

# **Bold Steps Forward**

## **Towards Equator Principles that deliver to people and the planet**

### **A civil society call to the Equator Principles Financial Institutions**

**Nijmegen, Netherlands, January 14 2010**

Undersigned organisations and individuals will take part in, or have been informed of the meeting between Equator Principles Financial Institutions (EPFIs) and civil society groups in February 2010 in Switzerland.

Prior to this meeting, we want to convey our growing concern about the apparent ineffectiveness of the Equator Principles initiative to help meet the profound social and environmental challenges of our times. After over six years we are disappointed with the lack of transparency, accountability, effectiveness and true compliance with the Principles and the lack of progress in their further development. We are even more disappointed about the continued involvement of EPFIs in projects that should have no place in the portfolio of banks that strive to be sustainability leaders.

We call upon the EPFIs to reinvigorate the pioneering spirit and strong ambitions that led to the launch of the Principles in 2003, and to adopt as soon as possible a number of measures -listed below-, so that the Equator Principles meet the expectations that civil society places on any voluntary initiative that strives to make a real difference to people and planet.

#### **Towards steps that matter**

Over the years, our organisations have gained extensive experience with voluntary initiatives of all kinds, in all sectors. While we have seen laudable efforts to improve business practices through self regulation, so far these efforts have not been sufficiently ambitious or accountable to move business towards environmental and social sustainability.

Without renewed efforts to be bold, the prospect of banks using self regulation to avoid social and environmental upheaval looks bleak. The global economic crisis that was triggered by financial institutions' unchecked activities, greed driven operations and spectacular failings in risk management has led to a strong public call for much tighter government and international regulation, including the regulation of 'extra-financial' issues now left to voluntary initiatives as the Equator Principles.

We strongly support such sustainable financial regulations. We also believe that voluntary initiatives have a complementary role to play, but only if they are sufficiently ambitious, transparent, accountable and effective.

### **Where is the spirit of 2003?**

In July 2003, we welcomed the commitment of nine banks to fundamentally change the way they provide project finance. Their new approach was based on enhanced risk assessment, by taking social and environmental impacts into account; an acknowledgement of key role of local communities in project design and the need to obtain their support for projects; solid binding agreements with project sponsors to prevent, mitigate or compensate negative impacts, should they arise; as well as the withholding and/or cancellation of financing should sponsors fail to comply with environmental and social covenants. We shared the hope of the adopting banks that this package would help safeguard the rights and interests of local stakeholders and protect the environment, while also leading to increased, sustainable business opportunities.

From the very beginning we also identified critical shortcomings to the Principles, most notably the lack of transparency requirements for banks and project sponsors alike, the absence of any accountability mechanism, and the absence of specific requirements on how adopting banks must integrate the Principles into their business operations. We also regret that the Principles are firmly pegged to the Performance Standards of the International Finance Corporation (IFC), the private arm of the World Bank, leaving no space for bank commitments beyond this limited framework.

Yet despite all these shortcomings we considered the initiative a worthwhile commitment. For over six years our organisations have engaged in good faith with the EPFIs to debate issues related to the content and the practice of the Principles. At the same time, we have monitored the implementation of the Principles on the ground and supported local communities in their engagements with EPFIs and sponsors. In short, we have done our utmost to assist in making the Equator Principles deliver on their promise. Yet, after all these years we are disappointed in how little the Principles have achieved; their limited effect on the protection of the planet's ecosystems, and on the lives of communities that are supposed to be the prime beneficiaries of the Principles.

Today we find ourselves continuing to campaign against the very same projects that we expected the Principles to prevent or significantly improve: supersized dams blocking life-supporting rivers, driving thousands of people from their submerged villages and lands; huge mining projects scarring entire mountains and polluting rivers and seas with their waste; oil and gas pipelines carrying their toxic load straight through devastated forests and threatening marine sanctuaries; coal power plants belching out millions of tons of greenhouse gases into our already fatigued atmosphere; enormous paper mills with insatiable appetites that devour the last wilderness areas, etc. Much to our disappointment, the Equator Principles allow for all of these disgraces to proceed, only now in an 'Equator compliant' mode.

### **Bold steps needed**

When witnessing the current state of affairs of the Principles, we see a lack of spirit, of belief in the vast potential of the Principles amongst the very banks that have adopted it. We witness an inward looking initiative that continues to operate in secrecy, that

has no internal strength to take on new challenges, or deal with issues whose incorporation is already long overdue, and that continues to deny affected communities and other stakeholders their rightful place in the process.

We want to see the original spirit that created the Principles revived. We strongly believe that in the case of a failure to revive this spirit and to further develop the Principles, they will cease to be a significant and leading sustainability initiative.

We therefore call upon you to take bold steps forward with the Principles, irrespective of the ongoing revision of the Performance Standards of IFC. Concretely you need to:

## **1. Open up**

No voluntary initiative can flourish if it operates in secrecy. Public scrutiny -actively invited and integrated into the model of the initiative itself- is the only check on the sincerity of adopting banks in making the Equator Principles work. Banks and project sponsors must therefore operate in a spirit of openness and transparency, and not defend and hide behind current excessive interpretations of 'client confidentiality' to withhold information to stakeholders. Given the current widespread public distrust towards banks, the overriding question for EPFIs should not be 'how much transparency can we allow?' but 'how much secrecy can we still afford?'

Transparency is necessary on both bank and project levels. The current Equator Principles oblige EPFIs to meet an extremely lenient set of reporting criteria, but these do not allow external observers to judge the quality and progress of a banks' implementation. The reporting criteria also allow for a long grace period during which it is impossible for external observers to determine what an adopting bank has put in place to deliver on its commitment to the Principles.

Full transparency is even more important on the project level. Local stakeholders need to be aware that a proposed project that is about to change their lives is 'under Equator' and that the Principles grant them rights to information, consultation and influence. When stakeholders are to be consulted in a timely, culturally appropriate and meaningful way, influence the design of a project and contribute to an action plan to deal with any negative social and environmental impacts, provide their explicit support, -or in the case of indigenous peoples provide or withhold their consent, they must be fully informed about every aspect of what is being proposed.

EPFIs should therefore agree to:

### **Transparency at the bank and initiative-level**

- Come up with a stringent set of reporting obligations for adopting banks, including new adopters. This package should *at least* include targets for implementation, precise information on the commitment made by a bank if this commitment exceeds the core Principles; detailed information on the Equator portfolio of each bank -composition, trends, regional and sectoral breakdown, names of projects and sponsors- and contact information for anyone wishing to enquire about the banks implementation of the Principles. Banks should also

report on Equator compliance, including which projects are not in compliance with Equator standards and what corrective actions the bank and/or client is taking to remedy this.

- Introduce mandatory external, independent and transparent third party verification of compliance with these reporting guidelines.
- list the names of all projects and sponsors that are being financed 'under Equator' on the website of the EPFIs involved, or on the official Equator website. Every deal should be publicly announced as being governed by the Equator Principles. Keeping this information confidential, citing client confidentiality, directly contradicts the spirit and objectives of the Principles.
- Develop an online project information disclosure tool that by 2011 will allow external stakeholders to easily access all publicly available information from banks, project sponsors and other parties involved, *and* to identify which information is still not in the public domain as required. This includes providing the contact details of all parties involved in the deal.
- Make a much stronger effort to disseminate information about the Principles to potentially affected stakeholders. If they are to benefit from the Principles they need to be well informed about them.

#### **Transparency at the project level**

- Immediately 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.
- In all relevant contracts, including loan agreements and contracts in the pre-financing phase (which often create 'blanket' confidentiality agreements governing the life the transaction), stipulate 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.
- Make environmental and social 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 Equator compliance.
- 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 on the client's compliance with Action Plans or social and environmental requirements.
- Require the project sponsor to publicly provide information on the precise functioning of the grievance mechanism established for a particular project.

## **2. Be accountable**

Transparency is one crucial element of accountability, but we also call upon EPFIs to create mechanisms that can be used by affected stakeholders to express concerns

about the implementation of the Principles, and allow communities to seek redress if project sponsors violate rights or legitimate interests supposedly guaranteed by the Principles.

This call for the establishment of **accountability, compliance, and dispute settlement mechanisms** for Equator projects is as old as the Principles itself, and has been rejected by the EPFIs ever since. We strongly believe that the rejection of such mechanisms by EPFIs undermines the legitimacy of the Principles and denies EPFIs a valuable additional source of information on how the Principles play out in individual transactions.

In the past, our organisations have proposed various models for the establishment for such a mechanism, some modelled upon already existing mechanisms with development banks, the World Bank/IFC and some Export Credit Agencies. EPFIs should at least bring their business practice in line with precedents set by their public counterparts and take steps to finally establish a mechanism that fits and serves their specific needs.

In addition, EPFIs must also develop robust criteria for the establishment and proper functioning of the project-level grievance mechanisms mandated by Principle 6 of the Principles, and oblige all project sponsors to publicly report on the organisation and effectiveness of these mechanisms. It is worth noting here that John Ruggie, the UN Special Representative on business and human rights, has obtained wide support for his findings that such a mechanism must be legitimate, accessible, predictable, equitable, rights-compatible, and transparent.<sup>1</sup>

While, on the one hand, EPFIs need to establish accountability mechanisms to better ensure compliance of project sponsors with the Principles, they also need to establish better accountability for themselves. For example:

- EPFIs should develop a clear procedure to 'delist' banks that do not meet new transparency and accountability requirements, or banks that repeatedly have problems with compliance.
- The Equator Principles website must be changed from a self congratulatory advertising platform into a portal that explicitly fosters public accountability and debate on the effect of the Principles. For this to happen, the site should ideally be managed by an independent third party, paid for by the EPFIs, and overseen by a board that includes representatives of external stakeholders.
- EPFIs should advance their knowledge about the impacts of the EPs in the real world. For example, they could facilitate academic/journalistic research on the

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<sup>1</sup> In his end report he states that: " An effective grievance mechanism is part of the corporate responsibility to respect". A/HRC/8/5, para. 93. "For multi-stakeholder or industry initiatives aiming to advance human rights standards in the practices of their corporate members, a grievance mechanism provides an important check on performance. The same is true for financial institutions seeking to ensure compliance with human rights standards in the conduct of the projects they support. In the absence of an effective grievance mechanism, the credibility of such initiatives and institutions may be questioned." A/HRC/8/5, para. 100.

implementation of the Equator Principles by making all relevant project information available. EPFIs may consider coming up with their own set of examples of successful application of the Principles, in the form of a collection of 'Rosy Deals' on the Equator website.

- EPFIs should explore opportunities for establishing a panel of experts or instigate joint field research between NGOs/EPFIs and project sponsors, aimed at arriving at balanced conclusions on the quality of project level implementation, also for the sake of setting future best practices.

### **3. Extend the scope**

Assuming that the Principles start delivering in the field of project finance, a relatively small niche market, there is still a world to win through the application of the Principles to other bank activities. We appreciate that a number of adopting banks apply the Principles beyond project finance, but we are equally aware of situations where the Principles are not being applied, but where the involvement of EPFIs is clearly aimed at making a particular project happen.

It cannot be justified that banks consider certain social and environmental issues important and 'material' in one part of their business but not in other activities. We therefore call upon the EPFIs to:

- Take immediate steps to formally extend the scope of the Equator Principles not just to project finance transactions per se but to all financing of 'projects', regardless of the specific financing modality.
- Within your 'Scope' working group, continue to explore how the Principles could be extended beyond project finance into corporate lending, asset management and initial public offerings, with the aim towards making this expansion mandatory, rather than producing merely a set of best practice papers.

### **4. Stop financing climate change**

Runaway climate change is by far the biggest environmental threat of our times, threatening the lives and livelihoods of billions of people worldwide. Yet, despite the Principles' ambition to appropriately manage all risks related to project finance, there is an astonishing lack of commitment in the Principles to adequately deal with climate change.

The only 'obligation' now placed upon project sponsors is to "promote the reduction of project-related greenhouse gas (GHG) emissions in a manner appropriate to the nature and scale of project operations and impacts". The sponsor is to "quantify direct emissions from the facilities ... and evaluate technically and financially feasible and cost-effective options to reduce or offset project-related GHG emissions during the design and operation of the project".

With so much discretion placed with the project sponsor, and with 'indirect emissions' being understood here solely as resulting from energy use in the production process and not resulting from the ultimate combustion of a product of a specific project (oil, gas, coal fuel), the Principles simply fail to deal with the most pressing environmental

threat of our times. Nothing prevents adopting banks from financing massive fossil fuel exploration and exploitation projects that will lead to billions of tons of greenhouse gases being released into the atmosphere. In fact, some of the most controversial projects still receiving finance with explicit reference to the Principles are precisely large scale oil and gas projects and coal fired power plants which have a huge negative impact on climate change.

We consider this situation simply unacceptable. We therefore call on EPFIs to:<sup>2</sup>

- Change the Principles so that they include the climate impact of proposed projects as an integral part of all risk assessments. Commit to a process of continuously tightening the conditions for financing under the Principles, if required, to meet the challenges posed by an unfolding climate crisis.
- Include additional principles that categorically exclude the financing of, at minimum, all new coal, oil and gas extraction and delivery projects and all new coal-fired power plants.
- Commit to develop workable instruments for measuring financed emissions, and adopt reduction targets for each bank. Provide a stringent timeline for this. The current emphasis on quantifying and disclosing, and monitoring and reporting project-specific GHG emissions neglects the need to seek net reductions in GHG emissions at both the project and corporate levels.
- Articulate a set of stringent climate best practices in each sector and stipulate that meeting these will be a prerequisite for obtaining finance. These standards should tighten over time (continuous improvement).
- For each sector, list negative practices that will automatically lead to the exclusion from any finance from EPFIs.
- Require that project sponsors continuously upgrade their already existing facilities in order to lower the climate impact; provide ongoing financial support for such revisions.

We look forward to hearing from you what you commit to do to revive the spirit of 2003 and turn the Principles once more into a groundbreaking sustainability initiative. We count on bold steps forward.

**This call is endorsed by the following groups and networks:**

**International**

BankTrack, Johan Frijns  
Asia Pacific Research Network, Maria Theresa N. Lauron  
Central-Eastern European Bankwatch Network, Mark Fodor  
ECA Watch Europe, Deborah Lambert Perez  
Friends of the Earth Europe, Paul de Clerck\*  
Greenpeace International, Wendel Trio  
NGO Forum on the ADB, Red Constantino

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<sup>2</sup> See also the BankTrack position paper on banks and climate change 'A challenging climate'; what banks should do to combat climate change'  
[http://www.banktrack.org/download/a\\_challenging\\_climate\\_2\\_0\\_what\\_banks\\_must\\_do\\_to\\_combat\\_climate\\_change](http://www.banktrack.org/download/a_challenging_climate_2_0_what_banks_must_do_to_combat_climate_change)

## **Argentina**

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## **India**

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#### **Norway**

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#### **Pakistan**

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#### **Philippines**

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#### **South Africa**

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**List above as of January 14, 2010. For the latest list of signatories see:**  
**[http://www.banktrack.org/show/actionletters/equator\\_call](http://www.banktrack.org/show/actionletters/equator_call)**

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The logo for BankTrack, featuring the word "BANK" in a bold, blue, sans-serif font, followed by "Track" in a blue, italicized, sans-serif font. A blue arrow points to the right, underlining the "Track" part.