

September 21, 2020

Equator Principles Association

Concerning: Removal of Designated Country Status during Global Pandemic

Dear Members of the Equator Principles Association:

With the October 1, 2020 implementation date for EP4 near, we write to draw attention to host country policy changes in the wake of the global COVID-19 pandemic. More specifically, changes to host country policies in light of COVID-19 render EP4's distinction between Designated and Non-Designated countries arbitrary as reliance on host country policies during the global pandemic may be even less protective of financial institutions in terms of risk assessment and of the human rights of affected communities.

On June 4, 2020, the President of the United States of America issued [Executive Order 13927: Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities](#). Under the auspices of a flailing American economy due to the pandemic, the President directed federal agencies to use emergency provisions of established environmental laws to waive or entirely bypass environmental review requirements when approving infrastructure, energy, environmental, natural resource, and other development projects. We anticipate that companies will take advantage of these loosened requirements, resulting in a surge of development projects that have not been properly assessed for environmental, social and human rights risk.

Since the United States is listed as a Designated Country, an Equator Principles Financial Institution (EPFI) would be in technical compliance with EP4 if it relied on the United States' own loosened environmental assessment regime to provide financing for a project. However, finance of such a project with minimal risk review is entirely in conflict with the spirit of the Equator Principles framework to respect human rights in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs), to support the objectives of the 2015 Paris Agreement, or to support norms set forth in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

We are encouraged that the *EPA Guidance on the Implementation of the Equator Principles during the COVID-19 Pandemic* covers not only the additional risk review necessary to address the direct impacts of the pandemic, but also addresses the "second wave" impacts as the pace of development increases once the public health crisis abates. Of note, the Guidance states that, "[d]uring the Covid-19 recovery period it may be especially important to ensure that economic imperatives (e.g. at the local, national and Project/Borrower level) do not override compliance requirements." We agree. However, the guidance must be operationalized by EPFIs to be effective.

We recognize the changes made in EP4 updating the requirements for projects in Designated countries. However, we emphasize that those changes are not enough to prevent Equator Principle-sanctioned financing of projects, especially in the current pandemic context.

A failure in this moment to adhere to the highest standards of social and environmental review may expose EPFIs to future risk and project-affected communities to negative long-term impacts. For example, in the United States, a federal court recently ruled that Energy Transfer, the developer of the Dakota Access Pipeline, must remove oil from the pipeline nearly three years after it went online. The ruling was based on the fact that Energy Transfer failed to provide a sufficient Environmental Impact Statement at the outset of the project. This ruling sends a strong message that a failure to secure a social license to operate and failure to adhere to the highest standards of environmental review may incur additional legal, regulatory and financial hurdles far into the future.

The pandemic underscores the critical need for greater attention to risk assessment when communities are most vulnerable and regulatory regimes are relaxed. For example, since many Indigenous and local community leaders are engaged in the public health crisis, they simply do not have the ability to dedicate time to a fulsome consultation process. EPFIs should not use the pandemic as a pretext to finance projects that have not obtained consent in line with the UNDRIP. EPFIs that do so expose themselves to future risk for nearsighted gain, as evidenced in the above case. For the Equator Principles to be associated with a project, like DAPL, that relies on insufficient host country processes, further diminishes its reputation as a global standard at a moment when that standard is most necessary to protect EPFIs and to respect human rights.

In short, the pandemic has magnified the arbitrary nature of the distinction between Designated and Non-Designated countries and has illustrated the need to forego this distinction at least for the coming period in which the world is struggling with the pandemic.

Thus, we urge the EPA to soon publish additional guidance that states affirmatively that all projects financed in the coming period will not be considered compliant with the Equator Principles unless they can demonstrate additional review *against and compliance with* all applicable IFC Performance Standards. This protects communities and environments from shortsighted projects without adequate review; it protects the same against the “second wave” of development; and, it provides EPFIs the assurance they need to avoid finance for projects that have not undergone the proper scrutiny. This would be a strong step to provide global assurance of a standard of social and environmental risk review by the Equator Principles.

In future revisions, we maintain that the distinction between Designated and Non-Designated countries be removed entirely. Such a decision may then be made on the basis of the experience gained with this temporary removal.

Where entire communities and local economies are being forever changed due to COVID-19, we urge the EPA to address this implementation gap to ensure that EPFIs are financing projects with the highest degree of alignment with the UNGPs, UN Principles and other international norms.

To do so is to leverage project finance as a tool that rebuilds and repairs communities and environments to our mutual benefit long after this pandemic.

Signed,

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