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# Equator Principles 4 | Stakeholder Consultation Summary and Recommendations

Final Version



## About This Report

This report has been prepared by BSR on behalf of the Equator Principles Association (EPA), in line with the EPA's request for proposal "For the provision of stakeholder consultation support services on draft version 4 of the Equator Principles (EP4)," dated January 2019, and taking account the resources devoted to it in agreement with the EPA.

The report summarizes in good faith the stakeholder consultation process and feedback received by stakeholders during the process facilitated by BSR on behalf of the EPA during July and August 2019. The recommendations outlined in this report are BSR's recommendations to the EPA regarding the EP4 draft, based on stakeholder feedback, opinions and recommendations. The views expressed in this publication are those of its authors and do not reflect those of BSR members. Furthermore, this report summarized the feedback received from diverse stakeholders during the consultation process and BSR's corresponding recommendations based on that feedback, and not necessarily the views or positions of BSR as an organization on the topics of discussion.

We would like to thank all the stakeholders that actively participated in the stakeholder consultation process, providing constructive, informed, and detailed feedback to the EP4 draft, ultimately contributing to improve the adoption of best practice in Project finance environmental and social risk management.

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## Process Summary

### BACKGROUND

The Equator Principles Association (EPA) undertook a targeted review of the Equator Principles (EPs). This update reflects an understanding that approaches to environmental and social risk management have evolved since the last iteration of the EPs was issued in June 2013, with for example the implications of the Paris Agreement, challenges in implementation of Free Informed and Prior Consent (FPIC), and the Financial Stability Board's (FSB) Task Force on Climate-Related Financial Disclosures (TCFD) recommendations. The targeted review focused on four themes: Scope of Applicability, Applicable Standards in Designated and Non-Designated Countries, Human Rights and Social Risk, and Climate Change.

On 24 June 2019, the EPA published the EP4 draft for public consultation, and requested stakeholder feedback on the proposed draft. BSR, a not-for-profit membership organization and consultancy focused on sustainability, facilitated the subsequent external engagement. The objective of the public consultation was to solicit input from a wide range of interested parties on the EP4 proposed draft and targeted review.

### PROCESS AND RULES OF ENGAGEMENT

The EP4 public consultation process took place from 24 June to 9 August 2019 (extended to 23 August 2019 at stakeholder request). The EPA and BSR undertook a joint effort to outreach to as many interested parties and relevant stakeholders as possible to inform them of the EP4 public consultation. BSR also asked some interested organizations and associations to contact their networks and memberships to create additional awareness. The EPA and BSR welcomed and encouraged additional awareness efforts that interested parties were able to provide.

Equator Principles stakeholders had the opportunity to provide feedback in three ways: In-person, at stakeholder consultation meetings in Tokyo, London, or Toronto; via webinars, replicated in two time zones; or via the Equator Principles website [<https://equator-principles.com/ep4/>]. Consultation events were open to any interested party or relevant stakeholder of the EPs. Meetings were hosted separately for industry participants (i.e. banks and their clients) and non-industry participants (including civil society, regulators, investors, international institutions, and other stakeholders). This represented a total of ten events, covering all geographies and time zones.

All engagements took place under Chatham House Rules.

### MAIN TOPICS OF DISCUSSION

In-person and webinar participants were provided an overview of the main proposed changes between EPIII and EP4, accompanied by a set of questions for discussion during the consultation meetings. The overview was not a comprehensive review of all of the proposed changes and stakeholders were invited to read the full EP4 proposed text. The main topics discussed during the consultation events were as follows:

1. Scope of Applicability (i.e., to which financial transactions EP applies)

2. Applicable Standards in Designated vs. Non-Designated Countries
3. Human Rights and Social Risk
4. Climate Change
5. Any other topic of discussion relevant to the EPs that participants wished to raise

For each topic, BSR asked for feedback from stakeholders on the ambition level, clarity of language, feasibility, and adoptability of the proposed changes.

## **BSR'S ROLE**

BSR sought to facilitate the EP4 stakeholder engagement process according to the principles of timeliness, representativeness, inclusiveness, respect, and transparency.

The stakeholder consultation process facilitated by BSR is part of a larger stakeholder engagement process led by the EPA and other third parties on behalf of the EPA, during the EP4 targeted review process, which began in 2017. In addition, while BSR has made recommendations for changes to the EP4 draft based on stakeholder feedback, the EPA has the ultimate authority to accept or reject these recommendations and determine the final text for consideration by the Equator Principles Financial Institutions (EPFIs).

During the stakeholder consultation period, as detailed in the following EP4 Stakeholder Consultation Results section, over 150 individuals participated in the stakeholder consultation events representing diverse organizations. Over 250 organizations provided written feedback through the online feedback form or email. BSR and the EPA outreached to hundreds of organizations to inform them of the stakeholder consultation process. When possible, we asked additional organizations and associations to also reach out to their networks and memberships. We understand that we may have inadvertently excluded participation by certain groups which were not included in the initial outreach.

Some factors may have influenced the scope and diversity of the stakeholder views heard during the consultation process. These include, but were not limited to, that the locations selected for holding in-person events may have limited the participation of groups outside these urban centers, and provided more accessibility to the industry, investors, and global civil society organizations than local communities affected by Projects. BSR facilitated webinars accessible in all time zones to allow stakeholders in all geographies to participate in the consultation events.

The timeline allowed for a stakeholder consultation period of nine weeks, in a view to allow the EPA to adhere by its publicly announced timeline for EP4 approval. The deadline for consultation feedback was extended by 2 weeks at the request of stakeholders allowing for an 11-week period in total. BSR recognizes that this timeline, held during the summer holiday period, may have limited the opportunity of some stakeholders to provide thorough feedback.

This report summarizes in good faith stakeholder feedback collected during the consultation events and through the online feedback form or email. The report includes feedback summaries and recommendations that were heard multiple times (for example, by multiple stakeholder organizations,

groups, or geographies), as well as specific recommended language that contributed to improve the clarity of the EP4 draft. BSR's corresponding recommendations are based on the feedback received and are not necessarily the views or positions of BSR as an organization on the topics of discussion.

BSR also aimed to provide a level of information and recommendations in a format that is manageable and fit-for-purpose for the EPA to act upon, in the timeline set forth by the EPA.

The summary report does not capture all the stakeholder feedback collected during the consultation period. BSR also delivered to the EPA in a separate document detailed, comprehensive stakeholder comments, which were not attributed to specific organizations or individuals. All individual stakeholder feedback remains confidential and will not be shared publicly.

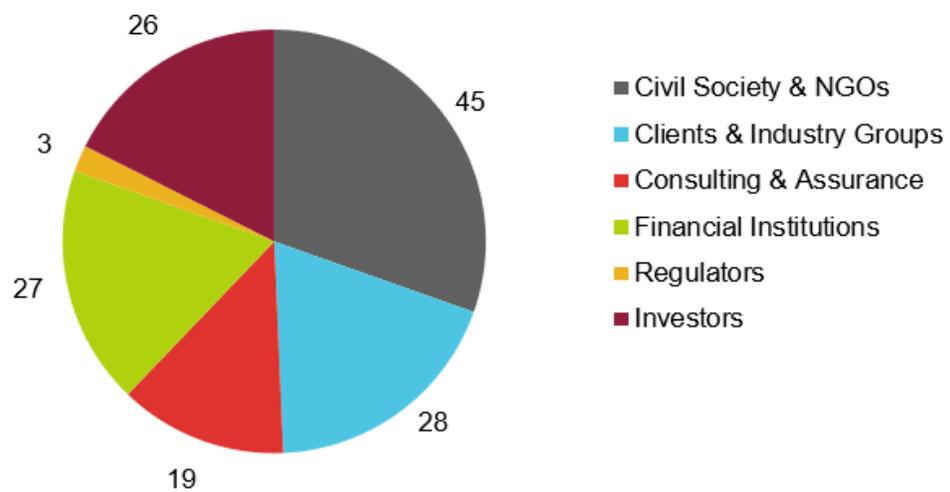
## EP4 Stakeholder Consultation Results

### STAKEHOLDER EVENTS

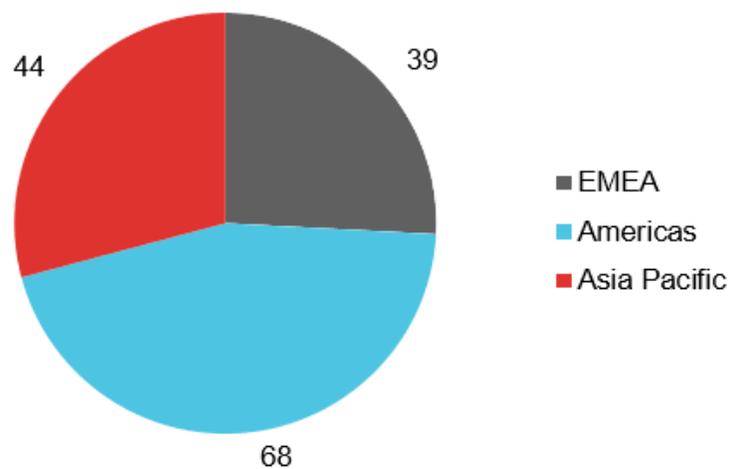
Total number of participants (in-person & webinar): 151

Total number of organizations (in-person & webinar): 90

#### Number participants per stakeholder group



#### Number of participants per geographical area



## STAKEHOLDER ONLINE FEEDBACK

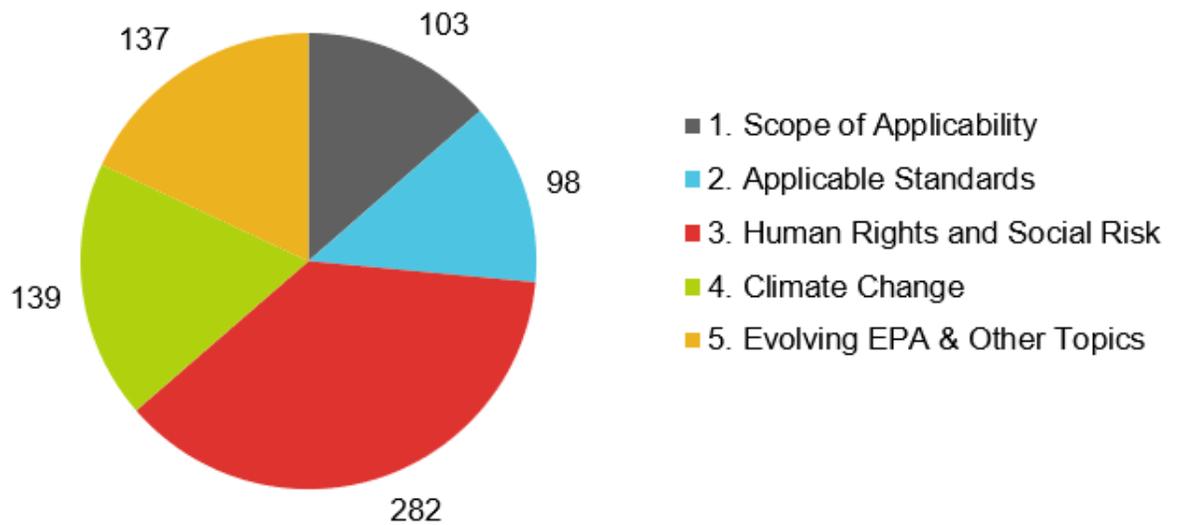
Total number of responses received: 63

Total number of organizations that provided written feedback: 251

## STAKEHOLDER COMMENTS

Total number of comments received: 759

Number of comments per theme



## Stakeholder Feedback Summaries and Key Recommendations

### SCOPE OF APPLICABILITY

#### Summary of EP4 Draft Updates Compared to EPIII

Overall, the scope of applicability remains within the Project-Related realm.

The total threshold for Project-Related Corporate Loans (PRCLs) has reduced to US\$50 million, where the total aggregate loan amount and the EPFI's individual commitment (before syndication or sell down) meets the new threshold (see section Scope). Project-Related Refinancing and Project-Related Acquisition Financing is added to the scope of the EPs with the following criteria:

- » The underlying Project was financed in accordance with the EPs;
- » There has been no material change in the scale or scope of the project;
- » The project is not yet completed (see section Scope).

For Project-Related Corporate Loans, the exception for sovereign borrowers is removed for Category A, and as appropriate for Category B Projects (see Exhibit 1: Glossary of Terms: 'Project-Related Corporate Loans').

AMBITION LEVEL AND FEASIBILITY	
<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>General support for the overall goal of expanding the Scope (p. 6) to cover a larger quantity of bank transactions, including sovereign borrowers. Requests to expand the Scope even further to include more types of financial products, such as how to capture general corporation financing which enables project-type investments, project bonds, and other project related financial instruments.</b></p>	<p>BSR supports the intent of keeping the EPs applicable to project-related financing and recommends including a long-term goal of reviewing how project-specific bonds could be within the Scope as they are a common source of project financing. BSR understands that Project bond financing is quite different in structure as there are no loan agreement clauses or due diligence processes and they are financed on capital markets, so it would require different mechanisms to manage environmental and social risk. In addition, as stakeholders were concerned that EPFIs have been using technical bank classification systems to avoid applying the EPs in circumstance where they should be applied in principle, BSR recommends adding in language in Scope section (p. 6) such as “the intent of the EPs is to capture all forms of significant EPFI lending that support project-related investments.”</p>
<p><b>Suggestions to eliminate the monetary threshold (p. 6) (e.g. \$10 million for Project</b></p>	<p>BSR does not recommend eliminating the thresholds given the likely transaction costs, lesser impacts of smaller</p>

<p><b>Finance) as some smaller projects could have significant environmental and social impacts. Questions about how the US\$50 million for PRCLs was determined.</b></p>	<p>projects, and that some stakeholders were not in favor of reducing the thresholds from EPIII. However, BSR recommends adding in additional language at the end of Scope (p. 7) such as “EPFIs, at their own initiative, may also apply the EPs to projects which come under the financial thresholds established under the Scope.” In addition, BSR recommends elaborating on the rationale for the reduced threshold of US\$50 million for PRCLs and the need for thresholds overall in a guidance document or a clarifying note (e.g. Feasibility Q&amp;A about EP4). Furthermore, on human rights issues the UN Guiding Principles on Business and Human Rights (UNGPs) (as discussed below) do not have a financial threshold and BSR therefore recommends that EP4 encourages that EPFIs conduct an efficient human rights risk-based review of Projects below the thresholds to determine if significant human rights risks are present.</p>
<p><b>Inquiries if E&amp;S diligence processes could be better integrated into a Know Your Customer / customer acceptance process so that certain types of clients (e.g. sensitive sectors) will have the EPs applied to them regardless of financial product.</b></p>	<p>Based on stakeholder feedback BSR recognizes that good practice is for EPFIs to have environmental and social due diligence during customer acceptance, but that it is not within the project-related scope of EP4.</p>
<p><b>Recommendations to acknowledge and align the EPs with the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct.</b></p>	<p>BSR recognizes that many stakeholders believe the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the OECD Due Diligence Guidance for Responsible Business Conduct provide good practice guidance for companies. However, as the OECD Guidelines cover a wide range of business topics, which are beyond the Scope of the EPs, – e.g. bribery, corporate disclosures, science and technology, taxation – BSR does not recommend adding language related to the OECD Guidelines in the EPs.</p>
<p><b>CLARITY OF LANGUAGE</b></p>	
<p><i>Stakeholder Feedback Summaries</i></p>	<p><i>BSR’s Recommendations</i></p>
<p><b>Uncertainty if Principle 2: Environmental and Social Assessment now applies to all projects</b></p>	<p>BSR recommends adding in language at the beginning of Principle 2 (p. 10) such as “For all Categories of Projects...” BSR also recommends adding (p. 11) what is required for</p>

<p><b>and questions around the exact guidance for Assessments for Category C Projects.</b></p>	<p>Category C Projects such as “For other Category B Projects and Category C Projects, a limited or focused environmental and social assessment...”</p>
<p><b>Uncertainty on when to apply higher standards for Category B Projects when the phrase “in Category A and, <u>as appropriate</u>, Category B Projects” is used.</b></p>	<p>BSR recognizes that “as appropriate” is unclear on which standards to apply to Category B projects and recommends that a paragraph be inserted into Principle 1 (p. 10) to clarify the discretion of the EPFIs to determine the level of due diligence for Category B projects and any criteria or guidance used.</p>
<p><b>Uncertainty about the application of the EPs to project expansions, brownfield projects, and other types of investments in existing projects.</b></p>	<p>BSR recommends modifying the ‘Project’ definition (p. 30) to capture “brownfield” investments.</p>
<p><b>Meaning and context of “for financial products that fall outside of the Equator Principles” is not clear (p. 5).</b></p>	<p>BSR recommends changing the language (p 5.) to “... social risks and impacts and respecting human rights even for EPFI financial products which are outside of the Scope of the Equator Principles.”</p>
<p><b>Definition and conditions for “Project-Related Corporate Loans” (p. 6).</b></p>	<p>BSR recommends clarifying the scope and definition of Project-Related Corporate Loans in Exhibit 1: Glossary of Terms rather than in three different sections as is currently the case (Scope, footnote 1, and Exhibit 1). BSR recommends clarifying criteria 3.ii, for example “The total aggregate loan amount and the EPFI’s individual commitment are each at least US\$50 million.”</p>
<p><b>Definition and conditions for “Project-Related Refinancing and Project-Related Acquisition Financing” could be simplified for clarity.</b></p>	<p>BSR recommends changing the language (p. 6) to “Project-Related Refinancing and Project-Related Acquisition Financing where the underlying Project was financed in accordance with the Equator Principles framework.” Other criteria (5.ii and 5.iii) can be eliminated as they are not relevant.</p>
<p><b>Concern with the term “offset” (e.g. Principle 2, p. 10) especially in the context of human rights.</b></p>	<p>As human rights abuses cannot be offset, BSR recommends a review and update of the language (Preamble, p. 4; Principle 2, p. 10; Exhibit I, Environmental and Social Management System) to be the same as within the IFC Performance Standards which is “avoid, minimize, and where residual impacts remain, to compensate/offset</p>

for risks and impacts to workers, affected communities, and the environment". BSR would even support eliminating the word "offset" to reduce further confusion in the human rights context, although as a general principle BSR prefers to use the exact IFC Performance Standard language when possible.

## APPLICABLE STANDARDS IN DESIGNATED AND NON-DESIGNATED COUNTRIES

### Summary of EP4 Draft Updates Compared to EPIII

Principle 3 retains the list of ‘Designated Countries’ i.e. high-income OECD countries as a proxy for governance. However, it clarifies that the EPFI will evaluate the specific risks of the Project to determine whether one or more of the IFC Performance Standards could be applied to address those risks, in addition to host country laws. In addition, the EPs require that the EPFI’s due diligence includes, for all Category A and Category B Projects, a review of how the project meets each of the Equator Principles Standards.

AMBITION LEVEL AND FEASIBILITY	
<i>Stakeholder Feedback Summaries</i>	<i>BSR’s Recommendations</i>
<p><b>Substantial feedback focused on whether there is a need to distinguish between Designated and Non-Designated Countries (p. 12) or to eliminate this distinction, with several recommendations to eliminate for all Projects or for Category A Projects.</b></p>	<p>For clarity, the EPs already apply globally for both Designated (i.e. higher income) and Non-Designated Countries (i.e. lower income). This distinction is in place only for and specifically to Principle 3: “Applicable Environmental and Social Standards” for the Assessment. BSR recommends renaming Principle 3 “Applicable Environmental and Social <u>Assessment</u> Standards” for further clarity. However, based on stakeholder feedback, BSR does not recommend eliminating the Designated and Non-Designated Countries distinction in full. The IFC Performance Standards, which are the minimum expectations for Principle 3, are specifically developed for Non-Designated Countries and some stakeholders recognized that the IFC Performance Standards are often exceeded in Designated Countries.</p> <p>BSR recommends there be an exception for Performance Standard 7 (PS-7), however. A key rationale is that almost all stakeholder feedback for eliminating the distinction focused exclusively on ensuring human rights standards globally and more specifically on Indigenous Peoples issues (PS-7) as opposed to other IFC Performance Standards. Therefore, BSR recommends clarifying the application of the UNGPs globally and eliminating the distinction only and more clearly for Indigenous Peoples (PS-7) under Principle 5: Stakeholder Engagement. BSR recommends elaborating</p>

	<p>on this rationale in a guidance document or a clarifying note (e.g. Feasibility Q&amp;A about EP4). Please see Human Rights and Social Risks recommendations below for more detail.</p>
<p><b>Awareness that the current EPA Designated and Non-Designated Country list does not match the OECD list and it is unclear if it is based on another third-party list (e.g. IFC). Specifically, Mexico and Turkey are on not on the EPA Designated Country List.</b></p>	<p>BSR recommends defining a country list based on a credible, third-party source, such as OECD membership, and cite that clearly in the Glossary for “Designated Countries” and on the EPA website.</p>
<p><b>Substantial feedback on the feasibility of the IFC Performance Standards being applied to Designated Countries on a subjective basis (p. 12), including:</b></p> <ul style="list-style-type: none"> <li>• <b>Uncertainty and consistency around which IFC Performance Standards might be applied in specific countries and industries;</b></li> <li>• <b>The timeliness of application during the Project lifecycle to provide clients and stakeholders sufficient lead-time, and;</b></li> <li>• <b>The compatibility of the IFC Performance Standards with national and local laws in Designated Countries.</b></li> </ul>	<p>BSR recommends maintaining the current language (p. 12) “in addition, for Projects located in Designated Countries, the EPFI will evaluate the specific risks of the Project to determine whether one or more of the IFC Performance Standards could be used as guidance to address those risks, in addition to host country laws.” BSR also recommends qualifying that this voluntary application will only be used for Projects in which significant environmental and social risks are present. A qualifier, such as “for Category A Projects and as appropriate Category B Projects” may be helpful to segment significant impacts (Principle 3, p. 12).</p> <p>The rationale is the application of the IFC Performance Standards to Designated Countries would be a new undertaking with no precedent to our knowledge and presents several legal, feasibility, and financial challenges. For example, some stakeholders, both industry and non-industry, acknowledged that in many cases, but not all, the IFC Performance Standards would be below the legally required level of environmental and social due diligence standards in certain countries. The exception for this is PS-7, as detailed elsewhere in this document. BSR therefore recommends that the best approach is for EP4 to allow a flexible and discretionary mechanism for case-by-case application of the other Performance Standards (i.e. not PS-7) to Designated Countries with a more extensive review on mandatory full application to be done in the future, possibly in conjunction with an EP5 update.</p> <p>BSR recognizes that this is an imperfect approach that may create some confusion at the Project level, but based on</p>

	<p>stakeholder feedback, we believe a trial period is needed before deciding to fully eliminate the Designated / Non-Designated Distinction.</p> <p>BSR further recommends additional language (p. 12) such as " the intent of the EPFI is to use the IFC Performance Standards for guidance only when they exceed national laws and regulations for project due diligence" to clarify the intent of this option. Furthermore, BSR recommends that a guidance note be developed by the EPA to assist the EPFIs in determining when to use the IFC Performance Standards as additional guidance in Designated Countries and also recommends that the EPA develops training and lessons-learned sharing opportunities for its membership, with the participation of and input from diverse stakeholders.</p>
<p><b>Significant concern on how a client would know, with sufficient lead time, which IFC Performance Standards are being applied on a voluntary basis in Designated Countries under Principle 3.</b></p>	<p>BSR recommends that the EPFIs, through guidance and training specified above, develop processes for communicating to clients under a feasible timeline the voluntary application of IFC Performance Standards in Designated Countries similarly to the manner it is already conducted in Non-Designated Countries.</p>
<p><b>CLARITY OF LANGUAGE</b></p>	
<p><i>Stakeholder Feedback Summaries</i></p>	<p><i>BSR's Recommendations</i></p>
<p><b>Ability for EPFIs to have discretion over what other standards to apply creates uncertainty.</b></p>	<p>BSR recommends removing the statement under Principle 3 (p. 12) "The EPFI may, at their sole discretion, undertake additional due diligence against additional standards relevant to specific risks of the Project and apply additional requirements." The rationale is that the EPs already cite the key standards used for due diligence, with BSR recommending further application for assessments of the UNGPs for human rights and the TCFD for climate change, and the option of using additional, possibly competing, standards may lead to client confusion about how Projects are assessed. As always, EPFIs are free to go above and beyond the EPs, a minimum requirement, at their own discretion, and this could be stated as a general principle in the Preamble.</p>

**Recommendations to improve the human rights credentials of consultants as EPFIs and clients rely heavily on consultants for EPA implementation and compliance.**

BSR recommends, under Principle 7 (p. 16) adding language such as “The Consultant must be able to demonstrate expertise for assessments in evaluating the types of environmental and social risks and impacts, including human rights and climate expertise, relevant to the Project.”

## HUMAN RIGHTS AND SOCIAL RISK

### Summary of EP4 Draft Updates Compared to EPIII

The Preamble states that EPFIs will fulfil their responsibility to respect Human Rights in line with the UN Guiding Principles on Business and Human Rights. Principle 2 strengthens language on human rights, stating that the Environmental and Social Impact Assessment (ESIA) included in the Assessment Documentation should include the assessment of potential adverse Human Rights impacts.

Two options related to 'Free, Prior and Informed Consent' (FPIC) are presented:

#### Option 1

For projects with impacts on indigenous peoples as described in IFC Performance Standard 7: Indigenous Peoples, clients "are expected to engage in meaningful consultation with affected Indigenous People, with the goal of achieving their Free Prior and Informed Consent." In the case that it is unclear whether consent has been achieved, the EPFI should evaluate if further consultation efforts are required and whether the clients' mitigation and remedy plans are appropriate.

#### Option 2

For projects with impacts on indigenous peoples as described in IFC Performance Standards 7, clients "must demonstrate to the EPFI's satisfaction, that the Free, Prior and Informed Consent of the indigenous peoples affected by the Project is obtained."

AMBITION LEVEL AND FEASIBILITY	
<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>Majority of stakeholders, both Industry and Non-industry, believed the EPs should adopt the UN Guiding Principles on Business and Human Rights (UNGPs) as an overarching standard.</b></p>	<p>For clarification there is no specific IFC Performance Standard on Human Rights, rather IFC Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts) states "Each of the IFC Performance Standards has elements related to human rights dimensions that a project may face in the course of its operations." There is, however, a specific IFC Performance Standard, PS7, for Indigenous Peoples issues.</p> <p>BSR recommends that the EPs clearly define the UNGPs as its overarching standard for human rights broadly in the documents as recommended by stakeholders. BSR recommends that the Preamble (p. 4) modifies language such as "In this regard, when financing Projects the EPFI <b>commits</b> to respect internationally recognized Human Rights in line with the UNGPs, and associated...". In addition, a footnote could be provided referencing the guidance</p>

	<p>provided in UNGP Principle 12 about other internationally recognized human rights instruments. Furthermore, at the end of Principle 3: Applicable Environmental and Social Standards, BSR recommends adding language such as “In respect to human rights due diligence and oversight, the EPFI should use the UNGPs as the minimum required standard when evaluating all Projects in all locations.” In addition, BSR recommends that the EPA considers developing a guidance note on the application of human rights and FPIC for EPFIs, and also recommends that the EPA develops training and lessons-learned sharing opportunities for its membership, with the participation of and input from diverse stakeholders.</p> <p>In line with the above, in Exhibit I, “Environmental and Social Assessment (Assessment)”, delete “if applicable” to ensure that human rights are considered in all Environmental and Social Assessments. In Exhibit I “Environmental and Social Assessment Documentation (Assessment Documentation)”, replace “should” by “shall”.</p>
<p><b>Mixed views on the adoption of FPIC options. Industry stakeholders clearly preferred Option 1, or a variation of it, and Non-industry stakeholders clearly preferred Option 2, or a variation of it.</b></p>	<p>BSR recommends adopting Option 2 in principle, as it is consistent with PS-7. However, BSR recommends simplifying the language and that instead of the language proposed currently as Option 2, much of which has been copied from PS-7, the EPs could simply state “For all Category A and Category B Projects that affect Indigenous Peoples, the EPFI will require the application of IFC Performance Standard 7: Indigenous Peoples globally in both Designated and Non-Designated Countries.” The rationale, in addition to simplification and clarity, is that the intent of Option 2 is consistent with adopting PS-7 globally.</p> <p>BSR recognizes that some stakeholders believe the PS-7 does not fully capture emerging best practice on FPIC. However, stakeholders did not offer or have consensus on a universally accepted and preferable alternative and BSR suggests that the EPA should avoid develop its own standard and approach when a well-recognized Performance Standard already exists. Additional rationale is that many industry stakeholder concerns about the application of Option 2 are already addressed in PS-7 (e.g. where there is not unanimity between indigenous groups,</p>

	<p>where government is responsible for managing related issues, etc.) and that EPFIs and clients already have experience applying PS-7 and relevant situations in Non-Designated Countries.</p> <p>BSR also understands, based on legal advice provided to the EPA, that EPA may want to further explore “The Circumstances Requiring Free, Prior, and Informed Consent” under PS-7 for Designated Countries specifically as EPFIs and clients will require clarity on application for which indigenous groups and indigenous lands with corresponding legal structures commonly in place in Designated Countries.</p>
<p><b>Several suggestions to refer to, align with, and/or require adherence to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).</b></p>	<p>Given the importance to stakeholders of the EPFIs recognizing human rights more clearly, including indigenous rights, BSR recommends that current language under the Human Rights definition (p. 29) be replicated in the Preamble in a manner clearly stating the EPFIs intent to respect human rights such as “We, the EPFIs, will respect Human Rights in accordance with international human rights standards aimed at securing dignity and equality for all. Every human being is entitled to enjoy them without discrimination. As a minimum, relevant human rights are those expressed in the International Bill of Human Rights – meaning the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the principles concerning fundamental rights set out in the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work.”</p> <p>BSR does not recommend adding a specific reference to UNDRIP. The rationale is that the majority of UNDRIP focuses on the role of the state with UNDRIP Article #28 being the most relevant for Project Finance by EPFIs, however with the same intent already being covered in the UNGPs and in IFC PS-7. Furthermore, PS-7 already refers to UNDRIP in its Guidance Note and cites that “private sector companies are increasingly expected to conduct their projects in a way that respect the Human Rights and livelihoods of Indigenous Peoples.” In addition, UNDRIP, unlike the UNGPs, does not reference the role of or guidance for business, companies, or</p>

	the private sector. BSR recommends that in principle the external standards and conventions referenced in the EPs be specifically developed for and focused on business.
<p><b>General support for including a Human Rights Impact Assessment (HRIA) as part of Environmental and Social Impact Assessment (ESIA). There were additional suggestions on how to clarify language to ensure that HRIAs follow best practice and the UNGPs.</b></p>	<p>Specifically, under Principle 2 (p. 11), BSR recommends changing language such as “As a component of the ESIA or other Assessment, the client will include a Human Rights Impact Assessment (HRIA) aligned with the UNGPs and a Climate Change Risk Assessment aligned with the risk categories of the TCFD.” For additional guidance on the Human Rights Impact Assessment, BSR recommends aligning the requirements with those of ESIA for Category A, B, and C (Principle 2, p. 11). In addition, BSR recommends that the EPFI also consider the client’s human rights policy and its alignment with the UNGPs. Furthermore, BSR recommends expanding the language in Exhibit II, #15 to provide more detail on what should be included in the HRIA based on UNGP guidance.</p>
<p><b>Some stakeholder groups recommended specifying that Indigenous Peoples have veto rights over Projects and to require that consent can be withdrawn at any time.</b></p>	<p>BSR recommends that the EPs follow PS-7 globally, which addresses this point, as already stated in Footnote 2 in Option 2 (p. 15).</p>
<p><b>Concern about what information to provide indigenous groups and other stakeholders when consulting them.</b></p>	<p>BSR recommends simplifying the language in Principle 5 (p. 13) such as “To facilitate Stakeholder Engagement, the client will, <del>commensurate to the Project’s risks and impacts,</del> make the appropriate Assessment Documentation readily available to the Affected Communities, and <del>where relevant</del> Other Stakeholders, in the local language and in a culturally appropriate manner.” In addition, in the following paragraph BSR recommends adding language such as “The client will take account of, <del>and</del> document, and <u>share with Stakeholders</u> the results of the Stakeholder Engagement process, including any actions agreed upon resulting from such process.” In the last sentence of paragraph 4 (p. 13), BSR recommends amending the language such as “Disclosure of environmental or social risks and adverse impacts <del>should</del> <u>shall</u> occur early in the Assessment process (...).”</p>
<p><b>CLARITY OF LANGUAGE</b></p>	

<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>Concern by some stakeholders on the definition of “consent” and how to clearly establish when it has been achieved or not. In cases where it is unclear if consent is achieved, stakeholders wanted to know what evidence is expected to show that there was FPIC (p. 14-15).</b></p>	<p>BSR recommends for the EPA to build on the legal review conducted on FPIC and use PS-7 as guidance for what constitutes “consent.” In addition, BSR recommends that the EPA provides more detail on “consent” in a guidance note on the application of human rights and FPIC for EPFIs.</p>
<p><b>The abbreviation of Equator Principles Action Plan (AP) is not common or well-understood.</b></p>	<p>BSR recommends using the more common term/standard “Environmental and Social Action Plan (ESAP)” in place of Equator Principles Action Plan, as this might lead to confusion.</p>
<p><b>Clarity to the definition of Indigenous People.</b></p>	<p>BSR understands this is a complex issue and depends greatly on federal and local government policies and approaches. BSR recommends maintaining the proposed definition in the glossary which is consistent with PS-7 in the absence of a global, credible, and universally accepted definition of recognized indigenous groups.</p>
<p><b>Need for more clarity on the definition of Workers and recommendations to broaden the definition of Affected Communities in Exhibit I: Glossary of Terms</b></p>	<p>BSR recommends relying on the definitions of the IFC PS for both terms. The EP definition of workers excludes supply chain workers. However, IFC PS-2 covers supply chain workers. BSR recommends using the IFC PS-2 definition of workers. The definition of Affected Communities aligns with the IFC PSs, so BSR recommends keeping it unchanged.</p>
<b>GENERAL</b>	
<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>There were multiple suggestions for the EPA to recommend and/or provide access for EPFIs and clients to best practice FPIC and human rights tools.</b></p>	<p>BSR recommends that any additional referenced tools be included in guidance notes. The EPA should consider reviewing its overall approach to providing access to a tool/resource library. This tool library would not need to be prescriptive and would still allow individual EPFIs the ability to determine which tools are most appropriate on a Project by Project basis and provide consistent guidance to all</p>

	EPFIs. External stakeholders with relevant expertise in this area should also be consulted.
<b>Recommendations to strengthen Principle 6 (Grievance Mechanism) to be better align with international best practice</b>	As the UNGPs expect all businesses to establish grievance mechanisms, BSR recommends adding language at the end of Principle 6 (p. 15) such as “Grievance mechanisms should be aligned with the UNGPs and comply with the UNGPs Effectiveness Criteria.” In addition, a footnote could be provided referencing the guidance provided in UNGP Principle 28 - 31.
<b>Inquiries about the access for grievance mechanisms to both the EPFIs and the EPA as Principle 6 only pertains to clients’ grievance mechanisms.</b>	BSR recommends that the EPA EPFI list include links to EPFI’s grievance mechanisms on their own website. In addition, BSR recommends that the EPA encourages all current EPFIs which do not have a corporate grievance mechanism to establish one and require all incoming EPFIs to establish one that complies with the UNGPs Effectiveness Criteria.
<b>Recommendations to expand the disclosure requirements to include making HRIAs publicly available.</b>	BSR recommends that HRIAs be part of the disclosure requirements for Projects in Principle 10 (p. 18), ideally in full and at minimum in summaries for confidentiality or conciseness reasons.

## CLIMATE CHANGE

### Summary of EP4 Draft Updates Compared to EPIII

The Preamble recognizes EPFI's role in the 2015 Paris Climate Change agreement, as well as responsibilities for reporting climate-related information in line with the TCFD recommendations.

Principle 2 introduces Climate Change Risk Assessment as a requirement for certain Projects:

- » For Category A and as appropriate, Category B Projects, the climate change assessment will include consideration of relevant physical risks.
- » For all Projects, in all locations, when combined Scope 1 and Scope 2 Emissions are expected to be more than 100,000 tons of CO<sub>2</sub> equivalent annually, the climate change assessment will include consideration of relevant transition risks and the completion of an alternatives analysis to evaluate less Greenhouse Gas (GHG) intensive alternatives. The depth and nature of this assessment will depend on the type of Project, as well as the nature of risks, including their materiality and severity.

Annex A requires clients to use the GHG Protocol or national reporting methodologies if they are consistent with or equivalent to the GHG Protocol. Annex A specifies questions that the climate change risk assessment should address including the identification of transition and/or physical risks and mitigation efforts.

Annex A specifies that the climate change risk assessment should consider the project's compatibility with climate policy including e.g. Nationally Determined Contributions (NDCs).

AMBITION LEVEL AND FEASIBILITY	
<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>Generally positive that the climate scope and ambition had been expanded. However, some stakeholders expressed a general observation that EP4 could be even more ambitious on climate issues given the level of international progress in recent years (e.g. Paris Agreement, TCFD launch, increased CDP reporting, etc.) and the increased urgency due to climate impacts cited in the IPCC reports and elsewhere.</b></p>	<p>BSR recommends selectively expanding the climate ambition as detailed below.</p>
<p><b>Industry and non-industry stakeholders welcomed the Climate Change Assessment requirement and recommended that the assessment be aligned with TCFD. There were</b></p>	<p>BSR recommends clearly aligning the Climate Change Assessment with TCFD for risk assessments. Specifically, under Principle 2 (p. 11), BSR recommends changing language such as "As a component of the ESIA or other</p>

<p><b>also comments about the applicability of scenario analysis.</b></p>	<p>Assessment, the client will include a Human Rights Impact Assessment (HRIA) aligned with the UNGPs and a Climate Change Risk Assessment aligned with risk categories of the TCFD.”</p> <p>Regarding climate change scenario analysis, as per the TCFD recommendations, BSR does not recommend requiring them at the Project level. The rationale is that scenarios are commonly applied at the corporate level and more advancement in scenario models, approaches, and disclosures is needed.</p>
<p><b>Questions were raised about how the Climate Change Risk Assessment would demonstrate the Project’s compatibility with the Paris Agreement and a country’s climate/energy policies including Nationally Determined Contributions (NDCs), including in cases where these do not exist. There were also comments that climate impact mitigation is achieved by corporate-level practices, not as an individual project.</b></p>	<p>BSR supports maintaining the recognition of the Paris Agreement in the Preamble as drafted. BSR does not recommend requiring EPFIs or clients to ensure that individual Projects are aligned with the Paris Agreement directly, however.</p> <p>The rationale is, recognizing that many companies have voluntarily committed to science-based targets and other initiatives aligned with the Paris Agreement at the corporate level, requiring alignment at the Project level could be creating parallel and inconsistent requirements to NDCs and corporate commitments. Of the 196 parties to the Paris Agreement, 185 have submitted NDCs.</p> <p>Furthermore, the EPs are a risk management framework whereas Paris Agreement alignment was viewed by some stakeholders to be a corporate policy and strategy decision, which is outside the EPs and more appropriate for other banking initiatives. The Principles for Responsible Banking is an example of a corporate policy and strategy industry framework which requires alignment of business strategy with the Paris Agreement.</p> <p>BSR does recommend that the Paris Agreement considerations and associated GHG emission reduction goals for the country under its NDC should be considered as part of the Climate Change Assessment, and how the individual Project is compatible with those commitments. Furthermore, Paris Agreement Article 2.1.(c) states “Making finance flows consistent with a pathway towards</p>

	low greenhouse gas emissions and climate-resilient development” and could be referenced as a footnote.
<b>Some stakeholder groups expressed that the EPFIs should commit to not financing some types of or all fossil fuel projects</b>	As the EPs are not a policy document, rather a risk management guide, BSR does not recommend that all EPFIs should commit to Project portfolio emission reduction targets or science-based targets, although BSR and many stakeholders recognized it as good corporate environmental practice. BSR would support language in Principle 2 (p. 11) such as “In line with the Paris agreement, EPFIs are encouraged to set their own corporate GHG emission reduction goals” and/or have links to the sector policy websites of EPFIs.
<b>Increased transparency of the alternative analysis so that clients will be held accountable to best practice approaches, legitimacy of findings, and appropriate recommendations.</b>	There does not appear to be a reference to publish the alternative climate analysis, only language that states “In some circumstances, public disclosure of the full alternatives analysis or Project-level emissions may not be appropriate.” BSR therefore recommends, as part of Principle 10 (p. 18), adding the requirement and language such as “Alternative analysis are expected to be published and, at minimum, a summary of the alternative analysis is required to be published as part of the ESIA. In rare circumstances...” and eliminating the subjective ability to not publish the alternative analysis.
<b>CLARITY OF LANGUAGE</b>	
<i>Stakeholder Feedback Summaries</i>	<i>BSR’s Recommendations</i>
<b>Specific comments on the further inclusion of agriculture industry impacts on climate and discussions on the need to specifically cite agriculture in reference to “example projects” as agriculture is a major emissions source.</b>	BSR recommends adding agriculture to the example Project list in the Project definition (p. 30).
<b>Need for more clarity on the definition of ‘climate change risk assessment’. There were some comments that the EPs should focus on climate change risk to the communities or the environment affected by projects.</b>	In some places, it is referred to as a “climate change assessment” and in some a “climate change risk assessment,” which needs to be made consistent. BSR also recommends clarifying the objective of climate change risk assessment and providing more guidance on the climate change risk assessment by adding the language such as “relevant physical risks as defined by

	the TCFD” and “relevant transition risks as defined by the TCFD”. In Annex A (p. 21), BSR recommends adding language such as “What are the current and anticipated climate risks (transition and/or physical as defined by TCFD) of the Project’s operations?”
<b>GENERAL</b>	
<i>Stakeholder Feedback Summaries</i>	<i>BSR’s recommendation for proposed change</i>
<b>There were recommendations to include Scope 3 Emissions in the climate requirements (Principle 2 &amp; Principle 10).</b>	BSR does not recommend including Scope 3 at the Project level. The rationale is that Scope 3 emissions reporting is still fairly new and evolving. It would be challenging to implement at the Project level given the 15 categories of potential Scope 3 emissions. BSR would support the EPA further researching and/or constructing a working group to determine the long-term adoption of Scope 3 emission reporting and believes this should be a long-term goal. In general, if HRIAs and Climate Change Assessments, including alternative analysis, are parts of ESIA’s, they should be published.

## GENERAL AND OTHER TOPICS

### Summary of EP4 Draft Updates Compared to EPIII

There were a variety of comments concerning the overall purpose of the EPs, the role of the EPA, and other topics not covered under the targeted review on the four above topics. BSR has included these comments below.

BIODIVERSITY	
<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>Positive feedback on inclusion of language pertaining to conservation and biodiversity (Preamble) with specific comments to strengthen language in the EP4 draft, as well as prohibit financing of projects located in or near World heritage sites, protected areas, etc.</b></p>	<p>BSR recommends aligning Footnote 9 with the IFC PS Guidance Note 6 to "Projects in some areas <del>may</del> <u>will</u> not be acceptable for financing."</p>
<p><b>Specific comments on the further inclusion of animal welfare.</b></p>	<p>BSR recommends providing additional information in an updated Guidance Note on Biodiversity, including a specific mention of animal welfare and agriculture projects.</p>
CONVENANTS	
<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>Specific language proposed to clarify and strengthen Principle 8 Covenants</b></p>	<p>BSR recommends to clarify language related to Principle 8 (p. 17), as Covenants are legally binding such as "If the client fails to re-establish compliance within an agreed grace <u>or remedy</u> period, the EPFI reserves the right to exercise remedies, including calling an event of default, <del>as</del> <u>appropriate as agreed</u> in the finance documentation."</p> <p>Other recommended language includes under Project Finance and Project Related Corporate Loans:</p> <p>"a) to comply with <u>ESIA</u>, ESMPs and ESAPs (where applicable) document compliance with the ESMPs and the ESAP"</p> <p>b) "prepared by <del>in-house staff</del> <u>the Client/EPFI</u> or third-party experts, and document compliance with the ESIA ESMPs and the ESAP."</p> <p>In addition, BSR invites the EPA to consider adding the following covenants:</p>

	<p>d) to allow site audits rights for E&amp;S experts, as agreed by Financial documentation"</p> <p>e) requiring the client to establish an operational-level grievance mechanism as an explicit aspect of Project Finance.</p>
<b>REPORTING AND TRANSPARENCY</b>	
<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>Concerns that the reporting requirements (Principle 10 and Annex B) allowing for clients to block or withhold Project information from being publicly disclosed.</b></p>	<p>BSR recommends removing "subject to obtaining client consent" in Annex B, p. 24. This would include adding the word "obtain" instead of "seek" as it would become irrelevant. BSR also recommends that the disclosure of the Project Name should also include the client's name. Furthermore, BSR recommends adding under Principle 10 (p. 18) "EPFI Reporting Requirements" language such as "The EPFI will make the clients aware of all EPFI reporting requirements before financial closure." The rationale is that few industry stakeholders cited circumstances where this is a challenge and the EP reporting requirements should be agreed to by clients before financial closure as opposed to negotiated after financial closure. As always, BSR understands that certain countries may have more stringent legal requirements or legal restrictions on disclosures, which should be adhered to.</p>
<p><b>Footnote 3 on Page 18 seems irrelevant.</b></p>	<p>BSR recommends removing "cases where the client does not have internet access."</p>
<b>EVOLVING EPA</b>	
<i>Stakeholder Feedback Summaries</i>	<i>BSR's Recommendations</i>
<p><b>Providing more accountability and oversight of the EPFIs on their respective implementation of the EPs to increase credibility, such as having a mechanism to ensure that all EPFIs are implementing the EPs fully.</b></p>	<p>BSR recommends changing the Preamble (p. 4-5) to be an "EPFI Commitment" summarizing the responsibilities of the EPFIs to help ensure accountability. BSR recognizes that the EPA may view this as a long-term recommendation and not part of the EP4 targeted review. This would include language such as "We, as the EPFIs, commit to implementing the Equator Principles through our internal environmental and social policies, procedures and standards for financing Projects." Furthermore, the</p>

	<p>section should contain language on the accountability of EPFIs to the EPA consistent with the governance rules. We encourage the EPA to consider implementing a full accountability mechanism for the Equator Principles.</p>
<p><b>Inquired if any future revised EP4 drafts and the EP4 draft which goes to full EPFI vote will be made publicly available.</b></p>	<p>BSR recognizes that it would be best practice for the EPA to allow for two rounds of open public consultations on the EP4 draft. We believe that the EP4 draft would ultimately benefit from another consultation round, recognizing that this may introduce some delay into the EPA's own internal timeline. Regarding future drafts of EP4 for comment, BSR recommends that the EPA makes the final draft publicly available on the EPA website for comments to be received electronically before the EPFI vote on final text. BSR also recommends that there is an ongoing mechanism for the EPA to receive stakeholder comments on EP4 implementation and conduct regular stakeholder engagements on how to improve EP4 implementation and the guidance notes outside of the EP update cycles as well.</p>
<p><b>Interest in a stakeholder consultation process for the guiding documents that will be developed to support EP4.</b></p>	<p>BSR recommends that the EPA consults relevant stakeholders on the development of the guidance notes and provides an open consultation mechanism for any interested stakeholders to comment on the drafts, which should be publicly released for comment before finalizing.</p>

