



The Equator Principles Association
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Mr. Greg Radford
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Dear Greg,

On behalf of the Equator Principles Financial Institutions (EPFIs) Steering Committee, we would like to thank you for the open and collaborative process during Phase I and II of the IFC's Policy and Performance Standards Review and Update process (IFC PS Review).

The two day discussion at the IFC's Community of Learning in June provided a helpful overview of the IFC's current thinking on the IFC PS Review, and we thank you again for your openness and transparency.

The IFC has thought deeply about the IFC PS Review and has done a thorough job of balancing the many competing views on complex and challenging issues. However, it is also evident through our discussions, and through the EPFIs' analysis of the draft PS and Guidance Notes, that there are still a few areas that require greater clarity and sustained focus before final consideration by the public, stakeholders and eventual approval by the IFC's Board.

The following comments represent EPFI collective thoughts on the IFC PS Review. In some instances, we have suggested alternative language for your consideration. In others, we indicated concern or asked for further clarification. We reviewed the draft PS and Guidance Notes with a view to identify any areas of weakness that need strengthening, or proposed language that may pose undue implementation challenges in a private sector context.

We provide this feedback believing that it is in all our interests that the IFC's standards continue to remain best-in-class. The IFC's standard setting role is important and helpful for numerous stakeholders including development finance institutions, ECAs, EPFIs, and even some companies not seeking direct financing assistance but wishing to utilize the PS as a common baseline standard. Many EPFIs also use the PS for transactions beyond project finance. This convergence has helped all of us – as financiers, project sponsors and developers, assessment professionals and consultants – to better assess and manage our risk. Such convergence ultimately helps speed transaction review time thereby reducing due diligence costs, and ensures improved project outcomes for locally affected communities and ecosystems.

Climate Change

As we have highlighted to the IFC before, climate change is one of the EPFIs' greatest priorities. In order for the IFC to maintain its standard setting role, the EPFIs recommend that the IFC is more assertive and innovative with regards to climate change than is currently proposed in its revised drafts.

While this may be difficult within the IFC's governance structure, we feel that collectively we can do more to signal to the market that Equator Principles (EP)-compliant transactions meet best available technology (BAT), including BAT for climate mitigation. This will provide a stronger foundation as international agreements evolve and provide more specificity in the coming years. For example, BAT analysis could signal that subcritical technology (for coal-fired power) is not a generally preferred direct financing option in most cases (as some of your multilateral development bank peers currently reflect in their policies).

In this context, we urge the IFC to consider incorporating and/or requiring:

- a dedicated paragraph on climate change considerations to be included in the Risks and Impacts Identification section of PS 1 (Para 6-12);
- clearer Climate Change Impact Assessment triggers for certain projects in GHG-intensive sectors or in geographies with high vulnerability to climate change;
- dedicated climate-specific BAT analysis within the environmental and social assessment process, and
- client public reporting requirements for GHG emissions of large projects (e.g., 100,000 tonnes of direct project emissions and above).

Human Rights

The EPFIs support the protection and preservation of human rights around the world.

We are pleased that the IFC supports the UN Special Representative Professor John Ruggie's mandate and current thinking with respect to business and human rights as this is an emerging normative standard. We believe Professor Ruggie's mandate will provide the private sector with a helpful foundation for affirming that states have the primary duty to protect human rights, while underscoring the private sector's responsibility to respect them. We urge the IFC to continue to work and consult closely with Professor Ruggie.

As the Ruggie mandate and the IFC PS Review process are not fully aligned in terms of timing, the EPFIs would request the IFC consider the following:

- include language (or a specific brief human rights section) related to Government's Duty to Protect, and to the private sector's Responsibility to Respect Human Rights in PS 1 (we understand this is in the IFC

Sustainability Policy, but it would help the EPFIs to include a brief mention or synopsis in PS 1, as the EPs refer to the PS explicitly);

- provide clear criteria when a Human Rights Impact Assessment (HRIA) may be required as a stand-alone assessment tool, and
- to ensure the broad uptake and consideration of human rights in all other transactions, we urge the IFC to integrate human rights considerations into existing environmental and social assessment processes, when feasible.

Stakeholder Engagement

The EPFIs strongly believe that robust stakeholder engagement/consultation processes with affected communities lead to better project outcomes on the ground.

We note the introduction of new stakeholder groups such as "other stakeholders " and "all other interested parties". We encourage a stakeholder hierarchy, with supporting guidance and definitions to ensure that "directly affected" communities and stakeholders needs and views are appropriately prioritised.

This is why in the EP 2006 revision the EPFIs fully embraced the IFC's proposed concept of "free prior and informed consultation" (FPIConsultation) and grievance mechanisms, and incorporated them as free-standing principles within the EPs. This improved the EPs' scope and effectiveness, and signalled an important shift towards active community engagement. The IFC's leadership in standard setting for stakeholder engagement has helped the financial sector and project performance move forward in a positive way..

We believe that the FPIConsultation framework continues to work well: it underscores the need for robust stakeholder engagement with affected communities in the absence of fear, intimidation or coercion, and full affected community access to environmental and social assessment documentation through robust disclosure of information at the project level. The further requirement of Broad Community Support (BCS), in addition to informed participation and the Good Faith Negotiation (GFN) requirement for Indigenous Peoples (IPs), is a good performance standard for those situations with sensitive IP issues. We also have a strong preference to include BCS with proper definition and guidance in PS 7 instead of in the IFC's Sustainability Policy.

The EPs agree fully that IPs have social identities and characteristics that require special attention and focus, and impacts on them need to be carefully assessed, managed and monitored, and their rights respected. While we fully appreciate that the debate surrounding consent is challenging, "consent" is a concept that appears not to be fully and consistently defined. Indeed, there appears to be a lack of common agreement on how "consent" can be achieved in real-life project contexts. The IFC has not, as yet, given the EPFIs clear performance criteria on how to achieve and maintain consent over a project's life cycle, and such uncertainty could generate undue risk.



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If the IFC decides to move towards “consent” for IPs, the EPFIs will require direct engagement with you to understand how you propose to overcome the challenges particularly with regard to consent definition, triggers, assessment processes and monitoring.

We urge the IFC to decide on this issue soon, so that we may engage in direct consultation on your preferred approach and so that your process is not unnecessarily delayed in the fall.

Biodiversity

EPFIs believe that biodiversity has a vital role to play in sustaining life on earth.

As we celebrate the International Year of Biodiversity, revisions to PS 6 take on even greater meaning. This is a complex and challenging issue with revisions to PS 6 requiring detailed focus and attention. Our comments make the point that the private sector has a role to play in preventing biodiversity loss and in protecting ecosystem services.

We recommend you consider:

- revising the definition of Critical Ecosystem Services to be a subset of Priority Ecosystem Services, inclusive of provisioning, regulating, and natural cultural services;
- including an additional critical habitat Criterion 6 – habitat providing Critical Ecosystem Services;
- inserting requisite offset principles to be followed;
- providing clarity on the threshold for a no-go decision related to critical habitat, and
- recommending that the IUCN assist in the identification of qualified experts and/or provide peer review of assessments undertaken.

This letter, and / or its content, may be used in any public comments submission process, as appropriate.

We look forward to our continued dialogue and partnership.

Sincerely on behalf of the EPFI Steering Committee,

Shawn D. Miller
Chair of the EPFI Steering Committee
The Equator Principles Association