

Consultation response

Part 1: Your details

Original language of response: English

Name: Anonymous

Country of residence: Brazil

Are you willing to let us publish your response publicly on the Global Tailings Review website? Yes

Please select which stakeholder group you are representing: Academic (universities and other research institutes)

If 'Other', please specify below:

Are you responding on behalf of an organization? No

Please give the name of the organization:

Your level within the organisation:

Part 2: Your views on each of the Principles and Requirements in the Standard Topic 1: Knowledge Base

Principle 1

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 1 do your comments relate to?

Requirement 1.3, Requirement 1.2

Your comments on Principle 1

REQUIREMENT 1.2: Prepare and regularly update detailed site characterization[...]The physical and chemical properties of the tailings shall be determined and regularly updated. This excerpt is too vague. A precise time frame for updating must be defined.

REQUIREMENT 1.3: Where there is a potential for flow failure[...]. This excerpt is too vague; every dam has the potential to fail. Inundation studies must be conducted for every dam. These studies must be publicly disclosed independently of local legislation.

Principle 2

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

No

Which aspects of Principle 2 do your comments relate to?

Requirement 2.2, Requirement 2.6, Requirement 2.5

Your comments on Principle 2

REQUIREMENT 2.2: Engage an Independent Tailings Review Board (ITRB) or an independent senior technical reviewer with no conflicts of interest to assess and review the alternatives analysis for site and technology selection. The Standard does not make explicit how IRB and ISTR will be chosen

and paid. If mining companies are still responsible for indicating and paying reviewers, a clear situation of conflict of interests will emerge. Different authors have already made explicit the conflict of interest in such situations. For example, Bazerman, Morgan and Loewenstein (1997, p. 90)1 argued that “under current institutional arrangements, it is psychologically impossible for auditors to maintain their objectivity; cases of audit failure are inevitable, even with the most honest auditors”. Similarly, Boyd (2004)2 identified that as auditing companies globalised, consulting services assumed increasing importance in their revenues, which greatly changed the relations between them and the hiring companies. The author suggests that third-party consulting firms are becoming increasingly partners of their hiring companies, rather than “watchdogs”. Even The Economist (2014) argued that “companies tend to select auditors who will provide a clean opinion as cheaply and quickly as possible”3. Therefore, a system that removes the power of the mining corporations to choose their auditors seems to be a requirement of the Standard to reduce this conflict of interest significantly.

REQUIREMENT 2.5: The amount of financial assurance shall be reviewed periodically and updated based on estimated closure and post-closure costs. The co-convenors have edited this extract. The Standard should adopt the previous version. “Provide financial assurances sufficient to guarantee that the full cost of closure and post-closure of the tailings facility will be covered in the event of the incapacity or bankruptcy of the Operator. For new facilities, these assurances must be secured during the permitting process and before construction begins. For existing facilities without financial assurances, these must be secured as soon as possible and no later than six months after the adoption of the Standard.”

REQUIREMENT 2.6: Taking into account actions to mitigate risks, the Operator will consider obtaining appropriate insurance to the extent commercially reasonable or providing other forms of financial assurance if appropriate to address risks relating to the construction, operation, maintenance, and/or closure of a tailings facility. The co-convenors have edited this extract. The Standard should adopt the previous version. “To the fullest extent possible, obtain an insurance policy or equivalent financial liability instrument for an amount sufficient to cover compensation as a result of harm to people, property, and natural resources that may occur, on or off the mine site, during the construction, operation, maintenance, and/or closure of the tailings facility”

Topic II: Affected Communities

Principle 3

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

No

Which aspects of Principle 3 do your comments relate to?

Comments on the Principle itself, Requirement 3.3, Requirement 3.2

Your comments on Principle 3

PRINCIPLE 3: Respect the rights of project-affected people and meaningfully engage them at all stages of the tailings facility lifecycle. The co-convenors have edited this extract. The Standard should adopt the previous version. “Respect the rights of pro

Topic III: Design, Construction, Operation and Monitoring of the Tailings Facility

Principle 4

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

No

Which aspects of Principle 4 do your comments relate to?

Requirement 4.1

Your comments on Principle 4

REQUIREMENT 4.1: Presume the consequence of failure classification of all new tailings facilities as being 'Extreme' (see Annex 2, Table 1: Consequence Classification Matrix) and design, construct, operate and manage the facility accordingly. The way the Standard deals with "consequence classification" and "extreme consequences" should be more carefully examined. There are moral aspects related to the use of "Table 1: Consequence Classification". It seems ethically questionable that co-convenors would endorse the certification of dams that could cause more than 100 deaths. I suggest that the potential loss of a single human life should be treated as an Extreme Event

Principle 5

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 5 do your comments relate to?

Comments on the Principle itself

Your comments on Principle 5

PRINCIPLE 5: Develop a robust design that integrates the knowledge base and minimizes the risk of failure for all stages of the tailings facility lifecycle. All plans, designs and risk assessments mentioned in requirements under this principle should be publicly disclosed independently of local legislation.

Principle 6

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

No

Which aspects of Principle 6 do your comments relate to?

Requirement 6.3, Requirement 6.4

Your comments on Principle 6:

REQUIREMENT 6.3: Identify and address brittle failure mechanisms with conservative design criteria and factors of safety to minimize the likelihood of their occurrence, independent of trigger mechanisms. "Conservative factors of safety" is a vague definition

Principle 7

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 7 do your comments relate to?

Requirement 7.3, Requirement 7.5

Your comments on Principle 7

REQUIREMENT 7.3: Prepare a detailed Construction Records Report at least annually or whenever there is any change to the tailings facility, its infrastructure or its monitoring system. The CRR should be publicly disclosed independently of local legislation.

REQUIREMENT 7.5: Implement a formal change management system that triggers the evaluation,

review, approval and documentation of all changes to design, construction, operation and monitoring during the tailings facility lifecycle. The change management system shall also include the requirement for a periodic Deviance Accountability Report (DAR), prepared by the EOR, that provides an assessment of the cumulative impact of the changes on the risk level of as-constructed facility. The DAR should be publicly disclosed independently of local legislation.

Principle 8

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Yes

Which aspects of Principle 8 do your comments relate to?

Requirement 8.2

Your comments on Principle 8

REQUIREMENT 8.2: Establish performance objectives, indicators, criteria, and performance parameters and include them in the design a monitoring program that measures performance at all stages of the tailings facility lifecycle. Record, evaluate and publish the results at appropriate frequencies. What does "publish"? To be publicly disclosed? It should be more explicit.

"Appropriate frequencies" is a vague expression and difficult to be assessed by auditors.

Topic IV: Management and Governance

Principle 9

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 9 do your comments relate to?

Requirement 9.2

Your comments on Principle 9

REQUIREMENT 9.2: For an existing facility, where a potential credible failure could have 'Very High' or 'Extreme' consequences, the Board or senior management (as appropriate based on the Operator's organizational structure) shall mandate additional steps to minimize the consequences and publish reasons for its decision. Different from Requirement 9.1, Requirement 9.2 does not define any responsibility; this flaw might difficult implementation and assessment. Therefore Responsibility must be linked to a specific person.

Principle 10

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 10 do your comments relate to?

Requirement 10.1, Requirement 10.4

Your comments on Principle 10:

REQUIREMENT 10.1: The Board of the parent corporation shall adopt and publish a policy on or commitment to the safe management of tailings facilities, to emergency preparedness and response, and to recovery after failure that is mandatory for all its subsidiaries and joint ventures. The commitment shall require the Operator to establish a Tailings Management System (TMS), and

a governance framework to assure the effective implementation and continuous improvement of the TMS. The TMS and the Governance Framework should be publicly disclosed independently of local legislation.

REQUIREMENT 10.4: For employees who have a role in the TMS, consider implementing a performance incentive program to include a component linked to the integrity of tailings facilities. This requirement is too vague and does not seem sufficient to address the issue. The companies should not only "consider", but implement such a programme. The previous version had some limitations, but it was much more appropriate than this one. The requirement must be discussed in more details by the EP.

Principle 11

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

No

Which aspects of Principle 11 do your comments relate to?

Comments on the Principle itself, Requirement 11.4, Requirement 11.5

Your comments on Principle 11:

PRINCIPLE 11: Establish and implement levels of review as part of a strong quality and risk management system for all stages of the tailings facility lifecycle. The logic behind this principle splits responsibility and makes it more challenging to identify

Principle 12

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Yes

Which aspects of Principle 12 do your comments relate to?

Your comments on Principle 12:

Principle 13

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Yes

Which aspects of Principle 13 do your comments relate to?

No

Your comments on Principle 13:

Principle 14

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 14 do your comments relate to?

Comments on the Principle itself, Requirement 14.2

Your comments on Principle 14:

PRINCIPLE 14: Respond promptly to concerns, complaints and grievances. Brazilian legislation allows workers to stop their tasks at any time if they identify imminent risk to health and safety

without suffering any punishment. A similar protective requireme

Topic V: Emergency Response and Long-Term Recovery

Principle 15

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

No

Which aspects of Principle 15 do your comments relate to?

Requirement 15.2

Your comments on Principle 15:

REQUIREMENT 15.2: Meaningfully engage employees and/or employee representatives, site contractors, public sector agencies, first responders and at-risk communities to participate in emergency planning and implementation, including development of specific E

Principle 16

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Yes

Which aspects of Principle 16 do your comments relate to?

Your comments on Principle 16:

Topic VI: Public Disclosure and Access to Information

Principle 17

In your view, will compliance with this Principle and its Requirements contribute to the prevention of catastrophic failure of tailings facilities?

Partially

Which aspects of Principle 17 do your comments relate to?

Your comments on Principle 17:

Part 3: Your views on the Standard

Your view as to whether the content of the Standard meets your expectations

Your view as to whether the content of the Standard meets your expectations (closed question):

1: Falls well below my expectations

Please summarize why you chose this option:

Your view on whether the Standard will create a step change for the industry in the safety and security of tailings facilities

Your view on whether the Standard will create a step change for the industry in the safety and security of tailings facilities (closed question):

2: Will deliver minor improvements to the safety and security of tailings facilities

Please summarize why you chose this option:

Does the content of the Standard address all aspects of tailings facility management adequately?

Does the content of the Standard address all aspects of tailings facility management adequately (closed question)?

No

Please explain why and/or what is missing:

It does not encourage the adoption of safer technologies.

Part 4: Suggestions for topics to be included in the accompanying Recommendations Report

On which topics would you expect to have further clarification or guidance in this document?

Other information

Non-fitting response text (text submitted which did was not in response to one of the questions above)

Attachment 1 reference (if applicable)

ref:0000001000:Q83

Attachment 2 reference (if applicable)

Global Tailings Review – Consultation Draft

20th December 2019

1 Foreword

The draft presents many flaws and gaps and it does not seem capable of fulfilling the objective of ensuring “zero harm to people and the environment and zero tolerance for human fatality”. Along with this text, I make specific remarks about this version of the Standard.

REQUIREMENT 1.2: Prepare and **regularly update** detailed site characterization [...]The physical and chemical properties of the tailings shall be determined and **regularly updated**.

This excerpt is too vague. A precise timeframe for updating must be defined.

REQUIREMENT 1.3: **Where there is a potential for flow failure** [...].

This excerpt is too vague; every dam has the potential to fail. Inundation studies must be conducted for every dam. These studies must be publicly disclosed independently of local legislation.

REQUIREMENT 2.2: Engage **an Independent Tailings Review Board (ITRB) or an independent senior technical reviewer** with no conflicts of interest to assess and review the alternatives analysis for site and technology selection.

The Standard does not make explicit how IRB and ISTR will be chosen and paid. If mining companies are still responsible for indicating and paying reviewers, a clear situation of conflict of interests will emerge.

Different authors have already made explicit the conflict of interest in such situations. For example, Bazerman, Morgan and Loewenstein (1997, p. 90)¹ argued that “under current institutional arrangements, it is psychologically impossible for auditors to maintain their objectivity; cases of audit failure are inevitable, even with the most honest auditors”. Similarly, Boyd (2004)² identified that as auditing companies globalised, consulting services assumed increasing importance in their revenues, which greatly changed the relations between them and the hiring companies. The author suggests that third-party consulting firms are becoming increasingly partners of their hiring companies, rather than “watchdogs”. Even The Economist (2014) argued that “companies tend to select auditors who will provide a clean opinion as cheaply and quickly as possible”³.

Therefore, a system that removes the power of the mining corporations to choose their auditors seems to be a requirement of the Standard to reduce this conflict of interest significantly.

Footnote 9: The Standard does not ban any specific design technology, such as upstream tailings facilities. Banning particular technologies was outside the Expert Panel’s scope of work, available here: <https://globaltailingsreview.org/about/scope/>

The Standard should not consider upstream dams for new facilities, due to their high-risk characteristics.

¹ Bazerman, Max H., Morgan, Kimberly P., and Loewenstein, George F. 1997. "The impossibility of auditor independence." **Sloan Management Review**, 38 (4):89 - 94

² Boyd, Colin. 2004. "The structural origins of conflicts of interest in the accounting profession." **Business Ethics Quarterly**, 14: 377-398.

³ The Economist. 2014. "The dozy watchdogs." Last Modified 13 Dec Available at <http://www.economist.com/news/briefing/21635978-some-13-years-after-enron-auditors-still-cant-stopmanagers-cooking-books-time-some>.

Footnote 11: This Requirement applies the mitigation hierarchy to consequences or impacts and where avoidance is not feasible, to first minimize the impacts and then **include measures to allow future compensation for remaining impacts to the extent they occur**.

The co-convenors have edited this extract. The Standard should adopt the previous version. “This Requirement applies the mitigation hierarchy to consequences or impacts and where avoidance is not feasible, to first minimize the impacts and then **compensate for remaining impacts**”.

REQUIREMENT 2.5: The amount of financial assurance shall be reviewed periodically and updated **based on estimated closure and post-closure costs**.

The co-convenors have edited this extract. The Standard should adopt the previous version. “Provide financial assurances **sufficient to guarantee that the full cost of closure and post-closure of the tailings facility will be covered** in the event of the incapacity or bankruptcy of the Operator. For new facilities, these assurances must be secured during the permitting process and before construction begins. For existing facilities without financial assurances, these must be secured as soon as possible and no later than six months after the adoption of the Standard.”

REQUIREMENT 2.6: Taking into account actions to mitigate risks, the **Operator will consider obtaining appropriate insurance** to the extent commercially reasonable or providing other forms of financial assurance if appropriate to address risks relating to the construction, operation, maintenance, and/or closure of a tailings facility. The co-convenors have edited this extract. The Standard should adopt the previous version. “To the fullest extent possible, obtain an insurance policy or equivalent financial liability instrument for an amount sufficient to cover compensation as a result of harm to people, property, and natural resources that may occur, on or off the mine site, during the construction, operation, maintenance, and/or closure of the tailings facility”.

PRINCIPLE 3: Respect the rights of project-affected people and **meaningfully engage them** at all stages of the tailings facility lifecycle.

The co-convenors have edited this extract. The Standard should adopt the previous version. “Respect the rights of project-affected people and **enable their participation in decisions that affect them** at all stages of the tailings facility lifecycle.”

REQUIREMENT 3.2: Meaningfully engage project-affected people (PAP) **throughout the tailings facility lifecycle regarding the matters that affect them.**

The co-convenors have edited this extract. The Standard should adopt the previous version. “Meaningfully engage project-affected people (PAP) **throughout the tailings facility lifecycle in a manner that enables their participation in decisions that affect them, including decisions that affect their risk exposure level.**

REQUIREMENT 3.3: Where the **risks** of a potential tailings facility failure could result in loss of life or sudden physical and/or economic displacement of people, the Operator **shall consider in good faith additional measures to minimize those risks or implement resettlement following international standards.** The Operator shall communicate these decisions to those affected

The co-convenors have edited this extract. The Standard should adopt the previous version. “Where the **consequences** of a potential tailings facility failure could result in loss of life or sudden physical and/or economic displacement of people, and either the Operator or potentially-affected people propose to avoid those consequences through pre-emptive resettlement, the **Operator shall negotiate in good faith to either: minimize consequences so that resettlement is not necessary;** or if consequence minimization is not possible, plan and implement resettlement and livelihood restoration, following international standards”.

Footnote 12: As defined in the United Nations Guiding Principles on Business and Human Rights (UNGPR). Demonstrating respect for indigenous peoples rights may involve obtaining their 'free prior and informed consent' (FPIC), as outlined in the ICMM Indigenous Peoples and Mining Position Statement.

The document lacks a definition of indigenous people. Due to the social characteristics of countries in Africa and Latin America, a broader definition of indigenous people should be used, to include afro-descendants and traditional communities. The definition presented in "Box 1 Characteristics defining Indigenous Peoples", of ICMM's Good Practice Guide Indigenous People and Mining seem to be a good starting point for such a definition. In this publication, ICMM includes some essential aspects such as a common experience of colonialism and oppression; occupation of or a strong link to specific territories; distinct social, economic and political systems; distinct language, culture and beliefs from dominant sectors of society; resolved to maintain and reproduce their ancestral environments and distinctive identities.

REQUIREMENT 4.1: Presume the consequence of failure classification of all new tailings facilities as being 'Extreme' (see Annex 2, Table 1: Consequence Classification Matrix) and design, construct, operate and manage the facility accordingly.

The way the Standard deals with "consequence classification" and "extreme consequences" should be more carefully examined. There are moral aspects related to the use of "Table 1: Consequence Classification". It seems ethically questionable that co-convenors would endorse the certification of dams that could cause more than 100 deaths. I suggest that the potential loss of a single human life should be treated as an Extreme Event.

PRINCIPLE 5: Develop a robust design that integrates the knowledge base and minimizes the risk of failure for all stages of the tailings facility lifecycle.

All plans, designs and risk assessments mentioned in requirements under this principle should be publicly disclosed independently of local legislation.

Footnote 20 Safe closure is achievement of a confirmed 'landform' status or similar status that also has a permanent non-credible flow failure state.

This definition of 'safe closure' is too vague; it should be more specific and require the desaturation of tailings, also called "dry closure".

REQUIREMENT 6.3: Identify and address brittle failure mechanisms with conservative design criteria and factors of safety to minimize the likelihood of their occurrence, independent of trigger mechanisms.

"Conservative factors of safety" is a vague definition and cannot be verified in an auditing process. The Standard should define minimum factors of safety or adopt a more precise language.

REQUIREMENT 6.4: The EOR shall prepare a Design Basis Report (DBR) that details the design criteria, including operating constraints, and that provides the basis for the design of all stages of the tailings facility lifecycle

The DBR should be publicly disclosed independently of local legislation.

REQUIREMENT 7.3: Prepare a detailed Construction Records Report at least annually or whenever there is any change to the tailings facility, its infrastructure or its monitoring system.

The CRR should be publicly disclosed independently of local legislation.

REQUIREMENT 7.5: Implement a formal change management system that triggers the evaluation, review, approval and documentation of all changes to design, construction, operation and monitoring during the tailings facility lifecycle. The change management system shall also include the requirement for a periodic **Deviance Accountability Report (DAR)**, prepared by the EOR, that provides an assessment of the cumulative impact of the changes on the risk level of as-constructed facility.

The DAR should be publicly disclosed independently of local legislation.

REQUIREMENT 8.2: Establish performance objectives, indicators, criteria, and performance parameters and include them in the design a monitoring program that measures performance at all stages of the tailings facility lifecycle. **Record, evaluate and publish the results at appropriate frequencies.**

What does “publish”? To be publicly disclosed? It should be more explicit. “Appropriate frequencies” is a vague expression and difficult to be assessed by auditors.

REQUIREMENT 9.2: For an existing facility, where a potential credible failure could have ‘Very High’ or ‘Extreme’ consequences, **the Board or senior management (as appropriate based on the Operator’s organizational structure) shall mandate additional steps to minimize the consequences and publish reasons for its decision.**

Different from Requirement 9.1, Requirement 9.2 does not define any responsibility; this flaw might difficult implementation and assessment. Therefore Responsibility must be linked to a specific person.

REQUIREMENT 10.1: The Board of the parent corporation shall adopt and publish a policy on or commitment to the safe management of tailings facilities, to emergency preparedness and response, and to recovery after failure that is

mandatory for all its subsidiaries and joint ventures. The commitment shall require the Operator to establish a Tailings Management System (TMS), and a governance framework to assure the effective implementation and continuous improvement of the TMS.

The TMS and the Governance Framework should be publicly disclosed independently of local legislation.

REQUIREMENT 10.4: For employees who have a role in the TMS, consider implementing a performance incentive program to include a component linked to the integrity of tailings facilities.

This requirement is too vague and does not seem sufficient to address the issue. The companies should not only “consider”, but implement such a programme. The previous version had some limitations, but it was much more appropriate than this one. The requirement must be discussed in more details by the EP.

PRINCIPLE 11: Establish and implement levels of review as part of a strong quality and risk management system for all stages of the tailings facility lifecycle.

The logic behind this principle splits responsibility and makes it more challenging to identify the decision-making process. Instead of distributing responsibility among various levels, it should be concentrated at a specific level, which would be fully accountable for the consequences of its decision.

REQUIREMENT 11.4: A senior independent technical reviewer shall conduct an independent DSR periodically (every 3 to 10 years, depending on performance and complexity, and the Consequence Classification of the tailings facility). The DSR shall include technical, operational and governance aspects of the tailings facility and shall be done according to best practices. The DSR contractor cannot conduct a subsequent DSR on the same facility.

As mentioned in Requirement 2.2, one of the main flaws of the Standard is to give to mining companies the power to choose their auditors. There is a significant

possibility of conflicts of interest, which might reduce independence considerably. Although Requirement 11.4 forbids hiring a contractor to conduct a DSR in the same facility, he might be hired to work in another facility of the same company. Apart from that, consulting contracts can also be used when bargaining for favourable reports. Finally, “strict” contractors are less likely to be hired than “lenient ones” because mine companies want to make sure they will get positive DSR.

REQUIREMENT 11.5: For tailings facilities with ‘Very High’ or ‘Extreme’ Consequence Classification, the ITRB, reporting to the Accountable Executive and/or the Board, shall provide ongoing senior independent review of the planning, siting, design, construction, operation, maintenance, monitoring, performance and risk management **at appropriate intervals** across all stages of the tailings facility lifecycle.

“Appropriate intervals” is a vague expression and difficult to be assessed.

PRINCIPLE 14: Respond promptly to concerns, complaints and grievances.

Brazilian legislation allows workers to stop their tasks at any time if they identify imminent risk to health and safety without suffering any punishment. A similar protective requirement could be included in the Standard.

REQUIREMENT 14.2: Establish an effective pathway that guarantees anonymity for employees and contractors to express concerns about tailings facility safety.

It is not clear to whom employees must express concerns. An independent third party must be created to allow workers to voice their concerns.

REQUIREMENT 15.2: Meaningfully engage employees and/or employee representatives, site contractors, public sector agencies, first responders and **at-**

risk communities to participate in emergency planning and implementation, including development of specific ERPs for at-risk communities.

The Standard does not define “at-risk communities”. There is no “zero-risk” dam; therefore, the imposition of risks to communities should not be naturalised. This decision goes against Environmental Justice Principles. The Standard must define a minimum distance between dams and existing communities.

Footnote 37: Relevant information to be disclosed shall at a minimum include those items referred to in Requirements 1.3, 2.3, 2.4, 3.1, 4.2, 4.3, 5.5, 5.6, 7.8, 8.2, 8.4, 9.1, 9.2, 10.1, 10.2, 11.1, 11.4, 11.5, 12.1, 13.5, 14.3, 15.1, 15.3, 15.4, 16.1, and in case of a tailings failure 16.2-16.5, provided that such disclosure: (i) is subject to applicable law; (ii) may be complied with through relevant regulatory agencies in accordance with applicable legal requirements; and (iii) will in some cases be subject to the consent of external parties (for example where third party reports and external stakeholder information are involved).

In its current form, the text may be interpreted in a way that information shall be disclosed only when required by law or regulatory agencies, making disclosure an exception. The text such be rephrased to make clear that the listed documents must always be disclosed, unless in cases when forbidden by law.