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### **Challenging Voluntary CSR-Initiatives – A Case Study on the Effectiveness of the Equator Principles**

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# Challenging Voluntary CSR-Initiatives – A Case Study on the Effectiveness of the Equator Principles

by Alicia Hennig & Manuel Wörsdörfer<sup>1</sup>

**Abstract:** The Equator Principles (EPs) are a voluntary and self-regulatory Corporate Social Responsibility (CSR) initiative in the field of project finance. The EPs provide a number of principles to businesses to reduce the negative impacts of lending practices linked to environment-damaging projects. The paper argues that the actual impact of the EPs even now as revised version is still limited. This is due to their voluntary nature and their lack of adequate governance mechanisms, that is, enforcement, monitoring and sanctioning. With the help of RepRisk, which provides a database capturing third-party criticism as well as a company's or project's exposure to controversial socio-environmental issues, the paper evaluates the on-the-ground performances of the two 'Equator banks' Barclays and JPMorgan Chase and compares their performance with the one of the two non-Equator banks Deutsche Bank and UBS. The paper shows that the EPs do not have a substantial influence on the broader CSR-performance of multinational banks due to the EPs' limited scope – focusing mainly on project finance – and the (still) existing various loopholes, grey areas and discretionary leeway. The paper also gives an overview of the main institutional shortcomings of the EPs and their association and discusses some potential reform steps which should be taken to further strengthen and 'harden' this 'soft law' EP-framework. The paper thus argues in favor of (more) mandatory and legally binding rules and standards at the transnational level to overcome the EPs' 'voluntariness bias'.

**Keywords:** Barclays, CSR, Deutsche Bank, Equator Principles, JPMorgan Chase, RepRisk, UBS.

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## 1. INTRODUCTION

“... in some banks, such as Barclays, Citibank, HSBC and JPMorgan Chase, the process of signing onto the EPs may be both evidence of and a further catalyst for cultural change within the banks. [...] So what began as a change in lending procedures by a number of global banks in an important but limited arena – project finance – is spreading throughout the industry, and in some cases may be starting to transform the business practices of banks across a wider spectrum of lending and underwriting activities. We may thus be seeing not only self-regulation by banks, but the beginnings of social and environmental regulation of global business by the leading EPs banks ...” (Williams, 2013,pp.305).

Today, there are plenty of multi-stakeholder initiatives providing guidelines and principles to businesses, like the Equator Principles (EPs) for instance, but many of them inherently lack effectiveness. Above, Williams, for example, speaks of self-regulation, thereby highlighting the financial businesses’ ambitions for voluntary social and environmental regulation. Yet when it comes to the actual business practices it can be established that despite their commitments these banks often continue to finance dubious business practices regardless of their impacts on the environment and surrounding communities. As a consequence, voluntary commitments are prone to be being compromised in favor of profitable investment opportunities. Therefore, we advocate more (formal) institutionalization to enable socio-economic responsibility. Such a formal institutionalized approach should rely on institutions created by state and non-state actors, such as (multinational) companies, civil society and supra-/international organizations, and make use of the collaboration between state, business and (civil) society.

At the core of our paper are empirical case studies on four global banks – Barclays, Deutsche Bank, JPMorgan Chase (JPMC) and UBS – illustrating their complicity in socio-environmental abuse. Two of these banks have adopted the Equator Principles (EPs) (Barclays and JPMC), a voluntary CSR-initiative in the project finance sector aiming at reducing transactions spurring socio-environmental destruction. With the help of the RepRisk database and web-based tool, which

provides an overview of a corporation's reputation based on third-party criticism as well as a company's or project's exposure to controversial environmental and social issues, the paper analyzes whether being an 'Equator bank' makes a significant difference regarding the magnitude of complicity in socio-environmental abuse.

As a result, the paper shows that the EPs do not have a substantial influence on the on-the-ground CSR-performance of multinational banks due to their limited scope – being mainly restricted to project finance – and their inefficient governance mechanisms – providing a wide discretionary leeway and multiple loopholes.

The paper is structured as follows: Section two gives an overview of the EPs and their main characteristics. Sections three and four critically evaluate the socio-environmental commitments and the on-the-ground performances of Barclays, Deutsche Bank, JPMC and UBS with a focus on their engagement in so-called 'dirty projects' and 'dodgy deals', that is, deals which cause negative impacts on project-affected communities and the environment (cp. Facing Finance, 2012; Facing Finance, 2013; Facing Finance, 2014). Section five analyzes the main institutional shortcomings of the EPs and their association and portrays some necessary reform steps which should be taken to strengthen and harden the soft law CSR-approach of the EPs to make it more effective in terms of socio-environmental and human rights protection. Section six then explains how to generally increase CSR-effectiveness by equipping initiatives with a more binding nature. Subsequently, section seven analyzes CSR in the context of shared and collective responsibility in order to illustrate the various responsible participants in making CSR more binding. The paper ends with a summary of the main findings.

## **2. THE EQUATOR PRINCIPLES**

The EPs are officially described as a voluntary and self-regulatory finance industry benchmark and good business practice in project finance. In particular, they are a "credit risk management framework for determining, assessing, and managing environmental and social risk in Project Finance transactions" (cp. Equator Principles, n.d. a). The EPs are based on the International Finance Corporations' (IFC) 'Performance Standards on Environmental and Social Sustainability' and the World Bank Group's 'Environmental, Health and Safety Guidelines'.

The EPs apply globally to the four financial products: project finance with total project capital costs exceeding US\$ 10 million, project finance advisory services, project-related corporate loans and bridge loans. Project finance funds the development, construction and operation of large industrial and infrastructure projects such as power plants, chemical processing plants, manufacturing plants, mining, oil and gas projects, fracking, tar and oil sands projects as well as transportation and telecommunication infrastructure projects.

As of today, the EPs are adopted by 80 Equator Principles Financial Institutions (EPFIs) from 36 countries covering over 70% of international project finance debt in emerging markets (cp. Equator Principles Association, n.d. a).

On June 4<sup>th</sup> 2013, the Equator Principles Association (EPA) celebrated the formal launch of the third generation of the EPs and, at the same time, the tenth anniversary of the EPs. The two major innovations of EP III are, *first*, the inclusion of an explicit reference to John Ruggie's *Protect, Respect and Remedy* framework, which forms the basis of the *U.N. Guiding Principles on Business and Human Rights*: The EPs thus strive for social sustainability in the form of the protection of the rights of affected communities (e.g., protection of the rights of indigenous peoples) and other stakeholder groups such as civil society. Moreover, projects financed 'under the EPs' require a stakeholder dialogue either in the form of 'Informed Consultation and Participation' (ICP) or in the form of 'Free, Prior and Informed Consent' (FPIC) – given that indigenous peoples are involved. *Second*, EP III aims at environmental stewardship, which means, it seeks to fight global warming and tackle climate change mainly by evaluating less Greenhouse Gas (GHG) intensive alternatives (i.e., technologies and procedures) and by reducing CO<sub>2</sub> emissions during the design, construction and operation of the projects (i.e., 'de-carbonization') (cp. Equator Principles Association, 2013a).

In general, the EPs – including their latest version – are accused of being merely a public relations' tool, a 'green-washing' instrument or a 'paper tiger', meaning high-minded commitments on paper that fail to be enforced in practice. Indeed, when taking a closer look at the EPs as a voluntary CSR-initiative, it becomes apparent that the governance mechanisms are in fundamental regard inadequate; so far, the enforcement, monitoring and sanctioning mechanisms are informal in nature and lack substantial 'legal bite' since formal sanctions are absent. In addition, the EPs in their

current version provide multiple loopholes, grey areas and a wide discretionary leeway for EP-implementation. Thus, it comes as no surprise that theory and practice fall apart: socio-environmental standards are still massively abused and undermined by the involved parties – as will be shown by the empirical case studies in this article.

In the upcoming sections three and four we analyze the CSR-commitments of Barclays, Deutsche Bank, JPMC and UBS. Standardized principles and guidelines developed by third parties are only briefly mentioned for the sake of completeness, as this article mainly concentrates on the EPs. Therefore, priority is given to the description of the EP-implementation and relating internally developed guidelines or principles with regard to the mitigation of risks resulting from transactions with companies from sensitive sectors.

### **3. CSR AT BARCLAYS, DEUTSCHE BANK, JPMC AND UBS**

#### **3.1. The CSR-Agendas of Two Major Equator Banks**

This section gives an overview of corporate social and environmental responsibility measures implemented at Barclays and JPMC – which are both committed to the EPs. After a brief introduction of each company, the respective commitments and additional individually developed guidelines or frameworks as well as the bank's commitment particularly to the EPs are expounded (for more information see appendix).

##### **3.1.1. Barclays**

Right after British HSBC, Barclays represents one of the most profitable banks in the U.K. (cp. Palmer, 2014). The company based in London operates in over 50 countries and employs around 140,000 people worldwide (cp. Barclays, 2013, p.44). According to Fortune Magazine online, which nominates every year the 500 companies with the highest turnover, Barclays ranks 171 in 2014 with annual profits of US\$ 844.1 million (cp. Fortune, 2014a). Barclays is a co-founder of the EPs and a member thereof since June 2003 (cp. Equator Principles Association, n.d. b).

##### ***Principles, Guidelines and Initiatives***

Besides being a member of the EPs, Barclays is publicly committed to the following CSR-principles, guidelines and initiatives (cp. Barclays, 2010, pp.9):

- Core Conventions of the International Labor Organization (ILO)<sup>2</sup>;
- OECD Guidelines for Multinational Enterprises;
- Thun Group of Banks (i.e., operationalization of the U.N. Guiding Principles on Business and Human Rights for the banking sector);
- United Nations Environmental Program Finance Initiative (UNEP FI);
- Universal Declaration of Human Rights; and
- Wolfsberg Standards (i.e., anti-money laundering principles).

### ***Internal Preventive Policies and Standards***

In addition to these commitments, Barclays has also developed its own ‘Group Environmental and Social Impact Assessment’ policy, which serves to manage Barclays’ socio-environmental risks in lending (cp. Barclays, n.d.). The policy is based on the EP-framework, but goes beyond. While the EP-framework only requires an assessment in cases of project finance of more than US\$ 10 million – and also corporate loans of US\$ 50 million and above (cp. Equator Principles Association, 2013b, p.3) –, this policy may be also applied in cases of transactions with a lower value and different transaction types than covered by the EPs if these happen to be in sensitive sectors, according to Barclays. The sensitive sectors defined by Barclays are agriculture and fisheries; metals and mining; oil and gas; power generation, supply and distribution; chemicals, pharmaceuticals manufacturing and bulk storage; general manufacturing; utilities and waste management; infrastructure; the service industry; and forestry and logging. The additional industry-specific risk guidance by Barclays covers more than 50 socio-environmentally sensitive activities across these sectors (cp. Barclays, n.d.).

### ***The Equator Principles at Barclays***

Under the EPs, EPFIs are required to report annually on their transactions subjected to the EPs. In 2013, Barclays reviewed a total of 236 transactions. Only a comparably small part thereof (34 transactions) fell into the range covered by the EPs (cp. Barclays, 2013, p.24-25). In conclusion, only a small percentage, about 14%, of

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<sup>2</sup> According to Barclays (and the ILO), these core conventions are: Forced Labor Convention, 1930; Freedom of Association and Protection of the Right to Organize Convention, 1948; Right to Organize and Collective Bargaining Convention, 1949; Equal Remuneration Convention, 1951; Abolition of Forced Labor Convention, 1957; Discrimination (Employment and Occupation) Convention, 1958; Minimum Age Convention, 1973; and Worst Forms of Child Labor Convention, 1999 (cp. Barclays, 2010).

Barclays' transactions is linked to project finance. The other transactions are based on different financial means.

According to Barclays, out of the 34 transactions (only) nine transactions were linked to Category A (i.e., potential significant adverse impacts on society and the environment), 24 transactions fell into Category B (i.e., potential limited adverse impacts on society and the environment), and one transaction corresponded to Category C involving minimal or no socio-environmental impacts (for more information see appendix).

### **3.1.2. JPMorgan Chase & Co.**

According to Fortune Magazine online, JPMorgan Chase & Co. (JPMC) is America's largest bank (cp. Badenhausen, 2014). The bank is headquartered in New York and employs 260,000 people in 60 countries (cp. Jpmorganchase, n.d. a). At the Global Fortune 500, JPMorgan Chase ranks 57 with annual profits of almost US\$ 18 billion, making JPMC the most successful bank of the USA (cp. Fortune, 2014c). Since 2006 JPMC is committed to the EPs – first as an associate member and since 2013 also as a full member.

#### ***Principles, Guidelines and Initiatives***

Beside the EPs, JPMC also adopted and/or joined the following CSR-guidelines, principles and initiatives (cp. Jpmorganchase, n.d. d; Jpmorganchase, n.d. b):

- Carbon Principles;
- Extractive Industries Transparency Initiative;
- Global Reporting Initiative (GRI);
- United Nations Declaration of Human Rights;
- United Nations Principles for Responsible Investment (UN PRI); and
- Wolfsberg Standards.

#### ***Internal Preventive Policies and Standards***

Beyond the commitments listed above, JPMC has internally developed policies in place to manage socio-environmental risks arising from lending practices and other transactions. JPMC's 'Environmental and Social Risk Policy' (E&S Risk Policy) (cp. Jpmorganchase, 2014) is based on the EPs and the IFC's Performance Standards (cp. Ifc.org, 2012), but is broader in scope. Transactions linked to the particular



financing possibilities<sup>3</sup> are all subject to JPMC's 'Global Environmental and Social Risk Management' irrespective of the amount involved. A so-called 'tailored approach' is required for activities in other particular sectors.<sup>4</sup> Furthermore, JPMC clearly states what the company refuses to finance, for example transactions related to forced labor or child labor; transactions affecting UNESCO World Heritage Sites; and transactions linked to illegal logging.

### ***The Equator Principles at JPMorgan Chase & Co.***

Though having adopted the EPs already in 2006 according to the EP-website (cp. Equator Principles, n.d. a), JPMC claims it only became a full member in 2013. In the period 2006 to 2013 the bank was only an 'Associate Member'. According to JPMC's latest EP-report, which follows the EP III guidelines, there have not been any transactions involving project finance advisory services or corporate loans in the reporting period. For the reporting year 2013, JPMC discloses its activities linked to project finance as required by the EPs. However, the disclosure only provides very basic information, like geographical regions and sectors (here merely oil and mining). JPMC states that there have been transactions of Category A related to the chemical industry in Europe, Middle East and Africa, and transactions of Category B in the oil and gas sector in the USA but without providing any concrete numbers (cp. Jpmorganchase, 2013; see also the appendix of this article).

## **3.2. The CSR-Agendas of Two Major Non-Equator Banks**

This section gives an overview of corporate social and environmental responsibility measures implemented at Deutsche Bank and UBS. Neither of these banks is committed to the EPs. After a brief introduction of each company, the respective public commitments and individually developed guidelines or frameworks are described (for more information see appendix).

### **3.2.1. Deutsche Bank**

Deutsche Bank is headquartered in Frankfurt, Germany and can be considered as the leading financial institution in Germany. Deutsche Bank Group employs almost 10,000 people worldwide (effective 31<sup>st</sup> December 2013; cp. Deutsche Bank, 2013a)

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<sup>3</sup> Subject to JPMC's 'Global Environmental and Social Risk Management' are project finance transactions including advisory and principal investments; bilateral and syndicated loans, including project-related corporate loans and bridge loans as defined under the EPs; equity security offerings; debt security offerings; private placements; and advisory assignments.

<sup>4</sup> These sectors are oil and gas, including hydraulic fracturing, oil sands development and operations in the arctic; electric power, including coal-fired power generation and large hydroelectric plants; so-called soft commodities like palm oil and timber; and mining practices like mountaintop removal.

and operates in 71 countries (cp. Deutsche Bank, n.d. a). In 2014, Deutsche Bank Group ranked 163 at the Global 500 published by Fortune with profits of US\$ 884.2 million (cp. Fortune, 2014b).

### ***Principles, Guidelines and Initiatives***

Deutsche Bank Group is officially committed to the following CSR-initiatives, standards, guidelines and principles (cp. Deutsche Bank, n.d. c):

- ILO-Standards;
- OECD Guidelines for Multinational Enterprises;
- UNEP FI;
- United Nations Global Compact (UNGC); and
- UN PRI.

### ***Internal Preventive Policies and Standards***

Beyond the commitments named above, Deutsche Bank Group has also implemented individual guidelines and frameworks to manage socio-environmental risks. An Environmental, Social and Governance (ESG) Guideline particularly for asset management at Deutsche Bank was introduced in 2011 (cp. Deutsche Bank, n.d. d). In 2012, a 'Social and Environmental Risk Framework' followed (cp. Deutsche Bank, n.d. b). This risk framework serves to manage socio-environmental risks arising from lending practices. Certain critical sectors linked to transactions and clients are defined. If clients or particular transactions fall into these critical sectors<sup>5</sup> the procedure requires that internal sustainability experts are involved in due diligence and approval processes. Though Deutsche Bank is not an EPFI, this framework is based on a similar categorization of risks classified into 'high-impact', 'medium-impact' and 'low-impact' transactions corresponding to the IFC/EPs' 'ABC-categorization' (cp. Equator Principles Association, 2013a, p.5).

### **3.2.2. UBS**

Currently, the UBS is the most profitable bank in Switzerland with its headquarters in Zurich and Basel. The bank is operating in more than 50 countries with 60,000 people being employed worldwide (cp. UBS, n.d. b). According to Fortune Magazine, UBS ranks 274 with annual profits of US\$ 3.6 billion (cp. Fortune, 2014d).

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<sup>5</sup> These sectors include pulp, paper and forestry; chemical industry; aerospace and defense; infrastructure; metals (e.g., steel) and mining (e.g., copper, coal); oil and gas; and utilities and other activities with high carbon intensity.

### ***Principles, Guidelines and Initiatives***

Same as Deutsche Bank, the UBS is not committed to the EPs. Yet it is following other CSR-guidelines, initiatives and principles, such as:

- GRI;
- Thun Group of Banks;
- UNEP FI;
- UNGC;
- UN PRI; and
- Wolfsberg Standards.

### ***Internal Preventive Policies and Standards***

In addition to these commitments UBS has a risk management framework available, which is applied to all “transactions, products, services and activities”, also including client’s assets (cp. UBS, n.d. a) and covers six critical sectors.<sup>6</sup> Identified socio-environmental risks require the approval by the senior management. Particular transactions, like those related to palm oil production, Mountaintop Removal (MTR), hydraulic fracturing or the development of oil sands are subject to due diligence and scrutiny using “stringent, pre-established guidelines” (cp. UBS, n.d. a). UBS also clearly states which transactions the bank refuses to finance.<sup>7</sup>

## **4. ‘DODGY DEALS’ SUPPORTED BY BARCLAYS, DEUTSCHE BANK, JPMC AND UBS**

So far, the bank’s public commitments have been described. The next section examines the business reality of the four banks, of which two are committed to the EPs.

Though in the finance industry most incidents are linked to the violation of national legislation and governance issues – see for example the Libor, Euribor and Forex scandals, the Madoff-Ponzi Scheme scandal, or various cases of tax evasion and

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<sup>6</sup> These critical sectors are: chemicals; forestry products and biofuels; infrastructure; metals and mining; oil and gas; and utilities.

<sup>7</sup> Transactions are rejected which are linked to the extractive industries, heavy infrastructure and forestry and plantations which are prone to cause environmental damage thereby affecting the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington Convention), the Forest Stewardship Council standards, the Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat, or UNESCO World Heritage Sites. In addition, the bank will not complete transactions linked to uncontrolled or illegal use of fire for land clearance, illegal logging, and commercial activities involving child labor, forced and bonded labor, diamond mining and trading or the threatening of indigenous rights.

currency rigging (cp. Colombo, 2014; Lenzner, 2008; Anon, 2015b; Stempel, 2015); involvement in socio-environmental abuse *qua* corporate complicity happens frequently too.

#### **4.1. Research Design**

To illustrate the gap between theory and practice, the article draws on the RepRisk database, a business intelligence tool developed by RepRisk AG, Switzerland, a commercial provider of ESG-business intelligence. The information provided by RepRisk serves companies to assess their own reputational risk and to get an overview of their stakeholder's opinions. The RepRisk web-based tool includes a database of newspaper articles, NGO-reports and statements amongst others, along with a quantitative risk measure, called RepRisk Index, which provides a visualized overview of a corporation's reputation. The database captures criticisms in 14 different languages by independent third parties (i.e., stakeholders like NGOs, journalists, civil society organizations, etc.). It covers negative information from all kinds of companies and is not limited to global and mid-sized companies. The critical information is categorized into 27 different issues linked to the respective ESG-dimensions, like pollution, waste and climate change issues, human rights infringements or tax evasion and bribery (cp. RepRisk, n.d. a; for more information see appendix).

The criticism captured by RepRisk is not further verified nor validated by the company (cp. RepRisk, n.d. b). However, for the article at hand, all RepRisk internal links to criticism by various sources have been double-checked and turned into external and official website links now referring to the original source of information. That is, this article drew the basic criticism primarily from the database; while in a second step the internal links provided by RepRisk were then looked up on the web and manually checked regarding their relevance and credibility. Based on the articles already provided by RepRisk, further research was conducted to find additional articles linked to the same issue to have a more detailed picture.

With the help of the RepRisk database, the article evaluates the on-the-ground, socio-environmental performances of the two Equator banks Barclays and JPMC and compares them with the CSR-performances of the two non-Equator banks Deutsche Bank and UBS. Thereby, the article focuses on negative screening of information. It

aims to verify its hypothesis of these banks being frequently complicit in socio-environmental abuse by presenting illustrating examples accordingly.

On the following pages, the article therefore describes various controversial involvements and examines in how far the banks' EP- (and other CSR-)commitments have been (in-) directly infringed due to their complicity in socio-environmental abuse (cp. Clapham, Jerbi, 2001; Wettstein, 2009a, pp.295; Wettstein, 2010a, pp.36; Wettstein, 2012, pp.40). Further, the effectiveness of the EPs is analyzed by comparing the CSR-performances of Equator banks and non-Equator banks. The article shows that the EPs in their current version do not have a substantial influence on the on-the-ground CSR-performance of multinational banks.

#### **4.2. Controversial Engagements by Barclays, Deutsche Bank, JPMC and UBS**

The following sections illustrate the most controversial engagements linked to corporate complicity in socio-environmental destruction by the four banks, which have been criticized by NGOs, civil society and the media (see also appendix). These engagements can take various forms from offering mere advisory services, account management or management of bonds or shares over the holding of bonds or shares to different ways of direct financing like project finance and corporate loans. Yet, in articles by NGOs, civil society organizations and the media, it does not always become clear what kind of engagement exactly is involved. Therefore, this article mainly uses terms like 'support' or 'involvement' to describe a bank's activity as long as there is no clear indication of investment or credit lending. Moreover, the transaction value announced by NGOs and press agencies can be only seen as a mere indicator for engagement, as these are usually drawn from sources like Thomson Reuters or Bloomberg. These news agencies, however, report only on the latest transactions at a specific date; that is, these companies present financial market data movements in real time. Accordingly, the total value of these transactions mentioned by NGOs does not necessarily turn up in a company's annual report or balance-sheet, as these transactions may also refer to revolving credits, credits given in tranches over several years, syndicated loans, or traded bonds and shares, for example, which the specific company was holding only in a particular moment.

## **Barclays**

Since 2003, Barclays is an Equator bank but involved in various controversial projects linked to socio-environmental destruction regardless. The following pages are describing Barclays' complicity in socio-environmental abuse by outlining the company's support of controversial projects and companies in the oil and gas, coal and palm oil sectors.

### *Oil and Gas*

The Sakhalin Oil and Gas project is managed by the Sakhalin Energy Investment Company (SEIC) and considered the largest oil and gas project globally. SEIC already has a long record of socio-environmental destruction linked to its practices. The Sakhalin project, whose planning started already in 2004, comprises various offshore platforms and connected pipelines. When in operation, it will severely threaten the livelihood of the critically endangered West Gray Whales. During construction phase, protected forests have been already destroyed and water codes have been violated (cp. BankTrack, 2015d). Russian authorities have investigated the case already in 2008. Furthermore, adequate socio-environmental impact assessments – as required by the IFC Performance Standards and the EPs – have been missing since (cp. BankTrack, 2004).

#### Barclays' involvement:

- Corporate loan to Gazprom (that holds the majority of shares in SEIC) in 2007 as a part of a syndicated loan with a total value of US\$ 2 billion; and
- Corporate loan to Gazprom of US\$ 17.1 million in 2010.

Other oil companies supported by Barclays:

- Chevron: underwriting bonds with a value of US\$ 1.3 billion; and
- Royal Dutch Shell: underwriting bonds with a value of US\$ 1.6 billion (estimated 2014<sup>8</sup>) (cp. Facing Finance, 2014).

Furthermore, Barclays supports the oil sands industry in Alberta, Canada. Generally, the extraction of oil sands is linked to environmental destruction due to forestation, thereby also threatening animal habitats, and significantly increasing GHG-emissions

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<sup>8</sup> Underwritten bonds are usually traded; this means the underwriting bank is not keeping these bonds itself but selling it to other investors.

based on the energy-intensive extraction process (cp. Greenpeace, 2014; Oilsandstruth.org, n.d.).

Barclays' involvement:

- Financially supporting<sup>9</sup> various companies with a total value of £8 billion between 2007 and 2009 (cp. BankTrack, 2015b; Gass, 2011).

Barclays' latest engagement in the oil and gas sector is a hotly debated fracking project in Yorkshire, U.K., by Third Energy. Fracking is controversial because of its impact on the environment and surrounding communities. There are several risks involved, for example the release of methane from the ground by the process of drilling, the contamination of rivers if wells are badly constructed and the noise and traffic caused by the setup of new infrastructure required for fracking (cp. Soraghan, 2011; Bradfield, 2014).

Barclays' involvement:

- Third Energy, an energy company almost fully owned by Barclays Natural Resources Investments that is a subsidiary of Barclays bank (cp. Friends of the Earth, n.d. a; Gosden, 2014).

*Coal Mining, Coal Power and Mountaintop Removal*

Behind the Cerrejón coal mine in Columbia are mining companies like BHP Billiton, Anglo American or Xstrata (that nowadays belongs to Glencore plc., a mining company headquartered in Switzerland). This mine exists already since the 1970s but is expanding ever since. The project is controversial, because it already led to the displacement of various surrounding communities, is destroying the environment and is also linked to labor exploitation and health issues (cp. World Development Movement, 2013).

Barclays' involvement:

- Corporate loan of total US\$ 3.5 billion since 2009, recipient not disclosed (estimated May 2013, *ibid.*).

MTR is a mining practice common in the USA and an ecologically damaging practice. It involves deforestation and blasting the mountaintop in order to access the coal

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<sup>9</sup> From the source it is not becoming clear whether this alleged 'financing' is linked to shares, bonds or the provision of a corporate loan.

reserves. The latter process inevitably produces a lot of waste rock, so-called 'overburden', which is then disposed in the surrounding valleys (cp. Ilovetmountains, n.d.). Allegedly, Barclays is complicit in the socio-environmental destruction caused by this practice through supporting various mining companies doing MTR.

#### Barclays' involvement:

- MTR-support estimated with US\$ 550 million (cp. RAN, 2014b).

Mining companies supported by Barclays:

- Glencore, Switzerland: corporate loan of about €1 billion (estimated 2014) (cp. Facing Finance, 2014);
- Barrick Gold Corp., Canada: corporate loan of €731 million (estimated 2014<sup>10</sup>) (cp. Facing Finance, 2014);
- PT Bumi Resources, Indonesia: bridge loan of US\$ 200 million (estimated 2011) (cp. Chakravarti, Danubrata, 2011; Scrivener, 2013); and
- Vedanta Resources, U.K./India: £30 billion between 2004 and 2009 (Vedanta owns the controversial Bauxite Mine in the Nyamgiri Hills of Orissa, India) (cp. Gass, 2011).

Regarding its engagement in the coal sector, Barclays is very active in giving support related to coal-fired plants, making it the number 2 worldwide with a transaction volume of €11.5 billion from 2005 to 2011 (cp. BankTrack, 2011a). Moreover, Barclays is ranked number four based on its total transaction volume in the mining sector between 2005 and 2014, which is estimated with €17.84 billion (cp. BankTrack, 2014a). Geographically, Barclays is focused on Colombia, Australia and the USA (cp. BankTrack, 2011a; BankTrack, 2013).

#### *Palm Oil*

Barclays allegedly supported Wilmar International, a Singapore listed company in the palm oil business. Wilmar International is accused of land grabbing, illegal logging and deforestation. The company is entangled in various conflicts, as it is frequently violating national and international laws and regulations, is not conducting environmental and social impact assessments and does not engage with relevant stakeholders such as project-affected communities (cp. Friends of the Earth, n.d. b).

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<sup>10</sup>The transaction value either refers to an outstanding loan or a new loan provided in 2014. This does not become clear from the source.



### Barclays' involvement:

- Wilmar International: corporate loan of US\$ 133 million between 2009 and 2012.

### **Deutsche Bank**

The non-Equator bank Deutsche Bank is involved in various controversial projects linked to socio-environmental destruction. For instance, Deutsche Bank is currently involved in a controversial hydropower project in Albania, the dams at Mavrovo National Park, which are said to threaten biodiversity in particular, because they will be located at a national park (cp. Bethge, 2014; Deutsche Bank, 2013b). Furthermore, the bank has managed together with JPMC a controversial bond sale in Ethiopia. The deal is feared to spur socio-environmental destruction, as “the proceeds from the bonds will be used for a number of controversial dam projects that are linked to land and water grabs, forced resettlement and human rights abuses” (cp. BankTrack, 2014b). Besides these two recent involvements, Deutsche Bank is also engaged in more questionable activities in other sectors, like oil and gas, palm oil, nuclear energy and coal, presented on the following pages.

### *Oil and Gas*

Particularly in 2014 Deutsche Bank heavily supported oil companies like Royal Dutch Shell and Gazprom both involved in the controversial Sakhalin II oil and gas project (cp. BankTrack, 2015d).

### Deutsche Bank's involvement:<sup>11</sup>

- Chevron: managing shares with a value of about €1.3 billion, corporate loan of €160 million in 2014;
- Royal Dutch Shell: underwriting of bonds of about €1.6 billion, corporate loan of about €250 million in 2014;
- Gazprom: underwriting of bonds of about €1 billion, corporate loan of about €360 million in 2014 (cp. Facing Finance, 2014); and
- Andarko Petrol Corp.: corporate loan of €444 million in 2012, underwriting of bonds with a value of €237 million and managing shares of €225 million (cp.

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<sup>11</sup>The overall values of these involvements appear to have increased over the years (cp. Facing Finance, 2013; Facing Finance, 2014).

Facing Finance, 2012).

### *Palm Oil and Other Investments Related to Illegal Logging and Deforestation*

Like Barclays, Deutsche Bank is also allegedly supporting Wilmar International and Bumitama Agri, from which Wilmar is buying palm oil (cp. Chain Reaction Research, 2014). Bumitama Agri is active in the palm oil plantation business and headquartered in Jakarta, Indonesia. The company's business involves significant deforestation in Central Kalimantan also threatening Orangutan habitats (cp. Profundo, 2013).

#### Deutsche Bank's involvement:

- Wilmar International: corporate loan of €24 million in 2011, holding or managing shares with a total volume of €2.7 million in 2013 (cp. Profundo, 2013); and
- Bumitama Agri: shares of US\$ 690,000 since 2010 (cp. Friends of the Earth, 2013).

The NGO Global Witness reported in May 2013 on Deutsche Bank's engagement with the Vietnamese rubber industry. Vietnam's biggest companies, the Vietnam Rubber Group (VRG) and Hoang AnhGia Lai (HAGL), are responsible for socio-environmental destruction, illegal logging and land grabbing in Cambodia and Laos.

#### Deutsche Bank's involvement:

- HAGL: holding shares of US\$ 4.5 million; and
- VRG: holding shares of US\$ 3.3 million (estimated 2013, cp. Global Witness, 2013).

The latest case of complicity in illegal logging and other forms of socio-environmental destruction has been revealed only recently. In January 2015 it was reported that Deutsche Bank is also involved in the 'timber baron case' in Malaysia. Here, the governor of the province Sarawak is involved in corruption linked to illegal logging and money laundering. The governor, Abdul Taib Mahmud, is accused of systematic illegal logging of timber and money laundering through accounts of international banks. Deutsche Bank is allegedly engaged as a book runner or account manager for various Indonesian timber companies. The timber business is connected to the palm oil business, since when all timber is logged these areas are usually turned into

plantations for oil palms (cp. Worrall, 2015). In March 2014, Deutsche Bank announced it is terminating the relation with Taib's K&N Kenanga Holding. However, at that time Deutsche Bank was still supporting Sogo Holding, which is also linked to the Taib Clan and used for the financing of the Clan's real estate (cp. Anon, 2014).

### *Nuclear Energy*

Nuclear energy companies are also a major field of activity at Deutsche Bank.

#### Deutsche Bank's involvement:

- Areva: corporate loan of €45 million, underwriting of bonds with a value of €100 million;
- RWE: a corporate loan of €567 million, managing shares and bonds; and
- Vattenfall: underwriting of bonds with a value of €1 billion (cp. Facing Finance, 2013; Facing Finance, 2014).

### *Coal Mining and Coal Power*

When it comes to the financing of coal, Deutsche Bank is equally active in the field of coal-fired plants as well as coal mining. From 2005 to 2011, the bank ranked number six worldwide with regard to coal finance. From 2005 to 2013, the company ranked five worldwide regarding the engagement in the mining sector in particular. Geographically, Deutsche Bank is mostly engaged in Colombia, South Africa and Kazakhstan. Deutsche Bank's activity in this sector seems to be more or less stable over the last years. From 2005 to 2011, Deutsche Bank was involved with an overall transaction volume of almost €11.5 billion in the coal power and mining sectors. From 2005 to 2014, the bank provided an overall volume of €15.3 billion to the coal power and mining sectors. Accordingly, there was an overall transaction volume of €3.8 billion between 2011 and 2014, which represents about a fourth of the overall volume from 2005 to 2014 (cp. BankTrack, 2011a; BankTrack, 2013; BankTrack, 2014a).

The list of mining companies supported by Deutsche Bank is quite long. It includes, for instance, Alpha Natural, Resources, Anglo America, Anglo Gold Ashanti, Barrick Gold Corp., BHP Billiton, Coal India Ltd., Glencore plc., Goldcorp, Newmont Mining, Rio Tinto, Vale and Vedanta (cp. Facing Finance, 2012; Facing Finance, 2013; Facing Finance, 2014). Here, only the biggest clients are described in detail.

#### Deutsche Bank's involvement:

- Glencore: corporate loan<sup>12</sup> of €756 million in 2012, corporate loan of €937 million<sup>13</sup> in 2013, corporate loan of €1.8 billion in 2014;
- Anglo Gold Ashanti: corporate loan of €352 million in 2013; and
- Vale: corporate loan of €313 million in 2013 (cp. Facing Finance, 2012; Facing Finance, 2013; Facing Finance, 2014).

### ***JPMorgan Chase & Co.***

JPMC has adopted the EPs in 2006. However, the bank is still involved in various controversial projects linked to socio-environmental destruction. Like Deutsche Bank, JPMC has participated in the recent Ethiopian Bond Sale scandal, as the bank has been managing the sale (cp. BankTrack, 2014b). And, same as the Equator bank Barclays, JPMC's engagement is very much focused on the coal and mining sector, which is rather surprising for a bank committed to the Carbon Principles and the EPs, which in their latest version try to tackle the climate crisis and reduce CO2 and other GHG-emissions.

The following pages are describing JPMC's complicity in socio-environmental abuse by outlining the company's support particularly of controversial projects and companies in the coal, gas, hydropower, mining and oil sectors (for more information see also the appendix).

### *Coal Mining, Coal Power & Mountaintop Removal*

In 2012, JPMC was ranked number two regarding its engagement in the coal-power industry. In the same year, the company ranked number four in the MTR-industry acting as a lead manager or lead arranger for companies. In 2013, JPMC then reduced its support of the MTR-industry and terminated lending and other engagements connected to Arch Coal and Alpha Natural Resources. Yet in the same year, there was a significant rise observable regarding JPMC supporting the coal-power industry as a lender and underwriter. Despite increasing support JPMC only ranked number five, which may be an indicator for other companies taking over in the coal-power industry. Furthermore, JPMC's slow phasing out of MTR-finance in turn led to Barclays, an Equator bank, intensifying its engagement (cp. RAN, 2014a).

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<sup>12</sup> The amount mentioned either refers to a loan provided in 2012 or an outstanding amount of a recent corporate loan. The numbers provided by Profundo in the Facing Finance reports do not disclose this detail.

<sup>13</sup> Why the corporate loan to Glencore plc. has suddenly increased from €756 million to €937 million is not disclosed by Profundo. However, most probably the latter amount does not refer to a completely new loan provided in 2013, but rather to a topped up and renewed loan provided in the past.

In 2008 and from 2010 to 2013 at least, JPMC was intensively supporting the MTR- and coal-power industry in the USA, and was therefore attacked by NGOs, like RAN, Friends of the Earth and BankTrack. The bank was engaged with various companies applying the practice of MTR, amongst those were Massey (in 2008), Arch Coal and Alpha Natural Resources.<sup>14</sup> Massey had frequently violated the Clean Water Act and agreed to a settlement of US\$ 20 million to be paid to the Environmental Protection Agency (cp. Kroll, 2010). Arch Coal and Alpha Natural Resources, on the other hand, are the largest companies in the MTR-industry (cp. RAN, 2013).

#### JPMC's involvement:

- MTR-support: lead manager or lead arranger with a total transaction volume of US\$ 616.7 million in 2012 (cp. RAN, 2013);
- Coal-power support: US\$ 1.5 billion in 2012, US\$ 2.1 billion in 2013 (cp. RAN, 2014a); and
- Coal-industry total support: about US\$ 2.17 billion (cp. RAN, 2012).

Outside the USA, JPMC is supporting the Indonesian company Bumi Resources. The Bumi Resources' PT Kaltim Prima coalmine is linked to socio-environmental destruction by discharging untreated wastewater, thereby contaminating surrounding rivers. Furthermore, wetlands, agricultural soil and forests have been destroyed by the mining operations. Like Deutsche Bank, JPMC allegedly is a key underwriter for Bumi Resources (cp. BankTrack, 2014c).

#### *Metals Mining*

In the field of metals mining, JPMC is supporting the U.K.-based company Vedanta and the Hong Kong-based company G-Resources. Vedanta is most active in India (see for example its controversial Bauxite Mine in the Nyamgiri Hills of Orissa or its aluminum refinery also in the province of Orissa). Vedanta's latest project is the Konkola Mine, a copper mine in Zambia, which is like other Vedanta projects linked to environmental destruction and moreover social devastation (cp. Foilvedanta, 2014).

#### JPMC's involvement:

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<sup>14</sup> In 2012, JPMC was further supporting Arcelor Mittal, Alpha Natural Resources, Cliffs Natural Resources and TECO Energy (cp. RAN, 2012; RAN, 2013).

- Vedanta: holding 2.99% of shares via Chase Nominees Limited, a JPMC subsidiary (cp. Bloomberg, n.d.).<sup>15</sup>

JPMC is also a significant investor of G-Resources, which operates the Martabe Gold Mine in Indonesia (cp. Winn, 2010). Martabe is considered to be the most successful mining project in Indonesia. However, this project is controversial, as wastewater will be dumped into a nearby river that is providing surrounding farming communities with water. Therefore, despite of all community development programs, the surrounding communities are negatively impacted by these mining operations, which simply cannot be compensated by the G-Resources' programs (cp. Bland, 2013).

### *Oil and Gas*

Though the Keystone XL project is currently on hold due to legal-political issues, the project as such remains controversial (cp. Rowall, 2014). It is a part of pipeline system originally starting in Alberta, Canada and cutting straight through the USA to the Gulf of Mexico. The pipeline is supposed to transport Canadian tar and oil sands to the port located at the Gulf for later shipping to other countries. Not only is the extraction of oil from tar sands as such environmentally controversial since it is related to vast socio-environmental destruction (cp. Oilsandsrealitycheck, 2014). Also, the subsequent procedure of shipping this very energy-intensive fossil fuel product all across the globe to other buyer countries is questionable in times of generally acknowledged climate change.

### JPMC's involvement:

- Keystone XL project<sup>16</sup>: underwriting or managing shares or bonds of about US\$ 2 billion from 2007 to 2010 (cp. BankTrack, 2015c).

Another case of involvement in the gas sector is JPMC's support for the fracking (hydraulic fracturing) industry. In 2012, JPMC was even awarded with the Energy Risk Award for its "impressive deal flow and its extensive work with the shale gas producers" (Financial Risk Management and News Analysis, 2012). In November 2014, a report by Bloomberg revealed information on a current settlement between JPMC and players in the shale gas industry (cp. Calkins, Fisk, 2014).

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<sup>15</sup> JPMC's website confirms the engagement with Vedanta. The company is still listed as receiving financial support in various ways by JPMC (cp. JPMorgan.com, n.d. c).

<sup>16</sup> It does not become clear from the information provided by BankTrack in how far this financial involvement by JPMC is related to the project as such or to some other company involved in building Keystone XL.

### JPMC's involvement:

- Various oil companies active in the fracking industry (like Chevron, Total, Royal Dutch Shell<sup>17</sup>): financial support of €5.8 billion, type of support not clear (cp. Pettitjean, 2014).

### *Hydropower*

JPMC's engagement in controversial renewable energy projects is illustrated by its support for the hydropower dam Belo Monte in Brazil. Belo Monte is a large dam project at the Basin of Xingu River. Despite various controversies, the construction of Belo Monte resumed in 2012. An operation of the dam will lead to the displacement of about 19,000 people from Altamira, a city close to the dam and another 800 indigenous people from surrounding tribe communities in the Amazon region. Furthermore, water quality and biodiversity are negatively impacted by this vast intrusion into nature. JPMC is holding shares of 8.65% in Eletrobras Group (cp. BankTrack, 2015a), which in turn holds 15% of shares directly in the Belo Monte project and another almost 25% of shares via its subsidiaries Companhia HidroElétrica do São Francisco and Centrais Elétricas do Norte do Brasil S/A (Eletronorte). In brief, Eletrobras owns almost 40% of Belo Monte (cp. Russau, 2013).

### **UBS**

UBS has not adopted the EPs so far; yet it is a member of the Thun Group of Banks – a banking 'association' working on the operationalization of the U.N. Guiding Principles on Business and Human Rights for the banking sector – and other CSR-initiatives. The bank is involved in various controversial projects linked to socio-environmental destruction. However, compared to the other three financial institutions previously described, UBS does not appear to be entangled in as many different cases as the other banks. The following pages are describing the bank's complicity in socio-environmental abuse by outlining the company's support particularly of controversial projects and companies in the coal, mining, oil and gas as well as palm oil sectors.

### *Palm Oil and Other Investments Related to Illegal Logging and Deforestation*

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<sup>17</sup> Further companies in the fracking industry are for example Hutton Energy, San Leon Energy, Sasol and Statoil (cp. Profundo, n.d.).

According to a Greenpeace report, UBS has been allegedly supporting the Sinar Mas Group in 2009 and 2010. The Sinar Mas Group is the biggest palm oil and paper producer of Indonesia with various subsidiaries like Asia Pulp & Paper, the fourth biggest producer of paper globally, or Golden Agri Resources (GAR), the holding for Sinar Mas' various palm oil businesses (cp. Greenpeace, 2010a). Sinar Mas' business is linked to illegal logging, deforestation and the destruction of peat lands.

UBS' involvement:

- Gold East Paper: book runner in 2006; and
- GAR: joint book runner for convertible bonds with a total value of US\$ 400 million in 2007, one of three book runners with estimated US\$ 71.1 million in 2009 (cp. *ibid.*).

Like Deutsche Bank, UBS is also involved in the scandal around illegal timber logging in the Indonesian province Sarawak. Yet unlike Deutsche Bank, UBS is directly sued by the Bruno ManserFonds, a Swiss environmental group, because of condoning money laundering of money apparently obtained from bribery and corruption via the bank's accounts (cp. Anon, 2012; Anon, 2015a).

*Coal Mining, Coal Power and Mountaintop Removal*

UBS is also active in the coal sector, including coal mining and coal power. However, UBS is not as engaged in the mining sectors as other banks like Barclays and JPMC. Of all four banks presented in this article, UBS is the bank with the lowest engagement in this sector. Taking all transactions together from 2005 to 2011, the bank ranks ten regarding its overall coal-related transaction volume of €8.2 billion (cp. BankTrack, 2011a). Until 2011, the bank was primarily focused on supporting the coal power sector. From 2011 onwards, the transaction volume in mining increased from €1.9 billion totally between 2005 and 2011 to around €4 billion in 2013 – reflecting the total support since 2005. Accordingly, from 2011 to 2013 the bank doubled its support (cp. BankTrack, 2013). In 2014, the bank ranked number thirteen regarding its overall support for the coal industry (cp. BankTrack, 2014a).

UBS' support for the coal industry is mainly concentrated in China and Colombia (from 2005 to 2011; relations to Colombia appear to be terminated after 2011), and in Australia and Indonesia – from 2011 onwards (cp. BankTrack, 2011a; BankTrack,



2013). Preferred types of support are investments like shares or bonds as opposed to corporate loans.

UBS' involvement:

- Glencore: corporate loan of €708 million in 2013<sup>18</sup>, corporate loan of €750 million in 2014<sup>19</sup>; and
- Newmont Mining: corporate loan €550 million in 2012 (cp. Facing Finance, 2012; Facing Finance, 2013).

Apart from this support, UBS has been also involved in the MTR-industry. In 2010, UBS was the biggest foreign supporter of this sector, regardless of its socio-environmentally destructive potential (cp. Anon, 2010b). In 2011, the Huffington Post mentioned UBS as “Massey Energy's last primary financier” (cp. Biggers, 2011). At that time, UBS was the third biggest supporter of the MTR-industry in general (cp. Ilovemountains, 2014). However, in 2014 UBS terminated its business relationship with Alpha Natural Resources and Arch Coal, the two biggest MTR-companies (cp. Nickerson, Just, 2014).

UBS' involvement:

- Massey Energy: corporate loan of US\$ 200 million in 2010.

*Mining, Other*

Like Barclays and JPMC, UBS allegedly supported Vedanta, as reported in 2011 (cp. Howald, 2011).

UBS' involvement:<sup>20</sup>

- Vedanta: corporate loan of US\$ 200 million in 2010<sup>21</sup>, participant in bank syndicate managing bonds of US\$ 883 million (cp. Bankenundmenschrechte, n.d.).

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<sup>18</sup> This number refers to the outstanding amount of some loan offered previously. Again, this does not become clear from the source.

<sup>19</sup> This increased amount may be due to still outstanding payoff and added interest rate but this is not clearly presented in the source.

<sup>20</sup> In 2008, UBS was already mentioned in connection with Vedanta (cp. Bland, 2008). Judging from the UBS-website, the bank is still supporting Vedanta, as there are still bonds mentioned with a tenor ending in 2019 (cp. UBS Investment Bank, n.d.).

<sup>21</sup> At that time, UBS was the only bank providing a credit to Vedanta (ibid.).

## *Oil and Gas*

In 2010, the bank was accused of supporting the environmentally destructive practice of oil sands extraction. According to Greenpeace, the bank was involved in about 20 companies active in the field of oil sands extraction. The companies were included in UBS' equity funds. Since 2004, UBS has supported the oil sands industry with US\$ 572 million by way of inclusion in its funds. UBS itself claims that the bank is not actively investing in the oil sands industry but only their clients (cp. Anon, 2010a; Greenpeace, 2010b).

### UBS' involvement:

- Chevron: managing shares worth €480 million in 2013, managing shares of €1 billion in 2014; and
- Royal Dutch Shell: managing shares €1.9 billion in 2014 (cp. Facing Finance, 2013; Facing Finance, 2014).

### **4.3. Case Study Evaluation**

In fact, all four banks are involved in a number of controversial issues and projects, no matter whether they have adopted the EPs or not. Yet in contrast to violation of national legislations, socio-environmental abuse as such is not prosecuted as long as it is not violating any official regulations. As there are still many socio-environmental abuses not recognized by law these accordingly go unpunished. The issue of 'socio-environmental abuse' becomes even more complicated in cases of mere indirect complicity (cp. Clapham, Jerbi, 2001; Wettstein, 2009a, pp. 295; Wettstein, 2010a, pp. 36; Wettstein, 2012, pp.40), which is the case with banks, as they are not actively engaged in socio-environmental abuse themselves but only *qua* their lending practices and other support. The next sections analyze whether the involvements previously described also present an infringement of the EPs by participating banks.

### **Barclays and the Equator Principles**

The following table lists Barclays' various involvements in controversial projects linked to socio-environmental destruction. However, the involvements listed are not exhaustive but represent only those being exposed in the media or by NGOs.

|                    | <b>Country</b>  | <b>Project/Company</b>        | <b>Support type</b>   | <b>Date</b>        |
|--------------------|-----------------|-------------------------------|-----------------------|--------------------|
| <i>Coal mining</i> | <i>Colombia</i> | <i>Cerrejón mine</i>          | <i>Corporate loan</i> | <i>2009 – 2013</i> |
| Coal mining        | Indonesia       | Bumi Resources                | Bridge loan           | 2011               |
| <i>Coal mining</i> | <i>Global</i>   | <i>Barrick Gold, Glencore</i> | <i>Corporate loan</i> | <i>2014</i>        |
| <i>MTR</i>         | <i>USA</i>      | <i>Various</i>                | <i>Unclear</i>        | <i>2013, 2014</i>  |
| Palm oil           | Indonesia       | Wilmar International          | Corporate loan        | 2009 – 2012        |
| Oil, tar sands     | Canada          | Various                       | Bonds (possibly)      | 2007, 2009         |
| Oil                | Russia          | Sakhalin II Project           | Syndicated loan       | 2007, 2010         |
| Gas, fracking      | U.K.            | Third Energy                  | Equity, 97%           | n.a.               |

**Figure I: Overview Barclays**

Apparently, there are no more than three cases altogether, which may fall under the EPs. This small number of cases results from the fact that only since mid-2013 – the formal launch of EP III – corporate loans have been officially included into the EP-framework. Corporate loans provided before that date were not subjected to the EPs. Other support, like the underwriting and management of shares or bonds, is not recognized by the EPs at all.

Hence, only three cases remain, namely Barclays alleged corporate loan to Barrick Gold and Glencore in 2014, the bank's loan linked to the Cerrejón coal mine and its involvement in the MTR-sector. However, in retrospect, it is difficult to determine with certainty whether these cases can be considered as definitely infringing the EPs: Regarding the first case it is not clear when this corporate loan was actually first provided to Barrick and Glencore. The amounts listed by Facing Finance in their 2014 report (cp. Facing Finance, 2014) may as well refer to an outstanding amount of corporate loans provided earlier. In the second case, the source does not mention whether Barclays also provided a corporate loan in 2013 or whether the bank's loan was already repaid by then (cp. World Development Movement, 2013). In the third case, it remains unclear whether Barclays provided a corporate loan or rather and most probably was underwriting bonds (cp. Gass, 2011).

**JPMorgan Chase & Co. and the Equator Principles**

The table below shows JPMC’s various involvements in controversial projects linked to socio-environmental destruction. Please note, the involvements listed are not exhaustive but represent only those being exposed in public. Apparently, there is no clear case of involvement presented in the table that can be linked to a potential infringement of the EPs, as JPMC is supporting companies or projects primarily through the management or underwriting of bonds and shares or via holding shares.

| Sector        | Country   | Project/Company       | Support type       | Date        |
|---------------|-----------|-----------------------|--------------------|-------------|
| n.a.          | Ethiopia  | Ethiopian Govt.       | Bond sale mgmt.    | 2014        |
| Coal mining   | India     | Vedanta               | Holding shares     | 2013        |
| Coal mining   | Indonesia | Bumi Resources        | Underwriting bonds | n.a.        |
| Coal mining   | Indonesia | G-Resources           | Holding shares     | n.a.        |
| MTR           | USA       | Massey Energy         | Underwriting bonds | 2008        |
| Hydropower    | Brazil    | Belo Monte; Eletrobas | Holding shares     | 2013        |
| Oil           | USA       | Keystone XL           | Shares or bonds    | 2007 – 2010 |
| Gas, fracking | USA       | Total, Shell, Chevron | n.a.               | 2010 – 2014 |

**Figure II: Overview JPMC**

**4.4. Case Study Conclusion**

From the case study summary it appears as if there is no significant difference between EPFIs and non-EPFIs. All the banks, except for the UBS, are more or less involved in a similar number of controversial cases between 2005 and 2014. Furthermore, all banks are active in similar sectors, mostly in mining (mainly coal but also metals), oil and gas (including fracking at Barclays and JPMC) and palm oil.

Yet, particularly the Equator banks Barclays and JPMC show a higher involvement regarding the coal industry. Both banks are significantly more supportive in terms of

the overall transaction volume than Deutsche Bank and UBS.<sup>22</sup> Also, both companies were intensively financing MTR-companies. While Barclays is still active, JPMC appears to be phasing out its relation by terminating already most of its relations to big MTR-companies.

In the light of adopted EPs and their environmental concerns it is quite surprising that particularly Equator banks appear to be most active in the coal sector. Compared to the other financial institutions, the non-Equator bank UBS has the lowest exposure in the coal sector based on the information presented here.

What could be a possible explanation for this insignificance? Judging from the material collected and presented in this article, it appears as if the EPs are just not sufficiently effective due to their limited scope. In fact, they do not reflect other very common financing practices in the finance sector, which are namely the underwriting and management of shares or bonds. Hence, the investment part of transactions is completely left out and also the mechanism of bonds which represents a tradable corporate loan. Accordingly, roughly half of the overall transaction value is not covered by the EPs, because it refers to the underwriting or management of shares and bonds.<sup>23</sup>

In brief, bonds and shares are not reflected, corporate loans were only included in the EP III version becoming effective by mid-2013 respectively beginning of 2014, and project finance only represents a small fraction of the overall transaction value. In the light of this it does not come as a surprise that most institutions are considered as being 'compliant' (cp. Equator Principles Association, n.d. b).

According to a report by MSCI in 2014, more and more financial institutions come to prefer internally developed principles and guidelines to the EPs. MSCI states that "[t]here is also evidence that the most widely adopted standard, the Equator Principles, is (and has been) lagging the banks' actual depth and breadth of risk-mitigation strategies" (cp. MSCI, 2014). Therefore, these internally developed

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<sup>22</sup> Total transaction volume from 2005 to 2011 for coal power and mining: JPMC: €16.5 billion (No.1), Barclays: €11.5 billion (No.5), Deutsche Bank: €11.5 billion (No.6), UBS: €8.2 billion (No.10). Total transaction volume from 2005 to 2014 for coal power and mining: JPMC: €21.5 billion (No.1), Barclays: €17.8 billion (No.4), Deutsche Bank: €15.2 billion (No.10), UBS: €11.4 billion (No.13) (cp. BankTrack, 2011a; BankTrack, 2014a).

<sup>23</sup>For instance, compare the distribution of investment banking vs. corporate loans between 2005 and 2011: €113 billion vs. €91 billion, and the comparably little value of transactions based on project finance: €3 billion; distribution of shares and bonds vs. corporate loans between 2005 and 2014: €200 billion vs. €173 billion (cp. BankTrack, 2011a; BankTrack, 2013; BankTrack, 2014a).

guidelines are often broader in scope as the EPs. The report further notes, that the number of EP-signatories is stagnating in the last few years (since 2013, the total number of EPFIs has fluctuated between 78 and 80 member institutions). According to MSCI, this is due to the preference of individually developed guidelines that go beyond project finance – which grew by 60% between 2011 and 2013.

In conclusion it can be said that the EPs seem to lose some of their attractiveness, as even financial institutions start to realize that these principles are not broad and deep enough to reflect the actual risks they are facing. The question of applicability (and the limited scope of the EPs) aside, even generally it does not appear as if the EPs are effective enough as they leave out a substantial part of financing companies or projects, namely shares and bonds.

## 5. CRITICAL EVALUATION OF THE EQUATOR PRINCIPLES

What might be the reasons that the EPs do not have a substantial effect on the on-the-ground CSR-performance of major international banks?

One major aspect is the existence of various loopholes and grey areas which allow EPFIs (and their clients) to circumvent the EPs in myriad ways: For instance, the EPs are vaguely, even ambiguously, formulated, leaving enough discretionary leeway for diverging interpretations and exit-door strategies.<sup>24</sup> The language used is often declaratory rather than compulsory and imperative; some principles are conditional in nature, others contain mere recommendations.<sup>25</sup> Words such as ‘should’, ‘intend’, ‘aim’, ‘encourage’, ‘make aware of’ and ‘commit’ are used, while legal terminologies

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<sup>24</sup> This is particularly true of the stakeholder dialogue that should either be based on the ICP-paradigm or on the FPIC-paradigm – given that indigenous peoples are involved. The challenge, however, is how to implement the stakeholder engagement in reality. Different interpretations of what (ICP and) FPIC entails might prevent their full realization. For example, who is affected, who gives consent and what constitutes consent? For the IFC consent constitutes at least the agreement of indigenous peoples to the impact assessment and to the action plan to ensure that impacts are stated correctly and actions address indigenous peoples’ concerns. Currently, FPIC applies only for projects impacting indigenous peoples. Should there be a universal application of FPIC to all projects? Who counts as indigenous peoples? Is the definition in the IFC Performance Standards clear enough? Are their concerns adequately represented in terms of gender, age and societal structure? How many focus group consultations will be set up? Who is responsible for seeking FPIC – the state or the company? Does FPIC require a binding consultation or is an informative consultation sufficient? Does FPIC grant any veto rights? Does it require unanimity? If a majority is sufficient, which majority rule should be followed? Is two-thirds’ majority approval sufficient for consent? Does 51-percent approval constitute consent? And what happens in cases when consent cannot be reached and third-party mediation fails?

<sup>25</sup> For example, the alternatives analysis requires “the evaluation of *technically* and *financially* feasible and *cost-effective* options” (cp. Equator Principles Association, 2013b, 12; emphasis added), leaving enough discretionary leeway for the involved EPFIs and their clients.

such as 'shall', 'must', 'will' and 'oblige' are more or less avoided. The EPs are mainly written in 'should' not in 'shall' language, which implies no legal obligations. As a consequence, borrowers and lenders are able to circumvent the 'contractual' obligations of the EPs in several ways to avoid being classified as high risk (cp. Marco, 2011, p. 470).

One way for banks to circumvent the EPs is to redefine their project finance activities as representing something else, such as corporate finance, export finance or investment banking (this has been shown, among others, by the previous case studies). It should also be noted that project finance in general is only a small segment of major financial institutions. It commonly accounts for up to 5% of the overall turnover of financial institutions. Thus, the EPs in their current version apply only to a small segment of multinational banks' total activities (see also section 4.4. for more information on the limited scope of the EPs).

Furthermore, project financiers could take the backdoor option and classify their projects as category B or C to avoid a stricter A-classification (which has been shown by section 3.1.) (cp. Haack et al., 2010, p.21; Wright, 2012, p.68). Last but not least, financial institutions can provide loans in different tranches to not meet the respective financial thresholds.<sup>26</sup>

A major problem concerning the EPs is also the lack of publicly disclosed information. Public disclosure of information and public consultation are often prevented by confidentiality duties towards clients. Breaches of client confidentiality for sure "can entail civil or criminal sanctions and damage relationship between a lender and its client" (Richardson, 2005, p.287). Yet, "NGOs have complained that this caveat [i.e., appropriate confidentiality considerations] is a hindrance to disclosure and transparency. They have found that banks are characterizing many relevant issues as "commercially sensitive" and, as such exempt from disclosure for reasons of confidentiality" (Mikadze, 2012, p.1406). In several cases, banks "hide behind excessive interpretations of "client confidentiality" to withhold information to stakeholders and the public" (BankTrack, 2011b, 5; cp. Wright, 2012, p.64).

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<sup>26</sup> Cp. for further loopholes and grey areas the recently published EP-implementation note (cp. Equator Principles Association, 2014), which lists several exceptions of what falls within and outside the scope of the EPs. Various exceptions are also granted by the EPA in terms of reporting requirements. In addition, many EPFIs hide behind confidentiality issues and, last but not least, the publication of (some) project-related information on the EP-website requires the client's consent.

Rather inadequate are also the governance systems of the EPs, that is, their enforcement, monitoring and sanctioning mechanisms: The EPs as a voluntary and soft law CSR-initiative do not set up minimum entry requirements which have to be met prior to becoming a member of the EPA. EP-(non-)compliance is also not assessed according to absolute performance standards, that is, the EPs do not contain clear, verifiable metrics which are transparently and independently monitored – e.g., by an independent EP-ombudsperson associated with the United Nations, the IFC and/or the World Bank Group (cp. Schepers,2011, p.101) – all of which are absolute necessities for an impartial and third-party assessment of compliance. Finally, organizational and project-level grievance and remedy mechanisms, which could help to address ineffective implementation and non-compliance, are (mainly) absent. In sum, so far, no adequate accountability, auditing and monitoring systems exist that could ensure corporate liability and help to ex ante prevent dodgy deals and dirty projects.

The self-regulatory EP-regime is especially ineffective since a credible deterrent – e.g., in the form of delisting and exclusion of non-compliant EPFIs – and formal sanctions are lacking: Currently, EPFIs face (almost) no formal sanctions and only minor informal sanctions should they not comply with the EPs. For instance, a delisting is possible according to the EP-Governance Rules (cp. Equator Principles Association, 2013b), if an EPFI fails to report publicly within 6 months or if it does not pay the membership fee within 3 months (according to the EPA-website, (unsurprisingly) all current EPFIs are in compliance with the reporting and membership fee requirements of the EPA). Only in these cases will an EPFI be removed from the list and thus, be no longer a member of the EPA – a re-adoption of the EPs, however, is still possible. Yet it is not planned to de-list a company due to non-compliance.

Besides that only ‘naming and shaming’ campaigns might put EPFIs and their clients under pressure. NGO-watchdogs have some (very limited) powers when it comes to reputational pressure. They help to ensure that non-state actors such as (multinational) companies abide by their voluntary commitments and promises. Nevertheless, this passive and ex-post way of monitoring (and sanctioning) is not sufficient to ex-ante prevent dodgy deals such as those described earlier in this article.



It is the governance mechanisms (i.e., enforcement, monitoring and sanctioning) that could help to avoid dirty projects and dodgy deals and protect human rights and other socio-environmental standards. Yet as it looks, the EPs in their current version do not have enough legal bite to penalize institutions that fall behind their voluntary socio-environmental commitments pointing towards a need to reform this CSR-initiative.

Reform measures should be primarily adopted to close the various loopholes and to reduce the discretionary leeway for EPFIs and their clients. For example, the ‘spirit of the EPs’ (cp. Conley, Williams, 2011, p.547) should be applied to all banking activities – including asset management and investment banking – and not being restricted to project finance alone since the project finance sector is only a small sector compared to the other financing activities of major international banks. The strategy ‘going beyond project finance’ could therefore help to avoid circumventing the EPs, e.g., by redefining investment projects as representing something else than project finance (see section 4.4.).

Moreover, further reform steps should be implemented to harden this soft law CSR-approach and to move towards (more) mandatory and legally binding rules, which in turn could help to enhance the effectiveness of the EPs on the ground – e.g., in terms of respect for socio-environmental CSR-standards.<sup>27</sup> A reform of the EPs and their association should focus on the implementation of (more) efficient (and formal) enforcement, monitoring and sanctioning mechanisms. This should include the introduction of minimum entry requirements – such as human rights due diligence, stakeholder engagement, impact benefit agreements and grievance mechanisms –, absolute performance standards, independent third-party assessment of norm compliance and formal sanctions, e.g., in the form of an enforcement pyramid<sup>28</sup> (cp. for a detailed overview of the reform steps: Wörsdörfer, forthcoming).

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<sup>27</sup> This could be achieved, for example, with the help of the U.N. Human Rights Council, the U.N. Working Group on the Issue of Human Rights and Transnational Corporations, the U.N. Special Rapporteur on the Rights of Indigenous Peoples as well as the IFC’s and World Bank Group’s ombudspersons and compliance officers.

<sup>28</sup> What is required is to establish a credible deterrent and an enforcement pyramid (cp. Ayres, Braithwaite, 1992). This pyramid should start with less coercive means like persuasion, warnings and setting deadlines for bringing projects back into compliance. Only when less coercive means fail, should more coercive tactics been employed. They should contain formal sanctions like penalties and fines. The final stage of such an enforcement pyramid should include the delisting and exclusion of non-compliant EPFIs (cp. Sarro, 2012, pp.1549).

As the case studies in this paper have shown, solely voluntary and self-regulatory CSR-initiatives like the EPs tend to fail to be properly enforced in practice; they also tend to be a weak instrument to prevent dodgy deals and dirty projects. Therefore, a need to move from (pure) corporate voluntarism towards (more) mandatory and legally binding rules seems appropriate – in order to (better) guarantee the on-the-ground protection of human rights.

## **6. MAKING CSR MORE EFFECTIVE BY INCREASED BINDING FORCE**

The Governance Rules as well as the legal Disclaimer of the EPs state that “the Equator Principles do not create any rights in, or liability to, any person, public or private” (Equator Principles Association, 2013a, 11). This implies that the EPFIs adopt and implement the EPs on a voluntary and legally non-binding basis. The EP-framework is, therefore, voluntary in use relying purely on self-enforcement and the goodwill of EPFIs, that is, no mandatory obligations or direct punitive actions can arise from the principles themselves (i.e., exclusion of liability) (Andrew, 2009, p.306).

As the case studies presented in this article have shown, however, a (mere) corporate voluntarism seems to be inappropriate to ex-ante prevent dodgy deals and dirty projects; voluntary CSR-standards tend to fail due to their limited scope and/or their inadequate governance mechanisms, including a high discretionary leeway and multiple loopholes.

Thus, this article argues for a pluralist transnational CSR- and EP-governance regime relying on a steering mix in the short run and a move towards hardening the soft law in the medium and long run. This indicates that soft law CSR-initiatives like the EPs should gradually emerge into hard law: ‘The soft law of today should become the hard law of tomorrow’ (Kobrin, 2009, p.360).

The medium-term aim must be to combine the advantages of hard- and soft-law approaches – and at the same time to avoid the respective disadvantages – and to find the right balance between the different regulatory approaches within the EP-framework. A smart and responsive steering mix, consisting of voluntary and mandatory standards and a middle path between the extremes of command regulation and deregulation are required in the medium-term. Yet what should also have become clear from the empirical data presented in this article is that “[i]n the longer run, global governance [and transnational governance regimes, including the

EPs] cannot rely entirely on soft law and non-hierarchical compliance mechanisms if it is to be effective” (Kobrin, 2009, p.368).<sup>29</sup>

In other words, in the short and medium run, voluntary and mandatory elements could coexist and complement each other (this is in particular true for CSR-initiatives at the transnational level like the EPs): Voluntary or soft-law regulation can help develop mandatory standards in that they provide the basis for further hard-law initiatives; they can be classified as temporary or transitional instruments which precede regulatory action (they also have the ability to compensate for the hard law’s lack of flexibility; hard-law regulation often lags behind the development of moral insights and new socio-economic developments). Yet voluntary regulation should not be a substitute for formal-governmental regulation (in the wider sense, including the regulation implemented by supranational organizations like the IFC and the World Bank Group) in the long run – due to its various deficiencies in terms of governance; it can at best fill a temporary void and/or a regulatory vacuum (Wettstein, 2009a; Kobrin, 2009, p.368).

In sum, self-regulatory and voluntary governance elements should be seen as a complement, not as a substitute for the formal socio-environmental obligations implemented by nation states and supranational organizations (Cragg, 2004, p.126). Unmonitored corporate commitments (e.g., in the form of corporation’s codes of ethics and/or industry association’s codes of conduct), however, are unlikely to result in higher moral standards – as the case studies presented in this paper have shown. What is required is an independent third-party monitoring and (formal-automatic) sanctioning with the help of nation states, supranational institutions and voluntary sector organizations such as NGOs and civil society groups. It remains to be seen whether the EPFIs and the EPA are willing to harden the soft-law EP-framework, e.g., by adopting some of the proposed reform measures in the academic literature.

## **7. POLITICAL CSR IN THE CONTEXT OF SHARED AND COLLECTIVE RESPONSIBILITY**

From our perspective, socio-environmental responsibilities today require the active participation of various different actors. These responsibilities are to be considered as

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<sup>29</sup> The proposed reform measures in this paper are supposed to lead towards more mandatory and legally binding elements of the EPs which might help to fully exploit their business-ethical potential. The aim must be to harden the soft law EP-framework and to overcome the ‘bias towards corporate voluntarism’ (Wettstein, 2009b; Wettstein, 2010b).

shared and collective responsibilities, which equally refer to state as well as non-state actors such as (multinational) companies – and in particular, financial institutions – and civil society organizations.

Today's global political economy is no longer a mere nation-state-based oriented one; it is rather a multi-actor system with shifting power relationships. That is, the traditional state-centric 'Westphalian' setting of the pre-globalization era seems no longer valid due to the fact that the power of nation states has decreased in recent decades while the powers of civil society organizations and especially multinational companies have increased tremendously. Kobrin (2009, p.353) and others speak in this regard of a 'post-Westphalian world order' which is characterized – among others – by the (partial) erosion of the regulatory power of nation states, the existence of regulatory governance gaps and hard law vacuums as well as a change in relationships and a new division of labor between state and non-state actors.

In the absence of a Kantian or Habermasian world government, the realization and fulfillment of CSR-norms at the transnational level, the level above and beyond the nation state, cannot rely solely on nation state actors – to the contrary. Their enforcement relies mainly on the close collaboration between various state and non-state actors (and whether non-state actors, such as multinational companies, adhere to their socio-economic and environmental responsibilities) which means that all major sectors of (world) society – the government sector, the business sector and the civil society sector – have to contribute to the production of global (quasi-)public goods, such as the protection of human rights and other socio-environmental standards.

This implies *shared* (cp. Young, 2006) or *collective responsibilities* (cp. Miller, 2001) which require concerted efforts and collaborations among different state and non-state actors – including government agencies, supra-/international organizations, (multinational) companies (e.g., EPFIs and their clients), NGOs, civil society groups and other stakeholders. These 'CSR-public-private partnerships' are, therefore, characterized by complementary (cp. Sorrell, 2004, p.135) and overlapping responsibilities and obligations of nation states, businesses and civil society.

The pooling of expertise is needed due to the fact that governance gaps created by globalization exist at the transnational level and due to the fact that no single actor alone is able to solve transnational problems; global problems simply overstrain the

capacity of either state or non-state actors. It is the transnational post-Westphalian setting – including the politicization of non-state actors as well as the shift in relations between governments, businesses and civil society actors – which requires moving beyond the state-centered remedies for human rights abuses and other CSR-standards violations. A special obligation exists for those actors with superior powers (cp. Kobrin, 2009), capabilities (cp. Wettstein, 2009a) and/or leverage-based influences (cp. Wood, 2011; Wood, 2012; Miller, 2001), such as multinational companies<sup>30</sup>, to ensure the protection and realization of human rights and other CSR-standards as quasi-public goods.

This, in turn, implies a positive duty for EPFIs and the EPA to (further) strengthen their governance mechanisms – e.g., by adopting some of the proposed reform measures in this paper– to ensure a proper EP-implementation on the ground. It also implies that the EPFIs and the EPA have a responsibility to enhance their cooperation with state and non-state actors – and especially with international organizations (such as the United Nations), NGOs and civil society activists – to transform the EP-framework into a true multi-stakeholder initiative (so far, the EPs lack a proper stakeholder engagement with affected stakeholders at the associational and organizational level; they, therefore, also lack democratic legitimacy).<sup>31</sup>

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<sup>30</sup> In particular, multinational companies gradually slip into the role of ‘primary agents of global justice’ (cp. O’Neill, 2001; Lane, 2004, p.148; Sorell, 2004, p.134; Wettstein, 2009a), that is, they are not any longer mere addressees of the regulation; they are also (co-)authors of the regulation. Moreover, multinational companies act as de facto (quasi-)political actors (cp. Crane, Matten, 2004/2010, pp.76.; Moon et al., 2005; Scherer, Palazzo, 2007; Scherer, Palazzo, 2008; Kobrin, 2009, p.354; Wettstein, 2010a, pp.39), rule-makers (Scherer et al., 2006; Wettstein, 2010, p.275) and standard-setters. At the transnational level, they shape and regulate the global business environment in which they operate (i.e., corporate structural power). At the national level, they act in (quasi-)governmental roles (Wettstein, 2009a; Wettstein, 2009b, p.143), acquire (quasi-)government-like powers and exercise (quasi-)government-like functions such as the provision of public goods (cp. Scherer, Palazzo, 2007, p.1098; Scherer et al., 2009; Scherer et al., 2014; Moon et al., 2005; Crane, Matten, 2004/2010; Matten, Crane, 2005; Wettstein, 2009a).

<sup>31</sup> Various parties, including a reform commission set up by the EPA itself, have made proposals for improving the engagement of stakeholders, such as NGOs, civil society organizations and project-affected communities (including indigenous peoples). The proposals include a structural reform of the EPA in the form of the creation of an EP-Advisory Group with representatives from stakeholder groups and civil society organizations and an EP-Forum for stakeholder engagement on finance industry ESG-issues (cp. Lazarus, Feldbaum, 2011, p.10). The inclusion of stakeholder groups and NGOs in decision-making processes of the EPA would raise the legitimacy and reputation of the association and the respective Equator banks, and help to strengthen the EP-framework. Also, the feedback, which Equator banks will receive from the various civil society organizations and stakeholder representatives, will be of great help to overcome practical challenges, e.g., with regards to FPIC-implementation (cp. Lazarus, Feldbaum, 2011, p.8). Furthermore, FPIC-based stakeholder dialogues between financial institutions, their clients and project-affected stakeholder groups should become the standard procedure for all projects financed ‘under the EPs’.

## 8. CONCLUDING REMARKS

Since our understanding of CSR is not (entirely) based on voluntariness, we therefore advocate a higher degree of formal institutionalization to enable socio-economic and environmental responsibility. The last few decades have seen the emergence of several voluntary and self-regulatory multi-stakeholder initiatives in the field of CSR. Yet, several of them – like the EPs – inherently lack effectiveness due to inadequate governance mechanisms – including various loopholes and discretionary leeway – and/or limited scope. Thus, we claim, in order to be effective, socio-economic and environmental responsibility must be formally institutionalized.

That is, CSR-initiatives should rely (more) on mandatory and legally binding elements to provide for an accountable and effective framework. This requires *first* and foremost that the language used should avoid loopholes as much as possible and help to reduce the discretionary leeway to a minimum. *Second*, it requires that the principles and guidelines have effective enforcement, monitoring and sanctioning mechanisms in place to ensure compliance. *Third*, membership in these CSR-initiatives should be ideally based on entry criteria that have to be met prior to becoming a member as well as clear, verifiable metrics and performance standards which are transparently monitored. *Fourth*, the scope should be broad enough to avoid circumventing strategies. *Lastly*, (formalized) CSR-initiatives should be based on a close collaboration between state and non-state actors, including civil society organizations, NGOs and supra-/international organizations, implying shared and collective responsibilities.

Future research on that topic should take the limits of our research design into consideration, that is, the methodology limitations as well as the scope limitations of the current article.

*First*, the RepRisk database has to be regarded as a starting point that requires (further) manual verification and relevancy check. The problem with this negative screening approach is that in several cases no reliable or clear data are available.

*Second*, the scope covered in this paper, namely the examination of four multinational banks is certainly not exhaustive. These banks only serve as prominent examples for the global banking industry in general. Thus, future research should not only focus on the EPs but also include the assessment of other CSR-commitments of

banks. And it should also be based on a broader study including more banks, e.g. the top ten to twenty banks globally.

*Third*, the research framework of this paper is not designed to support the bank's claims on their CSR-behavior nor does it try to validate the magnitude of fulfillment of their various commitments to third-party guidelines and principles beyond the EPs. That is, the paper only analyzes alleged infringements linked to the EPs and not to other multi-stakeholder initiatives. The real magnitude of socio-environmental abuse as such may not become visible by relying on the EPs only, as these are vaguely and sometimes even ambiguously formulated (leaving enough discretionary leeway for the involved parties)<sup>32</sup> and since they focus exclusively on the project finance sector and are thus limited to project-related corporate loans, bridge loans and project finance transactions, including advisory services related to project finance. Transactions based on bonds and shares are completely left out, which means that roughly a half of the total volume of financial transactions is not subjected to the EPs.<sup>33</sup>

*Finally*, the design of the case studies and the incidents illustrated does not include a retracement of EP-infringements in terms of attributing these to a specific management (i.e., inadequate chosen tools for EP-implementation) or individual failure (i.e., individual misconduct and/or lack of commitment). Nor does it allow us to clearly state which principles of the EPs have been violated – due to a lack of transparency and publicly disclosed information.<sup>34</sup> In several cases only circumstantial evidence exists which indicates that the client might have failed to conduct a proper stakeholder engagement, as laid down in the IFC Performance Standards, and/or an Environmental and Social Impact Assessment, as required by the EPs.<sup>35</sup>

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<sup>32</sup> It is this lack of precision (e.g., in terms of performance standards) which makes it almost impossible to evaluate the (non-)compliance of the EPs.

<sup>33</sup> Please note, only the latest version of the EPs includes project-related corporate loans and bridge loans which means that only transactions from mid-2013/beginning of 2014 – after the end of the transition period – are subjected to EP III; most of the transactions analyzed in this paper thus fall under EP II with an even more limited scope and lesser business-ethical requirements in terms of stakeholder engagement and human rights.

<sup>34</sup> The lack of publicly disclosed information – especially concerning data before 2003 and 2006 – makes it almost impossible to evaluate the CSR-performance of EPFIs before and after the implementation of EPI (2003), EP II (2006) and EP III (2013).

<sup>35</sup> The available data, however, indicates that at least the 'spirit of the EPs' (and other CSR-initiatives) has been violated by the involved parties in cases of serious socio-environmental and human rights violations. Moreover, the (still) high number of 'dirty projects' makes it at least questionable whether a

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cultural change in major banks is already under way as has been proposed by Williams (2013, pp.305) and others.



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|                         | Appendix    |               |           |            |
|-------------------------|-------------|---------------|-----------|------------|
|                         | Barclays    | Deutsche Bank | JPMorgan  | UBS        |
| <b>Employees</b>        | 140,000     | 10,000        | 260,000   | 60,000     |
| <b>Profits</b>          | USD 884.1 m | USD 884.2 m   | USD 18 bn | USD 3.6 bn |
| <b>CSR-Initiatives</b>  |             |               |           |            |
| Eps                     | ✓           | ✗             | ✓         | ✗          |
| Carbon Principles       | ✗           | ✗             | ✓         | ✗          |
| GRI                     | ✓           | ✓             | ✓         | ✓          |
| ILO                     | ✓           | ✓             | ✗         | ✗          |
| OECD                    | ✓           | ✓             | ✗         | ✗          |
| U.N. Human Rights Decl. | ✓           | ✗             | ✓         | ✗          |
| UNEP FI                 | ✓           | ✓             | ✗         | ✓          |
| UNGC                    | ✗           | ✓             | ✗         | ✓          |
| UN PRI                  | ✗           | ✓             | ✓         | ✓          |
| WolfsbergPrinc.         | ✓           | ✗             | ✓         | ✓          |
| Risk-MGMT Framework     | ✓           | ✓             | ✓         | ✓          |

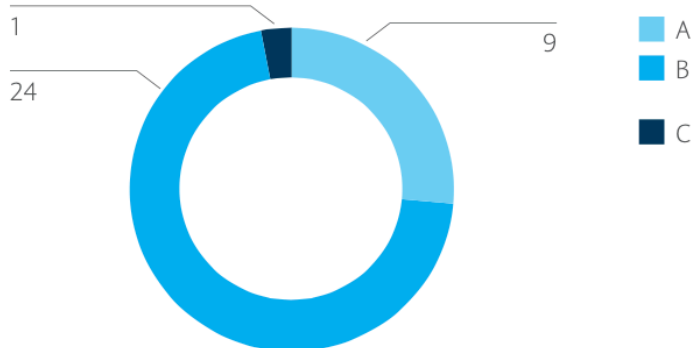
**Figure 1: Overview of multinational banks' membership in various CSR-initiatives**

## Transactions screened by sector

| Sector                                       | Project finance | Other transactions |
|--|-----------------|--------------------|
| Infrastructure                               | 1               | 13                 |
| Mining and metals                            | 6               | 56                 |
| Oil and gas                                  | 2               | 26                 |
| Power (fossil fuels)                         | 4               | 9                  |
| Other  | 0               | 12                 |
| Agriculture, fisheries, forestry and logging | 0               | 8                  |
| Manufacturing                                | 0               | 26                 |
| Chemicals and pharmaceuticals                | 0               | 5                  |
| Power (non-fossil fuels)                     | 19              | 42                 |
| Utilities and waste management               | 2               | 5                  |
| <b>Total</b>                                 | <b>34</b>       | <b>202</b>         |

**Figure 2: Barclays' EP-Reporting I (source: Barclays, 2013, p.25).**

## Project finance transactions by risk category



### Notes

Category A – Projects with potential significant adverse social or environmental impacts which are diverse, irreversible or unprecedented.

Category B – Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures.

Category C – Projects with minimal or no social or environmental impacts.

**Figure 3: Barclays' EP-Reporting II (source: Barclays, 2013, p.25).**

## Data Reporting

### Project Finance Advisory Services

JPMorgan Chase Bank, N.A. was not mandated on any Project Finance Advisory Service roles during the reporting period.

### Project Finance

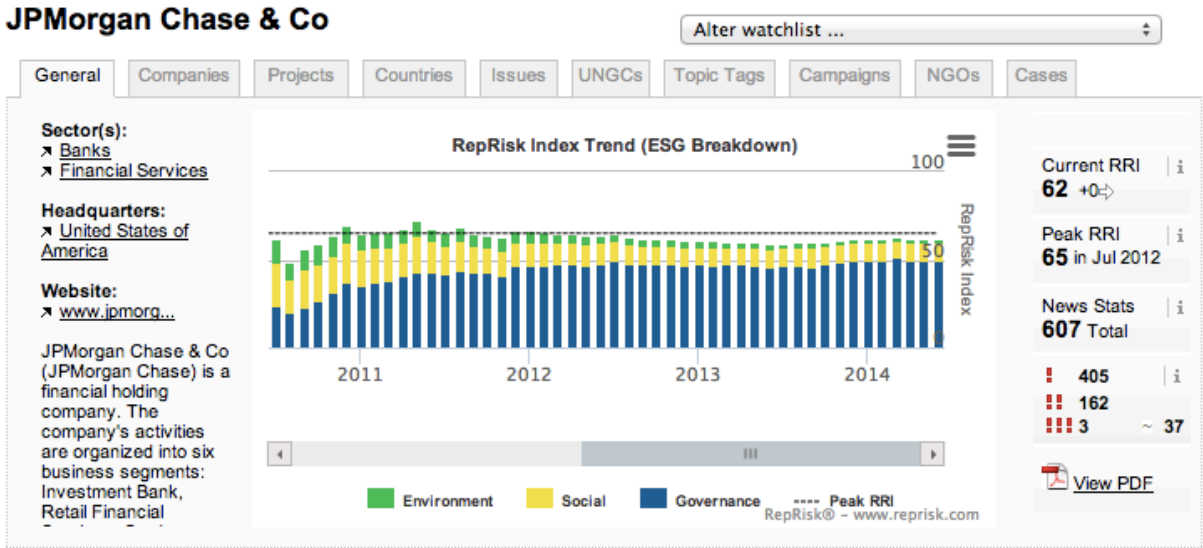
A summary of Project Finance transactions that reached financial close in 2013 is presented below<sup>1</sup>:

| Category <sup>2</sup> | Sector    | Region        | Country Designation <sup>3</sup> | Independent Review <sup>4</sup> |
|-----------------------|-----------|---------------|----------------------------------|---------------------------------|
| A                     | Chemicals | EMEA          | Non-Designated                   | Yes                             |
| B                     | Oil & Gas | North America | Designated                       | Yes                             |

**Figure 4: JPMC's EP-Reporting (source: Jpmorganchase, 2013).**

In general, the RepRisk Index (RRI) is a quantitative risk measure that captures NGO, civil society and government criticisms and quantifies a company's or project's exposure to controversial environmental, social and governance issues. The RRI ranges from zero (lowest) to 100 (highest). It is calibrated as follows: 0-25 indicates low risk exposure; 25-50 indicates medium risk exposure; 50-75 denotes high-risk exposure; 75-100 signifies very high-risk exposure. The following graphs and figures illustrate the RepRisk methodology by referring to JPMC as a case example.

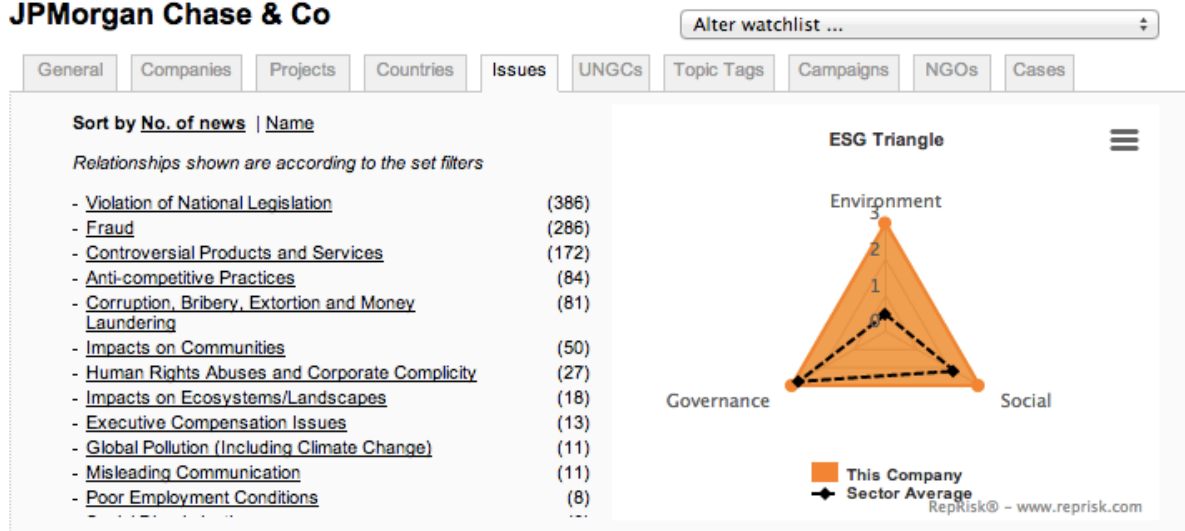
The current RRI of JPMC is 62 (cp. figure 5), which denotes a high-risk exposure.



**Figure 5: RepRisk Overview on JPMC’s Risk Exposure (June 2014)**

The following graph by RepRisk (cp. figure 6) shows the various issues at JPMC regarding violation of national legislation, environmental abuse, and social and human rights standards. As of June 2014, JPMC has been involved in 386 cases of violation of national legislation alone, as the figure below shows. Fraud, in particular, is a frequent issue at JPMC.

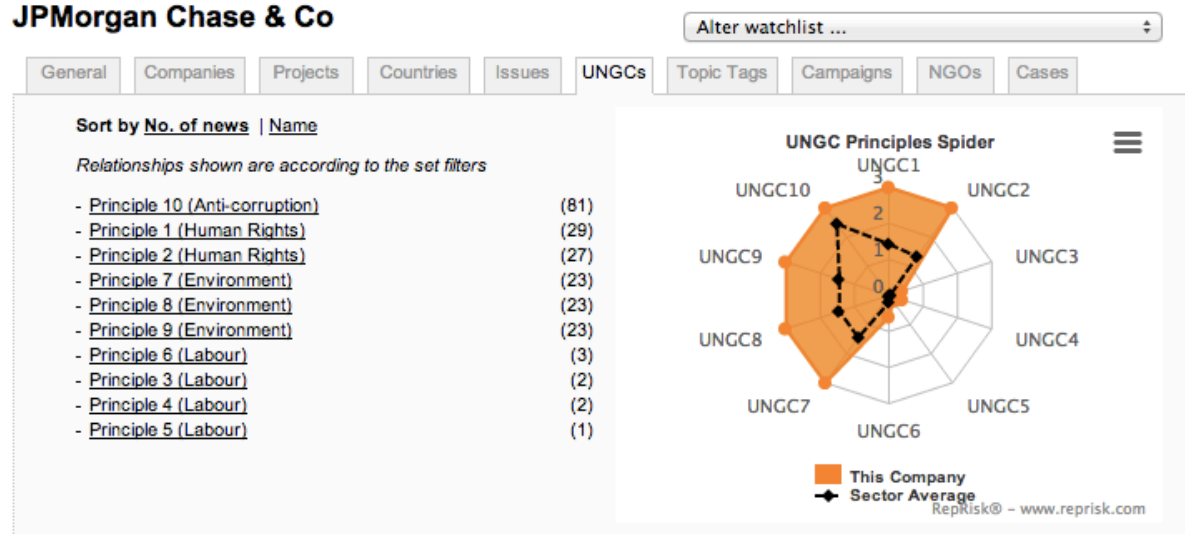
## JPMorgan Chase & Co



**Figure 6: Overview on ESG-Issues at JPMC (June 2014)**

Figure 7 indicates which principles of the U.N. Global Compact (UNGC) have been violated by JPMC. JPMC, in particular, violated the human rights, the environmental and the anti-corruption principles of the UNGC. Unlike HSBC and other banks, JPMC is not directly committed to the UNGC. Therefore, the figure below only serves as an illustration.

## JPMorgan Chase & Co



**Figure 7: Overview on UNGC-Infringements at JPMC (June 2014)**

As figure 8 shows, JPMC is particularly exposed to risks arising from violation of national legislation, severe governance issues like bribery, corruption, money laundering, fraud and anti-competitive behavior. Furthermore, in the area of environmental footprint, JPMC's business activities cause impacts on the ecosystem. In terms of social impacts, the company's business negatively impacts communities and also involves corporate complicity regarding human rights infringements. Further risks also arise from controversial products and services.

## Issue Analysis of JPMorgan Chase & Co since June 2010

| Environmental Footprint                                | Community Relations                       | Employee Relations                               | Corporate Governance                             | Product-Portfolio Related Risks            |
|--|---|--|--|--|
| Global Pollution and Climate Change                    | Human Rights Abuses, Corporate Complicity | Forced Labor                                     | Corruption, Bribery, Extortion, Money Laundering | Controversial Products and Services        |
| Local Pollution  | Impacts on Communities                    | Child Labor                                      | Executive Compensation                           | Products (Health and Environmental Issues) |
| Impacts on Ecosystems and Landscapes                   | Local Participation Issues                | Freedom of Association and Collective Bargaining | Misleading Communication, e.g. "Greenwashing"    |  |
| Overuse and Wasting of Resources                       | Social Discrimination                     | Discrimination in Employment                     | Fraud*   |  |
| Waste Issues   |   | Health and Safety Issues                         | Tax Evasion*                                     |  |
| Animal Mistreatment                                    |   | Poor Employment Conditions                       | Anti-competitive Practices*                      |  |
| Violation of International Standards                   |   |  |  |  |
| Violation of National Legislation                      |   |  |  |  |
| Supply Chain (Environmental, Social, and Legal Issues) |   |  |  |  |

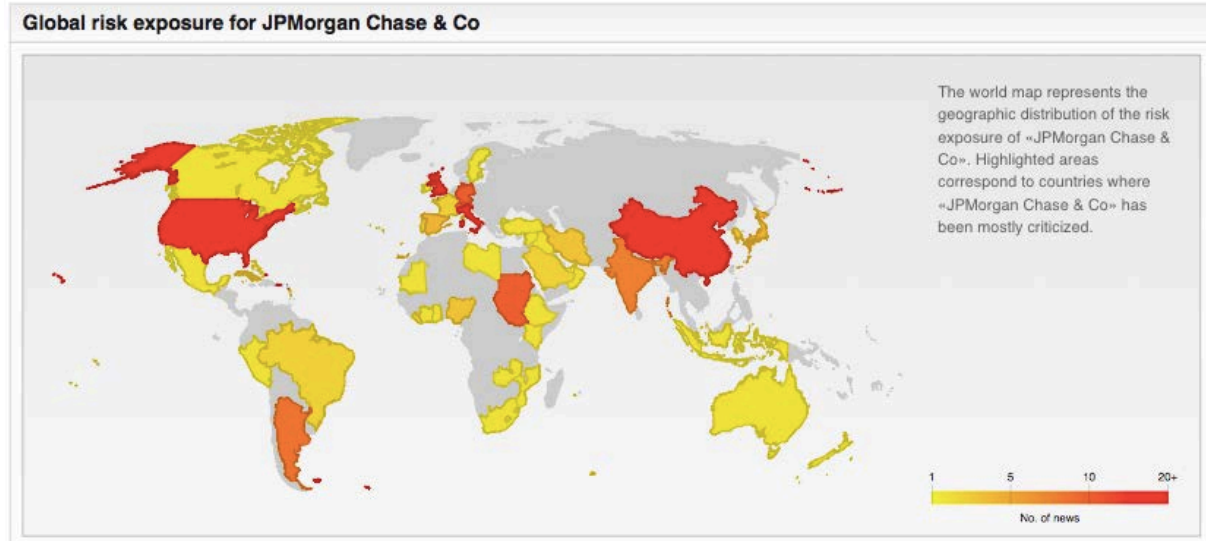
\* As of May 1, 2010



**Figure 8: Analysis of JPMC's ESG-Issues (June 2014)**

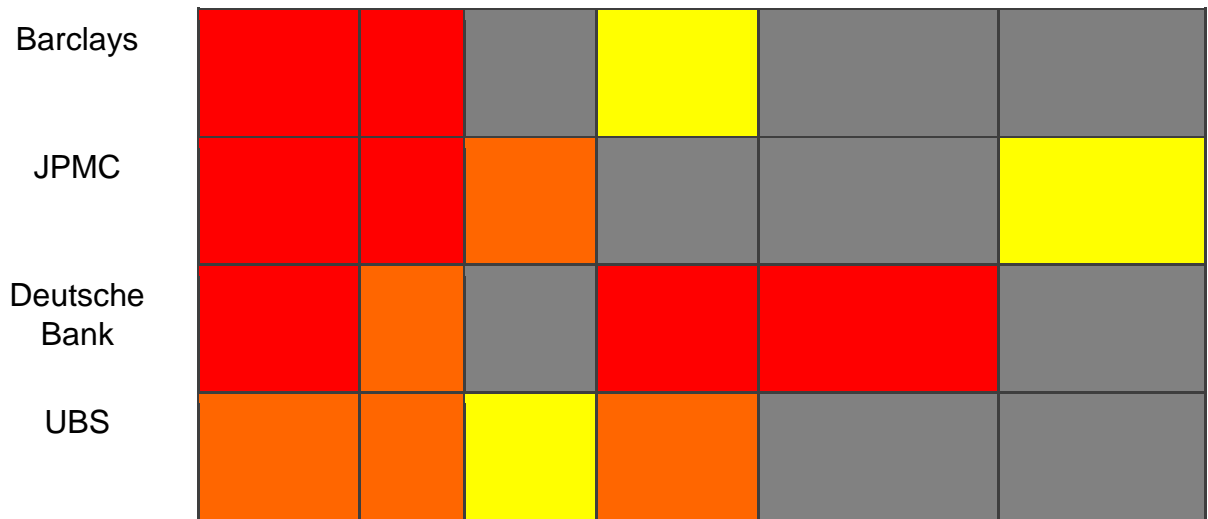
Noteworthy is also the geographic distribution of risk exposure presented in figure 9. JPMC is mostly criticized in the USA, the U.K., Italy and China.

## Risk Exposure of JPMorgan Chase & Co since June 2010



**Figure 9: Overview on JPMC's International Risk Exposure (June 2014)**

Oil & Gas    Coal    Mining    Palm Oil\*    Nuclear Energy    Hydro-power



**Figure 10: Case Study – Comparison EPFIs vs. Non-EPFIs**

Legend for grade of involvement: High ■ Medium ■ Low ■ None ■

\*) Palm oil and other resource exploitation linked to deforestation and illegal logging