

b. In the new fourth paragraph, add language that requires Project compliance with the most stringent relevant standards, as between the IFC Performance Standards and the EHS Guidelines, *Or* 



of the need for enhanced and specialized mechanisms to integrate Indigenous specific concerns as a part of a risk



the responsibility of the EPFI to ensure that the client itself properly obtains the FPIC of affected Indigenous Peoples before proceeding with the project. This

- rth de Wi(1)=12(de)BOT/E22 ountability requires due diligence on the part of the client and the EPFI to provide maximum assurance that the host country is not misrepresenting their solicitation of FPIC, or their processes to the detriment of the rights of Indigenous Peoples to give or withdraw consent according to the UNDRIP and international human rights standards.
- i. The language added for suggested paragraph 6 addresses the situation where the FPIC of Indigenous Peoples affected by the Project has not been obtained. The language is taken directly from IFC PS7 (15) but is applied to a broader situation in Principle 5 of EP4. The language here provides an operational mechanism that 1) implements an iterative process of dialogue and negotiation with Indigenous Peoples, and 2) provides a better path to a mutually agreeable Project design.
- j. Footnote 2 is revised to reflect changes that are further described in note 13 of this memorandum.
- 8. Principle 6
  - a. The language added to paragraph 2 is taken directly from IFC PS 1 (35) to



and is a critical aspect to partnership with Indigenous Peoples during Project conceptualization, design and implementation.<sup>3</sup>

9. Principle 7-

to ensure that

the most robust due diligence process is undertaken and that additional information informs that process but does not substitute for a more fulsome process.

- 10. Principle 8
  - a.

ensure compliance with

the EP4 framework.

- b.
  - operational-level grievance mechanism as an explicit aspect of Project Finance.
- c. As to Project-Related Refinancing and Project-Related Acquisition Financing, ensure that the most stringent standards are applied throughout the lifecycle of a Project.
- 11. Principle 10
  - a.

require

reporting on the full ESIA to all stakeholders online. Further, add a sentence to require clients to post relevant documents online so that Affected Communities and stakeholders can view the information from which the ESIA was drawn. As a risk management framework, EP4 should require full transparency of information that clients and EPFIs use to make critical decisions about Projects that have lasting impacts on people and the environment



of identification, prevention, mitigation and remediation are stronger to adequately address human rights and climate change impacts.

- d. Free, Prior, and Informed Consent (FPIC) Details regarding redlines are described in note 13 below.
- e.
- i. A more updated definition has been added to the EP4 definition. The description offered in new paragraph 3 is more encompassing than IFC PS7 because it recognizes that detachment from land and resources at issue did not have to occur in the lifetime of the Project affected Indigenous Peoples, but rather their attachment to the lands and resources survives from prior to colonization and forced relocation.
- ii. Similarly, as the single, recognized, global consensus on the rights of Indigenous Peoples, add explicit reference to the UNDRIP as a standard for the rights of Indigenous Peoples. ILO Convention 169 is added as a reference for the non-discrimination of Indigenous Peoples.
- f.

Add the UNDRIP as a reference point for EPFIs and clients. Adding the UNDRIP as a Term to EP4 demonstrates a commitment to operationalizing the rights of Indigenous Peoples during project finance through the Equator Principles.

13.

- The definition of FPIC as inserted via redline into the draft text of EP4 is repeated below with citations to supporting documents. The amended definition better reflects the global consensus on FPIC as it can be operationalized to create a comprehensive social and environmental risk assessment. The revised language of Principle 5, Option 2, Footnote 2 is excerpted from this longer definition.

There is international consensus around FPIC as a human rights norm. FPIC ts to self-determination and to be free from discrimination, as guaranteed by core international Human Rights instruments.<sup>4</sup> expressed in the UNDRIP. The rights of Indigenous Peoples to determine their political, social, economic and cultural priorities are safeguarded by the fair implementation of FPIC.<sup>5</sup>

<sup>5</sup> Expert Mechanism Report on FPIC, para. 14.

<sup>&</sup>lt;sup>4</sup> Notably, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. See UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution/ adopted in the General Assembly, 2 October 2007 (A/RES/61/295), preamble and arts. 3,4; See also Expert Mechanism Report on FPIC, para. 3 (hereinafter Expert Mechanism Report on FPIC); See also Johannes Rohr and José Aylwin, Interpreting the UN Guiding Principles for Indigenous Peoples, International Work Group for Indigenous Affairs, Report 16 (June 2014).



Pursuant to the UNDRIP, the right to be consulted, the right to participate and the rights to their lands, territories and resources are all intertwined and encompassed in FPIC.<sup>6</sup>

FPIC, as operationalized in Principle 5, builds on and expands the process of Informed Consultation and Participation to ensure the meaningful participation of Indigenous Peoples in decision-making, and to focus on fostering negotiations and dialogue with Indigenous Peoples and/or their chosen representatives towards mutually acceptable arrangements prior to decisions on proposed Projects.

Free refers to consent that is given voluntarily and absent of coercion, intimidation or manipulation.<sup>7</sup> that is sought sufficiently in advance of any authorization or commencement of Project activities.<sup>8</sup>



 United Nations Human Rights, Office of the High Commissioner, The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, HR/PUB/12/02 (2012).