The Outside Job

Turning the Equator Principles towards people and planet

BankTrack submission to the Equator Principles update process
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BANKTrack

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This briefing paper was prepared for discussion within BankTrack by Jan Willem van Gelder and Anniek Herder of Profundo, Additional writing by Johan Frijns, with comments from Roland Widmer and Michelle Chan. For further enquiries please contact Johan Frijns at johan@banktrack.org

The paper has been written as input for the EPFI update process. The opinions contained in the paper are those of BankTrack but due to time constraints have not gone through an extensive consultation process with all member groups

1. Introduction

The world finds itself in a deep economic and social crisis, triggered off and deepened by reckless and greedy behaviour of parts of the banking sector. As a consequence, public trust in banks is at an all-time low; many people have concluded that banks are '99 percent problem' and call for steep regulation, if not a complete overhaul of the sector. The debate on what to do with the banking sector is also no longer limited to policy- and academic circles; street protests and square occupations aimed against bank behaviour and the financial system are now a daily occurrence in financial capitals around the world.

In this context it takes a great deal of confidence in that same banking sector to still argue, as BankTrack does, that banks can and must play an important role in enabling the global transition towards a sustainable future. By allocating scarce financial resources in a prudent way to carefully selected business and clients working towards this objective, banks can help to preserve the environment and biodiversity for future generations, save our natural resources and prevent runaway climate change. By only supporting responsibly operating clients with their services, banks can also help guarantee the protection and promotion of human rights and help ensure a life in dignity, free from want and poverty for all people living today and in the future.

Ultimately, this will require a full transformation of the banking sector, with policymakers and regulators imposing strong regulation on the sector, that fully integrates sustainability objectives and safeguards to the wider interests of society. But BankTrack also believes that voluntary initiatives from banks have a complementary role to play, provided such initiatives are not mere window dressing but a sincere attempt to deal with the pressing social and environmental challenges faced by banks, people and planet alike, and are implemented with sufficient ambition and urgency.

Back in July 2003 we welcomed the establishment of the Equator Principles as an attempt to fundamentally change the way banks provide project finance. We shared the ambition of the adopting banks that this new approach to lending would help safeguard the rights and interests of local communities and protect the environment, while also shifting lending portfolios towards sustainable business activities. But from the start we have also argued that for the Equator Principles to realize their full potential they needed to become more transparent, more accountable, more effective, and most importantly that, given the myriad ways in which projects are financed, their scope would have to be broadened considerably beyond project finance.

After eight years of existence of the Principles, BankTrack remains critical about what the Principles have achieved. We note 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. We also continue to witness the involvement of Equator Principles Financial Institutions (EPFIs) in projects that should have no place in the portfolio of banks that strive to be sustainability leaders.

To convey our growing concern, in January 2010 BankTrack published a civil society call to the EPFIs, which was undersigned by a large number of organisations.[1] This was the latest call in a series of critiques and exhortations over the years.[2] In it we voiced our disappointment with the lack of progress on transparency, accountability, effectiveness and true compliance with the Equator Principles and called upon EPFIs to take 'Bold Steps Forward' to rescue the Principles as a standard setting initiative..

We were encouraged when later in 2010, the Equator Principles Association (EP Association) started a Strategic Review process of the Principles ('the Review') to prepare them for a major overhaul after the adoption of the new IFC Performance Standards (to which the Principles are pegged). This, we figured, was going to be the one chance for the Bold Steps Forward to happen. A number of serious flaws in the consultation process prevented us from participating in the review itself, but after a number of laudable commitments by the EP Association on how the subsequent 'EP upgrade process' will be conducted, we decided to once more share our thoughts with the EPFIs. This briefing is part of that engagement.

The inside job

We have studied the summary report of the Equator Principles Strategic Review[3] and the response by the EP Association[4] with strong interest. The report contains numerous observations we can concur with, and recommendations we can support. Yet important recommendations are also missing.

"Time for change has come", state the authors of the Review. The Equator Principles "need to advance as an organisation and create a sustainable platform for further development of its leadership role in environmental and social risk management in the financial sector". To maintain its position as leading initiative, it must "excel at its core mission as contained in its preamble". The report also states that "Its platform must be based on accountability with transparent and verifiable standards for adoption, implementation and reporting and with regular communication to members and stakeholders".

Words we can support. Yet the report and subsequent management response also reflect a tendency to consider the Principles as a goal in itself, a tool that exists primarily, or even exclusively, to serve adopting banks in their advanced risk management, or to project their sustainability ambitions.

Over the last years the EPFIs have spent a great deal of energy on improving the inner workings of the Principles, leading to improved governance structures, guidelines for reporting, best practices on implementing the principles in other business sectors and so on. These are important achievements and generally welcomed by BankTrack, yet sometimes it appears that these efforts are focused more on managing the risks banks associate with adopting the Principles itself than with improving the impact the Principles are supposed to make on communities and the environment. If continued in this mode, the principles risk to become an inward looking initiative, largely irrelevant to outside stakeholders -and thus will contribute little to restoring the trust lost in the sector.

The Outside Job

Neither the Equator Principles, nor the role of the EP Association within the financial industry, are what ultimately matters. The Equator Principles mean nothing if they do not meet the expectation that the public places on any voluntary sustainability initiative: that it makes a real difference to people and the planet. It is the outside job that must be delivered upon.

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, an end to oil exploration projects destroying our seas and last remaining wilderness areas, a stop to the construction of coal power plants belching out millions of tons of greenhouse gases into our already fatigued atmosphere, a concerted effort to protect the worlds' forests and so on.

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 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 Equator Principles then need to lead to a discernible change in what banks start doing less and what banks start doing more. This requires more than a mere change of the text of the Principles; it requires a whole different understanding of the nature of the Principles and of the role of external stakeholders in the project cycle and the business operations of clients.

Ideally, the new Principles coming out of this update process continue to be an effective risk management tool for banks, but based on the notion that proper risk management *for all involved* requires transparency of process, inclusion rather than secrecy, a recognition of the fallibility of everyone and therefore the need for accountability and access to redress, dialogue rather than desk studies as a means to understand perspectives and risks, the careful weighing of options and legitimate interests of all involved, an understanding of the limits to business imposed by nature and the environment, as well as the fundamental rights of all people, and in general a clear understanding of the responsibility of a bank to help achieve a more sustainable world.

It is with this broad perspective in mind that we are commenting on the Strategic Review and provide the recommendations in the following chapters of this paper.

2. 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 working 'under Equator' must therefore operate in a spirit of openness and transparency, and not defend and hide behind excessive interpretations of 'client confidentiality' to withhold information to stakeholders and the public. Given the current widespread public distrust towards banks, the overriding question for banks should not be 'how much transparency can we allow?' but 'how much secrecy can we still afford?'

Increased transparency is necessary on both the institution and Equator initiative level, as well as the project level. In the following paragraphs we will discuss both.

2.1 Transparency at the bank and Equator Principles initiative-level

The current Equator Principles (EPII) oblige EPFIs to meet an extremely lenient set of reporting criteria that do not allow external observers to judge the quality and progress of a bank's implementation of the Principles. 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 Equator Principles.

BankTrack has repeatedly called on the EP Association to come up with a stringent set of reporting obligations for EPFIs, including new adopters. This package should at least include:

- measurable targets for implementation, shared with the public at time of adoption;
- precise information on the non-financial commitment made by a bank if this commitment exceeds the core Equator Principles;
- detailed information on the portfolio which falls under the scope of the Equator Principles: detailed composition, trends, regional and sectoral breakdown;
- names of all projects and/or project sponsors that are financed 'under Equator'
- for banks implementing the Principles details on EP implementation: transactions evaluated under the EPs, those that were approved, declined, and approved with exceptions. Any such exceptions should be explained.
- 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.
- mandatory independent and transparent third party verification of compliance with these reporting guidelines.
- contact information for anyone wishing to enquire about the bank's implementation of the Equator Principles;

With regard to transparency, the Strategic Review report takes the right approach; it recommends to raise disclosure requirements in annual reporting, with at a minimum project names and related categorization (Recommendation 1). It further advises to develop a standard for consistent implementation reporting for which the EP Association could develop its own template, use a survey or GRI protocol (Recommendation 3). It recommends also to remove the grace period; all EPFIs, including new adopters, should report from the first year onwards on implementation procedures (Recommendation 4) and their information should be verified by a third party (Recommendation 5).

BankTrack endorses the recommendations made in the Strategic Review and welcomes the commitment of the EP Association to launch a more consistent reporting standard. In our opinion, this standard should contain all elements listed above. To complement this reporting standard, a mechanism for independent and transparent third party verification is indispensable.[5] We call upon the EP Association to develop a trustworthy verification mechanism and revise adoption criteria as soon as possible.

BankTrack has also called upon the EPFIs to list the names of all projects and sponsors that are being financed 'under Equator', either on the website of the EPFIs involved, on the Equator Principles website and/or require such information to be placed on the website of the project or sponsor itself. Every *closed* deal should be publicly listed as being governed by the Equator Principles.

To accommodate this, EPFIs should develop a standardised online project information disclosure tool that will allow external stakeholders to easily access all publicly available information from banks, project sponsors and other parties involved, including contact details. BankTrack welcomes the Strategic Review's Recommendation 6 to publish an EP Annual Report, but considers this not a substitute for a online overview with the names and further details of EP projects. The new EP website, although an improvement from the previous version, does not yet deliver upon this. Especially for the benefit of affected stakeholders, the EPFI's should make a much stronger effort to disseminate information to them about the application of the Equator Principles with regard to specific projects.

2.2 Transparency at the project level

To our dismay, the Strategic Review has completely ignored the subject of project level transparency, thus missing an important opportunity to break through the inward-looking tendency of the Equator Principles.

Full transparency is even more important on the project level. Local stakeholders at minimum need to be aware that a proposed project that is about to alter their lives is financed according to the Equator Principles and that these Equator Principles grant them rights to information, consultation and influence.

Without full access to all relevant information, stakeholders cannot be meaningfully consulted, influence the design of a project, contribute to -or help monitor the implementation of- an action plan to deal with any negative social and environmental impacts. Likewise, lack of information prevents communities from providing their explicit support, or -in the case of indigenous peoples- providing or withholding their consent. This information should be made available and accessible to communities when changes can still be made, before projects are finally designed, financed and developed.

In the past, BankTrack has called on the EPFIs to disclose, or demand disclosure from the project sponsor, of the following information about proposed projects:

- 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.
- Stipulate in all relevant contracts, including loan agreements and contracts in the prefinancing 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.
- Make environmental and social clauses in 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.
- 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 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.

3. Be accountable

Principles, like anything else in the world, do not always work perfectly in practice. A principle-based initiative has to anticipate implementation failures and needs to be willing and able to correct them. Such initiatives also should take advantage of lessons learned in the implementation, this in order to systematically improve the initiative. This can be achieved by setting up an accountable organisation, by enabling affected stakeholders to express concerns about the implementation of the Equator Principles, by ensuring that local communities and stakeholders can seek redress if project sponsors violate rights or legitimate interests supposedly guaranteed by the Equator Principles and by systematically study, or allow the study of, the implementation of the Principles.

While the EPFIs need to ensure compliance of project sponsors with the Equator Principles, they also need to establish better accountability for themselves. We discuss how various accountability aspects are dealt with in the Strategic Review in the following paragraphs.

3.1 Accountability and grievance mechanisms

The Equator Principles need accountability and grievance mechanisms both at the project level and at the level of the Equator Principles Initiative itself. It is worth noting that John Ruggie, the UN Special Representative of the Secretary General for Business and Human Rights, is of the opinion that: ”An effective grievance mechanism is part of the corporate responsibility to respect”. He has obtained wide support for his findings that such a grievance mechanism must be legitimate, accessible, predictable, equitable, rights-compatible, and transparent.[6] The UN Special Representative further concluded: "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." [7]

In the current Principles (EPII) accountability is supposed to be guaranteed by grievance mechanisms that are mandated for large projects (Principle 6). Whether this is indeed the case is completely unclear as no systematic research has been undertaken on the quality of these mechanisms. EPFIs must therefore 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.

In additional to project-level grievance mechanisms, EPFIs must provide a mechanism for challenges to adherence with the Principles in order to bring credibility and legitimacy to the Equator Principles Initiative. In the past, BankTrack has proposed various models for the establishment of such an accountability mechanism, some modelled upon already existing mechanisms with development banks, the World Bank/IFC and some Export Credit Agencies.[8] 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 of their own that fits and serves their specific needs as commercial private institutions. The absence of concrete proposals in the Strategic Review on such mechanisms is truly disappointing.

3.2 Implementation requirements

BankTrack has recommended to the EP Association the development of a clear procedure to 'delist' banks that do not meet transparency and accountability requirements, or banks that persistently have problems with compliance. The need for such a procedure has been recognised by the Strategic Review, which proposes to relate delisting to EP implementation performance.

Concretely, the Strategic Review recommends the delisting of EPFIs that do not meet a minimum required implementation threshold (Recommendation 10). Additionally, new adopters should demonstrate their implementation capacity and executive management commitment to the Equator Principles at time of adoption (Recommendation 11) and report on implementation procedures within the first year (Recommendation 4). BankTrack strongly supports these recommendations. We further recommend establishing a procedure that allows delisting of EPFIs that repeatedly finance transactions of which peer reviews or academic/civil society research has shown as clearly not compliant with the Equator Principles; this is different from the Review's Recommendation 10, which focuses on implementation processes, rather than performance.

The Strategic Review also found that assurance and accountability of the EPFIs is insufficient. A more adequate and professional EP Association with a transparency and accountability framework will help the organisation to meet its responsibilities here (Recommendation 1). More specific, the EP Association should develop an EP Assurance Standard to use for auditing of EPFIs internal implementation procedures and the verification of implementation capacity of new members (Recommendation 5). In its response, the EP Association states that all these actions need further deliberation and will be considered during the EP III Update Process. We welcome the willingness to consider the recommended actions, but stress that steps are necessary and long overdue.

3.3 Deepening and sharing knowledge

We support the ambition of EPFIs to advance their knowledge about the impacts of the Equator Principles. When knowledge is gained, constraints can be overcome and improvements made. The Strategic Review concludes that the autonomy of individual EPFIs in implementing the Equator Principles, as well as capacity constraints, have resulted in inconsistent forms of implementation across the group of EPFIs. The Strategic Review advises the EP Association to systematically facilitate knowledge sharing and membership capacity building and provides useful examples of tools and instruments that could be developed (Recommendation 9).

BankTrack supports this recommendation and looks forward to the plan on knowledge sharing that the EP Association promises to develop after the EP Update Process. Such a plan must include, or even focus upon what the Equator Principles mean in practice for real people and the living world in which projects are developed.

3.4 Website development

the Strategic Review advises that the EP website needs a revision (Recommendation 22). The EP Association states that it has already given follow up to this recommendation of the Strategic Review by launching a new website in May 2011. We certainly acknowledge improvement in this website, in the tone of voice and the content provided. Yet important elements are still missing: a list with names of all projects and sponsors that are being financed 'according to the Equator Principles', a platform for debate with external stakeholders and above all an effort to explain the relevance of, and the rights assigned by the Equator Principles to -potentially- affected communities.

3.5 Stakeholder engagement

The Strategic Review concluded that stakeholder engagement on initiative level is not broad based amongst the EPFIs: many clients are not familiar with the EPs and other stakeholders have little opportunities to engage with the EP Association. The Strategic Review recommends creating an EP Advisory Group with representatives from stakeholder groups (Recommendation 25) and an EP Forum for engagement and leadership on banking industry sustainability issues (Recommendation 26). Another advice is to develop a strategy for client engagement (Recommendation 24).

In its response to these recommendations, the EP Association replied that it will probably pilot the use of an EP Advisory Group during the EP III Update Process and consider an EP Forum in the longer term, after the EP III Update process, as a convening mechanism.

BankTrack supports the recommendation to establish an EP Advisory Group. To ensure the quality of advice provided by this group, civil society groups should be sufficiently represented. We also advise that the Advisory Group have the mandate to undertake or arrange independent research into the implementation of the EP in concrete cases.

4. Extend the scope

4.1 Financial services

The global project finance market is a relatively small market. Many more projects which potentially have a strong -negative or positive- impacts on climate, biodiversity and society are financed through other/alternative forms such as corporate loans, share and bond issuances.[9]

There is a world to win through the application of the Equator Principles to other bank activities that have a potential adverse impact on people and planet. 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 aimed at making a particular project happen. It cannot be justified that banks consider certain social and environmental issues important in one part of their business but not in others. To avoid this, the scope of the principles must at minimum be extended from ‘project finance’ to ‘financing projects’

We are pleased that the Strategic Review advises, as a first step, to extend the scope of the Principles to corporate loans “where 50% or more of the proceeds of the loan are being used to finance a single asset” (Recommendation 7). For the longer term, the Strategic Review recommends to develop Guidance Notes for other financial products (Recommendation 8).

In its response, the EP Association states that extending the scope to corporate loans require careful deliberation. Furthermore, the EP Association does not consider developing Guidance Notes for other financial products as an immediate priority and will think about this after the EP III Update process.

BankTrack appreciates that extending the scope of the Equator Principles requires careful deliberation. But it goes without saying that it is rather awkward for EPFIs to claim a leadership role in environmental and social risk management in the financial sector if the scope of the Principles continues to cover only a few per cent of the global financial market. Expansion of the scope of the Equator Principles needs to be a top priority. So many projects which devastate the environment and jeopardize the incomes and living conditions of people are being financed every day by means other than project finance, (at times with the involvement from banks which have adopted the Equator Principles) that postponing most of the scope expansion discussion is difficult to justify.

4.2 Issues

The scope of the Equator Principles is not only limited with regard to the financial services covered. Because the Equator Principles are now, and likely will be pegged to the Performance Standards of the IFC, there are severe limits on how they deal with pressing issues such as climate change, human rights and biodiversity loss. BankTrack has raised this issue time and again, encouraging the EPFIs to develop policy positions on these issues themselves, independent of and beyond what IFC is willing to commit itself to.

The Strategic Review signals the same shortcoming of the Equator Principles: “EPFIs are addressing coverage limits in IFC Performance Standards on climate change, thermal power and nuclear power in different ways and would benefit from a common approach.” The Review, written during the revision process of the Performance Standards, advises to facilitate incorporation of the EPs perspective on climate change, human rights and biodiversity into the IFC Performance Standard update (Recommendation 14). If coverage issues would remain in the revised and approved IFC Performance Standards, the Strategic Review recommends incorporating a policy statement into the EP preface indicating commitment to addressing these risks (Recommendation 15).

Regarding Recommendation 14, the EP Association responds that it will continue to engage with IFC and “be proactive in making our views known to the IFC on various priority issues”. With respect to the recommendation to make a commitment to cover crucial issues in the Principles themselves, the EP Association does not respond at all.

Yet, with the new IFC Performance Standards now agreed upon, this is precisely what needs to happen; while the new standards are generally an improvement over the current version, they do not commit IFC or the EPFIs to sufficiently robust steps to adequately deal with these issues. EPFIS need to make further commitments on both climate change and human rights obligations in the Principles itself. BankTrack provides suggestions on the issues of climate change and human rights in the following two chapters.

4.3 Geography

Also in geographical terms the scope of the Equator Principles is limited, as the Principles only require compliance with IFC performance standards in projects outside the high-income OECD countries. This geographical limitation is deceptive as it is based on the simplified assumption that meeting legal obligations in high-income OECD countries will ensure that projects will meet or even surpass the criteria of the IFC Performance Standards. This is not always the case, sometimes because of inadequate regulations and more often because of failures in implementation and control.

The Strategic Review is quite right to signal the flaws in this approach. BankTrack supports the recommendations to perform a gap analysis to determine the difference between the Equator Principles and national and provincial/state requirements in a select group of High-Income OECD countries and limited sectors (Recommendation 16) and to develop guidance materials on treatment of projects in High-Income OECD countries to ensure thorough environmental and social risk management (Recommendation 17).

5. Stop financing climate change

5.1 Urgency to act

Global climate change as it is now unfolding is the planet's greatest environmental challenge, threatening the prosperity, livelihoods and security of billions of people. To prevent dangerous climate change, global greenhouse emissions must be severely reduced to keep global average temperatures below 1.5-2°C over pre-industrial levels. Even with this temperature rise millions of peoples' lives will be severely impacted by drought, floods, food shortages, spread of communicable diseases, biodiversity loss, forced resettlement of communities and widespread loss of livelihood.

Until now, governments have not found the political will to effectively deal with climate change. For other actors this should offer no excuse, as every institution and individual must act to limit the emission of greenhouse gases within its own sphere of influence. This is particularly true for banks, whose financing activities have a relatively large impact on climate change.

Banks are in a unique position to help or prevent our world from further entrenching itself into patterns of energy production and intensive energy use that are based on the burning of fossil fuels. By allocating financial resources in a strategic way, they can help to catalyse the necessary transition to an economy that minimizes greenhouse gas emissions and relies on energy efficiency and sustainable energy sources. With this influential position comes a special responsibility to play a leading role in addressing the challenges of climate change.

5.2 The silence of the Equator Principles

If the Equator Principles association wants to develop "its leadership role in environmental and social risk management in the financial sector", this responsibility needs to be taken seriously. Yet, in the present Equator Principles there is an astonishing lack of commitment to adequately deal with climate change. The very word 'climate' does not even appear in the Principles and 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 new version of the Performance Standards also still provides a lot of -that is too much- discretion to clients to deal with the climate impact of operations brought up for finance as they see fit.

By allowing clients to effectively ignore the greenhouse gas emissions which will result from the combustion of the fossil fuels produced or transported by specific projects (oil, gas, coal), the Equator Principles do simply nothing to prevent banks from financing massive fossil fuel projects that will lead to billions of tons of greenhouse gases being released into the atmosphere and also pose a severe threat to both the reputation of the bank as well as its future operations on a planet affected by runaway climate change . In fact, some of the most controversial Equator projects are precisely large scale oil and gas projects and coal fired power plants which have a huge negative impact on climate change.

The lack of attention in the Strategic Review to the deafening silence of the present Equator Principles on this crucial issue is severely disappointing. The only recommendation made with regard to this issue is to "actively consult with IFC to facilitate incorporation of the EPs perspective on climate change, human rights and biodiversity into the IFC Performance Standard update" (Recommendation 14). With regards to climate change we conclude that these efforts have failed.

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 (Recommendation 15). BankTrack is of the opinion that this is indeed the case and that further steps must be taken. The following paragraphs discuss how we think EPFIs should deal with climate change.[10]

Acknowledge indirect climate impacts

The Equator Principles should explicitly acknowledge that the climate impact of proposed projects stretches much further than the direct emissions during the construction and lifetime of the project. Indirect climate impacts (caused, for example, by the combustion of fossil fuels produced or transported by the project) should be acknowledged by the Equator Principles as significant environmental risks and as a severe potential risk to their future business, which need to be minimized and mitigated. Such indirect climate impacts would therefore be included as an integral part of all risk assessments, in which all external costs and possible alternatives should be assessed.

Avoid strongest emitters

The Equator Principles should make clear that activities and projects that most substantially contribute to climate change cannot be financed under the Principles, as their huge negative impact on people and planet is beyond what can be mitigated by applying the Performance standards. These activities 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.

Banks should also not engage in so called 'false solutions' to climate change, such as the financing of nuclear energy, large scale hydro power, harmful biofuel production (those with a negative socio-environmental impact), natural gas exploration and geological carbon capture and storage.

Measure emissions and set reduction targets

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 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.

Stimulate new technologies

To meet the needs of growing world population, without sacrificing the climate, biodiversity and the environment, a strong emphasis should be put on the further development and use of climate-friendly technologies and production processes. The Equator Principles should lead this process by:

- Requiring 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).

6. Protect human rights

6.1 The Ruggie challenge

In March 2011, the UN Special Representative of the Secretary General for Business and Human Rights, professor John Ruggie, submitted his final report. After the United Nations Human Rights Council unanimously endorsed his “Guiding Principles for the implementation of the UN’s Protect, Respect, Remedy policy framework on business and human rights” in June 2011, this ‘PRR’ framework is clearly the new global standard for business and human rights.[11] Under the framework all business enterprises - including banks- have the responsibility to “respect” human rights and provide “access to remedy.” This responsibility needs to have consequences for the financing of projects and companies where human rights risks become reality.

The only recommendation made in the Strategic Review with regard to human rights is to "actively consult with IFC to facilitate incorporation of the EPs perspective on climate change, human rights and biodiversity into the IFC Performance Standard update" (Recommendation 14). or include a policy statement into the EP preface indicating commitment to addressing human rights risks if the revised IFC Performance Standards do not deal with them in an appropriate manner (Recommendation 15). The following paragraphs discuss how we think the Equator Principles should incorporate the requirements contained in the PRR framework.

Formulate a human rights policy

A bank's human rights policy should begin with a statement referencing the human rights standards or the framework it commits to follow with all of its activities and each decision at all levels. This should be followed by an assessment of the level of human rights due diligence required for a proposed activity. Each bank should apply a ranking system for each type of activity it undertakes. "Knowing and showing" should guide bank's human rights policies and practices. Therefore transparency and the publication of policies are key. Furthermore, transparency on bank's human rights policies and practices will allow banks to cross-reference their activity rankings with peer institutions.

Develop the capacity to conduct human rights due diligence and a human rights impact assessment

The principles should provide guidelines to banks on what sort of projects or business activities should automatically trigger a detailed due diligence process. 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. Where the formulation of an action plan is the appropriate response, the policy must require the bank or client to disclose identified risks to potentially affected communities, and consult with these affected communities. Action plans impacting indigenous communities are required to be based on the principle of "free, prior informed consent (FPIC)".

In some cases, the HRIA may identify impacts that are so large or so challenging to mitigate that refraining from financing the activity taking on the activity is the only acceptable next step that will allow adherence to the bank's policy. For a bank's human rights policy to have meaning, 'refrain from involvement' must be an explicit option for consideration.

Ensure access to remedy

Banks have a crucial role in providing non-judicial remedy at two levels. The first is with regard to project-level grievance mechanisms. Access to remedy must be guaranteed at the level of impact when human rights risks are identified. Client-created project-level grievance mechanisms provides people impacted by bank activities with the ability to raise grievances and have them addressed promptly so as to avoid, or avoid escalation of, human rights issues. The credibility and trust-building components of a project-level grievance mechanism depend on the bank's requirement that the bank or its client enlist community support in helping to design and create the mechanism.

But in addition, in order to give credibility and legitimacy to their human rights policies, banks must also provide a forum for challenges to adherence with their own policies. The purpose of such a forum is not only to provide the bank's board of directors with a tool of ensuring compliance with the bank's policy, but to provide affected communities with a tool to resolve grievances.

Banks could create individual accountability mechanisms that govern their corporate entity alone. But they also could pool resources to establish a new, altogether freestanding mechanism. The Equator Principles could play a leading role in establishing such a collective accountability mechanism. In order to be useful and accepted by both the bank and the would-be users of the mechanism, any mechanism that is developed must be independent, transparent, professional, fair, accessible and effective.

7. Conclusion

BankTrack welcomes the decision of the EP association to enter an update process that will lead to a revised set of Equator Principles (EPIII). Given that this process will result in a set of principles that will be around for at least four, five years, the process must deliver substantial improvements on the functioning of the Equator Principles.

We therefore, once again, call upon the EP Association to revive the original spirit that created the Equator Principles and turn them once more into a groundbreaking sustainability initiative. We count on bold steps forward, by implementing the useful recommendations of the Strategic Review as soon as possible, and by tackling the major issues which are left untouched:

- Expanding the transparency of the workings of the Principles and the Association
- Increase the accountability of the initiative and adopting banks towards stakeholders
- Expands the scope of the Principles
- Adequately deal with climate change
- Adequately deal with human rights obligations of banks

And in general ensure that the new Principles will assist the adopting institutions in getting 'the Outside Job done' by making a real difference on the lives of people and the state of the planet.

1 BankTrack, “Bold Steps Forward - Towards Equator Principles that deliver to people and the planet”, *BankTrack*, 14 January 2010.

[2] For an overview of our engagement see BankTrack ‘Going around in Circles’ 2010.

3 Lazarus, S. and A. Feldbaum, “Equator Principles Strategic Review - Final Report”, *ERM*, 17 May 2011.

4 EP Association, “Summary Response By Equator Principles Association To The Equator Principles Strategic Review Report”, *EP Association*, 26 May 2011.

[5] For more information on a proposed accountability mechanism, see http://www.banktrack.org/download/narrowing_the_accountability_gap_toward_a_new_foreign_investor_accountability_mechanism/090615_narrowing_the_accountability_gap.pdf

6 SRSG, “Report, Protect, Respect and Remedy: a Framework for Business and Human Rights”, *U.N. DOC. A/HRC/8/5*, 7 April 2008, p. 93.

7 Idem p. 100.

[8] http://www.banktrack.org/download/narrowing_the_accountability_gap_toward_a_new_foreign_investor_accountability_mechanism/090615_narrowing_the_accountability_gap.pdf

9 A recent study on global investments in coal mining and coal-fired electricity plants, for instance, concluded that project finance does not play a significant role in expanding this sector, but that corporate loans (in Asia) and bond issuances (in Europe and North America) are the most important sources of finance Gelder, J.W. van, P. Spaargaren and A. van Ojik, “Mapping Global Investment in Coal - A research paper prepared for Growald Family Fund and Rockefeller Brothers Fund”, *Profundo*, 25 February 2011.

10 See also: BankTrack, “A Challenging Climate 2.0 - What banks must do to combat climate change”, *BankTrack*, December 2009.

11 UNHRC, “Framework Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises - Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy”, UN Human Rights Council, 21 March 2011; Jerbi, S., “UN Adopts Guiding Principles on Business and Human Rights - What Comes Next?”, Institute for Human Rights and Business, 17 June 2011.