BANKTRACK

Tiny Steps Forward on the Outside Job

Comments on the
Equator Principles III Official First Draft
Submitted October 10, 2012

1. INTRODUCTION

On august 12 2012, The Equator Principles Association released the 'Official First Draft' of the 'Equator Principles III' (EPIII), seeking comments from interested stakeholders and the general public. The release marked the end of over fifteen months of internal discussion amongst Equator Principles Financial Institutions (EPFIs) on what they commit to do 'under Equator' to adequately deal with environmental and social risks associated with the financing of projects.

BankTrack, the international NGO network monitoring sustainability commitments and business activities of large banks, has always taken a strong and critical interest in the development of the Equator Principles, ever since their inception in June 2003. Over the years, we have submitted numerous letters and a number of papers to EPFIs seeking improvements and strengthening of the Principles.[1] Of all these documents, two are relevant for the current review of EPIII:

In January 2010, BankTrack published a civil society call to the EPFIs, supported by a large number of civil society organizations.[2] In this document we voiced our disappointment with the lack of progress on the key issues of transparency, accountability, effectiveness and compliance with the Equator Principles and called upon EPFIs to take '*Bold Steps Forward*' on all these matters.

In November 2011, with the Equator Principles review process in full swing, we published '*The Outside Job*'.[3] The paper urged EPFIs to turn their full attention to where the Principles ultimately are supposed to make a difference; on the ground, in the lives of affected people and communities impacted by bank financed projects, and on the environment. In the words of the report:

"The world does not need improved risk management as a goal in itself; it needs fewer supersized dams blocking life-supporting rivers, less mining projects scarring entire mountains and polluting community water sources with their tailings, no oil exploration projects destroying our seas and last remaining wilderness areas, no coal power plants belching out millions of tons of greenhouse gases into our already fatigued atmosphere.

In addition to what it needs less, the world also needs more of many other things; pioneering efforts to reward energy saving and efficiency by companies and households, financial services to protect and strengthen biodiversity all over the globe, massive investments in the development of fair and equitable supply chains and markets which create decent means of living for rural and urban

[1] 'Going around in Circles' BankTrack, February 2010.
http://www.banktrack.org/download/going_round_in_circles_an_overview_of_bank_ngo_engagement_with_the_equator_principles/100128_going_around_in_circles.pdf
[2] 'Bold Steps Forward - Towards Equator Principles that deliver to people and the planet, BankTrack, February 2010.
http://www.banktrack.org/download/bold_steps_forward_towards_equator_principles_that_deliver_to_people_and_the_planet/100114_civil_society_call_equator_principles.pdf
[3] 'The Outside Job; Turning the Equator Principles towards people and planet' BankTrack November 2011,
http://www.banktrack.org/download/the_outside_job/111021_the_outside_job_final.pdf

communities; responsible resource extraction with respect for community rights and the environment, and respect for human rights in all business undertakings of banks and their clients."

The paper then called upon the EP Association to use the upcoming update of the Principles to "revive the original spirit that created the Equator Principles and turn them once more into a groundbreaking sustainability initiative", this by tackling five major issues left unresolved in EPII:

1. Increase the transparency of the workings of the Principles and the Association
2. Increase the accountability of the Principles and adopting banks towards stakeholders
3. Extend the scope of the Principles
4. Adequately deal with climate change
5. Adequately deal with human rights obligations of banks

BOLD STEPS FORWARD WITH THE OUTSIDE JOB?

With the draft EPIII text now released for public comments it is possible to take stock of how many of the detailed recommendations included in these two BankTrack documents are reflected in EPIII, and in what other respect EPIII can be considered a step forward compared to EPII.

This paper does both. In the first part it revisits the five major issues listed in 'the Outside Job' as unresolved and assesses whether the necessary 'Bold Steps Forward' have indeed been taken in EPIII. The second part of the paper provides detailed comments on the draft text of EPIII.

As will become clear from the analysis below, BankTrack *does* consider the proposed EPIII an improvement over EPII, yet far bigger steps must be taken by the EPFIs for the Equator Principles to regain their position as leading industry initiative on sustainable finance. Instead of Bold Steps Forward, the EPFI community is now taking tiny, over cautious steps ahead, or even sideways at times, thus risking to be overrun by the very developments and risks the Equator Principles are supposed to manage for them.

For example, the strong public demand for greater transparency of banks, so crucial to restore the now deeply damaged public trust in the sector, will not be satisfied by the feeble commitments in Principle 10 to list number and categories of transactions, but without providing any information on the nature of these transactions and their potential impact on people and planet.

As in the two previous versions, EPIII will also not provide *any* mechanism accessible to affected communities or the public to address cases of non-compliance with the Principles in a transparent, fair, or effective manner, thus ignoring growing expectations within society on the accountability of business towards legitimate stakeholders.

Similarly, the deepening climate crisis -to a substantial extend financed by Equator banks investing in ever more oil, gas and coal extraction projects and coal power plants- will not in any way be mitigated, let alone prevented, by merely requiring borrowers to 'assess alternatives and consider them when financially feasible' or by suggesting borrowers to assess the 'viability of Project operations, of reasonable foreseeable changing weather patterns/climatic conditions, together with adaptation opportunities' without in any way addressing the direct and indirect impact on these 'climatic conditions' of projects financed under Equator.

The EPIII text now released is the result of a long internal debate between all 77 EPFIs. As such, it bears every characteristic of a watered down compromise between parties with a widely divergent view on matters, with those Equator banks aiming for a more ambitious new 'gold standard' clearly loosing the debate from those who are fine with a little tinkering on the edges.

Given that it has taken the EPFIs this long to present this watered down compromise, BankTrack has serious concerns about how much of this draft text is still open for substantial change. We nevertheless hope that the observations below are of use to the drafters of the final text that is to serve banks, communities and the environment in the coming years. It is not yet too late for 'Bold Steps Forward' on 'The Outside Job'

2. Tiny Steps Forward

This section assesses how much of the recommendations made in the 'Outside Job' paper is reflected in the EPIII draft.

2.1 Increase transparency?

Transparency at bank and initiative-level

The 'Outside Job' paper made a number of recommendations on improving bank level transparency. The table below assesses how much is reflected in the EPIII draft:

Recommendation BankTrack	EPIII
Measurable targets for the proper implementation of the Principles, shared with the public at moment of adoption;	Not included
Precise information on the non-financial commitments made by a bank if this commitment exceeds the core Equator Principles;	Not included, at the discretion of EPFI how much information is provided on commitments 'above' EPs, as well as the application of EPs beyond the scope as defined in EPIII
Detailed information on the portfolio which falls under the scope of the Equator Principles: detailed composition, trends, regional and sector breakdown;	Improved; EPIII requires more mandatory disclosure of information on composition of 'Equator portfolio'
Provide names of all projects and/or project sponsors that are financed 'under Equator' and list on website.	Included, but subject to consent of borrowers / project sponsors and with other restrictions. There will be no requirement to list name of

Recommendation BankTrack	EPIII
	borrower/project sponsor, only of project. With this restriction to obtain consent (instead of covenanting this as condition to the loan) the overall impact of this 'requirement' may be negligible, depending on number of deals disclosed
Provide details on EP implementation: transactions evaluated under the EPs, those that were approved, declined, and approved with exceptions. Any such exceptions should be explained.	Partly included, more extensive requirements on portfolio level reporting but no obligation to report on implementation or on exceptions
Information on Equator Principles' compliance, including which projects are not in compliance with Equator standards and what corrective actions the bank and/or client take to remedy this.	Not included, at discretion of EPFI to provide this information on an anecdotic basis.
Mandatory independent and transparent third party verification of compliance with these reporting guidelines.	Not included, other when this is being part of regular audit of CSR report
Contact information for each bank for anyone wishing to enquire about the bank's implementation of the Equator Principles;	Not included, thus missing an important opportunity to at least install a minimum mechanism for the public to enquire with banks on EP implementation and compliance

Conclusion: Overall, little of our recommendations on increasing transparency is reflected in the EPIII draft. BankTrack is particularly disappointed to see that EPIII contains no requirement for EPFIs –and for borrowers to consent- to list all transactions conducted 'under Equator' on their website, or that of the EPFI Association. The voluntary character of the 'requirement' now included in annex II will likely not produce the desired result of EPFIs being open and transparent on how and where EPs will be applied as risk management tool *and* as safeguard for the general good.

At the very minimum we would expect a requirement for each EPFI to provide a contact point per bank for enquiries about the implementation of the EPs. We also wish to note here that the Strategic Review undertaken by the EPFIs in 2010 contained a number of recommendations for reporting standards that also see to be not taken on board in EPIII.

Transparency at the project level

The 'Outside Job' paper made a number of recommendations on improving project level transparency, by calling on EPFIs to disclose, or demand disclosure from the project sponsor, of the following information about proposed projects. The table below assesses how much of the recommendations are reflected in the EPIII draft:

Recommendation BankTrack	EPIII
Require clients, through financing covenants, to publicly identify on their websites which projects are being conducted 'under Equator' and the names and roles of Equator banks supporting the project.	Not included as obligation but subject to client consent. It may therefore continue to remain a mystery to the general public whether a project is to be implemented 'under Equator' by a project sponsor, including all relevant rights that this may grant to communities, as well as which banks are supposed to oversee compliance of the borrower with the Equator Principles.
Stipulate in all relevant contracts, including loan agreements and contracts in the pre-financing phase, that project-specific environmental and social information and documents may not be considered business confidential and may ultimately be released to allow external stakeholders to meaningfully engage in the consultation and monitoring processes.	EPIII does contain a number of specific requirements on project level information disclosure, such as the posting of ESMP, ESMS on company websites, but EPIII does not contain the explicit clause that such information can never be considered 'business confidential' and should always be placed in the public domain.
Make environmental and social clauses of the loan covenants publicly available. Communities should not only know that a project is subject to the Equator Principles in general, but what specific environmental and social conditions the sponsor must meet in order to remain in compliance.	Not included; what exactly is covenanted as social and environmental clauses between bank and project sponsor is not shared with affected communities and other relevant stakeholders. Compliance with these clauses thus cannot be independently assessed.
Make available all environmental and social reports and plans that are prepared by or for the bank, including but not limited to Environmental and Social Impact Analyses, Community Consultation plans and reports, Environmental and Social Management Plans, Environmental and Social Action Plans, Corrective Action Plans and Decommissioning Plans. Upon request, banks also should release lenders' independent consultant reviews, environmental and social certificates and progress reports, and consultant reports	Partly included but important documents not explicitly listed as documents that must be made publicly available by the project sponsor. These include -but are not limited to- the community consultation plan itself and the independent consultant reviews and independent consultant compliance reviews. There should be more precise requirements on which documents project sponsors are to make available and accessible to relevant stakeholders.

on the client's compliance with such plans and requirements.	
Require the project sponsor to publicly provide information on the precise functioning of any grievance mechanism established for a particular project.	EPIII includes requirements on how the grievance mechanism should be made accessible to affected communities that are to be the prime beneficiaries of such mechanisms, but there is no requirement to also publicize this information and proceedings on a company/project website for other stakeholders to review the effectiveness of such mechanisms.

Conclusion: As with bank level transparency, the requirements on project level transparency contained in EPIII, while an improvement over EPII, fall short of what is expected of banks and companies aiming to conduct their business in a transparent and accountable manner.

2.2 INCREASE ACCOUNTABILITY?

The Equator Principles need both accountability and grievance mechanisms, at the project level and at the level of the Equator Principles Initiative itself. A shortcoming of EPIII, as with EPII, is that it does not *explicitly* recognize that proper functioning grievance mechanisms are part of the responsibility of every company to 'respect human rights' by providing 'access to remedy.' This would also include a responsibility for all EPFIs themselves to facilitate access to remedy, with all the principles found therein.

The 'Outside Job' paper made a number of recommendations on improving bank level accountability. The table below assesses how much is reflected in the EPIII draft:

Recommendation BankTrack	EPIII
EPFIs must develop robust criteria and guidelines for the establishment and proper functioning of the project-level grievance mechanisms mandated by Principle 6, and oblige all project sponsors to publicly report on the implementation and effectiveness of these mechanisms.	Partly reflected in EPIII, which contains basic language on the expected functioning of project level grievance mechanisms. However, it does not require project sponsors to publicly report on their effectiveness and functioning, nor maintain a public registry of complaints. Robust guidelines for creating consistent and fair project level grievance mechanisms are still lacking.
EPFIs must provide a centralized and independent process at the level of the Equator Principles Initiative to address challenges with adherence to the Principles, and take steps to establish an accountability mechanism that fits and serves the needs of affected people.	Absent from EPIII. There again has been no commitment whatsoever to increasing the accountability of EPFIs for the way they conduct their business under the Equator Principles. It undermines the legitimacy of the Principles if they cannot provide fair and effective access to

	remedy.
Reference delisting procedures in the Equator Principles for those EPFIs not implementing the EPs in good faith, or are repeatedly found failing in their implementation.	Absent from EPIII. Without potential repercussion for non-complying EPFIs to be delisted, the Principles lack an important accountability tool.

Conclusion: EPIII, as the previous versions, again does not contain any language that can be considered a serious step forward on the accountability commitments of adopting institutions. The improvements envisioned in the functioning of the grievance mechanisms are no substitute for this lack of commitment.

2.3 SCOPE EXTENSION?

The 'Outside Job' paper made a number of recommendations on how the scope of the Equator Principles should be extended to ensure that the Principles continue to cover a substantial part of the banks lending operations and also address all relevant issues. The table below assesses how much of this is reflected in the EPIII draft:

Recommendation BankTrack	**EPIII**
Extend the scope from 'project finance' to the 'financing of projects', as for example through corporate loans	Partly included. The extension of the scope to included 'Project related corporate loans' and 'Bridge loans' is a major step forward but these two categories of loans are delineated in such a strict way that it is hard to assess the impact of this scope extension to the overall portfolio of adopting banks.
Apply *the principles underneath* the Equator Principles to other financial services such as asset management and IPOs. Develop guidance notes for these products	Not included in EPIII. No mentioning by EPFIs of any further developments within EP Association -?-
Include issues that are not adequately covered in the Performance Standards of IFC, including coverage of certain high risk industries such as nuclear industry and thermal power generation.	Not included. EPIII does not contain any commitments on issues that are beyond what is included in the IFC Performance Standards. In some cases the commitment in EPIII is even below what is required in IFC PS (such as reporting requirements on CO2 emissions). EPIII provides no further guidance, let alone commitments, on high risk sectors such as nuclear energy and thermal power generation.
Perform a gap analysis to determine the difference between the Equator Principles and	EPIII maintains assumption that in high income OECD countries 'meeting legal requirements' is

national and provincial/state requirements in a select group of High-Income OECD countries and limited sectors (Recommendation 16 EPFI strategic review) and to develop guidance materials on treatment of projects in High-Income OECD countries to ensure thorough environmental and social risk management (EPFI strategic review Recommendation 17).	similar to, or exceeds EP requirements and is therefore a proper way to apply EPs in those countries.

Conclusion: The expansion of the scope of the Equator Principles to include 'project related corporate loans' and bridge loans may well be the most important improvement of EPIII compared to EPII. However, the actual impact of this expansion is hard to assess without a proper understanding of how this expansion will work in practice and without reporting requirements placed on EPFIs on what problems and issues they encounter when applying this scope extension.

2.4 DEALING WITH CLIMATE CHANGE?

The 'Outside Job' paper made a number of recommendations on how the Equator Principles should deal with the climate impact of project financed under Equator, reflecting not only the need to manage risks posed by altering weather patterns and changing climate conditions to the project, but more importantly the potential impact of the project on the climate, and the risk this poses to people and planet. Given the severity of the rapidly unfolding climate crisis, this requires a deep commitment from Equator banks to help reduce the climate impact of projects under Equator. The table below assesses how much of the recommendations of the 'Outside Job' report is reflected in the EPIII draft:

Recommendation BankTrack	EPIII
The Strategic Review recommends that a policy statement be incorporated into the EP preface, indicating commitment to addressing climate change risks if the revised IFC Performance Standards do not deal with them in an appropriate manner (endorsed by BankTrack)	Absent. The text of EPIII text lacks any acknowledgement of sincerity of climate crisis and responsibility of adopting banks. Similarly, 'climate' is again not recognized as a major risk that must be independently assessed and managed, and therefore justifies a separate principle or even just a paragraph within the Principles.
Indirect climate impacts should be acknowledged by the Equator Principles as significant environmental risks which need to be minimized and mitigated. Such indirect climate impacts must be included as an integral part of all risk assessments, in which all external costs and possible alternatives should be assessed.	Partly included. EPIII contains a requirement to integrate climate issues and expected direct emissions in overall risk assessment. EPIII also requires an assessment of alternatives with less direct emissions, but there are no obligations for project sponsors to then opt for an identified lower emission alternative. All is left to

	discretion of project sponsor. There is no recognition in the Principles that the emissions stemming from burning fossil fuels that are the product of a particular extraction or transportation project must be included in the overall risk assessment of a project
The Equator Principles should make clear that business that most substantially contribute to climate change cannot be financed, as their impact on climate is beyond what can be mitigated by applying the Performance standards. These would include: • New coal, oil and gas extraction and transport projects; • New coal-fired power plants; and • The most harmful and least efficient practices in other sectors emitting large amounts of greenhouse gases, such as agriculture, forestry, steel, concrete, chemistry and transportation.	Not included. There is no categorical exclusion of specific projects and business activities with a high impact on climate. This is incompatible with the wider objective of the EPs as a comprehensive risk management tool. EPIII, as EPII, leaves the door open for, for example, the financing of, new coal power plants, tar sand explorations, and oil and gas projects in the Arctic that are financed 'under Equator'
The Equator Principles should stimulate banks to minimize the extent to which their financing activities and investments contribute to climate change. Towards this end, the Equator Principles should: • Require companies to be more ambitious in quantifying, disclosing and reducing their GHG emissions. This should include all - direct and indirect - emissions of the project and of the company as a whole. Project finance should not be granted to sponsors which do not commit to company-wide substantial emission reduction targets. • Commit to a process of continuously tightening the climate related conditions for financing under the Equator Principles, to meet the growing challenges posed by an unfolding climate crisis. • Demand from banks that they develop workable instruments for measuring financed	Not included. There are no targets included for portfolio wide emissions reduction, nor any other collective commitment to reduce the impact of lending on climate.

GHG emissions associated with all their loans, investments and other financial services; • Demand from banks that they establish sufficiently ambitious reduction targets and develop a set of tools to address climate issues and reduce GHG emissions across the full range of their operations and services.	
• The Equator Principles should require companies to continuously upgrade their already existing facilities in order to lower the climate impact; • Articulate a set of stringent climate best practices in each sector and stipulate that meeting these will be a prerequisite for obtaining project finance. These standards should tighten over time (continuous improvement)	Not included

Conclusion:

EPIII is deeply disappointing in how it deals with climate change, or fails to do so. The EPIII draft does not contain any acknowledgement of the responsibility of banks to help stem climate change, let alone any meaningful commitment by EPFIs to collectively lessen their climate impact.

The only 'requirements' that are included relate to the reporting of emission levels and the consideration of alternatives, yet without any obligation or consequence imposed on the project sponsor as to how to use the outcome of such an assessment. EPIII continues to be a risk management tool that is turning a deliberate blind eye to the greatest environmental risk currently faced by the planet, banks included.

2.5 Dealing with Human Rights?

The 'Outside Job' paper made a number of recommendations on how the scope of the Equator Principles should be extended to ensure that the Principles continue to cover a substantial part of the banks lending operations and also include all relevant issues. The table below assesses how much of this is reflected in the EPIII draft:

Recommendation BankTrack	EPIII
Include a new principle in the Equator Principles that makes explicit reference to the PRR framework, in which EPFIs commit to formulate a human rights policy	Not included. The text of EPIII mentions human rights only once –in the preamble- but does not contain any explicit reference to the PRR framework. It further considers human rights obligations of both EPFIs and borrowers

	adequately and implicitly covered in the principles dealing with community consultation and the underlying performance standards on Labor and Working Conditions, Community Health, Safety and Security, Land Acquisition and Involuntary Resettlement, Indigenous Peoples and Cultural Heritage. Merely applying the Equator Principles *is* then considered meeting the human rights requirements of business. Nowhere in EPIII is there any acknowledgement of gender specific risks and potential impacts that must be assessed, including women's rights issues.
Develop the capacity to conduct human rights due diligence and a human rights impact assessment. Where the analysis of risk factors trigger the need for a Human Rights Impact Assessment (HRIA), the bank's human rights policy should identify the elements required in the HRIA analysis itself, drawing on what are now well-developed standards. Where risks are identified through the HRIA process, a human rights action plan may be required.	Human rights are mentioned as one of the issues that must be covered in the overall Environmental and Social Assessment. EPIII does not contain any criteria as to when a specific human rights assessment is to be conducted. There is also no explicit reference to human rights issues when considering the need for an action plan. This may leave important human rights related risks not identified.
Ensure access to remedy • By ensuring establishment of grievance mechanisms, equipped to also deal with human rights issues. • By creating individual accountability mechanisms that govern their corporate entity alone or pool resources to establish a new, freestanding mechanism.	• Grievance mechanism included in requirement for category A and some B projects, yet related to ESMS and action plans that may not specifically address human rights issues • No bank accountability mechanisms

Conclusion: Human rights issues are explicitly acknowledged but only in the preamble. Far from mainstreaming human rights issues throughout the EP-process it is considered that human rights are adequately dealt with as part of the social en environmental assessment required from borrowers. Dutifully applying the Principles (the performance standards of IFC) is then considered an adequate way to deal with human rights.

There is no explicit acknowledgement of the importance of the PRR framework on business and human rights for both adopting institutions and borrowers. Therefore the EPIII are falling behind the consensus achieved with the guiding principles on business and human rights, that where unanimously agreed in the human rights council in 2011.

3. DETAILED COMMENTS ON EPIII DRAFT TEXT

This section contains additional comments on the proposed text of EPIII. Comments, observations and text suggestions of BankTrack are included in the original EPIII text in this blue.

THE EQUATOR PRINCIPLES

A financial industry benchmark for determining, assessing and managing environmental and social risk in projects

PREAMBLE

Large infrastructure and industrial Projects can have adverse impacts on people and on the environment. As financiers and advisors, we work in partnership with our clients to identify, assess and manage environmental and social risks and impacts in a structured way, and on an ongoing basis. Such collaboration promotes sound and sustainable environmental and social performance, and can lead to improved financial, environmental and social outcomes.

We, the Equator Principles Financial Institutions (EPFIs), have adopted the Equator Principles in order to ensure that the Projects we finance are developed in a manner that is socially responsible and reflects sound environmental management practices. By doing so, negative impacts on Project-affected ecosystems, communities, and the climate

Climate is mentioned here in passing, not doing justice to the key importance of climate issue as a major risk threatening the very survival of the planet as we know it. The preamble should contain a separate paragraph on climate risk, acknowledging the responsibility of EPFIs for helping to stop climate change from unfolding and the need to take this wider risk into account when making business decisions.

should be avoided where possible. If these impacts are unavoidable, they should be minimised and compensated for, or offset appropriately.

We believe that adoption of and adherence to the Equator Principles offers significant benefits to us, our borrowers, and local stakeholders through our borrowers' engagement with locally affected communities. We therefore recognise that our role as financiers affords us opportunities to promote responsible environmental stewardship and socially responsible development, including fulfilling our responsibility to respect human rights by undertaking due diligence in accordance with the Equator Principles.

The preamble should not just mention the human rights responsibility of business but make explicit reference to the PRR framework, including the obligation to provide access to remedy.

The Equator Principles are intended to serve as a common baseline and framework for the implementation of each EPFI's internal environmental and social policies, procedures and standards related to its financing of Projects.

We will not provide Project related loans and Project Finance Advisory services, as described and per the requirements in the Scope, to Projects where the borrower will not, or is unable to comply with, the Equator Principles. This sentence deserves a separate paragraph

The Equator Principles apply globally and to all sectors. In High-Income OECD Countries, relevant host country laws, regulations and permits generally meet or exceed the requirements of the Equator Principles. For Projects located in these countries, host country requirements may be used as a substitute for the requirements in the Equator Principles. Unless a gap analysis proves otherwise

EPFIs review the Equator Principles from time-to-time based on implementation experience, and in order to reflect ongoing learning and emerging good practice.

It may be helpful to include here already a specific moment in time (in three years from the adoption?) when the functioning will be reviewed and the results of this review made publicly available.

SCOPE

The Equator Principles apply to the four financial products described below:

1. **Project Finance Advisory** services where total Project capital costs are US$ 10 million or more.

2. **Project Finance** with total Project capital costs of US$ 10 million or more.

3. **Project-Related Corporate Loans** where all five of the following criteria are met:
    a. the loan is related to a single Project,
    b. the total aggregate loan amount is at least 100 US$ million,
    c. the EPFI's individual Initial Exposure is at least 50 US$ million,
    d. the loan tenor is at least two years, and
    e. the borrower has Effective Operational Control (either direct or indirect) over the Project.

4. **Bridge Loans** with a tenor of less than two years that are intended to be refinanced by a Project Finance or Project-Related Corporate Loan. The requirements for Bridge Loans vary depending on the Project's stage of development. This sentence leaves a lot of ambiguity that is incomprehensible for external reviewers

While the Equator Principles are not intended to be applied retroactively, EPFIs will also apply them to the expansion or upgrade of an existing Project where changes in scale or scope may create significant environmental and/or social impacts, or significantly change the nature or degree of an existing impact.

STATEMENT OF PRINCIPLES

EPFIs will only provide Project related loans and Project Finance Advisory services, as described in the Scope, to Projects that conform to Principles - below:

Recognising business confidentiality and applicable laws and regulations, mandated EPFIs will endeavour to share relevant environmental and social information with other mandated financial institutions with a view to seeking, where appropriate, consistent application of the Equator Principles to Projects financed. Any decision as to whether, or on what terms, to provide Project-Related loans and Project Finance Advisory services will be for each EPFI to make in accordance with their own risk management policies. Timing constraints may lead EPFIs considering a transaction to seek authorisation from their clients to start such information sharing before all relevant EPFIs are formally mandated. EPFIs expect clients to provide such authorisation on a best efforts basis.

Principle 1: Review and Categorisation

When a Project is proposed for financing, the EPFI will, as part of its internal environmental and social review and due diligence, categorise such Project based on the magnitude of its potential risks and impacts. Such screening is based on the environmental and social categorisation scheme of the International Finance Corporation (IFC).

Using categorisation, the EPFI's environmental and social due diligence is commensurate with the nature, scale and stage of the Project, and with the level of environmental and social risks and impacts. The categorisation scheme is:

Category A – Projects with potential significant adverse environmental and social risks and/or impacts which are diverse, irreversible or unprecedented;

Category B – Projects with potential limited adverse environmental and social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and

Category C – Projects with minimal or no adverse environmental and social risks and/or impacts.

Principle 2: Environmental and Social Assessment

Where EPFIs are providing Project Finance Advisory services or a Bridge Loan, EPFIs will make the client aware of the content, application and benefits of applying the Equator Principles to the anticipated Project. The EPFI will request that the client communicates to the EPFI its intention to adhere to the requirements of the Equator Principles when subsequently seeking financing. In their advisory capacity the EPFI will guide and support the client through the steps leading to Equator Principles application.

For each Project assessed as being either Category A or Category B, the EPFI will require the borrower to conduct an Environmental, human rights (including indigenous peoples rights) and Social Assessment ("Assessment") process to address, as appropriate and to the EPFI's satisfaction, the relevant environmental and social risks and impacts of the proposed Project (which may include, if relevant, the illustrative list of issues found in Exhibit II). The Assessment should also propose measures to prevent, mitigate and manage adverse impacts in a manner relevant and appropriate to the nature and scale of the proposed Project.

The Assessment will be an adequate, accurate and objective evaluation and presentation of the risks, whether prepared by the borrower, consultants or external experts. The Assessment document may comprise a full-scale environmental and social impact assessment, a limited or focused environmental or social assessment (e.g. audit), or straight-forward application of environmental siting, pollution standards, design criteria, or construction standards. One or more specialised studies may also need to be undertaken. This may be the appropriate paragraph to explicitly reference the need at times to conduct a separate human rights impact assessment.

Regardless of the location, for all Projects which are expected to emit more than 100,000 tonnes of CO equivalent annually, an alternatives analysis will be conducted to evaluate less GHG intensive alternatives. Refer to Annex A for alternatives analysis requirements.

This requirement is meaningless if not accompanied by an obligation to opt for less GHG intensive alternatives, should they be identified, or at the very least a requirement to publicly explain why that option is not chosen and nevertheless financed under Equator.

Principle 3: Applicable Environmental and Social Standards

The EPFI will require that the Assessment process evaluates compliance as follows:

1. For Projects located in non-OECD countries and OECD countries not designated as High-Income, the Assessment process evaluates compliance with the then applicable IFC Performance Standards (Exhibit III), and IFC Environmental, Health and Safety (EHS) Guidelines (Exhibit IV).

2. For Projects located in High-Income OECD Countries, the Assessment process evaluates compliance with relevant host country laws, regulations and permits that pertain to environmental and social matters as they are generally considered to meet or exceed the requirements of the Equator Principles. This substitution may extend to environmental and/or social assessments (Principle 2), management systems and plans (Principle 4), stakeholder engagement (Principle 5) and, disclosure and grievance mechanisms (Principle 6). EPFIs may require that a gap analysis be conducted where there is reason to believe – from previous experience or indications from external observers- that relevant country laws do not meet or exceed EPs. It may also be possible to refer to 'home' country laws of the borrower when these exceed host country laws

The Assessment will establish to a participating EPFI's satisfaction the Project's overall compliance with, [or justified deviation from], -this leads to unnecessary ambiguity, justified by whom?- the applicable standards. The applicable standards (as described above) represent the minimum standards adopted by EPFIs and individual EPFIs may, at their sole discretion, apply additional requirements.

Principle 4: Environmental and Social Management System and Action Plan

For all Category A and Category B Projects, the EPFI will require the borrower to develop or maintain an Environmental and Social Management System (ESMS).

Further, an Environmental and Social Management Plan (ESMP) will be prepared by the borrower to address issues raised in the Assessment and incorporate actions required to comply with the applicable standards. Where the applicable standards are not met to the EPFIs satisfaction, the borrower and the EPFI will agree an Action Plan (AP). The AP is intended to outline gaps and commitments to meet EPFI requirements in line with the applicable standards.

We understand this as that the 'Action Plan' in EPIII is different from the 'Action plan' in EPII. There may be a need to explain this change in meaning of the term.

For Bridge Loans where impacts have been identified and Project development is expected to begin during the tenor of the loan, the borrower will identify an Independent Environmental and Social Consultant and develop a scope of work to conduct an Independent Review. Where the Project is in the feasibility phase and no impacts are expected during the tenor of the loan, the EPFI will include a loan covenant, or a condition precedent to disbursement, requiring confirmation that an Assessment process or other assessment study (if applicable to the stage of development of the Project) has been assigned.

EPFIS may wish to include here already a reference to disclosure requirements for project related documents, as contained in Principle 10

Principle 5: Stakeholder Engagement

For all Category A and, as appropriate, Category B Projects, the EPFI will require the borrower to publicly demonstrate effective Stakeholder Engagement as an ongoing process in a structured and culturally appropriate manner with Affected Communities and, where appropriate, Other Stakeholders. For Projects with potentially significant adverse impacts on Affected Communities, the borrowers will conduct an Informed Consultation and Participation process. The borrower will tailor its consultation process to the language preferences of the Affected Communities, their decision-making processes, and the needs of disadvantaged and vulnerable groups. This process should be free from external manipulation, interference, coercion and intimidation.

The very nature of this process requires that the borrower does not only demonstrate effective stakeholder engagement to EPFIs but also to stakeholders themselves; the stakeholder engagement plan must be a public document, part of the package of project related documents that must be disclosed by the borrower

EPFIs recognise that indigenous people are often a vulnerable segment of Project-Affected Communities. Projects affecting indigenous peoples will be subject to a process of Informed Consultation and Participation, and will comply with applicable national law, including those laws implementing host-country obligations under international law. In [non-OECD countries and OECD countries not designated as High-Income], there is no reason to make this distinction in this context consistent with special circumstances described in IFC Performance Standard , Projects with adverse impacts on indigenous people will require their free, prior and informed consent.

To facilitate Stakeholder Engagement, the borrower will make the stakeholder engagement plan, the Assessment documentation and the ESMP readily available to the public in the relevant local language and in a culturally appropriate manner. Refer to Principle 10 for Project Reporting requirements.

Principle 6: Grievance Mechanism

For all Category A and, as appropriate, Category B Projects, the borrower will, as part of the ESMS, establish a grievance mechanism designed to receive and facilitate resolution of concerns and grievances about the Project's environmental and social performance.

Please explicitly reference the requirement of business to provide appropriate 'access to remedy' as now recognised in the PRR framework

The grievance mechanism should be scaled to the risks and impacts of the Project and have Affected Communities as its primary user. It will seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate, readily accessible, at no cost, and without retribution to the party that originated the issue or concern. The mechanism should not impede access to judicial or administrative remedies. The borrower will inform the Affected Communities about the mechanism in the course of the Stakeholder Engagement process. The borrower will also maintain an explanation of the workings as well as a track record of proceedings on its company website to allow for external review of the effectiveness of the mechanism.

Principle 7: Independent Review

Project Finance

For all Category A and, as appropriate, for Category B Projects, an Independent Environmental and Social Consultant, not directly associated with the borrower, will carry out an Independent Review of the Assessment, ESMP, ESMS and consultation process documentation in order to assist the EPFI's due diligence, and assess Equator Principles compliance.

The Independent Environmental and Social Consultant will also propose or opine on a suitable AP capable of bringing the Project into compliance with the Equator Principles, or indicate when compliance is not possible.

Project-Related Corporate Loans

An Independent Review by an Independent Environmental and Social Consultant is required for Projects with high risk impacts including, but not limited to, any of the following:

- Adverse impacts on indigenous people,
- Critical habitat impacts,
- Significant cultural heritage impacts,
- Large-scale resettlement.

Large impact on climate /high GHG emissions stemming from project

In other Category A, and as appropriate Category B, Project-Related Corporate Loans, the EPFI may determine whether an Independent Review is appropriate or if internal review by the EPFI is sufficient. This may take into account the due diligence performed by an Official Agency, if relevant.

All independent reviews should be made publicly available

Principle 8: Covenants

An important strength of the Equator Principles is the incorporation of covenants linked to compliance. For all Projects, the borrower will covenant in the financing documentation:

a) to comply with all relevant host country environmental and social laws, regulations and permits in all material respects;

b) to comply with the ESMPs and AP (where applicable) during the construction and operation of the Project in all material respects;

c) to provide periodic reports in a format agreed with the EPFIs (with the frequency of these reports proportionate to the severity of impacts, or as required by law, but not less than annually), prepared by in-house staff or third party experts, that i) document compliance with the ESMPs and AP (where applicable), and ii) provide representation of compliance with relevant local, state and host country environmental and social laws, regulations and permits; and

d) to decommission the facilities, where applicable and appropriate, in accordance with an agreed decommissioning plan.

Where a borrower is not in compliance with its environmental and social covenants, the EPFI will work with the borrower on remedial actions to bring the Project back into compliance to the extent feasible. If the borrower fails to re-establish compliance within an agreed grace period, the EPFI reserves the right to exercise remedies, as considered appropriate.

The social and environmental clauses contained in the loan covenant are not considered 'client confidential' and will be disclosed to all stakeholders, so as to allow for external review of compliance

Principle 9: Independent Monitoring and Reporting

Project Finance

To assess Project compliance with the Equator Principles and ensure ongoing monitoring and reporting over the life of the loan, the EPFI will, for all Category A and, as appropriate, Category B Projects, require the appointment of an Independent Environmental and Social Consultant, or require that the borrower retain qualified and experienced external experts to verify its monitoring information which would be shared with the EPFI and local stakeholders.

Project-Related Corporate Loans

For Projects where an Independent Review is required under Principle 7, the EPFI will require the appointment of an Independent Environmental and Social Consultant, or require that the borrower retain qualified and experienced external experts to verify its monitoring information which would be shared with the EPFI and local stakeholders.

Principle 10: Reporting and Transparency

Project Reporting Requirements

For all Category A and, as appropriate, Category B Projects located in non-OECD countries and OECD countries not designated as High-Income, the EPFI will require the borrower to disclose the Assessment documentation and the ESMP online

The text here should contain an explicit list of all documents that may fall under the term 'assessment documentation and ESMP' so that any potential gaps in the disclosure can be externally verified

For all Category A and, as appropriate Category B Projects, in all countries, the EPFI will require the borrower to publicly report on its website greenhouse gas emission levels during the operational phase for Projects emitting over 100,000 tonnes of CO equivalent annually. Refer to Annex A for detailed requirements on greenhouse gas emissions reporting.

This reporting requirement should at the very least apply for projects emitting over 25,000 tonnes of CO_2 equivalent annually, the threshold for such a quantification adopted in the new IFC Performance Standards.

EPFI Reporting Requirements

The EPFI will report publicly at least annually on transactions screened and closed, and about its Equator Principles implementation processes and experience, taking into account appropriate confidentiality considerations. The EPFI will report according to the minimum reporting requirements detailed in Annex B.

DISCLAIMER

The EPFIs view the Equator Principles as a financial industry benchmark for developing individual, internal environmental and social policies, procedures and practices. As with all internal policies, the Equator Principles do not create any rights in, or liability to, any person, public or private. Institutions adopt and implement the Equator Principles voluntarily and independently, without reliance on or recourse to the IFC, the World Bank or other EPFIs.

ANNEXES: IMPLEMENTATION REQUIREMENTS

Annex A - Climate Change: Alternatives Analysis, Quantification and Reporting of Greenhouse Gas Emissions

Where an alternatives analysis is required by a regulating permitting process, the analysis will follow the methodology and time frame required by the relevant process. Following completion of an alternatives analysis, the borrower will provide evidence of [technically and financially feasible and cost-effective] it is this sentence that creates a loophole big enough for a coal truck to drive through. It therefore needs to be made clear what this means and who assesses this options available to reduce Project-related GHG emissions during the design, construction and operation of the Project.

Language needs to be included that obliges borrowers to opt for less GHG emission option, or at very least publicly report on reasons for deviation from this.

Quantification of GHG emissions will be conducted by the borrower in accordance with internationally recognised methodologies and good practice, for example, the GHG Protocol. For Scope emissions, this analysis will include consideration of alternative fuel or energy sources. Additionally, for Projects in sectors with the highest carbon intensity, the alternatives analysis will include comparisons to other viable technologies used in the same industry in the country or region with the relative energy efficiency of the selected technology.

High carbon intensity sectors include the following, as outlined in the IFC EHS Guidelines:

- thermal power,
- cement and lime manufacturing,
- integrated steel mills,
- base metal smelting and refining,
- foundries.

The EPFI will require the borrower to publicly report on greenhouse gas emission levels during the operational phase for Projects emitting over 100,000 tonnes of CO_2 -equivalent annually (combined Scope 1 and Scope 2), and they will be encouraged to report publicly on Projects emitting over 25,000 tonnes.
What form does ‘encouraging’ take? What sanctions exist if encouraging leads nowhere?

Public reporting requirements can be satisfied via regulatory requirements for reporting or environmental impact assessments, or voluntary reporting mechanisms such as the Carbon Disclosure Project where such reporting includes emissions at Project level.

The borrower will quantify direct emissions from the facilities owned or controlled within the physical Project boundary (Scope 1 emissions), as well as indirect emissions associated with the off-site production of energy used by the Project (Scope 2 emissions).

Annex B - Minimum Reporting Requirements

These reporting requirements apply to Project Finance Advisory services, Project Finance and Project-Related Corporate Loans, unless specified otherwise.

Reporting data will be published in a single on line location on the internet. If data is displayed in different locations (e.g. website, reports) the EPFI will provide links to facilitate information gathering.

The EPFI will report annually at a minimum and will specify the reporting period (e.g. start and end dates).

Aggregated Data Reporting

1. The EPFI will report the number of transactions screened for the first time during the reporting period. The EPFI will provide a definition of "transactions screened".

2. Data for Project Finance Advisory services and Project Finance will be displayed separately from Project-Related Corporate Loans.

3. The EPFI will display a breakdown of the data as follows:

    - Category (A, B, or C);
    - Category (A, B, or C) and by Sector and Region i.e. (Mining, Infrastructure, Oil and Gas, Power, Others) and (Americas, Europe Middle East and Africa, Asia Pacific);
    - Category (A, B, or C) and by Host Country Classification (e.g. High-Income OECD);
    - Category (A or B) and whether an Independent Review has been carried out.

4. The EPFI will report on the number of Project Finance and Project-Related Corporate Loans that have reached Financial Close during the reporting period and will display a breakdown of the data by Category (A, B, or C). Note this requirement does not apply to Project Finance Advisory services.

Implementation Reporting

1. The EPFI will report on their implementation of the Equator Principles, including:

    - The mandate of the Equator Principles Reviewers (e.g. responsibilities and staffing);
    - The respective roles of the Equator Principles Reviewers and business lines involved in the transaction review process;
    - The level of senior management involvement for Category A and, as appropriate, Category B transactions;
    - The incorporation of the Equator Principles in their credit and risk management policies and procedures.

2. EPFIs, in their first year of Equator Principles adoption, will provide details of their internal preparation and staff training.

3. Each EPFIS will provide the public with a contact point for any enquiries on the implementation of the EPs

Project-Specific Data Reporting

Project-Specific Data reporting is:

- applicable only to Project Finance transactions that have reached Financial Close,
- subject to obtaining client consent,
- subject to applicable local laws and regulations, and
- subject to any reduction in the rights, or increase in the liability, of the EPFI.

The EPFI will seek client consent at a time during the loan documentation process deemed appropriate by the EPFI or at Financial Close.

It is a huge missed chance that the public disclosure of the existence of the deal is not part of every loan covenant under Equator. Prospective borrowers would then know in advance that this is part of the deal

The crucial issue here is how many clients will consent to this. EPFIs must publicly set themselves a minimum percentage of total loans disclosed to allow for a meaningful review of the effectiveness of this requirement

The EPFI will submit data (or a link to the data on their website) to the Equator Principles Secretariat for publication on the Equator Principles website. The data will include:

- borrower / project sponsor name
- Project name (as per the loan agreement);
- Sector: Mining, Infrastructure, Oil and Gas, Power, Others;
- Region: North America, Central and South America, Europe, Middle East, Africa, Asia, Pacific;
- The calendar year in which the loan reached Financial Close.

Exhibit I - Glossary of Terms (not included here)

Exhibit II: Illustrative List of Potential Environmental and Social Issues to be Addressed in the Environmental and Social Assessment Documentation

In the context of the business of the Project, the Assessment documentation will address, where applicable, the following issues:

a) assessment of the baseline environmental and social conditions
b) consideration of feasible environmentally and socially preferable alternatives
c) requirements under host country laws and regulations, applicable international treaties and agreements
d) protection of human rights by acting with due diligence to prevent, mitigate and manage adverse human rights impacts
e) protection of community health, safety and security (including risks, impacts and management of Project's use of security personnel)
f) protection of cultural property and heritage
g) protection and conservation of biodiversity, including endangered species and sensitive ecosystems in modified, natural and critical habitats, and identification of legally protected areas
h) sustainable management and use of renewable natural resources (including sustainable resource management through appropriate independent certification systems)

i) use and management of dangerous substances
j) major hazards assessment and management
k) labour issues (including the four core labour standards), and occupational health and safety
l) fire prevention and life safety
m) socio-economic impacts
n) land acquisition and involuntary resettlement
o) impacts on affected communities, and disadvantaged or vulnerable groups
p) impacts on indigenous peoples, and their unique cultural systems and values
q) cumulative impacts of existing Projects, the proposed Project, and anticipated future Projects
r) consultation and participation of affected parties in the design, review and implementation of the Project
s) efficient production, delivery and use of energy
t) pollution prevention and waste minimisation, pollution controls (liquid effluents and air emissions) and solid and chemical waste management
u) viability of Project operations, of reasonable foreseeable changing weather patterns/climatic conditions, together with adaptation opportunities. The acknowledgement of this as a risk that must be assessed is in sharp contrast with the lack of any commitment of EPFIs to reduce this overall risk

Note: The above list is for illustrative purposes only. The Assessment process of each Project may or may not identify all issues noted above, or be relevant to every Project.

Exhibit III: IFC Performance Standards on Environmental and Social Sustainability and Environmental, Health and Safety Guidelines

The Equator Principles refer to two separate parts of the IFC Sustainability Framework as *"the then applicable environmental and social standards"* under Principle .

1. The IFC Performance Standards on Environmental and Social Sustainability

As of January 1st 2012 the following Performance Standards were applicable:

1. Assessment and Management of Social and Environmental Risks and Impacts
2. Labor and Working Conditions
3. Resource Efficiency and Pollution Prevention
4. Community Health, Safety and Security
5. Land Acquisition and Involuntary Resettlement
6. Biodiversity Conservation and Sustainable Management of Living Natural Resources
7. Indigenous Peoples
8. Cultural Heritage

Guidance Notes accompany each Performance Standard. EPFIs do not formally adopt the Guidance Notes however EPFIs and borrowers may find them useful points of reference when seeking further guidance on or interpreting the Performance Standards.

The IFC Performance Standards, Guidance Notes and Industry Specific Guidelines can be found at http://www.ifc.org/ifcext/policyreview.nsf/Content/-Edition.

2. The IFC Environmental, Health and Safety (EHS) Guidelines

The IFC EHS Guidelines are technical reference documents containing examples of Good International Industry Practice (GIIP), as defined in Performance Standard on Resource Efficiency and

Pollution Prevention. They contain the performance levels and measures that are normally considered acceptable for Projects in emerging markets, as well as being achievable in new facilities at reasonable costs by existing technology. Two Guidelines are used:

The General EHS Guidelines

These Guidelines contain information on cross-cutting environmental, health, and safety issues potentially applicable to all industry sectors. They are divided into sections entitled: Environmental; Occupational Health and Safety; Community Health and Safety; Construction; and Decommissioning. They should be used together with the relevant Industry Sector Guideline(s).

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