

# Written Submission on Asian Development Bank's (ADB) September 2023 Draft Environmental and Social Framework (ESF)

Submission from Foundation Earth  
Received on November 10, 2023

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## **ADB Environmental and Social Framework Draft For Consultation: Feedback On Sexual Orientation, Gender Identity and Expression, and Sex Characteristics**

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Submitted to the Asian Development Bank (ADB) October 2023

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# ADB SAFEGUARDS (ENVIRONMENTAL AND SOCIAL FRAMEWORK)

## DRAFT FOR CONSULTATION: FEEDBACK ON SOGIESC

### Key Takeaways

Sexual orientation and gender identity (SOGI) are mentioned only once in the [ADB safeguards policy draft](#): in the definition of “vulnerable or disadvantaged” groups, along with a list that also includes age, ethnicity, religion, disability, social, civic or health status, economic disadvantages or indigenous status, and dependence on unique natural resources. As a result, the ADB is required to consider SOGI in all of the places within the draft where “vulnerable or disadvantaged” groups are mentioned. However, the draft falls well short of including all of the protections contained in the proposed Gender and SOGIESC Safeguard Policy endorsed by 43 civil society organizations. Moreover, because of the unique risks and barriers to inclusion on the basis of SOGIESC, grouping sexual orientation and gender identity together with a long list of other identity groups does not align with goals of a standalone SOGIESC safeguard.

The ADB’s current draft is not yet final, meaning there is still room for civil society to offer feedback to strengthen it before the policies are approved by the ADB Board of Directors. Below is a list of key issues relating to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) that should be addressed in order to work towards ensuring the inclusion of those with non-normative SOGIESC in ADB operations:

- 1. Discrimination and exclusion:** Based on the policy draft, it is unclear whether discrimination and exclusion (on the basis of SOGIESC or any other social group) are to be considered in a project’s risk classification and/or environmental and social risk assessment. Project risks and impacts will be considered, but are discrimination and exclusion defined as “impacts”? If so, this should be clearly stated so that the ADB can ensure that risk of discrimination on the basis of SOGIESC, among other factors, is addressed before a project begins.
- 2. Environmental & social assessment and mitigation are left to borrowers:** According to the draft, the borrower/client is responsible for assessing project risks, including the risk of disproportionate impact on the basis of SOGI. They are also responsible for designing and implementing plans to mitigate these risks. The ADB will provide some oversight, but the safeguard draft provides little information on how and to what extent the ADB will support borrower countries in addressing issues like SOGIESC where borrower countries may lack capacity or political will. The borrower is also responsible for stakeholder engagement, including grievance mechanisms.
- 3. Approach to gender:** There are many places in the document where “gender” is mentioned, yet gender is not included in the document’s list of definitions. As a result, it is unclear whether or not the ADB will approach gender as a binary in its implementation of the safeguards. The ADB’s Policy on Gender and Development (2003) defines gender as “the

social differentiation between women and men” and does not cover issues relating to SOGIESC. If gender is defined as a binary in the application of the ADB safeguards, as it is in the 2003 policy, there are important implications for risk assessment, mitigation measures, and consultations. In the current safeguard draft, there are many requirements relating to gender such as “gender-related risks,” “gender analysis,” “gender-sensitive,” and “gender responsive,” but it is unclear whether gender identity and expression factor into these terms, especially given the ADB’s outdated gender policy.

- Importantly, several ADB member countries legally recognize non-binary gender identities, including Bangladesh, India, Nepal, and Pakistan. These constitute substantial populations: for example, in India, the hijra population is estimated at 5-6 million and approximately 300,000 khawaja sara in Pakistan. It is vital that these non-binary genders are considered within the ADB’s conception of gender, especially to inform risk assessment and mitigation plans.

**4. SOGI rather than SOGIESC:** The definition of vulnerable or disadvantaged groups in the draft includes sexual orientation and gender identity, but there is no mention of gender expression or sex characteristics. This leaves individuals with non-normative gender expression or sex characteristics out from the protections afforded to other groups. There is extensive evidence of violence and discrimination against gender non-conforming and intersex persons in Asia, making this exclusion especially alarming. Without including gender expression and sex characteristics in its definition of vulnerable groups, there is a significant risk that ADB-funded projects may permit or exacerbate such cases of violence and discrimination.

- For example, human rights organizations such as [Intersex Asia](#) have documented cases of violence against intersex people in the region, including an attack upon one of their former board members in India. Intersex people in the region also face widespread [discrimination in health, education, employment, public services, and sports](#).
- [Discrimination in healthcare services](#) on the basis of gender expression is also prevalent across Asia — a sector in which the ADB plays a direct role for many borrower countries. For instance, an [Amnesty International report](#) found that transgender people across fourteen Asian countries were excluded from assistance to help people cope with the impact of the COVID-19 pandemic due to obstacles to accessing healthcare (such as vaccines) and relief packages.

**5. "Country context":** The draft policy may leave room for protections for vulnerable or disadvantaged groups to be overridden by a borrower country’s legal framework. In relation to SOGIESC, adapting requirements based on country context and legal framework is especially worrying for countries where discrimination/persecution on the basis of SOGIESC is codified.

- For example, ESS2 requires "appropriate measures to protect and assist disadvantaged or vulnerable project workers," but that these must be "consistent with the host country's applicable laws" — in a country like Uzbekistan, for example, will gay project workers therefore not be protected?

6. **Missing from ESSs:** Disadvantaged or vulnerable groups are mentioned briefly in ESS7 (Indigenous Peoples) and ESS9 (Climate Change), and are not mentioned at all in ESS3 (Pollution), ESS6 (Biodiversity), or ESS8 (Cultural Heritage). As was argued by civil society groups in written statements to the ADB during the consultation process, it is important that the intersection of SOGIESC (as well as other social identities) with environmental issues and indigenous peoples be addressed.
- In ESS7 (Indigenous Peoples), vulnerable groups are mentioned only in an Annex outlining the contents of an Indigenous Peoples Planning Framework. The inclusion of SOGIESC issues in ESS7 is especially relevant due to traditions in the region of non-binary conceptions of gender, including for example among the Bugis people in Indonesia or the bakla gender identity in the Philippines. “Gender” sensitivity and responsiveness is included in several ESS7 requirements, but it is not clear whether this includes consideration of SOGIESC.
  - In ESS9 (Climate Change), disadvantaged or vulnerable groups are mentioned only in the introduction and in reference to their inclusion in consultations.

Beyond the draft document itself, there also remain important questions on how the safeguard policies will be effectively implemented:

- **Communications:** The ADB safeguard is 142 pages long and written in highly technical language. Vulnerable groups may face greater difficulty in accessing and deciphering this document in order to understand the ADB’s requirements for their protection and inclusion. Especially taking into consideration that the Bank operates in 46 developing member countries in many different languages, how will the ADB ensure that safeguard policies and project documents are available to vulnerable groups?
- **Lack of staffing:** The ADB plans to hire one person to be responsible for covering many types of vulnerabilities — on the basis of SOGIESC, religion, age, disability, ethnicity, etc — across 46 countries. Furthermore, the ADB does not plan to hire anyone with expertise on indigenous peoples. How will the ADB fully implement its safeguards given this lack of staff?
  - How will it support borrower countries in carrying out risk assessments, consultations, grievance redress, etc without expertise on the specific needs of vulnerable or disadvantaged groups?
  - How will the ADB conduct adequate monitoring to ensure that borrower countries are in full compliance with the safeguard policies, including regarding SOGIESC inclusion?

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## **I. Discussion of key points**

The six key points listed as the introduction to this document lay out the most important takeaways of the analysis. Below, each is further explained with citations to the relevant passages of the ADB's draft policy.

### **1. Discrimination and exclusion**

Based on the policy draft, it is unclear whether discrimination and exclusion (on the basis of SOGIESC or any other social group) are to be considered in a project's risk classification and/or environmental and social assessment. The key question is whether discrimination and exclusion are considered as "impacts." Paragraph 10 in ESS1 is unclear on this point:

Throughout the E&S assessment process, the borrower/client will identify project affected persons that may be disproportionately affected by a project because of their disadvantaged or vulnerable status. Where such disadvantaged or vulnerable persons are identified, the borrower/client will implement differentiated measures to mitigate the adverse impacts and ensure the project risks do not fall disproportionately on them. The borrower/client will ensure that, through these measures, such disadvantaged or vulnerable persons can share equitably in benefits and opportunities resulting from a project. (p.24)

Though the final sentence of this paragraph speaks to inclusion, the wording is such that it is not clear whether additional, specific measures will be designed to ensure nondiscrimination and inclusion of disadvantaged/vulnerable groups. The paragraph implies that measures designed to mitigate impacts and risks will ensure disadvantaged/vulnerable inclusion, but discrimination and exclusion of SOGIESC requires additional measures beyond merely preventing harm. The language in this paragraph could be clarified, and/or the definition for project risks and impacts could be amended to include exclusion from sharing equitably in benefits and opportunities. Similar language is also included in the ESP paragraph 52 (p. 17).

In paragraph 24 of ESS1, the borrower is required to take certain risks into account in its E&S assessment, including "risks that project impacts fall disproportionately on the disadvantaged or vulnerable; and gender-related risks, including potential risks of sexual exploitation, abuse, and harassment" (p. 26). This list could be amended to include risk of discrimination or exclusion, on the basis of SOGIESC or any other vulnerable/disadvantaged category. Including discrimination and exclusion explicitly in this list would ensure that these are identified, assessed, and mitigated by the borrower.

The lack of discussion of discrimination or exclusion in ESS1 is especially concerning for SOGIESC, because arguably the most common risk of harm for those with non-normative SOGIESC is that of being excluded from the benefits of ADB projects. Therefore, it is crucial

that this risk of exclusion is identified and addressed in a project's environmental and social assessment before a project begins.

## **2. Environmental & social assessment and mitigation are left to borrowers**

According to the draft, the borrower is responsible for assessing project risks, including the risk of disproportionate impact on the basis of SOGI (pp. 26-28). The borrower will determine the scope of E&S assessment, and will also "identify project-affected persons that may be disproportionately affected by a project because of their disadvantaged or vulnerable status" (p. 24). This is troubling in relation to SOGIESC because of the difficulties associated with identifying these individuals and the associated project risks, especially in the borrower countries where non-normative SOGIESC is highly stigmatized or legally persecuted. The borrower country is also responsible for designing and implementing plans to mitigate the risks and impacts identified (pp. 28-30). The borrower will "ensure sufficient high-level commitment, and human and financial resources, are provided on an ongoing basis to implement" these measures. The ADB will provide oversight, but the safeguard draft provides little information on how and to what extent the ADB will support borrower countries in addressing issues like SOGIESC where borrower countries may lack capacity or political will.

The ADB is required to review the borrower's E&S assessment, including assisting in identifying appropriate assessment and management tools to address risks and impacts for disadvantaged/vulnerable groups. This oversight is discussed in the Environmental and Social Policy (ESP) paragraphs 28-40 (pp. 13-15). The ADB may also require the borrower to retain independent third-party specialists to assist in the E&S assessment in paragraph 35 (p. 14). The ESP does state that the ADB and the borrower/client must agree on the Environmental and Social Commitment Plan/Environmental and Social Action Plan (ESCP/ESAP) to mitigate the risks identified. Importantly, "A legal agreement for the project will include obligations of the borrower/client to implement the ESCP/ESAP" (p. 14). Paragraphs 56-59 specifies that the ADB will monitor and enforce compliance with ESCP/ESAP (p. 18).

The borrower is also responsible for stakeholder engagement, including grievance mechanisms (as described in ESS10). There is very little discussion of the ADB's role at all in ESS10, across stakeholder identification and analysis, consultation, and monitoring (the exception is on information disclosure, where the ADB is directly involved in disclosing documents, see p. 127). The borrower is required to "enable full and fair access by additional means for disadvantaged or vulnerable persons" in grievance mechanisms, but no support or oversight from the ADB is required (p. 129). The ADB reviews the plans for stakeholder engagement as part of the E&S assessment, but again, there is no information to explain how specifically the ADB will support borrower countries on SOGIESC inclusion.

## **3. Approach to gender**

There are many places in the document where "gender" is mentioned, yet gender is not defined. As a result, it is unclear whether or not the ADB will approach gender as a binary in its



implementation of the safeguards. The ADB's Policy on Gender and Development (2003) defines gender as "the social differentiation between women and men" and does not cover issues relating to SOGIESC. See the Key Points for further context on the impact of this binary approach to gender.

In the current safeguard draft, there are many requirements relating to gender such as "gender-related risks," "gender analysis," "gender-sensitive," and "gender responsive," but based on the ADB's current definition of gender, gender identity and expression would not factor into these terms. For example, in both ESS10 paragraph 16 and definition section, "meaningful consultations" are defined as follows:

Is based on early disclosure and dissemination of information in a form, language, and manner that is culturally appropriate, **gender-responsive**, understandable, and readily accessible to project-affected persons; (p. 128, p. 139)

The meaning of "gender-responsive" is not clarified, including whether such consultations would pay particular attention to the safety and inclusion of those with non-normative SOGIESC.

The draft policy also uses the term "gender-related risks" in key places in its ESP and ESS1. In the ESP paragraph 30, the ADB commits to "take into account in its review of a borrower's/client's E&S assessment all relevant E&S risks and impacts of a project," including:

Social risks and impacts such as: any impacts from land acquisition and land use restriction; adverse impacts on communities of Indigenous Peoples; risks associated with labor, working conditions and rights of project workers; risk that project impacts fall disproportionately on the disadvantaged or vulnerable; **gender-related risks**, including potential risks of sexual exploitation, abuse, and harassment. (p. 13)

Similar language is used in ESS1 paragraphs II (p. 23) and 24 (p. 26). Gender-related risks could be interpreted to be inclusive of SOGIESC issues, but this is not assured. Further, as identified above, it is not clear whether discrimination or exclusion would fall under the category of a gender-related risk.

#### **4. SOGI rather than SOGIESC**

The definition of vulnerable or disadvantaged groups in the draft includes sexual orientation and gender identity, but there is no mention of gender expression or sex characteristics (p. 134-135). This leaves individuals with non-normative gender expression or sex characteristics out from the protections afforded to other groups. The proposed civil society safeguard includes "ESC" alongside SOGI throughout the policy, in alignment with current best practice. See the introductory Key Points (pg 2 of this document) for further comment on the implications of these exclusions.

#### **5. "Country context"**

The draft policy may leave room for protections for vulnerable or disadvantaged groups to be overridden by a borrower country's legal framework. In relation to SOGIESC, adapting requirements based on country context and legal framework is especially worrying for countries where discrimination/persecution on the basis of SOGIESC is codified.

This occurs in ESP para 52 (p. 17), ESS1 para 10 (p. 24), and ESS2 para 12 (p. 47). Paragraph 52 of the ESP contains the following language on inclusion of disadvantaged/vulnerable groups:

Where such disadvantaged or vulnerable persons are identified, ADB will require a borrower/client to implement differentiated measures to mitigate the adverse impacts so that the project risks do not fall disproportionately on them. ADB will work with a borrower/client so that through these measures, such disadvantaged or vulnerable persons can share equitably in benefits and opportunities resulting from a project. **The design of these measures and their implementation will take into consideration the particular circumstances of such persons, project and country context, including the host country's legal and institutional frameworks** and other relevant factors set out in para 21, to the extent possible and as determined by ADB. There may be circumstances under which the identification of disadvantaged or vulnerable individuals or groups, or designing of differentiated mitigation measures could expose these individuals or groups to further risks. ADB will consider the overall project-specific circumstances and project and **country context**, and work with the borrower/client to understand the potential effects and risks to such individuals and groups to determine an appropriate course of action and require the borrower/client to document its good faith effort to apply the requirements of this para. (emphasis added) (p. 17)

The possibility of exposing individuals or groups to risk through identification and mitigation measures is an important consideration. However, the current language may allow for borrower countries where LGBTQI+ groups are persecuted or otherwise socially marginalized to evade taking specific measures to protect and include those groups.

Similarly, ESS1 paragraph 10 (which is also quoted in the above section on discrimination) uses this language as well:

Throughout the E&S assessment process, the borrower/client will identify project-affected persons that may be disproportionately affected by a project because of their disadvantaged or vulnerable status. Where such disadvantaged or vulnerable persons are identified, the borrower/client will implement differentiated measures to mitigate the adverse impacts and ensure the project risks do not fall disproportionately on them. The borrower/client will ensure that, through these measures, such disadvantaged or vulnerable persons can share equitably in benefits and opportunities resulting from a project. **The design of these measures and their implementation will take into consideration the particular circumstances of such persons, project and country context, including the host country's legal and institutional**

**frameworks** and other factors set out in para 28, to the extent possible and as determined by ADB. (emphasis added) (p. 24)

Again, the consideration of “country context” could leave room for borrowers who are not supportive of SOGIESC rights to argue that mitigation measures targeted at SOGIESC inclusion are not compatible.

Finally, ESS2 (Labor) paragraph 14 requires “appropriate measures to protect and assist disadvantaged or vulnerable project workers,” but that these must be “consistent with the host country's applicable laws” (p. 47). In countries where LGBTQI+ identities are persecuted, will project workers with non-normative SOGIESC not be protected?

## **6. Missing from ESSs**

Disadvantaged or vulnerable groups are mentioned briefly in ESS7 (Indigenous Peoples) and ESS9 (Climate Change), and are not mentioned at all in ESS3 (Pollution), ESS6 (Biodiversity), or ESS8 (Cultural Heritage). Gender is not mentioned in ESS3, ESS6, ESS8, or ESS9, nor is it present in ESS2 (Labor) or ESS4 (Health Safety and Security), except by nature of its inclusion in the general vulnerable groups category.

As was argued by civil society groups in written statements to the ADB, it is particularly important that the intersection of SOGIESC with environmental issues and indigenous peoples be addressed. The lack of discussion of SOGIESC in the relevant ESSs is therefore concerning.

In ESS7 (Indigenous Peoples), vulnerable groups are mentioned in paragraph 13 on inclusion in consultations and within the Annex outlining the contents of an Indigenous Peoples Planning Framework, also relating to inclusion in consultations (p. 100, p. 113). The inclusion of SOGIESC in ESS7 is especially relevant due to traditions in the region of non-binary conceptions of gender, including for example among the Bugis people in Indonesia or the bakla gender identity in the Philippines. This was discussed at length in a written statement submitted by First Peoples Worldwide for the ADB safeguard consultation.

Gender sensitivity and responsiveness is included in several ESS7 requirements, but as discussed above, it is not clear whether this includes consideration of gender identity or expression. For example, in paragraph 44, it is stated that:

ADB's developing member countries, borrowers/clients, and Indigenous Peoples' organizations may ask ADB to support them in their development planning and poverty reduction strategies by providing financial assistance for initiatives, such as the following:  
...

IV. Address the **gender and intergenerational issues** that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;

V. prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, **gender and intergenerational relations**, and social organization, institutions, production systems, religious beliefs, and resource use patterns; (p. 107)

Ideally, such programming would be inclusive of gender issues among indigenous peoples relating to SOGIESC, but the current language is not inclusive of a non-binary conception of gender or sexual orientation. Similar language is also included in the outline of an Indigenous Peoples Plan on p. 109.

In ESS9 (Climate Change), disadvantaged or vulnerable groups are mentioned only in the introduction and in reference to their inclusion in consultations. The intersection of climate change impacts with social identities such as gender is not discussed.

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Beyond the draft document itself, there also remain important questions on how the safeguard policies will be effectively implemented:

**Communications:** The ADB safeguard is 142 pages long and written in highly technical language. Vulnerable groups may face greater difficulty in accessing and deciphering this document in order to understand the ADB's requirements for their protection and inclusion. Especially taking into consideration that the Bank operates in 46 developing member countries in many different languages, how will the ADB ensure that safeguard policies and project documents are available to vulnerable groups?

- ESS10, paragraph 16 states: "The borrower/client will disclose the information set out in para 15 and any other relevant information as determined by ADB, to project-affected persons in a manner that is understandable, accessible, and culturally appropriate, taking into account any specific needs of groups that may be differentially or disproportionately affected by a project or groups of the population with specific information needs such as due to ethnicity, disability, literacy, gender, age, mobility, differences in language, or accessibility."
- These efforts to disseminate understandable, accessible, and culturally appropriate information should extend to the safeguard policies as well as specific project documents.
- It should also consider project-affected persons to include any individuals who may be excluded from the benefits or opportunities presented by a project, including on the basis of SOGIESC.

**Lack of staffing:** The ADB plans to hire one person to be responsible for covering many types of vulnerabilities — on the basis of SOGIESC, religion, age, disability, ethnicity, etc — across 46

countries. Furthermore, the ADB does not plan to hire anyone with expertise on indigenous peoples. How will the ADB fully implement its safeguards given this lack of staff?

- How will it support borrower countries in carrying out risk assessments, consultations, grievance redress, etc without expertise on the specific needs of vulnerable or disadvantaged groups?
- How will the ADB conduct adequate monitoring to ensure that borrower countries are in full compliance with the safeguard policies, including regarding SOGIESC inclusion?

## **II. Comparison with proposed civil society Gender & SOGIESC Safeguard**

In 2022, civil society groups composed and submitted a proposal for a standalone Gender & SOGIESC Safeguard Policy (included as an [Appendix](#) to this document). The proposal was endorsed by 43 civil society organizations from around the world, including many based in and representing populations from ADB borrower countries.

There are many important divergences between the civil society policy proposal and the ADB's draft safeguard policy. Below, the language of the two documents is compared on the basis of their inclusion and treatment of SOGIESC issues:

### ***Standalone vs. laundry list***

Most importantly, the civil society proposal calls explicitly for a standalone safeguard addressing gender and SOGIESC. Throughout, the civil society proposal refers to the need to account for the unique risks and barriers to inclusion that exist on the basis of SOGIESC. In contrast, as pointed out in the previous section, the ADB safeguard draft includes SOGI only within the laundry list of other social categories included in its definition of "disadvantaged or vulnerable" (p. 134-135). Nowhere in the draft does the ADB include specific provisions relating to SOGI.

### ***Definitions***

The civil society proposal calls for an update to the ADB's outdated and harmful concept of gender as a binary as per its [2003 "Policy on Gender and Development"](#) and [2019 "Operational Priority 2: Accelerating Progress in Gender Equality 2019-24."](#) The ADB safeguards draft does not update or refine its approach to gender.

In terms of definitions, the civil society proposal provides definitions for the following terms: gender, sex, sexual orientation, gender identity, sexual exploitation, and sexual abuse (see Appendix: Civil society's Gender and SOGIESC Safeguard proposal). These definitions are based on those of the United Nations and World Health Organization. The ADB safeguard draft does include definitions aligning with those proposed by civil society for sexual exploitation and sexual abuse, and includes a strong definition for sexual harassment as well (p. 141). However, gender, sex, sexual orientation, and gender identity are not defined in the ADB draft. We assume that this means that the ADB's binary approach to gender in its 2003 and 2019 policy still stands, and that the ADB will approach gender as a binary in its implementation of its new safeguard policies.

### ***Borrower responsibility***

The civil society proposal is clear that "knowledge building and understanding, compliance and enforcement of all safeguards, and continuous monitoring and evaluation" should not be the

responsibility of the borrower alone. Rather, the “ADB must recognize lack of capacity in borrower countries.” However, as is demonstrated in the following two sections on the Environmental and Social Assessment (ESS1) and stakeholder engagement (ESS10), the ADB draft leaves the responsibility for protections and inclusion for disadvantaged and vulnerable groups primarily to the borrower. There is little recognition that borrowers are likely to lack the capacity to comprehensively address the challenges to inclusion for SOGIESC. It is also not clear how exactly, if and when such gaps in borrower capacity do exist, the ADB will support borrowers and ensure that such gaps are filled. This is especially concerning in relation to SOGIESC due to the known lack of capacity, and in some cases opposition to inclusion, with regards to SOGIESC issues among borrower countries.

### ***Environmental and Social Assessment (ESS1)***

The civil society proposal makes clear that a gender- and SOGIESC-inclusive Environmental and Social (E&S) Assessment should be required for any project if there exists the potential for particular impacts and/or risks on the basis of gender and/or SOGIESC. Importantly, the proposal states that the assessment should include “formulation of baseline gender and SOGIESC disaggregated indicators to permit tracking progress and outcomes throughout the project or policy cycle.” Collection of such baseline data is especially important for SOGIESC indicators for which little data exists in many borrower countries. The ADB’s indicative outline of the E&S Assessment includes a section on baseline data (p. 37), but this provision does not specifically mention vulnerable or disadvantaged groups including SOGIESC.

The civil society proposal furthermore states that the E&S assessment should consider “the unique impacts based upon gender and SOGIESC, as well as risks of discrimination, GBV, and SEA/H” and the “potential to be excluded from the full positive benefits of the project or policy” on the basis of SOGIESC. It also requires special attention to persons with “multiple vulnerabilities and/or intersectional identities by virtue of compounding factors.” The ADB draft policy does require that the assessment include the identification of disadvantaged/vulnerable groups, and that risks and impacts for those groups be assessed and mitigated (p. 24, p. 26). However, discrimination in particular is not mentioned, nor are unique disaggregated impacts on the basis of any of the specific vulnerable/disadvantaged group categories (including SOGIESC). Intersectionality and compounding vulnerabilities are also not addressed in ESS1 or elsewhere in the ADB draft policy. As identified in statements submitted by members of civil society during the safeguards consultations, SOGIESC intersects with other identities including but not limited to indigeneity, race and ethnicity, and disability, in ways which should be addressed in the ADB safeguards.

Especially taking into consideration the aforementioned lack of sensitization and capacity on SOGIESC issues, the civil society proposal states that “the borrower may be required to engage social scientists and other experts whose qualifications, experience, and terms of reference are acceptable to the Bank and include gender, SOGIESC, and SEA/H expertise” in conducting the E&S assessment. In alignment, the ADB draft requires that borrowers “engage internationally recognized experts for High Risk and Substantial Risk projects that are

contentious, involve serious and multidimensional issues, and generally have interrelated potential E&S risks and impacts” (p. 27). It is not explicitly stated by the ADB whether expertise on vulnerable and/or disadvantaged groups (including SOGIESC) are among the requirements for such experts, nor is it made clear how the internationally recognized experts would be selected.

The civil society proposal states clearly that the E&S assessment conducted by the borrower should be sent to the ADB for review and approval. Only after the ADB accepts the documents as providing an adequate basis for appraisal is the project able to move forward. In the ADB’s draft, there are provisions and guidelines for the ADB to review the borrower’s E&S assessment — but it is not stated explicitly that the ADB must ultimately *approve* the E&S assessment in order to proceed with project appraisal.

### ***Stakeholder Engagement (ESS10)***

On stakeholder engagement, the civil society proposed safeguard specifies that “all public consultation must be gender- and SOGIESC-inclusive.” The ADB’s ESS10 does require that borrowers pay particular attention to disadvantaged and vulnerable groups in stakeholder engagement (p. 125-126). However, those with non-normative SOGIESC have limited access to safe public consultation because of the sensitive nature of SOGIESC concerns. The ADB must require that borrowers give specific attention to SOGIESC safety and inclusion in all stakeholder engagement activities, especially respecting gender self-determination. The general provision to prioritize “those who may face systemic barriers to stakeholder engagement based on discrimination or social exclusion” goes part of the way but is not specific on what measures could be taken to ensure inclusivity.

The chapeau to the civil society proposal also calls for grievance redress mechanisms to be strengthened with SOGIESC considerations. The ADB draft, on the other hand, contains very little detail on grievance mechanisms (p. 129) in general. On vulnerable groups, it states that the grievance mechanism will “enable full and fair access by additional means for disadvantaged or vulnerable persons.” It does not provide guidelines as to what such “additional means” may consist of, nor are there provisions ensuring that these means will be subject to oversight by the ADB.

### ***Special considerations***

On resettlement (ESS5: Land Acquisition And Land Use Restriction), the civil society proposal calls for attention to preserving household structure and preventing household and community breakdown during resettlement, including via a disaggregated assessment of household structure based on gender. The ADB draft does not include language on household structure or breakdown. However, it does require in cases of land acquisition and land use restriction that the borrower report on mitigation measures in relation to disadvantaged or vulnerable persons and provide a gender-disaggregated analysis of mitigation activities (p. 79). The ADB draft also requires that the borrower “identify, assess, and address risks to and impacts on



disadvantaged or vulnerable persons, while also taking into account gender considerations,” during land acquisition and land use restriction including “gender-disaggregated analysis in the census and socio-economic baseline studies” (p. 80). In alignment with the civil society proposal, the ADB draft specifies that compensatory measures focus on livelihood restoration and improvement. It does not, however, include reference to the informal sector, of which women, children, and people with non-normative SOGIESC make up a large part, as called for in the civil society proposal.

On labor (ESS2: Labor and Working Conditions), the civil society proposal calls for “special measures to address gender and SOGIESC based discrimination, harassment, intimidation, and/or exploitation,” including social exclusion and employment inequalities. The ADB’s draft does require nondiscrimination particularly for disadvantaged/vulnerable groups, as well as measures to protect and assist disadvantaged/vulnerable project workers (p. 47). It does not, however, include specific measures to address SOGIESC. Furthermore, it states that measures to protect and assist disadvantaged or vulnerable project workers must be consistent with the host country’s applicable laws — this provision is potentially problematic for projects taking place in countries with anti-LGBTQ legislation (p. 47).

### ***Implementation***

The civil society proposal notes the ADB’s lack of institutional enforcement and absence of staff sensitization on SOGIESC and calls for knowledge building, compliance and enforcement, and continuous monitoring and evaluations on the part of the ADB. Lack of sensitization and capacity continue to be major problems facing the successful implementation of the safeguard policies in relation to SOGIESC. As stated above, the ADB plans to hire one person to be responsible for covering many types of vulnerabilities — on the basis of SOGIESC, religion, age, disability, ethnicity, etc. The safeguard draft does not include any measures on the part of the ADB to address staff sensitization and lack of capacity on issues relating to SOGIESC.

### III. Comparison with other MDB safeguards

The ADB is not alone in that it does not adequately provide for inclusion on the basis of SOGIESC: the other multilateral development banks (MDBs), including the World Bank, IFC, IDB, EBRD, AfDB, and AIIB also fall short of aspects of SOGIESC protection and inclusion. However, the new ADB draft does not represent the leadership or a state-of-the-art policy that civil society organizations had hoped for. Indeed, the existing policies of the IDB, EBRD, and AfDB are stronger in some respects than those contained in the new ADB draft.

The IDB's [2020 Environmental and Social Policy Framework](#) integrates SOGIESC throughout the framework. In contrast to the ADB draft, "sexual orientation" is mentioned 30 times and "gender identity" 17 times in the IDB's policy. The Framework includes a "Gender Equality" standalone policy that acknowledges and lays out provisions to address the unique risks for impacts and exclusion on the basis of SOGI. In its E&S assessment, the IDB explicitly requires borrowers to assess risk of gender-based exclusion, gender based violence, and potential discrimination risks based on gender and sexual orientation (p. 34). It recommends that borrowers consider gender rights training for project staff and contractors. It furthermore describes methods to ensure women and people of diverse sexual orientations and gender identities are included in stakeholder engagement processes (p. 103). While not perfect, the IDB safeguard sets a precedent illustrating how much further the ADB could have gone in including SOGIESC issues in its draft policies (see Gender Action 2020, "[Unmet Gender Promises](#)," for a comprehensive analysis).

The EBRD's 2019 [Environmental and Social Policy](#) is also somewhat stronger than that of the ADB on SOGIESC issues. SOGI is included not only in the definition of vulnerable groups, but also in its definition of "social," thereby providing for sexual orientation and gender identity to be considered everywhere that social impacts, issues, risks, exclusion, outcomes, etc. are mentioned. It also states that borrowers will not make employment decisions on the basis of SOGI explicitly (p. 17). In general, it includes strong requirements on gender in its risk assessment, information disclosure, and consultations (see Gender Action 2020).

The AfDB 2021 [Integrated Safeguards System](#) is comparable to the ADB's draft in its inclusion of SOGIESC, though slightly stronger. Like the ADB, the AfDB includes SOGI in its definition of vulnerable groups (p. 11) and also restates this inclusion in its standalone Vulnerable Groups safeguard (E&S Operational Safeguard 7, p. 104). Importantly, it also explicitly commits to protection of all stakeholders against reprisals, SEAH, GBV or discrimination on the grounds of sexual orientation and gender identity (p. 14), which the ADB does not.

Unfortunately, the World Bank 2018 [Environmental and Social Framework](#), the IFC [2012 Performance Standards](#), and the AIIB 2021 [Environmental and Social Framework](#) do not contain any mention of sexual orientation or gender identity. The ADB therefore surpasses these three institutions by at least including SOGI among the groups listed in its definition of vulnerable/disadvantaged.

#### IV. Mentions of “disadvantaged or vulnerable”

The ADB safeguard draft includes SOGI in its definition of “disadvantaged or vulnerable,” therefore, consideration of SOGI is required in the places in the draft where these terms are used. To assess inclusion of SOGI in the draft, the following table lists all of the instances in which disadvantaged or vulnerable groups are mentioned. This table provides a detailed picture of all of the requirements applying to SOGI and was used to support this analysis:

Pg #	Section	Para	Sentence	Notes
3	Vision	4	ADB will promote nondiscrimination by working with its DMCs to create enabling environments that provide equal access to services and benefits and permit <b>meaningful participation of all people, including the disadvantaged or vulnerable</b> , and others who are often excluded from the development process. To ensure that project design and implementation maximize social benefits and inclusion while minimizing adverse social impacts, for each project that ADB supports, it undertakes poverty and social analyses to identify and consider potential social risks and issues. ADB has a zero tolerance approach to inaction on sexual exploitation, abuse, and harassment in the context of projects ADB finances. To encourage inclusive development, ADB is also engaged in policy dialogues with DMCs to introduce climate and gender considerations at all levels of their budgetary process.	Aspirational
5	Vision	10, viii	ADB, through the E&S Policy and the ESSs, will translate the institutional aspirations set out in this Vision into project-level mandatory requirements to be applied within the parameters of a project and within the context of its mandate as set out in its Charter, and seeks to: ...Ensure nondiscrimination among project-affected persons and give <b>particular consideration to Indigenous Peoples and those who are disadvantaged or vulnerable</b> , taking into account gender-related risks, and promote equitable sharing of development benefits and opportunities resulting from a project	Aspirational
10	ESP	22, i, b	"High" Environmental and social risk classification based on: "area likely to be affected is of high value and sensitivity, includes lands or rights of Indigenous Peoples and <b>other vulnerable minorities</b> , intensive or complex land acquisition and land use restriction, impacts on cultural heritage, or densely populated urban areas."	Are "other vulnerable minorities" inclusive of all d/v groups? If gender and SOGIESC rights are likely to be affected is a project classified as high risk?
13	ESP	30, ii	Environmental and Social Assessment Review: "ADB will take into account in its review of a borrower's/client's E&S assessment all relevant E&S risks and impacts of a project as described in detail in ESSs2-10, including but not limited to: ...Social risks and impacts such as: any impacts from land acquisition and land use restriction; adverse impacts on communities of Indigenous Peoples; risks associated with labor, working conditions and rights of project	ADB review of borrower E&S assessment will include risks for d/v groups. Do gender-related risks include SOGIESC?

			workers; risk that project <b>impacts fall disproportionately on the disadvantaged or vulnerable; gender-related risks</b> , including potential risks of sexual exploitation, abuse, and harassment."	
17	ESP	51	ADB recognizes the importance of early and continuing engagement with stakeholders that is inclusive and without discrimination against project-affected persons, including those deemed <b>disadvantaged or vulnerable</b> . ADB will require a borrower/client to engage with stakeholders through information disclosure, and meaningful consultation in a manner proportionate to the risks to and impacts on project-affected persons as required under ESS10. This includes requiring a borrower/client to identify project-affected persons that may be disproportionately affected by a project because of their <b>disadvantaged or vulnerable status</b> .	Non-discrimination in consultation and participation per ESS10, including identifying disproportionate effects on the basis of dv/
17	ESP	52	Where such <b>disadvantaged or vulnerable persons</b> are identified, ADB will require a borrower/client to implement differentiated measures to mitigate the adverse impacts so that the project risks do not fall disproportionately on them. ADB will work with a borrower/client so that through these measures, such <b>disadvantaged or vulnerable persons</b> can share equitably in benefits and opportunities resulting from a project. The design of these measures and their implementation will take into consideration the particular circumstances of such persons, project and country context, including the host country's legal and institutional frameworks and other relevant factors set out in para 21, to the extent possible and as determined by ADB. There may be circumstances under which the identification of <b>disadvantaged or vulnerable individuals or groups</b> , or designing of differentiated mitigation measures could expose these individuals or groups to further risks. ADB will consider the overall project-specific circumstances and project and country context, and work with the borrower/client to understand the potential effects and risks to such individuals and groups to determine an appropriate course of action and require the borrower/client to document its good faith effort to apply the requirements of this para.	ADB will "consider" "country context," require documentation of "good faith effort to apply the requirements of this para"
23	ESS1	Section II, d	Adopt differentiated measures so that adverse impacts do not fall disproportionately on the <b>disadvantaged or vulnerable, taking into account gender-related risks</b> , and ensure that they are not disadvantaged in sharing development benefits and opportunities resulting from a project;	1 of 5 Objectives for ESS1

24	ESS1	10	<p>Throughout the E&amp;S assessment process, the borrower/client will identify project-affected persons that may be disproportionately affected by a project because of their <b>disadvantaged or vulnerable status</b>. Where such <b>disadvantaged or vulnerable persons</b> are identified, the borrower/client will implement differentiated measures to mitigate the adverse impacts and ensure the project risks do not fall disproportionately on them. The borrower/client will ensure that, through these measures, such <b>disadvantaged or vulnerable persons</b> can share equitably in benefits and opportunities resulting from a project. The design of these measures and their implementation will take into consideration the particular circumstances of such persons, project and country context, including the host country's legal and institutional frameworks and other factors set out in para 28, to the extent possible and as determined by ADB. [Para 28: The borrower/client will ensure that the E&amp;S assessment takes into account the host country's applicable policy framework; the host country's applicable laws; institutional capabilities for implementation relating to E&amp;S issues; project context; and host country environmental or social status reports and/or national environmental or social action plans, where these exist. The borrower/client will ensure that the E&amp;S assessment is undertaken in coordination with the economic, financial, institutional, social, and technical analysis of a project.]</p>	<p>Borrower is responsible for d/v identification, mitigation measures, and implementation. a) Equates avoiding disproportionate harm with sharing in benefits? b) Consideration of country context and legal framework - is this a concern?</p>
26	ESS1	24, ii	<p>The borrower/client will ensure that the E&amp;S assessment will take into account all relevant E&amp;S risks and impacts of a project as described in detail in ESSs2 –10, including: ...Social risks and impacts such as: any impacts from land acquisition and land use restrictions; adverse impacts on communities of Indigenous Peoples; risks associated with labor, working conditions, and rights of project workers; data privacy; <b>risks that project impacts fall disproportionately on the disadvantaged or vulnerable; and gender-related risks</b>, including potential risks of sexual exploitation, abuse, and harassment.</p>	<p>Borrower is responsible for including d/v and gender-related risks and impacts in the E&amp;S assessment.</p>
27	ESS1	27	<p>The borrower/client will ensure that the E&amp;S assessment is based on current information, including an accurate description of the scope of a project, its components and associated facilities, and E&amp;S baseline data at an appropriate level of detail sufficient to inform characterization and identification of E&amp;S risks and impacts and mitigation, management, and monitoring measures. The borrower/client will ensure that the E&amp;S assessment process for a project examines project alternatives and identifies ways of improving project selection, siting, planning, design, and implementation. The borrower/client will seek opportunities to enhance the positive impacts of a project, subject to the requirements of the ESSs. The borrower/client will undertake stakeholder engagement as an integral part of the E&amp;S assessment process in accordance with ESS10. <b>The borrower/client will ensure that stakeholder engagement is inclusive and without discrimination against project-affected</b></p>	<p>Borrower is responsible for inclusion and nondiscrimination on the basis of d/v in stakeholder engagement.</p>

			<b>persons, including those deemed disadvantaged or vulnerable.</b>	
37	ESS1 Annex 1	vi	Identifies mitigation measures and significant residual adverse impacts that cannot be mitigated and, to the extent possible, assesses the acceptability of those residual adverse impacts. <b>Identifies differentiated measures so that adverse impacts do not fall disproportionately on the disadvantaged or vulnerable.</b>	Within "Indicative Outline of Enviro and Social Impact Assessment." Do "adverse impacts" include discrimination or exclusion?
47	ESS2: Labor	12	The borrower/client will: (i) not make project employment decisions on the basis of personal characteristics unrelated to inherent job requirements, <b>particularly for those project workers who are disadvantaged or vulnerable</b> ; (ii) base the employment relationship on the principle of equal opportunity and fair treatment; and (iii) not discriminate with respect to any aspect of the employment relationship, such as recruitment and hiring, job assignment, compensation (wages and benefits), working conditions and terms of employment including reasonable adaptation of the workplace related to disabilities, access to training, promotion, termination of employment, retirement, and disciplinary practices.	Non-discrimination in employment decisions
47	ESS2: Labor	14	The borrower/client will implement appropriate measures to <b>protect and assist disadvantaged or vulnerable project workers</b> . Such measures may be necessary only for specific periods of time, depending on the circumstances of the project worker and the nature of the disadvantage or vulnerability. Such measures of protection and assistance will not be deemed as discrimination, provided they are consistent with the host country's applicable laws, a project's labor management plan, and this ESS2.	Measures to protect and assist d/v workers must be consistent with host country law.
59	ESS4: Health Safety and Security	2	This ESS4 recognizes that the borrower/client has the primary responsibility, in collaboration with competent government authorities, to manage health, safety, and security risks associated with project activities that impact project workers and project-affected persons to avoid or minimize such risks and impacts, with <b>particular attention to those who may be disadvantaged or vulnerable</b> .	Introduction to ESS4
60	ESS4: Health Safety and Security	10	Where there are specific risks associated with certain work activities that could result in <b>adverse effects on the health and safety of disadvantaged or vulnerable project workers</b> , the borrower/client will carry out more detailed risk assessment and integrate the findings and the related occupational health and safety (OHS) measures into the HSMP.	Occupational health and safety
61	ESS4: Health Safety and Security	18	Where there are specific risks that could result in <b>adverse impacts on the health and safety of disadvantaged or vulnerable persons</b> , the borrower/client will carry out a more detailed risk assessment and develop measures to manage the risks, including preventing injury and ill health, and include them in the HSMP.	Occupational health and safety

62	ESS4: Health Safety and Security	21	The borrower/client will avoid or minimize the potential exposure of project workers and project-affected persons to diseases which could result from, or be exacerbated by, project activities. The borrower/client will take into consideration <b>differentiated exposure to, and higher sensitivity of, disadvantaged or vulnerable groups</b> and will develop appropriate mitigation measures in meaningful consultation with such groups and the competent government authorities.	Exposure to disease for project workers
63	ESS4: Health Safety and Security	26	The borrower/client will assess project-related risks of SEAH to project workers consistent with ESS2 and project-affected persons, <b>including those who may be disproportionately affected because of their disadvantaged or vulnerable status.</b> The borrower/client will adopt specific and differentiated measures to prevent and address SEAH, following a survivor-centered approach, and will establish a confidential grievance mechanism for reporting incidents and referral systems to provide support to SEAH survivors.	SEAH risk assesment for project workers, grievance mechansim
71	ESS5: Land	Section II, d	<b>Improve livelihoods and living conditions of disadvantaged or vulnerable persons</b> , including by providing adequate housing with essential services, utilities, and security of tenure to those who are physically displaced.	1 of 5 Objectives for ESS5
73-74	ESS5: Land	14	The borrower/client will consider feasible alternative project designs and sites to avoid LA/LUR, while balancing environmental, social, and financial costs and benefits, <b>paying particular attention to gender impacts, and avoiding adverse impacts on disadvantaged or vulnerable persons.</b> Where avoidance is not possible, the borrower/client will minimize displacement and develop appropriate measures to mitigate adverse impacts on affected persons.	Consideration of alterantives to displacement
74	ESS5: Land	15	The borrower/client will undertake meaningful consultation in accordance with ESS10 and this ESS5 with stakeholders on project design alternatives, as relevant to LA/LUR, and on applicable mitigation measures. The borrower/client will ensure participation of affected persons in the negotiation, planning, implementation, monitoring, evaluation, and reporting on compensation, livelihood restoration, and relocation activities, with <b>special attention to the views of disadvantaged or vulnerable persons.</b> The borrower/client will consult with affected persons on appropriate options and alternatives for the mitigation of adverse impacts, or relocation and livelihood restoration, from which they may choose.	Inclusion of d/v in stakeholder engagement on displacement
79	ESS5: Land	33	The extent of monitoring will be proportionate to the nature and scope of a project's potential LA/LUR risks and impacts. The borrower/client will carry out <b>stakeholder engagement with the participation of affected persons, including women and disadvantaged or vulnerable persons</b> , as well as other relevant stakeholders, and will consider their concerns and feedback as part of monitoring activities. The borrower/client will report on the status of the delivery of	Inclusion of d/v in stakeholder engagement on displacement. Does gender-disaggregated analysis include SOGIESC?

			mitigation measures to all affected persons, including disadvantaged or vulnerable persons and <b>provide a gender-disaggregated analysis of mitigation activities</b> . The borrower/client will ensure the availability of designated financial and staff resources to undertake monitoring, evaluation, and reporting. All reports will be publicly disclosed on the websites of the borrower/client and of ADB.	
80	ESS5: Land		Section title: "6. Treatment of Disadvantaged or Vulnerable Persons"	
80	ESS5: Land	42	The borrower/client will <b>identify, assess, and address risks to and impacts on disadvantaged or vulnerable persons, while also taking into account gender considerations</b> , in the planning and implementation of LA/LUR throughout the concept design, preparation, and implementation phases of a project cycle. The borrower/client will include <b>gender-disaggregated analysis</b> in the census and socio-economic baseline studies to generate understanding of the <b>gender aspects</b> of LA/LUR risks and impacts. The borrower/client will <b>ensure that disadvantaged or vulnerable persons receive fair and appropriate mitigation measures</b> tailored to their needs and preferences and <b>accounting for gender considerations</b> , as it pertains to modalities of compensation, provision of livelihood restoration and livelihood improvement, and relocation and resettlement measures. When the host country's applicable laws and tenure systems do not recognize the rights of women to hold or exchange property, provision will be made to ensure, to the extent possible, that women can gain security of tenure.	Borrower responsible for d/v and gender considerations in displacement
82	ESS5: Land	48	Persons physically displaced from their residential or business premises temporarily or permanently are entitled to relocation and resettlement measures at full replacement cost. The borrower/client will consult physically displaced persons on their preferences for relocation and resettlement and may offer options for either relocation by the project in resettlement sites or in individual residential and business premises, or self-relocation...Persons whose livelihoods are affected by relocation and resettlement, including lost income during the period of transition to relocation sites, will be compensated by the borrower/client in accordance with the requirements for livelihood restoration and livelihood improvement under paras 53 and 54 of this ESS5. <b>Particular attention will be paid to the differentiated needs of disadvantaged or vulnerable affected persons</b> . The borrower/client will improve living conditions of such affected persons through the provision of adequate housing, access to services and utilities, and security of tenure. Where the borrower/client demonstrates that an affected person derives substantive income from multiple illegal rental units, the compensation and other assistance that would otherwise be available to such affected person for non-land assets and livelihood restoration may be reduced with the prior agreement by ADB.	Under "Compensation and Benefits for Affected Persons," Mitigation of impacts from involuntary land acquisition and use restriction



85	ESS5: Land	59, vi	In order for LA/LUR to be considered voluntary, the following criteria apply: ...(vi) Affected persons are <b>not rendered disadvantaged or vulnerable</b> as a result of the transfer of their land rights.	Not applicable to SOGI
86	ESS5: Land	63	Community-based natural resource management projects may entail voluntary collective agreement by a community to restrict access to resources that are being managed or conserved...Because conservation measures may have livelihood implications, <b>particularly for disadvantaged or vulnerable households</b> , a LAP will assess the nature and extent of such adverse impacts and appropriate mitigation measures will be agreed with the community and supported by the borrower/client. General Requirements in Section IV.A apply to such transactions, modified as appropriate to reflect the nature of the transaction and proportionate to the LUR risks and impacts involved.	D/v households must be assessed in Land Acquisition Plan
86	ESS5: Land	64	Voluntary sale and purchase of land: "Through the E&S assessment process described in ESS1, the borrower/client will transparently document the process and outcomes of the transaction, demonstrate the free consent of the sellers to the sale of land and/or other assets, and confirm that the voluntary sale <b>will not render the sellers disadvantaged or vulnerable</b> . For this purpose, the borrower/client will agree with ADB on meaningful consultation processes, policies, the host country's applicable laws, qualified third-party validation, mechanisms for calculating the replacement cost of land and other assets affected, and record-keeping requirements.	Not applicable to SOGI
87	ESS5 Annex 1	C	C. Land Acquisition/Land Use Restriction Assessment Reports on the methodologies, findings and conclusions of the census and socio-economic baseline studies carried out and the magnitude and types of LA/LUR-related losses caused by a project, as well as the social and valuation specialists engaged to undertake the LA/LUR assessment, including the following: ...Results of the census and socio-economic baseline studies based on detailed engineering designs to: (i) define, identify, and enumerate the number and types of all affected persons and communities, including host communities, if any, as well as their relevant social, economic, and cultural characteristics; and (ii) to ascertain their ownership and use rights with respect to land and other assets to determine their eligibility to compensation and assistance. <b>All data and information are disaggregated by gender and for disadvantaged or vulnerable groups</b> , and are supported by tables and diagrams, as applicable.	Outline of Land Acquisition Plan
88	ESS5 Annex 1	F	F. Planned Mitigation Measures Documents mitigation measures for all applicable permanent and temporary, full and partial types of LA/LUR-related losses, including: ...Measures to address the specialized needs of the <b>disadvantaged or vulnerable</b> .	Outline of Land Acquisition Plan
100	ESS7: IP	13	The borrower's/client's consultation process will provide sufficient time for Indigenous Peoples' collective decision-making processes and will pay <b>special attention to the concerns of indigenous</b>	Under General Requirements - Meaningful Consultation. Inclusion of

			<b>women, youth, people with disabilities, and people with other disadvantages or vulnerabilities.</b>	d/v in IP consultation.
113	ESS7: Annex 2	F	F. Consultation and Participation: This section outlines the mechanisms and strategy that will be adopted for the conduct of meaningful consultation with the affected Indigenous Peoples at each stage of subproject preparation and implementation. Provides guidelines on ensuring cultural appropriateness of consultative process; provides for a <b>gender-responsive consultative process and ensuring inclusion of vulnerable groups within the Indigenous Peoples' communities</b> ; provides measures to deal with participation barriers such as language. For project activities requiring FPIC, this section outlines the mechanisms and procedures for documentation of the consultation process that establishes FPIC from affected Indigenous Peoples' communities.	Part of Outline of an Indigenous Peoples Planning Framework. Only place where "vulnerable groups" within IP are mentioned.
122	ESS9: Climate	1	This Environmental and Social Standard (ESS) 9 recognizes the urgency and importance of tackling climate change, which poses a global threat and reverses development gains. Effects of greenhouse gases (GHG) emissions, compounded by reduction of the planet's carbon sinks, are altering the physical and biological environment and severely impacting economies, livelihoods, food security, health conditions, and quality of life of communities and individuals, <b>disproportionately affecting disadvantaged or vulnerable communities.</b>	Introduction
122	ESS9: Climate	7	The borrower/client will undertake <b>meaningful consultation with project-affected persons, including disadvantaged or vulnerable groups and communities</b> , on project-related GHG reduction measures, if any, and climate risk assessment including climate change adaptation and resilience measures, and any subsequent changes or updates to such measures and assessments.	Consultation with d/v. Only place where "vulnerable groups" are mentioned in ESS9.
124	ESS10	II, e	Ensure the needs and concerns of <b>disadvantaged or vulnerable project-affected persons</b> are recognized and accounted for in the stakeholder engagement and information disclosure process.	1 of 6 Objectives of ESS10
125	ESS10	10	The borrower/client will undertake a stakeholder analysis that will provide sufficient levels of information and disaggregation to enable the borrower/client to determine the nature, scope, and methods of the engagement process that are appropriate for a project. During stakeholder identification and analysis, the borrower/client will pay particular attention to, and prioritize, <b>identifying and analyzing those project-affected persons with emphasis on those deemed disadvantaged or vulnerable, or who may face systemic barriers to stakeholder engagement based on discrimination or social exclusion</b> , and who may need different or separate forms of engagement.	Borrower responsible for inclusion of d/v in stakeholder identification and analysis.

126	ESS10	13	<p>The SEP will reflect how concerns, recommendations, and managing risks will be addressed in project design and mitigation measures. The borrower/client will ensure that the SEP takes into account the interests of all relevant stakeholders, summarizing comments, needs, and concerns received from project-affected persons and other interested parties, with <b>special attention to the views of disadvantaged or vulnerable persons and groups, women</b>, and different age groups, and how they will be addressed. The SEP will also describe data privacy procedures, including how sensitive or confidential information collected through ESSs will be managed and protected.</p>	Attention to d/v required in the Stakeholder Engagement Plan
127	ESS10	15, iii	<p>The borrower/client will provide stakeholders with access to the following information as early as possible in a project cycle and in a timeframe that enables meaningful consultations with stakeholders on project design: ...Potential E&amp;S risks and impacts of the project on local communities, and the proposals for avoiding, minimizing, or mitigating these, including the <b>differentiated measures taken for disadvantaged or vulnerable groups</b>.</p>	Borrower must disclose info on E&S risks/impacts and mitigation for d/v
129	ESS10	28, vi	<p>The grievance mechanism will respond to concerns promptly, effectively, and in a manner that is transparent, discreet, objective, culturally appropriate, and readily accessible to all project-affected persons. The grievance mechanism will: ...(vi) <b>enable full and fair access by additional means for disadvantaged or vulnerable persons</b>.</p>	D/v must be included in grievance mechanism (responsibility of borrower).
134-135	Definitions		<p><b>Disadvantaged or vulnerable.</b> Those individuals or groups who, by virtue of, for example, their age, gender, ethnicity, religion, disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources, may be more likely to be at risk of being adversely affected by project impacts, and/or more limited than others in their ability to take advantage of a project's benefits, excluded from/unable to participate fully in consultation processes and benefit sharing.</p>	Definition of d/v

## V. Mentions of gender

Although gender was not defined in the safeguard draft, in future versions or with a more inclusive overall gender policy the ADB could consider “gender” as inclusive of non-normative gender identities and expressions. To assess inclusion of gender identity and experience in the draft, the following table lists all of the instances in which gender is mentioned. This table provides a detailed picture of all of the requirements referring to gender, including the various terms used in relation to gender which could potentially be used to support SOGIESC inclusion:

Pg #	Section	Para	Sentence	Notes/context
3	Vision	4	Strategy 2030 also emphasizes human capital development, social inclusion, and <b>gender equality</b> in ADB’s operations and activities to ensure the benefits of social and economic growth are extended to all.	Aspirational
3	Vision	4	To encourage inclusive development, ADB is also engaged in policy dialogues with DMCs to introduce climate and <b>gender considerations</b> at all levels of their budgetary process.	Aspirational
5	Vision	10, viii	Ensure nondiscrimination among project-affected persons and give particular consideration to Indigenous Peoples and those who are disadvantaged or vulnerable, taking into account <b>gender-related risks</b> , and promote equitable sharing of development benefits and opportunities resulting from a project; and (ix) Strengthen stakeholder engagement through meaningful consultation and prevent threats of reprisals against project-affected persons through effective grievance mechanism.	Aspirational
13	ESP	30, ii	ADB will take into account in its review of a borrower’s/client’s E&S assessment all relevant E&S risks and impacts of a project as described in detail in ESSs2-10, including but not limited to: ...Social risks and impacts such as ...risk that project impacts fall disproportionately on the disadvantaged or vulnerable; <b>gender-related risks</b> , including potential risks of sexual exploitation, abuse, and harassment.	ADB review of borrower E&S assessment will include risks for d/v groups. Do gender-related risks include SOGIESC?
13	ESP	31, i	ADB may also request additional relevant information where there are gaps that prevent ADB from completing its review, and consider additional information obtained by ADB through its other tools and instruments such as poverty and social analysis, <b>gender analysis and gender assessment</b> , fragility and resilience assessments, disaster risk assessment, or climate risk assessment; and (ii) providing guidance to assist a borrower/client in developing appropriate measures consistent with the mitigation hierarchy to address E&S risks and impacts in accordance with the ESSs	Does gender analysis/assessment include SOGIESC?
23	ESS1	II, d	Adopt differentiated measures so that adverse impacts do not fall disproportionately on the disadvantaged or vulnerable, taking into account <b>gender-related risks</b> , and ensure that they are not disad	1 of 5 Objectives

26	ESS1	24	Social risks and impacts such as: any impacts from land acquisition and land use restrictions; adverse impacts on communities of Indigenous Peoples; risks associated with labor, working conditions, and rights of project workers; data privacy; risks that project impacts fall disproportionately on the disadvantaged or vulnerable; and gender-related risks, including potential risks of sexual exploitation, abuse, and harassment.	Borrower is responsible for including d/v and gender-related risks and impacts in the E&S assessment.
74	ESS5: Land	14	The borrower/client will consider feasible alternative project designs and sites to avoid LA/LUR, DRAFT FOR CONSULTATION - 7 SEPTEMBER 2023 73 while balancing environmental, social, and financial costs and benefits, <b>paying particular attention to gender impacts</b> , and avoiding adverse impacts on disadvantaged or vulnerable persons	Consideration of alternatives to displacement
75	ESS5: Land	21	Information regarding the cut-off date will be documented and disseminated throughout the project area at regular intervals in a <b>form, language, and manner that is culturally appropriate, gender-responsive</b> , understandable, and readily accessible to affected persons.	Declaration of Cut-Off to determine who will be eligible for compensation and assistance based on full and complete LA/LUR assessment
79	ESS5: Land	33	The borrower/client will report on the status of the delivery of mitigation measures to all affected persons, including disadvantaged or vulnerable persons and provide a gender-disaggregated analysis of mitigation activities. The borrower/client will ensure the availability of designated financial and staff resources to undertake monitoring, evaluation, and reporting. A	Does gender-disaggregated analysis include SOGIESC?
80	ESS5: Land	42	The borrower/client will identify, assess, and address risks to and impacts on disadvantaged or vulnerable persons, while also taking into account <b>gender considerations</b> , in the planning and implementation of LA/LUR throughout the concept design, preparation, and implementation phases of a project cycle. The borrower/client will include <b>gender disaggregated analysis</b> in the census and socio-economic baseline studies to generate understanding of the <b>gender aspects</b> of LA/LUR risks and impacts. The borrower/client will ensure that disadvantaged or vulnerable persons receive fair and appropriate mitigation measures tailored to their needs and preferences and accounting for <b>gender considerations</b> , as it pertains to modalities of compensation, provision of livelihood restoration and livelihood improvement, and relocation and resettlement measures.	Borrower responsible for d/v and gender considerations in displacement
87	ESS5 Annex	C	All data and information are <b>disaggregated by gender and for disadvantaged or vulnerable groups</b> , and are supported by tables and diagrams, as applicable.	Outline of Land Acquisition Plan
99	ESS7: IP	11	A borrower/client, in a <b>gender-sensitive manner</b> and in meaningful consultation with the Indigenous Peoples' communities, will identify project-affected Indigenous Peoples and the potential risks and impacts of a proposed project on them.	General requirements for ESS7

103	ESS7: IP	28	The borrower/client will scale the grievance mechanism proportionately to the potential risks and impacts of a project. The borrower/client will address concerns and complaints promptly, using an understandable and transparent process that is culturally appropriate, <b>gender responsive</b> , and accessible to the project-affected Indigenous Peoples' communities at no cost to them and without threat of reprisal.	Grievance mechanism under ESS7
105	ESS7: IP	38, iv	The borrower/client will ensure that assessment of land and natural resource use will be <b>gender-inclusive and specifically consider women's role</b> in the management and use of these resources;	Impacts on Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use
107	ESS7: IP	44, iv	ADB's developing member countries, borrowers/clients, and Indigenous Peoples' organizations may ask ADB to support them in their development planning and poverty reduction strategies by providing financial assistance for initiatives, such as the following: ...address the <b>gender and intergenerational issues</b> that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children; prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, <b>gender and intergenerational relations</b> , and social organization, institutions, production systems, religious beliefs, and resource use patterns;	Do gender issues or gender relations include SOGIESC?
109	ESS7 Annex 1	C	Provides baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples' communities; the land and territories that they have traditionally owned or customarily used or occupied; land tenure systems and customary uses of land; the natural resources on which they depend; community and governance structures including decision making mechanisms; a description of Indigenous community's world-view, way of life, <b>gender and intergenerational relationships</b> including inheritance and property rights; religious orientation such as animism, naturism, ancestor worship;	Outline of Indigenous Peoples Plan
109	ESS7 Annex 1	C	Includes a <b>gender-sensitive assessment</b> of the affected Indigenous Peoples' perceptions about the project and its impact on their social, economic, and cultural status;	Outline of Indigenous Peoples Plan
110	ESS7 Annex 1	D	Identifies key project stakeholders and elaborates a <b>culturally appropriate and vulnerability and gender-sensitive process for meaningful consultation</b> with Indigenous Peoples at each stage of project preparation and implementation;	Outline of Indigenous Peoples Plan
110	ESS7 Annex 1	D	Assesses, based on meaningful consultation with the affected Indigenous Peoples' communities and utilizing participatory assessment tools, potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is a <b>gender-sensitive analysis</b> of the relative vulnerability of, and risks to, the affected Indigenous Peoples' communities given their particular circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to those available to other social groups in the communities, regions, or national	Outline of Indigenous Peoples Plan

			societies in which they live;	
110	ESS7 Annex 1	E	It will demonstrate the participatory methods used for developing beneficial measures in a culturally appropriate and <b>gender responsive manner</b> .	Outline of Indigenous Peoples Plan
111	ESS7 Annex 1	H	It establishes clear time-lines and processes to redress grievances. It explains how the procedures are accessible to Indigenous Peoples in a <b>culturally appropriate and gender sensitive manner</b> and where feasible ensures inclusion of Indigenous Peoples' communities' own customary dispute settlement mechanisms	Outline of Indigenous Peoples Plan
113	ESS7 Annex 2	F	Provides guidelines on ensuring cultural appropriateness of consultative process; provides for a <b>gender-responsive consultative process</b> and ensuring inclusion of vulnerable groups within the Indigenous Peoples' communities; provides measures to deal with participation barriers such as language.	Outline of Indigenous Peoples Planning Framework
113	ESS7 Annex 2	H	This section discusses processes to establish <b>culturally appropriate and gender-sensitive grievance redress mechanisms</b> for affected Indigenous Peoples.	Outline of Indigenous Peoples Planning Framework
127	ESS10	16	The borrower/client will disclose the information set out in para 15 and any other relevant information as determined by ADB, to project-affected persons in a manner that is understandable, accessible, and culturally appropriate, taking into account any specific needs of groups that may be differentially or disproportionately affected by a project or groups of the population with specific information needs such as due to ethnicity, disability, literacy, <b>gender</b> , age, mobility, differences in language, or accessibility.	Information disclosure
128	ESS10	21	Is based on early disclosure and dissemination of information in a form, language, and manner that is culturally appropriate, <b>gender-responsive</b> , understandable, and readily accessible to project-affected persons;	Meaningful consultation
135	Definitio ns		Disadvantaged or vulnerable. Those individuals or groups who, by virtue of, for example, their age, <b>gender</b> , ethnicity, religion, disability, social, civic or health status, sexual orientation, <b>gender identity</b> , economic disadvantages or indigenous status, and/or dependence on unique natural resources, may be more likely to be at risk of being adversely affected by project impacts, and/or more limited than others in their ability to take advantage of a project's benefits, excluded from/unable to participate fully in consultation processes and benefit sharing."	Disadvantage or vulnerable
139	Definitio ns		Is based on early disclosure and dissemination of information in a form, language, and manner that is culturally appropriate, <b>gender responsive</b> , understandable, and readily accessible to project-affected persons;	Meaningful consultation

## Appendix: Civil society's Gender and SOGIESC Safeguard proposal

### Gender and SOGIESC Safeguard Policy

Developed for the Asian Development Bank (ADB), April 2022

#### Key Messages

The latest ADB gender policy, the 2003 “Policy on Gender and Development,” is out of date. The ADB 2019 Operational Plan, which prioritizes gender issues (Operational Priority 2: Accelerating Progress in Gender Equality 2019-24), is more recent but mostly relies on an outdated and harmful gender binary that excludes those with non-normative SOGIESC<sup>1</sup> – and is thus inadequate to deliver on the normative ideal of inclusive, sustainable and effective development.<sup>2</sup> Although the ADB has many standards to incorporate and operationalize “intersectionality”, these mostly fail to include those with non-normative SOGIESC due to a lack of institutional enforcement, an absence of staff sensitization on the risks the community faces, and missing analytical tools to address these complex issues. A gender and SOGIESC safeguard policy meeting the following criteria is needed:

- The safeguard must be **standalone**, and must include measures to prevent and respond to discrimination, sexual exploitation, abuse and harassment.
- The safeguard should cover all ADB operations, including indirect lending such as program-based lending, multi-tranche facilities, performance-based loans, private sector loans, and financial intermediaries. **No operations are exempt.**
- The lack of capacity in some developing countries to conduct complex gender and SOGIESC assessments must be recognized and the ADB must take **responsibility** for these assessments, while attempting to build **national capacity**.
- The ADB must make the gender and SOGIESC safeguard subject to their **Accountability Mechanism**. Grievance redress mechanisms and problem-solving functions also need to be strengthened with SOGIESC considerations.

<sup>1</sup> This policy predominantly utilizes the “SOGIESC” acronym to refer to sexual orientation, gender identity and expression, and sex characteristics. For those with non-normative SOGIESC, these characteristics and identities are often a target to negative social attitudes, discriminatory laws, and other forms of exclusion, which has historically left them outside of economic development as well as economic gains. “SOGIESC” is inclusive of heterosexual cisgender people as well as lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) people. It also includes other culturally-driven characteristics and identities, like third gender people, gender-nonconforming people and others who exist outside of a sex and gender binary that prioritizes a heterosexual orientation.

<sup>2</sup> Gender Action 2020, “Unmet Gender Promises: making IFI projects and policies deliver on gender-equal rights” points out that Priority 2 acknowledges the importance of intersectionality including sexual orientation and gender identity but lacks specific protection for LGBTQI people.

: [https://genderaction.org/docs/Unmet\\_Gender\\_Promises\\_Report.pdf](https://genderaction.org/docs/Unmet_Gender_Promises_Report.pdf). See Table 2.



- While recognizing that a comprehensive gender and SOGIESC safeguard will have staffing and institutional structure implications, much greater effort must be devoted to knowledge building and understanding, **compliance and enforcement** of all safeguards, and **continuous monitoring and evaluation**, preferably by country offices. This should not be regarded as a developing country responsibility alone.

## Introduction

1. *Purpose.* This policy contributes to the [ADB's mission](#) of achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of all individuals, regardless of their gender in addition to their sexual orientation, gender identity & expression, and sex characteristics (SOGIESC). For all operations with the potential for particular risks and impacts on the basis of gender and/or SOGIESC, the Bank requires [a social and poverty assessment](#) that is gender- and SOGIESC-inclusive and which assesses risks of discrimination, gender based violence (GBV), and sexual exploitation, abuse, and harassment (SEA/H). Such Bank-financed operations will then have a management plan developed to (a) avoid potentially adverse effects on individuals who are particularly vulnerable based on gender and/or SOGIESC; or (b) when avoidance is not feasible, to minimize, mitigate, or compensate for such effects.
2. *Justification.* The Bank recognizes that differences in gender and SOGIESC expose individuals to different types of risks and levels of impacts from development projects and policies, especially in areas of health, education, labor and employment, and other key areas of life, including housing, credit, public spaces and services, government-funded programs, access to justice and access to resources. As social groups with identities that are often distinct from the dominant groups in their national societies, women, girls, and people with non-normative SOGIESC are frequently among the most marginalized and vulnerable segments of the population. As a result, their economic, social, and legal status often limits their ability to participate in and benefit from development. At the same time, the Bank recognizes that these groups play a vital role in sustainable and inclusive development.<sup>3</sup> A tremendous amount of research by economic development institutions shows that the focus on gender and SOGIESC is crucial to macroeconomic development. Inversely, when gender and SOGIESC are excluded, this not only limits macroeconomic growth but also contributes to higher poverty rates.

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<sup>3</sup> The ongoing Review and Update of the ADB Safeguards Policy Statement explicitly sets out to consider policy gaps relating to gender diversity and inclusion, including SOGIESC specifically:  
<https://www.adb.org/sites/default/files/institutional-document/650626/background-info-paper-review-update-adb-safeguards-policy.pdf>

3. *Definitions.*<sup>4</sup> For the purposes of this policy, “gender” refers to the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for individuals based on the sex they were assigned at birth. This includes societal norms dictating what types of behaviors are generally considered acceptable, appropriate or desirable for a person based on their actual or perceived sex, including gender identity and sexual orientation. Gender varies from society to society and can change over time. Gender norms are frequently hierarchical and produce inequalities that intersect with other social and economic inequalities. “Sex” can refer to the classification of a person, assigned at birth, as having female, male and/or intersex biological and physiological characteristics, such as chromosomes, hormones and reproductive organs. While infants are usually assigned the sex of male or female at birth based on the appearance of their external anatomy alone, a person’s sex is a combination of a range of bodily sex characteristics. For purposes of discrimination, sex also includes sex stereotypes, pregnancy and related medical conditions, sexual orientation, gender identity, and sex characteristics. “Sexual orientation” refers to a person’s enduring capacity for profound romantic, emotional and/or physical feelings for, or attraction to, other people. In some cultural contexts, this includes people who identify as lesbian, gay, bisexual, or heterosexual; in other contexts, these terms might be different and based on cultural identities and characteristics. “Gender identity” refers to a person’s deeply felt internal and individual experience of gender, which may or may not correspond with their sex assigned at birth or the gender attributed to them by society. In some cultural contexts, an individual might identify their gender identity as transgender, gender non-conforming, nonbinary, third gender, or cisgender; in other contexts, these terms might be different and based on cultural identities and characteristics.

“Sexual exploitation” refers to any actual or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. “Sexual abuse” refers to actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

4. *Use of Country Systems.* The Bank may decide to use a country’s systems to address environmental and social safeguard issues in a Bank-financed operation that affects individuals and communities on the basis of gender and/or SOGIESC. This decision is only made in cases where the country’s policies and laws on gender and SOGIESC are non-discriminatory and in accordance with the requirements of the applicable [Bank policy on country systems](#).

## Project and Policy Preparation

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<sup>4</sup> These definitions align with the definitions of OHCHR, the United Nations Human Rights Office: <https://www.unfe.org/definitions/>; the UN International Organization for Migration (IOM): <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/IOM-SOGIESC-Glossary-of-Terms.pdf>; the World Health Organization: [https://www.who.int/health-topics/gender#tab=tab\\_1](https://www.who.int/health-topics/gender#tab=tab_1); and the United Nations Glossary on Sexual Exploitation and Abuse: [https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf) (pages 5-6).

5. A project or policy proposed for Bank financing that has the potential for particular risks and impacts on the basis of gender and/or SOGIESC requires:
  - a. Formulation of baseline gender and SOGIESC disaggregated indicators to permit tracking progress and outcomes throughout the project or policy cycle;
  - b. A social and poverty assessment by the borrower that considers the unique impacts based upon gender and SOGIESC, as well as risks of discrimination, GBV, and SEA/H. To reiterate, current analytical tools developed by the ADB (e.g. gender and social inclusion assessments) operate on an outdated and harmful gender binary that excludes those with non-normative SOGIESC;
  - c. Meaningful consultation with the affected groups and local, regional and international civil society organizations (CSOs) specializing in women's rights and the rights and inclusion of SOGIESC issues, about the project's or policy's potential risks and impacts at each stage, in an environment that ensures confidentiality and security of participants;
  - d. The preparation of a Gender and SOGIESC Plan or a Gender and SOGIESC Planning Framework that includes measures designed to prevent and respond to discrimination, GBV, and SEA/H;
  - e. Disclosure of the draft Gender and SOGIESC Plan or draft Gender and SOGIESC Framework.
6. The necessity to meet requirements specified in paragraph 5 is triggered by any operation that has the potential for particular impacts and/or risks on the basis of gender and/or SOGIESC. While all projects that receive Category A and Category B<sup>5</sup> categorization require a gender- and SOGIESC-inclusive social and poverty assessment as part of the Environmental Assessment (EA) process, projects that are categorized as Category C under the EA process also require a gender- and SOGIESC-inclusive social and poverty assessment if there exists the potential for particular impacts and/or risks on the basis of gender and/or SOGIESC.

#### *Baseline Indicators*

7. If, based on the EA screening, the Bank concludes that a project is deserving of Category A or Category B categorization, or is determined to have the potential for particular impacts and/or risks on the basis of gender and/or SOGIESC, the Bank creates a set of baseline gender and SOGIESC disaggregated indicators to permit tracking progress and outcomes during implementation and after completion. Indicators should be context-specific to reflect the details of particular projects, yet should at least incorporate baseline indicators as created by the World Bank and UNDP.<sup>6</sup>

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<sup>5</sup> <https://www.adb.org/site/safeguards/safeguard-categories>.

<sup>6</sup> See the World Bank "Good Practice Note – Non-Discrimination: SOGI" (<https://thedocs.worldbank.org/en/doc/590671570796800429-0290022020/original/GoodPracticeNoteSOGI.pdf>) and the World Bank and United Nations Development Program (UNDP) "Set of Proposed Indicators for the LGBTI Inclusion Index" (<https://openknowledge.worldbank.org/handle/10986/30994>).

### *Social and Poverty Assessment*

8. If, based on the EA screening, the Bank concludes that a project is deserving of Category A or Category B categorization, or is determined to have significant potential for risks and impacts on the basis of gender and/or SOGIESC, the borrower undertakes a gender- and SOGIESC-inclusive social and poverty assessment to evaluate the project's potential positive and adverse effects and to examine alternatives where adverse effects may be significant. To carry out the social and poverty assessment, the borrower may be required to engage social scientists and other experts whose qualifications, experience, and terms of reference are acceptable to the Bank and include gender, SOGIESC, and SEA/H expertise.
9. A gender- and SOGIESC-inclusive social and poverty assessment will specifically assess how the policy or project is likely to have differing impacts based on gender, as well as uniquely impact people with non-normative SOGIESC. The assessment will examine the potential for the operation to have negative impacts on individuals and communities who are particularly vulnerable based on their gender and SOGIESC, as well as their potential to be excluded from the full positive benefits of the project or policy. A gender- and SOGIESC-inclusive assessment will examine areas of risk including, but not limited to, the possibility of economic discrimination or exploitation, increased risk of negative impacts on health due to lack of access to services, decreased access to education, and higher rates of sexual exploitation.
10. This analysis should be disaggregated to determine whether a project or policy is likely to have differing impacts on persons based upon their gender or SOGIESC. Special attention must be paid to persons who may have multiple vulnerabilities and/or intersectional identities by virtue of compounding factors, including but not limited to status as an indigenous person, racial, ethnic or religious minority, age, or persons living with a disability, in addition to factors related to gender and SOGIESC.
11. When it is determined that an operation is likely to have adverse impacts on the basis of gender or SOGIESC, the borrower identifies appropriate measures for avoiding or mitigating these impacts as part of the social and poverty assessment process.

### *Public Consultation*

12. If a project or policy is determined to have the potential for particular risks and impacts on the basis of gender and/or SOGIESC, the borrower/client is required to undertake public consultation with affected groups and local civil society organizations (CSOs) focusing on gender and SOGIESC issues early in preparation and continuing throughout the project or policy cycle.
13. All public consultation must be gender- and SOGIESC-inclusive, taking into account differential access to consultation mechanisms. Consultation measures must also allow for the safe participation of organizations that work on behalf of SOGIESC issues and others with non-normative SOGIESC, understanding and addressing their limited access to safe public consultation because of the sensitive nature of SOGIESC concerns. They must particularly pay attention to respecting gender self-determination.

### *Gender and SOGIESC Plan/Planning Framework*

14. *Gender and SOGIESC Plan.* On the basis of the social and poverty assessment and the results of public consultation, the borrower prepares a Gender and SOGIESC Plan that details the measures through which the borrower will ensure that (a) groups vulnerable on the basis of gender and SOGIESC affected by the operation will receive social and economic benefits in a manner equal to the benefits received by other members of the community; and (b) when potential adverse effects on the basis of gender and SOGIESC are identified, those adverse effects are avoided, minimized, mitigated, and/or compensated for. In cases where GBV and/or SEA/H are identified as a risk, targeted prevention and response measures must be put in place, including measures specifically designed to prevent and respond to SEA/H of children. The level of detail required for the Gender and SOGIESC Plan varies depending on the specific operation and the nature of effects to be addressed. The borrower integrates the Plan into the project or policy design.
15. *Gender and SOGIESC Planning Framework.* For operations involving the preparation and implementation of annual investment programs or multiple subprojects, the borrower prepares a Gender and SOGIESC Planning Framework. The Gender and SOGIESC Planning Framework provides for the screening and review of all programs or subprojects in a manner consistent with this policy and integrated into the project or program design by the borrower.

### *Disclosure*

16. The borrower makes the social and poverty assessment report and the draft Gender and SOGIESC Plan/Planning Framework available to the affected communities in an appropriate form, manner, and language. Before project or policy appraisal, the borrower sends the social and poverty assessment and the draft Gender and SOGIESC Plan/Planning Framework to the Bank for review. Once the Bank accepts the documents as providing an adequate basis for appraisal, the Bank makes them available to the public in accordance with the [Asian Development Bank Access to Information Policy](#), and the borrower makes them available to the affected communities in the same manner as the earlier draft documents.

## **Special Considerations**

### *Resettlement/Physical Relocation*

17. The Bank recognizes the potential for physical relocation to adversely impact individuals on the basis of gender and/or SOGIESC. The Bank will provide full available information to potentially adversely impacted individuals and communities to provide them the opportunity to consent or refuse operations. If they consent, the borrower will prepare a resettlement plan and compensation terms that are sensitive to gender and SOGIESC.
18. A gender- and SOGIESC-inclusive resettlement plan takes into account the differential risks and impacts of resettlement on individuals due to gender and/or SOGIESC. This resettlement plan is designed to ensure that vulnerable groups will not suffer from decreased access to services (especially health and educational services) and/or

employment opportunities due to the effects of physical relocation. The resettlement plan also ensures that vulnerable groups will not suffer from new or increased risk of discrimination, GBV, or SEA/H. The plan will provide compensation to displaced and resettled individuals, ensuring new housing, land, and other amenities that are equal to or better than conditions pre-resettlement.

19. Special attention is paid to preserving household structure as well as preventing household and community breakdown before, during, and after the resettlement process. During monitoring visits, the Bank collects data on household structure and composition. These data are disaggregated for male-identifying headed households, female identifying-headed households, and households of people with non-normative SOGIESC in order to demonstrate the impacts of the resettlement plan on each.
20. Compensatory measures for relocation shall focus on livelihood restoration. These restorative measures will be inclusive of participants in the informal economy, of which women, children, and people with non-normative SOGIESC make up a large part.

#### *Labor*

21. The borrower/client will not make employment decisions on the basis of personal characteristics<sup>7</sup> unrelated to inherent job requirements. The borrower/client bases the employment relationship on the principle of equal opportunity and fair treatment, and does not exclude or discriminate against employees with respect to any aspects of the employment relationship, such as recruitment and hiring, compensation (wages and benefits), working conditions, terms of employment, access to training, promotion, termination of employment, retirement, and disciplinary practices.
22. The borrower/client takes special measures to address gender and SOGIESC based discrimination, harassment, intimidation, and/or exploitation. The borrower/client also prevents gender- and SOGIESC-based social exclusion and employment inequalities. To the extent possible, the borrower/client allows employment not to conflict with household responsibilities.

#### *Indigenous Peoples*

23. The borrower/client will ensure the participation of women, girls, and others with non-normative SOGIESC in the process of consultation required by *Safeguards Requirements 3: Indigenous Peoples*. Beyond indigenous peoples, gender- and SOGIESC-inclusive consultation will be extended to all affected individuals, see para. 13.
24. This consultative process will allow for safe, culturally appropriate, and accessible measures to include women, girls, and others with non-normative SOGIESC.

#### *SEA/H prevention and response*

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<sup>7</sup> Such as gender, sexual orientation, gender identity, race, nationality, ethnic, social and indigenous origin, religion or belief, disability and age (except when age is used to prevent child labor and to protect children from the worst forms of child labor, as defined by ILO Convention No. 182).

25. The Bank recognizes the uniquely heightened risks of SEA/H experienced by women, girls, and people with non-normative SOGIESC and thus environmental and social management plans will include targeted measures to both prevent and respond to cases of SEA/H.
26. These measures will be tailored to the needs of each vulnerable group with specific measures in place to address unique risks to women, specific measures to address unique risks to people with non-normative SOGIESC, and specific measures to address unique risks to children.
27. Project-level Grievance Redress Mechanisms are designed in ways that enable safe reporting of cases of SEA/H and include channels which are accessible to women, men, people with non-normative SOGIESC, and children. Channels that are accessible to children must be designed in a child-friendly manner.
28. For operations identified by social assessments as having a high risk of SEA/H, borrowers/clients are required to contract with dedicated SEA/H service providers in advance of beginning implementation such that, where cases of SEA/H are reported, survivors can be immediately referred for necessary health and support services. Service providers must have the capacity to support women, men, people with non-normative SOGIESC, and children. Where necessary more than one service provider may be contracted to meet the needs of these different groups.
29. The borrower/client must carry out trainings and awareness raising activities related to prevention of SEA/H for all contractors, project workers, and communities. These activities must clearly set the age of consent for workers employed on the project at 18, regardless of any provisions in national law setting an earlier age of consent.

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**List of NGOs endorsing the Standalone Gender-SOGIESC Safeguard (as of July 18, 2023):**

1. American Federation of Labor-Congress of Industrial Organizations
2. Asia Pacific Coalition on Male Health (APCOM)
3. ASEAN SOGIE Caucus
4. Bank Information Center (BIC)
5. BIMBA (Kiribati)
6. Center for Values in International Development
7. Council for Global Equality
8. Equal Asia Foundation
9. Equal Ground (Sri Lanka)
10. Friends of the Earth, U.S.

11. Foundation Earth
12. Gay, Lesbian & Straight Education Network (GLSEN)
13. Gender Action
14. Global Equality Caucus
15. Global Union LGBTI Workers Project (Council of Global Unions)
16. Greenpeace, U.S.
17. Human Rights Campaign
18. iAm (Fed. States of Micronesia)
19. International Center for Research on Women (ICRW)
20. ILGA Asia
21. ILGA Europe
22. Kaleidoscope Human Rights Foundation (Australia)
23. LAIIB. (Palau)
24. LGBT Rights Advocacy (China)
25. LSVD & Hirshfield Eddy Foundation
26. Micro Rainbow, Int
27. National Queer Asian Pacific Islander Alliance
28. Open For Business
29. Out Leadership
30. OutRight International
31. Queerly Legal (New Zealand)
32. Pride Cook Islands
33. Proud at Work-Foundation
34. PSGDN Pacific Sexual & Gender Diversity Network
35. RPF Rainbow Pride Foundation (Fiji)
36. Samoa Fa'afafine Association (Samoa)
37. Sierra Club, U.S.
38. SoFi A Society of Fa'afafine in American Samoa
39. Te Tiare Association (Cook Islands)
40. Tonga Leitis Association (Tonga)
41. Tuvalu Akanda Alliance (Tuvalu)



- 42. Urgewald (Germany)
- 43. VPride (Vanuatu)