



To: Equator Principles Financial Institutions (EPFIs)
att. Marcelo Battisti, Chair of Steering Committee
CC. Jens Kubusch, HvB, NGO working group
Samantha Hoskins, Work Ethics Ltd.

Subject:

Follow up on Washington meeting

Date

23 June 2009

Dear Mr Battisti, Mr Kubusch, Mrs Hoskins, EPFIs,

I hope this finds you all well. I am writing you on behalf of my fellow BankTrackers who participated in the EPFI-NGO meeting of May 15 at the World Resources Institute in Washington. At the meeting I promised you a letter with our thoughts on the results of the meeting and suggestions from our side for a follow up on the various issues discussed there.

Let me start by saying that we all considered the meeting a very pleasant and productive event. EPFIs and NGOs seem to agree that both sides have something to gain from these meetings, and that the eighteen month period that passed between 'Amsterdam' and 'Washington' was too long. We therefore propose that a next meeting be planned within a reasonable period of time, for example early 2010, right after the Copenhagen Climate Summit. We are flexible on the dates and locations but Europe seems to be the preferred place to meet for most prospective participants.

We also hope that in the interim, the communication and cooperation between our organisations and your working group on NGO engagement will be more substantial than in the past. I will get in touch with Mr Kubusch separately to arrange this.

As a follow-up to our meeting in Washington, we would like to provide you with a number of observations and suggestions. We look forward to your response on the various proposals made below.

Governance

We very much appreciated the presentation on the new governance structure of the EPFIs. It seemed that it was worth the long wait to materialise and that the structure now proposed will deal with at least some of the outstanding and unresolved governance issues.

As we do not have a copy of the final version of the proposed structure it is difficult for us to comment on the details of the structure. We suggest that you post the governance document

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as soon as possible on your website and encourage feedback from a wide variety of stakeholders.

We understand that the new structure will be in place by September 2009. We suggest that you refrain from taking on additional EPFI members until this structure comes into effect, in order to avoid last minute undercutting of the requirements to be an EPFI.

As for the proposed governance structure, we would like to provide the following recommendations:

- We understand the merit of a dual membership structure, one for banks that will apply the EPs in their project finance operations, another one for banks that see the EPFI community mostly as a learning community they want to be part of. We assume that this distinction in membership will be made crystal clear to the public -and on your website- so that there is no confusion on the nature of the commitment made by a particular adopting bank.
- We understood that the new structure will introduce further implementation requirements for adopting banks. We look forward to seeing the precise requirements, which in our opinion should at minimum include presenting a plan on how the bank will integrate the Equator Principles requirements into their lending processes, as well as the concrete staff training activities envisioned.
- We understood that the reporting requirements for adopting banks will remain the same as the guidelines now already in place. We would like to reiterate that we consider these requirements insufficient for the evaluation of proper implementation of the Equator Principles. As such, we request and welcome a response to the recommendations we made in our report on *The Silence of the Banks* (2007).
- We very much welcome the introduction of a delisting mechanism, but are concerned that the criteria for delisting are too lenient and only focused on procedural matters (we understood them to be based only on proper payment of membership fee and compliance with the existing reporting requirements). We believe that delisting should also take place when adopting EPFIs consistently demonstrate operations that are in conflict with the intention of the EPs, and thus lessen the credibility of the EP framework as a whole. Criteria may include activities which all EPFIs -or the steering committee- believe are unbecoming of an EPFI. For example, banks could be delisted for financing multiple cases of projects which led to proven human rights abuses. Multiple cases of these types of issues are a proxy measure of internal bank capacity to implement the EPFIs.
- We look forward to developing a closer working relationship with the secretariat of the EPFIs. We suggest that one role of the secretariat will be to ensure that communication from stakeholders is passed on to all EPFIs when requested. We also believe that the secretariat can assist in increasing stakeholder engagement in the implementation of the Principles at the project level. As such, we look forward to an overhaul of the Equator Principles website, to ensure that it become a platform for knowledge sharing and the dissemination of information to local stakeholders. For example, a community guide to the Equator Principles that explains the requirements for proper community consultation during project design, as well as the rights of local

communities during operation of a project would help communities prepare for more meaningful interactions with EPFI staff during site visits.

- In Washington, our discussion focused –not for the first time- on the absence of an accountability mechanism provision in the governance structure now proposed. We continue to consider the absence of such a mechanism as a key weakness in the design of the Principles and of your proposed governance structure. We are fully aware that EPFIs are not willing to consider such a mechanism, but we hope to continue the discussion with you on the practical options for establishing some type of external mechanism to allow for an independent, impartial review of the application of the Principles.¹

Transparency and Reporting

We regret to say that we were rather disappointed by the presentation of the working group on transparency and reporting. After eighteen months and numerous previous discussions (including a proposal which we presented in November 2004 at the request of the EPFIs), we had hoped to hear of far more stringent reporting requirements, not only for EPFIs themselves but especially for project sponsors obtaining finance under the Equator Principles. It was disappointing to learn that no further steps are being proposed on this crucial topic in the near future.

We appreciated the explanation that to meet the current requirements (basically, include the number of transactions assessed under EPs and their categorization in the CSR reports) already triggers an extensive audit process within the bank, and that therefore there is a lot more robustness in the reporting than meets the eye of the casual reader. Still, this explanation misses the point that, for the Equator Principles to thrive and deliver, a certain amount of public scrutiny is not only necessary but must be actively organised as part of the engagement and agreement between EPFIs and project sponsors.

At earlier occasions we have suggested that one minimum step for EPFIs to take is to require project sponsors obtaining finance under Equator to publicly communicate (on their websites and directly to local stakeholders) that a certain deal is indeed 'under Equator' –and only this fact-. A list of such publicly announced projects could then also be posted on the website of the equator Principles. We fail to see why this requirement would be a breach of client confidentiality as there can be nothing secret about the mere existence of a deal, especially once the deal has been signed. Instead, we think that such a requirement would trigger precisely the sort of socially embedded application of the Principles which we have been advocating, as it would create a healthy interest of stakeholders, media and civil society groups in how the Principles are to make a difference in the project at hand.

¹ In this context we like to draw your attention to the article 'Narrowing the accountability gap; Toward a new Foreign Investor Accountability Mechanism' written by Ms Natalie Bridgeman and Mr David Hunter (The Georgetown International Environmental Law Review, volume 20;187, p.187) The article provides a consistent argument why the establishment of such a independent mechanism (outside the governance structure of the EPFIs) serves the interest of stakeholders, project sponsors and financiers alike. BankTrack will continue to advocate for the establishment of such a mechanism. The article can also be found at: <http://tinyurl.com/nlxptg>.

As per the suggestion made during the meeting, our organisations plan to engage with a number of industry associations to see whether they can include a commitment in their best practice standards that members seeking project finance abide by the Equator Principles and communicate to the public whether a deal is 'under Equator'. We would appreciate from EPFIs further guidance on how such a commitment should be formulated.

We further propose once more that EPFIs actively encourage, conduct and disseminate case studies on the effectiveness of the Principles at the project level (the rosy deals approach). These provide a critical foundation for analysis, the identification of areas for improvement, and more critically, examples to replicate. In addition, the lack of concrete case studies hampers an informed debate on the effect of the principles. If project sponsors are unwilling to put forth an entire project as a "Rosy Deal," we believe that case studies could also focus on discrete components of a project – such as examples of successful environmental and social impact assessments, community engagement, grievance mechanisms, indigenous peoples plans, and relocation.

Best Practice and Outreach

We would like to express our gratitude for the dissemination of the 'guidance to EPFIs on incorporating environmental and social considerations into loan documentation'. The guidance document provides us with a much better understanding on the process of covenanting EPFI requirements into contracts. The document illustrates a sincere will to make project sponsors abide by these requirements.

We hope to present you detailed comments on the document in due time. For now, we would like to point to two missing elements in the guidance document that, if included, would better ensure that stakeholders are properly consulted and involved in the design and implementation of the project;

- The guidance note specifies the reporting requirements that exist for the project sponsor or borrower to the lenders, but it does not provide explicit guidance on what loan documentation should be made available to affected communities, or be placed in the public domain, at each stage of the project cycle. We understand that this is implicitly covered by being in compliance with the requirements of the Principles. However, we believe that explicit guidance on this crucial topic would be useful for project sponsors and EPFIs.
- The guidance document makes only one explicit reference to 'communities', namely when a protest by a community directed at the project can potentially have a material adverse effect (p.11, par.7). This may reinforce the perception that 'communities' are to be approached primarily as a potential risk, rather than legitimate stakeholder, even potential supporter of the project. We believe that the guidance note would improve if it explicitly refers to the obligation of project sponsors to conduct -and provide adequate evidence for- proper community consultation. The guidance note could also mention the obligation of project sponsors to establish grievance mechanisms for high impact projects. Again, we understand this is implicitly covered by being in compliance with the requirements of the Principles but including such

obligations directly into the loan contract would further safeguard the rights and interests of affected communities.

While we did not hear specifics on the timing of the public disclosure of the guidance, we encourage you to seek public comment on the draft guidance before it is being adopted.

Finally, we acknowledge your hard work to produce this document, as well as your willingness to share the document with us. The document represents an important contribution and benchmark for not only EPFIs, but also for companies working in high impact sectors, as well as NGOs and local communities that need to understand the legal arrangements made between EPFIs and project sponsors. It is this type of resource that adds to the credibility of the Principles, while making a tangible contribution to improved project standards.

We look forward to future guidance notes by the best practice group, and would be interested to learn what issues you will focus on next. Future topics to cover with a best practice note may indeed be how to effectively engage with communities, and a guidance note on project level information disclosure. We also want to emphasise that our organisations are ready to work with the best practice group on developing other guidelines.

Equator Principles and Export credit agencies

We appreciate the candid remarks made on the process of engagement between ECAs and EPFIs. We will closely follow the matter and keep our colleagues of ECA Watch informed on this.

Banks and Climate Change

We are pleased to learn that EPFIs acknowledge that the current EPs are unacceptably silent on climate change and need to catch up. This said, we considered the presentation on the work of the recently established EP climate working group very disappointing. For an issue that is of such crucial concern to both your business and the survival of the planet as we know it, the presentation suggested a surprising lack of urgency to deal with the matter as required.

While we understand the need to continue to perfect methodologies for measuring the carbon footprint of clients and deals, and the hesitation of EPFIs to proceed faster than governments in charge of putting the regulatory framework in place, we believe that EPFIs are already in a position to take initial steps. We believe that the EPFIs –precisely as part of the ambition to be a ‘learning community’ - can play a more ambitious role in shaping the commitments to be made by the financial sector to combat climate change. This may be done in conjunction with other groupings such as the Carbon Principles initiative, the Climate group/Climate principles and the UNEP FI initiative on climate change, none of which seems to be playing the leadership role to which they have publicly aspired.

We understood that the main focus of the EPFI Climate Working Group is to provide input in the upcoming review of IFC Performance Standards and/or propose refinements of the text of the EPs itself. The Performance Standards aside, at the minimum we would expect that the work of the Climate Group leads to convincing commitments by the EPFIs to prevent their

lending operations from contributing to catastrophic climate change. In our view, this includes moving towards a categorical exclusion of a number of business activities that are incompatible with moving towards a low/no carbon economy, most notably the financing of new fossil fuel exploration projects. While we understand that such categorical exclusions may pose difficulties, we believe that given the urgent need to prevent runaway climate change, banks must clearly and publicly articulate their institutional rationale for the non-exclusion of new fossil fuel exploration projects.

We also see potential for the EPFIs to play a leading role in further developing, adopting, and reporting on greenhouse gas accounting methodologies for financial institutions. We were pleased to learn that the climate working group shares our view that a sound and universal methodology needs to be developed. Several already useful methodologies exist that could be developed further, and BankTrack urges the climate working group to take up the task to get this rolling. We offer to share with you the results of the research project on methodologies for measuring financed emissions as now conducted by Milieudefensie.

We look forward to hear from you which concrete objectives are to be achieved by the climate working group by what date.

Workshop 1; Towards Measuring Financed Emissions

This workshop was based on three presentations²

- David Rich and Shally Venugopal of WRI on the Greenhouse Gas Protocol, addressing recent insights into how this can be applied to financial institutions.
- Maxim Luttmer and Barbera van der Hoek of BECO reviewed seven existing methodologies for calculating financed emissions, including several methods used by banks.
- Jens Nielsen of Friends of the Earth Netherlands (Milieudefensie) presented the key BankTrack recommendations for methodology work

In the lively discussion that followed a number of methodology challenges were flagged, such as how to deal with changing equity shares over time, ultra-short term financial transactions and lead vs. non-lead roles in syndicated loans. Comments of participants were taken into account for the report on financed emissions calculations that is now being finalised by Milieudefensie and that will soon be send to all participants to the meeting.

Workshop 2; Implementing Human Rights – Community Engagement, Free Prior and Informed Consent, and Indigenous Peoples

This workshop was based on three presentations:

- Kristen Genovese of the Center for International Environmental Law presented the report of last year on failure of the IFC Performance Standards and EPs to adequately deal with human rights <http://tinyurl.com/orryyn>

² All presentations are available upon request with Jens Nielsen, <jens.nielsen@milieudefensie.nl>

- Kirk Herbertson on WRI guidelines on the Equator Principles' community engagement requirements <http://tinyurl.com/ph7uwl>
- Christian Poirier of Amazon Watch presented the risks of failure to do so by Occidental Petroleum in Achuar Territory, Peru (already tragically illustrated by recent events in the area) <http://www.amazonwatch.org/amazon/PE/block1ab/>

We considered the discussion that followed afterwards very productive and frank, leading to a better understanding from our side of the obstacles faced by EPFIs in properly conducting social and human rights impact assessments, as well as with reviewing the efforts of project sponsors to appropriately engage with men and women in communities affected by projects. As many of our organisations work with communities and their NGO supporters, we believe that it is important and practical to continue this type of dialogue, in order to share lessons among us. As such, we reiterate here a number of proposals made during the workshop:

- World Resources Institute is willing to convene or host joint workshops to dig deeper into concrete challenges raised by participants, such as guidance for social impact assessments, improving environmental and social performance during the exploration phase, and promoting effective community representation during project design.
- CIEL would welcome the opportunity to discuss with EPFIs the issues that arise in obtaining the free, prior, informed consent of affected communities, drawing on their experiences from the field as well as the experience of banks in reviewing stakeholder engagement processes.
- EPFIs may want to explore with the BankTrack secretariat the possibility to set up a number of joint missions of banks and NGOs to completed Equator projects (this of course with approval/involvement of the project sponsors). We believe that such a joint visit would help all parties involved to draw lessons from past experiences. We understand the many reasons why this may not be a feasible path to follow but encourage you to focus on the learning potential of such a mission.
- Gender Action will assist BankTrack in the upcoming research project on the quality of sector and issue policies ('Mind the Gap II') to ensure that possible differentiated effects of such policies on men and women are properly identified and valued. This includes a review of the Equator Principles.

Scope review

We were pleased to hear that the working group on the scope of the Equator Principles had embarked on developing internal guidelines for the applications of the Equator Principles beyond project finance, into the areas of corporate finance, export credit and Initial Public Offerings (IPOs).

We share the opinion of the working group that the proliferation of 'EP-lite', 'EP spirit' and other approaches in these business lines creates confusion on what commitments are actually made by individual EPFIs, and that therefore a common approach is preferable.

We would welcome the opportunity to be further involved in discussing the pros and cons of proposals made by the working group on how to expand the scope. We are not clear on whether the proposals of the working group will be in the public domain but we encourage you to seek public comments on draft version of these guidelines

IFC Performance Standards Review

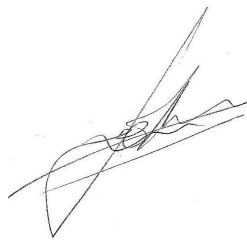
We understood from the various presentations made in Washington that the upcoming IFC Performance Standard review is seen by the EPFIs as an important, indeed the only possible way to change the content of the Equator Principles, most notably on the topics of climate change, water and human rights.

As in the earlier process of turning the Safeguard Policies into Performance Standards we see significant opportunities to exchange notes on the input provided by our respective constituencies into this process, and perhaps coordinate this input where both parties see a mutual interest in doing so. Our Washington based partners are committed to follow closely the process as it is being designed and, as BankTrack, we will actively engage with IFC in this process.

Once the process is underway (which we understand is to start only in September 2009) we may develop a communication process between us to exchange thoughts and positions on each performance standard and IFC's three chosen focal areas.

We hope that the observations and suggestions made above are of help in bringing our ongoing debate on the Equator Principles forward. We look forward to your response on these suggestions and will cooperate closely with the NGO working group to arrange the follow up process, including the scheduling of a new meeting as soon as possible.

On behalf of BankTrack members and partners



Johan Frijns

Coordinator BankTrack