

Building Good Governance into the Indonesian Sovereign Wealth Fund

Lessons from Around the World

June 2022

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List of Acronyms

ADB	Asian Development Bank		
AIIB	Asian Infrastructure Investment Bank		
CAO	Compliance Advisor Ombudsman of the IFC and MIGA (World Bank Group)		
CSO	Civil Society Organization		
DFC	United States International Development Finance Corporation		
DGM	Dedicated Grants Mechanism		
EBRD	European Bank for Reconstruction and Development		
ESMS	Environment and Social Management System		
ESPP	Environmental and Social Policy and Procedures		
ESS	Environmental and Social Safeguards		
FI	Financial Intermediaries		
FIP	Forest Investment Programme		
FPIC	Free Prior Informed Consent		
GAPP	Generally Accepted Principles and Practices (of the Santiago Principles of the IFSWF)		
GCF	Green Climate Fund		
GEF	Global Environment Facility		
Gol	Government of Indonesia		
IAB	Investment Advisory Board of the Timor Leste Petroleum Fund		
IFC	International Finance Corporation of the World Bank Group		
IFSWF	International Forum of Sovereign Wealth Funds		
INA	Indonesian Investment Authority		
IP	Indigenous Peoples		
IPAD	Independent Project Accountability Mechanism of the EBRD		
IPLC	Indigenous Peoples and local communities		
IRM	Independent Redress Mechanism (IRM) of the Green Climate Fund		
KPK	Corruption Eradication Commission (Indonesia)		
MIGA	Multilateral Investment Guarantee Agency of the World Bank Group		
NBIM	Norges Bank Investment Management		
NIIF	National Infrastructure and Investment Fund (India)		
NSP	National Strategic Project		
OHCHR	Office of the United Nations High Commissioner for Human Rights		
OPIC	Overseas Private Investment Corporation		
PIP	Pusat Investasi Pemerintah (Government Investment Agency)		
PPP	Public-private partnership		
QIA	Qatar Investment Authority		
REDD+	Reducing deforestation and forest degradation and enhancing carbon sinks		
SDG	Sustainable Development Goals		
SOE	State-Owned Enterprise		
SPU	Statens Pensjonsfond Utland, the Sovereign Wealth Fund of Norway		
SWF	Sovereign Wealth Fund		
UAE	United Arab Emirates		
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples		
UNFCCC	UN Framework Convention on Climate Change Convention		
WEDO	Women's Environment and Development Organization		
YPPSDP	Foundation for Potential Defense Resource Development		

Executive Summary



The Indonesian Investment Authority (INA) is a Sovereign Wealth Fund that was established in 2020 as part of the controversial Omnibus Job Creation Law. However, the Omnibus Law has been partially suspended by Indonesia's Constitutional Court on account of the government's failure to undertake meaningful public participation in advance of passing the law. The Omnibus Law has also been widely criticized for reducing workers' rights, human rights, and environmental protections.

The U.S. International Development Finance Corporation (DFC) is reportedly considering a US\$2 billion investment in the INA. This report makes the case that no such investment should be undertaken unless and until the INA has established clear policies and guidelines to ensure that its investments are conducted with minimum risk to the environment and without harming local communities.

The INA is explicitly tasked with supporting National Strategic Projects, a programme of large-scale infrastructure initiatives that has already raised concerns regarding deforestation risks and potential impacts on Indigenous Peoples, as well as potential corruption risks in the case of PT Agro Industri Nasional (Agrinas), a newly established company with links to a number of Army officers and high ranking members of the Prabowo (Gerindra) political party. The INA will likely channel significant investment through partnership agreements and equity funds (or sub-funds) involving one or more layers of financial intermediation. This structure raises transparency and accountability concerns, so it is crucially important that INA policies, including social and environmental safeguards, are fully applicable across the full range of these investment types.

The Regulation establishing the INA has tasked its Board of Directors with setting policies on a number of governance aspects, ranging from risk management to procurement and information disclosure. However, there are significant gaps that remain unaddressed, including the lack of any specific commitment to develop environmental and social safeguards. The INA should put in place a participatory process for addressing these governance and policy gaps, seeking to involve vulnerable groups, women, Indigenous Peoples, minorities, and community representatives from areas where environmental degradation has occurred across Indonesia, among others.

The second part of this report looks at current best practice examples drawn from development finance institutions and sovereign wealth funds, covering social and environmental safeguards, respecting the rights of Indigenous Peoples, the promotion of gender equity through a gender mainstreaming approach, accountability mechanisms, transparency, as well as measures to prevent corruption and conflict-of-interest.

The report provides the following recommendations to the DFC should it choose to invest in the INA:

- The INA should put in place a clear policy concerning access to information and disclosure, which complies with all relevant international obligations. This should include advanced disclosure of all relevant projects and sub-project documentation, including prior publication of environmental and social impacts safeguard reports for high- and mediumrisk investments (Category A or B in World Bank terminology). There should be proactive disclosure of information on sub-projects invested in, and searchable real-time public disclosure of the list of assets that the INA holds.
- The INA should also develop an Environmental and Social Policy which, at a minimum, complies with the DFC's own Environmental and Social Policy and Procedures. This policy should explicitly cover all INA investments, including subprojects, equity funds, and partnership agreements.
- » Further policies should be developed to ensure that the INA conforms with international agreements and obligations concerning human rights, gender rights, rights of Indigenous Peoples (including the United Nations Declaration on the Rights of Indigenous Peoples) and the protection of the environment. These should include alignment of all investments and standards with Indonesia's national policies on Indigenous Peoples, which include laws related to customary forests, the Village Law, traditional knowledge laws and regulations, and laws and regulations put in place related to REDD+. The INA should also commit to developing a stand-alone gender equality policy and an institutional gender action plan, including a requirement that all planned investments conduct a gender analysis and socio-economic assessment prior to funding approval.

- The INA should develop and publish an exclusion list, which should at a minimum be consistent with the DFC's own list of 'categorical prohibitions'. In addition, the exclusion list should prohibit investment in coal mining, power production from coal, oil extraction and distribution, and related infrastructure, as well as investment in new upstream, midstream and downstream gas projects. It should be noted that the proposed INA investment with Pertamina is unlikely to meet this standard.
- The exclusion list should also include conduct-based exclusions, prohibiting investment in companies and subsidiaries that are found to contribute to serious or systematic human rights violations, severe environmental damage, unacceptably high greenhouse gas emissions, or gross corruption, using Norway's Government Pension Fund Global (SPU) exclusions in these areas as a guide.
- The INA should establish an grievance redress mechanism that is independent from INA management, as well as projectlevel grievance mechanisms. The grievance mechanism should address complaints in a timely, predictable, and transparent manner, while taking precautions to protect the identities of complainants to avoid reprisals. It should also have an advisory mandate, as is the case with the IFC/MIGA Compliance Advisor Ombudsman (CAO) and GCF Independent Redress Mechanism (IRM), in order to identify lessons for improving INA policies and practices in light of the findings of grievance processes.
- The INA should also adopt a clear and robust anti-corruption policy, including whistleblower protection, debarment of certain individuals and firms, as well as ethical principles and integrity rules governing procurement processes. It should also establish clear rules concerning conflicts of interest that apply to governing bodies, management, and staff, as well as third party consultants and advisors.

SECTION 1:



The Indonesian Investment Authority (INA) is Indonesia's first Sovereign Wealth Fund (SWF) and was established in 2020 as part of the Government of Indonesia's (GoI) Omnibus Job Creation Law (Omnibus Law).

The primary aim of the INA, according to the Omnibus Law, is "to boost capital flow of investment from various sources and increase economic outcomes."1 In common with all SWFs, the INA hopes to achieve long-term returns on its investments, but its primary purpose is to attract private investment into infrastructure projects and land acquisitions. However, the Omnibus Law that established the INA has been highly controversial and has been met with a very significant protest movement throughout Indonesia. The Omnibus Law reduces environmental, workers' rights, and human rights protections, including those of Indigenous Peoples, say its critics. The law was passed with little consultation during the global COVID pandemic and has since been challenged on constitutional grounds (see box: "Constitutional Challenge").

This report is divided into two sections. This first part examines what the INA is, its likely funding structure and investments, the regulations that established it, and its existing governance structure. The second part focuses on how to improve and develop this governance structure in light of international examples and best practices related to social and environmental safeguards, respecting the rights of Indigenous Peoples, the promotion of gender equity through a gender mainstreaming approach, accountability mechanisms, transparency, as well as measures to prevent corruption and conflict of interest. We offer international examples and best practices drawn from a number of SWFs (including those of Norway, Australia, Singapore, and Qatar) and development finance institutions (including the International Finance Corporation (IFC) and the Green Climate Fund (GCF)). This section

also examines minimum requirements and means to align the INA with the safeguards and standards of the U.S. International Development Finance Corporation (DFC), which is reportedly considering a US\$2 billion investment in the INA.

BOX. Constitutional Challenge.

The constitutionality of the Omnibus Law has been challenged on various legal grounds, and in late November 2021 the Indonesian Constitutional Court ordered that any parts of the law that have a "strategic and broad impact" should be suspended for up to two years due to procedural irregularities related to public participation.² Through this finding, the Court has given the government two vears to revise the law or have it formally declared unconstitutional.³ Legal experts differ regarding the implications of this suspension on the establishment of the INA, and the extent to which it falls within the scope of the Court's judgment.⁴ Although the Gol has stated that it will comply with the Court's decision, it has not clarified how it interprets its implications for implementing the INA.⁵ As of March 2022, media reports suggest that the INA will not be suspended because it had been legally constituted before the Court's decision took effect.⁶ Over the longer term, it is widely expected that the INA will be implemented irrespective of the Constitutional Court decision.

¹Law No. 11/2020 on Job Creation (Omnibus Law), Art. 154, https:// peraturan.bpk.go.id/Home/Download/153567/UU_Nomor_11_ Tahun_2020-compressed.pdf

² Decision of the Constitutional Court Number 91/PUU-XVIII/2020, Section 3.20.5, https://www.mkri.id/public/content/persidangan/ putusan/putusan_mkri_8240_1637822490.pdf.

³ Times 7 February, https://www.equaltimes.org/how-the-labour-movement-helped?lang=en#.Yj2N97go_F5.

⁴ Haliem, B. and S. Ashar (2021) Inilah Dampak Putusan MK Soal UU Cipta Kerja Terhadap Keberlangsungan LPI, Kontan 25 November, https://nasional.kontan.co.id/news/inilah-dampak-putusan-mk-soaluu-cipta-kerja-terhadap-keberlangsungan-lpi; Masitoh, S. (2021) Kata Fraksi PKSI soal nasib LPI pasca putusan MK atas UU Cipta Kerja, Kontan 28 November, https://nasional.kontan.co.id/news/kata-fraksipksi-soal-nasib-lpi-pasca-putusan-mk-atas-uu-cipta-kerja.

⁵ Jakarta Globe. (2021) "Gov't, Businesses Find Reprieve After Court Declares 2020 Job Creation Law Unconstitutional", Jakarta Globe 26 November,https://jakartaglobe.id/business/govt-businesses-findreprieve-after-court-declares-2020-job-creation-law-unconstitutional

⁶ Rahma, M. and Satyagraha (ed.), (2021), "Pemerintah perlu memaksimalkan UU Cipta Kerja untuk picu investasi", Antara 28 December, https://www.antaranews.com/berita/2610709/pemerintahperlu-memaksimalkan-uu-cipta-kerja-untuk-picu-investasi.

The Indonesian Investment Authority - an overview

The Lembaga Pengelola Investasi or Indonesian Investment Authority (INA) was established under Chapter X, Articles 154-172 of the Omnibus Law. which set out some general provisions on the structure of the fund, including the role and responsibilities, selection process and criteria for the directors and supervisory board. It also states that the INA investment channels will include "financial instruments, asset management, collaboration with other parties including trust fund entities, selecting investment partners, and offering loans." The Omnibus Law also provides around US\$1 billion in seed funding from the government budget to establish the INA's initial operations.7

The authority and scope of the INA is regulated by Government Regulation 74/2020 (INA Regulation), which states that the INA directly reports to the President of Indonesia and has two main decision-making structures:

- 1. The Supervisory Board, which is made up of five members: two ex-officio ministers (Minister of Finance and Minister of State-Owned Enterprises (SOE)) plus three non-government representatives with professional expertise; and
- 2. A Board of Directors, which includes five office holders: Chief Executive Officer, Deputy Chief Executive Officer, Chief Investment Officer, Chief Risk Officer, and Chief Financial Officer.



⁷ Omnibus Coca, N. (2022) "How the labour movement helped defeat pro-business legislation in India and Indonesia", Equal Law, Art. 170.

Governance

The INA Regulation requires that it carries out asset management based on the principles of good governance, accountability, and transparency. It stipulates a code of conduct for Board Member candidates, including that they are not affiliated with political parties and never been sentenced to prison for a crime. It also requires that candidates have not been found to have participated in a 'disgraceful investment', although the precise meaning of this phrase is unclear. The INA regulation also requires that investment policies will be implemented taking into account social and environmental due diligence responsibilities.⁸

While the INA Regulation is vague and does not set out details of how these requirements would work in practice, there is a clear mandate to address conflicts of interest and pursue a level of environment and social accountability. This could provide a basis on which to elaborate operational policies and practices that prevent corruption and ensure that environmental degradation and human rights violations do not occur. These issues are discussed in detail in section 2 below. It should however be noted that these are assumptions that need to be tested in reality. History has shown that similar institutions in Indonesia have been manipulated as political assets. For example, the Reforestation Fund allegedly lost more than US\$700 million through misuse and fraudulent marking up from the borrowers of commercial plantations (although this was denied by the Gol).⁹ The massive corruption scandal surrounding 1MDB, Malaysia's nowinsolvent SWF, further highlights the risks of failing to establish good governance practices from the outset.¹⁰

The INA Regulation specifies that the Board of Directors shall establish policies and rules on several issues including principles of good governance, risk management, and data and information disclosure. The Regulation provides details of rules that will need to be stipulated by the Board of Directors." These include asset management, implementation of risk management, compliance, human resources, finance, law, information systems, auditing, procurement of goods and services, work plans, and remuneration for the Supervisory Board and the Board of Directors without further detail or guidance on what these rules should cover.

The Board of Directors alone will decide the scope of these rules. In terms of public disclosure, the Regulation makes reference to international standards,¹² although it remains unclear what this means. The INA Regulation says nothing about whether the process to set up policies will take into account good governance and international standards with regards to public participation and aim to follow or exceed existing good practices. This is concerning and may result in a lack of public participation in procedures to set up INA policies. Ongoing channels for public participation are also important before investment decisions are taken, given that the fund will undertake a number of large-scale infrastructure investments that may involve high levels of social and environmental risk.

Once these rules are in place, it will also be vital to ensure that there is an external, independent accountability mechanism that would help to ensure redress and public monitoring. Such a mechanism is not currently envisaged in the INA Regulation and is further discussed in Section 2.

⁸ Indonesian Government Regulation No. 74/2020 on Investment Management Institution, Art. 67, https://peraturan.go.id/common/ dokumen/ln/2020/pp74-2020bt.pdf.

⁹ Mongabay (2013), "Indonesia's Ministry of Forestry denies losing \$731m in state funds in 2012", Mongabay 3 May, https://news. mongabay.com/2013/05/indonesias-ministry-of-forestry-denies-losing-731m-in-state-funds-in-2012/; Barr, C., A. Dermawan; H. Purnomo and H. Komarudin (2010), Financial governance and Indonesia's Reforestation Fund during the Soeharto and post-Soeharto periods, 1989-2009: a political economic analysis of lessons for REDD+, https://www.cifor.org/knowledge/publication/2886.

¹⁰ Ellis-Petersen, H. (2020) "1MDB scandal explained: a tale of Malaysia's missing billions", The Guardian 28 July, https://www. theguardian.com/world/2018/oct/25/1mdb-scandal-explained-a-tale-of-malaysias-missing-billions.

¹¹ Investment Management Institution Gov. Regulation, Art. 65.

¹² Investment Management Institution Gov. Regulation, Art. 68.



It is difficult to classify exactly how the INA will be funded and allocate its financial resources. Most SWFs draw revenues from oil and gas (or other natural resources), foreign exchange reserves, or pension funds, but the INA does not fit any of these categories.¹³ The INA was started with initial capital of IDR 7.5 trillion (around US\$5.25 billion) but only IDR 1.5 trillion (US\$1 billion) had been paid into its account as of the second quarter of 2021.¹⁴ This initial financing is drawn from a mix of tax revenue and equity in state-owned enterprises (SOEs).¹⁵

The INA states that it aims to grow its Assets Under Management to US\$20 billion "in the near future", although this figure includes the value of investments made by the INA's partners.¹⁶ The United Arab Emirates (UAE) has pledged to invest US\$10 billion in the Fund, while a number of other governments are reported to be considering investments.¹⁷ The Indonesian President has claimed that the eventual goal is US\$200 billion (the initial target was US\$100 billion), although there is currently no plausible path to reaching this goal.¹⁸

Dr Ridha Wirakusumah, President Director of the INA, has stated that GIC and Temasek (Singapore's SWFs), with combined assets of around US\$1 trillion, are examples that the INA aspires to. Close to half of GIC Private's investment is in the form of equity, split roughly evenly between investments in companies and funds in developed and developing countries, with most of the remainder invested in bonds.¹⁹ Temasek is focused on equity investments, which are concentrated in Singapore (24 percent) and elsewhere in Asia (40 percent) in a range of sectors.²⁰ As with other SWFs, the investment goals of Singapore's funds are to secure "value over the long term."

¹³ Lingga, V. (2020), "Indonesia's planned \$5b sovereign wealth fund raises questions", Jakarta Post 26 October, https://www. thejakartapost.com/academia/2020/10/26/indonesias-planned-5b-sovereign-wealth-fund-raises-questions.html.

¹⁴ Indonesia Investment Authority (INA) (2021) Financial Statement Q2 2021, p.5, https://www.ina.go.id/quarterly-report/view/financereport-q2-2021

¹⁵ Connors, E. (2021), "Why the world's pension funds have discovered Indonesia", *Financial Review* 6 June, https://www.afr.com/ companies/infrastructure/why-the-world-s-pension-funds-have-discovered-indonesia-20210531-p57wue.

¹⁶ INA, About Us, https://www.ina.go.id/about-us.

¹⁷ United Arab Emirates Ministry of Foreign Affairs (2021), "UAE announces \$10 billion investment in Indonesia on Mohamed bin Zayed's directives", United Arab Emirates Ministry of Foreign Affairs 24 March, https://www.mofaic.gov.ae/en/missions/jakarta/media-hub/embassy-news/uae-announces-10-billion-dollars-investment-in-indonesia.

¹⁸ Aditya, A. & Amin, H., (2021) "Jokowi Doubles Indonesia's Wealth Fund Goal to \$200 Billion", *Bloomberg* 8 April, https://www. bloomberg.com/news/articles/2021-04-08/jokowi-doubles-indonesia-s-wealth-fund-goal-to-200-billion.

¹⁹ GIC (n.d.), Investment Report 2020 /21, https://report.gic.com.sg/investment-report.html.

²⁰ Temasek (2021) Our portfolio, https://www.temasek.com.sg/en/our-investments/our-portfolio.



The INA will also seek long-term returns on its investments, in common with all SWFs, but its main objective is to attract private investments into the Indonesian government's infrastructure projects.²¹ In this regard, it has been reported that "the INA is more like an investment platform on which government cash or equity can be invested in new infrastructure alongside foreign contributors."22 One relevant analogy here is the "asset recycling" conducted by Australian State authorities that have privatized assets and leased or sold off state assets in order to finance infrastructure investment. This has contributed to a public-private partnership (PPP) model that has proven controversial elsewhere for its role in creating "hidden debt" by encouraging off-balance sheet lending for infrastructure that proves costly over the long term.23

The closest international analogy is India's National Infrastructure and Investment Fund (NIIF), which has served as a model for the INA according to Dr Darwin Noerhadi, a member of the INA's Board of Supervisors.²⁴ The NIIF is designed to make equity investments, adopting a "fund-of-funds" approach that subdivides into several separate investment vehicles to finance infrastructure including roads, ports, airports and energy.²⁵ The NIIF, like the INA, was established with a view to attract investments from international insurance and pension funds, multilateral institutions and other SWFs.²⁶

The NIIF example draws attention to various challenges that the INA poses, which are examined later in this report. As with other funds that rely on several layers of intermediation, there is a significant risk that a lack of transparency obscures what is actually being financed, as well as reducing accountability for investment outcomes and impacts.²⁷ As a result, communities might not be consulted in advance of investments being made that affect them, while a lack of transparency could also close off the opportunity to access accountability mechanisms in cases where investments risk causing environmental and social harms (further discussed in the sections below on Transparency and Environmental and Social Safeguards).

Civil society organizations (CSOs) have also expressed concern that the NIIF could provide a new avenue for coal financing, even as other institutions are starting to exit this funding space due to increasing risks associated with climate change.²⁸ The INA poses many of these same risks, which we discuss in more detail in Section 2 alongside best practice international examples to avoid such negative outcomes.

²⁶ GIH (2019), p.76.

²⁷ BIC Europe & CFA (2018), p.3.
²⁸ *Ibid.*

²¹ Habir, M. (2021) "Indonesia's First Sovereign Wealth Fund (INA): Opportunities and Challenges", ISEAS No.63, https://www.iseas.edu. sg/wp-content/uploads/2021/04/ISEAS_Perspective_2021_63.pdf.

²² Connors (2021).

²³ Eurodad & EPSU (2020) "Why public-private partnerships are still not delivering", Eurodad 14 December, https://www.eurodad.org/ why_public_private_partnerships_are_still_not_delivering.

²⁴ Habir, M. T. (2021) Indonesia's First Sovereign Wealth Fund (INA): Opportunities and Challenges, https://www.iseas.edu.sg/wp-content/uploads/2021/04/ISEAS_Perspective_2021_63.pdf.

²⁵ Global Infrastructure Hub (GIH) (2019), Guidance Note on National Infrastructure Banks and Similar Financing Facilities, https://cdn.gihub.org/umbraco/media/2621/gih-national_infrastructure_banks_-full_report-web.pdf. See also, Bank Information Center Europe (BIC Europe) & Centre for Financial Accountability India (CFA) (2018), Risky Venture: The AIIB's hands off approach to funding infrastructure in India, https://www.re-course.org/wp-content/uploads/2018/06/Risky-Venture_FINAL.pdf.

Initial investment areas

The investment profile and portfolio of the INA has not yet been defined, but a number of sectoral investment priorities have been identified, as shown in Table 1.²⁹

Table 1: INA Key Sectors and Scope of Investment



Sector	Scope of Investment
Infrastructure	Toll roads, airports, seaports
Supply chains and logistics	Cargo, cold chain, agriculture and fisheries logistics
Digital infrastructure	Telecoms towers, data centers, fiber optics
Green investing	Renewable energy, waste management
Healthcare services	Hospital and clinics, diagnostic labs, pharmacies
Financial services	Banking, digital lending, credit analytics
Consumer and tech	FMCG (fast-moving consumer goods), consumer health, consumer tech
Tourism	Special economic zones (KEK), hotels

Source: INA Website³⁰

The INA will most likely have an overarching "master fund", alongside several "thematic" subfunds.³¹ Investors are being sought for individual sub-funds or for the whole portfolio, which would be offered at different levels of risk and return.³² An example of how this funding structure would look is offered in Figure 1.

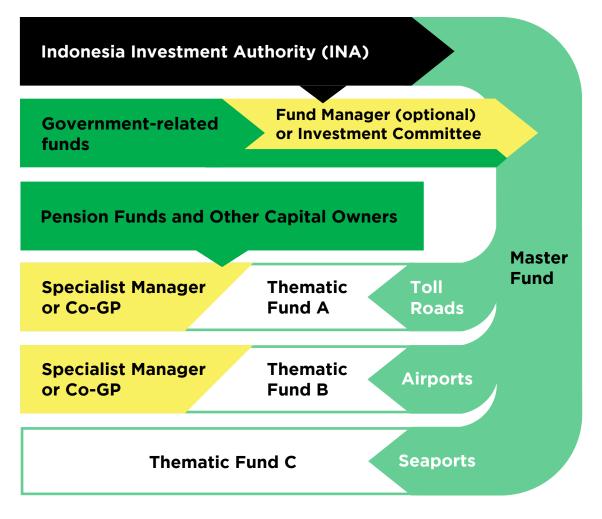
²⁹ INA (n.d.) Press Release, https://www.ina.go.id/press-release.

³⁰ INA (n.d.), Key Sector, https://www.ina.go.id/key-sector.

³¹ Allard, T.; Suroyo, G. & Widianto, S., (2020), "Exclusive: Indonesia sovereign wealth fund aims to raise \$15 billion by offering multiple funds", Reuters 17 November, https://www.reuters.com/article/us-indonesia-swf-exclusive-idUSKBN27X0E3.; See also Aditya & Amin (2021).

³² Allard et al. (2020); See also Aditya & Amin (2021).

Figure 1: An example of INA's Co-Investment Fund Structure



Source: Habir (2021), derived from Noerhadi (2021)

In May 2021, the INA announced that its first Investment Platform would be formed with coinvestments by Caisse de dépôt et placement du Québec (a Canadian pension fund and asset manager), APG Asset Management (a Dutch pension investment fund), and the Abu Dhabi Investment Authority (a SWF).³³ This would create a sub-fund of up to US\$3.75 billion (IDR 54 trillion), with 'toll road investment opportunities' as its core focus, since these are seen as relatively 'safe' assets that appeal to foreign investors. The basic idea is that toll roads will be sold off by state-owned construction companies, many of which have reached their debt limits.³⁴ Toll roads can have potentially significant environmental and social impacts, underscoring the need for the INA to elaborate clear and robust environmental and social safeguards (see below). This is a minimum requirement if the INA is to achieve 'sustainable development', which is a stated goal in both the Omnibus Law and the INA Regulation.³⁵

³⁵ Omnibus Law, Art. 165; INA Regulation, Art. 5.Art 5 of the INA Regulation

³³ INA, APG, CDPQ & ADIA, (2021) "Press Release: INA, CDPQ, APG, and ADIA signed MoU on Toll Road Infrastructure Investment Platform", https://www.ina.go.id/en/ina-cdpq-apg-and-adia-signed-mou-on-toll-road-infrastructure-investment-platform?pdflang=en; The Abu Dhabi Investment Authority's co-investment is part of the US\$10 billion UAE commitment to the INA.

³⁴ Habir (2021), p.5.; See also Connors (2021). According to Habir (2021), the toll roads sold into the INA fund could include Hutama Karya (Trans-Sumatera project), Jasa Marga (North Sumatera, Java, East Kalimantan, North Sulawesi and Bali projects), and Waskita Karya (West, Central and East Java projects).

The INA has also signed Memorandums of Understandings (MoU) to explore possible investments with BP Jamsostek,³⁶ an SOE that handles social security programs and pensions; PT Angkasa Pura II (Persero), the SOE responsible for the management and development of Jakarta's Soekarno-Hatta Airport, with a view to financing a new cargo terminal;³⁷ and Pertamina, a state-owned energy company.³⁸ These investments also raise sustainability and transparency concerns, especially where the potential partnership with Pertamina was announced in May 2021 but is subject to a Non-Disclosure Agreement. A press release related to the Pertamina partnership highlights the company's strategic aim "to increase production and reserves of petroleum & gas", although it is not clear if this would fall directly within the scope of any INA investment. Unfortunately, no further details are yet available on how SOE investments will be managed.





A "strategic alliance" worth up to US\$7.5 billion has also been signed with DP World, a logistics company owned by the Government of Dubai. in order to "enhance Indonesia's maritime and port sector."³⁹ While the precise details of this platform remain unclear, it should be noted that if the INA ends up holding a minority stake in the resulting consortium ("thematic" sub-fund) then this would mean that it can be outvoted on investment decisions, potentially limiting its ability to ensure consistency with national priorities, or to apply adequate environmental and social safeguards. Clear investment rules are needed for such situations, too, stating that the INA should ensure that all projects and subprojects that result from investment alliances and consortiums that it enters into should be covered by the INA's (vet to be developed) environmental and social safeguards and investment criteria.

³⁶ INA (2021), "Press Release: INA - BP Jamsostek Agreement on Investment Sector", https://www.ina.go.id/en/ina-bp-jamsostekagreement-on-investment-sectors?pdflang=id.

³⁷ INA (2021), "Press Release: Indonesian Investment Authority (INA) Partners With Angkasa Pura II To Accelerate Soekarno-Hatta Airport Expansion", https://www.ina.go.id/en/indonesian-investment-authority-ina-partners-with-angkasa-pura-ii-to-accelerate-soekarno-hatta-airport-expansion?pdflang=id.

³⁸ INA (2021), "Press Release: Pertamina and Indonesia Investment Authority (INA) Consider Investment Cooperation in Energy Sector", https://www.ina.go.id/en/ina-pertamina-agreement-on-energy-sector?pdflang=en.

³⁹ INA (2021), "Press Release: Indonesia Investment Authority (INA) And DP World Partner To Invest \$7.5 Billion Into Indonesian Seaport Facilities Over The Long Term", https://www.ina.go.id/en/indonesia-investment-authority-ina-and-dp-world-partner-to-invest-75-billion-into-indonesian-seaport-facilities-over-the-long-term?pdflang=en.



In 2016 the Gol established a programme of National Strategic Projects (NSP) to support large scale infrastructure such as toll roads, airports, rail, ports, bridges, gas pipelines, oil refineries, and the building sector.⁴⁰ Amongst other objectives, this programme is said to support the implementation of Indonesia's Nationally Determined Contribution (NDC) and to achieve energy security including through scaled up geothermal and dam construction for hydro-power; however, this is questionable since the programme includes gas and oil infrastructure. Dam construction in the name of energy security in Indonesia has proven to be particularly controversial. For instance, the Batang Toru project in North Sumatra has been criticized for planning to include 273

hectares of critically endangered Orangutan habitat,⁴¹ whilst Indigenous Peoples in Flores have publicly opposed a dam project that was planned without their Free Prior and Informed Consent.⁴²

The NSPs are also intended to establish Special Economic Zones and projects for fisheries, food estates and agriculture in Kalimantan, Maluku, and Papua. These provinces have the largest areas of primary forests in Indonesia. In 2020, research by Madani, a civil society support initiative funded by USAID, found that the planned 'Food Estates' would require approximately 3.69 million hectares of land, 89 percent of which is located in Papua, and will cause significant deforestation and impact on Indigenous Peoples in the area.⁴³

⁴⁰ Established under Presidential Regulation No. 3/2016 on Acceleration of National Strategic Projects Implementation.

⁴¹ Jong, H. N. (2020) "Dam that threatens orangutan habitat faces three-year delay", Mongabay 15 July, https://news.mongabay. com/2020/07/batang-toru-hydropower-dam-tapanuli-orangutan-delay-nshe/.

⁴² Pramita, D. (2021) "Holes in the Geothermal Power Plant Project", Tempo 29 November, https://magz.tempo.co/read/ environment/38628/why-residents-of-flores-defiant-about-geothermal-power-plant-construction.

⁴³ Madani (2021) "Menakar Ancaman Terhadap Hutan Alam dan Ekosistem Gambut di Balik Rencana Pengembangan Food Estate di Papua, Kalimantan Tengah, Sumatera Utara, dan Sumatera Selatan", Madani 5 February, https://madaniberkelanjutan.id/2021/02/05/ menakar-ancaman-terhadap-hutan-alam-dan-ekosistem-gambut-di-balik-rencana-pengembangan-food-estate-di-papua-kalimantantengah-sumatera-utara-dan-sumatera-selatan#.

In terms of projects and investments to be supported, the INA Regulation specifies that it aims to increase foreign and domestic investment in line with the main goals of the Omnibus Law. This is understood to relate specifically to increasing private sector investment in NSPs,⁴⁴ as confirmed by the Minister of Finance, since these projects had put too much pressure on the national budget during the 2015-2019 period.⁴⁵ Until now, Indonesia has struggled to attract private sector investments in NSPs,⁴⁶ and one of the stated aims of the Omnibus Law and the INA is to remove "overly complex" regulations to encourage private investment. However, critics of the Omnibus Law have pointed out that it removes key human rights, labor rights, and environmental protections.⁴⁷ For example, the new law reduces numerous protections for workers, including on minimum wages, severance pay, vacation, maternity benefits, and health and child care, and abolishes legal protections in permanent employment contracts.⁴⁸ The Omnibus Law also makes the process of public participation far more complicated, despite its claim to reduce complex regulations.49

Corruption and governance concerns have also been raised in the context of NSPs, in particular regarding PT Agro Industri Nasional (Agrinas), a newly established company that has partnered with the Ministry of Agriculture in a number of Food Estate-related NSPs, despite its lack of any agribusiness track record.⁵⁰ Agrinas is a for-

profit company established by the Foundation for Potential Defense Resource Development (YPPSDP), a public body overseen by and headquartered in the Ministry of Defense. Top positions are held by Army officers and highranking members of the Prabowo (Gerindra) party.⁵¹ Specific concerns have been raised that Agrinas's corporate structure, with a government-owned Foundation establishing a for-profit company, opens up significant corruption risks.⁵² It has been reported that Agrinas has deployed military as security for implementation of its projects, posing security risks for environmental activists and Indigenous Peoples, especially in Papua, where the majority of Food Estate projects are located⁵³.



⁴⁴ Sari, A. N. (2021) "Lembaga Pengelola Investasi, Bedanya dengan Pengelola Investasi Sejenis?", Kementerian Keuangan Republik Indonesia 24 February, https://www.djkn.kemenkeu.go.id/artikel/baca/13718/Lembaga-Pengelola-Investasi-Bedanya-dengan-Pengelola-Investasi-Sejenis.html.

⁴⁹ Pusat Studi Hukum & Kebijakan Indonesia (PSHK) (n.d) "Menyambut Implementasi Peraturan Pelaksana UU Cipta Kerja: Penyederhanaan Regulasi yang Tidak Sederhana", https://pshk.or.id/publikasi/menyambut-implementasi-peraturan-pelaksana-uucipta-kerja-penyederhanaan-regulasi-yang-tidak-sederhana/

⁵⁰ The Gecko Project (2021) "Politically connected firm seeks to profit as Indonesian government cuts down orangutan habitat", The *Gecko Project* 14 October, https://thegeckoproject.org/politically-connected-firm-seeks-to-profit-as-indonesian-government-cuts-down-orangutan-habitat-ab7b5a398c17.

⁵¹ Environmental Paper Network (EPN) et al (2021) *Swallowing Indonesia's Forest*, https://environmentalpaper.org/wp-content/uploads/2021/03/2021-03-Swallowing-Indonesias-forests.pdf.

⁵² Law Justice (2020), "Elit Prabowo Kuasai Bisnis Pangan Baru Via Agrinas", Law Justice 4 October, https://www.law-justice.co/ artikel/94820/elit-prabowo-kuasai-bisnis-pangan-baru-via-agrinas/.

⁴⁵ Al Hikam, H. A. (2021) "Mengapa LPI Fokus di Investasi Proyek Infrastruktur?", Detik 3 March, https://finance.detik.com/beritaekonomi-bisnis/d-5479671/mengapa-lpi-fokus-di-investasi-proyek-infrastruktur.

⁴⁶ Private sector funding accounted for only 36.5% of the target investment in NSPs, see https://fiskal.kemenkeu.go.id/aifc2017/index.php?r=seminarFiles/viewFile&id=36.

⁴⁷ Mahy, P. (2021) Indonesia's Omnibus Law on Job Creation: Reducing Labour Protections in a Time of COVID-19, https://www.monash. edu/__data/assets/pdf_file/0007/2458582/LEAH-Working-Paper-no.-23-Mahy-Omnibus-Law-Indonesia-Jan-2021-1.pdf; see also Business & Human Rights Resource Centre (n.d.) Blog: Indonesia: Omnibus Law on Job Creation raises serious human rights concerns, https://www.business-humanrights.org/en/blog/?opinion_series=19.

⁴⁸ Human Rights Watch (2020) "Indonesia: New Law Hurts Workers, Indigenous Groups" https://www.hrw.org/news/2020/10/15/ indonesia-new-law-hurts-workers-indigenous-groups.

SECTION 2:

Governance and Best Practices: Lessons from Sovereign Wealth Funds and development finance

The INA is seeking billions of dollars in investments from around the world, including US\$2 billion from the U.S. International Development Finance Corporation (DFC). However, the INA's governance structure remains uncertain, including a lack of clarity on what measures it would take to avoid causing environmental degradation and human rights violations.

In this section we explore international examples and current best practices established by SWFs and development finance institutions and climate funds with respect to social and environmental safeguards, Indigenous Peoples, gender, accountability mechanisms, transparency, anti-corruption, and conflicts of interest. We look at the challenges related to legal frameworks in Indonesia concerning Indigenous Peoples, laws related to land rights and provide a case study concerning the Forest Investment Program Dedicated Grants Mechanism (DGM). We explore transparency related to equity funds, public private partnerships and disclosure requirements and put forward proposals concerning a potential exclusions list for the INA.

Social and Environmental Safeguards

It is long established that best practice for development funds and financing institutions should implement an environmental and social management system to ensure that their investments do no harm and actually provide positive benefits. Unfortunately, the Regulation establishing the INA does not explicitly state that it should have an environmental and social safeguards policy (ESP), and there is no public statement confirming that it has or that it intends to create one. However, if the INA is to receive financing from the DFC, it will need to show that its investments comply with the DFC's own Environmental and Social Policy and Procedures,⁵⁴ which it cannot realistically claim to do without creating an ESP of its own or adopting as its own the ESP of another development finance institution. Most other development finance institutions from which the INA may seek support have similar minimum environmental and social safeguarding requirements.

⁵⁴ U.S. International Development Finance Corporation (DFC) (2020) Environmental and Social Policy and Procedures, https://www. dfc.gov/sites/default/files/media/documents/DFC_ESPP_07312020-final_1.pdf.



Environmental and social policies are an important pillar in ensuring that investments lead to sustainable development and prevent harm. Typically, ESPs include criteria defining minimum standards in the assessment of environmental and social risks, and impacts on human rights, labor conditions, community health and safety, resource efficiency and preventing pollution, biodiversity conservation, cultural heritage and the protection of Indigenous Peoples. ESPs require development finance projects to avoid adverse impacts such as involuntary resettlement as far as possible and, if such impacts are unavoidable, set out a basis for the proper compensation for and mitigation of these impacts, including meaningful consultations with project-affected people. ESPs typically classify projects and subprojects into higher and lower risk categorizations, and in many cases contain a list of generally prohibited practices (or "exclusion list", see below). The DFC's Environmental and Social Policy and Procedures, for example, include all of the above elements with a requirement that projects are screened against

all applicable IFC Performance Standards on Social and Environmental Sustainability, and Industry Sector Guidelines.⁵⁵

Development finance institutions investing in SWFs have a mixed record on environmental and social responsibility, despite the fact that all have formally requested adherence to their own environmental and social safeguard (ESS) standards. As shown above (see "funding structure" section), India's NIIF offers the closest international comparison in terms of the INA's remit. In 2018, the Asian Infrastructure Investment Bank (AIIB) approved a US\$100 million investment in the NIIF.⁵⁶ The approval of this funding required the NIIF to develop an Environmental and Social Policy and an Environmental and Social Management System (ESMS) for its implementation, which was also applicable to investments into Private Equity Funds and companies that these funds are invested in.⁵⁷ The AIIB reportedly worked closely with the NIIF's management team to create these safeguards policies and the system for their implementation.58

⁵⁷ Ibid.

⁵⁵ DFC (2020) Environmental and Social Policy and Procedures [2], https://www.dfc.gov/sites/default/files/media/documents/DFC_ ESPP_012020.pdf; International Finance Corporation (IFC) Performance Standards [1], https://www.ifc.org/wps/wcm/connect/Topics_ Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards. The DFC is presented as a relevant example here, but this is not intended to imply that it offers the "best practice" in terms of environmental and social safeguards. Some best practices on rights-compatible social and environmental safeguards are discussed in Center for International Environmental Law (CIEL) (2021), "Funding Our Future: Five Pillars for Advancing Rights-Based Climate Finance" [1], https://www.ciel. org/reports/funding-our-future-five-pillars-for-advancing-rights-based-climate-finance/, p.14-18.

⁵⁶ Asian Infrastructure Investment Bank (AIIB) (2018) India: National Investment and Infrastructure Fund Phase I, https://www.aiib. org/en/projects/details/2018/approved/India-National-Investment-and-Infrastructure-Fund.html; the first part of a planned US\$200m investment.

⁵⁸ Rogers, K. (2018) "Civil society sounds alarm on AIIB's latest 'hands-off' lending deal", Devex 26 June, https://www.devex.com/news/ civil-society-sounds-alarm-on-aiib-s-latest-hands-off-lending-deal-93002.

In 2019, the Asian Development Bank (ADB) approved a US\$100 million investment, citing the alignment between the NIIF's new ESMS guidance and its own, and noting its applicability to "each underlying fund", referring to any equity funds (sub-projects) that are invested in.⁵⁹ This definition extends beyond the equity fund level to include the individual companies and sub-projects that these funds are invested in, as well as covering "third party managers of its sub-funds."⁶⁰

The DFC and other potential public sector investors should follow a similar approach, making any financing commitment to the INA conditional on its creation of an ESP and detailed ESMS procedures that are equivalent to or better than the DFC's own standards, and offering support in drawing up such policies if necessary. The INA should also be required to explicitly commit that its ESMS is applicable to all of its projects and sub-projects, including any underlying equity funds (including those managed by third parties), and the companies and sub-projects that those funds invest in.

However, it should be noted that adopting ESPs and ESMS procedures is not enough; the INA must also be able to and must fully implement such checks. In the case of the NIIF, civil society groups have repeatedly warned that it lacks the capacity to implement safeguards checks at the sub-project level, and this is a common complaint in relation to development finance institutions that invest via financial intermediaries.⁶¹ In particular, the ability to adequately monitor safeguards is dependent on having a high degree of transparency about what projects, funds, and sub-funds are being supported with public disclosure of potential financing needed well in advance of investment decisions being taken (see "transparency" section, below).⁶²

To hold the INA to account, the DFC itself urgently needs to align its own safeguards policies with international best practice. To this end, it should restore provisions of Overseas Private Investment Corporation (OPIC) 2017 Environmental and Social Policy Standards⁶³ that were removed in 2020 when DFC adopted its Environmental and Social Policy and Procedures (ESPP). In particular, this should include a prohibition on investments in nuclear energy projects in high-risk environments.⁶⁴ In line with DFC policy, DFC should also insist that the INA provides evidence that an appropriate environmental assessment has been conducted and made available to the public 60 days - and preferably 120 days - before the INA approves investments that pose significant environmental and social risks.65

With the INA likely to pass a significant share of its financing through financial intermediaries (FIs) and hold equity investments, it would do well to learn from the IFC experience in this area, including recent reforms intended to increase accountability. The IFC, which channels over half of its investment portfolio via FIs, has long faced criticism of its FI lending practices from both CSOs and the Compliance Advisory Ombudsman (CAO), the independent accountability mechanism for IFC and the Multilateral Investment Guarantee Agency (MIGA). Following critical findings from the CAO, the IFC committed to "reduce IFC's own exposure to higher risk FI activity, and apply greater selectivity to these types of investment, including equity investments."66

⁵⁹ Asian Development Bank (ADB) (2019) Proposed Equity Investment National Investment and Infrastructure Fund Limited NIIF Fund of Funds-I (India), https://www.adb.org/sites/default/files/project-documents/53288/53288-001-rrp-en.pdf.

⁶⁰ National Investment & Infrastructure Fund (NIIF) (n.d.) NIIFL E&S Management Policy, https://www.niifindia.in/uploads/about/NIIFL_ ES-Policy.pdf.

⁶¹ Rogers (2018); See also Oxfam International, Washington Office (2021), "Financial Intermediary sub-project data exposed for the first time" [1], Medium 1 December, https://medium.com/@OxfamIFIs/financial-intermediary-sub-project-data-exposed-for-the-first-time-eb3d1591662b.

⁶² Centre for Financial Accountability (CFA) (2018), "CSOs Ask AIIB's India Executive Director to not to go Ahead on NIIF", CFA 25 March, https://www.cenfa.org/finance/csos-ask-aiibs-india-ed-to-not-to-go-ahead-on-national-investment-and-infrastructure-fund/

⁶³ Overseas Private Investment Company (OPIC) (2017) Environmental and Social Policy Statement, https://www. accountabilitycounsel.org/wp-content/uploads/2020/01/1-2017-opic-esps.pdf.

⁶⁴ Friends of the Earth U.S. (FOE U.S.) (2020) DFC nuclear comment, https://foe.org/resources/dfc-nuclear-comments/.

⁶⁵ Vesey, C., (2021), "How can the DFC strengthen its environmental, social, and accountability standards?", Bank Information Center 1 April, https://bankinformationcenter.org/en-us/update/how-can-the-dfc-strengthen-its-environmental-social/.

⁶⁶ Le Houérou, P. (2017), "Re-examining our work with financial institutions", IFC on Medium 11 April, https://medium.com/@IFC_org/ re-examining-our-work-with-financial-institutions-208c4161d9e3.



In March 2020, the House Financial Services Committee won further concessions in return for US agreement to a US\$5.5 billion capital increase for the IFC, which included enhanced due diligence on human rights impacts of risky activities, and a requirement of far greater transparency at the level of sub-projects and equity investments (see "transparency" section, below).⁶⁷

The lack of transparency and the distance that layers of intermediation put between financial institutions and the underlying projects that they are investing in poses significant challenges in ensuring that safeguards are upheld. To address this challenge, in September 2020, the IFC introduced a new approach to "greening equity", aimed at encouraging FI clients to phase out coal-related investments and increase their financing for green investments.⁶⁸ This is a welcome development although, as a number of CSOs have pointed out, the IFC's approach is undermined by loopholes in its rules (around timelines and portfolio fossil fuel exposure limits) that allow for continued investment in coal.69

At a minimum, the INA should follow the U.S. fossil fuel guidance at multilateral development banks, which rules out new coal and oil projects, as well as almost all gas projects (with very limited exceptions such as methane abatement).70

This should form part of an INA exclusion list, and it should be stipulated that any such exclusion includes financial intermediary and equity investments as well as direct investment projects (as is the case with the DFC).

A recent report on Putting People and Planet at the Heart of Green Equity by Recourse and Heinrich Böll Stiftung offers a series of other best practice recommendations for improving the application of safeguards to equity investments.⁷¹ These include developing a 'referral list' approach to managing high risk clients and sub-projects, supporting these clients to adopt their own ESMS, improving sub-project disclosures to include the disclosure of the name, sector(s) and location of higher risk lending and underwriting clients, and ensuring that human rights concerns are included as priority investment criteria, with compliance checks and incentives for fund managers to ensure that these concerns are fully protected in investments.

People and Planet at the Heart of Green Equity, https://us.boell.org/sites/default/files/2021-10/Putting%20people%20and%20 planet%20at%20the%20heart%20of%20green%20equity_FINAL.pdf.

⁷¹ IFC (2020), [2]; Brightwell et. al. (2021); By way of example, the IFC holds equity investments in Hana Bank Indonesia, which is financing Java 9 & 10 coal plants.

⁶⁷ U.S. House Committee on Financial Services (n.d.), https://financialservices.house.gov/uploadedfiles/malpass_ltr_mnuchin_3202020. pdf; BIC (n.d.), "Chairwoman Maxine Waters negotiates unprecedented reform package with the World Bank Group", https:// bankinformationcenter.org/en-us/update/chairwoman-maxine-waters-negotiates-unprecedented-reform/.

⁶⁸ IFC (2020), IFC's Approach to Greening Equity's Investment in Financial Institutions [2], https://www. ifc.org/wps/wcm/connect/05541643-0001-467d-883c-5d7a127ffd57/IFC+Greening+Report+Sept+2020. pdf?MOD=AJPERES&CVID=niscDfR&ContentCache=NONE&CACHE=NONE; Brightwell, R., Geary, K. & Schalatek, L., (2021), Putting

⁶⁹ Geary, K. & Temizyürek, C., (2021), Closing loopholes: How the IFC can help stop fossil fuel finance, https://www.re-course.org/wp-content/uploads/2021/03/Closing-loopholes-How-the-IFC-can-help-stop-fossi I-fuel-finance.pdf; IFC (2020), [2]; Brightwell, et al. (2021); By way of example, the IFC holds equity investments in Hana Bank Indonesia, which is financing Java 9 & 10 coal plants.

⁷⁰ U.S. Department of the Treasury (n.d)., Guidance on Fossil Fuel Energy at the Multilateral Development Banks, https://home.treasury. gov/system/files/136/Fossil-Fuel-Energy-Guidance-for-the-Multilateral-Development-Banks.pdf.

Case Study: Exclusion List, Norway's Pension Fund Global

An exclusion list is a tool that sets clear limits on the types of projects that development finance institutions will finance, either directly or indirectly.

The Government Pension Fund Global (Statens pensionsfond Utland, SPU), which is the Sovereign Wealth Fund of Norway, has an extensive exclusion list covering both 'product-based' and 'conduct-based' exclusions.⁷² The policy covers both the SPU and Norges Bank, the state-owned institution that serves as the Fund's investment manager.

Product-based exclusions

The SPU's product-based exclusions prohibit it from investing in companies involved in the production of weapons, tobacco, or military materials – a common feature of most exclusion lists. It has also led the way in excluding (as of 2019):

"mining companies and power producers which themselves or through entities they control:

- a) "derive 30 per cent or more of their income from thermal coal;
- **b)** base 30 per cent or more of their operations on thermal coal;
- c) extract more than 20 million tons of thermal coal per year; or
- d) have a coal power capacity of more than 10,000 MW from thermal coal."

SPU was the first SWF to exclude coal investment, but it has since been joined by several other public finance institutions, which have either added coal to an exclusion list or reached the same objective through changes to their energy investment policies. Increasingly, institutions such as the EIB (see below) are extending beyond coal exclusions to rule out investment in the extraction and use of other fossil fuels. For example, the Swedish National Pension Fund has a broader exclusion of "[f]ossil-based companies: thermal coal, oil sands and companies not aligned with the Paris Agreement", which excludes companies for which thermal coal or oil sands account for more than 20 percent of sales, as well as adopting a broader practice of divesting from "holdings in energy companies... whose plans and goals are considered to not be aligned with the Paris [Climate] Agreement."⁷³

⁷² See Kingdom of Norway (2019.), Guidelines for observation and exclusion from the Government Pension Fund Global, https:// www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/guidelines-for-observation-and-exclusion-from-thegpfg---01.09.2019.pdf

⁷³ See The Fourth Swedish National Pension Fund (AP4) (n.d.), Excluded companies, https://www.ap4.se/en/esg/excluded-companies/.

The SPU's product-based exclusions are relatively limited. As no single institution offers the 'best practice' on product-based exclusions, it is worth considering a range of exclusion lists adopted by development finance institutions. Notably, DFC has a more elaborated list of 'categorical prohibitions' that includes guidance on hydroelectric dams, resettlement and protected areas.⁷⁴ The exclusion list maintained by the IFC, although limited in its overall scope, is notable for prohibiting investment in "production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples."⁷⁵

The scope of product-based exclusions also requires specification to ensure that these apply not just to the primary activity itself,



but also to associated infrastructure and value/ supply chains so that, for example, exclusions of commercial logging operations in primary tropical or old-growth forests should extend to the purchase of logging equipment used in such operations. SPU explicitly considers supply chains and subsidiary companies, but with investments often passing through financial intermediaries, clear rules on subprojects and equity funds are needed as these exclusion lists should also apply to all subprojects and equity funds.

All development finance institutions have scope for improvement in this regard, although EBRD has made some progress in at least recognizing this issue. Its exclusion list asks that financial intermediaries must refer to it before making investment decisions in companies or activities that involve a range of sensitive activities, including involuntary resettlement, "activities within, adjacent to, or upstream of land occupied by Indigenous Peoples and/or vulnerable groups", activities "involving the release of GMOs into the natural environment", and the "construction of mini-hydro cascades."⁷⁶

⁷⁴ DFC (2020), [1]; Annex 2.

⁷⁵ See IFC (2007), Exclusion List, http://www.ifc.org/exclusionlist.

⁷⁶ See European Bank for Reconstruction & Development (EBRD) (2008), EBRD Environmental and Social Exclusion List, https:// www.ebrd.com/downloads/about/sustainability/Environmental_ and_Social_Exclusion_and_Referral_Lists_15092008.pdf.

Conduct-based exclusions

The SPU and Norges Bank are more innovative in their use of conduct-based exclusions, which prohibit them from investing in companies and their subsidiaries that contribute to:

- a) "serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour and the worst forms of child labour
- b) serious violations of the rights of individuals in situations of war or conflict
- c) severe environmental damage
- d) acts or omissions that at the aggregate company level lead to unacceptable greenhouse gas emissions
- e) gross corruption
- f) other particularly serious violations of fundamental ethical norms."77

The exclusion on grounds of excessive greenhouse gas emissions (item (d)) is of particular note, since it could offer a pathway to ensuring that investments are consistent with the Paris Climate Agreement target of restricting global warming to 1.5 degrees Celsius. So far, the SPU investment portfolio and scope of exclusions fall well short of this goal, although it has already resulted in divestment from several companies that derive income from the extraction of oil sands.⁷⁸

SPU's conduct-based exclusions also include broad-based prohibitions for environmental damage and human rights violations. This has led to exclusions of various companies investing in palm oil plantations for driving deforestation,⁷⁹ as well as investments in hydroelectric power plants that were seen as likely to contribute to severe environmental damage.⁸⁰ Importantly, these "conduct-based restrictions" are also applied to supply chains – a crucial factor behind SPU's divestment from Walmart on human rights grounds, in a restriction that remained in place for over a decade.⁸¹

The SPU,⁸² Swedish National Pension Funds Council of Ethics,⁸³ and UN Global Compact,⁸⁴ amongst others, all maintain lists of delisted companies. Alongside, or in the absence of, its own monitoring capacity, the INA could adopt an exclusion list that mirrors the exclusions of companies made by some or all of these other institutions.⁸⁵

⁷⁹ See Erickson-Davis, M., (2019), "Norway divests from plantation companies linked to deforestation", Mongabay 1 March, https://news. mongabay.com/2019/03/norway-divests-from-plantation-companies-linked-to-deforestation/.

⁸⁰ For example, Skaar (2020).

⁸¹ Brooksbank, D. (2006), "Norwegian government fund excludes Wal-Mart", IPE, https://www.ipe.com/norwegian-government-fundexcludes-wal-mart/19027.article. Following a review of company practices the Walmart exclusion was revoked in 2019, although the Swedish Pension Funds Council of Ethics maintains its exclusion on similar grounds. See Walker, O., (2019), "Norway's wealth fund lifts restrictions on some multinationals", Financial Times 25 June, https://www.ft.com/content/dfcf930c-9724-11e9-8cfb-30c211dcd229; and Council on Ethics Swedish National Pension Funds (2020) Recommended Exclusions, https://etikradet.se/en/our-work/recommendedexklusions/.

⁸² Norges Bank (n.d.) Observation and exclusion of companies, https://www.nbim.no/en/the-fund/responsible-investment/exclusion-of-companies/.

⁷⁷ For more minor violations, the Pension Fund Global would first enter into dialogue with the investee before withdrawing its investment.

⁷⁸ See Skaar, M., (2020) "Government Pension Fund Global: Exclusion and observation decisions", Norges Bank 13 May, https:// www.norges-bank.no/en/news-events/news-publications/News-items/2020/2020-05-13-spu/; Canada's National Observer (2020), "Norway's wealth fund excludes Cdn oils ands investments over emissions", Business & Human Rights Resource Centre 13 May, https:// www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/norways-wealth-fund-excludes-cdn-oilsands-investments-overemissions/.

⁸³ Council on Ethics Swedish National Pension Funds (2020).

⁸⁴ United Nations Global Compact (n.d.), De-Listed Participants, https://www.unglobalcompact.org/participation/report/cop/createand-submit/expelled.

⁸⁵ This practice of adopting other organizations' lists has been used by private investors lacking monitoring capacity of their own, e.g., State Street Global Advisors (2021), State Street Emerging Markets SRI Enhanced Equity Fund SFDR Article 8 - Additional Information, https://www.ssga.com/library-content/products/fund-docs/mf/emea/sfdr-disclosure/state-street-smerging-markets-sri-enhancedequity-fund.pdf.

Governance

A crucial aspect to the relative success of SPU's exclusion list is the continuous monitoring of its investment portfolio, which is overseen by a 5-member Council of Ethics, which is appointed by the Ministry of Finance and supported by a permanent Secretariat. The Council has a broad remit to investigate potential violations of SPUs policies and provide recommendations for exclusions, either on request or at its own initiative. It can also "develop and publish principles for the selection of companies for closer investigation."

The SPU exclusion list is also characterized by a high level of transparency, with the reasons for excluding or placing companies under observation (one step short of exclusion), as well as grounds for revoking existing exclusions, documented in full on the Norges Bank website.

Indigenous Peoples

The INA has no specific policy for Indigenous Peoples, beyond a general mention in the INA Regulation that it will operate in line with international standards and practices.⁸⁶ Although this does not specify any particular standards, it is worth noting that the INA is a member of the International Forum of Sovereign Wealth Funds (IFSWF), and that it has made a public commitment to follow the Santiago Principles for SWFs.⁸⁷ These principles require adherence to applicable home country laws, although they do not make explicit reference to Indigenous Peoples.

Therefore, the INA should at a minimum align its investments and standards with Indonesia's national policies on Indigenous Peoples, which include laws related to customary forests, the Village Law, traditional knowledge laws and regulations, and laws and regulations put in place related to the UN Framework on reducing emissions by decreasing deforestation and forest degradation known as REDD+.⁸⁸ It should also routinely ensure the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples in relation to any investments that



affect them or their territories as part of a more comprehensive set of environmental and social safeguards (as outlined in the section above). FPIC is partially regulated in the natural resources sector by Indonesia's Environmental Law (Law 32/2009), and in Environmental Impact Assessment processes. Potentially impacted communities should be informed ahead about the impacts and have a right to lodge objections. FPIC is also regulated by a Ministerial decision on traditional knowledge that any programs or activities which are potentially affecting or using traditional knowledge must get the consent of said communities.⁸⁹ Indonesia is also a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (although, concerningly, the Gol maintains that this has very limited applicability). INA should, therefore, fully adhere to its principles.90

⁸⁶ Investment Management Institution Gov. Regulation, Art. 32.

⁸⁷ MediaIndonesia.com (2021), "Lembaga Pengelola Investasi RI Resmi Anggota IFSWF", Media Indonesia 24 May, https:// mediaindonesia.com/infografis/detail_infografis/407040-lembaga-pengelola-investasi-ri-resmi-anggota-ifswf; International Working Group of Sovereign Wealth Funds (IFSWF) (2008) Sovereign Wealth Funds Generally Accepted Principles and Practices "Santiago Principles", https://www.ifswf.org/sites/default/files/santiagoprinciples_0_0.pdf.

⁸⁸ REDD+ is a Framework established under the United Nations Framework Convention on Climate Change and includes activities to decrease deforestation and forest degradation, enhancing carbon stocks, conservation, and sustainable management of forests. For more information see here: United Nations Framework Convention on Climate Change REDD+ (REDD+) (n.d.), Homepage, https://redd. unfccc.int/.

⁸⁹ Minister of Environment and Forestry Regulation (MOEF) No. P.34/MENLH/SETJEN/KUM.1/5/2017 on Recognition and Protection of Local Wisdom on Natural Resources and Environment Management.

⁹⁰ Anshori, M. S., (n.d.), "Indigenous peoples of Indonesia: Calling for recognition and respect", UNSW Human Rights Institute,https:// www.humanrights.unsw.edu.au/research/commentary/indigenous-peoples-indonesia-recognition-respect.

Indonesia's legal obligations concerning Indigenous Peoples

Over the past decade, Indonesia's regulations to protect Indigenous Peoples have marginally improved in various aspects, including related to institutions, land, territories, and natural resources management. At the subnational level, more and more provinces and districts are introducing regulations to recognize the rights of Indigenous Peoples.

The progress made in Indonesia has been largely influenced by the groundbreaking and historic Constitutional Court decision made in 2012 that categorizes customary forests as a legal subject allowing Indigenous Peoples in Indonesia to claim communal land, traditional institutions, and customary laws.⁹¹ This important decision has also acted as a trigger for a policy discourse on Indigenous Peoples' rights and regulations, including related to villages through the 'Village Law'.

In 2014, a new Village Law was introduced, which includes the recognition of traditional/ customary villages, allowing for semiautonomous traditional governance. The new Village Law also includes provisions for establishing village governments (executive agencies and village parliamentary bodies), customary laws, land rights registration, and multi-stakeholder processes at the village level.⁹² A number of implementing regulations have been set up by the Ministry of Villages. Development of Disadvantaged Regions, and Transmigration to support the process of identifying and empowering those villages. Besides providing financial support through village funds, the government distributes village facilitators to increase the institutional and governance capacity of the village. The village system of information is also supported in every village as a channel for villages to e-share and e-learn from other areas.

In terms of investment activities, the Village Law includes a coordination provision stating that all the programs and activities that are intended to be implemented in the village

⁹¹ Decision of the Constitutional Court Number 35/PUU-X/2012.
 ⁹² Law of the Republic of Indonesia Number 6 Year 2014 on Village.
 ⁹³ Village Law, Art. 83 & 118.

should be coordinated and intended to support the village development planning. Although there is no scorecard of investment impact, the higher government entities and project implementers have to consider the projects as the instrument to empower villagers.⁹³ However, the village governments have no authority to raise objections to projects designated as "strategic projects", even if they consider that these are not aligned with their village plan. Activities that are labeled "strategic" in this way include food security and energy, infrastructure building, and security and military projects, many of which are priority investment areas within INA's portfolio. Therefore, in a case where an investment negatively impacts a community's land, the Village Law affords village institutions no formal right to complain. As such, if the INA is to adopt an approach that includes FPIC for Indigenous Peoples, it cannot simply rely on conformity with national laws, and it should seek to provide additional protections as part of its ESP.





Indonesia's Nationally Determined Contribution (NDC), its national commitments under the Paris Climate Agreement, provides another possible legal basis upon which the INA could develop greater protection of Indigenous Peoples' rights. Indonesia's first NDC states that, in line with the Paris Agreement, Indonesia respects, promotes, and considers its obligation on human rights, the rights to health, the right of adat communities or the Indigenous Peoples.⁹⁴ While Indonesia's position on UNDRIP remains ambiguous,⁹⁵ as noted above, Gol has been more explicit in acknowledging the need for Free Prior and Informed Consent in international climate negotiations. For example, Indonesia's REDD+ safeguards document clearly adopts UNDRIP, and Indonesia has endorsed this approach through the Ministry of Environment and Forestry Regulation No 70/2017.

Moreover, Indonesia has ratified most of the international covenants on human rights, including those on civil and political rights, social, economic and cultural rights, and racial discrimination. Notably, the United Nations Committee on the Elimination of Racial Discrimination (UN CERD) issued a formal communication to the Gol in April 2021 urging, amongst other things, that it should "respect the way in which indigenous peoples perceive and define themselves" and "amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way [...] and are not used as a justification to override the rights of indigenous peoples."⁹⁶

Similarly, Indonesia also complies with the Convention on Biological Diversity and its Nagoya Protocol, which includes Free Prior and Informed Consent as a core principle. In line with these ratified international covenants and conventions, Ministry of Environment and Forestry Regulation No 34/2017 recognizes the traditional wisdom of Indigenous Peoples' conservation practices, management of natural resources and the environment, and that FPIC applies when outsiders invest in Indigenous Peoples' territories. Currently, under the need to protect the intellectual property rights of Indigenous Peoples, the Gol has established Law 13/2016 where traditional knowledge is protected from piracy and its application has to consider fair benefit sharing.⁹⁷ The law is also supported by Ministerial level regulation of the Ministry of Law and Human Rights Regulation No 13/2017 where communal traditional knowledge including genetic resources, cultural expressions, and geographical indications need to be registered by the Ministry of Law and Human Rights.

⁹⁷ Law of the Republic of Indonesia Number 13 Year 2016 on Patent, Art. 26.

⁹⁴ "First Nationally Determined Contribution Republic of Indonesia" (2016), https://www4.unfccc.int/sites/ndcstaging/ PublishedDocuments/Indonesia%20First/First%20NDC%20Indonesia_submitted%20to%20UNFCCC%20Set_November%20%202016.pdf.

⁹⁵ United Nations General Assembly (UNGA) (2007), "General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major Step Forward' Towards Human Rights for All, Says President", https://www.un.org/press/en/2007/ga10612.doc.htm.

⁹⁶ Aliansi Masyarakat Adat Nusantara (AMAN) (2021), "UN CERD formal communication to the Government of Indonesia requests evidence of safeguards to protect the rights of indigenous peoples", *Forest Peoples Programme* 27 May,https://www.forestpeoples.org/en/palm-oil-rspo/press-release/2021/un-cerd-formal-communication-government-indonesia-requests.

Case Study: The Dedicated Grants Mechanism and Indigenous Peoples

The Dedicated Grants Mechanism (DGM), a program under the Forest Investment Program, which is part of the World Bankadministered Climate Investment Funds (CIFs), is the only multilateral financing scheme designed and led by Indigenous Peoples and local communities. The DGM has a mandate to provide small grants directly to Indigenous Peoples to support projects addressing deforestation and forest degradation. The FIPs have approved US\$6.25 million in grant financing for land tenure security, livelihood support, and capacity building in Indonesia.⁹⁸ Community organizations, individual CSOs, and groups of CSOs are eligible to apply.

The DGM Indonesia has to apply financial safeguards including an anti-corruption policy and World Bank safeguards policies to its on-granting. Social safeguards are necessary to address the risk of internal injustices for vulnerable sub-groups among community members.⁹⁹ In terms of project structure, DGM Indonesia has a National Steering Committee which maximizes the regional representative structure of the National Forestry Council (DKN). This Committee includes 11 members, representing the seven regions of Java, Sumatra, Kalimantan, Bali and Nusa Tenggara, Sulawesi, Maluku and Papua, plus two other representatives of women from local communities and two more representing DKN and government. The Committee representatives are voted in by their constituents through a participatory process that is already installed in DKN's governance system.



Currently, DGM Indonesia has more than 40 grants approved and under implementation.¹⁰⁰ Most of the projects support Indigenous Peoples to apply for the recognition of customary forests (hutan adat), making use of the legal opportunity provided by Constitutional Court Decision 35/2012 and recent policies related to social forestry. For instance, in terms of Indigenous Peoples' rights, seven Indigenous communities in Bengkayang District, West Kalimantan Province are being supported to conduct participatory mapping of their land and to set up District Regulations for recognition. Similarly, in Aceh Province, the project supports two communities to establish the Indigenous territory for legal recognition, while other projects support management skills. For example, in Tulungagung, Central Java, the project supports three local communities' access to social forestry schemes, including building capacity to manage the forests.

⁹⁸ DGM Global (n.d.), Indonesia, https://www.dgmglobal.org/indonesia.

⁹⁹ DGM Indonesia (n.d.), About [1], https://www.dgmindonesia.id/about.

¹⁰⁰ DGM Indonesia (n.d.), Daftar Penetapan Proposal Indonesia [2], https://www.dgmindonesia.id/grants#daftar-penetapan-proposal.

In learning from the DGM, the INA should develop a clear structure to represent stakeholders' concern, especially those of Indigenous Peoples. DGM has employed the National Forestry Council as a forum to facilitate the expression of stakeholders' interest directly to the project proponents, where they can exchange views openly. This forum helps to ensure that concerns of Indigenous Peoples from across Indonesia are addressed and accommodated within the scope of projects, including fundamental considerations regarding the legal recognition for customary forest, mapping, and economic empowerment.

Although DGM grants have benefitted a number of communities, there remains room for further improvement. Notably, the safeguards policy is not yet updated to be in line with the updated version of the 2016 World Bank's safeguards. As a result, the DGC safeguards refer to applying the principle of Free Prior Informed Consultation, which is much weaker than the standard of Free Prior and Informed Consent (FPIC) as required under UNDRIP and other international conventions. Similarly, there is no specific requirement related to human rights. The INA could improve upon this by ensuring that it conforms with FPIC and applies safeguards that protect human rights.

Gender equity

Development and climate finance institutions are increasingly seeking to integrate gender considerations in their governance and funding structures. In July 2021, for example, the DFC proclaimed itself "a leader in the world's effort to promote gender equity in developing countries" as it announced its new 2X Women's Initiative.¹⁰¹ If the DFC is to substantiate this claim, it should ensure that gender equity is mainstreamed across its entire portfolio, including any investments that it makes in the INA.

The INA has not yet made public any plans to implement gender equity principles as part of its governance framework or core operational policies, and makes no mention of gender, women's empowerment, intersectionality or marginalized gender groups anywhere on its website. This is perhaps surprising, given that the Indonesian government has long-standing commitments to gender mainstreaming at a policy level, although its



record in practice remains mixed.¹⁰² Indonesia has seen improvements in gender equity across several metrics, such as education and youth literacy, but female labor force participation rates have not significantly increased over the past two decades. 56 percent of women participate in the labor force (compared to 89 percent of men), while the gender gap is even wider in relation to management positions.¹⁰³ Inequality is particularly acute amongst communities that are marginalized in other ways, as noted by the United Nations Development Programme: "Women from lower socio-economic strata and indigenous communities are triply marginalized due to their social standing along gender, class, and ethnic lines. Likewise, women with disabilities, women living with HIV and women from the LGBT community are often discriminated against."104

¹⁰¹ DFC (2021), "DFC Announces Ambitious New Commitments to Gender Equitable Financing", DFC 1 July, https://www.dfc.gov/ media/press-releases/dfc-announces-ambitious-new-commitments-gender-equitable-financing.

¹⁰² SMERU (2021) Gender Equality in Indonesian New Developmental State: The Case of the New Participatory Village Governance, https://smeru.or.id/sites/default/files/publication/wp_neoliberal_developmental_gender_2019-9-6.pdf; World Bank (2020) Indonesia Country Gender Assessment: Investing in Opportunities for Women, https://openknowledge.worldbank.org/bitstream/ handle/10986/35310/Indonesia-Country-Gender-Assessment-Investing-in-Opportunities-for-Women.pdf?sequence=1&isAllowed=y ; Asian Development Bank (ADB) (2015), Summary of Indonesia's Gender Analysis, https://www.adb.org/publications/summaryindonesias-gender-analysis.

¹⁰³ World Economic Forum (WEF) (2021), Global Gender Gap Report 2021 Insight Report March 2021, p.14, https://www3.weforum.org/ docs/WEF_GGGR_2021.pdf; ADB (2015), p.3.

¹⁰⁴ United Nations Development Programme Indonesia (UNDP Indonesia) (2017), Change Makers: Programming for Gender Equality and Helping Men and Women in Indonesia Shape a Fairer World, p.6, https://www.undp.org/content/dam/indonesia/2019/DOCS/ CO%20Gender%20Equality%20Strategy%202017-2020.pdf

Gender equity is explicitly enshrined in Indonesia's Constitution and there are several laws intended to implement this goal. Indonesia adopted a National Gender Mainstreaming Policy¹⁰⁵ in 2000 to guide national development plans, while a 2008 regulation issued by the Ministry of Home Affairs offers¹⁰⁶ guidelines for mainstreaming gender at local government levels.107 A 2017 Presidential Decree¹⁰⁸ provides a legal basis for the government's implementation of the Sustainable Development Goals (SDGs), which include as Goal 5 a focus on Gender Equality and Women's Empowerment.¹⁰⁹ Indonesia's commitments to UN Women include a focus on increasing the participation and representation of women in decision making processes, while in 2015 the country also committed to the G20 Development Commitments, which include a pledge to reduce the gender gap in labor force participation by 25 percent by 2025.¹¹⁰ Indonesia's National Long-term Development Plan 2005-2025 also affirms the Indonesian government's commitment to gender equality. At a minimum, the INA should make public its commitment to uphold these national

intends to help achieve their implementation. While there is no single SWF or development finance institution that offers a "best practice" example on gender equity for the INA to follow, there are plenty of good practices internationally that can be built upon.

initiatives, including a clear plan on how it

The Green Climate Fund (GCF) is notable for the fact that its Governing Instrument established a "gender-sensitive approach"



as one of the Fund's core principles. Building on this mandate, strong gender requirements were included in a number of the GCF's core operational policies, including its investment framework (the basis against which investment decisions are judged), results measurement policy, and the accreditation of partner organizations.^{III} A separate, principles-based Gender Policy and an accompanying Gender Action Plan were approved in advance of any funding decisions being taken in 2015 and updated in 2019 in light of experience gained.¹¹² Under the GCF's 2019 Gender Policy update, specific project or program-level gender assessments and action plans with dedicated budgets and indicators are mandatory and are made publicly available in advance of any funding being approved. Reporting against fulfillment of commitments under the project or program level gender actions plans is part of required annual performance reporting.¹¹³

¹⁰⁷ World Bank (2020), p.12.

¹⁰⁸ Presidential Instruction Republic of Indonesia Number 59 Year 2017 on Implementation of Sustainable Development Goals.

¹⁰⁹ World Bank (2020), p. 12-13.

¹¹⁰ *Ibid.*, p.2.

¹¹¹ Brightwell et al (2021), p.12.

¹¹² Green Climate Fund (GCF) (2015), *Decisions of the Board – Ninth Meeting of the Board, 24 - 26 March 2015 B.09/23* [1], https:// www.greenclimate.fund/sites/default/files/document/gcf-b09-23.pdf.

¹¹³ Brightwell et al (2021), p.12

¹⁰⁵ Presidential Instruction Republic of Indonesia Number 9 Year 2000 on Gender Mainstreaming in National Development and Minister of Home Affairs Regulation Number 15 Year 2008 on General Guideline for Implementation Mainstreaming Gender in The Regions.

¹⁰⁶ Minister of Home Affairs Republic of Indonesia Regulation (MoHA Regulation) Number 15 Year 2008 on General Guidelines for the Implementation of Gender Mainstreaming in the Regions, amended with MoHa Regulation Number 67 Year 2011 on the Amendment of. Minister of Home Affairs Republic of Indonesia Regulation Number 15 Year 2008 on General Guidelines for the Implementation of Gender Mainstreaming in the Regions.

The Global Environment Facility (GEF) Policy on Gender Equality, adopted in 2017, makes similar requirements, with potential activities needing to prove a "gender analysis or equivalent socio-economic assessment" has taken place prior to funding approval, as well as making provisions for ongoing monitoring and annual reports to the Board to assess progress in implementing the Gender Equality policy.¹¹⁴ The INA would benefit from similar requirements to those of the GCF and GEF, including mandatory (and publicly available) gender assessments of any activity before investment decisions are made and mandatory reporting against progress in implementation on the activity and portfolio levels.

The INA should also establish – either as part of its safeguards, as part of its gender approach or in the context of procedures and strategies against prohibited practices – a policy on preventing sexual exploitation, abuse, and harassment (SEAH), which are rampant in the implementation of many infrastructure projects. Recent experiences, such as those by the GCF, which has an internal SEAH policy applying to staff, with SEAH obligations for its implementation partners integrated in its recently updated ESP, can be instructive.¹¹⁵

SWFs have not provided leadership on advancing gender equality and women's empowerment (or the SDGs more generally),¹¹⁶ although it should be noted that some funds have started to insist on improvements from companies that they are invested in. For example, Norway's Pension Fund Global (SPU) is asking its investees to improve gender diversity on company boards in line with G20/ OECD Principles on Corporate Governance that also stress this issue.¹¹⁷

In practice, even the institutions that have gender policies and guidance that cut across investment and operational policies have plenty of room for improvement. A recent survey on GCF gender integration by the Heinrich Böll Stiftung and Gender Action found that its policies were often poorly implemented and recommended the greater integration of gender goals and assessment findings at project/program level; increased budgets allocated for gender-related expenditures; the inclusion of local gender experts and representatives of women's organizations, LGBTQ people, and other marginalized groups in project/program design; and a far more consistent provision of genderdisaggregated data.¹¹⁸ A separate survey of gender integration in climate finance projects, undertaken by Women's Environment and Development Organization (WEDO) and the Climate & Development Knowledge Network, made similar recommendations, including that projects are informed by local gender expertise, gender specialists are embedded in decisionmaking positions in project teams, and that gender-differentiated baseline data informs project design from the outset.¹¹⁹

The INA should seek to act on these recommendations, mainstreaming gender considerations in its policy framework and consultation processes, as well as at the level of investment decisions and management. This should include taking measures to ensure that INA invests in "gender-sensitive infrastructure services", which were identified as a priority by a recent World Bank gender assessment of Indonesia.¹²⁰

¹¹⁸ Brightwell et al (2021), p.7-9.

¹¹⁹ WEDO, pp.5-6

¹²⁰ World Bank (2020), p.7.

¹¹⁴ Global Environment Facility (GEF) (2017), *Policy on Gender Equality* [1], https://www.thegef.org/sites/default/files/council-meetingdocuments/EN_GEF.C.53.04_Gender_Policy.pdf; GRF (2021), *Progress Report on the GEF Gender Implementation Strategy*, https:// www.thegef.org/sites/default/files/council-meeting-documents/EN_GEF.C.60.Inf_.09_Progress_Report_on_the_GEF_Gender_ Implementation_Strategy_1.pdf

¹¹⁵ GCF (2021), *Revised policy on the prevention and protection from Sexual Exploitation, Sexual Abuse, and Sexual Harassment* [2], https://www.greenclimate.fund/document/revised-policy-prevention-and-protection-sexual-exploitation-sexual-abuse-and-sexual.

¹¹⁶ UN Environment (n.d), *Financing the SDGs: the Role of Sovereign Wealth Funds for Green Investment*, https://greenfiscalpolicy.org/wp-content/uploads/2020/08/Policy-brief-SWF-2018-1.pdf.

¹¹⁷ Norges Bank Investment Management (NBIM) (2021), "Board Diversity", NBIM 15 February, https://www.nbim.no/en/the-fund/ responsible-investment/our-voting-records/position-papers/board-diversity; Organisation for Economic Co-operation and Development (OECD) (n.d), "G20/OECD Principles of Corporate Governance", https://www.oecd.org/corporate/principles-corporategovernance/.

In particular, the World Bank report emphasized "supporting subnational governments to strengthen gender and social inclusion principles in infrastructure design and planning, and to adopt evidence-based planning and monitoring systems to better track gender responsive interventions at the district level," and noted that deficits in Indonesia's water, sanitation, and hygiene infrastructure have particularly negative impacts on women.¹²¹

Independent Accountability Mechanisms

Recognizing that even when social and environmental safeguards are in place things can and do go wrong. It is now standard good practice for development and climate finance institutions to establish independent accountability mechanisms to provide an avenue for redress for impacted communities. The INA should similarly establish its own independent accountability mechanism as part of its due diligence and implementation of its environmental and social management system. Accountability (grievance and redress) mechanisms can take a variety of forms, but often have both a compliance function (that assesses a project's compliance with the policies) and a dispute resolution function and sometimes an advisory one as well. Regardless of the specific functions and operations for providing access to redress, there are numerous principles that the INA should look to in establishing its mechanism. The UN Guiding

Principles on Business and Human Rights set out a number of basic principles that offer a starting point for effective accountability (grievance and redress) mechanisms, namely that these mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.

Legitimacy means that the grievance mechanism engenders trust from stakeholders, which requires that it can reach independent conclusions without fear of consequences or reprisals for not only the mechanism itself, but also complainants. This means that the grievance mechanism should be independent from INA management so that it is not reporting directly to the INA management that is responsible for implementing its projects. At the project level, local grievance mechanisms must also be independent of local management.¹²²

¹²¹ *Ibid*, p.7 & 57. A gender assessment by the ADB also highlighted water and sanitation infrastructure improvements as a gender priority, pp. 4-5.

¹²² Eisen (2021). "Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement", CIEL, p.15, https://www.ciel. org/reports/rights-carbon-caution/. p.15; Daniel, C.; Genovese, K.; van Huijstee, M. & Singh, S. (Eds.) (2016) *Glass Half Full? The State* of Accountability in Development Finance. Amsterdam: SOMO, p.47, https://www.ciel.org/glass-half-full-the-state-of-accountability-indevelopment-finance/.

Building legitimacy also requires that the staff selection process seek to involve representatives of affected communities, as is the case for the IFC/MIGA Compliance Advisor Ombudsman (CAO), the GCF's Independent Redress Mechanism (IRM), and the EBRD's Independent Project Accountability Mechanism (IPAD) with candidate nominations for leadership positions subject to nominations by civil society and other stakeholders.

Accessibility means that grievance mechanisms should be known about and easily understood by affected communities and all stakeholder groups for whose use they are intended with specific measures taken to overcome numerous access barriers including but not limited to those related to language, gender, vulnerability, and disabilities. If the INA is engaged in project financing, this could include a requirement that project developers establish project-level grievance mechanisms, but should also (in line with most such mechanisms) require that local stakeholders are adequately informed of and given unrestricted opportunity to access institutional as well as local grievance mechanisms since affected peoples may not trust the local actors involved. Further, aggrieved people must be able to access any of the grievance mechanisms, and there should be no requirement to go to one before accessing another. It should also include measures to ensure that complaints can be made in any language or format as with the GCF's Independent Redress Mechanism (IRM). Complaints should also be able to be made by one or more persons and should be able to be submitted confidentiality especially when there is a fear of reprisals.



According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), predictability means "providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation."¹²³ This needs adequate resourcing and staffing at institutional level so that they are able to meet their timeframes and to enable them to be in regular communication with the complainants, and it is important that grievance mechanisms include a mandate to monitor the implementation of any remedial action plans resulting from complaints, as with the GCF's IRM.

An equitable grievance process requires that complainants have the same rights of participation as the INA and the client (project developer/investee company). Existing mechanisms have largely not achieved this standard, although some mechanisms, including the EBRD's and ADB's mechanisms at least allow complainants to submit comments on draft findings. The best practices so far on this are those of the GCF's IRM, which requires that the complainant is consulted in the development of any draft remedial action plan and subsequent monitoring reports.¹²⁴ The IFC/MIGA CAO has recently adopted a similar process.¹²⁵

¹²³ United Nations Human Rights Office of the High Commissioner (OCHCR) (2011), Guiding Principles on Business and Human Rights, Principle 31, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹²⁴ Eisen (2021), p.16.

¹²⁵ World Bank (2021) IFC/MIGA Independent Accountability Mechanism (CAO) Policy (English), https://documents.worldbank.org/en/ publication/documents-reports/documentdetail/889191625065397617/ifc-miga-independent-accountability-mechanism-cao-policy.

For a grievance mechanism to be transparent, it needs to keep complainants informed about its progress, as well as document its handling of other complaints. The African Development Bank's Independent Review Mechanism is notably transparent in this regard since it publishes a list of all past and pending complaints, including all documents submitted by the complainant, responses to allegations, the results of the compliance review, and monitoring reports on the implementation of action plans to redress the harm.¹²⁶ In adopting such principles, it is worth noting that transparency should relate to the scope of allegations, while at the same time maintaining the confidentiality of complainants (especially when requested) in order to reduce any risk of reprisals.

The transparency as well as accessibility of any independent grievance mechanism is inextricably linked to the underlying transparency of the financial institution itself and of the assets that it holds. Impacted communities must know about the INA's involvement in financing projects. Thus, for the grievance mechanism to have better transparency and accessibility, when and if the INA is engaged in new infrastructure projects and programs, then it must extend transparency to its full project and program pipeline of direct investments, as well as indirect investments involving financial intermediation and equity (see transparency section).

It may sound obvious, but grievance mechanisms designed to respond to alleged human rights abuses must themselves be "rights-compatible." Above all, this means that the INA rules should include a specific commitment to respect human rights obligations, which should be operationalized via an actively monitored exclusion list and system of environmental and social safeguards that include ensuring human rights (see Environmental and Social Safeguards section, above). It also implies a duty to keep complainants safe from reprisals, threats, and intimidation - for example, by keeping the identities of complainants confidential, taking precautions when interacting with complainants, and promoting policies that secure their safety (as the CAO and IRM do to some extent).¹²⁷

The INA should go further than this basic minimum and should, as part of its safeguards and initial environmental and social due diligence, screen all projects for risks to human rights defenders, conduct additional due diligence where significant risks are identified, and set up a hotline to respond to reprisals, among other measures. Similarly, the INA's grievance mechanism should do the same and, upon receiving a complaint, assess the risk of reprisals to the complainants and have a hotline to respond to reprisals, among other measures.

Finally, as a source of continuous learning, the mechanism should identify lessons that it can learn for improving its own policies and operations, including committing to periodic consultations and reviews. Additionally, the mechanism should serve as a source of continuous learning for the INA by distilling lessons from its cases (or those of projectlevel mechanisms or other IAMs) about the INA's policies and practices to share with the INA to prevent future grievances and harms.¹²⁸ The best practice here is for the grievance mechanism to have an explicit advisory mandate as is the case for the CAO in relation to the IFC and the IRM in relation to the GCF.¹²⁹

¹²⁶ African Development Bank (2021) Independent Review Mechanism, https://www.afdb.org/en/independent-review-mechanism-irm.

¹²⁷ Daniel et al. (2016) p.55; Eisen (2021) p.16. For further proposals to prevent reprisals, see Coalition for Human Rights in Development (202), Joint submission on policy recommendations regarding reprisals against human rights defenders, 3 March, https://rightsindevelopment.org/wp-content/uploads/2020/03/2020.03.20-Coalition-Members-Submission-for-AIIB-ESF-Review-with-Annex-1.pdf and Holmström, T. (2019) Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit, Inter-American Development Bank, http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/ce43d67170fcd8f3482583a20026ab13/\$file/guide_for_iams_on_measures_to_address_the_risk_of_reprisals_in_complaints_management_february_2019.pdf.

¹²⁸ Multiple Authors (2021) Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms, p.80, https://www.ciel.org/reports/good-policy-paper/.

¹²⁹ Eisen (2021) p.16; GCF (2019) para. 107-109; Office of the Compliance Advisor/Ombudsman (CAO) Terms of Reference, http://www. cao-ombudsman.org/about/whoweare/documents/TOR_CAO.pdf.

Enhancing Transparency

Transparency around financing is essential to ensure that communities understand the potential impacts of any projects that might affect them, including potential environmental and social risks, as well as having the opportunity to meaningfully participate in their development and implementation. This is true of direct project and program financing, as well as sub-projects and investments made through financial intermediaries and equity funds. Although the Regulation establishing the INA references "international standards" for public disclosure, it does not specify what this



implies, and it is left to the BoD to develop such provisions. $^{\scriptscriptstyle 130}$

Sovereign Wealth Funds and infrastructure investment funds typically have a very poor record on transparency with most releasing "little financial, operational, and governance information to the public."¹³¹ In part, this has to do with political and organizational culture, but the lack of transparency is compounded by the structure of the investments that most SWFs undertake. Two potentially significant INA investment types – equity financing and public-private partnerships

- are of particular concern here.



Equity investments that take place via a "funds of funds" (pooled investment vehicles that invest in other equity funds, which in turn are the actual investors in a company) create a structural impediment to transparency and accountability.¹³² In such cases, asset managers have shown themselves reluctant to engage in transparent and timely disclosure of potential and current funding either through lack of expertise or through the adoption of very broad definitions of commercial confidentiality.¹³³ This issue is sometimes compounded by the overly restrictive approach that public finance institutions themselves have taken to the disclosure of private (or public-private) investments in general and equity investments in particular. For example, the GCF, which (on paper) has a very extensive information disclosure policy that involves a "presumption to disclose," has nevertheless limited the availability of private sector project or program documentation prior to funding approval with no requirements to publicly disclose project pipelines or stakeholder engagement plans, while private equity finance is approved without clarifying its sectoral scope.¹³⁴

¹³⁰ Investment Management Institution Gov. Regulation, Art. 68.

¹³¹ Megginsona, W. And X. Gao (2020) "The state of research on sovereign wealth funds", Global Finance Journal Volume 44, May, https://doi.org/10.1016/j.gfj.2019.03.003. The "Santiago Principles", which set out voluntary guidance for SWFs, are extremely weak and unspecific, see IFSWF (2008).

¹³² Brightwell et al (2021).

¹³³ Ibid.

¹³⁴ See Reyes, O. & Schalatek, L. (2021) *Green Climate Fund Private Sector Finance in Focus Briefing 1 A Critical Review of Key Trends,* https://us.boell.org/en/2021/10/05/green-climate-fund-private-sector-finance-focus-briefing-1-critical-review-key-trends.

Public-private partnerships

The reliance on Public-Private Partnerships (PPPs) to deliver new infrastructure is also beset with transparency risks since the private companies involved routinely insist that many aspects of the partnership are kept secret usually including the contracts themselves.¹³⁵ This lack of transparency increases the risk of corruption, as well as obscuring the true costs of infrastructure investments by providing a means to remove them from public balance sheets – with the true price being paid by ordinary citizens in the form of high tariffs and/or subsequent public budget cuts extending over many years.¹³⁶

For these reasons, PPPs should be avoided, but transparency rules are also needed for instances in which the INA does invest in such activities. At a minimum, the INA should follow the "WBG Framework for Disclosure in Public-Private Partnerships," which lays out minimum disclosure standards for PPPs from the pre-tender phase through to performance monitoring.¹³⁷

Disclosure requirements

Given the potential for significant social and environmental impacts, as well as corruption, the DFC should maximize its leverage to ensure that extensive and proactive public disclosure of financing is established as a norm at the INA. To ensure that this engagement is credible, the DFC should itself adopt more robust policies and practice on transparency and public engagement since, as a number of organizations have highlighted, it currently "falls far short of international norms and best practice."¹³⁸

Such an approach is only possible if the INA restricts its activities to project or programmatic financing in support of new sustainable infrastructure investments. If the INA were to engage in broader assets management

activities, there would be no means to achieve advance notification of potentially affected communities. Clarifying the scope and potential structure of INA investments is therefore important to determine whether DFC could invest without compromising its environmental and social safeguarding obligations.

If the INA were to engage in asset management more broadly, then it should at a minimum follow the approach of Norway's Pension Fund Global, which is generally considered the most transparent of the SWFs.¹³⁹ This includes realtime public disclosure of the list of assets that it holds, in a form that is searchable by sector and region and asset type, as well as annual and quarterly public reporting (including an annual report on "responsible investment").¹⁴⁰

¹³⁹ Stone, S. E. & Truman, E. M. (2016) Uneven Progress on Sovereign Wealth Fund Transparency and Accountability, p.16-18, https:// www.piie.com/publications/policy-briefs/uneven-progress-sovereign-wealth-fund-transparency-and-accountability.

¹⁴⁰ See Joe, M. (2021), "Why Norway's \$1.3trn wealth fund prizes transparency so highly", Capital Monitor 22 June, https:// capitalmonitor.ai/institution/asset-owners/why-norways-1-3trn-wealth-fund-prizes-transparency-so-highly/.

¹³⁵ Eurodad & EPSU (2020).

¹³⁶ Ibid. plus the examples from Eurodad 2019.

¹³⁷ See World Bank, Construction Sector Transparency Initiatives & PPIAF (2015) A Framework for Disclosure in Public-Private Partnerships, https://thedocs.worldbank.org/en/doc/773541448296707678-0100022015/original/DisclosureinPPPsFramework.pdf.

¹³⁸ See the statements on the DFC's draft transparency policy by International Accountability Project: International Accountability Project (IAP) (2020) "Written Statement of International Accountability Project (IAP)", https://accountabilityproject.org/wp-content/uploads/2020/07/IAP-Submission-DFC-Public-Hearing.pdf and Publish What You Fund, DFC (2020) "Testimony Before the US Development Finance Corporation", https://www.dfc.gov/sites/default/files/media/documents/Public%20Hearing%20-%20Written%20 Sumission%20%28Publish%20What%20You%20Fund%29%20-%2012-10-2020.pdf. The DFC draft transparency policy can be found at https://www.dfc.gov/sites/default/files/media/documents/20Policy%20-%20Draft.pdf

More generally, the DFC should seek to ensure that there is transparency in the reporting of any INA investments that pass through financial intermediaries, following the example of the IFC, which recently reformed its policy in this area as part of efforts to secure U.S. government support for a capital increase.¹⁴¹

The IFC is now required to "annually report the name, location by city, and sector for subprojects funded by the proceeds from IFC's senior loans or senior bonds or by the IFC equity investee that would be considered 'Category A' according to the IFC Performance Standards, as well as relevant Category B subloans."¹⁴² This information must be disclosed to the public in searchable form on the IFC website and updated annually. The INA should also proactively disclose information on sub-projects, including the name of the final beneficiary, the amount of financing received, and their type and location. The INA should incorporate this into an Information Disclosure Policy that sets forth disclosure requirements. Projects and programs (as well as all sub-projects), including information about the environmental and social risks (i.e., the Environmental and Social Impact Assessments, Human Rights Impact Assessments, etc.), should be disclosed prior to funding approval, and ongoing investments made via intermediaries and equity funds should be subject to equivalent reporting requirements. This is essential to ensuring the right to participation of potentially affected communities because it is impossible to participate effectively and meaningfully if you do not have the relevant information to do so. This should also require disclosure of information in an accessible manner. There should also be a way for people to request information and an independent panel in charge of reviewing denial of information.

Preventing corruption in INA activities

Prevention of corruption and adherence to national laws and international standards related to corruption should be an extremely high priority in the context of the establishment and operations of the INA. Corruption comes at great financial, social, economic, and environmental cost to countries, especially those already suffering from poverty and challenging economic and social circumstances as is the case with Indonesia. SWFs are not immune to the problem, as was seen with Malaysia's 1MDB scandal.¹⁴³

Indonesia has struggled with corruption for many decades and has made it a priority to put in place legal and regulatory measures to address this challenge, including the establishment of the Corruption Eradication Commission - the KPK - and the national anticorruption Court. However, after 20 years of KPK's presence, corruption is still considered to be widespread. Transparency International's Corruption Perception Index (CPI) ranks Indonesia 96th out of 180 countries.¹⁴⁴ The KPK itself has experienced many institutional crises due to political interventions that have impacted on its performance. A survey by the Indonesian Survey Institute (LSI) has found declining public confidence in the effectiveness of the KPK in between 2018 and 2020, although two-thirds of those surveyed still felt that it was effective.¹⁴⁵

¹⁴² See U.S. House Committee on Financial Services (n.d.).

¹⁴¹ See Oxfam International, Washington Office (2020), "A very welcome and long awaited reform on transparency for IFC's financial intermediary lending" [2], Medium 13 April, https://medium.com/@OxfamIFIs/a-very-welcome-and-long-awaited-reform-on-transparency-for-ifcs-financial-intermediary-lending-42fd54f1d0eb; Oxfam International, Washington Office (2018) https://medium.com/@OxfamIFIs/financial-intermediary-sub-project-data-exposed-for-the-first-time-eb3d1591662b . Although the IFC has a new and improved policy towards sub-project disclosures, it is too early to know how this will be implemented in practice.

¹⁴³ Aljazeera (2020), "Timeline: How Malaysia's 1MDB financial scandal unfolded", *Aljazeera* 28 July, https://www.aljazeera.com/ news/2020/7/28/timeline-how-malaysias-1mdb-financial-scandal-unfolded.

¹⁴⁴ Wibowo, E. A. (ed.) (2022) "Indeks Persepsi Korupsi Indonesia 2021 Peringkat 96 dari 180 Negara", *Tempo.co* 25 January, https:// nasional.tempo.co/read/1553924/indeks-persepsi-korupsi-indonesia-2021-peringkat-96-dari-180-negara

¹⁴⁵ Litha, Y. (2020) "Survei LSI: Publik Nilai Efektivitas Kinerja KPK Menurun Tajam", VOA Indonesia 7 December, https://www.voaindonesia.com/a/survei-lsi-publik-nilai-efektivitas-kinerja-kpk-menurun-tajam-/5689949.html.



Corruption can occur in many forms and involve many stakeholders. It may involve politicians and government bureaucrats. companies, wealthy elites and often occurs in relation to large infrastructure investments, which places the INA in a particularly 'high risk' position. Corruption can occur through the misuse of public money; providing political favors in exchange for payment; through such acts as money laundering, bribery, nepotism, and cronyism among others; and can involve organized crime. Indonesia remains at risk insofar as 'patronage' is culturally accepted by many and often actions that may fit the definition of bribery are not considered to be as such.¹⁴⁶ A further problem that undermines the potential to eradicate corruption in Indonesia concerns that of capacity and under resourcing of oversight mechanisms.¹⁴⁷

Therefore, while the legal frameworks may be in place in the country itself, the INA should put in place its own measures to prevent corrupt practices through relevant policies and measures. The Omnibus Law, the INA Regulation, and the Santiago Principles all fail to address corruption risks specifically even though explicit anti-money laundering, anti-corruption, and anti-fraud policies are important to ensuring good governance especially in the Indonesian context where corruption remains multi-layered and systemic.

In addition to these challenges, the very law that establishes the INA has been reported by some as having the potential to increase corruption risks. For example, the Omnibus Law abolishes a requirement that the regions across the country maintain a minimum 30 percent of their watershed as forest area. Removing this threshold leaves each region free to decide how much forest area should be kept and opens the potential for increased deforestation and backroom dealing between developers and local officials.¹⁴⁸ Further, under the Omnibus Law, the central government rescinds the right of regional governments to veto an investment project already approved by Jakarta. Concerns have been expressed that due to this change, companies may be subjected to powerful interests at the national level requiring kickbacks, increasing tensions between national and regional level government officials,¹⁴⁹ and strengthening the elites and the oligarchy.¹⁵⁰ Large investments such as those expected to be undertaken by the INA are particularly relevant in this context.



¹⁴⁶ United Nations Office on Drugs and Crime (UNODC) (n.d.), Indonesia: Anti-Corruption, https://www.unodc.org/indonesia/en/issues/ anti-corruption.html.

¹⁴⁷ Ibid.

¹⁴⁸ Jong, H. N. (2021) "Deregulation law 'raises corruption risk' in Indonesia's forestry sector", *Mongabay* 13 January, https://news. mongabay.com/2021/01/indonesia-deregulation-omnibus-law-corruption-risk/.

¹⁴⁹ Nugroho, J., (2020) "Indonesia's Omnibus Law won't kill corruption", *The Lowy Institute* 4 December, https://www.lowyinstitute.org/ the-interpreter/indonesia-s-omnibus-law-won-t-kill-corruption.

¹⁵⁰ Nastiti, A., (2020) "Why Indonesia's omnibus bill will not create jobs and only strengthen the oligarchy", *The Conversation* 20 October, https://theconversation.com/why-indonesias-omnibus-bill-will-not-create-jobs-and-only-strengthen-the-oligarchy-147997.

Corruption risks, employees, third parties and suppliers

Perhaps the most vocal SWF on the issue of corruption has been the SPU (Norway), with public calls being made to fight corruption since at least 2018.¹⁵¹ Due to high levels of corruption in the sector, SPU is now also targeting oil companies.¹⁵² The Norges Bank has a strict zero tolerance approach to corruption, including related to employees, contractors, and third parties and does not invest in countries where corruption is high. Corruption risk is managed through an anticorruption program under the comprehensive risk framework, which includes ethical rules, procurement, and background checks for staff and suppliers.

Norges Bank puts in place ethical principles and rules of conduct for employees,¹⁵³ which include strict rules on confidentiality, conflict of interest, and accepting invitations, as well as restrictions on employee's ability to invest. These rules include an ongoing obligation for employees to disclose personal trading and secondary occupations. Employees must not accept gifts or benefits for themselves, especially from business contacts of the bank, which may constitute a personal advantage or may influence the employee's performance. Suppliers are also required to adhere to these rules and agree to refrain from acts including corruption. In Indonesia, civil servants are obliged to report gifts and benefits to the KPK and follow the 2015 Guidelines on Gratification Control.154



¹⁵¹ Reuters Staff (2018) "Norway wealth fund to firms: fight corruption", *Reuters* 13 February, https://www.reuters.com/article/norwayswf-idUSO9N10T003.

¹⁵² Taraldsen, L. E. & Ummelas, O. (2021) "World's Biggest Wealth Fund Set to Target National Oil Giants", *Bloomberg* 4 February, https://www.bloomberg.com/news/articles/2021-02-04/national-oil-firms-face-corruption-test-at-norway-s-wealth-fund.

¹⁵³ Norges Bank (n.d.) Ethical principles for employees of Norges Bank [2], https://www.norges-bank.no/en/topics/about/ Mission-core-responsibilities/Legislation/executive-board-documents/supplementary-ethical-rules/#:~:text=General%20 principles&text=Employees%20must%20perform%20their%20work.good%20communication%20at%20Norges%20Bank.

¹⁵⁴ See Law of the Republic of Indonesia Number 30 Year 2002 on the Commission for the Eradication of Criminal Acts of Corruption.

Corruption and project or programme investments

As mentioned, corruption risks are particularly high where large scale investments are concerned, placing the INA in a position whereby significant measures should be taken to prevent corruption in all of its investments. Such measures should include putting in place internal anti-corruption guidelines and a system of sanctions, including a system to debar certain firms.

The INA does not yet have any such internal systems in place, but can draw on other existing systems such as that of the World Bank Group's 'two tiered' system to address corruption through suspension and debarment and through sanctions as a means to protect the funds entrusted to it. The World Bank system requires that any allegations of fraud and corruption be investigated at first instance by the Integrity Vice Presidency (INT), which is an independent unit.¹⁵⁵ If the INT believes there is sufficient evidence to do so, the case will be referred to the Office of Suspension and Debarment (OSD).¹⁵⁶ Where a matter is contested, it goes to the World Bank Group Sanctions Board, an independent administrative tribunal composed of seven external judges.¹⁵⁷ The World Bank maintains a public list of more than 1,200 entities and individuals that have received sanctions for fraudulent and corrupt practices, around 50 of which are based in Indonesia.¹⁵⁸

The World Bank system is governed by the Bank Directive: Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants (revised as of July 1, 2016),¹⁵⁹ which sets out the 'five sanctionable practices' as a 'corrupt practice,'¹⁶⁰ 'fraudulent practice,'¹⁶¹ 'collusive practice,'¹⁶² 'coercive practice,'¹⁶³ and an 'obstructive practice.'¹⁶⁴

¹⁵⁵ World Bank (n.d.) Integrity Vice Presidency [1], https://www.worldbank.org/en/about/unit/integrity-vice-presidency.

¹⁵⁶ World Bank (n.d) Sanctions System [2], https://www.worldbank.org/en/about/unit/sanctions-system#2.

¹⁶⁰ A 'corrupt practice' is defined as offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to improperly influence the actions of another party.

¹⁶¹A 'fraudulent practice' is defined as any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

¹⁶³ A 'coercive practice' is defined as impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

 ¹⁵⁷ World Bank (n.d) World Bank Group Sanctions Board [3], https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board.
 ¹⁵⁸ World Bank (n.d) Procurement - World Bank Listing of Ineligible Firms and Individuals [4], https://www.worldbank.org/en/projects-operations/procurement/debarred-firms#.

¹⁵⁹ Bank Directive Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants (2016), https://ppfdocuments.azureedge.net/4039.pdf.

¹⁶²A 'collusive practice' is defined as an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

¹⁶⁴An 'obstructive practice' is defined as (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information.

The INT is empowered to undertake both internal and external preliminary investigations into both firms and individuals to determine on a 'balance of probabilities' whether a complaint is related to any of the five sanctionable practices before referring a matter to the OSD for review prior to issuing any sanction, which may include debarment, debarment with conditional release, conditional non-debarment, public letter of reprimand, and restitution.¹⁶⁵ In putting in place such a system, the INA Board would need to establish independent systems of a similar nature to ensure the initial investigation is undertaken by an independent body and the referral, sanctioning, and any appeals process is also independent. Putting in place measures to also ensure cross-debarment with other similar institutions such as the KPK, the World Bank and multilateral development banks would also be important to ensure the INA has in place the most up-to-date list of individuals and firms convicted of corruption related offenses.

Supporting and protecting whistleblowers

Norges Bank has an internal whistleblowing channel, which is accessible to employees and suppliers to make reports and puts in place measures to ensure the protection of whistleblowers.¹⁶⁶ GIC (Singapore) also provides a good example of clear processes in place for reporting any wrongful, illegal, improper, or unethical conduct through a public whistle-blower channel, which is displayed clearly on their web site.

While there is currently no policy in place for the INA related to anti-corruption, antimoney laundering, or other related policy frameworks, Article 65 of the INA Regulation sets out a list of rules that will need to be stipulated by the Board of Directors. This list includes several areas where anti-corruption measures can be put in place, including asset management, risk management, compliance, human resources, finance, law, and procurement. The Board of Directors may also develop rules on other matters, and should put in place anti-corruption, anti-money laundering, and anti-terrorism financing policies.



¹⁶⁶ Norges Bank (n.d) Anti-corruption programme for the Governor's area of responsibility, https://www.norges-bank.no/en/topics/ about/Mission-core-responsibilities/Legislation/anti-corruption-programme/.

¹⁶⁵ World Bank (n.d) Office of Suspension and Debarment [5], https://www.worldbank.org/en/about/unit/sanctions-system/osd#2.

Conflicts of Interest

Conflicts of interest are defined by Transparency International as a situation where an individual or the entity for which they work, whether a government, business, media outlet or CSO, is confronted with choosing between the duties and demands of their position and their own private interests.¹⁶⁷ They can fall into two categories, as defined by the United Nations Office on Drugs and Crime Good Practices Guide on preventing and managing conflicts of interest in the public sector prepared at the request of the G20 as:¹⁶⁸

- » Financial conflicts of interest: a conflict of interest involving a pecuniary interest. The public official, a member of his or her family, or close associates may gain financially or may avoid financial loss.
- » Non-financial conflicts of interest: a conflict of interest where the competing private capacity interest is nonpecuniary in nature. The interest may arise in connection with personal relationships, affiliations or ties, or other sorts of involvement that could compromise the objective decision-making of the official.

Conflicts of interest have the potential to seriously undermine the integrity of the INA as well as lead to potential corrupt activities, including bribery, unless wide-ranging policies and procedures are put in place to reduce these risks. Conflicts of interest and corruption are often intrinsically linked, noting that Article 7(4) of the United Nations Convention Against Corruption calls upon the States' parties to endeavor to adopt, maintain, and strengthen systems that promote transparency and prevent conflicts of interest.¹⁶⁹

The scope of conflicts of interest

Conflicts of interest – whether actual, apparent or perceived, or direct or indirect – may arise related to economic, financial, and personal interests of members of governing boards and committees, management, and staff, as well as in relation to dealing with third parties either

through investments or procurement processes and through 'revolving doors.' As such, it is important that any conflict-of-interest policies apply to all levels of the INA's organizational structure, including advisory bodies and external consultants.

¹⁶⁷ Transparency International (n.d) Conflict of interests, https://www.transparency.org/en/corruptionary/conflict-of-interests.

¹⁶⁸ World Bank, OECD & UNODC (2020) Preventing and Managing Conflicts of Interest in the Public Sector, https://www.unodc.org/ documents/corruption/Publications/2020/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.pdf.

¹⁶⁹ UNODC (2004) *Convention Against Corruption*, https://www.unodc.org/documents/brussels/UN_Convention_Against_ Corruption.pdf.

Conflicts of interest in the context of SWFs are usually governed by law.¹⁷⁰ In the case of the INA, conflicts of interest are recognized and defined by the INA Regulation,¹⁷¹ which defines a conflict of interest as: "The difference between LPIs [INA] economic interests and the economic interests of members of the Board of Directors who may harm LPI [INA] and/or benefit members of the Board of Directors." This definition specifically relates to conflicts of interest mentioned in Article 35, which prohibits conflicts of interest for members of the Board of Directors. This definition of conflicts of interest would be considered as falling short of best practice as it does not address the potential range of conflicts of interest as covered in higher standards - actual, apparent and perceived conflicts of interest. For example, the GCF's Policy on Ethics and Conflicts of Interest of the Board of the GCF is triggered where there is an 'appearance of a conflict of interest,' and where there is (or there is doubt that) 'a conflict, actual, apparent or perceived, exists.'¹⁷²

Rules and procedures related to conflicts of interest

In the case of the Australian Future Fund,¹⁷³ the issue of conflicts of interest is covered by legislation - the Future Fund Act. This legislation sets out requirements for Board members to disclose a 'material personal interest' in matters that relate to the affairs of the Board with several exclusions. In the case of the INA, the Board of Directors are prohibited from having a conflict of interest related to 'economic' interests.'174 Members of the Supervisory Board, the Board of Directors, and the Advisory Board are required to disclose 'personal' interests, either directly or indirectly, which may cause a conflict of interest with the object to be decided.¹⁷⁵ This obligation sits in addition to the requirement that all Public Officials must submit a financial/ asset declaration on an annual basis through the National Asset Declaration reporting mechanism under the KPK Regulation and the KPK Guidelines on Conflict of Interest Handling dated 2009 to facilitate graft control and handle conflicts of interest.¹⁷⁶

The rules related to conflicts of interest should also provide clarity on processes for declaring a conflict of interest. For example, the Timor-Leste - Petroleum Fund¹⁷⁷ to manage Timor-Leste's petroleum resources for "the benefit of both current and future generations"¹⁷⁸ requires members of the Investment Advisory Board (IAB) on appointment to signify in writing, an affirmation that their appointment or advice does not represent a conflict of interest with any of their other interests. The Minister of



Finance may also request members of the IAB, as necessary, to submit a declaration concerning their assets to avoid any conflict of interest. In the Australian example, any such disclosure must provide details of the nature and extent of the interest and the relation of the interest to the affairs of the Board as soon as practicable after the Board members become aware of the interest in the matter. In the case of the INA, however, no such guidance is provided under the legislation and will need to be considered by the Board.

¹⁷⁰ See for example the Future Fund Act (Australia), the Petroleum Fund Law (Timor Leste) and the Qatari Tender Law (Qatar).

¹⁷¹ Investment Management Fund Gov. Regulation.

¹⁷² GCF (n.d.) Policy on Ethics and Conflict of Interest for the Board of the Green Climate Fund, https://www.greenclimate.fund/ sites/default/files/document/policy-ethics-coi-gcf-board.pdf.

¹⁷³ Future Fund (n.d.) Homepage, https://www.futurefund.gov.au/.

¹⁷⁴ Investment Management Institution Gov. Regulation, Art. 35.

¹⁷⁵ Investment Management Institution Gov. Regulation, Art. 70.

¹⁷⁶ Commission for the Eradication of Criminal Act of Corruption (KPK) Regulation Number 7 Year 2016 on Procedures for Registration, Announcement and Inspection of States Assets.

¹⁷⁷ As established under the Law No. 9/2005 of 3 August Petroleum Fund Law.

¹⁷⁸ International Forum of Sovereign Wealth Funds (IFSWS) (n.d.) Timor-Leste Petroleum Fund, https://www.ifswf.org/members/ timor-leste. Usually, a conflict of interest is managed through exclusion in decision making and consideration of certain decisions. The Australia Future Fund Act states that a Board member who has a 'material personal interest' in such a matter must not be present while the matter is being considered at a meeting or may not vote on the matter.¹⁷⁹ An exception exists whereby a Board member may participate in a vote with the approval of other Board members or with Ministerial approval. In the case of the INA, while section 35 concerning the prohibition on the Board of Directors does not specify any such process, section 70 sets out that members of the Supervisory Board and the Board of Directors are prohibited from voting in decisionmaking where there is a conflict of interest without exceptions.

Conflicts of interest are vaguely covered in Principle 13 of the Santiago Principles,¹⁸⁰ which requires that "professional and ethical standards should be clearly defined and made known to the members of the SWFs governing body(ies), management, and staff". Adhering to this Principle requires that members of the governing bodies, managers, and staff should be appropriately qualified and welltrained; subject to the 'minimum' professional standards, and subject to codes of conduct, conflicts of interest guidelines, and rules. Such a policy would usually apply to members of governing bodies, management, and staff, as well as third party consultants and advisors. The INA should put in place measures covering this scope of application. For example, in Singapore, GIC Private Limited¹⁸¹ seeks to ensures compliance with Principle 13 through guidelines provided in their compliance manual which includes policies related to the management of conflicts of interest, gifts and entertainment, and personal investments.¹⁸²

Conflicts of Interest and Third Parties

Conflicts of interest can be exceptionally problematic when dealing with third parties. Often corruption, bribery, and other illegal practices occur in this regard and need to be prevented. The Australian Future Fund Act seeks to ensure investment decisions and activities occur at 'arm's length' from the Government.¹⁸³ The QIA (Qatar) has put in place a specific law – The Qatari Tender Law – that seeks to remove any conflicts of interest in dealing with external service providers and



suppliers.¹⁸⁴ No such laws or policies are vet in place for the INA, but Indonesia's Presidential Regulation No. 54 of 2010 contains a number of provisions mandating ethical conduct and integrity in procurement processes and sets out rules to avoid conflicts of interest.¹⁸⁵ For example, each official responsible for procurement is required to sign an integrity pact that expresses his or her commitment against any acts of corruption, collusion, and nepotism. As mentioned, Article 65 of the INA Regulation sets out a list of rules that will need to be stipulated by the Board of Directors, which includes procurement of goods and services, and hence, any such rules should be aligned with this Presidential Regulation.

¹⁷⁹ See Division 8, Sections 68 - 72 of the Future Fund Act 2006 here: https://www.legislation.gov.au/Details/C2020C00003.
 ¹⁸⁰ IFSWF (2008).

 ¹⁸¹ GIC (n.d.) Who We Are, https://www.gic.com.sg/who-we-are/.
 ¹⁸² IFSWF (2014) Santiago Principles: 15 Case Studies, https:// www.ifswf.org/sites/default/files/SantiagoP15CaseStudies1_0.pdf.
 ¹⁸³ Future Fund (n.d.) Legislation and Governance, https://www. futurefund.gov.au/about-us/legislation-and-governance.
 ¹⁸⁴ IFSWF (2014).

¹⁸⁵ World Bank et al (2020).

Reporting conflicts of interest

Processes related to reporting of conflicts of interest may be combined with systems that deal with complaints, whistleblower protections, procurement, or investigations, and in some cases prosecutions. Such procedures should be made known to members, management, staff, and the public. Currently, there is no clear channel or process in place for reporting conflicts of interest or whistleblowing within the structure of the INA, and such a process should be put in place. The Norges Bank has established a compliance and control unit, which is charged with ensuring compliance with all applicable regulatory and disclosure requirements. The compliance and control unit may report conflicts of interest issues directly to the executive board if required.

Preventing revolving doors

Revolving doors are known as the movement of personnel between government and the private sector, between lawmakers and lobbyists and resulting in certain privileges and can lead to regulatory or elite capture. In the case of the INA, this would involve movement of personnel between the SWF itself and private sector investment partners, including companies receiving investments.

Indonesia has no laws to ban and avoid revolving door situations. The Law on Public Service¹⁸⁶ requires that public service providers are prohibited from concurrently serving as commissioners or administrators of business organizations for implementers from government agencies, state-owned enterprises, and regional-owned enterprises,¹⁸⁷ carrying the sanction for those who do in the form of being relieved from the office.¹⁸⁸ The Law on State Owned Enterprises¹⁸⁹ and its implementing Regulation¹⁹⁰ also prohibits members of the Board from holding concurrent positions. The inclusion of rules, which prevent revolving doors, would enhance the integrity of the INA, and decrease opportunities for corrupt practices.

¹⁸⁶ Law of the Republic of Indonesia Number 25 Year 2009 on Public Service.

¹⁸⁷ Public Service Law, Art. 17a.

¹⁸⁸ Public Service Law, Art. 54(7).

¹⁸⁹ Law of the Republic of Indonesia Number 19 Year 2003 on State-Owned Enterprises.

¹⁹⁰ Minister of State-Owned Enterprises Regulation Number 2 Year 2015 on Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises.

Conclusion and recommendations



The INA is a new financing institution with the capacity to invest in large-scale infrastructure projects across Indonesia, but it lacks clear guidelines to ensure that its investments are conducted with minimum risk to the environment and without harming local communities. This is particularly concerning, given the range and type of investments that have already been outlined by the INA.

The range of potential INA investments covers a wide cross-section of infrastructure and products, with planned investments already announced that include toll roads, a new airport cargo terminal, the maritime and port sector, and a partnership with Pertamina, the state-owned oil and gas company. The INA is also explicitly tasked with supporting National Strategic Projects, a programme of large-scale infrastructure initiatives that has already raised concerns regarding deforestation risks and potential impacts on Indigenous Peoples, as well as potential corruption risks.

INA investments look likely to be conducted through equity funds (and sub-funds) and partnership agreements that include one or more layers of financial intermediation, raising transparency and accountability considerations that must be addressed by ensuring that INA governance mechanisms, including environmental social policies, are fully applicable across the full range of investments.

The Regulation establishing the INA has tasked its Board of Directors with setting policies on several governance aspects, ranging from risk management to procurement and information disclosure, but it is also notable for what is not vet specified, such as a lack of any specific commitment to develop environmental and social safeguards. No process for public participation in these important decisions on the future of the INA has been elaborated, but the track record so far is poor to the extent that Indonesia's Constitutional Court has ruled the Omnibus Law that established the INA "conditionally unconstitutional" due to the lack of meaningful public participation when it was being drafted.¹⁹¹ Potential investors, such as the DFC. should take heed of these risks before committing any financing to the INA and demand minimum standards and conditions across a range of policy areas. The recommendations that follow are intended as a brief quide as to how the governance of the INA could be strengthened and draw on comparisons with the best current practices amongst equivalent development finance institutions and sovereign wealth funds. including the DFC, which have been elaborated throughout this report.

¹⁹¹ Makarim & Taira S. (2022) "The Indonesian Constitutional Court Ruling on the Omnibus Law: Unconstitutional with Conditions?", The *Legal* 500 21 January, https://www.legal500.com/developments/thought-leadership/the-indonesian-constitutional-court-ruling-on-the-omnibus-law-unconstitutional-with-conditions/.

In response to the 2021 Constitutional Court decision suspending parts of the Omnibus Law that have a "strategic and broad impact," an open and meaningful public participation process should be put in place specifically related to the establishment and operations of the INA. The public participation process should seek to involve a broad range of civil society stakeholders at every stage of the policy formation process, including outreach to vulnerable groups, women, Indigenous Peoples, minorities, and community representatives from areas where environmental degradation has occurred across Indonesia, among others. The INA should establish a transparent and accountable process for considering these inputs. Similar levels of participation should be sought in relation to investment decisions, including equity investments, partnership agreements, and project or programmatic financing, in a process that runs from initial concepts through to the monitoring of results.

The INA Regulation specifies that the Board of Directors shall establish policies and rules on several issues including principles of good governance, risk management, data, and information disclosure. The following recommendations are intended to cover these areas and should be requirements of the DFC prior to the provision of any support to the INA:

- 1. Put in place a clear policy concerning access to information and disclosure, which complies with all relevant international obligations, and adopt:
 - a. a proactive approach to information disclosure prior to new investments with timely and early outreach to communities in their local language, in a culturally relevant medium, and in a manner accessible to them to inform them that a potential investment might affect them and the potential negative impacts;
 - **b.** a presumption of disclosure regarding all information related to the fund;
 - **c.** the advanced disclosure of all relevant projects and sub-project documentation, including prior publication of environmental and social impacts reports (including related reports such as human rights impact assessments, stakeholder engagement plans, etc.) for high-risk investments ("category A" in World Bank terminology or equivalent) and medium-risk investments ("category B" in Word Bank terminology or equivalent);
 - **d.** full documentation of projects should be made public at least 120 days before the INA approves investments that pose environmental and social risks;
 - e. specific project level reporting that includes interim monitoring reports, articulates developmental impacts, and makes available project data (as well as pipeline projects as with the IDB and IFC) in a machine readable format;
 - f. put in place measures for sub-project disclosures to include the disclosure of the name, sector(s), and location of higher risk lending and underwriting clients and ensure that human rights concerns are included as priority investment criteria;
 - **g.** proactively disclose information on sub-projects, including the name of the final beneficiary, the amount of financing received, and their type and location prior to the approval of the sub-project; and
 - h. real-time public disclosure of the list of assets that it holds in a form that is searchable by sector and region and asset type, as well as annual and quarterly public reporting (including an annual report on "responsible investment").

- 2. Put in place an Environmental and Social Safeguard Policy and related policies and procedures, which should: Develop and publish an exclusion list that should:
 - a. ensure that all investments at a minimum comply with the DFC's own Environmental and Social Policy and Procedures;
 - **b.** explicitly cover all direct and indirect investments, including sub-projects of larger programmes, equity investments, and other forms of financial intermediation, as well as any financing that results from investment alliances, partnership agreements, and consortiums entered into by INA;
 - **c.** ensure compliance with all relevant international obligations and agreements concerning human rights, gender rights, rights of Indigenous Peoples (including UNDRIP), and the protection of the environment;
 - **d.** develop a 'referral list' supporting clients to adopt their own environmental and social management systems;
 - e. align all investments and standards with Indonesia's national policies on Indigenous Peoples, which include laws related to customary forests, the Village Law, traditional knowledge laws and regulations, and laws and regulations put in place related to REDD+;
 - f. screen all projects and complaints for risks to human rights defenders, conducting additional due diligence where significant risks are identified and setting up a hotline to respond to reprisals, among other measures;
 - **g.** commit to upholding national initiatives and international obligations related to the promotion of gender equality and the empowerment of women, including through the development of a stand-alone gender equality policy and an institutional gender action plan; such a policy should require that all planned investments conduct a "gender analysis and socio-economic assessment" prior to funding approval and make provisions for ongoing publicly disclosed monitoring and annual performance reports at the individual investment level and INA portfolio level;
 - h. establish a policy on preventing sexual exploitation, abuse, and harassment (SEAH), covering both INA staff and organisations implementing INA investments; and
 - i. require the commitment of adequate resources and the hire of appropriately qualified staff to ensure compliance with environmental and social safeguards, and related policies.
- 3. Develop and publish an exclusion list that should:
 - a. incorporate a list of product-based exclusions that, at a minimum, is consistent with the DFC list of 'categorical prohibitions,' which sets some limits on investment in large hydroelectric dams, projects that result in considerable resettlement, and extraction or infrastructure in or impacting certain protected areas;¹⁹²
 - **b.** prohibit investment in coal mining, power production from coal, oil extraction and distribution, and related infrastructure;

¹⁹² DFC (2020) [2].

- **c.** prohibit new upstream, midstream, and downstream gas projects (in line with U.S. Treasury guidance that allow for very limited exceptions) in advance of an anticipated full phase out of gas financing;¹⁹³
- **d.** prohibit investment in activities that impinge on the lands owned or claimed under adjudication by Indigenous Peoples without the full documented consent of such peoples;
- e. maintain a list of conduct-based exclusions, prohibiting investment in companies and subsidiaries that are found to contribute to serious or systematic human rights violations, serious human rights violations, severe environmental damage, unacceptably high greenhouse gas emissions, or gross corruption, using Norway's Government Pension Fund Global (SPU) exclusions in these areas as a guide;
- f. develop adequate monitoring capacity to assess conduct-based exclusions and, until such capacity exists, cross-debar companies that are subject to conduct-based exclusions by either the SPU or the Swedish National Pension Funds Council of Ethics;
- **g.** ensure that all direct and indirect INA investments are assessed in relation to its exclusion list, including a requirement that financial intermediaries refer to the list before making investment decisions in companies engaged in or projects/programmes involving sensitive activities, including but not limited to involuntary resettlement and activities within, adjacent to, or upstream of land occupied by Indigenous Peoples and/or vulnerable groups;
- **h.** establish and adequately resource an ethics body to monitor the INA investment portfolio for its conformity with the exclusion list policy; and
- i. operate in a transparent manner, publishing reasons for excluding companies or investments, or for revoking such exclusions.
- 4. Establish an independent grievance redress mechanism that should:
 - a. be independent from INA management;
 - **b.** involve representatives of vulnerable communities and those potentially affected by investments in the staff selection process;
 - **c.** be accessible, including through a requirement that local project-level grievance mechanisms are also established, while also ensuring that local stakeholders are adequately informed of and given unrestricted opportunity to access either institutional or local mechanisms with no requirement to go to one before accessing another.
 - d. allow complaints to be made in any language or format;
 - e. allow complaints to be submitted confidentially;
 - f. ensure that there is adequate resourcing and staffing of the grievance mechanism to ensure that complaints can meet a clear and known procedure with an indicative time frame for each stage;
 - **g.** include a mandate to monitor the implementation of any remedial action plans resulting from complaints, as with the GCF's IRM, as well as ensuring that the complainant is consulted in the development of any draft remedial action plan and subsequent monitoring reports, as is the case with the IFC/MIGA CAO;

¹⁹³ This recommendation is consistent with DFC policy, except for also excluding Carbon Capture, Use & Storage (CCUS) projects. See also UN Climate Change Conference UK 2021 (2021) "Statement on International Public Support for the Clean Energy Transition", https://ukcop26.org/statement-on-international-public-support-for-the-clean-energy-transition/.

- publicly document its handling of complaints without compromising the confidentiality of complainants, including through the publication of monitoring reports on the implementation of action plans to redress any harms;
- i. include a specific commitment to respect human rights obligations, including a duty to keep complainants safe from reprisals, threats, and intimidation - for example, by keeping the identities of complainants confidential, as well as taking precautions when interacting with complainants and promoting policies that secure their safety (as the CAO and IRM do to some extent); and
- **j.** have an explicit advisory mandate as is the case with the IFC/MIGA CAO and GCF IRM in order to identify lessons for improving INA policies and practices that emerge from the grievance process.
- 5. Adopt a clear and robust, worlds-best-practice anti-corruption policy with independent oversight, including related to asset management, risk management, compliance, human resources, finance, law, and procurement, which includes:
 - a. internal anti-corruption guidelines and whistleblower protection;
 - **b.** a system of sanctions, including to debar certain individuals and firms; and
 - **c.** ethical principles and rules of conduct for employees and suppliers, which include strict rules on confidentiality, conflict-of-interest, accepting gifts and invitations, and restrictions on employee's ability to invest.
- 6. Establish clear rules concerning conflicts of interest which apply to governing bodies, management, and staff, as well as third party consultants and advisors, and which cover actual, apparent, and perceived conflicts of interest, and include:
 - a. rules related to conflicts of interest, which provide clarity on processes for declaring a conflict of interest, and reporting of financial interests and other ties held;
 - b. mandating ethical conduct and integrity in procurement processes which avoid conflicts of interest, including a requirement that each official responsible for procurement is required to sign an integrity pact that expresses his or her commitment against any acts of corruption, collusion, and nepotism; and
 - c. rules which prohibit 'revolving doors' practices.
- 7. Put in place an independent compliance and control unit, which is charged with ensuring compliance with all applicable regulatory and disclosure requirements and which acts as an independent channel for communications and complaints related to conflicts of interest.