not sufficient to adequately detect and address the risk of forced labor and other abuses of foreign workers. Because the Project has

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<sup>3</sup> 2017 U.S. Trafficking in Persons Report: Oman, available at <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271257.htm>

<sup>4</sup> 2017 U.S. Trafficking in Persons Report.

<sup>5</sup> Accessibility would include a complaint procedure that is accessible to a migrant worker community that “hails primarily from Bangladesh, India, Pakistan, Sri Lanka, and the Philippines.” 2017 U.S. Trafficking in Persons Report: Oman.

<sup>6</sup> Project Document of the Asian Infrastructure Investment Bank, *Sultanate of Oman Duqm Port Commercial Terminal and Operational Zone Development Project* (8 December 2016), para. 14.

“significant risks”<sup>7</sup> with respect to foreign workers, we recommend that AIIB require SEZAD to “[r]etain suitably qualified and experienced experts to verify monitoring information on a routine basis.”<sup>8</sup> While the CEMP already has incorporated third-party environmental audits,<sup>9</sup> it has not incorporated third-party audits of labor issues. The current version of the CEMP also does not address social issues, and only addresses workers’ health and safety issues associated with environmental impacts, such as noise, spill prevention and response, and hazardous materials.<sup>10</sup>

*“With regard to your second point, on information disclosure and consultation, and a project-level grievance mechanism, I wish you to note the following: The planning and development of the Duqm port has been the subject of a series of planning studies based on Omani legislation and procedures; these studies have included review of environmental and social issues. The CEMP for the project will be subject to disclosure and consultation with Omani ministries, local authorities and the public. This process has been discussed by SEZAD and the Bank, and will take place in the near future.”* Based on our understanding of the AIIB’s ESF, AIIB requires meaningful consultation of Project-affected people<sup>11</sup> prior to the Bank’s approval of the Project.<sup>12</sup> AIIB’s response, however, seems to suggest that consultation has not yet occurred. We would appreciate any clarity that AIIB could provide on this issue.

*“SEZAD is in the process of establishing an effective and accessible project-level grievance mechanism, which will be reviewed by the AIIB. Information on how to access the mechanism will be made available to the public, including those involved with the project, in both Arabic and English. The use of a more comprehensive consultation and disclosure process for the CEMP and adoption of a project-level grievance mechanism will support the efforts of SEZAD to adopt improved practices to manage the environmental and social aspects of its longer-term investment program.”* We are encouraged to hear that SEZAD is in the process of establishing a project-level grievance mechanism. We would be particularly interested to learn more about the “provisions to protect complainants from retaliation and to remain anonymous, if requested,”<sup>13</sup> which are critical to ensure the mechanism’s effectiveness.

*“For its part, the AIIB, as part of its supervision missions, will monitor environmental and social issues, including labor, health and safety. This will also include review of the use of the project-level grievance mechanism and consultations undertaken during project implementation.”* We

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<sup>7</sup> AIIB ESF at para. 62.

<sup>8</sup> AIIB ESF at para. 62.

<sup>9</sup> CEMP, p. 24.

<sup>10</sup> CEMP, p. 10, 29, and 44.

<sup>11</sup> *“Meaningful Consultation.* Carry out meaningful consultation with Project-affected people and facilitate their informed participation in the consultations. Meaningful consultation is a process that: (a) begins early in the preparation stage of the Project and is carried out on an ongoing basis throughout the implementation and life cycle of the Project; (b) ensures that all parties have a voice in consultation, including national and subnational government, the private sector, nongovernmental organizations and people affected by the Project, including, as applicable, Indigenous Peoples.” AIIB ESS 1.

<sup>12</sup> “The Bank requires the Client to complete and furnish the Bank with the following environmental and social documentation, as required for the Project, prior to, or as early as possible during the Bank’s appraisal of the Project: the draft environmental and social assessment report, including the record of consultations; the draft ESMP or ESMPF (if applicable); and the drafts of any required resettlement plan, Indigenous Peoples plan, RPF and IPPF (if applicable).” AIIB ESF at para. 69.

<sup>13</sup> AIIB ESS 1 at Section A.

request that AIIB disclose additional information about project implementation and monitoring, as required by AIIB's ESF.<sup>14</sup> Additional detail about AIIB's supervision missions—including whether the missions will consist of “periodic site visits” or “comprehensive, field-based reviews”<sup>15</sup>—would demonstrate AIIB's commitment to ensuring compliance with its social standards and addressing serious social risks. We also encourage AIIB, as part of its supervision missions, to meet with stakeholders, including workers and project-affected community members. To ensure an open and full dialogue with stakeholders about sensitive social issues, we recommend that AIIB hold meetings in private settings that allow stakeholders to provide confidential feedback.

Thank you again for your willingness to dialogue with us about the Duqm Port Commercial Terminal and Operational Zone Development Project. Please do not hesitate to contact us if you have any additional questions.

Regards,

Elizabeth Summers, Infrastructure Policy Manager, Bank Information Center

Mariam Bhacker, Project Manager – Migrant Workers & Gulf Business, Business & Human Rights Resource Centre

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<sup>14</sup> AIIB ESF at para. 57 and 58.

<sup>15</sup> AIIB ESF at para. 62.