NOTE: This document should be read in conjunction with the proposed ADB Environmental and Social Framework, which contains the full text of the Environmental and Social Policy (proposed responsibilities of the ADB), the 10 Environmental and Social Standards (proposed responsibilities of the Borrowers/Clients, and the Prohibited Investment Activities List (activities ineligible for ADB financing). This document is being circulated for consultation purpose only. Guidance from the ADB Board of Directors will be sought on this document as part of the Working Paper, scheduled in Q4 2023.

DRAFT FOR CONSULTATION
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Environmental and Social Standard 2. Labor and Working Conditions
ESS2: LABOR AND WORKING CONDITIONS

I. INTRODUCTION

1. This Environmental and Social Standard (ESS) 2 recognizes that borrowers/clients can advance the social and economic well-being of project workers through employment generation and that project workers play a major role in delivering quality projects. Equitable standards for labor and working conditions are fundamental to the employment relationship for both borrowers/clients and project workers. The borrower/client will promote good human resource management and relationships that support respect for project workers.

II. OBJECTIVES

a. Promote fair treatment, nondiscrimination, and equal opportunity for project workers;
b. Prevent and address any forms of violence and harassment, bullying, intimidation and exploitation against project workers, including any forms of sexual exploitation, abuse, and harassment;
c. Support the principles of freedom of association and collective bargaining;
d. Prevent the use of forced labor and child labor;
e. Promote, develop, and maintain transparent project worker management relationships;
f. Provide project workers with accessible means to raise workplace concerns.

III. SCOPE OF APPLICATION

2. The applicability of this ESS2 is established during the environmental and social (E&S) assessment process described in ESS1. The scope of application of this ESS2 depends on the type of employment and nature of the employment relationship between the borrower/client and project workers during the implementation phase of a project cycle.

3. Project workers means:
   (i) direct workers – workers engaged or employed directly by a borrower/client to work on a project. The requirements in paras 5-31 apply;
   (ii) contracted workers – workers engaged or employed by a third party to perform work related to a project, regardless of location. The requirements in paras 5-32 apply;
   (iii) primary supply workers – workers engaged or employed by a borrower’s/client’s primary suppliers. Primary suppliers are suppliers who provide directly to a project goods or materials essential for production and/or service processes that are necessary for a specific project activity and without which a project cannot continue. The requirements in paras 20-26 and 37-39 apply; and
   (iv) community workers – workers engaged or employed by a borrower/client from a community or communities in a project-affected area who contribute their labor to a community development project through different working arrangements. The requirements in paras 20-26 and 33-35 apply.

4. Where government civil servants are working with a project, whether full-time or part-time, they will remain subject to the terms and conditions of their existing public sector employment agreement or arrangement, unless there has been an effective legal transfer of their employment or engagement to the project. This ESS2 will not apply to such government civil servants, except for the provisions of paras 20-26.
IV. GENERAL REQUIREMENTS

5. The borrower/client will require that all project workers, contractors, and subcontractors or other third-party contractors engaged on a project operate in a manner consistent with the requirements of this ESS2 and the requirements under the host country’s applicable laws related to labor and social security, including those laws implementing host country obligations under international laws.

A. Working Conditions and Management of the Relationship with Project Workers

6. The borrower/client will, in consultation with ADB, maintain or adopt and implement for a project a labor management plan. The plan will identify the different types of project workers engaged by the project and set out how they will be managed based on the employment relationships. The plan will also set out the way in which project workers will be managed, in accordance with the requirements of the host country’s applicable laws, this ESS2 and, if relevant, a good international practice (GIP). The plan will address the way in which this ESS2 will apply to different categories of project workers, and the way in which the borrower/client will require third parties to manage their workers. It will be proportionate to the size, needs, and risks involved in a project’s workforce. The borrower/client will ensure that a project’s labor management plan is accessible, clear, and communicated to project workers in a language and format that they will understand.

7. If there are significant changes to a project that will result in additional risks for and impacts on project workers, the borrower/client will meaningfully consult with project workers and review and update the project’s labor management plan where necessary to indicate how such risks and impacts will be mitigated.

B. Terms and Conditions of Work

8. The borrower/client will ensure that, at the beginning of the working relationship, project workers are provided with written contracts and/or other forms of information and documentation that contain clear and understandable terms and conditions of their employment. The contracts, information, and/or documentation will set out the project workers’ rights under the host country’s applicable laws and any applicable collective agreements, including rights related to hours of work, wages, overtime, and compensating benefits, as well as those arising from the requirements of this ESS2. The borrower/client will ensure that project workers are provided with additional information and documentation when any material changes to their terms or conditions of employment occur.

9. The borrower/client will establish and maintain two-way communications with project workers in a language and format that project workers understand and which provide: (i) adequate information on changes that might affect them, particularly any anticipated and unanticipated changes related to a project as they occur; and (ii) the opportunity for project workers to provide comments and concerns, including how to raise grievances as specified in para 31.

10. The borrower/client will ensure that project workers are: (i) paid on a regular basis including overtime where applicable; and (ii) provided with adequate periods of rest per week, annual holidays, and sickness, maternity and family leave, as set out in written contracts or other forms of information and documentation and/or otherwise in accordance with a project’s labor management plan. Deductions from payment of wages will only be made as specified in a
project’s labor management plan or if allowed by the host country’s applicable laws, and the borrower/client will ensure that project workers are informed of the conditions under which such deductions will be made.

11. The borrower/client will ensure that project workers receive a written notice of termination of employment and details of severance payments in a timely manner, and in accordance with the requirements of the host country’s applicable laws and a project’s labor management plan. The borrower/client will ensure that all wages, social security benefits, pension contributions, and any other entitlements earned or accrued will be paid on or before termination of the working relationship, either directly to the project workers or, where appropriate, for the benefit of the project workers. Where payments are made for the benefit of project workers, the borrower/client will ensure that project workers are given notice in advance of such payments and provided with evidence of them.

C. Non-Discrimination and Equality of Opportunity and Treatment

12. The borrower/client will: (i) not make project employment decisions on the basis of personal characteristics unrelated to inherent job requirements, particularly for those project workers who are disadvantaged or vulnerable; (ii) base the employment relationship on the principle of equal opportunity and fair treatment; and (iii) not discriminate with respect to any aspect of the employment relationship, such as recruitment and hiring, job assignment, compensation (wages and benefits), working conditions and terms of employment including reasonable adaptation of the workplace related to disabilities, access to training, promotion, termination of employment, retirement, and disciplinary practices.

13. The following measures will not be considered discrimination: special measures of protection or assistance to remedy past discriminatory actions; measures to promote local employment opportunities; and selection for a particular job based on the inherent requirements of the job that are in accordance with the host country’s applicable laws.

14. The borrower/client will implement appropriate measures to protect and assist disadvantaged or vulnerable project workers. Such measures may be necessary only for specific periods of time, depending on the circumstances of the project worker and the nature of the disadvantage or vulnerability. Such measures of protection and assistance will not be deemed as discrimination, provided they are consistent with the host country’s applicable laws, a project’s labor management plan, and this ESS2.

15. The borrower/client will take appropriate measures to prevent and address in a project context any form of violence and harassment, bullying, intimidation, and/or exploitation, including any form of sexual exploitation, abuse, and harassment (SEAH).

V. SPECIFIC REQUIREMENTS

A. Project Worker Accommodation

16. Where accommodation is provided for project workers, the borrower/client will include in a project’s labor management plan specific requirements on the quality and management of the accommodation and provision of basic services. The accommodation services will be provided in a manner consistent with the principles of non-discrimination and equal opportunity, including prevention of SEAH. The borrower/client will ensure that project workers’ accommodation arrangements will not restrict their freedom of movement or of association.
B. Freedom of Association and Collective Bargaining

17. In countries where the **host country’s applicable laws** recognize workers’ rights to form and to join workers’ organizations of their choosing and to bargain collectively, the borrower/client will inform project workers of these rights, and a project will be implemented in accordance with such laws. The borrower/client will not discriminate or retaliate against project workers who act as representatives, participate or seek to participate in such organization or in collective bargaining, and will not interfere in the formation or functioning of worker organizations. The borrower/client will engage with such workers’ representatives or organizations and provide them with information needed for meaningful negotiation in a timely manner.

18. Where the **host country’s applicable laws** restrict the establishment or functioning of workers’ organizations, the borrower/client will not restrict project workers from developing alternative mechanisms to represent their interests and protect their rights regarding working conditions and terms of employment, appropriate to the size and needs of a project’s workforce. The borrower/client will not discriminate or retaliate against project workers who participate, or seek to participate, in such workers' organizations and alternative mechanisms. The borrower/client will neither seek to influence nor control these alternative mechanisms.

19. Where the **host country’s applicable laws** are silent, the borrower/client will not discourage project workers from electing worker representatives, forming or joining workers’ organizations of their choosing, or from bargaining collectively, and will not discriminate or retaliate against project workers who participate, or seek to participate, in such organizations and collective bargaining. The borrower/client will engage with such workers’ representatives and workers’ organizations and provide them with information needed for meaningful negotiation in a timely manner.

C. Protecting the Work Force

a). Child Labor

20. The borrower/client will not employ or engage a child under the age of completion of compulsory schooling, and in any case not under the minimum age of 15 in connection with a project, unless the **host country’s applicable laws** specify a higher age. The borrower/client will specify the minimum age for employment or engagement in connection with a project in the project’s labor management plan.

21. The borrower/client will not employ or engage a child over the minimum age and under the age of 18 in connection with a project in a manner that is economically exploitative or is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development. **Hazardous child labor** is work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children. Hazardous child labor includes work and activities: (i) with exposure to physical, psychological, or **SEAH**; (ii) occurring underground, underwater, working at heights, or in confined spaces; (iii) with dangerous machinery, equipment, or tools, or involving handling of heavy loads; (iv) in unhealthy environments exposing the worker to hazardous substances, agents, processes, temperatures, noise, or vibration damaging to health; or (v) under difficult conditions such as long hours, late night, or confinement by employer.
22. The borrower/client will ensure that any project workers identified as over the minimum age and under 18 years of age will be subject to appropriate assessment of their physical health prior to commencing work and to regular monitoring of health, working conditions, hours of work, and other requirements of this ESS2.

23. The borrower/client may engage a child who is 13 to 15 years old for light work that will not (i) be harmful to their health or development; and (ii) prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent government authority, or their capacity to benefit from the instruction received, if the host country’s applicable laws justify engaging such child consistent with the applicable international convention and ADB agrees.

24. Where a child is engaged in a project, regardless of age, the borrower/client will take appropriate measures to prevent and address any form of violence and harassment, bullying, intimidation, and/or exploitation, including any form of SEAH, and ensure access to grievance mechanism under para 31. If cases of child labor are identified, the borrower/client will promptly take corrective actions to eliminate such practice from a project.

b). Forced Labor

25. The borrower/client will not employ forced labor in connection with a project. Forced labor is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered themself voluntarily. This prohibition covers any involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements. Work is performed on a voluntary basis when it is done with the free and informed consent of a project worker, and whose consent can be revoked freely by the project worker throughout the employment relationship. The borrower/client will assess the authenticity of a project worker’s free and informed consent, and confirm that no external constraint or indirect coercion has been carried out, either by an act of the competent government authorities or by an employer’s practice.

26. The borrower/client will not engage any trafficked persons in connection with a project. Trafficking in persons means the recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. If forced labor or other exploitative form of labor practices are identified, the borrower/client will promptly take corrective actions to eliminate such practices from a project.

D. Collective Dismissal

27. The borrower/client will provide advance notification to ADB of any planned collective dismissal.

28. In cases of a collective dismissal, the project’s labor management plan will be revised to incorporate the plan for collective dismissal and associated measures to be implemented by the borrower/client.

29. Prior to implementing any collective dismissal in connection with a project, the borrower/client will carry out an analysis of alternatives to the planned workforce reduction. If the
analysis does not identify any alternatives that are technically and financially feasible, the borrower/client will develop and implement a labor restructuring plan to assess, reduce, and mitigate the adverse impacts of the workforce reduction on project workers based on the principle of non-discrimination, and in meaningful consultation with project workers and their organizations, if any. The borrower/client will ensure that the process to identify project workers who will be subject to collective dismissal is transparent, based on fair, objective, consistently-applied criteria, and subject to an effective grievance mechanism.

30. In carrying out any collective dismissal, the borrower/client will comply with a project’s labor restructuring and labor management plans on collective dismissal. The borrower/client will ensure notification to competent government authorities, where required, and provision of information to, and meaningful consultation with, project workers and their organizations, if any. The borrower/client will ensure that severance pay and all wages, social security benefits, pension contributions, and any other entitlements earned or accrued will be paid: (i) to the project workers on or before termination of the working relationship; (ii) where appropriate, for the benefit of the project workers; or (iii) in accordance with a timeline set out in any applicable agreement reached through collective bargaining. Where payments are made for the benefit of project workers, the borrower/client will ensure that they are provided with evidence of such payments.

E. Grievance Mechanism

31. The borrower/client will set up an effective grievance mechanism through which project workers and their organizations, where they exist, can raise workplace concerns. This grievance mechanism will be separate, and in addition to, the grievance mechanism described in ESS10 for a project. The borrower/client will ensure that the grievance mechanism set up under this ESS2 addresses concerns promptly and is readily accessible to project workers. The grievance mechanism under this ESS2 will follow the principles of the grievance mechanism described in ESS10. The grievance mechanism will be proportionate to the nature and scale of the potential risks and impacts of a project and will involve an appropriate level of representation from management and project workers to address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without threat of reprisal. The grievance mechanism will include provisions for confidential complaints, and those requiring special protection measures such as reports of SEAH. The mechanism will not prevent access to judicial or administrative remedies of the host country that might be available under law or through existing arbitration or mediation procedures, nor will it substitute for grievance mechanisms provided through workers’ organizations or collective agreements. The borrower/client will inform project workers of the grievance mechanism at the time of recruitment and the measures put in place to protect them against any threat of reprisal for its use. The borrower/client will establish a procedure to regularly monitor the use of the grievance mechanism. Where monitoring indicates that the grievance mechanism requires modification to make it appropriately responsive to project workers’ needs, the borrower/client will ensure that such modifications are made and communicated to project workers in a timely manner and in a language and format they will understand.

F. Contracted Workers

32. The borrower/client will identify risks associated with the recruitment, engagement, and demobilization of project workers by third parties, develop proportionate procedures, and implement a contractor management plan for managing and monitoring the performance of such third-party employers in relation to a project and requirements of this ESS2. The borrower/client will make reasonable efforts to find out that a third-party employer who engages contracted
workers has appropriate human resource policies and labor management systems and procedures that are consistent with this ESS2. The borrower/client will also ascertain that contractors are legitimate and reliable enterprises and have knowledge and skills to perform their project tasks in accordance with their contractual commitments. The borrower/client will incorporate the requirements of this ESS2 and all applicable aspects of the environmental and social commitment plan (ESCP)/environmental and social action plan (ESAP) into contractual agreements with a third-party employer, and require that such third-party employer include equivalent requirements into its contractual agreements with its contracted workers. The borrower/client will monitor compliance with such contractual agreements. The borrower/client will ensure that all contracted workers have access to a project’s grievance mechanism.

G. Community Workers

33. **Community workers** are those who contribute their labor to a project as part of their community work, or to a project that is designed and implemented for the purpose of fostering community-driven development, providing a social safety net such as food for work or community public works or similar programs, or providing targeted assistance in fragile and conflict-affected situations.

34. Where a project involves the provision of labor by **community workers**, the borrower/client will include measures in a project’s labor management plan to determine whether workers are performing work on a voluntary basis as an outcome of individual or community agreement. Those community workers voluntarily employed or engaged for a project will not be paid salary and benefits but will still have the same rights and responsibilities of other **project workers**, with the main difference being the absence of a salary and benefits package for their work. Any community workers contracted to perform work for wages and benefits are **contracted workers**. The measures to be included in a project’s labor management plan will reflect and will be proportionate to: (i) the nature and scope of the project; (ii) the specific project activities in which the community workers are engaged; and (iii) the nature of the potential risks to and impacts on the community workers.

35. The borrower/client will assess whether there is a risk of child labor or **forced labor** among **community workers**, identifying those risks consistent with paras 20-26. The borrower/client will ensure that a project’s labor management plan will set out roles and responsibilities for supervising and monitoring the labor and working conditions of community workers. If cases of child labor or forced labor among community workers are identified, the borrower/client will promptly take corrective action to remove such practices from a project and provide access to the project’s grievance mechanism.

H. Migrant Workers

36. The borrower/client will identify **project workers** who have migrated from one country to another or from one part of the country to another for purposes of employment, and ensure that they are engaged on terms and conditions of work that are not less favorable than those for non-migrant **project workers** carrying out the same work, as set out in paras 5 to 31. The borrower/client will ensure that all migrant project workers have access to a project’s grievance mechanism.

I. Primary Suppliers and Primary Supply Workers
37. As part of the E&S assessment process described in ESS1, the borrower/client will identify and assess potential or actual risks of child labor, forced labor, and serious safety issues which may arise in relation to primary suppliers. Where there is a significant risk of child labor or forced labor related to primary supply workers and suppliers engaged by a primary supplier, the borrower/client will require the primary supplier to adhere to the requirements in paras 20-26, in a manner proportionate to its control or influence over the primary supplier, to the satisfaction of ADB. The borrower/client will monitor its primary suppliers on an ongoing basis, identify any significant changes in the primary supply workers and/or suppliers engaged by a primary supplier and if new risks or incidents of child and/or forced labor are identified, the borrower/client will require the primary supplier to address such risks, in a manner proportionate to its control or influence over the primary supplier, to the satisfaction of ADB.

38. Where the E&S assessment process described in ESS1 identifies a significant risk of serious safety issues related to primary supply workers, the borrower/client will require the primary supplier to introduce procedures and mitigation measures to address such safety issues. The borrower/client will periodically review such procedures and mitigation measures to ascertain their effectiveness.

39. The ability of a borrower/client to address risks in paras 37 and 38 will depend on the borrower's/client's level of control or influence over its primary suppliers. The borrower/client will be required to demonstrate the extent to which it cannot exercise control or influence over a primary supplier by providing details of the considerations for such determination, which may include legal, regulatory, and institutional factors. Where corrective action to bring a project into compliance with this ESS2 is not possible, the borrower/client will, within a reasonable period of time, shift a project's primary suppliers to suppliers that can demonstrate that they have the capacity to comply with this ESS2.

VI. MONITORING AND DISCLOSURE

40. Depending on the level of risks and impacts with regards to labor and working conditions, the borrower/client will prepare and disclose a project labor management plan as a standalone plan or as part of the project environmental and social management plan (ESMP) in accordance with ESS1 and ESS10.

41. The borrower/client will monitor the implementation of the requirements of the labor management tools in accordance with the requirements in the ESCP/ESAP and ESS10.