

August 23, 2019

Dear Equator Principles Financial Institutions:

We, the undersigned, write to express our deep disappointment with the latest draft of the Equator Principles, [EP4](#). **We urge additional revisions to protect and respect the rights of Indigenous Peoples.**

The revisions process began after the world watched as the rights of Indigenous Peoples were trampled during the Dakota Access Pipeline (DAPL) controversy. At that time many financial institutions realized that they could not extricate themselves from that project – even if they wished – because of the terms of their engagement. Thus, several signatory financial institutions endeavored to provide a more robust social and environmental risk screening mechanism via a stronger version of the Equator Principles. The timeliness of their response to DAPL inspired confidence that EP4 could usher in a new era wherein social risks as to the rights of Indigenous Peoples would be considered proactively.

The events around DAPL demonstrated that any risk assessment must include consideration of the social, cultural and environmental rights of Indigenous Peoples to effectively understand all of the risks attendant to a project. In the reverse, without analyzing the human rights impacts connected with a project, banks risk financing development that creates social conflict, fuels human rights abuses, and results in financial and reputational losses. This is a losing position for both the financial institutions and the affected Indigenous Peoples.

The core right that serves to protect Indigenous Peoples and to elevate their rights to self-determination and governance over their resources is their right to free, prior, and informed consent (FPIC). The DAPL controversy flowed from a failure to secure the FPIC of the Standing Rock Sioux Tribe, and other affected Indigenous Peoples, along the route of the pipeline. **Because the Equator Principles Association (EPA) is setting a global benchmark for social and environmental risk assessment, it is imperative that EP4 provide clear and strong guidance on implementation of FPIC as to Indigenous Peoples.**

As written in EP4, the process of “Informed Consultation and Participation” is far from a human rights-based approach to FPIC. The existing process is merely a first step to soliciting the FPIC of Indigenous Peoples. EP4 provides two options to build on this process. **The first option is wholly insufficient.** Option 1 minimizes the right to FPIC into a mere compliance procedure that is driven by the client and the financial institution without any reference to integrating Indigenous Peoples’ priorities or perspectives. As such, no entity is incentivized to negotiate directly with Indigenous Peoples or to integrate their priorities into project design.

**The second option to operationalize FPIC is the preferred option because it requires clients to demonstrate affirmative consent from Indigenous Peoples.** Option 2 is a stronger implementation that is more protective of Indigenous Peoples and better incentivizes

clients and financial institutions to operationalize a human rights-based process to solicit the FPIC of Indigenous Peoples.

In short, the following recommendations are also necessary to strengthen EP4's approach to Indigenous Peoples:

- The two options presented as to FPIC in EP4 are so limited in applicability as to be minimally protective of Indigenous Peoples rights and narrowly consider the social risks related to financing. Both the scope and applicability of the better option - option 2 - must be broadened to include all projects that may have impacts on Indigenous Peoples, their lands, territories, and resources, in any country.
- The Designated versus Non-Designated country distinction must be removed. The DAPL controversy took place in a Designated Country where supports for consultation with Indigenous Peoples were allowed to stand in for the Equator Principles framework. The country distinction propagates similar situations without attention to the purpose of applying one global standard as a benchmark to assess and to address social risks from a foundation of human rights.
- The grievance mechanism as set forth in Principle 6 does not align with the EPA's internal commitment to the United Nations Guiding Principles on Business and Human Rights. It is written as a platitude without the specificity necessary to ensure that clients will proactively provide opportunities for grievances to be heard and then addressed by influencing project implementation.
- Again, while EP4 references the 2015 Paris Agreement and the TCFD Recommendations, there are few incentives for financial institutions and clients to integrate the radical changes necessary into their operations to protect Mother Earth and halt climate chaos.

Furthermore, violations of human rights cannot be "offset" or mitigated retroactively. Once occasioned, human rights abuses cannot be undone. **To show leadership on these issues in the field of sustainable finance, EP4 must reference and implement rights as enumerated in the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration is never referenced in EP4.**

**The revision of EP4 is of vital importance because it is the only global framework that can support, elevate, and protect the rights of Indigenous Peoples during project financing.** Alone, host countries, financial institutions, and corporations have failed in this regard.

With this letter, we ask that EP4 be revised to better protect and respect the rights of Indigenous Peoples during project financing. We welcome the opportunity to provide expertise and perspective on these issues with the mutual understanding that our position will be considered and integrated into a revised draft.

Carla Fredericks  
First Peoples Worldwide  
USA

Johan Frijns  
BankTrack  
Netherlands

Osprey Orielle Lake  
Women's Earth and Climate Action Network  
USA

Michelle Cook  
Divest Invest Protect  
USA

Luan Jenifer  
Miller/Howard Investments, Inc.  
USA

Y. Elaine Rasmussen  
Social Impact Strategies Group  
USA

Mari Schwartzer  
NorthStar Asset Management, Inc.  
USA

Frances Fairhead  
Sustainalytics  
USA

Agnes Portalewska  
Cultural Survival  
USA

Michael Kramer  
Natural Investments  
USA

Will Morgan  
Sonen Capital  
USA

Lorette Philippot  
Friends of the Earth France  
France

Andrew Whitmore  
London Mining Network  
United Kingdom

Jeffery W. Perkins  
Friends Fiduciary Corporation  
USA

Nkanda David  
Peasant Farmers Association for Rural Development  
Uganda

Delaney Greig  
SHARE  
Canada

Jennifer Krill  
Earthworks  
USA

Vanessa Roanhorse  
Roanhorse Consulting  
USA

Alison Kirsch  
Rainforest Action Network  
USA

Becky Albert-Breed  
First Nations Community Financial  
USA

James Brumm  
Glastonbury Commons, Ltd.  
USA

Ben Cushing  
Sierra Club  
USA

Christian Donaldson  
Oxfam International  
USA

Maurice Ouma Odhiambo  
Jamaa Resource Initiatives Kenya  
Kenya

Kindra Mohr  
Accountability Counsel  
USA

Shona Hawkes  
Global Witness  
United Kingdom

Robert Kugonza  
Friends with Environment inz Development (FED)  
Uganda

Chris James  
The National Center for American Indian Enterprise Development  
USA

Emilie Pradichit  
Manushya Foundation  
Thailand

Elsa Stamatopoulou  
Indigenous Peoples Rights Program  
Columbia University  
USA

Charles Wilkinson  
University of Colorado Law School  
Distinguished Professor Emeritus  
USA

Musa Ansumana Soka  
WASH-Net Sierra Leone  
Sierra Leone

Jason Campbell  
Soveriegn Power Inc,  
Spokane Tribe of Indians  
USA

Anthony Debbarma  
Borok Peoples' Human Rights Organization  
NE, India

Lalremruata Chhakchhuak  
Zo Indigenous Forum  
India

Richard Williams  
Indigenous Consultant  
USA

Moko Morris  
Te Waka Kai Ora  
New Zealand

Dean DePountis  
Standing Rock Sioux Tribe  
General Counsel  
USA

Joshua Cooper  
Hawai'i Institute for Human Rights  
USA

Cathryn Eatock  
Indigenous Peoples Organization, Australia  
Australia

Nonabah Lane  
Navajo Ethno-Agriculture  
USA

Kanchan Amatya  
Sustainable Fish Farming Initiative (SFFI)  
Nepal

Pamela Kraft  
Tribal Link Foundation  
USA

Mary Beth Gallagher  
Tri-State Coalition for Responsible Investment  
USA