

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

Submission from CEE Bankwatch Network  
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## **CEE Bankwatch Network comments on the ADB's environmental and social Framework**

CEE Bankwatch Network acknowledges the progress made by the ADB in its draft Environmental and Social Framework and the efforts to modernise and harmonise it with other multilateral development banks (MDBs). The new policy far better addresses numerous issues that have been problematic in the implementation of ADB projects over the past decade in the Caucasus and Central Asia region, where CEE Bankwatch Network is actively engaged and monitors the Bank's projects.

### **Environmental and Social Framework and Human Rights**

We welcome the Bank's commitment to ensure that its operations in the region "support the realization of human rights as expressed in the Universal Declaration of Human Rights". However, we would like to see these commitments translated from a non-binding vision to an Environmental and Social (E&S) policy statement and ESSs through concrete tools in line with the UN High Commissioner for Human Rights' [Benchmarking Study of Development Finance Institutions](#).

Without the application of these tools, it would be quite impossible to ensure a non-discriminatory approach on the part of the borrower/client and to create an enabling environment that provides equitable access to services and benefits and enables meaningful participation. The assessment of human risks and impacts, human rights due diligence, should be an integral part of the environmental and social assessment, together with the analysis of contextual risks. The Bank should require the client to integrate human rights risks and impacts into the assessment and management processes within and around the project.

It is welcomed that ADB recognises that "the management of environmental and social (E&S) risks and impacts of a project is influenced by the project context" and therefore commits to "consider the context and constraints in which a project is being developed and will be implemented, and work with its borrowers/clients to develop appropriate measures that are adequate and tailored to the specific E&S risks and impacts of a project."

The contextual risk analysis should be operationalized, including introducing like the tools as contextual risk assessment, involvement of independent experts who are familiar with the human rights situation in the country, the specific risks of reprisals, etc.

Without operationalising the above commitments, it would be rather impossible to ensure the non-discriminatory approach of the borrower /client and to create an enabling environment that provides equal access to services and benefits and allows meaningful participation.

- The Assessment of Human Risks and impacts should be an integral part of environmental and social appraisal, together with contextual risks analysis.
- The methodology of the contextual analysis both for country level and project level should be well consulted with wider Human rights entities, Civil Society groups, independent experts and so on.
- The Bank should request the client to integrate human rights risks and impacts into the assessment and management process.
- During the monitoring the human rights risks and impacts should be one of the major priorities.
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### **Environmental and Social Framework and Impacts Mitigation**

The Environmental and Social Framework (ESF) vision states that “the institutional aspirations set out in this vision” will be translated to binding project-level requirements to be applied within the parameters of a project and within ADB's mandate it will seek to avoid and, where this is not possible, minimize, mitigate, and compensate for adverse impacts of ADB projects on people and the environment, taking into account climate change risks. It also emphasises the importance of ensuring that ADB projects do not cause harm to individuals, communities, or the environment, and that any potential negative impacts are effectively managed and addressed.

However, the ESF is not built on the do not harm principle that not only avoids and minimize mitigates but also effectively prevents, reduces and controls potential risks and impacts, and ensures effective remedy in case of harm, as well as responsible exit strategies, as its part.

It is important that the ADB Environmental and Social Policy (E&S Policy) and ESS 1 should explicitly require full commitment and completed ADB due diligence to ensure adequate environmental and social impact assessment and mitigation measures. The hierarchy of environmental and social impact assessment and

mitigation measures should ensure that project approval is conditional on well-developed and prepared project documents, including risk assessment, environmental and social management plans, etc.

The well-developed environmental impact assessment, which is publicly reviewed within 120 days for public sector projects and at least 60 days (about 2 months) for private sector projects, should be procedurally linked to ADB's project appraisal/decision-making, as is required in several other MDBs, e.g. at the European Bank for Reconstruction and Development (EBRD). In the meantime, approving projects without proper ADB due diligence poses numerous risks, which the Compliance Review Panel (CRP) has pointed out several times.

- The ADB should ensure all relevant documents for High Risk and Substantial Risk projects, (including Environmental Impact Assessments and Environmental and Social Management plans etc.) the due diligence process should be fully finalised, and all mitigation measures should be reflected as conditionalities before the project is approved by the ADB Board of Directors.
- All relevant documents should be disclosed for public participation prior to the project approval by the board – 120 days for public sector projects and at least 60 days for private sector projects.
- The draft safeguards reinforce the requirement that the client is solely responsible for providing remedy. This is not enough.
- The ADB must **commit to providing remedy in cases where its actions or omissions contribute to harm**. It should share the responsibility for remedy with the client. Therefore, the ADB should ensure that funding is available for remedial actions taken by the ADB and the client.
- The ADB should **develop responsible exit principles** to ensure that it does not leave environmental and social harm unaddressed when it exits investments.

### **Environmental and Social Framework and Associated Facilities**

According to ESS1, the “ADB will require the application of the ESSs to associated facilities to the extent a borrower/client has control or influence over such associated facilities as set out in ESS1. For the purpose of this E&S Policy and the ESSs, the term “associated facilities” means new facilities or activities that are not funded as part of a project and, in the judgment of ADB, are: (i) directly and significantly related to the project; and (ii) developed, or contemporaneously planned to be developed, with the project; and (iii) necessary for the project to be viable and would not have been developed if the project did not exist”. The statement is problematic given that associated facilities often represent the actual part of the project and borrowers/clients often slice the projects to avoid clarifying the full impact of the projects of associated facilities, which often characterises energy projects.

It is therefore important that borrowers ensure that the environmental and/or social risks and impacts of associated facilities are managed and mitigated in accordance with applicable law, Good International Practice and the objectives of the ESSs.

If the associated facilities cannot be structured to meet ESSs, the ADB should identify during the project appraisal the environmental and/or social risks and impacts that such associated facilities may have on the project.

### **Environmental and Social Framework and Land related issues**

The process of land consolidation (concentration) can cause negative impacts on local communities and should be properly considered. The problem of land concentration goes beyond the process of land acquisition itself. This process of buying up vast tracts of land by a single company in certain areas has long-term effect through changes in land ownership (control), resulting in shifts in the balance of power between stakeholders (e.g. large landowners, local governments, and local communities). That's very clear in the projects that the Bank has implemented or considered in the energy or agricultural sectors (Georgia Shuakhevi HPP, or Nenskra HPP, Indorama Project in Uzbekistan etc).

The ADB's Environmental and Social Framework, ESS5 "Land acquisition and Land use restriction" acknowledges that "project-related land acquisition and land use restriction (LA/LUR), if unmitigated, could give rise to significant economic and/or environmental and social (E&S) risks and impacts, and may result in long-term hardship and impoverishment. LA/LUR refers to all methods of obtaining land or restricting land use in connection with a project. Project-related LA/LUR may cause physical displacement, economic displacement, or both to affected persons."

The problems associated with land concentration are not unique to the Bank or to the region in which it operates. The Land Matix Initiative is one of the academic groups discussing these issues in its third analytical report '[Taking stock of the global land rush: Few development benefits, many human and environmental risks](#)' (2021). According to the report, *"the results of our review and complementary analyses are sobering, in part alarming. Compliance with the principles of responsible business conduct is rare, and scant consultation with the affected communities is common. The non-consensual and uncompensated loss of land often comes with only little socio-economic benefits – be they employment, positive productivity spillovers, or infrastructure."*

The issue of land concentration was highlighted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its [Benchmarking Study of Development Finance Institutions' Safeguard Policies February](#) of 2023-. The study points out the need to adjust International Financial Institutions' policies to avoid negative impacts of land transactions on page 118 *“LAND TRANSACTIONS DFIs' Safeguards have for a long time addressed involuntary land transactions and involuntary resettlement. Land is a vital asset, critical for human rights and sustainable development, and many DFI projects affect land access and land rights with potential impacts on a wide range of human rights. The multiple functions and uses of land as a source of food, water livelihoods and other resources, its importance for cultural and social identity, peace and economic security, and the impoverishment risks that often result from involuntary resettlement, underscore the need for broad-ranging and robust Safeguards. Resettlement has been a consistent focus of complaints to IAMs and a source of social tension and violent conflict. This Section focuses on one particular gap in most DFIs' Safeguards, pertaining to land transactions.”*

Bankwatch suggests that ESF and ESS5 clearly spell out:

- the need to assess the impact of large-scale land acquisition as a dedicated assessment aimed at avoiding land concentration by individual companies. Such an assessment should not be the sole responsibility of the client, as it is the client's objective to increase its land bank while keeping logistics and infrastructure costs low, thus aiming to concentrate its land in certain areas. The impact of such land consolidation on smaller landowners and communities should be part of the Bank's project due diligence.

Bankwatch also calls on the ADB to implement the following recommendations of the OHCHR:

- *“Require procedural checks in relation to the “willing buyer willing seller” assumption. This would help to ensure that transactions are validly negotiated, and that the right not to proceed with the transaction (when this is claimed) is respected. This would entail an assessment of parties' access to information, access to legal and technical support, reprisal risk checks, and the availability of effective grievance mechanisms. Many of these dimensions are already included in the World Bank's ESSF 5, which in OHCHR's view may serve as a precedent and stimulus for wider progress on these issues.*
- *Recognize that there may be a need for a sliding scale of requirements tailored to particular transactions and situations; for example, minimal checks would suffice where there is an active land market, and more detailed requirements should apply in situations of large-scale acquisitions in rural settings, and in relation to acquisitions from marginalized groups, which could also require third-party verification.”*

**Environmental And Social Framework and Biodiversity protection**

In times of climate change, protecting biodiversity becomes even more important and urgent, so it's important that the Bank sets limits on its impact on biodiversity. We welcome the new draft as it gives more clarity, defines critical, natural and modified habitats and priority biodiversity features and adds Alliance for Zero Extinction, UNESCO sites and some free-flowing river sections as no-go zones. However, in terms of the mitigation hierarchy, ESS1 and ESS6 should clearly require all projects to avoid significant adverse impact on biodiversity at the earliest possible stage. The mitigation measures should only be designed after the avoidance measures have demonstrated that the remaining impact is not significant. And biodiversity offsetting should be unacceptable, especially for impacts on critical and natural habitats.

The following benchmarking table shows that the ADB's draft ESF and ESS6 are still not aligned with the Convention on Biological Diversity's mission to halt and reverse biodiversity loss by 2030 and the Kunming-Montreal Global Biodiversity Framework (GBF) targets. It also shows that the ADB would lag behind other international financial institutions such as the European Investment Bank (EIB) and at the level of the older IFC and EBRD policies.

	IFC 2012 and EBRD 2019	EIB 2022	ADB draft 2024
Main objective	no <b>net</b> loss of biodiversity	no loss of biodiversity	no <b>net</b> loss of biodiversity
Species that trigger critical habitat	critically endangered and endangered species	critically endangered, endangered and <b>vulnerable</b> species	critically endangered and endangered species
Biodiversity offsets	allowed for any project	<b>not allowed</b> for critical habitat or habitat of high biodiversity value	allowed for any project, but if demonstrated that all other viable avoidance and mitigation options have first been exhausted

<p>Internationally recognised areas</p>	<p>UNESCO Natural World Heritage sites, UNESCO Man-and-Biosphere Reserves, Ramsar sites</p>	<p><b>Natura 2000 sites, potential Natura 2000 sites, Emerald sites, UNESCO Natural World Heritage sites, UNESCO Man-and-Biosphere Reserves, Ramsar sites, Important Bird and Biodiversity Areas (IBAs), Alliance of Zero Extinction (AZE) sites, Key Biodiversity Areas (KBAs)</b></p>	<p>not specified</p>
<p>Appropriate assessment for internationally-recognised areas</p>	<p>not required</p>	<p><b>required</b> in EU, EFTA, Candidate and potential Candidate countries</p>	<p>not required</p>
<p>No-go zones</p>	<p>none</p>	<p>none</p>	<p>(i) <b>Alliance for Zero Extinction (AZE)</b> sites;  (ii) <b>UNESCO</b> Natural and Mixed World Heritage (WH) Sites; and  (iii) <b>Free-flowing sections of rivers</b> 500 km or longer in length</p>

Therefore, we propose the following changes in ESS1:

ADB proposed Draft	Changes proposed by Bankwatch
	<p><i>Align the ADB with the Kunming-Montreal Global Biodiversity Framework (GBF) mission.</i></p> <p><i>Justification: In June 2023, 74 civil society organisations called on financial institutions to protect biodiversity and help implement the Global Biodiversity Framework.</i></p>

We propose the following changes in ESS 6, Biodiversity conservation and sustainable CONSERVATION AND SUSTAINABLE NATURAL RESOURCES MANAGEMENT in track changes

ADB proposed draft	Changes proposed by Bankwatch
<p><i>II. OBJECTIVES</i></p> <p><i>b. Apply the mitigation hierarchy and the precautionary approach to achieve a minimum of no net loss and, preferably, a net gain of biodiversity;</i></p>	<p><i>Objectives</i></p> <p><i>b. Apply the mitigation hierarchy and the precautionary approach to achieve a minimum of no loss and, preferably, a gain of biodiversity;</i></p> <p><i>Justification: No Net Loss of biodiversity is a concept that is proving ineffective, difficult to monitor and even more difficult to control and should not be used in this standard. The word ‘Net’ allows the destruction of biodiversity in a particular place, on the assumption that biodiversity will be protected somewhere else. For example, in projects like the <a href="#">Shuakhevi hydropower plant</a>, where the destruction of river habitats and the disappearance of fish and otter populations is supposed to be offset by the planting of artificial forests. The project’s EIA/ESIA report and biodiversity management plan based on the No Net Loss principle rely on incorrect assumptions about the impacts of the project and the mitigation/compensation/offsetting measures. We suggest using</i></p>

	<p>in II. Objectives and afterwards in other articles of ESS6 the concept of “<b>No Loss of Biodiversity</b>”.</p> <p>This change has already been accepted in the 2022 <a href="#">EIB environmental and social standards</a>. It is also in line with the Kunming-Montreal Global Biodiversity Framework (GBF), a landmark agreement to guide global action to preserve and protect nature through 2030. It was adopted by the State Parties to the Convention on Biological Diversity (CBD) in December 2022 at COP15 in Montreal, Canada, and replaces the Aichi Biodiversity Targets set in 2010. The framework calls for urgent action in achieving the Convention’s mission by “halting and reversing nature loss” by 2030. The GBF, along with the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), has clearly stated that land use change, pollution, climate change, and over-exploitation of natural resources are major drivers of biodiversity loss. Public and private financiers are closely linked to these drivers via the activities and sectors they choose to finance. It is increasingly important for financial institutions to align with the goals and targets set out in the GBF and prohibit financing of activities and sectors that are driving nature destruction and therefore do not align with the targets of the Framework.</p> <p>Taking into account the ADB’s countries of operation, the ADB should, <b>as a minimum</b>, aim for <b>no significant loss of biodiversity</b> in order to avoid significant impacts on the most valuable biodiversity (natural and critical habitats, threatened and endemic species, etc.).</p>
<p>5. The E&amp;S assessment process described in ESS1 will be used to determine potential direct, indirect, landscape-level, and cumulative project impacts to biodiversity or ecosystem services</p>	<p><i>The E&amp;S assessment process described in ESS1 will be used to determine potential direct, indirect, landscape-level, and cumulative project impacts <u>of the project and ancillary/associated works/facilities, where relevant</u>, to biodiversity or ecosystem services and the applicability of this ESS6. It will especially focus on habitat loss, degradation, and fragmentation, <u>loss of species</u></i></p>

<p>and the applicability of this ESS6. It will especially focus on habitat loss, degradation, and fragmentation, invasive alien species, overexploitation, hydrological changes, nutrient loading, pollution, and projected climate change impacts.</p>	<p><u>diversity and abundance, loss of genetic diversity, invasive alien species, overexploitation, hydrological changes, nutrient loading, pollution and incidental take, and projected climate change impacts.</u></p>
	<p><i>Add new paragraph</i></p> <p><u>To guarantee the completeness and sufficient quality of the assessment of the impacts and risks affecting biodiversity and ecosystems, the promoter shall conduct and document the following, as relevant:</u></p> <p><u>a. An adequate characterisation of the baseline conditions, including field surveys over multiple seasons as required, indicating the ecological state of the project site and its assessment areas as they are now and as they would develop in the absence of the planned project. Any field surveys and assessments should be up-to-date and the data should be acquired for the area where the project may have impacts, direct or indirect, including ancillary/associated works/facilities;</u></p> <p><u>b. The baseline analysis that considers, but is not limited to, the following threats: (i) habitat loss, degradation and fragmentation (including risk of collision) of marine, freshwater and terrestrial environments and the creation of an edge effect; (ii) deforestation and illegal logging; (iii) overexploitation of natural areas and resources; (iv) migration barriers; (v) the capturing of wild animals and wildlife poaching; (vi) nutrient loading; (vii) pollution and noise, including hydrological changes; (viii) pre-existing threats and the extent to which the project might exacerbate them; and (ix) a spill-over effect, sometimes referred to as induced development;</u></p> <p><u>c. The assessment process, including: (i) consideration of potential land/seascape-level impacts, seasonal sensitivities, as well as</u></p>

	<p><u>impacts on the ecological integrity of the ecosystems, including the habitats within these ecosystems, regardless of their protection status and regardless of the degree of their degradation; and (ii) any climate change impacts and risks affecting biodiversity and ecosystems, as well as the appropriate measures required to adapt to a changing climate;</u></p> <p><u>d. An assessment of the impacts of the construction, operation and decommissioning phases of the various alternatives against the benchmark of the “without-project-scenario” (as established in paragraph a.), indicating if these would result in improved outcomes for biodiversity, ecosystems and their services;</u></p> <p><u>e. The application of the mitigation hierarchy as defined in article 10 of ESS6.</u></p>
<p>6. The borrower/client will use project screening and scoping to determine the requirements for a biodiversity assessment. The extent of the assessment will be proportionate to the nature and scale and potential risks and impacts of a project and the sensitivity of the biodiversity and ecosystem services that could be affected. The scoping process will also be used to determine the potential presence of natural habitats, priority biodiversity features, and critical habitat in a project-affected area</p>	<p>The borrower/client will use project screening and scoping to determine the requirements for a biodiversity assessment. The extent of the assessment will be proportionate to the nature and scale and potential risks and impacts of a project and the sensitivity of the biodiversity and ecosystem services that could be affected. The scoping process will also be used to determine the potential presence of natural habitats, priority biodiversity features, <del>and</del> critical habitat in a project-affected area, <u>declared and potential protected areas and internationally recognized areas.</u></p> <p><i>Justification:</i></p> <p>These additions are important in order to set minimum requirements for the assessments and make them obligatory.</p>

<p>10. As a priority, the borrower/client will avoid adverse impacts to biodiversity and ecosystem services. Where avoidance is not possible, the borrower/client will follow the mitigation hierarchy and minimize or mitigate adverse impacts within a project-affected area. The borrower/client will only consider offsets as a last resort, where any significant residual impacts remain despite best efforts to avoid, minimize, or mitigate adverse impacts.</p>	<p>10. As a priority, the borrower/client will avoid adverse impacts to biodiversity and ecosystem services. Where avoidance is not possible, the borrower/client will follow the mitigation hierarchy and minimize or mitigate adverse impacts within a project-affected area. The borrower/client will only consider offsets as a last resort, where any significant residual impacts remain despite best efforts to avoid, minimize, or mitigate adverse impacts. <u>Where a project is expected to have impacts that would compromise the viability of a critical habitat and/or a priority biodiversity feature regardless of any proposed compensation or offset, the promoter shall undertake to redesign the project to avoid the need for such compensation/offset.</u></p> <p><i>Justification:</i> Public banks and financial institutions should focus on protecting biodiversity and ecosystem viability instead of betting on compensation/offsets while contributing to habitat destruction. There remains a <u>critical lack of sound evidence that offsets and compensation can prevent biodiversity loss</u>. The experience of using these mechanisms at different MDBs has also been unsuccessful all around the world and the EIB closed the door on biodiversity offsets in its 2022 standards.</p> <p>Since the introduction of biodiversity offsets in the ADB policy, these have been used in a variety of projects (like wind projects in <u>Uzbekistan</u> or hydropower projects in <u>Georgia</u>) exactly in the circumstances the <u>IUCN's policy on offsets</u> says they must not be used:</p> <ul style="list-style-type: none"> <li>● where the mitigation hierarchy has not been followed,</li> <li>● where meaningful alternatives for the projects have not been evaluated,</li> <li>● where a project may result in the extinction of species,</li> <li>● where there is a high degree of uncertainty regarding the success of the offset and a clear lack of governance,</li> </ul>
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	<ul style="list-style-type: none"> <li>• where the biodiversity value that will be lost is specific to a particular place, and therefore cannot be found elsewhere,</li> <li>• where the offsets are not measurable and appropriately implemented, monitored, evaluated and enforced,</li> <li>• where the offsets don't take full account of direct, indirect and cumulative impacts, geographically and over time.</li> </ul>
<p>11. The borrower/client will, in consultation with ADB, ensure all biodiversity assessment and development of subsequent management plans and a biodiversity action plan (BAP), where required, are completed before undertaking project activities that could adversely impact Biodiversity.</p>	<p>11. The borrower/client will, in consultation with ADB, ensure all biodiversity assessment and development of subsequent management plans and a biodiversity action plan (BAP), where required, are completed <a href="#">during the E&amp;S assessment process described in ESS1</a>.</p> <p><i>Justification:</i> For many projects, the BAP come too late when the ADB has very limited capacity to monitor the project or influence the plans.</p>
<p>12. 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. 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,</p>	<p>12. The borrower/client will ensure activities comply with the host country's applicable laws <a href="#">and</a> the host country's obligations under international laws <a href="#">and conventions</a>. 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, the borrower/client will follow the relevant GIP <a href="#">and the requirements of international conventions</a>.</p> <p><i>Justification:</i> It should be clearly defined that the activities should comply with international conventions such as the CBD, Ramsar, Bern, Bonn,</p>

<p>the borrower/client will follow the relevant GIP.</p>	<p>etc., and not only with the national laws implementing international laws.</p>
<p>13. If there are significant changes to a project that result in additional risks to, or impacts on, biodiversity, particularly where these will impact project-affected persons, including Indigenous Peoples, the borrower/client will meaningfully consult with project-affected persons on how to mitigate these risks and impacts and will update relevant plans accordingly, setting out any additional mitigation measures. The borrower/client will disclose the updated plans.i</p>	<p><i>13. If there are significant changes to a project that result in additional risks to, or impacts on, biodiversity, <u>including</u>-where these will impact project-affected persons, including Indigenous Peoples, the borrower/client will <u>carry out a new E&amp;S assessment process described in ESS1</u>, meaningfully consult with project-affected persons <u>and relevant stakeholders</u> on how to mitigate these risks and impacts and will update relevant plans accordingly, setting out any additional mitigation measures. The borrower/client will disclose the updated <u>E&amp;S assessment and plans</u>.</i></p> <p><i>Justification</i> A significant change to the project would mean that the assumptions in the E&amp;S assessment are not valid anymore. In some countries this would require a new environmental permit, but some of the countries of operation of ADB have weaker standards.</p>
<p>14. Where the E&amp;S assessment process has identified potential project-related risks to and impacts on biodiversity, the borrower/client will manage these risks and impacts by following a precautionary approach, applying the mitigation hierarchy, and implementing adaptive management practices as necessary</p>	<p><i>14. Where the E&amp;S assessment process has identified potential project-related risks to and impacts on biodiversity, the borrower/client will manage these risks and impacts by following a precautionary approach, applying the mitigation hierarchy, and implementing adaptive management practices as necessary.</i></p> <p><i>Justification:</i> Adopting the <b>mitigation hierarchy in the screening and appraisal phase</b> needs to be added because only including it in the E&amp;S assessment/design phase assumes that the projects will go ahead and just fiddling with the design, whereas some projects need to be screened out.</p>

<p>16. As part of the biodiversity assessment, the borrower/client will also identify priority biodiversity features. These features provide indicators of importance, sensitivity, and value and encompass: (i) threatened ecosystems; (ii) geographically-restricted ecosystems; (iii) threatened species; (iv) endemic/geographically restricted-range species; (v) geographically restricted assemblages; (vi) aggregations of migratory or congregatory species; (vii) areas associated with key evolutionary processes; or (viii) ecological functions that are vital to maintaining the viability of biodiversity described in this para. Priority biodiversity features may be present in any category of habitat and are a sub-set of biodiversity that is particularly irreplaceable or vulnerable</p>	<p>16. As part of the biodiversity assessment, the borrower/client will also identify priority biodiversity features. These features provide indicators of importance, sensitivity, and value and encompass: (i) threatened ecosystems <u>or habitats</u>; (ii) geographically-restricted ecosystems; (iii) threatened species <u>(add footnote 1)</u>; (iv) endemic/geographically restricted-range species; (v) geographically restricted assemblages; (vi) aggregations of migratory or congregatory species; (vii) areas associated with key evolutionary processes; or (viii) ecological functions that are vital to maintaining the viability of biodiversity described in this para. Priority biodiversity features may be present in any category of habitat and are a sub-set of biodiversity that is particularly irreplaceable or vulnerable.</p> <p><u>(footnote 1) critically endangered, endangered, vulnerable or near threatened species as listed on the International Union for the Conservation of Nature (IUCN) Red List of Threatened Species or any national or regional listing that adhered to IUCN guidance. In instances where nationally or regionally listed species' categorizations do not correspond exactly to those of the IUCN (e.g., some countries more generally list species as "protected" or "restricted"), an assessment will be conducted to determine the rationale and purpose of the listing.</u></p> <p><i>Justification:</i> The footnote is important in order to correctly define all threatened species. The new EIB policy added vulnerable species to endangered and critically endangered when assessing critical habitat, but we believe also near threatened species should be included, especially for the countries of operation of ADB where biodiversity loss is very fast and many near threatened species could become vulnerable. This is in line with the <a href="#">Banks and Biodiversity initiative's latest research on habitats with</a></p>
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	<p><a href="#">threatened and endemic species.</a></p>
<p>The borrower/client will not implement any project activities which may cause significant adverse impacts to natural habitats or their priority biodiversity features, unless: (i) no other viable alternatives exist for development of a project in modified habitats; (ii) a project is permitted under the host country’s applicable laws, including those governing the priority biodiversity features, and all requirements under such laws have been complied with; (iii) stakeholders are consulted in accordance with ESS10; and (iv) mitigation measures are put in place, in accordance with the mitigation hierarchy, to ensure delivery of no net loss, or preferably, a net gain, of any impacted natural habitats and priority biodiversity features over the long term.</p>	<p>20. <i>The borrower/client will not implement any project activities which may cause significant adverse impacts to natural habitats or their priority biodiversity features, unless:</i></p> <p><i>(i) no other viable alternatives <a href="#">(add footnote 2)</a> exist for development of a project in modified habitats (...)</i></p> <p><i><a href="#">(footnote 2) The alternatives may consist of a no project option or different:</a></i></p> <ul style="list-style-type: none"> <li>• <i><a href="#">ways to achieve the objectives of the proposed development;</a></i></li> <li>• <i><a href="#">locations that may be available for the development having regard to protected habitats and species, for example, by defining different land transportation corridors in master plans for roads and motorways or different housing development zones;</a></i></li> <li>• <i><a href="#">scale and size of the development;</a></i></li> <li>• <i><a href="#">design solutions for the development;</a></i></li> <li>• <i><a href="#">techniques, methods of construction or operational methods for the implementation of the development;</a></i></li> <li>• <i><a href="#">timetables (deferrals or compression) of the various activities and tasks at each of the implementation stages, including during construction, operation, maintenance and, if applicable, decommissioning or reconditioning.</a></i></li> </ul> <p><i><a href="#">The economic cost of the steps that may be considered in the review of alternatives cannot be the sole determining factor in the choice of alternative solutions. The client may not claim that alternatives have not been examined because they would cost too much.</a></i></p> <p><i>Justification:</i> It is crucial to define ‘viable alternatives’ to avoid misinterpretation and lack of real alternatives analysis.</p>

<p>23. Some areas of critical habitat are of such high importance that the borrower/client will not propose financing for projects in such areas, or project activities by suppliers in these areas, with the exception of those projects specifically designed to contribute to the conservation of such areas, or unless otherwise agreed with ADB. These areas comprise: (i) Alliance for Zero Extinction (AZE) sites; (ii) UNESCO Natural and Mixed World Heritage (WH) Sites; and (iii) Free-flowing sections of rivers 500 km or longer in length.</p>	<p>23. Some areas of critical habitat are of such high importance that the borrower/client will not propose financing for projects in such areas, or project activities by suppliers in these areas, with the exception of those projects specifically designed to contribute to the conservation of such areas, or unless otherwise agreed with ADB. These areas comprise:</p> <ul style="list-style-type: none"> <li>(i) Alliance for Zero Extinction (AZE) sites;</li> <li>(ii) UNESCO Natural and Mixed World Heritage (WH) Sites;</li> <li>(iii) Free-flowing sections of rivers <b>100 km</b> or longer in length <u>and any rivers that flow undisturbed from their source to mouth without encountering any dams, weirs or barrages and without being hemmed in by dykes or levees;</u></li> <li>(iv) <u>Primary and old-growth forests that are the result of biological and evolutionary processes and that have not been degraded by significant industrial, human driven activities;</u></li> <li>(v) <u>Key Biodiversity Areas (KBAs) and Important Bird and Biodiversity Areas (IBAs);</u></li> <li>(vi) <u>IUCN Protected Area Categories Ia, Ib, II, III and IV;</u></li> <li>(vii) <u>Ramsar Wetlands of International Importance;</u></li> <li>(viii) <u>Iconic, transboundary ecosystems, particularly the Amazon, Arctic, Sundarbans, Coral Triangle and Albertine Rift, amongst others;</u></li> <li>(ix) <u>At-risk marine or coastland ecosystems, including mangrove forests, wetlands, reef systems, sand dunes.</u></li> </ul> <p><i>Justification: concluding no-go areas in the ADB draft proposal is a very welcome change. We propose adding a more realistic threshold for free-flowing rivers (including a definition of such), because only in Siberia and the Amazon free-flowing sections of rivers 500 km or longer can be still found. Moreover, all completely free-flowing rivers from source to mouth should be included no matter their length. We also propose protecting the most valuable forests, marine, coastland and iconic ecosystems from damaging</i></p>
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	<p>projects. Ramsar sites, KBAs, IBAs, reserves, national parks and other strictly protected areas according to IUCN should also be protected. All these proposals are in line with the <a href="#">Banks and Biodiversity</a> initiative.</p>
<p>Where a project may occur within, or has the potential to adversely affect, a protected area and/or internationally recognized area, or an area that is formally proposed for either status by a competent government authority, the borrower/client will ensure that any project activities are consistent with the objectives of such areas and will follow the relevant requirements set out for modified, natural, and critical habitats. Where no such objectives exist, the borrower/client will consult relevant stakeholders to establish them and then act consistent with them.</p>	<p>25. <i>Where a project may occur within, or has the potential to adversely affect, a protected area and/or internationally recognized area <a href="#">(add footnote 4)</a>, or an area that is formally proposed for either status by a competent authority <a href="#">or organization</a>, the borrower/client will ensure that any project activities are consistent with the objectives of such areas and will follow the relevant requirements set out for modified, natural, and critical habitats. Where no such objectives exist, the borrower/client will consult with relevant stakeholders to establish what these objectives will be, and then act in a manner consistent with these objectives.</i></p> <p><i><a href="#">(footnote 4) Sites identified under international conventions or agreements or other areas of international importance in terms of biodiversity conservation using globally standardised criteria, including, but not limited to, UNESCO Natural World Heritage Sites, UNESCO Man-and-Biosphere Reserves, the Ramsar List of Wetlands of International Importance, sites protected as part of the Natura 2000 network (including Special Areas of Conservation and Special Protection Areas), international marine protected areas and protected areas beyond national jurisdiction, potential Natura 2000 sites, sites of the Emerald Network, Important Bird and Biodiversity Areas (IBAs), Key Biodiversity Areas (KBAs), Important Plant Areas (IPAs), Prime Butterfly Areas, sites from the Alliance for Zero Extinction (AZE), and others as relevant.</a></i></p> <p>Justification: It is very important to have a good definition of an internationally recognized area. The one we propose is adapted</p>

	<p>from the 2022 EIB standard. Also, it is important to have in mind that some of these areas are proposed by international NGOs and not by governments.</p>
<p>28. Biodiversity offsets are a last resort. Where it has been determined that they are necessary, the borrower/client will demonstrate that all other viable avoidance and mitigation options have first been exhausted. The borrower/client will also demonstrate through an assessment of project risks and impacts, mitigation, and realistic offset gains that a project will achieve no net loss or a net gain, as applicable, within a reasonable timeframe.</p>	<p><i>28. Biodiversity offsets are a last resort. Where it has been determined that they are necessary, the borrower/client will demonstrate that all other viable avoidance and mitigation options have first been exhausted <u>and that the remaining impacts after avoidance and mitigation are not significant</u>. The borrower/client will also demonstrate through an assessment of project risks and impacts, mitigation, and realistic offset gains that a project will achieve <i>-net gain</i>, as applicable, within a reasonable timeframe.</i></p>
<p>29. If offsets are being considered as part of a project, the borrower/client will demonstrate, as part of the E&amp;S assessment process described in ESS1 and prior to project appraisal or final credit approval, the offsetability of the project, recognizing that some impacts are not offsetable.</p>	<p><i>29. If offsets are being considered as part of a project, the borrower/client will demonstrate, as part of the E&amp;S assessment process described in ESS1 and prior to project appraisal or final credit approval, the offsetability of the project, recognizing that some impacts are not offsetable. <u>Biodiversity offsets are not an acceptable measure to achieve no loss or gain for biodiversity for critical habitat and/or priority biodiversity features.</u></i></p>
<p>30. In the event that biodiversity offsets are unavoidable, the borrower/client will plan offset implementation and financing to</p>	<p><i>30. In the event that biodiversity offsets are unavoidable, the borrower/client will plan offset implementation and financing to ensure maintenance of offset gains for at least as long as a project has impacts. This will be described in a standalone Biodiversity</i></p>

<p><i>ensure maintenance of offset gains for at least as long as a project has impacts. This will be described in a standalone Biodiversity Offset Management Plan (BOMP) or, for small-scale offsets, may be included as part of a BAP. For offsets of unavoidable impacts on critical habitat, the borrower/client will engage qualified experts to prepare a BOMP.</i></p>	<p><i>Offset Management Plan (BOMP) or, for small-scale offsets, may be included as part of a BAP.</i></p>
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**Environmental and Social Safeguard Framework and Environmental and Social Standard 7: Indigenous people**

The definition of indigenous peoples (IPs) in paragraph 6 of the ESS7 does not correspond to the UN definition and therefore poses a significant problem. The requirement for IPs to meet “possessing the following characteristics in varying degrees causing uncertainty. Especially, together with the requirement of paragraph 7 “In considering these characteristics, a borrower/client will take into account the host country’s applicable laws, including those laws implementing the host country’s obligations under international laws, and customary laws”. Indigenous peoples do not require to be recognised by others [in order to be considered as indigenous peoples](#). The current definition is dangerous because many States do not recognise indigenous peoples even if they have international obligations to do it.

Therefore, ESF and ESS7, should have clearer language on the interpretation and application of the criteria in accordance with the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention no.169 (Indigenous and Tribal Peoples Convention).

The Bank based on impacts on IPs proposes either meaningful consultation or Free Prior Informed Consent (FPIC). This approach is wrong. FPIC is a specific right granted to Indigenous Peoples recognised in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which aligns with their universal right to self-determination. FPIC allows Indigenous Peoples to provide or withhold/ withdraw consent, at any point, regarding projects impacting their territories. Therefore, FPIC applies to any activity that may affect indigenous people.

Therefore, it should be acknowledged that FPIC represents the essential right based on the right to self-determination, non-discrimination and effective participation, and this is not just an additional form of public consultation. FPIC should be applied in all cases when the projects may have an impact on indigenous people's rights, as well as to other collective rightsholders', lands or resources.

There should be clear indication that if the borrower/client fails to undertake a FPIC process (for instance by continuing construction activities without conducting FPIC) the Bank could suspend project activities and exercise forms of leverage, escalating to a possible exit.

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### **ADB Environmental and Social Framework and Climate Change**

In response to the climate crisis, we welcome the Bank's intention to include climate safeguards. Given the insufficiency of current Nationally Determined Contributions in meeting the goals of the Paris Agreement, the Bank should develop a transparent plan to achieve net-zero emissions by 2050. These climate targets should then be the basis of priorities for partnerships on climate and green financing with member-countries and the private sector.

Specifically, the ADB ESF should:

- explicitly prohibit financing of and guarantees/insurance for all upstream, midstream, and downstream fossil fuel projects; as well as hydrogen manufactured using fossil fuels. Electricity and heat generation from primary forest biomass and municipal waste should be added to the exclusion list. Both result in significant greenhouse gas emissions and air pollution; primary forest biomass impacts on forest biodiversity and carbon sinks and waste incineration inhibits cities' abilities to decrease waste generation and increase their recycling rates by diverting resources and creating a need for a constant waste stream. Uranium mining, new nuclear power generation, and lifetime extension of nuclear power plants also need to be added to the list.
- Prioritise and facilitate the financing of environmentally sustainable renewable energy projects in a just and equitable way to meet energy demand throughout the Global South as a needed compliment to its prohibition on the financing of fossil fuel energy projects.
- Further have a strong focus on improving the capacities of member countries in regulating and monitoring GHG emissions.

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<sup>1</sup> UN-REDD Programme, Free and Prior Informed Consent. <http://www.cbd.int/doc/meetings/tk/wg8j-09/other/wg8j-09-ifap-en.pdf>

- Ensure that the GHG accounting methodology used for paragraphs 9 and 10 considers indirect (Scope 2 and 3) project emissions, to ensure cumulative impacts are captured. Likewise, the methodology must consider that primary forest biomass can no longer be replaced within a climate-relevant timescale, thus it cannot be considered climate-neutral, and its emissions must be counted assuming they will not be sequestered.
- The project alternatives assessment, which must be publicly disclosed, must consider the lowest-GHG feasible alternative, not only the current situation, but only alternatives that fall within the core business of the project promoter.
- Regarding Assessment and Management of Climate Risks, require that the project climate risk assessment is disclosed to the public for consultation as part of the ESIA documentation.

### **Environmental and Social Framework and ESS10: Stakeholder Engagement and Information Disclosure**

The ESF states that it will “Strengthen stakeholder engagement through meaningful consultation and prevent threats of reprisals against project-affected persons through effective grievance mechanism.”

It is important that ESF underlines that “:ADB does not tolerate any form of reprisals in projects ADB finances, and will seek to take all steps within the limits of its ability to work with appropriate parties to address them, including requiring its borrowers/clients to provide protection in such projects” and that “ADB has a zero tolerance approach to inaction on sexual exploitation, abuse, and harassment in the context of projects ADB finances. To encourage inclusive development, ADB is also engaged in policy dialogues with DMCs to introduce climate and gender considerations at all levels of their budgetary process.”

However, ESS 10 does not operationalise the concrete measures to ensure that the borrower/client will prevent reprisals and ensure an enabling environment for stakeholders' engagement and public participation. With increased trend to the civil society shrinking space, it's important that Bank systematically identifies potential constraints in given countries and finding opportunities to strengthen the enabling environment for participation, legitimating the civil society actors and social movements through systemic measures.

The ESS 10, stipulates that “For High Risk, Substantial Risk, and Moderate Risk projects, prior to ADB’s project appraisal or final credit approval, the borrower/client will provide to ADB for disclosure draft, or final if available, documents and information prepared by the borrower/client in accordance with ESS1 including assessment tools and management tools, and environmental and social commitment plan (ESCP)/environmental and social action (ESAP), unless such documents and information will be prepared post-ADB approval of a project, as reflected in an ESCP/ESAP. The borrower/client will ensure that assessment tools and management tools address, in an adequate manner, the key E&S risks and impacts of a project and provide sufficient detail to inform stakeholder engagement and ADB decision making.”

This approach is very problematic. Information disclosure is key to civil society’s ability to respond meaningfully to documents. Therefore, the ESS 10 should ensure that disclosure of information should be tied to specific, time-bound, and monitorable benchmarks in the project cycle. It should ensure that borrower’s records of stakeholder engagement should be disclosed including preparation and implementation of stakeholder engagement plans. Inadequate timing can make information disclosure useless as a tool for participation and engagement. There is therefore a clear need in the Guidance Note to more clearly define what *timely* means. The setting of clear deadlines to deliver project-relevant documents to civil society before stakeholder meetings should be(come) conditional.

On another side, its welcomed that ADB will continue to publish the monitoring reports that will be submitted by borrowers/clients.

To ensure the proper information disclosure, the Bank stipulates that “the borrower/client will provide information to stakeholders using transparent and appropriate language on the scope, location, and duration of project activities that could cause risks to and impacts on cultural heritage”, which is an important step forward.

However, all information related to all types of 3nvironmental and social risks and impacts of projects should be available in appropriate languages, not only for cultural impacts. The same should apply to ADB monitoring reports.

Bankwatch calls for the ESF and ESS 10 to require that:

- all documents for projects in the high, substantial and moderate risk categories are available before ADB's project appraisal or final loan approval, in line with best international practice, at least 120 days in the public sector and 60 days (about 2 months) in the private sector.
- All relevant documentation for stakeholders is available in appropriate languages.
- Bank staff will proactively and publicly denounce - with the previously informed consent of affected people - any reprisal in the context of all current and pipeline projects.
- 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.
- Bank should systemically assess the civil society space in borrowing countries to address the actual circumstances and environment in which people participate, elaborating the plans and operations to ensure affected people, CSOs and other stakeholders' participation safely when they expressing their views.
- Underline the importance of civil society space in policy dialogue process with DCMs and set specific indicators for further improvement.

## Conclusion

We would like to reiterate the important role ADB's development financing plays in the Caucasus and Central Asia region. The Bank is making numerous efforts to ensure transparency, accountability and responsibility in these times of global climate and biodiversity crises, and as we see the increasing deterioration of human rights in the ADB region. We call on the Bank to incorporate the recommendations of CEE Bankwatch Network into the ADB's new Environmental and Social Framework documents.