

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

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Overview/General Comments

The Bank Information Center's overall comments and engagement through the ADB SPS/ESF process has been with the intention of not only strengthening the new framework, but also to recommend putting in place processes and requirements that enables strong implementation of ADB funded projects that prioritizes quality of implementation over speed. While strong binding policy language is necessary, it is equally important that the ADB build in strong mechanisms for monitoring and implementation throughout the project cycle in order to prevent harm and promote equitable access to project benefits. While projects may be compliant on social and environment assessments at the approval stage, without adequate monitoring and assessments throughout the project cycle including after it has concluded, the Bank will be unable to adequately measure the success of a project and understand lessons learnt. In addition to the comments below, we also recommend that Operations Manuals, Guidance Notes and any other organizational documents that will supplement and accompany the ESF be disclosed for public consultation in a timely and accessible form, with adequate time for interested stakeholders and project affected communities to comment and provide feedback.

Draft Environmental and Social Policy

1. Environmental and Social Risk Classification (E&S Policy, para 21.(ii)) should consider risks to local communities, as well as SEAH and GBV risks, including child SEAH.
2. The Environmental and Social Policy, including through the Environmental and Social Commitment Plan/Environmental and Social Action Plan (ESCP/ESAP), should require the borrower to complete and disclose all environment and social assessments and tools prior to Board approval, in a timely manner that allows for project affected communities and civil society to be fully informed, at least 120 days before Board approval for High and Substantial Risk projects, and at least 60 days in advance for Moderate Risk projects. ***Section I.49*** states '*ADB will disclose documents and information relating to the E&S risks and impacts of High Risk, Substantial Risk, and Moderate Risk projects prior to project appraisal or final credit approval, unless such documents and information including assessment tools and management tools will be prepared by a borrower/client post-ADB approval of a project, as reflected in an ESCP/ESAP.*' (Emphasis ours). It is crucial that ADB maintains their current front loaded requirements prior to Board approval. Releasing project documents in an accessible and time bound manner, with ample time for stakeholders to review in advance of consultations or decision points, is of utmost importance in order to prevent, reduce, or mitigate social and environmental harms.
3. In view of the upcoming Accountability Mechanism review, we recommend the removal of any reference to Good Faith Efforts in Section L.61 and anywhere in the ESF that states a requirement of good faith efforts prior to approaching the ADB AM.
4. We recommend that the ESF includes a section on remedy that includes information on
1) Detailing a plan for the types of remedy ADB will provide
2) Explicitly defining ADB's responsibility to provide direct financial contribution for remedial action
3) Providing access to remedy after the end of a project
4) Delivering remedy to communities experiencing harm from projects that have already been approved
5. There must be clearer language in the ESF on safeguards applications for sovereign and non-sovereign operations.
6. Assessments must include contextual risk assessments that also take into consideration the risk of reprisals to project stakeholders and the country's human rights track record and compliance with internationally recognized human rights standards. The current language in the ESF draft does not explicitly refer to human rights or human rights defenders in the sections on risk assessment. Contextual risks and risk of reprisals should also be considered in project risk classification.
7. The anti-reprisals statement should be applied broadly to cover anyone linked to the project or project affected communities, such as drivers and translators. The ESF must be accompanied by operational guidance for Bank staff on preventive measures and response to reprisals. Protocols for reprisal response should enable reporting and

responding to incidents throughout the project life cycle from design and extending beyond the formal close of the project.

8. We welcome ADB's commitment to mainstreaming nature. To implement this, please see <https://bankinformationcenter.org/en-us/update/how-should-multilateral-development-banks-implement>
9. Section G.38 we recommend revising as follows - If ADB concludes that a borrower/client has inadequate technical capacity to carry out the E&S assessment process, ADB will require a borrower/client to include in the ESCP/ESAP, a description of trainings to undertake and share such assessment prior to disbursement (In cases where this is not feasible in the needed time frame, the borrower/client has the option of hiring consultants to undertake the assessment, subject to ADB's approval of the consultant (verifying qualifications), and address the specific measures and actions required to support effective and continuous E&S performance, including through addressing the E&S issues identified in the assessment.
10. We recommend that universal access is explicitly stated in the ESF, and defined in the "Definitions for ESF" document, and mandatory to any public infrastructure financed by the ADB, and not only where technically and financially feasible as it is currently stated in the ESF. For the definition an example of the World Bank safeguards definition - *Universal access means unimpeded access for people of all ages and abilities in different situations and under various circumstances*. We also suggest removing "where technically and financially feasible" as this is subjective and can lead to borrowers and clients 'opting' out without considering how this might be possible.
11. We recommend that the ESF includes a specific requirement around **disaggregation of data by disability and** that this is mentioned where disaggregation by gender is specified (for example, page 79 requires a gender-disaggregated analysis of mitigation activities). Collecting data and analysis on disability throughout the project cycles is critical to understand the differentiated impacts on Bank projects on people with disabilities and to enable the planning of effective policy and programmes. It is not sufficient to assume that a general poverty analysis will sufficiently address people with disabilities.
12. We recommend ADB adequately consider the negative or positive contribution of its investments to global social and environment problems. Specifically, for Environmental And Social Risk Classification, in determining appropriate risk classification add to section 21 (vi): Adverse contribution to aggregate causes of international social and environmental problems, including the climate crises, loss of biodiversity, persistent organic pollutants, depletion of soil and freshwater.

Draft ESS 1: Assessment and Management of Environmental and Social Risks and Impacts

1. Include a paragraph in ESS1 requiring the borrower/client to “Assess risks of discrimination in access to project benefits. The borrower/client must assess the unique risks of discrimination for each group deemed disadvantaged or vulnerable, including risks based on gender, SOGI, disability or age. Where any risks of discrimination are identified the borrower/client will apply the motivation hierarchy with a focus on enabling equitable access to project benefits for all disadvantaged and vulnerable groups.
2. Regarding excluded activities (para. 5), the ESS states that “The borrower/client will ensure that a project does not include activities on the Prohibited Investment Activities List.” It should also specify that **“inclusion of such activities, if discovered, will be grounds for withdrawal of all ADB financing.”**
3. In paragraph 24 (ii), include contextual risks and risk of reprisal.
4. Annex 1 - we recommend the addition of -

(viii) Alternatives Analysis

An Alternatives Analysis is expected whenever there are physical or technical aspects of a project that present potentially significant risks and impacts. The alternatives analysis must describe a reasonable range of feasible alternatives to the project and/or project location that could feasibly attain most of the basic project objectives and that would avoid or substantially lessen any of the significant negative impacts of the proposed project. Accordingly, alternatives that do not avoid or substantially lessen such impacts do not qualify as meeting the Alternatives Analysis requirement. Additionally, a full alternatives analysis requires analysis of 1) full lifecycle project impacts and 2) the No-Project Alternative to allow decision-makers to compare the impacts of project approval over its full life with the impacts of not approving the project. The [Alternatives Analysis](#) must evaluate the comparative merits of the alternatives and identify the environmentally and socially superior alternative other than the No-Project Alternative.

Draft ESS 2: Labor and Working Conditions

1. Section 2.15: We recommend the following inclusion (in bold) - The borrower/client will take appropriate measures to prevent and address in a project context any form of violence and harassment, bullying, intimidation, and/or exploitation, including any form of **sexual exploitation, abuse, and harassment (SEAH) and gender-based violence (GBV)**.
2. Section V.C.22: We recommend the following inclusion (in bold) - The borrower/client will ensure that any **project workers** identified as over the minimum age and under 18 years of age will be subject to appropriate assessment of their physical health prior to commencing work and to regular monitoring of health, working conditions, hours of work, **school attendance (particularly in countries where the age for compulsory education is above the minimum age for children employment)**, and other requirements of this ESS2.
3. Section V.C.23: While this is in line with C138, we recommend a detailed analysis that is disclosed that justify why children can be engaged in project-related light work.
4. Section V.C.24: We recommend the following inclusion (in bold) - Where a child is engaged in a project, regardless of age, the borrower/client will take appropriate measures to prevent and address any form of violence and harassment, bullying, intimidation, and/or exploitation, including any form of **SEAH**, and ensure access to grievance mechanism under para 31. If cases of child labor are identified, the borrower/client will promptly take corrective actions to eliminate such practice from a project **and support children to return to school**.

See from ILO - "The two different age groups of children (below or above the general minimum working age) require different approaches: Younger (school age) children below the minimum working age should be withdrawn from work and helped to return to school, whether the work is hazardous or not. However, young children in hazardous work must be a priority target for rescue."

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_ipec_pub_30296.pdf

5. Section E.31: We recommend the following inclusion (in bold) - The borrower/client will set up an effective grievance mechanism through which **project workers** and their organizations, where they exist, can raise workplace concerns. This grievance mechanism will be separate, and in addition to, the grievance mechanism described in ESS10 for a project. The borrower/client will ensure that the grievance mechanism set up under this ESS2 addresses concerns promptly and is readily accessible to project workers. **The grievance mechanism must be child-friendly, whether the project plans to employ children or not.**

We further recommend adding - **If the project employs or plans to employ children or if child labor is a risk in the project area, the GRM must be child-friendly.**

6. Section VI.40: We recommend the following inclusion (in bold) - Depending on the level of risks and impacts with regards to labor and working conditions, the borrower/client will prepare and disclose a project labor management plan as a standalone plan or as part of the project environmental and social management plan (ESMP) in accordance with ESS1 and ESS10. **If the project is in a country or an industry sector where child labor is prevalent, the labor management plan should include a dedicated child labor management section. This plan should address the push pull factors that lead to child labor and contain concrete actions and budget for the prevention and response measures that it sets.**

Draft ESS 3: Pollution Prevention and Resource Efficiency

While the draft text covers all relevant areas, there are gaps and ambiguities within these areas that should be addressed to achieve the goals of preventing pollution and achieving resource efficiency. Specifically:

1. In para. 2, we recommend a) highlighting “Circular Economy” so it is clear it is a defined term and b), after “resource conservation” adding, for clarity, “(avoidance of resource extraction through reducing, reusing, repurposing and recycling of resources).”
2. In para. 6, the first sentence should clarify that proportionate measures are a minimum, not a maximum, and that they must be sufficient to address the risks. Thus it should read: “...that measures are, at minimum, proportionate to and sufficient to address, the nature and scale of the potential E&S risks...”
3. In para. 7, if less stringent standards are proposed, the borrower/client should provide a full **alternatives analysis** including detailed assessment, etc., since this aligns with and clarifies the requirement for justification for the proposed alternatives.
4. In para. 10, the 1st sentence should require that the borrower/client will ensure that the measures integrate the principles *and practices* of a **circular economy**. The reasoning here is that for this to be effective, it's important that circular economy principles be translated into practice.
5. Para.12, Energy Use, addresses efficiency, but not pollution prevention, or even the reduction of pollution. This can be readily fixed through additions at the end of the first two sentences. At the end of the 1st sentence [after “efficient use of energy,”] add “and the use of less polluting forms of energy, including the elimination or reduction of greenhouse gas emissions.” At the end of the 2nd sentence [after “financially feasible”],

add “considering full lifecycle costs and benefits, including **social costs**, e.g. of GHG emissions.”

For this, it will be useful to add to the Glossary a definition of Social Cost. We propose: **“Social Cost.** The social cost is an estimate of the cost, in dollars, of the damage done by a pollutant. It also is an estimate of the benefit of any action taken to reduce that pollutant. Most frequently it is used to estimate costs and benefits of reducing greenhouse gas emissions. The social cost of carbon (SCC) is an estimate of the cost, in dollars, of the damage done by each additional ton of carbon emissions and of the benefit of any action taken to reduce a ton of carbon emissions.” [Source: “What is the Social Cost of Carbon?” Elijah Asdourian and David Wessel, March 14, 2023]

6. Para. 15 on Soil appropriately “recognizes **soil** as an important resource,” but falls short of clarifying how it should be managed. Accordingly, at the end of the 1st sentence, we propose adding “requiring sustainable management and **conservation**.” And in the 2nd sentence, before “a project,” add “or as the result of” and after “project,” add “its effluents, or its primary suppliers.” These additions contemplate that a project's impacts on soils can occur during or after a project, be direct or downstream, and be from materials sourced for the project.

Para. 16 could be clarified and strengthened by adding “agro-ecological” after “sustainable” and “and quantity” after “quality,” since ADB clients also should avoid soil loss.

Draft ESS 4: Health, Safety, and Security

1. We recommend including disadvantaged and vulnerable groups in addition to project workers and project-affected persons through ESS4 as differentiated impacts will not be adequately captured if information, risks and mitigation that are specific to these groups are not captured in consultations, assessments and monitoring and disclosure processes, based on how I.2 is currently written.
2. We recommend that paragraph 25 include the following additions in bold: The borrower/client will undertake a climate risk assessment in accordance with ESS9. The borrower/client will identify and assess alternatives to a project's proposed location and/or technology and identify appropriate climate change mitigation, and climate change adaptation and resilience measures, **designed using universal access principles**, to be integrated into the project design.
3. Section I.26 on Sexual Exploitation, Abuse, and Harassment: We recommend the following revision -
In all projects, the borrower/client will assess project-related risks of SEAH to project workers consistent with ESS2 and project-affected persons, including those who may be disproportionately affected because of their disadvantaged status and overlapping vulnerabilities based on age, gender, SOGI, and disability, among others. Depending on the results of this risk assessment, the borrower/client will adopt specific and differentiated measures to prevent and address SEAH, following a survivor-centered approach, and will establish a confidential and gender-sensitive and child-friendly grievance mechanism for reporting incidents and referral systems to provide support to SEAH survivors. Projects with substantial or high risk of SEA/H will have a dedicated SEAH Action Plan, with sufficient budget, clear timeline, and specific prevention and response strategies throughout the project cycle, including specific measures on addressing and responding to child SEA/H.
4. Section O: We recommend to create a contractor disqualification mechanism for non-compliance with procurement requirements related to SEA/H that builds on the one the World Bank has created, but with the following enhancements: applies to SEA/H high and substantial risks projects; contains express mention to child SEA/H prevention and response in procurement mechanisms and procedures; and includes the provision of capacity building support for contractors on child SEA/H specifically.

Draft ESS 5: Land Acquisition and Land Use Restriction

1. Any data collection and analysis should be age and gender disaggregated and not only gender as currently mentioned in the ESF.

Draft ESS 6: Biodiversity and Sustainable Natural Resource Management

[View document](#)

1. **Section I, para. 3:** We recommend adding, after “project activities,” **“and seeks to avoid and minimize such impacts.”**
2. **Section IV.5.** In the 2nd sentence, we recommend adding **extinction risk** in the list of potential impacts for the E&S assessment process to focus on, since this is a critical element in biodiversity management.
3. **Section IV.12:** We recommend the following inclusion (in bold) - The borrower/client will ensure activities comply with the **host country’s applicable laws**, including those implementing the **host country’s** obligations under international laws^[1]. Such laws will include those related to access and benefit sharing in the utilization of **genetic resources**. In the absence of the host country’s applicable laws on a specific topic, **or where ESSs set out more stringent requirements or measures more protective for biodiversity and ecosystem services than the requirements of the host country’s applicable laws**, the borrower/client will follow/ **comply with the requirements of this ESS** and the relevant **GIP**.

The reasoning here is that some countries’ laws may have gaps relative to areas addressed in the ESSs, and the additional text ensures that the ESSs will still set the standards to be met. Further for completeness, we recommend listing in a footnote the major international laws referred to in the first sentence, as follows:

International laws refers to international conventions and agreements including but not limited to the Bonn Convention [on Migratory Species], Ramsar Convention, World Heritage Convention, Convention on Biological Diversity (Global Biodiversity Framework), and conventions or designations under other international bodies establishing place-based protections such as UNESCO (Biosphere Reserves, UNESCO Global Geoparks, etc) or Food and Agricultural Organization (vulnerable marine ecosystems), International Maritime Organization (particularly sensitive marine areas), and the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ).

4. Section IV.A. 20 - We recommend adding after “**priority biodiversity features**” “**whether at the genetic, species, or ecosystem diversity level**, and after “unless:”
 - (i) **the no-project alternative would result in losses to public goods or opportunities;**
5. Section IV.A.23 - We recommend the following additions (in bold):
 - (i) Alliance for Zero Extinction (AZE) sites and **other habitats with endemic or threatened species, including Key Biodiversity Areas;**
 - (ii) UNESCO Natural and Mixed World Heritage (WH) Sites, **UNESCO Biosphere Reserves, UNESCO Global Geoparks, and IUCN Designated Areas (Categories IA – V);**
 - (iii) **Indigenous Peoples and Community Conserved Territories and Areas (ICCAs);**
 - (iv) Nationally and sub-nationally recognized protected areas, such as parks, reserves, natural monuments, and preserves;
 - (v) **Intact primary forests;** and
 - (vi) Free-flowing sections of rivers **100 km or longer in length and vulnerable protected or at-risk marine or coastland ecosystems.**
6. Section IV.C, Project Design and Implementation, para. 27: To be consistent with the mitigation hierarchy, add **avoidance**: “...the borrower/client will specify **avoidance** and mitigation measures in a biodiversity management plan (BMP).”
7. Section IV.C., paras. 28-30 regarding **Biodiversity offsets** need additional clarity/ specificity to increase the likelihood that they will be effective and consistent with ESS6 objectives. Thus, at the end of para. 28, add “**and that no net loss or the net gain will be sustained for a period sufficient to ensure survival of the biodiversity values being protected.**” Similarly, at the end of para. 29, after “some impacts,” add “**such as species loss or other irreplaceable values,**” [are not offsetable]. Also, to be clear on the limitations of offsets, before the last sentence of para. 30, add “**Impacts that would require offsets in critical habitat are generally to be avoided.**” And in the last sentence, add at the end [after BOMP.], “that will describe how critical habitat values being impacted will be conserved, restored, or replaced for at least as long as a project has impacts.”
8. Section IV.E.34: We recommend the following inclusion (in bold) - The borrower/client will ensure risk-based sustainable resource procurement, management and verification procedures are in place to evaluate its primary suppliers or suppliers engaged by them, **including through the use of independent sustainable-sourcing certifications as a reference/baseline (these do not take the place of the borrower’s due diligence responsibilities / obligations).**
9. Section IV. E. 36: We recommend the following inclusion (in bold) - Where practices of sustainable management of **living natural resources** have been codified in standards that are globally, regionally, or nationally recognized, the borrower/client and ADB will agree on the applicable standard, **normally whichever provides the highest level of**

sustainability for the living natural resources. Where no such standards exist for particular living natural resources that are affected by a project, the borrower/client will apply **these and parallel funder standards as well as** appropriate **GIP** for sustainable management of living natural resources.

10. Section IV.E.37: To avoid and mitigate the serious environmental impacts of industrial livestock operations, which are a major contributor to GHG emissions and environmental degradation, we recommend the following inclusion (in bold) - “Where a project involves industrial livestock activities, the borrower/client will ~~apply~~**adhere to OIE/WOAH and relevant global GAP as well as** appropriate **GIP** for animal welfare and livestock operations. **Impacts and risks related to land use/land use change, and deforestation, as well as soil degradation, water and air pollution, and GHG emissions from the production and sourcing of animal feed, the production and disposal of animal waste, and effluent runoff from slaughter facilities must be taken into account in the ESIA, and an alternatives analysis and cumulative impact assessment must be prepared.**”
11. Section V: All management tools and analysis documents mentioned in this section must be required to be publicly disclosed. Further, monitoring should be accompanied by reporting. Specifically, para. 41, after “monitor” add “**and report at least annually.**”

Draft ESS 7: Indigenous Peoples

1. Section III, para.7: We recommend adding, after “customary laws,” “**and universally recognized rights, such as contained in the United Nations [Declaration on the Rights of Indigenous Peoples](#).**” Reference to UNDRIP is justified as it has been adopted with the support of 143 countries. Further, the declaration's purpose is not to create new rights, but rather addresses topics such as Indigenous reconciliation in regard to restoring and protecting culture, traditions, and indigenous institutions and the pursuit of self-determined development.
2. Section IV.C..21. The first sentence should clarify that **informed** participation is required in project design, etc. Similarly, the final sentence should specify that project documents will explain how the borrower/client has integrated accrual of benefits in a **culturally appropriate** way, **accepted by the project-affected communities**, into a project's design.
3. Section V.A.31-32. For completeness and adherence to best practice regarding FPIC, we recommend the following additions in bold, after “when a project:” **(including associated facilities)** will:

- (i) have adverse impacts, **direct or indirect**, on land, [territories](#), and natural resources subject to traditional ownership or under customary use or occupation, **or on Indigenous Peoples' access to the same**;
- (ii) cause relocation of Indigenous Peoples' communities from land, **territories**, and natural resources subject to traditional ownership or under customary use or occupation;
- (iii) have significant impacts on Indigenous Peoples' **livelihoods, sources of income, or on cultural heritage** that is material to their identity and culture, and/or to ceremonial and/or spiritual aspects of their lives.¹

Para. 32: At the end of the para., add: **Additionally, in evaluating a consultation process where FPIC applies, the borrower/client should address, document, share, and invite project-affected communities' feedback on, their assessment of the following questions, for which answers should be positive/affirmative if FPIC has been successfully applied:**

- **Free: How free was the engagement process?**
 - o Was the consultation process free of coercion, bias, bribery or rewards?
 - o Were meetings and decisions held at locations and times and in languages and formats that could be accessed by stakeholders?
 - o Were all community members free to participate regardless of gender, age or standing?
 - o Did the Affected Communities of Indigenous Peoples contribute to the design of the engagement, taking into account culturally-specific

¹ Borrowers/clients should note in particular the three most common circumstances [when FPIC is required in the context of supply chain operations](#):

1) **New acquisitions, developments, or operations:** FPIC is required prior to initiation or expansion of activities that may impinge on IP/LC rights, lands, resources, territories, livelihoods, or food security, including:

- Acquisition of interests in land or natural resources
- New production, processing, or harvesting operations
- Designation of land for conservation purposes
- Significant expansion of any of the above

Issuance or adoption of any project approvals or legislative or administrative measures enabling any of the above, such as allocating or designating land or natural resources for such purposes or granting permits, licenses, or approvals

2) **Remediation of past harms:** Where a company has caused or contributed to the appropriation of or harm to the lands, territories, or resources of IP/LC without first securing FPIC, a remediation process is required to address these past harms. An FPIC process should be conducted to reach agreement on the appropriate remediation measures. Agreements to remediate should specify the conditions and outcomes decided through the FPIC process, for instance, the continuation or temporary suspension of operations, restitution of lands, compensation to the parties harmed, or a new benefit sharing arrangement.

3) **Ongoing land conflict:** Where there is land conflict between an IP/LC and an external party such as a company, private landowner, or government, the borrower/client is required to halt any efforts to acquire or gain control of land, resources, or territories related to the conflicts until they are addressed through an FPIC process.

decision-making processes?

- **Prior: Was the engagement process undertaken early enough to affect decisions made on the project?**

- o Did the engagement process allow time for project information to be disseminated and interpreted by the Affected Community of Indigenous Peoples, and for comments and recommendations to be formulated and discussed by Affected Community of Indigenous Peoples?

- o Was there enough time for feedback from the consultation to have a meaningful influence on the broad project design options (e.g., location, routing, sequencing, and scheduling)?

- o Did the consultation feedback have a meaningful influence on the choice and design of mitigation measures and the sharing of development benefits and opportunities?

- **Informed: Were Affected Communities of Indigenous Peoples properly informed about the nature of the project, its risks, impacts and opportunities?**

- o Was information disclosed in a way that could be understood by affected stakeholders, including from a cultural and language perspective?

- o Was this information provided early enough in the process to allow the information to be understood and considered by the Affected Community of Indigenous Peoples, with informed feedback provided to the client?

- o Will information sharing be ongoing throughout the life of the project?

- o Was the Affected Community of Indigenous Peoples provided with appropriate capacity funding to ensure meaningful participation in the consultation process?

- **Consent: Did and does the process permit Affected Communities of Indigenous Peoples to define a collective position in response to a project, while recognizing that different and diverging viewpoints may exist within those communities?**

4. Section V.C. 40. Bearing in mind that FPIC is a process that should continue throughout the design and impact of a project, in the second sentence add, after “obtained,” **and maintained**. Further, for clarity, in the following sentence after “ESS5,” add **in addition to the FPIC and other requirements herein**.

5. Annex 1. References to “gender-sensitive” (or responsive) should be revised to be **age- and gender-sensitive** [Sections C(iv), D(ii), E].

6. Annex 2, Sections F and H. . References to “gender-sensitive” (or responsive) should be revised to be **age- and gender-sensitive**

Draft ESS 8: Cultural Heritage

1. Section A.15. In the 2nd sentence. add after “The borrower/client will provide information,” **and opportunities for response/consultation.**
2. Section B.18. In the 2nd sentence. add after “The mitigation hierarchy will be applied, and **offsets** will only be considered as a last resort,” **and subject to adherence to all ESS conditions (e.g. FPIC if impacts are on Indigenous cultural heritage).**
3. Section B.19. Add a new sub-para :
(iii) **Any removal or excavation is done so as to minimize the loss of cultural heritage and of any associated biodiversity and living natural resources (consistent with ESS6);**
And in the following sub-para., add after “Any removal or excavation is conducted after **meaningful consultation**” or **FPIC in the case of Indigenous cultural heritage,**
4. Section VI. 45. Add after “The borrower/client will monitor” **and disclose,** since information on the implementation of the E&S **management tools** should be public.

Draft ESS 9: Climate Change

General: We welcome that is the first MBD Safeguards with a specific guideline for CC. Additionally, it is important to:

- Explicitly mention the MDBs’ Paris Agreement Alignment methodology, in order to promote consistency across the documents (this includes that the projects should be aligned at least with the country’s NDCs/LTS) but ideally with Net Zero goals.
- Explicitly include a no-go (prohibition of financing) for high-emitting GHG projects (at least any considered as universally not aligned in PA Methodology)

1. Section I.1. In the 1st sentence, before “climate change” change to read This Environmental and Social Standard (ESS) 9 recognizes the urgency and importance of **limiting and adapting to anthropogenic tacking**”
2. Section I.2.. Change to read: In recognition of the increasing vulnerability of developing member countries (DMCs) to **climate change** risks and impacts, **ESS9 sets minimum requirements** ~~there is a need~~ for promoting **climate change mitigation** and building climate **resilience**, in accordance with the **host country**’s commitments under, and to **meet the goals of, the UNFCCC and other** international agreements.
3. Section II. a. Add in the sentence (new text in bold): “minimize absolute and relative GHG emissions attributable to a project by considering alternatives, **choosing the best alternative for avoiding and minimizing GHG emissions,** and monitor and report project-related GHG emissions, where applicable;”

4. Section III.A. As worded, this whole section lacks the specificity needed to guide action. For example, in para. 4, “proportionate manner” is too general. We recommend adding text in bold:

Where a project **is expected to** emit **GHG**, the borrower/client will promote **first the avoidance, then** the reduction of such project-related GHG emissions, in a manner proportionate to the nature and scale of **the emissions as well as** project operations and impacts.

Para. 5:

Where ADB has determined that a project has risk of **climate change** impacts and/or risk of increasing climate exposure or vulnerability of **project-affected persons**, the borrower/client will undertake **a comprehensive alternatives analysis to avoid and minimize such risks, and a** climate risk assessment **to address residual risks** as further described in para 12.

Para. 6: Add **avoidance and** before “reduction,” to align with the mitigation hierarchy.

Para. 7: The borrower/client **will identify project-affected groups like persons with disabilities vulnerable to climate change and explain how their vulnerability will be mitigated through project design and implementation that incorporate measures such as universal access to help them become more resilient. In doing so, the borrower/client** will undertake **meaningful consultation** with **project-affected persons**, including **disadvantaged or vulnerable** groups and communities, on project-related **GHG avoidance and** reduction measures,

5. Section III.B. 8. To achieve ESS9 and other ESS objectives (e.g. on stakeholder engagement), we recommend adding text in bold:

To **first avoid, then** minimize the **absolute** and **relative GHG emissions** attributable to a project, the borrower/client will consider alternatives **through robust alternatives analysis** including adoption of energy efficiency, lower-carbon energy sources, renewable energy, alternative project locations, reduction of fugitive emissions, or other GHG management practices. **This analysis will be publicly consulted and disclosed, including in a language and form accessible to project-affected communities.** The borrower/client will implement such measures where technically and financially feasible, **taking into account (through actual or shadow pricing) the full social costs of any GHG emissions**, during the project preparation and design phase. Where such measures are adopted for implementation during a project, the borrower/client will include them in the environmental and social commitment plan (ESCP)/environmental and social action (ESAP) **as a prerequisite for further project funding and operation.**

Para. 9. Delete “Except for projects with absolute and relative GHG emissions between -20,000 tons of carbon dioxide equivalent and +20,000 tons of carbon dioxide equivalent per year,” before “a borrower/client will disclose the ex-ante estimation to the stakeholders and submit the same to ADB for ADB’s disclosure in relevant project

documents.” Reason: All GHG emissions should be known to stakeholders. Also to clarify intent, add at the end of para. 9: **Project alternatives with greater negative emissions will be given priority for funding.**

Para. 10 states “Where projects have an ex-ante estimation for absolute GHG emissions that is more than 20,000 tons of carbon dioxide equivalent per year, the borrower/client will monitor absolute GHG emissions annually.” However, we recommend all projects monitor absolute and relative emissions (regardless of size). Re-word para. 10 as follows (additions in bold):

The borrower/client will monitor **absolute GHG emissions** annually and report publicly **the emissions and the actions taken to avoid or minimize them.** The GHG quantification assessment will be conducted in accordance with methodologies and practices advised by ADB, **and in line with UNFCCC and other internationally recognized climate reporting standards.**

Para. 11: For this para. to be meaningful in supporting contributions to GHG mitigation, actions beyond assessment are required. Accordingly, we recommend adding (bold) text at the end:

If there are changes to a project that result in a significant increase in the **relative GHG emissions**, the borrower/client will update the assessment of **absolute** and relative GHG emissions of the project, **and take and report actions to reverse the increase, or suspend project GHG-emitting operations until such actions can be effectively implemented and verified.**

6. Section III.C.12. Climate change risk assessments, in looking at climate-vulnerable physical assets, to support full resilience of affected communities, should do so from a universal access perspective, including accessibility in design and implementation of projects, outlining how the physical landscape in a project could change and how marginalized groups, including persons with disabilities, will still be able to access project benefits and not be harmed. Further, given their sustainability and cost-effectiveness, the option of nature-based solutions should be noted. Accordingly, para. 12 1st sentence should be edited to read (additions in bold): “(iii) identify and develop climate change adaptation and resilience measures, **including nature-based solutions, that are accessible to all** to address identified climate risks of a project.”

Para. 13: For the same reasons, and to promote transparency, add to para. 13 (bold text):

The borrower/client will integrate **climate change adaptation** and **resilience** measures into project design and implementation, **giving priority to natural climate solutions that contribute to mitigation and other public goods and to universal access** where technically and financially feasible and proportionate to the nature and scale of a project, and monitor **and report results** throughout a **project cycle**. Where such measures are adopted for implementation during a project, the borrower/client will

include them in the project ESCP/ESAP **to be publicly disclosed and open for stakeholder input.**

Para. 14: Consistent with the above and with the mitigation hierarchy, add to para. 14 (bold text):

If there are significant changes to a project or climate risk context that result in additional climate risk to the project and/or **project-affected persons, including marginalized or vulnerable groups**, the borrower/client will update the climate risk assessment and ESCP/ESAP accordingly, setting out additional risk **avoidance, mitigation, and** management measures, **designed for universal access**, as necessary.

Draft ESS 10: Stakeholder Engagement and Information Disclosure

1. We recommend the definition of stakeholders to be expanded to include civil society activists and organizations as examples of interested parties.
2. Information disclosure, section V. C.17: We recommend removing the following line - ***unless such documents and information will be prepared post-ADB approval of a project, as reflected in an ESCP/ESAP*** - such that all assessment and management tools, especially for projects that are categorized as high or substantial, are disclosed prior to board approval.
3. Section V.A.c) Information Disclosure. 19: For stakeholder engagement to be effective, processes must be transparent. Further, for consistency with ESS7, we recommend to add to para. 19 (bold text):

If there are changes to a project that result in additional **E&S risks and impacts**, particularly where these will impact **project-affected persons**, the borrower/client will **publicly disclose/** provide information on such risks and impacts and meaningfully consult with project-affected persons, **and in the case of Indigenous Peoples, obtain their FPIC**, on how to mitigate these risks and impacts. The borrower/client will also update the relevant documents and information, including the ESCP/ESAP accordingly, setting out any additional measures and actions. Updated documents and information will be submitted to ADB for **public** disclosure.
4. Section V.A. d) Meaningful Consultation. Para. 21: Again, for consistency with ESS7, we recommend to add to para. 21 after (ix)::

(x) With respect to Indigenous Peoples and other traditionally marginalized communities, meets the standards for [informed consultation and participation](#), as set out by the Equator Principles Association (EP4, July 2020) or other standard endorsed by the project-affected communities;

5. Section V.C. Grievance Mechanism – We recommend a mandatory requirement for at least one person from civil society and not connected to the borrower/client to be on the Grievance Mechanism, which for clarity of purpose should be framed as the Grievance Redress Mechanism (GRM).
7. Grievance Redress Mechanism – We recommend including a requirement that the borrower/client disclose the following information regarding the GRM, in addition to the information already stated in the ESS10 – 1) That the project is funded by the ADB and details of the contact details of the project team and Resident Mission 2) Information regarding the Accountability Mechanism and how to access it.
8. The language on grievance mechanisms should be strengthened to create meaningful access. For information on accessibility measures and formats for stakeholder engagement and GRM please see -

<https://bankinformationcenter.org/en-us/update/how-can-the-adb-better-safeguard-persons-with-disabilities/>

Draft Prohibited Investment Activities List

[View document](#)

For completeness and consistency with international conventions,

1. add to (ii) (d) after “wildlife or wildlife products regulated under the” **United Nations Convention on the Law of the Sea (UNCLOS)² and the**
2. Add to (x) after “marine or freshwater biodiversity and habitats, **and any practices illegal in the waters where fish are caught, whether in or beyond national jurisdiction;**

Reason: While illegality is generally prohibited under the ESF, this merits mention as some practices may not be illegal under the borrower/ client's flag, but illegal in the territory where fish are caught.

3. Additionally, for consistency with ESSs 6 and 9, add a new **(xi) production of or trade in agricultural products, including animal feed, sourced from forest or peatland areas deforested or converted for said production;**
4. In the following sub-para., now (xiii) excluding “coal-fired power generation and coal-fired heating plants,” in support of objectives of ESS9, add **including “captive” plants used for industrial processes;**
5. Also in support of objectives of ESS9, add a sub-para. (xvi): **other greenhouse**

² Specifically, the Agreement under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (A/CONF.232/2023/4)

gas-intensive projects or activities that are incompatible with 1.5°C trajectories under the latest science and analysis. This precludes support for projects /activities that produce hydrofluorocarbons, and those that use the highest emitting practices and technologies in all greenhouse gas intensive sectors.

Reason: While we welcome the draft Prohibited Investment Activities List as providing significant safeguards, ADB should also exclude all categories of greenhouse gas-intensive projects that are incompatible with 1.5°C trajectories under the latest internationally accepted science and analysis, e.g. IPCC. For example, this should preclude support for projects that produce hydrofluorocarbons, and those that use the highest emitting practices and technologies in all greenhouse gas intensive sectors. To develop this exclusion list, ADB should invite public and expert comments on appropriate sectoral standards.

Draft Requirements for Financing Modalities and Products

1. We recommend further clarity around why this section sits outside of the draft ESF unlike frameworks of other banks. We also recommend that any revisions, changes, additions to these requirements in the future must be disclosed for public disclosure and consultation period not less than 60 days, and Board approval.
2. We recommend clear time frames for assessments and information disclosure and discourage the use of vague and subjective language through this document as such “proportionate to the nature and scale of E&S risks”. At the very least, there must be **clear minimum requirements** outlined for measures outlined in the document such as ‘proportionate’ ‘materially consistent’.
3. We recommend a mandatory requirement for FI’s to disclose information at a sub project level about the GRM and the ADB’s Accountability Mechanism in a manner and format that is accessible to all communities. The AfDB’s ISS includes such a requirement - ***Operational Safeguard 9 (Financial Intermediaries) states that: “The FI will require the subprojects to disclose AfDB’s support to them, the existence of the project-level Grievance Redress Mechanism (GRM), the Bank’s Independent Recourse Mechanism (IRM) and ensure that this information is clearly visible, accessible and understandable to affected communities.”***
4. The suggested text revisions outlined below in bold are to provide for follow through on the requirements or conditions that have been stated, but where such follow-through or intent hasn't been made clear.

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2. The Financing Modalities Requirements explain how E&S requirements stemming from

ADB's Environmental and Social Framework (ESF), including ADB's Environmental and Social Policy (E&S Policy) and Environmental and Social Standards (ESSs) apply to the different financing modalities and products offered by ADB. ADB and the borrower/client will apply the relevant requirements of the E&S Policy and the ESSs, respectively, to the financing modalities and products, except to the extent such requirements are explained further in this document, **and will apply, or require borrowers to apply, the additional or alternative requirements as laid out here below.**

3. All disclosure requirements set out in this document are subject to ADB's Access to Information Policy (2018), including the exceptions to disclosure. **All substantive changes to this document will be subject to public disclosure and a consultation period of not less than 60 days.**

7. The borrower will undertake an E&S assessment of a **representative** sample of subprojects in accordance with ESS1 proportionate to the nature and scale of the **E&S risks and impacts**.

22. During the preparation and prior to finalization of a policy matrix, ADB will undertake risk classification in accordance with the E&S Policy of the proposed policy actions based on the likely **E&S risks and impacts** resulting from the policy actions, factoring in contextual or sector specific risks. ADB will review any mitigation measures proposed by the borrower **to ensure that they address all identified risks and impacts, and will oversee their implementation prior to full disbursement.**

24. If any significant strategic, geographic, and/or sector-wide E&S risks related to the scope and nature of a policy-based loan operation are identified by a borrower or ADB, the borrower will undertake further assessment, such as a strategic environmental and social assessment, to inform the design of the policy actions and associated E&S management, **so as to avoid and mitigate those risks, consistent with the obligations of the ESSs.**

30. The PSSA results will inform the integrated risk management plan for the RBL program that will identify the RBL program's strengths, weaknesses, and risks, and will help develop measures and actions to ensure that the RBL program system can **avoid (where feasible)**, then manage and mitigate program risks and build capacity in the RBL program. ADB and the borrower will agree on such measures and actions, which

will be included in an integrated risk management plan and a program action plan (PAP).

33. The report and recommendation of the President will document the findings of the E&S due diligence process. This will include documentation on risk classification; potential E&S risks and impacts; programmatic, institutional and contextual risks; and other relevant factors such as legacy issues. The documentation will also provide substantiation that the RBL program systems can **avoid**, manage and mitigate **environmental and social** risks.

36. The borrower will provide relevant information to ADB to undertake a PSSA that will:

(i) consider the **host country's applicable laws as they relate E&S risks and the ESSs**;

(iv) **describe and assess** the borrower's implementation track record, capacity, resources, and commitment to manage the applicable E&S risks; and

(v) identify **and address** gaps between the objectives set out in the applicable ESSs and the borrower's RBL system.

38. The borrower will **implement and monitor** the integrated risk management plan and the PAP and submit monitoring reports to ADB.

44. Where Technical assistance (TA) output is a pilot testing of a project approach, ADB will undertake classification of such output in accordance with the E&S Policy. Pilot testing **may or** may not result in risk classification of either High, Substantial or Moderate.

49. Where ADB provides financing to an FI, ADB will undertake due diligence (ADB DD) to review and evaluate the **E&S risks and impacts** related to the existing and planned activities and transactions of an FI's borrower/investee to be financed by ADB. The ADB DD will also review **and assess** an FI's capacity and commitment to **avoid**, manage, **and mitigate** those risks. The results of this ADB DD will inform ADB's review of an FI's ESMS and/or an FI's borrower/investee activities and transactions as described in paras 52-55.

50. For capital market transactions, E&S documentation prior to and after subscription may be subject to applicable capital markets rules and regulations and may not be available for review by ADB at the time of project processing. In such cases, ADB will assess an FI's E&S performance, including its capacity and commitment to manage the **E&S risks and impacts** associated with its activities and transactions, against the applicable requirements of the ESSs based on **the best** publicly available information.

53. ADB will review and provide guidance to FIs on the need and adequacy of an ESMS. If an FI has an existing ESMS, ADB will review a corporate audit of the ESMS prepared by a qualified and experienced specialist. For FIs that will support *higher risk transactions* with ADB financing, a corporate audit will evaluate the FI's existing ESMS and an FI's past and current performance against the applicable ESSs. If any gap is identified through ADB's review, **before final financing approval**, ADB will reach an agreement with an FI on a corrective action plan that sets out time-bound measures and associated budget needs to implement such a plan. ADB requires the FI to incorporate the corrective action plan into its corporate ESMS and will be reflected in an environmental and social action plan (ESAP), as necessary.

54. For any FI activities and transactions where other multilateral or bilateral funding agencies have already provided financing to the same FI, ADB may agree to rely on the requirements of such other agencies for the assessment and management of the **E&S risks and impacts** of the activities and transactions, including the institutional arrangements already established by the FI, provided that such requirements will enable the transaction to achieve objectives materially consistent with the applicable requirements as set out in this Section J **or ADB's ESF**. ADB may also require the FI to enhance its ESMS, as deemed necessary following review by ADB **to achieve objectives materially consistent with the applicable ESF or this Section J's requirements**.

58. ADB will require FI-1 and FI-2 to submit E&S monitoring reports to ADB for its review and disclosure. For *higher risk transactions*, E&S monitoring reports will have details (**amounts, disbursements, and terms**) for each activity and transaction supported by ADB financing.

64. An FI will undertake an FI ESDD, proportionate to the nature and scale of the **E&S risks and impacts** associated with the activities and transactions financed by ADB, and an FI's access to relevant information of its borrowers/clients, and influence on its borrowers'/clients' actions, **which shall be applied to the extent feasible to align with the requirements of the ESF**. In cases where ADB financing is earmarked for specific activities or transactions, such as financing for specific asset classes, the FI ESDD and the E&S risk assessment and management requirements will cover only such specified asset classes.

65. FI will refer all *higher risk transactions* to be supported by ADB financing to ADB for its review, clearance, and disclosure, including the screening, risk classification, and FI ESDD undertaken by FI, as well as the relevant **assessment tools** and **management tools** prepared by FI borrowers/investees in accordance with para 55. **If the risks are**

deemed unacceptable, or not able to align with ADB ESF requirements, the transaction may be excluded from ADB-supported financing, or required to be modified to reduce the risk and align with ESF objectives

68. FIs will develop and maintain **stakeholder** engagement procedures and a grievance mechanism, consistent with the relevant requirements of ESS10 and following indicative requirements in Annex-2, **including for all sub-projects.**

ANNEX 1-

3. An ESMF will also include an outline for **land acquisition and land use restriction** and **Indigenous Peoples** related assessments, as set out in ESS 5 and ESS 7, **and will be designed to achieve those ESS objectives**, respectively.

ANNEX 2 -

1. An ESMS will consist of the following elements: (i) an E&S policy; (ii) internal organizational capacity and competency; (iii) due diligence processes/procedures to identify **E&S risks and impacts** of an FI's borrowers'/investees' activities and transactions or a CF Client's activities and transactions financed by ADB; (iv) monitoring, reviewing, and reporting of activities, transactions, and/or portfolio; and (v) **stakeholder** engagement and grievance mechanism. The following section describes indicative content of each of the components of an ESMS, which will be detailed proportionate to the **E&S risks and impacts** of the activities, transactions, and/or portfolio supported by ADB financing, **and will be publicly disclosed:**

1.iii) Establish processes to identify, assess, **avoid, mitigate** and manage **E&S risks and impacts** associated with an FI's or a CF Client's activities and transactions financed by ADB, and where appropriate, will require an ESAP.

(iv) Monitoring, Reviewing, and Reporting

Establish monitoring procedures to review **and assess** progress with the ESAP and implementation of the ESMS.

(v) 2. For those FI that support *higher risk transactions* and CF Clients that support activities and transactions with High, Substantial, and Moderate Risks, if any gaps are identified through ADB's review, between the existing ESMS of an FI or CF Client and the applicable ESSs, ADB and the FI or CF Client will reach an agreement on a corrective action plan that sets out time-bound measures and associated budget needs to implement such a plan. Such a corrective action plan will be reflected in the corporate ESMS and in an ESAP, as necessary, **and be publicly consulted and disclosed.** Where ADB DD has determined that an FI or a CF Client does not have adequate

in-house capacity, an ESAP will describe how an FI or a CF Client will strengthen its in-house capacity or if that is not possible, retain qualified specialists to develop and implement an ESMS.

About You

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I agree to have my comments disclosed on the ADB website?*

☒ **YES**

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