RECOURSE SUBMISSION TO THE CONSULTATION ON THE ADB'S DRAFT ENVIRONMENTAL AND SOCIAL FRAMEWORK

FINANCIAL INTERMEDIARIES, CLIMATE CHANGE AND OVERARCHING CONCERNS

May 2024

Introduction

Recourse welcomes this opportunity to provide input to the Asian Development Bank's (ADB) Safeguard Policy Review. Recourse is a Netherlands-based civil society organisation, working for a world where people and planet are at the heart of development. We campaign to redirect international financial flows away from dirty, harmful investments, towards greener and more inclusive development, working with partners around the world to hold financial institutions accountable.

This submission focuses on financial intermediaries and climate change, together with some overarching concerns and recommendations, including on information disclosure, gender and the financial modalities section. Please note that the submission is not comprehensive in terms of its coverage of issues and recommendations. It should be read in conjunction with other inputs, in particular those of civil society and Indigenous Peoples' organisations in Asia. Recourse is also supporting several other submissions, including two on Indigenous Peoples - one led by the Forest Peoples Programme and one from the Indigenous Peoples Rights International (IPRI), Right Energy Partnership with Indigenous Peoples (REP), and Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE); a submission from the Coalition for Human Rights in Development on reprisals; and two submissions led by Bank Climate Advocates on climate change (one in March 2024, and a supplementary submission in May 2024). We would also like to refer to UN OHCHR's submission and the forthcoming submission by NGO Forum on ADB.

Overarching concerns

Information Disclosure

Recourse welcomes the extension of the disclosure of information regarding the environmental and social risks and impacts for projects under the new High Risk, Substantial Risk and Moderate Risk categories. This was limited to Category A projects in the 2009 Safeguard Policy Statement (SPS). However, the **removal of the 120-day requirement** to disclose the environmental impact assessment (EIA) reports before Board consideration is extremely disappointing. This time-bound requirement is instead replaced by the phrase *"in a timely manner"* under the section on Information Disclosure (page 16, section I). Likewise, the commitment to disclosure as well as due diligence is further weakened by having the provision *"unless such documents and information including assessment tools and management tools will be prepared by a borrower/client post-ADB approval of a project, as reflected in an ESCP/ESAP."* The list of required documents to be disclosed before ADB approval is also vague. While the SPS 2009 lists the EIA, the current draft only mentions *"documents and information relating to the E&S risks and impacts"* of projects, *"including assessment tools and management tools"*.

Recourse strongly recommends that the ADB reinstate the 120-day disclosure requirement in the revised ESF. The removal of the 120-day disclosure period and the definite list of documents to be disclosed negatively impacts the ability of stakeholders, especially communities that will be affected by the projects, and the general public to comment on and provide meaningful inputs on the proposed projects before they are approved.

ADB accountability

The draft ESF undermines ADB accountability in several ways. Significantly, it fails to adhere to the ADB's and many of its member state's obligations under international law as it stipulates that the client/borrower, rather than the ADB itself, is required to ensure adequate environmental and social impact assessments and mitigation measures are in place prior to financing decisions. This is out of line with peer MDBs, such as the IFC and MIGA. **The ESF should require the ADB to ensure environmental and social impact assessments are in place in line with best practice and are completed before financing decisions are taken.**

Furthermore, the ESF should provide essential protections to communities, especially vulnerable peoples and environments. However, the draft ESS1: Assessment and Management of Environmental and Social Risks and Impacts states that *"In cases where it is not possible to complete the E&S [Environmental & Social] assessment process before ADB's approval of such projects, the borrower/client will agree with ADB to adopt a framework approach and an ESMF [Environmental and Social Management Framework] will be prepared and documented in the ESCP [Environmental and Social Commitment Plan]/ESAP [Environmental and Social Action Plan]."* Not completing the E&S assessment before project approval risks further compromising the rights and well-being of communities who are already suffering from the impacts of conflict and fragility. Without a complete E&S assessment, the ADB and its clients cannot adequately assess risks, nor is it possible to monitor compliance with the ESF and ensure that proper measures are in place to avoid adverse impacts, especially on vulnerable groups. It is also not certain whether communities can still access ADB's accountability mechanism under this "framework approach;" this uncertainty must be clarified in the final ESF. **Recourse recommends the ADB to drop this provision and require all borrowers/clients to complete E&S assessment processes before being considered for ADB's approval.**

Financing modalities

The ESF includes references to a separate document, 'Environmental and Social Requirements for Financing Modalities and Products': "*62. The approach to the assessment and management of E&S risks and impacts will differ depending on the type of support ADB financing offers and the intended use of the proceeds. ADB will apply the relevant requirements of the E&S Policy to the financing modalities and products, except to the extent such requirements are modified through the general E&S approach described in paras 62-70. The specific E&S requirements for the financing modalities and products will be detailed in the ADB Management approved document.*"

The financing modalities document bundles together nearly all of the ADB's financial products, both loans and grants, apart from project investments. This includes, for example, Sector Lending, Policy-Based Lending (PBL), and Technical Assistance (TA)**.** Given that this document will be approved by management after the Board has approved the ESF, it could be interpreted to be guidance rather than mandatory and its relationship to the more general requirements in the Policy and ESS1 are unclear: *"The final Financing Modalities Requirements contained in this document will be considered for approval by the ADB Management, following the approval of the Environmental and Social Framework by the ADB Board of Directors."*

Moreover, the instructions in the document are not comprehensive, except for the section on financing for financial intermediaries (FIs, see further analysis below), and exclude some forms of lending. For example, while it is welcome that TA is covered, this only applies to TAs supporting *"pilot testing of a project approach"* or TAs that *"directly support the host country's policy reforms or development policy expenditure programs that are likely to have E&S risks and impacts"*. According to the document, the latter will be covered by the PBL requirements, however, these have been criticised (please see UN OHCHR's submission for commentary on PBL). Overall, the ADB's terminology around TAs is confusing and non-transparent. On its website, the ADB lists a number of other types of activities that TA's can finance, including project implementation support and feasibility studies, which do not seem to be covered by the ESF. In the analytical study on financing modalities that the ADB shared as part of the 2023 thematic consultations, two other types of TAs are discussed: Project Readiness Facility (PRF) and Small Expenditure Financing Facility (SEFF), however, none of these are referenced in the financing modalities document.

It is essential that the ESF covers all forms of TA that funds, instructs or prepares different types of projects. TAs are often overlooked due to their relatively limited size of the overall portfolio and less direct form of investment, which also means that some investments are not required to be approved by the Board, but this ignores the pivotal role technical assistance can play in shaping countries' sector strategies and other policies, paving the way for future investments. For example, since the Paris Agreement, the ADB has directed $2.4m to technical assistance for fossil gas in Bangladesh. The largest share of this is $2m for the "Sustainable and Resilient Energy Sector Facility in Bangladesh" approved in 2020, which aims to "improve performance of the country's energy sector through technical, policy and capacity development support for investment projects in power and gas sectors." This project is labelled a Transaction Technical Assistance Facility, while this kind of project could potentially fall under the ESF as it includes policy reform it is not clear.

All financial modalities should be covered by and explicitly form part of the ESF, not stand separately and be approved separately. The whole ESF should apply and where exceptions are proposed, they should be explicitly clarified and justified.

Gender

It is concerning that, despite holding dedicated consultations on gender, the draft ESF does not include a new gender safeguard nor does it discuss gender comprehensively at any point. The ADB was a pioneer in terms of introducing a policy on gender back in 1998, but in this case the ADB fails to follow best practice, as set out by the Inter-American Development Bank (IDB) in its 2020 Environmental and Social Policy Framework (ESPF), which includes a stand-alone gender equality safeguard. The IDB's leadership is also recognised in the ADB's own background analysis on gender, prepared for the SPS thematic consultations. The analysis lists a number of ways that gender is incorporated in the ESPF including and beyond the new gender safeguard (only two ESPF safeguards lack language on gender), concluding that *"amongst all MFIs [Multilateral Financial Institutions], IDB has the most comprehensive coverage with explicit mention of gender considerations across various standards in addition to a standalone standard on gender."*

The analysis recommends for the ADB to consider: *"Providing a Strong Gender Equality Commitment in the Safeguard Policy Statement/Vision"*; and *"Integrating gender-specific provisions in the Performance Standards/Requirements and/or having a stand-alone gender standard"*. However, neither of these options are reflected in the draft ESF. Nor does the draft include references to the ADB's 1998 Policy on Gender and Development or other relevant policies and processes that the ESF should build on. For example, the ESF only mentions gender equality once, which is as background information rather than a core objective. Female headed households are not referenced at all, despite being included in the 2009 SPS. In fact, on a word count basis the ESF includes less gender language than the previous SPS. There are even examples where the ESF backtracks on gender commitments in the SPS. For example, the SPS includes gender impacts and risk assessment on environment, Involuntary Resettlement, and Indigenous Peoples, but in the ESF this is only required for social risks and impact. The ESF also does not require a gender-responsive grievance mechanism besides in the context of the Indigenous Peoples Planning Framework, which the SPS did.

There are some positive elements, importantly an inclusion of gender and sexual orientation in the definition of disadvantaged and vulnerable people; new requirements regarding sexual exploitation, abuse and harassment (SEAH); and a commitment to secure women's land tenure as far as possible when the national laws fail to do so. But overall, gender language is unevenly distributed in the ESF and often in vague terms, such as "gender-responsive"; "taking into account gender considerations"; "paying particular attention to gender related risks"; and similar, but without further clarity on what this means in practice.

Recourse recommends that the ESF should include a gender safeguard or in the absence of this at the very least significantly strengthen gender related language coupled with clear requirements throughout all of the safeguards, including in ESS9 given the importance of gender equality to efforts to mitigate and adapt to climate change. It should also include references to already

established gender related policies and processes, as well as a requirement for mandatory project related gender impact assessments.

Financial intermediaries

No standalone Financial Intermediaries standard: It is disappointing that the ADB has no standalone standard for FI lending, given its high-risk nature – instead it is part of a wider safeguard, separated from the main ESF, on 'Financing Modalities'.[1] These 'Requirements for Financing Modalities and Products' will be considered by the Board after the ESF is approved, but approved by ADB management. It is unusual to separate out FIs from the ESF. The African Development Bank, European Investment Bank and European Bank for Reconstruction and Development have a standalone FI standard within the framework of their environmental and social standards. By mixing FI requirements in various ESS, it can dilute and confuse requirements. These should be set out clearly in a standalone ESS for FIs, that is included within the wider ESF.

FI Requirements
60. The following paras set out how certain requirements under ESS1 and ESS10 relevant to assessment, monitoring, information disclosure, stakeholder engagement, and grievance mechanisms (paras 61-68) and under ESS2 and ESS4 relevant to labor and working conditions and occupational health and safety (para 69) will be applied to FIs.

One welcome stipulation that should not be lost in future drafts is that the ADB's Accountability Mechanism will apply in cases where borrower systems are used. We would welcome an explicit clarification that the ADB AM applies to all Financing Modalities.

H.41. Any decision to use all, or parts, of a borrower's E&S system will not relieve ADB of its responsibilities set out in this E&S Policy, and ADB's Accountability Mechanism Policy (2012) will continue to apply.

Risk categorisation: We welcome some improvements in ADB's approach to intermediated lending, including the decision to bring the standards in line with the IFC by classifying FIs into different risk categories (FI 1, 2 and 3). This will help the bank to focus resources on those FI clients requiring the most supervision to ensure standards are applied at subproject level.

b. Environmental and Social Risk Classification
51. ADB will classify all activities and transactions involving FIs or delivery mechanisms involving financial intermediation as "FI" into subclassifications of FI-1, FI-2, and FI-3, in accordance with the E&S Policy.

Contextual risk analysis: We welcome the step to include contextual risk analysis, though this could be expanded to bring ADB in line with IFC's definition of contextual risk: "Examples of contextual risks include, among others, land disputes as a result of internal displacement or conflict; systemic

[1] The Financing Modalities section covers a huge range of products, including: *"sector lending, emergency assistance loans, multitranche financing facility, policy-based lending, sector development programs, results-based lending, project readiness financing, small expenditure financing facility, technical assistance, financial intermediaries, and corporate finance."*

issues such as discrimination against minorities, lack of freedom of association, or widespread use of child labor; and historical government actions related to land contamination, forced evictions, or similar issues." ADB's definition in para 21 of the E&S Policy is not as specific: "*any significant strategic, geographic, and/or sector-wide E&S risks"*

51. As part of the risk classification, ADB will also take into account risks relevant in the context in which an FI operates or activities and transactions supported by ADB financing will be developed and implemented, including those contextual risks described in para 21 of the E&S Policy.

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 developers**,[2] 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 which has impacts on indigenous lands).

For FIs with portfolio and/or activities and transactions that present high to substantial E&S risks (part or all of FI-1 and FI-2 portfolio), ADB will require that such FIs assess and require higher risk activities and transactions they support to apply the relevant requirements of the ESSs. These higher risk activities and transactions are referred to as "higher risk transactions".

Enhanced supervision: FI lending can be higher risk when the bank delegates supervision to the FI client so it is welcome that the ADB proposes to review screening and risk classification itself in higher risk transactions.

69. For higher risk transactions to be supported by ADB financing, ADB will require an FI to use the relevant ESSs as the underlying risk assessment and management standard in ESMS. For such transactions, ADB will also review the screening and risk classification undertaken by the FI under its ESMS.

Disclosure: FI lending is notoriously opaque with little information about where the money ends up. 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. Disclosure of the risk classification decision-making process by ADB is welcome.

[2] 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."

69: ADB will disclose the relevant E&S documentations prepared and submitted by FI borrowers/investees. For FI-1 and FI-2, ADB will disclose a summary of the ESMS and the monitoring reports for the activities and transactions supported by ADB financing. This type of financing includes loans, debt securities, equity investments, credit lines, and guarantees to FIs.

57: For higher risk transactions to be supported by ADB financing, ADB will also disclose relevant assessment tools and management tools prepared by FI borrowers/investees and submitted to ADB.

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

Monitoring and supervision: Tailoring the extent of monitoring according to risk is a good step, but we believe higher risk subprojects should be monitored more intensely by the bank, including by site visits which can often be the only way to reach project-affected communities. These reports, as well as the results of ADB's review, should be disclosed on ADB's website.

66. FI-1 and FI-2 will be required to submit E&S monitoring reports to ADB for review and disclosure. The extent and frequency of monitoring report will be proportionate to the E&S risks and impacts of the activities and transactions supported by ADB financing but will be at least annually.

59: ADB will also review the ESMS, results of FI ESDD and monitoring conducted by an FI. The extent and frequency of such a review will be proportionate to the E&S risks and impacts of the activities and transactions supported by ADB financing but will be at least annually.

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 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 standards,[3] and the InterAmerican Development Bank requires disclosure of its accountability mechanism during stakeholder consultation about the project.[4]

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[3] 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.

[4] 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

c. Stakeholder Engagement and Grievance Mechanism
68. FIs will develop and maintain stakeholder engagement procedures and a grievance mechanism, consistent with the relevant requirements of ESS10 and following indicative requirements in Annex-2.

Climate change

Positive - new standard on climate change and strengthened climate language
We welcome that the draft ESF introduced a new standard climate change, ESS9. This makes the ADB one of the frontrunners amongst Multilateral Development Banks (MDBs). To date, only the European Investment Bank (EIB) has a dedicated climate change safeguard. The ESF also introduces climate change language in several other places throughout. This includes the ESF vision, which as its first point seeks to: *"Avoid, and where avoidance is not possible, minimize, mitigate, and compensate for adverse impacts of ADB projects on people and the environment, taking into consideration climate change risks"* (Vision, para 10). This is a significant difference to the SPS which despite being approved in 2009 - the same year as the landmark Copenhagen climate conference – only included three references to 'climate change'.

Climate change is also specifically mentioned as a contextual risk included in the Environmental and Social Risk Classification (Environmental and Social Policy, para 21): *"climate change vulnerability, economic shocks, natural hazards, or presence of other factors outside the control of a project that could have a significant impact on the E&S performance."* Further, climate change mitigation and adaptation are included in the list of environmental risks and impacts that the ADB will take into account when reviewing a borrower/client's E&S assessment (Environmental and Social Policy, para 30).

It is also welcome that three standards include references to climate impacts and measures. For example, ESS4: Health Safety and Security: *"Project activities may also exacerbate natural hazard and climate change risks or impacts on project-affected persons"* (ESS 4 para 1). This includes a request under 'Natural Hazards' for borrower/clients to "*undertake a climate risk assessment in accordance with ESS9. The borrower/client will identify and assess alternatives to a project's proposed location and/or technology and identify appropriate climate change mitigation, and climate change adaptation and resilience measures to be integrated into the project design"* (para 25). ESS6: Biodiversity Conservation and Sustainable Natural Resources Management includes a reference to "*projected climate change impacts"* (para 5).

No links to important policies and agreements
Despite these important improvements, there are several issues that need to be addressed for the new climate safeguard and overall language on climate change in the ESF to be effective and impactful. In contrast to the EIB's Standard 5 on Climate Change, ESS9 is far less comprehensive, at

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 only two pages. It lacks depth both in coverage and ambition, as well as an up-front mandate towards a just transition out of fossil fuels towards sustainable renewable energy options. It also fails to present a balanced approach between climate mitigation and adaptation, with the former receiving far more attention. For the ESF climate commitments to be meaningful, **the ADB must commit to promoting a rights-based, just transition out of fossil fuels towards sustainable renewable energy options. This should cover all types of financing, both direct and indirect, as well as other forms of financing, such as PBL and TA. Equally, it should encourage a balanced approach towards investment support adaptation versus mitigation projects.**

Overall, there is an absence of references to applicable policies, methodologies and other agreements, including those relevant for the ADB's approach to climate change. For example, the EIB's climate standard clearly references both national and international law, as well as specific initiatives, frameworks and plans. Importantly, the ESF highlights the ADB's commitment to align with the Paris Agreement, but it does not spell out how this will happen in practice. This is particularly problematic as the ADB has to date not released any public information on its own Paris Alignment methodology and guidance, hence it is impossible to verify its quality. The MDB joint framework on Paris Alignment and MDBs' individual methodologies have been criticised for failing to rule out all types of fossil fuels, as well as other weaknesses, such as lack of gender equality considerations. **The ADB should make its Paris Alignment guidance public and make clear and direct references to this and other significant climate commitments in ESS9 and other relevant parts of the ESF.**

Lack of ambition, rigour and transparency

Overall, many of the climate related references are not comprehensive, lack rigour and omit providing adequate protection for vulnerable groups. Significantly, ESS9 fails to reference Indigenous Peoples at all, while ESS7 on Indigenous Peoples relegates any mention of climate change to an annex, noting that "project risks should include climate change scenarios, when appropriate". This is not strong enough. Indigenous Peoples' particular relation to the natural environment, the importance of securing their rights to forests and lands, and vulnerability to climate change impacts should be much more comprehensively considered throughout, including a requirement for climate change assessments with specific measures related to both climate change adaptation and mitigation. Importantly, **the new ESF should require obtaining Free, Prior and Informed Consent for any project impacting Indigenous Peoples and should not proceed if this is not secured**.

Other standards are void of climate references, in particular ESS1: Assessment and Management of Environmental and Social Risks and Impacts. **Since ESS9 includes references to ESS1, it is important that the same is the case for ESS1 due to the significance of the issue**. For example, ESS1 contains a mitigation hierarchy requirement that must be secured for environmental and social impacts prior to project financing, but it does not specify that this also applies to GHG emissions and climate change impacts. It is welcome that the ESS9 in para 9-11 introduces a requirement for ex-ante estimates of absolute and relative GHG emissions of a project, that borrowers/clients are required to monitor and report on the GHG emissions, and update the assessments should GHG emissions increase significantly, but this must be coupled with efforts to reduce emissions. However, the ESF must also define what the mitigation hierarchy implies in more detail, and ensure it is not replacing Environmental Impact Assessments, Social Impact Assessments, and other vital tools. It is also essential that the estimates of GHG emissions are based on best practice methodologies. Further, ESS9 should go beyond GHG emissions per se, for example, by emulating the EIB's climate safeguard which requires clients to **also report "physical risks to the project and to people, nature and assets, as compared to those reported to the EIB and assessed ex-ante"** (para 12).

For ESS9 to be effective, it needs much more clarity on exact requirements. This is a problem throughout the ESF and must be addressed for it to provide quality assurance and to enable effective implementation. For example, ESS9 paragraph 4 states: *"Where a project emits GHG, the borrower/client will promote the reduction of such project-related GHG emissions, in a manner proportionate to the nature and scale of the project operations and impacts"*, but without clarifying what 'promote', 'proportionate' or 'nature and scale' refers to in practice. **To be meaningful and accountable, exact requirements, targets and measures must be properly spelled out and aligned with best practice.** This paragraph should also directly reference alternatives analysis, to ensure unviable projects from a climate perspective are excluded.

The following paragraph is equally unclear: "*5. Where ADB has determined that a project has risk of climate change impacts and/or risk of increasing climate exposure or vulnerability of project-affected persons, the borrower/client will undertake a climate risk assessment as further described in para 12."* While para 12 gives a general overview of climate risk assessments, missing here is a clear explanation of how the ADB is 'determining' a project's climate risk, that will trigger the climate risk assessment. **The ESF should clarify the methodology for assessing climate change risk.**

It is good that climate change vulnerability and exposure of project-affected persons is specifically referenced several times in ESS9, but concerning that this section does not emphasise gender related impacts. Impacts on women should be highlighted here, as women are often first and worst hit by the impacts of climate change. Appropriate measures that strengthen and avoid undermining gender equality should be identified. This is particularly important for adaptation measures to be effective, an area where the ADB's own Independent Evaluation Department has called for improvements. **The ADB should follow the EIB's example, which clearly spells out other standards to be taken into account under assessments related to the climate safeguard**: *"When applying Standard 5, the promoter shall take into account relevant environmental and social, including gender, aspects in line with the requirements outlined in other EIB standards, in particular Standard 2 'Stakeholder Engagement', Standard 7 'Vulnerable Groups, Indigenous Peoples and Gender', and Standard 10 'Cultural Heritage'" (para 13).*

Alternatives analysis requirements weak
Rigorous alternatives analysis is critical for ensuring that projects with the most positive social and environmental impacts are prioritised, significantly for energy projects. It is therefore disappointing that the language on considering alternatives lacks proper guidance on how these should be assessed. Firstly, the language does not provide a clear incentive for conducting alternatives assessments. Instead of *"will consider"*, the ESF should include stronger language in line with the EIB's climate safeguard, requiring clients to *"demonstrate … that due consideration has been given to minimise project-related GHG emissions."* EIB also requires clients to provide *"all relevant information relating to physical climate risks associated with a project"*, with clear instructions which

already available assessments are required (para 17). Moreover, it is essential that assessments of alternatives are based on life-cycle analysis.

Furthermore, the ESF should proactively prioritise and facilitate a shift to sustainable renewable energy sources, in line with the requirements under the Paris Agreement. At present, paragraph 8 requires the borrower/client to analyse the potential for "lower" carbon energy sources rather than simply 'low carbon' or renewable energy sources.[5] This leaves the door open for a borrower to pursue all manner of ecologically destructive alternatives to a project as long as they are less carbon intensive than the initial proposal e.g. constructing a gas-fired power plant instead of a coal plant, or co-firing a coal plant with ammonia. Both fossil gas and ammonia co-firing are false solutions to the climate crisis that have egregious impacts on communities and biodiversity, lock countries into carbon intensive infrastructure and fail to deliver the rapid emissions reductions needed to meet the 1.5 degree goal of the Paris Agreement. ADB should rewrite this paragraph to instead **require borrowers to support genuinely renewable, low or no carbon energy projects that do no harm to people and planet**.

Similarly, ESS9 only require *"The borrower/client will implement such measures where technically and financially feasible"*, but without clarifying how this is assessed in practice. This again opens up for approval of projects that are unsustainable, if sustainable projects are deemed not 'financially feasible' depending on the criteria. Evidence from other banks, such as the AIIB, shows that similar language has allowed for fossil fuel intense gas projects to be approved by not being compared with renewable energy options in a clear, comprehensive and science-based manner. ESS9 should steer borrowers/clients towards best available technologies, while also considering social and environmental aspects, including impacts on vulnerable groups. ESS9 could also emulate the EIB's approach (para 20) to require (on request) **assessments of the economic case, including for the cost of carbon, economic valuation of change in adaptation risk and economic analysis "of climate-related project impacts on different groups in society, with a particular focus on vulnerable groups."**

Further loopholes for fossil fuels and false solutions

Recourse welcomes the exclusion of coal-fired power generation and coal-fired heating plants; coal mining, processing, storage or transportation; upstream or midstream oil projects; and natural gas exploration or drilling in the Draft ADB Prohibited Investment Activities List, in line with the 2021 Energy Policy. However, to align with the Paris Agreement on climate change, the exclusions must go further and encompass any project with significant climate related risks. **Recourse recommends the expansion of the list to include all direct and indirect investments in fossil fuels, including for captive coal projects as well as power generation from fossil gas** which pose threats on the climate and rights of communities where they are located. Moreover, environmentally damaging renewable energy technologies, such as large-scale hydropower, should also be excluded.

On the issue of **captive coal**, the current wording of the Prohibited Investment Activities List is vague. The commitment to not finance "coal-fired power generation and coal-fired heating plants"

[5] See page 2 of Asian Development Bank. (2023). *Draft for consultation: Environmental and social standard 9. Climate change.*https://www.adb.org/sites/default/files/institutional-document/908561/ess-9-climate-change-draft.pdf

leaves the question of whether ADB will finance coal-fired power generation for industrial use, such as captive coal units constructed to support steel production or other metal processing, unanswered.[6] It also leaves open the possibility of ADB financing projects that functionally reliant on new coal power. This should be strengthened to make clear that ADB will not fund any coal projects **or** projects that are reliant on coal power. For example, AIIB's Energy Sector Strategy commits to *"not finance thermal coal mining, coal-fired power and heating plants* ***or projects that are functionally related to coal****. Projects functionally related to coal means associated facilities that are dedicated to enable the mining and use of coal* ***or projects that would not be carried out without dedicated coal-based power supply"*** (emphasis added).[7] Such an addition would not create a contradiction with ADB's existing Energy Policy but would simply add further clarity to the eligible use of proceeds for ADB investments. This coal exclusion could be further strengthened by confirming that ADB will not provide general working capital, equity or other support to any company or financial intermediary that is developing new coal-fired capacity.

Further, we oppose the inclusion of carbon offsets in the ESF mitigation hierarchy and for the ESF to permit carbon offsets as permissible mitigation or impact avoidance measures for GHG emissions and climate change impacts. Carbon offsets are too commonly used as false solutions, rather than properly investigating alternative project options, and can result in enabling harmful projects with impacts that should and can be avoided. Furthermore, they often fail to meet necessary environmental integrity requirements related to additionality, permanence, not overestimated, not claimed by another entity, and not associated with significant social and environmental harms. They also commonly fail to respect and protect the ecosystem services indigenous peoples and affected communities depend upon, and their full rights, territories, sovereignty, and jurisprudence over the land, air, water, and biodiversity. **The ADB should remove offsets as permissible mitigation and explicitly prohibit their use for GHG emissions throughout the ESF** (including from the definition of mitigation hierarchy at Draft ESF page 139, paragraph 30 of ESS1, paragraph 21 of ESS3 section IV(F), Annex 1 Section 3(iv), and A-2: Indicative Outline of an Environmental and Social Management Plan).

[6] Asian Development Bank. (2023). *ADB prohibited investment activities list*. https://www.adb.org/sites/default/files/institutional-document/908561/esf-prohibited-investment-activities-list-draft.pdf

[7] Asian Infrastructure Investment Bank. (2022). *Energy sector strategy: Sustainable energy for tomorrow*. https://www.aiib.org/en/policies-strategies/strategies/sustainable-energy-asia/.content/index/_download/AIIB-Energy-Sector-Strategy-Update_Final_Nov-2022.pdf.