August 22, 2019

Joint submission to the Equator Principles Association: Towards an accountability mechanism for the Equator Principles

To the Equator Principles Association and signatory banks,

We thank you for the opportunity to review and comment on the most recent draft of the Equator Principles (EP4). We notice with regret that the current review process has not taken on board the need to strengthen accountability for the Equator Principles initiative. We are therefore writing to you to urge the Equator Principles Association (EPA) to initiate a process to develop an accountability mechanism to which project-affected people and other legitimate stakeholders can raise instances of alleged non-compliance with the Principles by signatory banks with the Association.

Although EP4 requires the establishment by project sponsors of project-level grievance mechanisms for high-risk projects financed by Equator Principles Financial Institutions (EPFIs), there are currently no means by which project-affected people or their legitimate representatives can raise instances of alleged non-compliance by the EPFIs with the Equator Principles.

Establishing such an accountability mechanism would bring the EPA closer to meeting the requirements of the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), particularly Principle 30. Furthermore, an accountability mechanism would enhance accountability of, and trust in, the Equator Principles and promote EPFI due diligence and risk management in the provision of project finance.

An Equator Principles accountability mechanism is needed to align with the UN Guiding Principles

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."[1] The Commentary to this Principle makes clear that the purpose of such a mechanism is to assess the compliance of initiative participants with the initiative's own standards – in this case, compliance by the EPFIs with the Equator Principles themselves. It goes on to say that the mechanism "could be at the level of individual members, of the collaborative initiative, or both." [2]

The Equator Principles do not currently offer a grievance mechanism at either the level of member banks or the initiative itself. We suggest that the most straight-forward and effective way to fulfill this expectation of the UN Guiding Principles is through establishing a central and independent accountability mechanism at the EPA level.

Requiring clients to establish effective project-level grievance mechanisms, while important, is not sufficient to meet the standards laid out in the UN Guiding Principles. Experience shows that project-level grievance mechanisms are often ineffective at addressing serious environmental and social issues that arise because they lack independence from the company causing the adverse impacts. They usually do not allow for neutral facilitation of problem solving, and crucially they do not allow for an impartial review of a project's compliance with the Equator Principles themselves.

By establishing an initiative-level mechanism, the EPA would demonstrate important alignment with the UN Guiding Principles and help ensure that EPFIs are accountable for meeting their commitments. An effective and accessible Equator Principles accountability mechanism would 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 minimize environmental and social risks to local communities before deeper harms ensue.

An accountability mechanism can enhance the Equator Principles' effectiveness

An Equator Principles accountability mechanism would contribute 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.

Investigating allegations of non-compliance coming from project-affected people or their legitimate representatives will help financing banks to assess whether project sponsors comply with loan conditionalities. In cases of non-compliance, banks can use their leverage to help ensure disputes are resolved early, before they escalate and require expensive, time-consuming remediation measures. This can help reduce legal, reputational, and other project or client risks, supporting the Equator Principles' objectives as a risk management tool.

In addition, an effective accountability mechanism can form part of EPFIs' continuous human rights due diligence, as required under the Equator Principles. By facilitating access to salient information about the project's impacts directly from project-affected people, it would improve the quality of information available to EPFIs about the impact of projects they finance and help improve management systems.

Furthermore, operating such a mechanism would help banks and the EPA identify systemic problems and adapt their practices accordingly. An initiative-level accountability mechanism would reveal important insights about instances of non-compliance by EPFIs and help identify systemic policy gaps that can result in environmental and social harm, which project-level mechanisms are not well-situated to do. By enabling EPFIs to rectify non-compliance and strengthen policies, an Equator Principles accountability mechanism would promote continuous institutional learning and improvement.

Designing an Equator Principles accountability mechanism

An accountability mechanism for the Equator Principles could take a range of formats, and designing it would require careful consideration. We suggest a design process which is led by a panel of independent experts that provides recommendations to the EPA. This process should be informed by the wealth of established good practice and lessons learned from the development of similar mechanisms among development finance institutions and multistakeholder initiatives, and should also take into consideration the needs of the intended users of the mechanism, i.e. project-affected people and their legitimate representatives.

To ensure effectiveness, the mechanism must be readily accessible to individuals and communities affected by projects financed by EPFIs. It should be mandated and equipped to review, investigate, and monitor compliance of EPFIs with the Equator Principles. Additionally, the mechanism should offer services for dispute resolution through mediated dialogue.

We understand the challenges of establishing such an initiative-level accountability mechanism as part of the current review process. We are aware that the EPA has established a Remedy Working Group and has begun to explore this issue. We would encourage it to go further and launch a formal process to develop such a mechanism alongside the launch of EP4, within an appropriate time frame of no more than two years, to provide reassurance that in due time the adoption of the new Equator Principles will be accompanied by an increase in accountability.

We stand ready to meet with the EPA and/or member banks to provide further input on why such a mechanism is necessary and how such a mechanism should be designed.

Signatories:

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Women's Earth and Climate Action Network International (WECAN) – Osprey Orielle Lake, Founder/Executive Director
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[1] United Nations, Guiding Principles on Business and Human Rights (hereinafter "UN Guiding Principles"), Principle 30, p. 32, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
[2] UN Guiding Principles, Commentary to Principle 30, pp. 32-33. (The Commentary states that the purpose of mechanisms is to enable affected parties to raise concerns when they believe "the commitments in question" – meaning collaborative initiatives' own codes of conduct, standards, etc. – have not been met. The Commentary goes on to say that "the legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms.").