

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

Submission from the NGO Forum on ADB
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Collective Civil Society Statement on ESF Draft: Calling for an Overhaul and immediate redrafting

RATIONALE

As advocates from civil society, local communities, and workers from across the Asia Pacific and beyond, **we are collectively urging the ADB to go back to the drawing board. We seek an overhaul of the current draft of the proposed Environmental and Social Framework, which updates the 2009 Safeguards Policy.**

REFLECTIONS ON THE PHASE 2 CONSULTATION PROCESS

After two years of engaging in the formal ADB review consultation process, during which we collectively sought to consistently raise critical concerns and provide formal inputs to the ADB's Office of Safeguards in good faith, we would have expected to see these recommendations meaningfully reflected in the outcome document. Indeed, this was the reason why we attended online and in-person meetings with ADB's safeguard staff, calling for a forward-looking policy rewrite that would require all financing flows to adhere to a binding framework underpinned by an unequivocal commitment to uphold international human and environmental rights.

While we acknowledge that the ADB Safeguards review counts among its milestones 3,500 individuals consulted, including through 84 online consultation events, 10 in-country consultations, and 7 project consultations with directly affected people, **ADB's Office of Safeguards (OSFG) still has yet to disclose a matrix enumerating CSO inputs and explaining how each is duly being addressed in the resulting policy document.** As a result, we have no reference point to determine which of our comments have been taken into account or corresponding rationales.

OUR THOUGHTS ON THE INTENT AND PURPOSE OF THE ESF W PAPER

We are currently in 2024 amid Phase 3 of the ADB process, with the first draft W paper on the ESF being the outcome of the past two years of consultations. **Unfortunately, the W paper falls far short of expectations.**

Firstly, the 'Vision' of this ESF does not commit to **'Do No Harm' through ADB operations**. This basic lack of recognition of the key purpose of environmental and social safeguarding from the very onset of the draft ESF W paper is illustrative of how our comments and words appear to have fallen on deaf ears. Throughout the document, we see flexible words such as **'materially consistent', 'timely', and 'where applicable'** applied in cases of risk assessment, borrower systems, and information disclosure. This clearly shows that **actors receiving financing who are supposed to be abiding by this policy will not be held accountable for meeting mandatory requirements for environmental and social safeguarding. Accordingly, we immediately call for the removal of these terms, instead replaced with wording that ensures actors will be held to timebound, mandatory, and compliant standards throughout this document.**

On the issue of borrower systems, the ADB has spent more than 40 million USD over the last decade to build and strengthen Country Safeguard Systems. However, even as of now, at the time of writing, the ADB has not been able to demonstrate evidence of any pilots successfully applying Country Safeguard systems for SPS 2009 implementation. This clearly shows the ADB must step up in the implementation of the SPS 2009 (for current projects and financing) and going forward, the new ESF. It is absolutely critical that when borrower systems are less stringent, there should not be any approval of financing by

the ADB. As a result, statements that indicate flexibility in the application of borrower systems must be revoked from the ESF.

Again, it must be reiterated that the objective of this ESF should be to do no harm and bring affected communities and the environment to pre-project levels or better. The ESF objective is not to ensure green economic growth – there are policies and strategies that the ADB has for achieving such so-called development aims. **We urge the ADB to ensure that the ESF as a Policy document is an instrument that acts as guardrails on all financing flows with the purpose first of avoiding harm and potential harm (precautionary approach), and subsequently ensuring environmental and social risks and harms that may or do result are comprehensively addressed and mitigated in a timebound manner.**

As we reach Objective 2, we are introduced in this ESF W paper to the term **Mitigation Hierarchy**. It appears as a panacea for all issues related to identifying and addressing environmental and social risks in ADB operations. The term appears without any definition, and by the time we reach the language around the **Environmental Social Commitment Plan under the Mitigation Hierarchy Approach**, we realize that the basic notions of **Pre-Project Environmental Impact Assessment and Social Impact Assessment** do not have any recognition in this ESF. Alarming, the very acronyms EIA and SIA, which are the heart of the SPS 2009, are not even mentioned anywhere in this over 170-page document.

The ESF W paper fails to identify the **ADB Project Cycle** and thereby cannot ensure how and when the ESCP approach will address project-related harms. Another new concept emerges in this ESF W paper titled **The Common Approach Applicable to Co-Financing of projects between ADB and other MDBs**. The Common Approach does not commit to the highest standard of safeguards to prevail rather alludes to a commonly agreed approach which may just about mean anything in terms of the lower most standards when it comes to Co-Financed projects. Whether the project is standalone or co-financed, the ADB should remember mega infrastructure remains destructive to all local communities and environments; therefore, the highest social and environmental standards must be ensured in Co-Financing. Problematic innovations in this new ESF also include issues such as the **Associated Facilities (AF)**. The SPS 2009 upheld that all AF will fall under the policy; unfortunately, the language in this new ESF allows AFs to circumvent ESS and the entire ESF itself. These provisions in this draft must be revoked in their entirety. The new ESF once again ignores **Gender Safeguarding** across all the Environmental Social Standards ESS 1-10, thereby making this ESF Gender blind in 2024. The fundamental rights of women in project-affected areas require immediate binding language so that their risks are included and addressed in the early stages of the project design and hence their voices and safeguarding are ensured throughout the project cycle.

We have therefore concluded that the only option available is for there to be a full overhaul of the current draft – hence our collective call for the ADB Board and Management to take this opportunity before policy finalization to go back to the drawing board. In the sections that follow, we provide more analysis of each provision in the current draft, with a summary of critical concerns. Many of these concerns are reflected in more detail in specific submissions by respective civil society and labor organizations signatories to this collective statement.

ON THE OVERVIEW OF SAFEGUARD UPDATE DIRECTIONS

1. One of the enabling factors cited in strengthening the outcome of safeguards is the creation of the ADB Office of Safeguards, pursuant to ADB's Organizational Review. Accordingly, the safeguards office "will house ADB's safeguards activities" (para. 37) and will be overseen by ADB's Managing Director General (MDG). The Independent Evaluation Department (IED) cited that the Safeguard Policy Statement (SPS) "lacks clarity to guide ADB operations and has not

been well adapted to support new lending modalities; nor has it been customized to address private sector financing instruments.” **How will the new safeguard office ensure that safeguards delivery for sovereign and non-sovereign operations is nuanced accordingly?**

2. Currently, the World Bank’s International Finance Corporation (IFC)/ Multilateral Investment Guarantee Agency (MIGA) is in the process of drafting an approach to remedial action. In the case of ADB, one of the enabling factors cited in strengthening safeguards outcome is updating the legal agreements and remedy. The said remedy should, at the minimum, include the following:
 - a. The cost of the remedy should be covered by the ADB and should not be in the form of another loan to the borrowing country or company.
 - b. The draft policy should include clear provisions on how access to remedy can still be obtained even after the cut-off period of two years after the closing date of a project as per ADB’s current Accountability Mechanism (AM). The practicality of the said cut-off period should be reviewed both in the current safeguards and AM review.
 - c. Lastly, the different types of remedies should be equally articulated in the draft policy.
3. The ADB’s Accountability Mechanism review is also cited as one of the enabling factors in strengthening safeguard outcomes. Separate comments will be submitted in this regard. Nonetheless, **what is critical for the current review of safeguards are the parameters of what constitutes an “impact” caused by the project-affected people.**
 - a. The draft policy should retain, at the minimum, the need to identify “potential direct, indirect, cumulative, and induced impacts”.
 - b. Parameters on what constitutes “harm” should also be articulated in the draft policy.
4. The Operations Manual, Staff Instructions, and Guidance Notes for each Environmental and Social Policy Standard (ESS) should be disclosed in its draft form, and be open for public comment for at least 120 working days before its approval.
5. We urge the ADB to conduct a formal civil society consultation during the 10 year period before embarking on any amendments of this new ESF

ON THE ENVIRONMENTAL AND SOCIAL POLICY STANDARDS (ESS)

ESS 1: Assessment and management of environment and social risks and impacts

The main concern of the Forum is that the institutionalization of the ESCP will then replace the practice of having adequate due diligence requirements prior to Board approval.

Thus, the Forum maintains that the environmental and social assessment should still be undertaken prior to Board approval.

- a. Disclose in unambiguous terms the new project cycle.
- b. What are the parameters in the draft policy of what comprises the range of vulnerable and disadvantaged groups? The remedy component is consistently stipulated in each legal agreement. The same due diligence requirements and procedures should apply to non-sovereign projects.
- c. The 2009 SPS provides for the **“potential direct, indirect, cumulative, and induced impacts”**. Whereas the 2014 AM cites, “direct and material harm to project-affected people.” **The ESP should also include the concept of “harm” in the risk screening and categorization.**

- d. As per above, there should be no exception provided for Fragile and Conflict Affected States (i.e. the broad exemption within the current text must be removed); all environmental and social provisions should be ascertained prior to approval.

The option for a client to offset project impacts – rather than address and compensate for losses incurred – should be removed. Similarly, the conditionalities surrounding compensation (“where technically or financially feasible”) should be removed. Addressing losses and harms through compensation should not under any circumstances be considered optional.

Environmental and Social Audits for existing facilities should identify ongoing and past grievances of communities and workers related to the project in question and what steps the client is taking to address current grievances. It should also specifically incorporate a litigation due diligence review, identify the reprisal risks faced by those affected by the project and their representatives, and specify provisions for what responses will be undertaken if reprisals occur in the future.

A human rights risks and impacts assessment should be required in addition to environmental and social risks and impacts, incorporating both at the project level and contextual aspects.

Include provisions to ensure ADB undertakes reprisal-sensitive consultations with stakeholders and site monitoring, independent from the client.

Require clients to notify the Bank of any reprisal allegations; and identify how the Bank will process and respond to any reports/allegations of reprisals or retaliation in relation to the project, inclusive of the entire project cycle, including as soon as projects are identified in the pipeline.

According to Defenders in Development Campaign, the ADB should state clearly that the assessment of risks and impacts of the project includes the assessment of reprisal risks, including project-related and contextual risk factors. The new policy should establish clear criteria related to the assessment of civic space restrictions and reprisal risks, and determine how these criteria will be analyzed in order to determine the project categorization.

The assessment should cover the environment for the stakeholder engagement process, human rights risks related to the government or third parties, and the vulnerability of the affected communities, including differentiated human rights impacts on defenders and other marginalized and vulnerable groups. Private sector clients should also be required to disclose any judicial processes they, or any company that is part of the same conglomerate, have been involved in over the last few years. They should also reveal any complaints against them, or any member of the conglomerate they are part of, at development finance institution independent accountability mechanisms. We suggest the inclusion of an annex with specific criteria and sources of information the Bank will use for the assessment of reprisal risks and civic space issues.

The assessment should be done independently by the Bank staff and should not rely solely on the information provided by the clients. The risk assessment should be based on the results of meaningful consultations with communities, civil society organizations, journalists, and human rights defenders. Consultations should be undertaken without putting participants at further risk at a location identified by those participating as accessible and safe at a location identified by those participating as accessible and safe, and follow an inquiry about any prior security incidents and reprisals.

The full submission can be found here:

<https://rightsindevelopment.org/news/recommendations-on-reprisals-for-the-updated-adb-safeguards/>

Japan Center for a Sustainable Environment and Society (JACSES) states that ESS1:

Objectives of the ESS 1 should include the following key components mentioned in the Policy Principles of the 2009 SPS:

1.2 to identify potential direct, indirect, cumulative, and induced impacts and risks

1.3 consider the no-project alternative

1.4 Prepare an environmental management plan (EMP)*

*Regarding (c), Should include the “assessment tools”, and “management tools” including IPP instead of EMP in the Objectives of the ESS1.

ESS 2: Labor and Working Conditions

According to Freedom from Debt Coalition (FDC), Philippines and Building and Woodworkers International (BWI):

- a. Without prejudice to penalties provided in the loan agreement, the ADB has the right to withhold further access to credit and loans, and at the same time treat unpaid loans as immediately due and demandable should the ADB receive credible evidence of failure to comply with labor laws by the borrower or any of its contractors and subcontractors.
- b. That “due diligence” was exercised by the borrower and/or any of the contractors and subcontractors cannot be used as a justification or excuse for failure to comply with labor standards by the borrower and/or any of its contractors and subcontractors.”
- c. The borrower and the contractor shall be jointly and severally liable for any labor standards or labor rights violations committed by any of the subcontractors. Prior to the release of loan proceeds, the borrower shall be required to post a bond equivalent to the estimated labor cost of the entire project, thus ensuring that unpaid wages and other benefits would be paid immediately, thereby heading off the need to go to the labor tribunals or the Ministry/Department of Labor.
- d. The ADB should incorporate the ILO Core Conventions in all its Operational Policies and Normative Documents. Make explicit reference to the ILO, as the international body mandated to set labor standards, and cite its conventions directly. National law should set a floor for labor standards, not a ceiling, and the ADB should enforce international norms around questions of freedom of association and collective bargaining independent of national policies.

According to the Global Alliance for Incinerator Alternatives (GAIA), Informal workers' rights form the majority of the labor force in many Asian countries, especially in the waste sector. ESS2 defines "project workers" as those with contracts and "community workers" as artisanal, home-based workers.

These definitions strip the rights of informal waste workers as recognized in ILO Recommendation 204 and national laws on the informal economy, waste management, circular economy, and green jobs, among others. There should also be a need for a transition plan for informal workers, developed in consultation with them well before the beginning of any project implementation.

ESS 3: Pollution prevention and resource efficiency

According to Global Alliance for Incinerator Alternatives (GAIA), the ADB should oversee the safe management of hazardous waste in accordance with the Stockholm, Basel, Minamata, and Rotterdam Conventions, including their accompanying technical guidelines:

- a. Total ban of all asbestos materials in ADB-funded projects. Asbestos is not just a pollution issue but it is also an industrial hazard.

- b. Bans and phaseouts in the production, sale, transportation, and use of problematic and hazardous pollutants and waste streams. These should be included in the Prohibited Investments List. According to GAIA, ADB should exclude thermal WTE from its renewable and clean energy portfolio. ADB should undertake a plan accompanied by targets to phase out existing thermal WTE.
- c. On pollution prevention, the said ESS should guide the minimum on how air pollution, and hazardous and non-hazardous wastes can be mitigated, if not avoided.
- d. On resource efficiency, aside from water use and water balance, the new policy should also provide at the minimum additional requirements on energy use as well as raw material use.

Generally, the Commitment to the circular economy is only limited to the disposal aspect of economic production, instead of placing safeguards measures for the reduction of unnecessary materials in the economy. It only speaks of internationally recognized standards, particularly the outdated EHSG WB standards, not international conventions on bans and phase-outs of global pollutants of concern such as stated in Stockholm, Rotterdam, Basel, and Minamata conventions. There is no anticipatory proposal based on the ongoing Global Plastics Treaty.

Recycling of hazardous waste such as plastic, e-waste, and non-biodegradable waste follows the waste hierarchy in a safe manner for human and ecosystem health, as defined by the host country's applicable laws or the EHSGs.

ESS 4: Health, safety and security

In addition, workers' risk assessment and management plan should also clearly indicate arrangements for the payment of wages, among others, and should be consistent with the protection based on ESS 2 on labor and working conditions.

Expand the scope of ESS 4 not only to project-affected persons and project workers but also to their families. Where hazardous materials are part of existing project infrastructure or components, the Borrower will exercise due care during the construction and implementation of the project, including decommissioning, to avoid community exposure.

The Borrower should avoid or minimize the potential for community exposure to waterborne, water-related, and communicable and non-communicable diseases that could result from project activities.

ESS 5: Land acquisition and land use restriction

NGO Forum on ADB suggest that there should be clarity on livelihood impacts & asset losses not caused by land acquisition. Most involuntary resettlement plans only compensate for physical displacement in the project area without having clear plans or compensation schemes for communities, economic sectors, and households that will be marginalized as a result of the shift in land use due to ADB's projects.

The scope of ESS5 must be broadened to include physical and economic displacement that is caused, in whole or in part, by any or all project activities that affect people's livelihood and food resources or access to these resources. The scope should not be limited to land acquisitions and land use restrictions. It should also include any activities that are **directly and significantly related to the project that result in physical or economic displacement**.

ESS5 must protect those with customary land tenure systems who may be excluded from ESS7. ESS5 should explicitly recognize all people and communities that have customary tenure rights as having

legitimate land claims. The Borrower should treat such communities with the same protections and provisions as are required for those with formal land rights.

Activities that reduce access to productive resources such as downstream impacts of dams¹ which can have disastrous and impoverishing impacts on fishing and agricultural communities, should be covered in the draft ESF.

According to Japan Center for a Sustainable Environment and Society (JACSES): Objectives of the ESS 5 should include the following key components mentioned in the Policy Principles of the 2009 SPS:

2.3 “Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land-based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods”

2.7 “Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of nonland assets.”

2.10 “Include the full costs of resettlement in the presentation of the project’s costs and benefits.”

2.11 “Pay compensation and provide other resettlement entitlements before physical or economic displacement.”

ESS 6: Biodiversity and sustainable natural resource management

NGO Forum on ADB is deeply concerned over ADBs' lack of recognition of critical habitats and biodiversity in their project operations. The impact of the Mannar Windmill project in Srilanka led to the direct impact on the loss of migratory bird populations due to poor design and lack of due diligent EIAs in cognisance of the migratory bird flow in the Mannar province. Similarly, the Mahaweli Water Management project in Srilanka has led to the destruction of critical habitats of the surrounding elephant population, directly causing elephant-human conflicts in the area². to this end, we strongly urge the new ESF to ensure clear No Go Zones to protect critical habitats from ADB project operations with no exceptions.

¹ Annex 1 on Dam Safety

- Should explicitly state applicability to cases where dams are considered as associated facilities as well as existing facilities
- In cases when rehabilitation or expansion of a project is being considered, the borrower must be required to provide clear justifications, showing how these options are being measured against decommissioning options. Up-to-date impact assessments must be provided prior to approval as well as clear information showing that community consent is not disputed and has not been acquired under duress. Outstanding legacy issues, in coordination with other project proponents, must be identified and addressed before proceeding.
- Should explicitly acknowledge that dam project impacts span upstream, downstream, and in the river sheds/watersheds surrounding the site
- Should explicitly explain how transboundary impacts will be accounted for, monitored, and addressed accordingly, given that it implies discussions with neighboring states, and intensive engagement with downstream/upstream users, as well as clear identification of all affected communities/land areas (e.g. through the preparation of an up to date evidence-based cadastre).
- Explicitly acknowledge the need for continuous monitoring of grievances, most especially when projects entail high river fluctuations due to routine hydro-peaking.
- Explain clearly the types of emergency measures borrowers must develop to provide clear and timely warnings (SMS alerts and alarm systems) to communities around and downstream of the dam site, as well as those living in close proximity to tributary rivers, and
- Require a detailed safe decommissioning plan to be developed in consultation with surrounding communities, outlining steps that will be taken, expected timelines, and financing prior to a project being approved by the ADB Board of Directors.
- Should reference the recommendations of the World Commission on Dams Final Report.

² <https://www.dailymirror.lk/insight/Mannar-Wind-Power-Projects-When-questions-blow-in-the-wind/374-258253>

According to Japan Center for a Sustainable Environment and Society (JACSES): Objectives of the ESS6 should include the following key components mentioned in the Policy Principles of the 2009 SPS:1.8 Do not implement project activities in areas of critical habitats

According to Friends of the Earth (FoE) US, there should be a total ban on offsets even as a “last resort”. This has been used as a means to justify and rationalize harmful projects that would otherwise not be able to receive financing. There is **no scientific way to prove “no net loss” of biodiversity** or “no significant net degradation”. Critical habitat should include not only the habitat of Endangered and Critically Endangered species but **also the habitat of vulnerable species** as defined by the IUCN Red List of Threatened Species or as defined in any national legislation.

According to the Biomass Action Network, there should be a total ban on wood-based projects in the absence of an ADB forest policy. There is a wide range of impacts associated with logging, deforestation, forest degradation, and conversion – usually with a large environmental footprint - and in the absence of such a policy it cannot be assumed that upstream impacts are known and have been rigorously assessed against established criteria, let alone whether they are acceptable or how they could be mitigated, if at all. Wood-based projects are predicated on ongoing demand for feedstock that will reach significant volumes and affect significant areas over time, and those environmental impacts are clearly associated specifically with each project.

To suggest that allowing the certainty of destruction today in one place on the promise of future restoration in another place (via “no net loss” of biodiversity and “no significant net degradation”) means that overall it is impossible to deliver net zero, making it a perverse concept in the field of biodiversity conservation, and should not be included.

It must also be noted that the current bioenergy projects with woody biomass/pellets as feedstock are receiving billions of dollars of public subsidies to remain viable while being responsible for deforestation and biodiversity loss. Such examples are there both in Japan and South Korea and Drax in the UK is the biggest example. Thus investment in bioenergy goes hand in hand with public subsidies that are harmful to biodiversity and results in biodiversity loss. Target 18 of the Kunming-Montreal Global Biodiversity Framework urges to eliminate and phase out subsidies harmful to biodiversity

ESS 7: Indigenous Peoples

According to the Legal Rights and Natural Resources Center (LRC), it must be stressed that FPIC has been reduced to an endless consultation process that only stops once consent is secured. As such, drawing from the practice of movements, the “Right to Say No” framework has emerged. It improves upon the FPIC by stressing the fundamental right of communities to reject projects and affirm instead their development models. Both the FPIC and the Right to Say No go beyond the ambit of “meaningful consultation”.

The determination of vitiated consent and/or influencing of community consent must be conditioned to discontinue or disallow project support.

ESS 8: Cultural heritage

According to Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth Philippines (LRC-KsK/FoE Phils.), the ADB can ensure better protection of cultural heritage through recognition of the importance of both tangible and intangible cultural heritage for present and future generations.

The new ESF policy should aim for:

- Undertake or identify existing cultural mapping to establish an inventory of cultural properties, customs, and practices, all within the full purview of Indigenous Knowledge Systems and Practices (IKSPs) which may be unduly threatened by an ADB-supported project;
- Protect cultural heritage from damage, inappropriate alteration, disruption, removal, or misuse and adopt the mitigation hierarchy approach from adverse impacts arising from the project.

ESS 9: Climate change

NGO Forum on ADB demands that there should be a climate risk vulnerability assessment – should not merely be focused on emissions but also a thorough vulnerability assessment of the risks to the population to be affected by any ADB-financed project. It should be applicable to all projects and financing, including, for example, trade finance.

Clearly articulate how GHG measurements will be accounted for and what measures will be taken to respond accordingly when projects already exist, including the application of polluters' pay principles. This includes avoiding a shift from one high GHG-emitting fuel to another.

The ADB should require that emissions (Scopes 1, 2, and 3) should be estimated and disclosed using a project lifecycle analysis (including up until decommissioning) prior to project approval, with the methodology for analysis disclosed. Each client should also be required to report annual emissions from the projects and subprojects (in cases of FIs) and the methodology used. This should be disclosed on the ADB website with no exemption for confidentiality or commercial sensitivity under the ADB's Access to Information Policy.

ADB should establish definitive provisions on what types of projects are considered eligible as climate mitigation/climate adaptation, establish what is the rationale and basis for classification, and disclose on project data sheets the percentage of financing considered as mitigation and/or adaptation, respectively. The Bank should also provide for screening to ensure direct and indirect financing (including trade finance, equity investments, associated facilities, and FI subprojects) is not exposed to coal, including but not limited to referencing the Global Coal Exit List. Lastly, ADB should also apply screening using the Global Oil and Gas Exit List to exclude clients that have no intention of scaling back on support for expanding fossil fuel assets.

According to the **Asia Pacific Biomass Working Group, Biomass Action Network**, EPN International, provisions on the types of projects considered eligible as climate mitigation and adaptation should be developed, and in so doing, energy generation from woody biomass should be excluded due to high emissions at the smokestack of wood combustion for large-scale energy production (equal to or exceeding those of coal). Assertions that something happening in forests elsewhere is a mitigating factor are dubious at best, cannot be delivered in relevant timeframes under the Paris Agreement, and have no relevance in the absence of forest policy under which to evaluate such claims.

Investing in bioenergy from burning woody biomass should not be considered as investing in renewables and also carbon neutral since it has been proved by scientific evidence that the entire process from logging of woody biomass to generation of bioenergy results in increasing emissions and does not reduce emission or become carbon neutral.

A study by Trend Asia in Indonesia revealed that co-firing 10% of biomass in 107 power plants potentially produces 26.48 million tonnes of Carbon dioxide equivalent (CO₂e) emission per year. This emission comes from deforestation, High-temperature electrolysis (HTE) utilization, to wood pellet

production. Instead of reducing, mixed biomass-coal will add emissions from power plants between 2021-2030, with an increasing projection of 298.9 million tonnes of CO₂e in 2030.

ESS 10: Stakeholder engagement and information disclosure

NGO Forum on ADB suggest that the 120-day disclosure should be retained in the ESF. In its attempt to strike the right balance of upfront assessment vis-a-vis implementation support, ADB must not forego key safety nets as this will completely defeat the purpose of the ESF. In this respect, we are extremely concerned about the timing of when Borrowers will be expected to develop and disclose key risk analyses and management plans. Specifically, the ESF does not make clear when the Borrower must prepare and disclose Environmental and Social Impact Assessments (ESIAs); Indigenous People's Plans (IPPs), and Resettlement Action Plans (RAPs), and instead the text suggests that they will be developed after Board approval. This is a clear dilution of the 2009 Safeguard Policy Statement.

According to Japan Center for a Sustainable Environment and Society (JACSES)

The sentence "ADB will not finance projects that do not comply with requirements on project preparation of Environmental and Social Policy (E&S Policy)" should be included in para 13 of E&S Policy. The following document names should be listed in para 49 of E&S policy as examples of documents which ADB is required to disclose prior to the ADB approval. The terms of exceptional cases in the ADB approval disclosure should be limited/defined clearly in the same paragraph.

- Environmental and Social Impact Assessment Report
- Environmental and Social Audit Report
- Environmental and Social Management Plan
- Environmental and Social Management Framework
- Environmental and Social Management System

JACSES further adds: Objectives of the ESS10 should include the following key components mentioned in the Policy

Principles of the 2009 SPS:

1.5 Ensure women's* participation in consultation.

1.5 Involve and concerned nongovernment organizations, early in the project preparation process.

1.5 Establish a grievance redress mechanism to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance.

** Regarding the introduction of "vulnerable people" into the Working Paper for the new ESF, it is not necessary to be described them as "women".*

According to Defenders in Development Campaign, stakeholder engagement plans must include concrete measures to implement the client's commitments to prevent reprisals and to ensure an enabling environment for stakeholder engagement and public participation. The policy should clearly establish how the Bank will respond to cases of retaliation, by regulating some of the essential elements of the response protocols. The Bank's commitment to use its leverage to respond effectively to cases of reprisals must be clearly established in the policy.

Concretely, the bank must:

- Proactively and publicly denounce - with the previous informed consent of affected people - any reprisal in the context of all current and pipeline projects;
- Commit to providing emergency assistance to defenders at risk;

- Disseminate widely how people affected by the projects can engage directly with the bank to raise cases of reprisals, and the procedures and protocols applied by the bank to deal with those cases;
- Establish the client's obligation to collaborate in good faith and support any investigation of allegations of reprisals carried out by the Bank that may be related to the project, and the client's obligation to remedy reprisals;
- Develop institutional capacities and allocate sufficient resources for the assessment of reprisal risks and the implementation of mitigation and response strategies, and
- Produce statistical information on the allegations of reprisals received, the kind of reprisals, the sectors involved, the countries where they allegedly took place, and the kind of responses adopted by the bank for continued monitoring and accountability.

The full submission can be found here:

<https://rightsindevelopment.org/news/recommendations-on-reprisals-for-the-updated-adb-safeguards/>

Other issues ESF ignores:

Gender

According to Aksi! for Gender, Social and Ecological Justice, safeguard commitments to protect communities (including women in their diversities) and the environment from ADB operations. The ESF dilutes the SPS 1995 in terms of gender consideration.

The ESF did not review the implementation of SPS gender considerations in this process. Hence, ESF is lacking bases to develop ESF. The ESF also removed the protection aspect for women.

Examples:

- SPS 1995 includes gender impacts and risk assessment on environment, IR, and IP; ESF is only for social risks and impacts. ESF does not require an assessment of the changing environment of women and gender differences.
- ESS 10 does not include women as a stakeholder
- ESS 10 (para 28) does not require a gender-responsive grievance mechanism. SPS 1995 does.

Some numbers for comparison:

	SPS	ESF
Women	13	7
Gender	43	34
Gender-sensitive	33	16
Gender-responsive	23	15
Female-headed household	2	0

According to Asia Biomass Working Group the entire ESS and the draft safeguards policy review process look completely gender-blind. Extraction and logging of woody biomass leading to deforestation and/or plantations, and bioenergy generation have severe impacts on women amongst the project-affected Indigenous Peoples, local and vulnerable communities with the loss of access to

forests, loss of biodiversity, collection of NTFP, loss of livelihood and traditional homeland and from severe environmental pollution.

On Financial Intermediaries

- Disclosure: FI lending is notoriously opaque with little information about where the money ends. Disclosing monitoring reports for transactions financed by ADB through FIs is welcome as is the commitment to disclose a summary of the ESMS. However, it would be preferable if the name, sector, and location of higher-risk subprojects were disclosed on the ADB's website before approval to enable scrutiny.
- Application of standards to subprojects: It is welcome that the ADB proposes to apply its standards at the subproject level to high and substantial-risk projects. It is welcome that this is a requirement – however, this policy could be strengthened by requiring ADB's FI clients to include ADB standards in legal contracts with subproject developers³, as is the practice at the EIB. The focus on high and substantial-risk subprojects or transactions leaves out activities determined to be medium risk – which can sometimes be misclassified (eg a small dam that has impacts on indigenous lands).
- Access to Grievance Mechanism/Accountability Mechanism: Access to accountability in FI projects is much more difficult than in those financed directly – so here an FI-specific requirement would have been much more effective. The language as it stands is far too vague. The requirement should be that FIs will implement effective GRMs and meaningful stakeholder engagement at the subproject level, disclosing information about it in a manner and format accessible to local communities. As well as disclosing information about the GRM, there must also be information at the subproject level, in a manner and format accessible to local people, disclosing a) the ADB's involvement b) the existence of the ADB's Accountability Mechanism and how to reach it. The AfDB has this requirement in its new E&S standards⁴, and the InterAmerican Development Bank requires disclosure of its accountability mechanism during stakeholder consultation about the project⁵.

Prohibited Investment Activities List

³ European Investment Bank, Environmental and Social Standards, Standard 1.26 The **European Investment Bank's** Environmental and Social Standards provide a useful starting point: "The promoter is also responsible for the proper implementation of any specific requirements set out in the ESMP or equivalent that is carried out by contractors or subcontractors. Effective contractor management includes due consideration to relevant ESMP provisions in respect of:

1. Tender documents, as appropriate, including criteria (such as knowledge, skills and resources) to determine potential contractors'/first-tier suppliers' capacity to meet the requirements;
2. Contractual requirements for contractors/first-tier suppliers to comply with the relevant Standards and to remedy any identified non-compliance;
3. Monitoring of contractor/first-tier supplier compliance with the above requirements; and
4. In the case of sub-contracting, the contractors/first-tier suppliers are required to have similar arrangements with their subcontractors.

⁴ The **African Development Bank's** 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." African Development Bank, Integrated Safeguards System, Operational Safeguard 9 para. 28.

⁵ The InterAmerican Development Bank (2021) Environmental and Social Performance Standard 1. Assessment and Management of Environmental and Social Risks and Impacts. Grievance Mechanism at 39. "The Borrower will inform project-affected people about the project's grievance mechanism and the IDB's Independent Consultation and Investigation Mechanism in the course of the stakeholder engagement process." See: <https://www.iadb.org/en/who-we-are/topics/environmental-and-social-solutions/environmental-and-social-policy-framework>

NGO Forum on ADB suggests full prohibition on support for any form of mining of uranium, rare earth, critical or transition minerals, including but not limited to support for developing plans or operations for extraction.

According to the Asia Biomass Working Group: they are suggesting a full prohibition on support for co-firing of woody biomass with coal, which serves to entrench the use of coal and should be prohibited on that basis along with other projects co-firing other substances with coal. A prohibition on co-firing woody biomass with coal is also warranted due to its climate impact being equivalent to or exceeding that of coal combustion alone, recognizing that a flawed accounting convention to exclude the emissions from energy sector accounts does not indicate zero emissions, merely that they ought to appear elsewhere (and that will be outside project boundaries although the impacts will arise due to the project).

Critical Concerns Over New Financing Modalities and Products

The current ESF draft, in Article 62, mentions that it does not articulate specific E&S requirements for financing modalities and products and points towards a pending ADB management-approved document, which has not been disclosed. Civil society raises the question: Why are the specific E&S requirements for products like equity finance, bonds, and new financing modalities not subject to civil society and public comment?

For high-risk and substantial-risk financing through new modalities and products, borrowers are subject to Strategic Social Environmental Assessment (SESA) as per Article 63 of the draft ESF. The SESA framework in the ETM scheme has been purely done through secondary and website information. This is a critical oversight that may lead to unassessed risks on the ground. The ADB must ensure that the SESA for new financing modalities undergoes onsite field investigations and rigorous project site visits, especially for high and substantial-risk projects, including meaningful consultation and time-bound disclosure requirements.

Under no circumstances should E&S assessments be done post-project approval. All E&S assessments must be conducted before project approval with time-bound information disclosure and meaningful consultations with all stakeholders, especially project-impacted communities.

Civil society strongly recommends that FIs and corporate clients including non-sovereign borrowers must have established ESMS systems that have gone through equivalence with the ADB ESS and ADB ESP before being considered for financing. If a client does not have an ESMS, they should be barred from ADB financing without exception.

Borrowers with ESMS should have to undergo an equivalence assessment, and if they have proved to have lower standards, the ADB will build their capacity to par with ADB standards before financing is approved. This should be mandatory, especially for financing for all sectoral and policy lending which may have a direct impact on local communities.

Offsetting E&S impacts must be revoked entirely as a solution to address harms and potential harms. This includes for all forms of non-sovereign, corporate, and FIs including RBLs and MTF. ADB must ensure second and third-tier assessment and validation of all E&S assessments done by borrowers before project and/or financing approval.

All costs to mitigate E&S issues must be earmarked in the loan and MOUs with clients/borrowers to ensure the safeguard costs are met across all forms of financing.

It is ADB's responsibility that all clients/borrowers must ensure that contractors and all forms of subcontractors adhere strictly to ADB ESF.

CONCLUDING REFLECTIONS

In light of the above concerns, we reiterate the call for a full rewrite of the ESF ensuring that binding requirements are set on borrowers keeping in mind the Do No Harm mandate of the ADB Safeguards. With climate vulnerability, political instability, and ongoing conflicts and wars, the role of the ADB to uphold environmental and social safeguards signals a commitment to the SDGs and the Paris Goals. We urge the Bank to charter Safeguards which leads other MDBs towards project operations that are accountable, transparent, and uphold human and environmental rights for all.

Endorsed by the following organizations -

11.11.11, Belgium

350 Pilipinas, Philippines

350.org Asia, Asia

Accountability Counsel, Global

Action Paysanne Contre la Faim, RDC

ActionAid Vietnam, Vietnam

Aksi! for Gender, Social and Ecological Justice, Indonesia

Alyansa Tigil Mina (ATM), Philippines

Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE)

Asian Peoples' Movement on Debt and Development (APMDD)

Bangladesh Working Group on External Debt (BWGED), Bangladesh

Bank Information Center, USA

Building and Wood Workers' International (BWI), Regional

Centre for Research and Advocacy Manipur, India

Change Initiative, Bangladesh

CLEAN (Coastal Livelihood and Environmental Action Network), Bangladesh

Community Development Friend (CDF), Bangladesh

Community Empowerment and Social Justice Network (CEMSOJ), Nepal

Community Legal Help And Public Interest Center, Philippines

Conseil Regional des Organisations Non gouvernementales de Développement, RDC

Defenders in Development Campaign, Global

Eco-Coalition Armenia, Armenia

Environmental Public Society, Armenia

Equitable Cambodia, Cambodia

Focus on the Global South, Regional

Freedom from Debt Coalition (FDC), Philippines

Gender Action, Global

Global Alliance for Incinerator Alternatives (GAIA), Global

Green Alternative, Georgia

Growthwatch, India

Indigenous Women Legal Awareness Group, Nepal

Indus Consortium, Pakistan

Initiative for Right View, Bangladesh

International Accountability Project, Global

International Rivers, Global

Jamaa Resource Initiatives, Kenya

Japan Center for a Sustainable Environment and Society (JACSES), Japan

Karmojibi Nari (KN), Bangladesh

KRuHA, Indonesia

Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth Philippines
(LRC-KsK/FoE Phils., Philippines)

Life Haven CIL, Philippines

Lumière Synergie pour le Développement, SENEGAL

Mekong Watch, Japan

Nash Vek PF, Kyrgyzstan

Oil Workers' Rights Protection Organization, Azerbaijan

Pakistan Fisherfolk forum, Pakistan

Participatory Research & Action Network - PRAAN, Bangladesh

Peace Point Development Foundation-PPDF, Nigeria

Philippine Legislators' Committee on Population and Development (PLCPD), Philippines

Rivers without Boundaries Coalition, Mongolia

Rivers without Boundaries PF, Kazakhstan

Sahmakum Teang Tnaut (STT), Cambodia

Solidaritas Perempuan, Indonesia

South Asia Just Transition Alliance (SAJTA), Regional

The Bretton Woods Project, United Kingdom

Urgewald, Germany

VOICE, Bangladesh

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