

THE EQUATOR PRINCIPLES AND HUMAN RIGHTS

WHAT DO THE EQUATOR PRINCIPLES COMMIT TO ON HUMAN RIGHTS?

Language on human rights was introduced into the main body of EPIII for the first time.

- In preamble:
 - EPIII “recognize the importance” of human rights.
 - EP banks “recognise that our role as financiers affords us opportunities to promote responsible environmental stewardship and socially responsible development, including fulfilling our responsibility to respect human rights by undertaking due diligence (As referenced in the “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”) in accordance with the Equator Principles.”
- In Principle 2:
 - Environmental and Social Assessment: the Assessment Process for Category A and Category B Projects: Furthermore, in limited high risk circumstances, it may be appropriate for the client to complement its Assessment Documentation with specific human rights due diligence.
- Human rights are also mentioned Exhibit II: Illustrative List of Potential Environmental and Social Issues to be Addressed in the Environmental and Social Assessment Documentation.

ISSUES WITH CURRENT COMMITMENT

The wording used in EPIII falls far short of the unequivocal recognition of the responsibility to respect human rights which is needed following the introduction of the UN Guiding Principles.

Looking at the specific wording currently used, we identify the following issues. Firstly, in the pre-ample:

- The wording is couched in terms of “opportunities to promote ... socially responsible development”, implying that the responsibility to respect human rights is something to be promoted when the opportunity arises, rather than a baseline responsibility.
- It talks of “fulfilling our responsibility to respect human rights by undertaking due diligence“. However there is more to respecting human rights than undertaking due diligence. UNGP15 spells out most succinctly what is needed: policies; a due diligence process; and a process for remediation (elaborated further in the Operational Principles).
- The wording is oddly circular, referring back to the Equator Principles at the end.

The pre-ample to EPIII could have much more simply stated: “EP banks recognise our responsibility to respect human rights, in accordance with the UN Guiding Principles on Business and Human Rights”. This would strike us as uncontroversial.

Secondly, the wording under Principle 2 is also out of line with the UN Guiding Principles. EPIII states that banks only need to conduct human rights due diligence "in limited high risk circumstances" - which seems to imply that human rights due diligence should be the exception rather than the rule, even among the large infrastructure projects the Equator Principles are designed to cover.

In fact, human rights due diligence should be understood as an overarching process, which includes the identification of human rights risks to rights-holders, as well as acting on the findings.

WAY FORWARD FOR EQUATOR PRINCIPLES

Firstly, the **Equator Principles should, in straight-forward wording, state that banks recognise their responsibility to respect human rights, in accordance with the Guiding Principles**. This should be understood as including policy commitment, an overarching human rights due diligence process; and a process for ensuring remediation of impacts which banks cause or contribute to.

As part of this due diligence process, we suggest specific human rights impact assessments will be needed in some cases, where a significant human rights risk to rights holders is identified. The language of the EPs should not seek to limit the need for such impact assessments, and it should be clear that they are a part of the due diligence process, rather than the sum total of it.

As we suggested in our letter, the Equator Principles Association can remedy the current gap on human rights by providing clear guidance for adopting banks on how to implement the UNGPs, including how they should ensure proper access to remedy for rights holders whose rights have been violated by bank financed projects.

Furthermore, as emphasised elsewhere, the UNGPs state 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", and even that "the legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms".

Following this, the **Equator Principles themselves should provide for an effective complaints mechanism, for those affected by Equator projects to raise grievances and seek remedy**.

BankTrack has long argued that the EPs badly need such a grievance mechanism, and the UNGPs underscore the urgency of developing one, if the EPs are to maintain legitimacy.