

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

Submission from BirdLife International  
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## **BirdLife International UPDATED VERSION of 6 May 2024**

### **Feedback Form: ADB Draft Environmental and Social Framework**

This form is provided for you to send feedback on draft ADB Environmental and Social Framework and 10 Environmental and Social Standards.

- Select which section you wish to comment on
- Write your comments in the space provided
- Enter your name, email address, and your affiliation
- Send to [safeguardsupdate@adb.org](mailto:safeguardsupdate@adb.org)

An email will be sent confirming you have successfully submitted your feedback.

If you have questions or if you are sending attachments in Word, pdf, Excel or other formats, please send them by [email](#).

### **Overview/General Comments**

Comments on this form are from Stuart Butchart, Tris Allinson, and Noelle Kumpel from BirdLife International.

### **Key reflections and suggestions**

We thank the ADB for the opportunity to engage in its comprehensive series of consultations, and for improvements made to the draft ESF since the last version. We refer the Safeguards team to our previous comments, submitted on 31 January 2022, in particular in relation to nature positive, the importance of a landscape perspective and supporting ecological connectivity, disclosure of information and Indigenous Peoples and local communities.

It is important to consider how to link the safeguards (doing at least no harm) with the ADB's (and wider MDBs') strategy and policy (doing positive) in order to ensure overall contribution to the nature positive global goal. This first requires a more ambitious and explicit framing of the Vision and ESS6 to recognise ADB's role in helping to achieve nature positive globally by 2030, as set out in the new Kunming-Montreal Global Biodiversity Framework (to which all ADB borrowers are committed as Parties to the Convention on Biological Diversity and to which reference should be made) and its Mission to halt and reverse the loss of biodiversity by 2030, as well as previously committed to directly by the ADB in form of fostering and making nature positive investments in the COP26 MDB joint nature statement (so being required to 'ensure' not just 'promote' nature positive investment).

The Vision should also highlight the need to mainstream nature into wider development policy, and, in relation to human rights, specifically mention the 'new' universal human right to a clean, healthy and sustainable environment (agreed by the Human Rights Council in 2021 and the UN General Assembly last year).

The safeguards could then strengthen delivery of this ambition through the following:

- All projects (including those in natural and modified habitats) aiming for net gain rather than simply no net loss, and ensuring all activities and induced impacts, including through the supply chain, are covered by the safeguards;
- Strict adherence to the mitigation hierarchy, or ideally the mitigation and conservation hierarchy, prioritizing avoidance (and restricting the use of offsets) where development is in protected or environmentally sensitive areas such as Key Biodiversity Areas, through use of preemptive spatial planning and scoping tools such as IBAT (the Integrated Biodiversity Assessment Tool; <https://www.ibat-alliance.org/>) and AVISTEP (Avian Sensitivity Tool for

Energy Planning; <https://avistep.birdlife.org/>) and ensuring no development under any circumstances in priority critical habitats;

- Making investment contingent on the borrower having carried out preemptive spatial planning in the form of a Strategic Environmental Assessment (SEA) incorporating sensitivity mapping, and ADB actively supporting the development and use of such strategic planning approaches and tools;
- With SEA in place, requiring more pre-emptive and detailed risk assessments under ESS1 before permitting development and following safeguards under ESS6;
- Having critical habitat more closely linked to the presence of priority biodiversity features rather than degree of naturalness, and being triggered by all globally threatened species (Critically Endangered, Endangered AND Vulnerable) on the IUCN Red List

Please see our specific comments and suggested text edits on the Vision, the ESF definition, list of prohibited activities and ESS6, and general comments in relation to ESS6 more broadly.

## Vision

Regarding the Vision, BirdLife International recommends:

- 1) In paragraph 4, line 4, add after Universal Declaration of Human Rights 'and other human rights such as the right to a clean, healthy and sustainable environment' – recognised by the UN Human Rights Council in 2021 and General Assembly in 2022.
- 2) In paragraph 6, strengthen the wording to say, 'It provides upstream support to DMCs in the development of policies, plans, and strategies including the implementation and monitoring of nationally determined contributions to support alignment and achievement of the Paris Agreement.'
- 3) In paragraph 7, first line, after 'It is a co-signatory to the Multilateral Development Bank Joint Statement on Nature, People and Planet (2021)', suggest to add 'and recognises its role in helping to achieve nature positive globally by 2030, as set out in the Kunming-Montreal Global Biodiversity Framework and its Mission to halt and reverse the loss of biodiversity by 2030'.
- 4) In paragraph 7, line 5, change the word 'promoting' to 'ensuring'.
- 5) In paragraph 7, line 7, after 'nature-based solutions', suggest to add 'mainstreaming of nature into wider development policy, including on climate,'.
- 6) In paragraph 9, adherence to free, prior and informed consent (FPIC) should be mentioned or as a bullet in paragraph 10.

## ESF definitions

BirdLife International recommends the following edits and revisions to the definitions:

- 1) Biodiversity offsets, p2 - suggest to add 'according to the mitigation hierarchy' at the end.
- 2) Critical habitat, p3 - suggest to add at the end: 'Key Biodiversity Areas would be one example.'
- 3) Good international practice (GIP), p5 - reference should be made to Good International Industry Practice (GIIP) guidelines such as CSBI (2015) A cross-sector guide for implementing the mitigation hierarchy.
- 4) Internationally recognized area, p6 - amend to 'UNESCO Natural and Mixed World Heritage Sites and Biosphere Reserves' and 'Key Biodiversity Areas including Important Bird and Biodiversity Areas and Alliance for Zero Extinction Sites'
- 5) Meaningful consultation, p7, should refer to free, prior and informed consent (FPIC) specifically
- 6) Mitigation hierarchy, p8 - propose to add or incorporate a reference to the Mitigation and Conservation Hierarchy, which can be applied by different actors at different scales to unite

mitigation and proactive conservation actions in one framework to support the achievement of nature positive outcomes (i.e. biodiversity net gain). <https://conservationhierarchy.org/>

- 7) Net gain, p8 - Need to be clearer that this can only be achieved as part of a strict Mitigation Hierarchy process, prioritising avoidance/mitigation measures first. Suggest reword to 'Net gain may be achieved through the development of a biodiversity offset or other compensatory program **as part of strict application of the Mitigation Hierarchy or Mitigation and Conservation Hierarchy, first prioritising avoidance and then mitigation and restoration measures,**'... Should also call this 'Net gain **of biodiversity**' to be clear what it is about.
- 8) No net loss, p8 - suggest to add at the end '**following the precautionary principle at all times**' (to allow for a margin of error or implementation failure - this depends on the context but would suggest at least 20%). This also applies to the definition of net gain and the Mitigation Hierarchy.
- 9) Offset, p8 - suggest to make clear that this scope differs from 'biodiversity offset' as defined above (and explain how).
- 10) Precautionary approach, p9 - Not sure this is exactly what the precautionary approach means – suggest to remove the term 'cost-effective' as the way it is worded sounds like this is the key aspect relating to lack of scientific certainty and this could be misinterpreted.

## **Draft Environmental and Social Policy**

[View document](#)

No comments.

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

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No comments.

## **Draft ESS 2: Labor and Working Conditions**

[View document](#)

No comments.

## **Draft ESS 3: Pollution Prevention and Resource Efficiency**

[View document](#)

No comments.

## **Draft ESS 4: Health, Safety, and Security**

[View document](#)

No comments.

## **Draft ESS 5: Land Acquisition and Land Use Restriction**

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No comments.

## **Draft ESS 6: Biodiversity and Sustainable Natural Resource Management**

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**SPECIFIC POINTS:**

- 1) In the Introduction, the standard should recognise the commitment by all ADB countries (196 Parties to the Convention on Biological Diversity, CBD) to achieve the nature positive global goal, as set out in the Kunming-Montreal Global Biodiversity Framework and its Mission to halt and reverse the loss of biodiversity by 2030, as well as ADB's commitment to nature positive investments under the MDB COP26 joint nature statement.
- 2) Add 'to help ensure overall net gain of biodiversity of ADB investments and demonstrable contribution to the delivery of the nature positive global goal' to the end of objective b.
- 3) In paragraph 6, add after critical habitat: '...,as well as protected areas and internationally recognised areas, ...'. It is key that internationally recognised areas are included in project screening and scoping from the earliest stage, and for protected and conserved areas and Key Biodiversity Areas this can be done easily through the Integrated Biodiversity Assessment Tool.
- 4) In paragraph 7, add, 'the borrower/client should also consult experts from NGOs, CSOs, and academia'.
- 5) In paragraph 9, change 'within' to 'within and external to' the project-affected area.
- 6) In paragraph 16 (iii) add in 'Particularly those listed as threatened (ie Critically Endangered, Endangered or Vulnerable) on the IUCN Red List, as well as species identified as threatened in Regional or National Red Lists (some of which are compiled at <https://www.nationalredlist.org/>)'.
- 7) In paragraph 16 (iv), 'geographically restricted range' is preferable terminology to 'endemic'. Endemic is typically applied to countries - given the range in size between China and Malta this is not very useful in predicting true levels of geographical restriction. It is much better to stick with standard 'restricted-range' definitions, which align with KBA criteria.
- 8) In paragraph 16, additional text could be added saying that Key Biodiversity Areas are sites that are significant for the global persistence of biodiversity and are identified using criteria relating to each of the types of features listed here. Commercial access to data on KBAs is available via IBAT.
- 9) In paragraph 20, after 'unless' insert 'each of the following conditions are met:'.
- 10) In paragraph 22 (ii), it is difficult to think of any circumstance where critical habitat or priority biodiversity features would be substantially improved through development at the site.
- 11) In paragraph 22 (v) after 'mitigation hierarchy' add 'or preferably the mitigation and conservation hierarchy'.
- 12) In paragraph 23, remove 'or unless otherwise agreed with ADB' or at the very least amend to 'or unless otherwise agreed with and publicly disclosed by ADB'. This provides a concerning possibly loophole to allow development in these areas.
- 13) In paragraph 23 insert 'The subset of Key Biodiversity Areas recognised as Alliance for Zero Extinction (AZE) sites...' so it is clear that AZE sites are a type of KBA.
- 14) In paragraph 23 we suggest considering expanding sub-paragraph (i) to include all KBAs.
- 15) In paragraph 24, we suggest to specifically mention free, prior and informed consent (FPIC).
- 17) In paragraph 25 (v), insert at the end, ' , following the mitigation and conservation hierarchy'.
- 18) In paragraph 34 (iii) remove 'where possible'. It is as important that the suppliers adhere to the same safeguards as the developers themselves, so this potential loophole phrasing should be removed.

## **GENERAL POINTS:**

Problem 1: Developments continue to be financed in areas of natural importance when much less sensitive locations are available.

This happens because multiple forces act to 'push' development towards areas of importance for nature. There is a tendency for governments and developers to regard landscapes that are not obviously used for direct human activity (i.e. agriculture, industry) as unutilised and vacant. Natural areas tend also to have lower land prices and weaker, less complex land tenure.

Solution 1: It is vital that the ADB strengthens its ESF to ensure that less financing is linked to damaging developments in natural areas that could have been avoided. Whilst there may be occasions when development within areas of importance for nature is unavoidable and societally necessary, such occasions are likely to be rare and the default starting position should always be to avoid development within areas of natural importance, whether these be deemed "modified", "natural" or "critical habitat". Development in these areas should only be considered when:

- a) A comprehensive Strategic Environmental Assessment has determined that no alternative location exists;
- b) It has been demonstrated that the development is of overriding national interest, societally necessary and is sustainable across the project lifespan; and
- c) The Mitigation Hierarchy has been fully enacted.

Problem 2: The definition of 'critical habitat' is too closely linked to degree of naturalness.

The ESS 6 definition of 'critical habitat' puts a lot of emphasis on the degree of human modification. This fails to recognise that many semi-natural habitats hold enormous values for both biodiversity and culture. Indeed, humans have been influencing nature for millennia, and it can be argued that almost everywhere is now 'substantially modified by human activity'. Even landscapes of minimal biodiversity value can still be critical to biodiversity if the air space above them is utilised by migratory or foraging aerial species. This is often the case with wind farm developments where the biodiversity value of the site at ground level can be minimal, but the airspace above can be a critical migratory route.

Solution 2: Critical habitat should be more closely linked to the presence of priority biodiversity features rather than degree of naturalness.

Problem 3: Inadequate definition of species that trigger critical habitat.

The standard currently defines species that trigger critical habitat as listed as either Critically Endangered or Endangered on the IUCN Red List. This is currently omitting many species threatened with global extinction, namely those in the Vulnerable category. The Red List identifies species that are on a trajectory to global extinction (Globally Threatened). All species identified by the IUCN as threatened with global extinction should be included as triggers of critical habitat.

Solution 3: The species that trigger critical habitat should be all those identified as globally threatened, namely those in the categories Critically Endangered, Endangered AND Vulnerable on the IUCN Red List, as well as those identified as threatened through National Red List exercises.

Problem 4: The new standards do not mention induced impacts.

The old standards outlined the need to assess 'induced impacts', which are often the most significant impacts on biodiversity of any project. Induced impacts should include infrastructure that is necessitated or precipitated by the development, but not financed by the bank. For instance, often a bank will finance a windfarm or solar facility in accordance with its biodiversity standards, but the overhead transmission line necessitated by the development is not funded by the bank and therefore

not subject to its standards. Nevertheless, without the windfarm/solar facility there would be no transmission line. Another common problem, especially for renewable energy projects, is that an IFI funds one development in accordance with its biodiversity standards, but this then encourages further developments to cluster in the same area, many lacking any consideration of biodiversity.

Solution 4: Clearly reinstate the need to address induced impacts. The assessment of whether the development is permissible must include a consideration of whether a project will encourage further development and whether that development is likely to meet the standards.

Problem 5: There must be greater clarity on how to determine that “no other viable alternatives exist for development of a project”.

Solution 5: In reality, this can only be known with certainty if a comprehensive Strategic Environmental Assessment has been conducted. The standards must state clearly that investment should be conditional on it being proved through a comprehensive and public Strategic Environmental Assessment that “no other viable alternatives exist for development of a project”.

Problem 6: Too many projects are resorting to biodiversity offsets.

As outlined in the Mitigation Hierarchy, biodiversity offsets should only be considered as a last resort when every effort has been made to first avoid and then minimise the biodiversity impact. Offsets are often costly, complicated, and have highly variable success rates. However, inadequate implementation of the Mitigation Hierarchy, specifically a failure to ensure the Avoidance step is properly fulfilled (outlined below), too often results in an overreliance on biodiversity offsets.

Solution 6: Fix the Mitigation Hierarchy (see below). When offsets are used, they should only be used to achieve like-for-like replacement and they should always be precautionary in nature, aiming to achieve a biodiversity gain. This means that for example if a project is expected to impact 30 individuals of a species even after every step has been taken to first Avoid and then Minimise the impact, the offset must be for the same species (like-for-like) and ensure a biodiversity gain (i.e. more than 30 individuals). Offsets should be:

- a) A last resort only rarely considered after full implementation of the Mitigation Hierarchy.
- b) Like-for-like. It is not acceptable to impact one species or habitat and provide an offset for a different species or habitat.
- c) Precautionary and providing an overcompensation of the anticipated losses.

**PRIMARY UNDERLINING PROBLEM:** IFIs cannot actually enact the Mitigation Hierarchy without pre-emptive, transparent spatial planning in the form of Strategic Environmental Assessment

The first and most critical step of the Mitigation Hierarchy is Avoidance; in effect this means ‘choosing a site for development that avoids biodiversity risk’. However, banks (and often their developer clients) do not choose where developments are placed. Governments decide on where infrastructure is to be built, developers are awarded the contracts to build it, and banks provide the funding.

Solution: To ensure the correct implementation of the Mitigation Hierarchy, there must be a mechanism for the IFIs to assess whether a site has been chosen with an aim to minimise impacts on nature and whether alternative locations have been considered. Investment must be contingent on a government demonstrating that they have considered the impacts on nature when selecting the site and that they can show that no viable alternatives exist in areas of lower biodiversity risk. This will typically require investment to be conditional on a Strategic Environmental Assessment (SEA). To be able to claim that the Mitigation Hierarchy has been correctly followed there must be a comprehensive and publicly available Strategic Environmental Assessment demonstrating that no alternative location

exists. It must also be demonstrated that the development is of overriding national interest, is societally necessary and is sustainable across the project lifespan.

### **Draft ESS 7: Indigenous Peoples**

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No comments.

### **Draft ESS 8: Cultural Heritage**

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No comments.

### **Draft ESS 9: Climate Change**

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No comments.

### **Draft ESS 10: Stakeholder Engagement and Information Disclosure**

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No comments.

### **Draft Prohibited Investment Activities List**

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On the whole this list has improved from previously.

Paragraph ix should also cover all of temperate and boreal forests. It could be better to say 'primary or old growth tropical, temperate and boreal forests'.

### **Draft Requirements for Financing Modalities and Products**

[View document](#)

No comments.

### **About You**

*\*required fields*

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