

BANKTRACK

THE UN WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL
CORPORATIONS AND OTHER BUSINESS ENTERPRISES,
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS,
UNOG-OHCHR,
CH-1211 GENEVA 10,
SWITZERLAND

SUBJECT: COMPLAINT REGARDING EQUATOR PRINCIPLES ASSOCIATION FAILINGS IN UN GUIDING PRINCIPLES IMPLEMENTATION

NIJMEGEN, 25 APRIL 2023

Dear Members of the UN Working Group,

We are writing to submit a complaint regarding the ongoing failure of the Equator Principles Association to meet its responsibilities under the UN Guiding Principles on Business and Human Rights, in particular regarding the responsibility set out in Principle 30 for industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards to ensure that effective grievance mechanisms are available.

This complaint follows engagement with the Equator Principles Association on the question of the accountability of the initiative over a period twenty years, outlined further below, which we regret has proved unsuccessful. We respectfully request that the Working Group investigate this complaint and communicate its recommendations to the Equator Principles Association in this regard.

In this letter we set out further background to the Equator Principles, including examples of harmful projects which have proceeded with finance under the Principles; the reasons we consider the Equator Principles Association is failing to meet its responsibilities under the UN Guiding Principles, and our engagement with the Equator Principles Association in this regard to date.

About the Equator Principles and the Association

The Equator Principles are a risk management framework for financial institutions to identify, assess and manage environmental and social risks when financing large projects. At the time of writing there are 138 financial institutions in 38 countries that are members of the Equator Principles (termed Equator Principles Financial Institutions, or EPFIs). The Equator Principles are governed by the Equator Principles Association (EPA), which has a Steering Committee elected by members, currently led by Standard Chartered Bank, and a CEO and Secretariat.

The kind of large infrastructure projects financed “under Equator” can have serious and irremediable impacts on people and the planet, so it is vital that the Equator Principles are effective at ensuring human rights risks are well managed. Unfortunately, the Equator Principles have suffered, ever since their formation in 2003, from a fundamental absence of accountability.



Problematic projects which result in human rights harm continue to be financed under the Equator Principles. To provide a few notable examples from recent years:

- In 2014 the Agua Zarca dam received finance under the Equator Principles, despite not having obtained Free, Prior and Informed Consent from affected Indigenous communities. At the time the loan was made, one Indigenous activist opposing the project, Tomas Garcia, had already been killed. It took further violence and murder of activists opposing the dam, including Berta Caceres, the Lenca leader of the Honduran federation of Indigenous groups COPINH, before the project's funding was suspended and EP member Dutch development finance agency FMO withdrew from the project.¹
- In 2016 the Dakota Access Pipeline (DAPL), a 1,172-mile-long underground oil pipeline from the Bakken oil fields in North Dakota to the Patoka oil terminal hub in Illinois, secured finance under the Equator Principles. DAPL became widely known for violations of Indigenous rights, after a large protest camp at Standing Rock was ultimately unable to stop the pipeline proceeding.²
- The East African Crude Oil Pipeline (EACOP), a proposed 1,445-kilometer oil pipeline from Hoima, Uganda to the port of Tanga in Tanzania, looks set to be financed under the Equator Principles, with two Equator member banks currently working as Financial Advisers to the project. Construction of the pipeline has already been associated with harassment of human rights defenders and adverse impacts on affected communities, while the project also poses grave risks to protected environments, water sources and wetlands in both Uganda and Tanzania. Given the gravity of project risks, compliance with the Equator Principles will be extremely challenging if not impossible.³

BankTrack, as a civil society organisation that tracks and campaigns on private sector commercial banks and the impacts of the projects and companies they finance, has encountered numerous examples of such problematic projects over the 20-year history of the Equator Principles.⁴ As such, an effective Grievance Mechanism, through which affected communities can raise complaints to the Equator Principles Association and the financiers of projects when they present risks or actual adverse rights impacts, is essential to enable a path for such impacts and risks to be addressed early and remediated as appropriate. However, despite extensive engagement with the EPA (see below), such a Grievance Mechanism still does not exist, and it has become clear in the last 12 months that the EPA has no plans to consider or develop such a mechanism.

The responsibility of the EPA to establish an effective Grievance Mechanism

The UN Guiding Principles set out in Principle 30 that “Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.” We consider that the Equator Principles are an industry initiative that is based on respect for human rights-related standards.⁵

¹ For more information see BankTrack's profile here: https://www.banktrack.org/project/agua_zarca_dam

² For more information see BankTrack's profile here: https://www.banktrack.org/project/dakota_access_pipeline

³ For more information see BankTrack's profile here:

https://www.banktrack.org/project/east_african_crude_oil_pipeline

⁴ Further examples of such problematic projects can be found on our website at

banktrack.org/campaign/tracking_the_equator_principles and at equatorbanksact.org/disaster_projects.

⁵ For example, the Equator Principles include a welcome commitment that “when financing Projects, we [member institutions] will fulfil our responsibility to respect Human Rights in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs) by carrying out human rights due diligence.” See: https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf, preamble page 3.



The commentary to Principle 30 of the UNGPs further states: “Such collaborative initiatives should ensure the availability of effective mechanisms through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met. The legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms. The mechanisms could be at the level of individual members, of the collaborative initiative, or both. These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts.” (Emphasis added.)

Although the Equator Principles require the establishment by project sponsors of *project-level* grievance mechanisms for high-risk projects financed by Equator Principles Financial Institutions (EPFIs), neither the EPFIs financing the project, nor the EPA is a party to these mechanisms. In addition, BankTrack research has found that these project-level mechanisms are often absent or inadequate.⁶

There are currently no means by which project-affected people or their legitimate representatives can raise instances of alleged non-compliance with the Equator Principles by its EPFI signatories. Indeed, in cases in which complaints have been raised to the EPA regarding projects financed under Equator, the secretariat has responded that “as per the EPA Governance Rules, the EP Secretariat does not have the authority or capacity to respond regarding individual Projects or EPFIs.”⁷

We suggest that the most straight-forward and effective way for the Equator Principles Association to fulfil its obligations under Principle 30 of the UN Guiding Principles is through establishing a central and independent accountability mechanism at the EPA level.

As we and other partner organisations have argued to the EPA, an effective and accessible Equator Principles accountability mechanism would help reduce reputational, financial, and legal risks to EPFIs and their clients by surfacing and effectively addressing problems and grievances as they arise. It would also help minimize environmental and social risks to local communities before deeper harms ensue. It can also enhance the Equator Principles’ effectiveness by contributing to improved due diligence and risk management and provide a basis for continuous learning, making the Equator Principles a more effective risk management tool for banks, as intended.⁸

Our engagement with the Equator Principles regarding this issue

Civil society groups, often led by BankTrack, and other experts have long called on the EPA to develop an accountability mechanism that can address alleged breaches and provide for effective remedies to communities who suffer harm.⁹ For example, during the consultation period leading to the development of the current, fourth version of the Equator Principles (EP4), BankTrack was one of 79 signatories to an open joint submission to the Equator Principles Association setting out arguments for an accountability mechanism at the EPA level.¹⁰

⁶ For example, our briefing paper “[Trust us, we’re Equator Banks, Part I](#)” found that only 17 out of 37 projects analysed (46%) had evidence of a project-level grievance mechanism; and [Part II](#) of the study looked in more detail at nine cases, finding no detailed information on the grievance mechanism or the process of how to complain for seven out of the nine projects analysed.

⁷ Private communication received from the Equator Principles Association secretariat, seen by BankTrack

⁸ See for example, [Joint submission to the Equator Principles Association: Towards an accountability mechanism for the Equator Principles](#), August 2019.

⁹ For example, Bank Track’s [first commentary on the Equator Principles in December 2003](#) called for the establishment of an independent accountability mechanism.

¹⁰ [Joint submission to the Equator Principles Association: Towards an accountability mechanism for the Equator Principles](#), August 2019.



Upon the release of EP4 in 2019, the Equator Principles Association released a document setting out its responses to recommendations received in the course of its consultation. This included a recommendation to “assess the establishment of an EPA platform through which the relevant group of EPFIs can receive and respond to grievances and / or requiring EPFIs to have their own accountability mechanism.” The EPA stated that the recommendation was “considered but not included at this time”, adding: “A new Operations Working Group is considering how this could be integrated into EP Association governance.”¹¹

The formation of this Operational Working Group to consider this and other recommendations around transparency and accountability was a welcome and hopeful signal. However, at a July 2022 meeting hosted by the UN Human Rights Office and OECD, the Chair of the Equator Principles Association Mr Amit Puri confirmed that such a mechanism was no longer being considered, citing concerns that securing the consensus needed from EPFIs to proceed would be difficult.¹²

We consider that the Steering committee of the EPA, being in charge of the initiative, has a clear responsibility to act to overcome such challenges and build the support within the membership base to ensure that EPFIs are accountable to their commitments under the Equator Principles. For the EPA to continue to ignore its own responsibilities under the UN Guiding Principles is an untenable situation, particularly for rights-holders that continue to be affected by bank-financed projects.

For this reason, and given that efforts at securing progress from the EPA by engagement have come to naught, we would like to ask the UN Working Group to take appropriate steps within its remit to investigate this complaint, engage with the EPA and communicate recommendations in this regard.

Please do not hesitate to contact us if you have any comments or questions in relation to this complaint.

Kind regards,



Ryan Brightwell
Director of Research and Communications, BankTrack
Tel 31-6-34643116, ryan@banktrack.org

¹¹ “EPA Response to Feedback During Review of the EPs” (especially p10, “Transparency”), November 2019, available [here](#).

¹² See the webinar recording available [here](#). The comments by the EPA Chair, Amit Puri, are at 1hr 11m.