The AMDAL Process and the Equator Principles

Common themes and apparent differences

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Abstract

Today’s buzzwords in environmental assessment are ‘The Equator Principles’ or EP in short. Differentiation is made between the regulatory environmental impact assessment (EIA) of the host country (in Indonesia referred to as the AMDAL process) and the international EIA adopting EP requirements, the adopted EIA standards for most financial institutions. In Indonesia, compliance with the AMDAL process for new mining projects is compulsory by law, while additional EP compliance is increasingly a reality of project financing. Much confusion, however, exists about the differences between the AMDAL and EP requirements. This paper argues that the AMDAL framework is sufficiently comprehensive to conduct, at least in theory, a high quality environmental impact assessment study, with supporting documentation that can conform to EP expectations. It is also argued that comparing the AMDAL process with EP requirements is not a black and white affair, easily achieved by ticking boxes. The main differences between the AMDAL and the EP requirements are seen in the extent to which the project owner has to demonstrate (1) the commitment to maximize socio-economic benefits for the host region of the mine, and (2) the commitment and the capability to implement agreed environmental action plans. The Equator Principles are as much concerned about planning (the preparation of the EIA documentation is part of it) as they are about implementation and monitoring of success. It is the latter two aspects in which EP requirements go beyond the usual AMDAL practice. Enforcement of environmental commitments is not left alone with the regulatory government authorities; the Equator Principles extend enforcement responsibility to involved financial institutions.

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BACKGROUND

The Equator Principles (EP) apply to all new mine developments in Indonesia and elsewhere with a capital cost of US$ 10 million or more that seek private sector financing. They have emerged as the banking industry standards on environmental and social issues for project finance.

In Indonesia a project proponent is also required by regulation to undertake an Environment Impact Assessment (AMDAL) as the major environmental prerequisite for starting the project. This begs the question: What are the differences between the AMDAL and EP requirements, if any? And if differences do exist, what does it mean in practical terms for the prospective mine developer?

The Beginning of EIA Practice in the Banking Sector

The National Environmental Policy Act of 1969 (NEPA) in the United States is considered to be the origin of Environmental Impact Assessment (EIA) as a distinct discipline. The EIA process was quickly adopted internationally. The practice of banks to adopt the EIA process as best practice to protect the environment, was initiated by the World Bank in 1989 when the World Bank started developing several policies governing environmental assessment (EA) of projects. Operational Policy (OP) 4.01 on Environmental Assessment is the central document that defines the Bank’s environmental assessment requirements. The Environmental Assessment Sourcebook (World Bank 1991) and its updates provide technical and authoritative guidance.

As early as 1992, the United Nations Environment Program and a group of commercial banks launched the UNEP Banking Initiative, which in 1997 evolved into the UNEP Financial Institutions Initiative, and the issuance of Statement by Financial Institutions on the Environment and Sustainable Development. At the time when the Equator Principles were launched in 2003, 165 banks have signed this statement including some of the Equator Banks. The UNEP Statement incorporates wide statements addressing sustainable development and environmental management; they are worded in more general terms than the Equator Principles.

The IFC Performance Standards of 2006

The International Finance Corporation (IFC), the private sector arm of the World Bank, released environmental policies similar to the Word Bank Directives in 1998, specifically tailored to private sector financing. The latest version, the IFC’s Performance Standards on Social and Environmental Sustainability of 2006 (commonly referred to as Performance Standards or PS on short) represent an environmental and social risk management system provided by the IFC for its investment and financial clients. They comprise of 8 standards:

- PS 1. Social and Environmental Assessment and Management Systems
- PS 2. Labor and Working Conditions
PS 1 is the linchpin of the environmental and social risk management system, centered on three key elements (Spitz and Trudinger 2008):

- Development of an environmental impact assessment (EIA) that evaluates project impacts;
- Public input into the EIA process; and
- Implementation, monitoring and enforcement of the applicable guidelines during the construction and operation phases of each project.

Standards 2 to 8 are specific sub-standards governing environmental and social reviews that are used to measure a project’s risk in detail from numerous environmental and social perspectives. Sub-standards 3 and 6 focus on environmental issues, whereas 2, 4, 5, 7 and 8 focus on social issues. Only those Sub-standards are relevant to a project will be applied; this is significant. IFC will require project sponsors to justify any deviations from the PS to the satisfaction of the bank.

All 8 standards are stand-alone guidelines, but are also interrelated; thus they constitute a complete system for environmental and social risk management. Clearly, the PS are much more than a framework for Environmental Impact Assessment.

THE EQUATOR PRINCIPLES

The Buy-in of Financial Institutions in World Bank’s Practice

While widely praised, the World Bank’s approach to environmental assessment remained limited to projects in which the World Bank or IFC had a financial stake. This changed in 2003 when private financial institutions with support and guidance by IFC, drafted a set of voluntary guidelines to ensure environmentally and socially responsible project financing, originally dubbed the ‘Greenwich Principles’ because the consultation meetings were held in this suburb of London. During the public comment period, however, the name ‘Equator Principles’ (EP) was introduced according to NGOs suggestions, in hope that the principles would become the global standard for development equally spread from North to South.

The EP represent the attempt by private financial institutions to introduce into lending decisions a more structured and rigorous consideration of social and environmental impacts of the projects banks are being asked to fund. The IFC PS emerged as the major applicable standards of the Equator Principles as they put forward all of the standards that private financial institutions (Equator Principles Financial Institutions-EPFI; or in short
Equator Banks- EB) require their project financing clients to meet (EP 3, see Figure 1). With the increasing global influence of the Equator Principles, it is fair to say that the IFC PS have emerged as the world’s leading system for environmental and social risk management.

Figure 1: Roadmap to EP Compliance (Spitz and Trudinger 2008)

THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS OF A MINE IN INDONESIA

In Indonesia a project proponent is required by regulation to undertake an Environment Impact Assessment (AMDAL) as the major environmental prerequisite for starting the project. As such, the government is responsible for the initial project risk and compliance assessment. The AMDAL process in Indonesia dates back more than 20 years, and it is specifically mandated by the newly approved Environmental Protection and Management Law (Article 22) dated 8 September 2009 replacing Environmental Law No. 23 of 1997. The Ministry of Environment Regulation No 08 of 2006 provides the latest guidance on the AMDAL process.

The Indonesian government imposes a “positive list” for a project and/or activity that requires AMDAL according to the type, scale and location of activity through Minister of Environment Regulation No. 11 Year 2006. Projects not listed are obliged to prepare Environmental Management Effort or Upaya Pengelolaan Lingkungan (UKL) and Environmental Monitoring Effort or Upaya Pemantauan Lingkungan (UPL) documents in accordance with the newly approved Environmental Protection and Management Law 2009 (Article 34).

The type of activity and scale of projects that require a full AMDAL process are defined in Minister of Environment Regulation No. 11 of 2006 covering the following sectors: (1) defence, (2) agriculture, (3) fishery, (4) forestry, (5) transportation, (6) satellite technology, (7) industry, (8) public work, (9) energy and mineral resources, (10) tourism, (11) nuclear development, (12) hazardous waste processing, and (13) genetic engineering. Any project located at the border or inside a protected area, no matter of type or scale, requires an AMDAL.

In regard to mining, the following activity requires an AMDAL: (1) mining concession area is $\geq$ 200 ha; (2) open area for mining activity $\geq$ 50 ha/year; (3) mining of radioactive ore; (4) sub-marine mining or sub-marine tailings disposal; and (5) ore processing using cyanide or amalgamation.

The AMDAL process in Indonesia is an integrated and comprehensive assessment of project impacts taking into account biological, geo-physical/chemical, socio-economic-cultural, and public health aspects. The AMDAL process aims to evaluate the
environmental feasibility of a project and is the means by which the authority grants the necessary permits for the project or activity.

Prior to commencing AMDAL work, the project proponent is required to notify the environmental impact management agency. Based on the type, scale and location of the project, AMDAL approval may be granted at central level by Ministry of Environment (KLH), at provincial level by Provincial Environmental Impact Management Agency (Provincial Bapedalda), at regency level by Regency Environmental Impact Management Agency (Regency Bapedalda).

The first step of the AMDAL process is the preparation of the Terms of Reference (KA-ANDAL) to be approved by the AMDAL Committee. The scoping process includes to define (1) scope of the study, (2) type of activities of the project that may cause impact to environment, (3) environmental parameters likely to be affected by the project, (4) method of data collection and analysis, (5) potential and important impact identification and (6) methods of impact prediction and evaluation (Minister of Environment Regulation No. 08 of 2006).


The format of the AMDAL documentation (consisting of ANDAL, RKL, RPL and Executive Summary/Ringkasan Eksekutif documents) is described in the Minister of Environment Regulation No. 08 of 2006. Section 2.1 b. “Alternatives Studied in AMDAL” of this regulation represents a new requirement for Indonesia, although it has long been a requirement of the World Bank/IFC and of most other countries.

AMDAL documents are reviewed and approved by the AMDAL Technical and Appraisal Committee through the stakeholder engagement process. The review of the AMDAL documents is a two-step approach. In the first round, the documents are reviewed by Technical AMDAL Committee (rarely documents are accepted without revision or request for more information), then revised by proponent to be re-submitted to the approval authority. If accepted, the documents are reviewed by the EIA Appraisal Committee and the same process will take place as in the first round.

The AMDAL Appraisal Committee consists of officials from inter-agency, university or other experts, NGO, as well as formal and informal leaders. If the review finds the AMDAL process satisfactory, the respective government agency (MoE or Bapedalda) will issue a letter of “approval to proceed with the project”. If the study demonstrates that impacts can not be mitigated by current available technology, the government may decide to reject the proposed project. Once the AMDAL is approved, construction can commence. The AMDAL becomes invalid if the proposed project is not undertaken within 3 (three) years since the issuance of AMDAL approval (Government Regulation No. 27 of 1999, Article 24).
The Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL) are important operational documents, which last throughout the lifetime of the project. The documents contain commitments of proponent to prevent, control, mitigate and monitor the environmental impacts at all stages of the project; they also specify reporting requirements of the environmental management and monitoring activities. RKL also addresses commitments to community development/CSR.

All commitments in the RKL and RPL documents are legal binding and used as reference by the Ministry of Environment, related Departments, Environmental Impact Management Agency (Bapedalda), or other third party auditor during the audit of the implementation of all commitments in RKL and RPL. The approving authority has powers to check conformance with the commitments and enforce compliance with the applicable laws and regulations.

It is fair to state that the AMDAL process allows for an integrated and comprehensive assessment of major and significant impacts likely to result from a proposed project or activity. However, while the AMDAL process is sufficiently comprehensive to prepare an environmental impact assessment to meet international standards, certain aspects may still require additional studies or the preparation of stand-alone additional documents to conform to guidelines set by international organizations or financial institutions, in particular ‘The Equator Principles’.

DIFFERENCES IN SUBJECT MATTERS ARE FEW

The procedural requirements such as

- EP 1 – Project Categorization (in Indonesia reflected in the requirement to either prepare a full AMDAL or an UKL/UPL document);
- EP 2 Environmental and Social Impact Assessment (in Indonesia reflected in the ANDAL document due to Bapedal Decree No 299 of 1996, Technical Guidance on Social Studies in AMDAL);
- EP 4 - Environmental Action Plans (RKL/RPL documents in Indonesia); and
- EP5 - Public Consultation (mandated in Indonesia due to Bapedal Decree No 08 of 2000)

are not that different under the EP and the AMDAL regime. To a large extent, the AMDAL process, originally developed by the Government of Indonesia with the assistance of the World Bank, is sufficiently comprehensive to prepare an environmental impact assessment that meets leading international standards: a well prepared AMDAL will go a long way in complying with EP 2 or respectively PS 1 in regard of assessing adequately project impacts and opportunities.

That said in practice there is an apparent paradox. The AMDAL regulation is detailed and unambiguous. The responsible authorities, accountability systems and monitoring mechanisms for compliance are well placed. The regulations are mandatory and legal
action can be taken against the party who violates the regulations. The AMDAL process appears sound, but there are loopholes in the implementation in the over 20 years history of the AMDAL process in Indonesia. On occasions the EIA reports are not authentic, often the outcome of a cut-and-paste process; the public consultation does not take place throughout the project life; and the EIA reports are too verbose or too technical that it is not clear what impacts the project will actually have on host communities and the surrounding environment. Not surprisingly, the Indonesian AMDAL system is not always working as intended. However, the new Environmental Protection and Management Law dated 8 September 2009 presents ways to overcome the weaknesses of the previous environmental laws and regulations and to strengthen the whole AMDAL process, including its implementation. The AMDAL documents can only be prepared by certified companies, team leaders and team members. The certification process and criteria are set forth in Minister of Environment Regulation No 11 of 2008. Furthermore, a project and/or activity with an approved AMDAL must now have an Environmental Permit issued by Minister of Environment or Governor or Regent. An individual preparing AMDAL document without having Certificate of Competence in AMDAL Compilation can serve a jail sentence of 1 to 3 years and can be fined between 1 to 3 billions IDR. Similarly, an individual carrying out a project/activity without having an Environmental Permit can serve a jail sentence of 1 to 3 years and fine between 1 to 3 billions IDR.

However, even with an exemplary AMDAL process in place, there are some factual differences between the EP and the AMDAL regime; these fall mainly under the following categories:

- Applicable standards;
- Implementation;
- Number of regulatory project stakeholders;
- Social standards;
- Grievances Mechanism, and
- Labor and working conditions, and community health and safety issues.

It is in these areas in which the Indonesian AMDAL practice appears to be less demanding.

**Applicable Standards**

Clearly, compliance with applicable Indonesian regulatory standards is mandatory for any new mining project in Indonesia, and regulatory project compliance is one of the first AMDAL subject matters. An Equator Bank, however, will either require projects additionally to comply with the IFC’s Environmental and Health and Safety Guidelines (the Guidelines) or require project sponsors to justify any deviations from those guidelines to the satisfaction of the bank.

Besides the general IFC EHS Guideline the following industry-specific EHS Guidelines relate to the mining and metals sector:
- Aluminium manufacturing;
- Base metal and iron ore mining;
- Coal mining and production;
- Copper smelting;
- Iron and steel manufacturing;
- Lead and zinc smelting;
- Mini steel mills;
- Nickel smelting and refining.

The Guidelines provide the standards applicable to the processes, technologies and environmental issues relating to specific industries and represent good practice within such industries. It is important to recognize that newly released IFC Guidelines tend to be based on cutting-edge pollution control measures which not necessarily represent common industry practice at that time.

The World Bank’s Pollution Prevention and Abatement Handbook (PPAH) will also apply generally to many projects. Furthermore, the ‘Mining and Milling - Underground’, and ‘Mining and Milling – Open pit’ policies comprising part of the EHS Guidelines will be applicable to many mining projects.

**Increased Focus on Implementation – From Cradle to Grave**

The core EP commitment arguably is that EPFIs will not provide loans to projects where the financial client will not, or is unable to, comply with EP requirements. As such EPFI will commonly screen the capability and the commitment of the financial clients of implementing agreed environmental and social protection measures (see Figure 2). A high risk project combined with a low rating of the Project Proponent in either capability or commitment to implement agreed environmental actions is likely to become a show stopper for involved EPFI.

**Figure 2: Screening of Financial Clients Capability of Adhering to EP Requirements**

Demonstrating capability (reflected in a Project specific EHS – Management System covering construction and operation) and commitment (commonly reflected in allocated resources and transparency) is becoming increasingly important to comply with EP.

**Increasing Number of Regulatory Project Stakeholders**

Before the advent of the EP the Indonesian Government solely acted as regulator. Seeking EPFI financing a mining company accepts additional regulatory stakeholders:

- EPFI;
- Host Communities;
- Employees and Workers; and finally
- Public at Large due to EP 10 on Public Reporting.
The responsibility of EPFIs is clear. As the EP were devised to promote environmental stewardship and responsible development in the context of project financing, EPFI as the lenders are obliged to monitor and to influence the environmental and social aspects of a project. Admittedly, notwithstanding EPFIs’ commitment to the Equator Principles, EPFIs cannot function as proxy environmental regulators: EP are a voluntary Code of Conduct for Financial Institutions and, by definition, the EP are not mandated by external agents (e.g., governments).

However, key to the credibility of the EP are the elements of monitoring (EP 9), transparency, and public reporting (EP 10). Because of the EP 10 requirement of public reporting, each EPFI commits to report publicly at least annually on its Equator Principles implementation process and experience. This requirement, added to the 2006 Equator Principles, seeks to address a common criticism of the 2003 Equator Principles regarding lack of transparency and accountability of EPFIs in applying the principles.

Disclosure of project details, of course, will be inevitably subject to banking confidentiality requirements, and correctly so: ultimately financial clients are in a better position to provide detailed environmental disclosure regarding their mining projects than EPFIs are. Nevertheless EP 10 enforces transparency and accountability in the application of the Equator Principles, and eventually opens environmental aspects related to project financing to the review of the public at large.

Social Standards

The core EP and IFC PS objective arguably is that project-affected communities are better off with the project than without it. Five of the 7 IFC sub-standards are social standards: (1) PS 2 Labor and Working Conditions; (2) PS 4 Community Health, Safety and Security; (3) PS 5 Land Acquisition and Involuntary Resettlement; (4) PS 7 Indigenous Peoples and (5) PS 8 Cultural Heritage.

PS 2 and PS 4

Labor and working conditions, together with issues related to community health, safety and security are relatively recent addition to the IFC social and environmental risk management framework; these issues are commonly only superficially addressed during the AMDAL process. That said, in regard of compliance with PS 2 (Labor and Working Conditions), Indonesian labor laws are well developed and at a high standard. Companies operating in Indonesia are required to prepare a comprehensive Employment Handbook detailing employee’s right and obligations. Compliance with Indonesian labor laws does address many of the key concerns of PS 2:

- Freedom of association;
- Collective bargaining;
- Forced labor;
- Child labor;
Equality of opportunity and treatment;
- Tripartite consultation
- Employment policy;
- Employment security;
- Wages;
- Working time;
- Occupational safety and health;
- Social security; and
- Maternity protection.

PS 5, 7, and 8

The EP requirements are by far more specific in regard to land acquisition and resettlement, Indigenous Peoples issues, or cultural heritage than equivalent AMDAL requirements. If applicable project proponents are well advised to prepare separate Action Plans in addition and in parallel to the AMDAL documentation to address applicable social PS.

Grievances Mechanism

Both the AMDAL and the EP emphasize the need for companies to establish effective dialogue processes in order to avoid or to minimize negative impacts and to ensure equitable benefits for host communities. However, IFC PA and EP have specific requirements for grievance mechanisms, including:

The PS require that if the client anticipates ongoing risks to, or adverse impacts on, affected communities, the client will ‘establish a grievance mechanism to receive and facilitate resolution of the affected communities and grievances about the client’s environmental and social performance’.

The EP require companies to establish an appropriate dispute resolution mechanism to ‘allow the borrower to receive and facilitate resolution of concerns and grievances about the projects social and environmental performance raised by individuals or groups and among project-affected communities’.

MINING INITIATIVES BEYOND AMDAL AND EP

Most major mining companies have been actively engaged in complying with similar requirements than the ones stipulated in the AMDAL or EP for a significant period of time; they are well used to imposing their own stringent environmental and social assessments (Spitz and Trudinger 2008). Mining groups had for a number of years embraced principles of sustainable development and environmental best practices by developing several voluntary codes of conduct and developing environmental and sustainable development policies, such as:
- International Cyanide Management Code, established by the International Cyanide Management Institute in 2002;
- International Council on Mining and Metals (ICMM) formed in 2001 and made up of 14 of the largest mining and metal companies and 24 national mining and global commodities associations, requiring its members to ‘integrate sustainable development principles into company policies and practices’;
- Guidelines on Responsible Mining by the Mineral Policy Center in 2001;
- Guidelines on Sustainable Development and Mining by the Mining, Minerals, and Sustainable Development Project in 2002;
- Minerals Council of Australia (MCA)’s Enduring Value: Guidance for Implementation of 2005; and
- World Bank’s 2003 Extractive Industries Review in 2003, which contained recommendations for the bank’s future lending activities in this sector.

Clearly, large mining companies are looking today beyond social and environmental responsibilities, to broader goals of governance and structural change. As one example, they aim enhancing of revenue transparency in the extractive industries, pursuant to the landmark Extractive Industries Transparency Initiative. It is fair to say that major mining companies welcome the AMDAL as well as the Equator Principles as a component of their overall risk management strategies to mitigate against political and operational risk in respect of their mining projects in emerging markets.

On the other side, however, junior and mid-cap mining companies which do not have access to the same financial resources as the majors, are more sensitive to additional costs applied to their projects. As financial clients, these entities are perhaps the most concerned about the time, effort and financial cost required to comply with the Equator Principles, in addition to the regulatory AMDAL requirements.

**THE WAY FORWARD**

A standard approach is not required for implementing the AMDAL process and satisfying the EP. A timely and effective environmental review of the project (technical project issues, applicable standards, environmental setting, and local social fabric) and an analysis of applicable international and national laws and regulations, is the first step; it will allow the project proponent to identify environmental risks and uncertainties in the context of the AMDAL, EP and the IFC PS and EHS Guidelines.

Identifying those IFC sub-standards PS 2 to 8 that are relevant to a project is an important outcome of this initial review. For applicable sub-standards an action plan needs to be designed and implemented (e.g. in form of a Land Acquisition and Resettlement Plan for PS 5); for those judged not applicable for the project under review the project proponent needs to prepare a justification why the project deviates from the PS to the satisfaction of the involved EPFI. It is also important to document relevant project activities: a well implemented consultation and public participation program, as one example, finds little recognition by EPFI if not well documented.
Subsequently a well prepared AMDAL process will satisfy the requirements as they relate to assessing projects impacts and opportunities, and to proposing environmental management and monitoring measures. There is the need to additionally assess compliance with relevant IFC’s Environmental and Health and Safety Guidelines, and to justify any deviations from those guidelines to the satisfaction of the involved EPFI.

Finally, and most importantly, demonstrating capability and commitment is key to EP compliance. In practical term this means preparing a project-specific EHS – Management System covering construction and operation, and allocating the necessary resources.

References