

THE EQUATOR PRINCIPLES' RELATIONSHIP TO BUSINESS ETHICS AND HUMAN RIGHTS

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Today I'm going to present my latest research in the field of political CSR, Corporate Social Responsibility and the business and human rights debate. I am focusing on the Equator Principle (EP) frame, which is one of the most important CSR initiatives in the finance industry. The EPs are officially described as a voluntary and self-regulatory finance industry benchmark. They are used as a credit risk management framework for determining, assessing, and managing environmental and social risk in project finance transactions. The EPs are based on the International Finance Corporation's performance standards on environmental and social sustainability as well as the World Bank Group's environmental, health and safety guidelines. As of today, 84 financial institutions have adopted the CSR initiative and the EPs cover around 70-80 percent of international project finance debt in emerging markets and developing countries.

In 2013, the Credit Principles Association celebrated the 10th anniversary of the Credit Principles framework and at the same time, the formal launch of the third and latest generation of these principles, EP3. There are two major innovations with EP3, the latest generation of these principles. The first one is that the EPs aim at environmental stewardship or sustainability, which means they try to take on climate change and global warming mainly by reducing CO₂ emissions during the design, construction and operation of these projects and by evaluating less greenhouse gas in terms of these technologies and procedures. The second innovative element refers to the explicit acknowledgment and inclusion of John Ruggie's "Protect, Respect and Remedy" framework which forms the basis of the United Nation's Guiding Principles on Business and Human rights. In this sense, the Equator Principles aim at social sustainability, meaning that they mainly try to foster respect for the rights of project-affected communities in general and indigenous communities in particular. The EPs require the following: that every project that is financed under the EPs have a stakeholder engagement process or a stakeholder dialogue process in that indigenous communities and project-affected communities have to be informed about the potential environmental and social risks and the impacts that are associated with the respective project.

The main problem with the Equator Principles, including the latest version, is the limited impact and some might say that the practical failure is due to a lack of enforcement, monitoring and sanctioning mechanisms and a lack of adequate governance systems in general. Many Equator Principles financial institutions still engage in so-called 'dirty projects' or dodgy deals. That is, projects that have egregious impacts on the environment and project-affected communities. A further problem, as I see it, is that the Equator Principles, as well as the underlying John Ruggie framework, the "Protect, Respect, and Remedy" framework, have to be labeled as mainly a negative and impact-based concept of CSR, one which stands in contrast to a positive and leverage-based concept of CSR. According to the Equator Principles and the underlying Ruggie framework, states and not companies, are considered to be the primary and exclusive human rights duty bearers and trustees. This means that any positive duty to protect is part of the exclusive domain of nation states. Companies, on the other hand, only need to fulfill the negative duty to do no harm and the negative duty to respect human rights. If they want to engage in positive duties to protect and realize human rights, they can do so, but this is regarded as an optional and voluntary matter of corporate philanthropy.

I argue against this human rights minimalism, as I call it, and the move towards corporate volunteerism. I argue for a gradual transition from this negative and impact-based concept of CSR, towards a positive and leverage-based concept of CSR. In particular I argue for a move towards more mandatory and legally-binding human rights obligations for multinational companies in general and financial institutions in particular. Why financial institutions? What is so special about financial institutions and banks in the context of human rights but also in the context of climate change? Well, financial institutions are right at the center of the global, political economy. They link the financial sector and Wall Street with the real economy of so-called Main Street. And they are powerful actors in this global, political economy in the sense that they equal economic powerhouses and pacemakers that keep the economic blood circulation alive. By providing financial means, either in the form of bonds, shares, and loans, they have huge leveraged influence over their clients and their business partners. Banks in particular are those institutions that co-determine whether or not financial resources are used in an ethical and sustainable manner. And they are key actors in this transitional process towards an ethical and green economy. By rewarding with their money, they ideally help to catalyze this process towards economic, social and environmental sustainability.

Equator banks or Equator-principled financial institutions in particular have a huge leveraged influence over their clients. They not only have priority approval, but also they have approval over the life of the loan. And the reason for this is that they closely collaborate with their clients in order to set up and work out environmental and social risk assessments, impact assessment systems, management systems and action plans. This means that banks have a huge influence over their clients and they really are able to shape their clients' behavior on the ground. One way to exert leveraged influence could be by making use of so-called covenants. This means that through their contractual business relationships, banks could easily include environmental, social and human rights requirements or human rights clauses into their supply and value chain management system. These human rights clauses could include explicit references to stakeholder engagement, to project-level grievance mechanisms, and could impact benefit agreements. A further way to exert leveraged influence could be by making use of so-called divestment strategies, so that banks and other financial institutions can clearly communicate to their clients that they will divest and disengage from companies that constantly violate environmental, social, and human rights standards. In other words, in order to avoid being complicit, banks and financial institutions should clearly communicate that they will terminate all direct and indirect business relationships with their clients that are notorious for their detrimental and negative business practices.

Other means of corporate human rights advocacy or activism include speaking out against ongoing systematic and civilian human rights violations, engaging in the public human rights discourses, but also collaborating closely with NGOs and civil society organizations or simply making use of political power and authority and diplomatic channels that banks and other multinational organizations have available. In this sense, they could, for example, put pressure on perpetrators and abusive and authoritarian governments and threaten them with withdrawing their financial means from countries and from companies that are notorious for their detrimental and negative human rights impacts. Some researchers in the field of business and human rights have claimed that there's already a culture change on its way in the finance industry. But recent research conducted by finance NGOs, but also by my colleagues and by myself, has shown that most multinational banks, most multinational financial institutions show serious deficiencies in terms of their human rights agenda, in terms of their human rights policy. This is particularly true for setting up adequate stakeholder engagement and

other projects or process-level grievance mechanisms. But there's still hope in that there are some pioneering companies out there, especially in the Netherlands that could function as role models and could indicate this way towards a positive and leveraged concept of CSR. But the question remains whether these pioneering companies will remain niche players or whether they will be able to initiate a race to the top.