INVESTOR ALLIANCE FOR HUMAN RIGHTS
AN INITIATIVE OF ICCR

August 23, 2019

Investor Submission to the Equator Principles Association: Ensuring Alignment of Draft EP4 with the UN Guiding Principles on Business and Human Rights

The undersigned institutional investors representing a total of US$1.2 trillion in assets under management welcome the opportunity to review and comment on the most recent draft of the Equator Principles (draft EP4). We commend the Equator Principles Association (EPA) and its signatory financial institutions (EPFIs) for their ongoing efforts to review and revise the requirements laid out in the Equator Principles (EPs) to better reflect international standards, particularly when it comes to established expectations for all business actors – including financial institutions – to respect fundamental human rights. Investors value the EPs as a framework that helps our portfolio companies to better understand and mitigate risks in their project finance, and we support robust, effective, and meaningful standards to guide business toward better human rights practice.

We believe this review effort is critical in responding to the fact that individuals and communities around the world continue to be negatively impacted by projects financed by EPFIs where more meaningful due diligence might play a role to prevent or mitigate these harms. As investors, we have fiduciary responsibilities for ensuring that the companies we invest in – including EPFIs and their clients – respect human rights. We are keenly aware of the fact that, where there are the most severe (i.e. salient) risks to people and planet, there are material risks to business, including reputational harm, financial loss, and legal liabilities.[1] We also recognize our own responsibility as investors to respect human rights throughout our investment activities.[2]

As such, we urge the EPA to take additional measures to strengthen the ability of business actors – namely, the EPFIs and their clients – to continuously and credibly identify, prioritize, prevent, mitigate, and where appropriate address human rights risks and impacts across operations and value chains. This is critical in ensuring that the EPs are fully aligned with the expectations laid out by the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles), the authoritative global framework on business and human rights, as well as the OECD Due Diligence Guidance for Responsible Business Conduct.

Specifically, we recommend the EPA take the following steps to better align draft EP4 with the EPA's stated commitment to the UN Guiding Principles:

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[1] See, for example, First People Worldwide's study, *Social Cost and Material Loss: The Dakota Access Pipeline*, which outlines how companies, banks, investors, tax payers, and affected Indigenous Peoples suffered major social and financial losses as a result of failures to respect human rights in association with the Dakota Access Pipeline project in the United States.

[2] Key steps regarding how institutional investors can conduct their own human rights due diligence activities have been outlined, for example, by the OECD guidance document, *Responsible Business Conduct for Institutional Investors: Key Considerations for Due Diligence under the OECD Guidelines for Multinational Enterprises*.

1. The EPs should **eliminate the continued distinction between Designated and Non-Designated Countries**, as this contradicts the stated commitment in the Preamble of draft EP4 to integrating respect for human rights globally. Critical gaps may remain in any country in terms of existing protections for vulnerable groups, and implementation and enforcement of even the most robust legal and policy frameworks remains a pressing issue in many jurisdictions.[3] As articulated in the UN Guiding Principles, "Although particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate." The corporate responsibility to continuously engage in human rights due diligence does not decrease simply based on which country is connected to certain business activities. Corporate practices on human rights can and should look different in response to contextual factors, but in order to be aligned with the UN Guiding Principles, the EPs should not promote the flawed understanding that certain countries automatically require a lesser application of the EPs' requirements. Unfortunately, the additional language put forward under Principle 3 in draft EP4 to address this concern, calling for EPFIs to "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," does not sufficiently shield from the significant risk posed by taking a "country list" approach. Instead, the full criteria outlined in the UN Guiding Principles to determine the most severe and likely impacts on people (namely, scale, scope, and remediability) should be used, all of which consider not only the geographic business context, but the specific business activities, business relationships, and potentially impacted vulnerable groups in assessing and prioritizing risk.

2. The EPs should **align its scope in terms of both financial threshold and the full value chain associated with EPFI-finance projects** with the expectations of the UN Guiding Principles. As articulated in the Public Summary of Shift's Advice to the EPA, the EPs should "eliminate the existing financial thresholds so that the expectations of the EPs would apply to all project finance-related services and transactions currently covered by the standards, regardless of capital costs involved." Moreover, the full text of the EPs and critical definitions included in Exhibit I should be revised to address instances where projects may not directly cause but perhaps contribute to or are directly linked to adverse impacts at the direct operational level but also in the project's broader value chain.

3. The EPs should **fully align with the criteria on access to remedy and non-judicial grievance mechanisms** laid out in UN Guiding Principle 30 and 31. UN Guiding Principle 30 sets out that industry associations such as the EPA should ensure that effective grievance mechanisms are available "through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met." To meet this expectation, the EPA should initiate a process to develop an

[3] See, for example, the *Public Summary of Foley Hoag LLP Report, "Good Practice for Managing the Social Impacts of Oil Pipelines in the United States"* which identifies gaps between legal requirements in the United States and international industry good practice and provides recommendations for the banks that retained Foley Hoag LLP for the independent report on steps they can take to go beyond a compliance-based approach to social risks.

accountability mechanism at the EPA level so that allegations of bank non-compliance with EP4 can be formally reviewed. This would serve to enhance the reputation of the EPs across stakeholder groups and provide opportunities for continuous learning. In addition, Principle 6 of draft EP4 currently fails to explicitly and fully outline the interconnected effectiveness criteria set out in UN Guiding Principle 31 – namely, that grievance mechanisms be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue with the stakeholder groups for whose use the mechanisms are intended.

4. The EPs should **incorporate international human rights standards regarding stakeholder consultation, engagement, and where appropriate consent**, particularly in relation to the ILO Core Conventions and the UN Declaration on the Rights of Indigenous Peoples. While draft EP4 helpfully clarifies that workers are critical stakeholders for EPFIs to engage with in Principle 5, there is no explicit reference to the need for signatories to incorporate key labor rights considerations, such as freedom of association and collective bargaining, in the standards that they require their clients to adhere to. We also call on the EPA to take up the specific recommendations outlined by First Peoples Worldwide pertaining to the rights of Indigenous Peoples on critical improvements to the EP4 draft options related to Free, Prior, and Informed Consent (FPIC). In particular, we agree that Option 1 under Principle 5 is unacceptable. We therefore support Option 2 in draft EP4 as an improved standard while also supporting the call for a strengthened Option 2 that fully aligns with the FPIC standards set out in UNDRIP.

5. The EPs should **cite and require signatories to utilize the most robust corporate human rights reporting frameworks** – such as the UN Guiding Principles Reporting Framework – as specific guidance on human rights reporting at the project level is notably missing from the minimum reporting requirements outlined in Annex B of draft EP4. Investors require comprehensive and comparable corporate data to inform their investment decision-making and engagement priorities. The EPs should build on and direct reporting to existing frameworks to reduce inefficiencies and inconsistencies, as well as reinforce specific expectations for corporate disclosure on human rights.

6. In recognition of the significant human rights impacts of the climate crisis, including on health, water, food, housing, land, and resources, we recommend that the EPA **explicitly make a commitment in the Preamble to alignment with the Paris Agreement**, in particular the target of limiting warming to well below 2˚C (with a goal of 1.5˚C). Moreover, Principle 2 of draft EP4 currently lacks a commitment to disclosure aligned with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), which equips investors with consistent and comparable climate data across companies. The guidance in Annex A should also be strengthened to not only consider, but align with, the goals of the Paris Agreement and national climate commitments.

We welcome the opportunity to discuss our recommendations further with the EPA and EPFIs in the coming months. For more information, please contact Sara Blackwell, Associate Director of the Investor Alliance for Human Rights,[4] at sblackwell@iccr.org.

Signatories:

Adrian Dominican Sisters, Portfolio Advisory Board

American Friends Service Committee

As You Sow

Australasian Centre for Corporate Responsibility

Aviva Investors

Azzad Asset Management

Batirente

Bon Secours Mercy Health

Boston Common Asset Management LLC

Christian Brothers Investment Services

Committee on Mission Responsibility through Investment of the Presbyterian Church U.S.A.

CommonSpirit Health

Conference for Corporate Responsibility Indiana and Michigan

Congregation of Sisters of St. Agnes

Congregation of St. Joseph

CREA

Dana Investment Advisors

Daughters of Charity, Province of St. Louise

Development Capital Strategies

Dignity Health

[4] The Investor Alliance for Human Rights is a collective action platform for responsible investment that is grounded in respect for people's fundamental rights. Our members represent US$3.5 trillion assets under management and 16 countries. Membership includes asset management firms, trade unions funds, public pension funds, foundations, endowments, faith-based organizations, and family funds. Along with civil society allies, we equip the investment community with expertise and opportunities to put the investor responsibility to respect human rights into practice.

Domini Impact Investments LLC

Dominican Sisters, Grand Rapids

Dominican Sisters of Hope

Dominican Sisters of San Rafael

Everence and the Praxis Mutual Funds

Figure 8 Investment Strategies

First Affirmative Financial Network

Heartland Initiative

Hermes Equity Ownership Services

Hexavest

Ircantec

JLens Investor Network

Mennonite Education Agency

Mercy Investment Services, Inc.

Midwest Coalition for Responsible Investment

Miller/Howard Investments, Inc.

Mission Driven Finance

Natural Investments

NEI Investments

Newground Social Investment

Nia Impact Capital

Northwest Coalition for Responsible Investment

Oblate International Pastoral Investment Trust

Oneida Trust Enrollment Committee

Oxfam America

Priests of the Sacred Heart, US Province

Proxy Impact

Rathbone Greenbank Investments

Region VI Coalition for Responsible Investment

Religious of the Sacred Heart of Mary, WP

Responsible Sourcing Network

RRSE (Le Regroupement pour la Responsabilité Sociale des Entreprises)

School Sisters of Notre Dame Cooperative Investment Fund

Seventh Generation Interfaith Coalition for Responsible Investment

SHARE

Sierra Club Foundation

Sisters of Charity of Nazareth

Sisters of Charity, Halifax

Sisters of Mary Reparatrix

Sisters of Saint Joseph of Chestnut Hill, Philadelphia, PA

Sisters of St. Dominic of Caldwell, NJ

Sisters of St. Francis of Philadelphia

Sisters of St. Joseph of Orange

Sisters of the Holy Names of Jesus and Mary SNJM

Sisters of the Presentation of the BVM of Aberdeen SD

SRI Committee Racine Dominicans WI

SRIC

Stardust

Storebrand Asset Management

T'ruah: The Rabbinic Call for Human Rights

The Province of Saint Joseph of the Capuchin Order

The United Church of Canada

Tri-State Coalition for Responsible Investment

U.S Missionary Oblates of Mary Immaculate

United Church Funds

Ursuline Sisters of Tildonk, U.S. Province

Walden Asset Management

Zevin Asset Management