

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

Submission from Institution of Occupational Safety and Health
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Asian Development Bank

Public feedback - Draft Environmental and Social Framework (ESF)



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Introduction – Overview general comments

The Institution of Occupational Safety and Health (IOSH), the Chartered body for occupational safety and health professionals, with approximately 50,000 members in more than 130 countries, has a vision of 'A safe and healthy world of work'. We are pleased to provide feedback to the Asian Development Bank public feedback consultation on the 'Environmental and Social Framework (ESF) Consultation Draft'.

As an international non-profit organisation, IOSH influences important decisions that affect the safety, health and wellbeing of people at work worldwide. We collaborate with governments, advise policymakers, commission research, set standards, engage with organisations such as the International Labour Organization (ILO), the World Health Organization (WHO) or International Development Banks and run high-profile campaigns to promote awareness of occupational safety and health (OSH) issues. The IOSH Policy and Regulatory Engagement function provides a strong foundation for key policy responses and public policy initiatives that focus on the crucial role of OSH.

The prevalence of labour and occupational health and safety issues in many countries within the Asia continent is still a harsh and an unacceptable reality. Contributing causes to this situation are diverse and complex due to the socio-economic context of the Asian regions and the inadequate attention given to OSH matters at a national policy and business level. The role of the Asian Development Bank (ADB), and in particular, the specific areas relating to labour and working conditions, health, safety and security and climate, are key to supporting the UN Sustainable Development Goals (SDGs) and to ensuring stronger due diligence policies and practices while advocating for more practical resources on the ground. These standards need to be integrated as early as possible in the project cycle including processes of planning, procurement, contract and asset management, and financial management where existent.

The public consultation on the Bank's ESF is quite timely as globally we see an increasing pressure from investors, through foreign investment insisting on extended labour and OSH compliance in accordance with key ILO international conventions and standards (labour and OSH) as a prerequisite for decent work and responsible and sustainable investment in a wide spectrum of projects on the continent as well as through the delivery of the SDGs. This is of importance as, yet many shareholders, employees, creditors, and society as a whole, remain largely in the dark about the negative impacts of poor health, safety and wellbeing on workers, on business, on society and the economy and on project-affected communities.

IOSH's Response

Environmental and Social Framework: September 2023 Consultation Draft¹

Environmental and Social Policy

IV. ADB Responsibilities, Section 11: *'Borrowers/clients will apply the relevant requirements of internationally recognized standards such as World Bank Group Environmental, Health, and Safety Guidelines (EHSGs) and other good international practice (GIP), as required under the ESSs and as applicable'*. We recommend that social assessment disclosure and reporting practices should have a

¹ <https://www.adb.org/sites/default/files/institutional-document/908561/environmental-social-framework-draft.pdf>

stronger alignment with occupational health and safety reporting metrics. The ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001) and developments on reporting standards such as 'GRI 403: occupational health and safety (2018)'² or 'ISO 45001:2018 Occupational Safety and Health Management Systems'³ are good examples of frameworks and reporting disclosures which covers reporting requirements on OSH matters. Both GRI 403 and ISO 45001:2018 place a stronger focus on strengthened management approaches and on the use of leading indicators⁴; there are more people covered by the term 'workers'; and they both focus on prevention of harm and promotion of health (based on the United Nations Sustainable Development Goals (SDGs)). Both of these standards also brings forth a greater emphasis on health issues (physical and mental); for example, injury severity is measured by recovery time and not just lost time; and improved data collection, including on sex, gender, age and migrant status where relevant⁵, with ISO 45001:2018 family of standards including ISO 45003:2021 on guidelines for managing psychosocial risks within an occupational safety and health management system.

D. Environmental and Social Assessment, Section 24. *'The borrower/client will ensure that the E&S assessment will take into account all relevant E&S risks and impacts of a project...'* We are pleased to see risks to labour, working conditions and rights of project workers listed, however, we also recommend the inclusion of the following examples: adverse impacts that pose a risk to the protection of basic workers' rights as detailed in the ILO Declaration on Fundamental Principles and Rights at Work⁶, and specifically to the fundamental principle and right at work for a safe and healthy working environment; the abolition of child labour, and the elimination of forced labour and human trafficking in global supply chains.

I. Primary Suppliers and Primary Supply Workers, Section 37: *'...the borrower/client will identify and assess potential or actual risks of child labor, forced labor, and serious safety issues which may arise in relation to primary suppliers'*. We recommend that serious occupational health issues as well as serious occupational safety issues are included within this scope. For example, this will ensure appropriate action is being taken to address the toll of occupational diseases, occupational cancers, etc.

L. Management of Contractors, Section 68. *'The borrower/client will require all contractors and sub-contractors engaged on a project....(vi) In the case of subcontracting third parties requiring contractors to have equivalent arrangements with their subcontractors'*. We recommend the inclusion of another subsection, which should be titled '(vii) Requirement equivalent levels of compliance to more opaque and subtle forms of outsourcing (e.g. use of business process outsourcing, freelance contractors, outsourced digital work, platform workers...)'

Rationale for this inclusion: Digital infrastructure, such as telecommunications networks, data centers, cloud services, devices and applications, and adequate power supply is ubiquitous in the Global South. According to a 2021 ILO study, the vast majority of online freelance work in the world is performed by workers in the Global South, nearly half in India and the Philippines. In the latter - one of the world's biggest destinations for outsourced digital work - workers in digital sweatshops can be subject to exploitation, workers who sort and label data for artificial intelligence models (an estimated 2 million people in the Philippines perform this type of "crowdwork carried out by freelance contractors). A similar situation occurs with helpdesk workers

² GRI 403:2018, <https://www.globalreporting.org/standards/media/1910/gri-403-occupational-health-and-safety-2018.pdf>

³ ISO 45001:2018, <https://www.iso.org/standard/63787.html>

⁴ Leading indicator definition from GRI:403: 'Leading indicators measures and organizations performance in relation to the actions it takes to prevent work-related injuries and ill health. They are important because organizations cannot rely solely on lagging indicators, which might not give a true picture of their occupational health and safety performance due to issues such as long-latency ill health and underreporting'.

⁵ Jones, R. Meaningful OSH performance reporting and a new social license to operate. Leicester, October 2020. https://www.inclusivegrowth.eu/files/Call-30/IOSH_discussion_paper_InGRID2_RJones.pdf

⁶ ILO, <https://www.ilo.org/declaration/lang--en/index.htm>

or online content moderators that work for a flourishing call center industry and that are considered as contractors through giant outsourcing agencies.

ESS 2. Labor and Working Conditions

II. Objectives. We recommend the inclusion of 'provision of a safe and healthy working environment' or the 'prevention of harm to workers safety and health' to the objectives. The inclusion will ensure alignment and commitment to fundamental principles and rights at work.

C. Protecting the Work Force.

Within this section we propose the following two inclusions (c and d) to the already identified 'a) child labour and b) forced labour.

c) A safe working environment. The borrower/client will ensure a safe and healthy working environment for project workers and project-affected communities.

Rationale for this inclusion: A safe and healthy working environment is a fundamental principle and right at work, as is eliminating forced labour and abolishing child labour. Ensuring a decent working environment is paramount for the workers, business, society and the surrounding community.

d) Non-standard forms of employment. The borrower/client will ensure that labour protections are provided to project workers and project-affected persons and communities that are at risk of deviating from standardised forms of employment. This includes temporary employment; part-time and on-call work; temporary agency work and other multiparty employment relationships; as well as disguised employment and dependent self-employment.

Rationale for this inclusion: Part of ADB's investment portfolio covers digital technology start-ups, through ecosystem development and impact investment that could potentially support companies that rely on app-based or "platform workers", who often face exploitative or otherwise abusive work conditions.

F. Contracted workers

We believe this section requires an explicit mention to the platform economy as there's potential for borrowers and clients to contract workers that could be classified as self-employed or independent contractors who have far fewer employment rights and social protections. In this context, platform workers could be contracted for temporary or seasonal roles. This is also relevant considering ADB's influence in financial markets, including capital markets, and for those initiative that try to make more robust the institutional investor base to provide long-term financing. This makes the case for adopting precautionary principles in early-stage investments in digital platform-mediated services linked to public investment that looks at promoting social and economic development.

G. Community Workers, Section 34. 'Where a project involves the provision of labor by community workers, the borrower/client will include measures in a project's labor management plan to determine whether workers are performing work on a voluntary basis as an outcome of individual or community agreement.' We recommend that this section makes mention to the informal sector that could include businesses, project workers and project-affected persons and communities, and activities operating outside the legal and regulatory systems.

I. Primary Suppliers and Primary Supply Workers, Section 37: '...the borrower/client will identify and assess potential or actual risks of child labor, forced labor, and serious safety issues which may arise in relation to primary suppliers'. We recommend that serious occupational health issues as well as serious occupational safety issues are included within this scope. For example, this will ensure appropriate action is being taken to address the toll of occupational diseases, occupational cancers, etc.

New sub-section 'J. Trade and Supply Chain Finance initiatives'. We recommend including an additional sub-section for improved assurance and governance on the area of Trade and Sustainable Development, Finance and Investment, through the effective management of bilateral, regional and international investment and trade agreements towards the promotion of business respect for human rights. We believe this is the way to engage in transparent and socially responsible investment and sustainable trade models that prioritise the ratification and implementation of labour, OSH and other human rights.

ESS3: Resource conservation and pollution prevention

IV. Requirements. 6. and applicable to G. Management of Hazardous and Non-hazardous Waste, H. Management of Hazardous Chemicals, Substances, and Materials and the applicable internationally recognized standards such as... We suggest the inclusion of the Global Framework on Chemicals (GFC) and the Bonn High-Level Declaration on Chemicals as well as the ILO guidelines for handling biological hazards in the working environment⁷ to better protect the environment and human health, including that of vulnerable groups and workers. We also recommend for ADB representatives to take part in future debates towards the development and implementation of an international standard covering biological hazards.

Rationale for this amendment: A just transition towards an environmentally sustainable economy with the sound management of biological hazards, hazardous chemicals and waste must contribute to the goals of decent work for all, social inclusion, and protection of human rights. A safe and healthy working environment is a fundamental principle and right at work; therefore, all workers should be protected from hazardous chemicals and waste, along the entire supply chain. Workplace measures and policies, including the ratification and implementation of relevant International Labour standards, should be integrated in the management and prevention of biological hazards, chemicals and waste management efforts.

ESS 4. Health, Safety and Security

IOSH is recommending that it is imperative for ADB's Environmental and Social Framework to better address the needs of vulnerable groups of workers: the younger workers, older workers and female workers; those with disabilities; migrant workers; and those on non-standard employment contracts or in low qualified work, who may be disproportionately employed in physically demanding or hazardous jobs putting them at higher risk of work-related injury and illness.

It is also worthy to note, that certain groups might be more vulnerable to exploitation, forced labour and modern slavery (when an individual is exploited by others, for personal or commercial gain. Whether tricked, coerced, or forced, they lose their freedom⁸). Gender sensitive approaches to risk management practices need to prioritise the higher risk profile faced by females and recognise the differences in how modern slavery manifests itself across the gender divide. On a similar note, workers operating in the informal economy, or in essential activities such as construction or electronics, where risks are higher can be more exposed to vulnerability risks. Internal or foreign migrant workers, low skilled workers, high numbers of informal workers, temporary/agency/contract/seasonal workers, or in professions under the radar of OSH protections need to be considered.

II. Objectives.

⁷ ILO, https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS_887758/lang--en/index.htm

⁸ Anti-slavery. Modern slavery definition. <https://www.antislavery.org/slavery-today/modern-slavery/>

'a) protect and promote the health, safety and security of project workers...'. It is recommended that 'prevention' of harm and 'preventative measures' is also referenced in point (a) along with protect and promote.

Under point a) it is also recommended that a specific reference highlighting that occupational safety and health measures will be designed and implemented to enable effective reporting of occupational accidents, diseases and work-related incidents and ill health. We believe that this wording is not robust enough considering how prevalent the lack of occupational safety and health data and poor reporting systems are, together with under-reporting of occupational incidents, accidents, diseases and work-related injuries and ill health.

'b) and respond to, adverse impacts on the health, safety, and security, including sexual exploitation, abuse, and harassment' also include 'conditions in which the work is performed, excessive working hours or violence and harassment'.

We also suggest including an additional paragraph: f) Ensure the effective recognition of a safe and healthy working environment as a fundamental principle and right at work.

IV. Requirements.

A. General Requirements for Ensuring Health and Safety

4. Applicable laws: We suggest the inclusion of key ILO standards specifically dealing with occupational safety and health, in the form of fundamental Conventions, Conventions, Recommendations, guidelines and Codes of Practice.

We also believe that special attention needs to be paid to the sectors that have more fatal work accidents (industrial, construction, manufacturing, garment, mining and agricultural activities). From child labour issues in cocoa plantations, abusive working conditions of textile suppliers to the fashion industry, to complex activities such as the extraction of cobalt, coal, copper, lithium, manganese, nickel and zinc – core components for renewable energy technology – allegations of human rights abuse, and occupational safety and health⁹ are common. As projects, activities, equipment, and infrastructure linked to these sectors can increase community exposure to risks and impacts, there is a need to strengthen the due diligence associated to these activities and hazardous industries.

B. Occupational health and safety.

9. The borrower/client will provide project workers with a safe and healthy workplace ... We recommend the inclusion of the following wording: 'a safe and healthy working environment' to ensure alignment with fundamental principles and rights at work.

10. Where there are specific risks associated with certain work activities that could result in adverse effects on the health and safety of disadvantaged or vulnerable project workers,... We believe that this text lacks from a general principle to take into consideration gender differences in the development of OSH policies and prevention strategies by borrowers/clients such as the implementation of gender-sensitive OSH risk assessments. This approach can help to improve the understanding biological differences, employment patterns, social roles and social structures within the workforce or the community can play to gender-specific patterns of occupational hazards and risks.

⁹ Walters D, Wadsworth E, Johnstone R, Lippel K, Quinlan M, Bhattacharya B, and James P. The role and effects of representing miners in arrangements for safety and health in coal mining: a global study. Wigston: IOSH, 2018

11. *The borrower/client will designate a person responsible for OHS, who will implement the HSMP...* while we agree to the inclusion of an identified responsible person, and one that is competent, we believe this paragraph can specifically mention how organisations can integrate OSH management into other systems and into their core business processes.

16. *The review will include identification of safety and health hazards and risks...* We recommend making specific mention to the evolving nature of some OSH risks, e.g. adverse impacts of digital technologies (before any AI-enabled devices or systems are introduced into a workplace, a thorough and more proactive OSH review of their benefits and risks should be carried out), and climate change and OSH. It is also recommended that OSH performance and performance measures are regularly reviewed at this stage.

V. Specific requirements for health and safety management.

D. Reporting of Accidents and Injuries including Fatalities.

In addition to what is already stipulated in Section 19, we see that the Banks demand for improved transparency in projects led by borrowers and clients is a great opportunity for OSH-related reporting needs to be meaningful and comparable and to include both 'leading' and 'lagging' indicators. Improving on OSH performance reporting, so that it can be more transparent, meaningful and comparable can help drive better standards, decision-making and resource allocation¹⁰ and more effectively inform work health and safety strategies and practices. Lagging indicators tend to measure the occurrence and frequency of past events, such as the number or rate of injuries, illnesses and fatalities. For that reason we recommend that this text mentions the benefits of using both leading and lagging indicators and for using these measures as part of a robust occupational health and safety management system, and for implementation of an occupational health and safety management system itself.

F. Exposure to Disease, Section 22.

Similar to the general recommendations provided on the reporting of accidents and injuries including fatalities, IOSH believes that this section doesn't address with the required detail the reporting of occupational health exposure and disease, therefore lacking from a stronger focus on both prevention of harm and promotion of health (as the SDGs recommend). To this extent, IOSH recommends the inclusion of a more balanced set of health metrics. This is a matter of increasingly relevance, due to the already high toll of occupational disease and illness¹¹, and also the emergence of many climate-sensitive disease risks continues to evolve, the threat of climate-sensitive infectious diseases (vector-borne, zoonotic viral diseases, etc...) becomes more prevalent in the context of climate change and intensifying environmental degradation. It is recommended that borrowers/clients take into consideration how regions, workers and people in different occupations are affected by emerging health issues such as climate change-driven infectious disease and incorporate OSH-related mitigation and adaptation interventions.

We believe the field of emerging infectious diseases prevention, preparedness and response is a critical one for the interests of the Bank to help strengthen selected national and provincial systems in ADB constituency regions in order to reduce the risk of zoonotic and other emerging health threats on project workers and project-affected persons.

H. Natural Hazards

¹⁰ Jones, R. Meaningful OSH performance reporting and a new social license to operate. October, 2020.

https://www.inclusivegrowth.eu/files/Call-30/IOSH_discussion_paper_InGRID2_RJones.pdf

¹¹ ILO, https://www.ilo.org/moscow/areas-of-work/occupational-safety-and-health/WCMS_249278/lang-en/index.htm#:~:text=The%20ILO%20estimates%20that%20some,of%20work%2Drelated%20illnesses%20annually.

25. *'The borrower/client will undertake a climate risk assessment in accordance with ESS9...'* The borrower/client will also aim to comply with existing legislation that requires them to conduct human rights and environmental due diligence to identify and address human rights and environmental impacts, including climate change-related impacts, covering the entire value chain such as hazards of a natural nature. The borrower/client will promote adaptation measures that minimise impacts of extreme natural events, especially on vulnerable populations.

I. Sexual Exploitation, Abuse, and Harassment (SEAH)

IOSH recommends that this section includes a specific acknowledgment of the gender dimension of violence and harassment and includes specific measures to address its root causes as the ILO Convention No. 190¹² and Recommendation No. 206. suggest, in particular for those most vulnerable to violence and harassment faced and at risk of exclusion and discrimination, such as women, indigenous people, people with disabilities or living with HIV/AIDS and domestic and migrant workers.

On this subject we recommend that the Bank takes a more proactive approach to collaborating with UN agencies, such as the ILO, UN-Women, the United Nations Development Programme and the WHO to address gender-based violence and harassment (GBVH) and to promote the previously cited regulatory framework for the prevention and elimination of such unacceptable behaviours and the creation of a safe and healthy working environment based on dignity and respect for all.

K. Infrastructure, Building and Equipment Design and Safety

IOSH believes that this section is lacking from a prevention-first approach to infrastructure and construction projects. The relationship between design and construction accidents is of critical importance as a significant number of accidents have a strong correlation to how OSH is embedded in the design phase of the project. To reduce the inherent hazards in the design, designers¹³ of construction and infrastructure projects need to be increasingly educated and trained on occupational safety and health aspects. Integrating sound occupational safety and health principles into the design process needs to be seen as critical for borrowers and clients to ensure safe working environment for project workers and project-affected persons and communities, the public, and the long-term sustainability of the infrastructure, building and equipment design.

M. Management and Safety of Hazardous Chemicals, Substances, Materials, and Wastes

IOSH recommends strengthening the principle of a prevention first approach to the management and Safety of Hazardous Chemicals, Substances, Materials, and Wastes. Preventing hazardous waste from being produced in the first place needs to be prioritised by the Bank, borrowers and clients. A similar approach should be followed for incentivising the reuse, recycle and recovery of hazardous waste rather than the disposal.

A similar approach must be incentivised for hazardous chemicals and substance products are safe and sustainable by design in order to improve product safety, prevent pollution, mitigate climate change and enable a circular economy.

N. Emergency Preparedness and Response. Sections 38. and 39.

We recommend for this text to be added to this section: *The borrower/client will also incorporate mechanisms and human resources to protect and improve worker's and people's mental health and psychosocial well-being in the midst of an emergency.*

VI. Monitoring and disclosure, Section 48.

¹² ILO, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

¹³ Hare, B., Campbell, J., Skivington, C. and Cameron, I. Improving designers' knowledge of hazards. IOSH, 2019

We recommend that social assessments disclosure and reporting practices should have a stronger alignment with health and safety reporting metrics. The ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001) and recent developments on reporting standards such as GRI 403: occupational health and safety or ISO 45001:2018 Occupational Safety and Health Management Systems are good examples of frameworks for sound OSH performance reporting. As part of the reporting process, both leading and lagging indicators are to be used.

Draft ESS 9 Climate change C.

Assessment and Management of Climate Risks

We welcome the ADB's efforts in scaling up support to address climate change, disaster risks, and environmental degradation and environmental sustainability. ADB helps its member countries to become more resilient to disasters by financing disaster risk management in areas such as flood control, early warning systems, nature-based solutions, integrated water resource management, resilient infrastructure, and disaster risk financing.

We see a need for a greater integration of climate change and worker-centric risk management into investment and development strategies. Vulnerable and disadvantaged workers, including women, ethnic minorities, migrants, older populations and those with underlying health conditions tend to be neglected by climate change national health policies and adaptation plans¹⁴. These workers are more vulnerable to the damage caused by climate change or as a consequence the climate change developments and continue to be excluded from health promotion, disease prevention, treatment and access to care programmes, as well as social protection mechanisms, on a global scale.

This can be particularly challenging in projects in countries such as India or Indonesia that have committed to a shift away from reliance on domestic coal and the subsequent transition to the renewable electricity sector, towards cleaner technologies and infrastructure.¹⁵ To accelerate this transition in the region, ADB through its Transition Mechanism (ETM) can help to avoid adverse impacts on the environment and people and avoid weakened protections for workers as a result (see working conditions and environmental degradation in regions such as Indonesia's Morowali Industrial Manufacturing Park (IMIP)¹⁶.

Prohibited investment activities list

We welcome work towards updating the ADB's prohibited investment activities list. We are particularly concerned that pre-investment screening and diligence processes could fall short when it comes to assessing projects and identifying and responding to the potential or actual human rights impacts of investments associated to digital technologies industries, digital technology start-ups, digital services or data analytics. To this extent, we the ESF framework of the prohibited investment activities list could make reference to avoid investment opportunities with borrowers, clients and other groups of interest that don't identify, audit or assess the risk that the artificial intelligence and machine learning (AI/ML) systems can have at both the design, adoption, development and deployment stage of a project.

As the spectrum of responsible investment practices continue to evolve at a fast pace, we also recommend the inclusion of the following disclaimer: *'This prohibited list is not exhaustive and ad hoc assessments are made where investments associated with similar or related risks are being contemplated'*.

¹⁴ Institution of Occupational Safety and Health. Climate change and OSH policy position. Leicester, 2022.

¹⁵ Elizabeth Ruppert Bulmer, Kevwe Pela, Andreas Eberhard-Ruiz and Jimena Montoya. 2021. "Global Perspective on Coal Jobs and Managing Labor Transition out of Coal." World Bank, Washington, DC.

¹⁶ Wired. Workers Are Dying in the EV Industry's 'Tainted' City. <https://www.wired.co.uk/article/workers-are-dying-in-the-ev-industrys-tainted-city>

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