Banking with Principles?

Benchmarking Banks against the UN Guiding Principles on Business and Human Rights

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BANKTRACK

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Summary

The UN Guiding Principles, while not perfect, provide the clearest expression yet of the international community's expectations of the human rights responsibilities of corporations, including private sector banks. The most notable response by the banking sector to date has been the formation of the Thun Group in 2011 to discuss the implementation of the Principles, and their first discussion paper, launched in 2013. More than one year from the launch of this paper, and more than three years from the launch of the Guiding Principles themselves, this study attempts to assess how banks are doing at implementing the Principles into their own operations, policies and reporting.

To do this, we have benchmarked 32 large global banks against a set of 12 criteria. These criteria fall into four categories: policy commitment; due diligence commitment; reporting and access to remedy. We have provided banks with the opportunity to comment on a draft of the criteria and also on a draft of the scores, and we have worked with an independent reviewer to ensure the robustness of the scores. Our key findings are that:

- **The banking sector's efforts to implement the UN Guiding Principles are at an early stage.** The benchmarking exercise resulted in banks achieving a broad range of scores, between 0 and 8 points out of a possible 12. However the average score received was just 3 points out of 12. Only half of the banks covered have developed human rights policies which include a clear commitment to respect human rights – one of the most fundamental requirements of the Guiding Principles.

- **At the bottom end of the ranking are eleven banks whose consideration of human rights is wholly inadequate, or in some cases entirely absent.** These banks scored less than 2 out of 12. This includes the four Chinese banks included in the exercise (all of which are among the top ten largest banks in the world by asset value), but it also includes banks from the United Kingdom, Germany and United States, where discourse on human rights is more advanced.

- **At the top end of the ranking are eight banks which clearly show progress in integrating the UN Guiding Principles into their business practices.** These banks scored six or more points out of 12. This includes four of the seven banks which signed on to the Thun Group's October 2013 discussion paper (although the highest scoring bank, Rabobank, is not a member of this group). Even in this relatively high achieving group, there is significant progress to be made, particularly in reporting and access to remedy.

- **Among all of the banks studied, human rights reporting remains underdeveloped.** A majority of banks (17 out of 32) made no substantive reporting on human rights developments, beyond mentioning the policies they have in place. Those that did report on their human rights impacts did not provide sufficient information to evaluate the effectiveness of their response to particular human rights issues.

- **Banks' responsibilities to remedy human rights impacts they identify are almost entirely unrecognised.** None of the banks covered were found to have grievance mechanisms in place which meet minimum standards, meaning no transparent means exist for rights-holders to raise human rights impacts. None had a clearly described process in place to remedy even those human rights abuses identified by their own due diligence.

Summary table of results

	Policy commit-ment / 4	Due dil. commit-ment / 3	Reporting / 3	Access to remedy / 2	Total score / 12
Rabobank	4	3	0.5	0.5	8
Credit Suisse	4	2.5	1	0	7.5
UBS	3	2	1.5	0	6.5
Unicredit	3.5	1	1	0.5	6
ING	3.5	2	0.5	0	6
Citi	2.5	2	1.5	0	6
BNP Paribas	4	1	1	0	6
ANZ	1.5	2.5	2	0	6
ABN AMRO	3	1	1	0	5
Commerzbank	2	1.5	1	0	4.5
RBS Group	3	1	0	0	4
La Caixa	4	0	0	0	4
JPMorgan Chase & Co	2	2	0	0	4
Barclays	1.5	2	0	0.5	4
Banco Santander	2.5	1.5	0	0	4
BBVA	2.5	0.5	0	0.5	3.5
Goldman Sachs	2	1	0	0	3
Morgan Stanley	1.5	1	0	0	2.5
Crédit Agricole	2	0.5	0	0	2.5
Wells Fargo	1	0	1	0	2
Société Générale	1	0.5	0	0.5	2
Mizuho Financial Group	1	0.5	0	0	1.5
Deutsche Bank	0	1.5	0	0	1.5
Standard Chartered	0.5	0.5	0	0	1
HSBC	0.5	0	0.5	0	1
Sumitomo Mitsui Financial Group	0	0	0.5	0	0.5
Mitsubishi UFJ Financial Group	0	0	0.5	0	0.5
Ind. & Comm. Bank of China (ICBC)	0	0	0.5	0	0.5
Bank of America	0	0.5	0	0	0.5
China Construction Bank Corporation	0	0	0	0	0
Bank of China	0	0	0	0	0
Agricultural Bank of China	0	0	0	0	0

Introduction

The human rights impacts of banks

Banks have the potential to impact human rights in many ways.[1] These include ways which are common to every business activity – for example, the potential for discrimination in the way employees are treated – as well as ways which are more unique to providers of finance, such as by financing activities which themselves result in human rights violations.[2]

BankTrack's online database of "dodgy deals" financed by banks shows that the potential for human rights violations as a result of bank finance is far from being purely theoretical. Banks covered in this report have been found to finance companies and projects involving forced removals of communities, child labour, military backed land grabs, and abuses of Indigenous peoples' right to self-determination - see Box 1. This list includes tar sands exploration projects, coal mines and coal power stations, all of which generate high levels of carbon emissions as well as posing particular risks to the rights of those living nearby; showing that human rights are deeply intertwined with environmental impacts, and that efforts to secure human rights can also be crucial in the fight against catastrophic climate change.

Policies and processes, open to public scrutiny and backed by adequate reporting, are important tools for banks to ensure that these kinds of abuses do not happen, and that where they do, those whose rights have been impacted have the right to effective remedy. However, banks must ultimately be assessed on the outcomes of such policies and systems on rights holders themselves. If these policies and procedures are to be meaningful, the finance for such "dodgy deals" must eventually dry up.

The human rights responsibilities of banks

The Universal Declaration of Human Rights clearly states that "every organ of society" has human rights obligations. This includes business enterprises and therefore banks. However the extent of business responsibilities relating to human rights remained for many years poorly described and little-understood.

To address this, the United Nations Secretary General appointed in 2005 a Special Representative on Business & Human Rights, to identify and clarify standards of corporate responsibility and accountability.[3] This led in 2008 to the development of the 'Protect, Respect and Remedy' framework, which set out differentiated human rights duties and responsibilities for states and businesses. This is expressed in a three pillar framework: the state has a **duty to protect** against human rights abuses; businesses have a corporate **responsibility to respect** human rights, and victims of human rights abuses have the **right to effective remedy**.

This framework was followed in 2011 by the Guiding Principles, which were unanimously endorsed by the 47-state Human Rights Council in June of that year, and which are designed to "operationalise" the Protect, Respect and Remedy framework. The Guiding Principles provide the clearest expression yet of the expectations of the international community regarding the human rights responsibilities of corporations, including banks.[4]

The fact that banks are within the scope of the UN Guiding Principles is well established. For example, the UN Office of the High Commissioner for Human Rights has asserted that "the financial sector is covered by the Guiding Principles in the same way as all other sectors".[5]

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1 In this report, "banks" refers to private-sector commercial banks. Multilateral and other development banks are not considered within this scope.

2 Damiano De Felice, "Banks and human rights: The Thun Group and the UN Guiding Principles on Business and Human Rights", 2014

3 UN Secretary General, Press Release, 2005

4 Guiding Principles on Business and Human Rights, 2011. Throughout this document, the abbreviation GP will be used to refer to specific Guiding Principles (e.g. GP13).

5 UN Office of the High Commissioner for Human Rights, Letter to Mr. Roel Nieuwenkamp (paragraph 15), November 2013

Box 1: Examples of human rights violations backed by banks[6]

- **Kaltim Prima Coal (KPC) mine, Indonesia:** Communities affected by the project have had to deal with significant water pollution, loss of land and other problems, including serious dust and noise disruptions from blasting. Indigenous Dayak Basap people are fighting to prevent being forcibly displaced for a fourth time as a result of the mine. Villagers report being intimidated by company representatives, have lost land and report having insufficient land to cultivate or hunt. "We feel that KPC wants to drive us out of our village, our homeland," said one interviewee. Financed by Bank of America, Bank of China, Bank of Tokyo Mitsubishi UFJ, Barclays, BNP Paribas, Crédit Agricole, Credit Suisse, Deutsche Bank, JPMorgan Chase, UBS.

- **El Mirador Copper Mine, Ecuador:** The mine will violate the rights of indigenous peoples to free, prior, and informed consent and fair and just compensation, and deny their collective rejection of the mine project. The mining company has seized peasant land, causing widespread discontent, and demolished a church and school. Those who did not have titles to their lands have simply been evicted, and others have been let down by the company's failure to fulfil compensation pledges. Financed by Bank of China, China Construction Bank Corporation, Industrial & Commercial Bank of China.

- **Tata Mundra Ultra Mega Power Plant, India:** The project has caused drastic reduction in fish catches, destroying the livelihoods of local fisher-folk, and blocked access to grazing grounds. The project failed to thoroughly examine or adequately address the health and environmental impacts of ash contamination from the project. Adequate, meaningful, and informed consultations with the affected communities were not conducted. Financed by BNP Paribas and public sector banks.

- **APRIL, Indonesia:** Asia Pacific Resources International Holdings Limited (APRIL) is Indonesia's second largest pulp and paper producer. APRIL and its subsidiaries and suppliers are involved in numerous land and social conflicts in Riau Province. A study by the independent auditors SGS found that over 40,000 hectares of APRIL's concession area in Riau have been claimed by local communities as their traditional land. Social conflicts have erupted in several different communities, with injuries and even deaths of community members as a result. Financed by ABN Amro, Bank of China, Credit Suisse, Industrial and Commercial Bank of China.

Banks and the UN Guiding Principles: the response

The banking sector response to the development of the Guiding Principles has been led to date by the Thun Group of Banks (although there has also been a more limited response from the Equator Principles: see Box 2). This informal grouping first consisted of four European banks (Barclays, Credit Suisse, UBS and UniCredit), who came together in May 2011 in Thun, Switzerland, and announced their intention to explore what the Guiding Principles mean for the banking sector. In October 2013, the Group (enlarged by the participation of three additional members: BBVA, ING Bank and RBS) released the first fruits of these explorations, the "Discussion Paper for Banks on Implications of Principles 16-21", in October 2013.[7]

This discussion paper included valuable recommendations for banks on what needed to be done to integrate the UN Guiding Principles into bank policies, and on how to develop due diligence procedures to cover commercial banking as well as retail banking and asset management. It also recognised, in a first for the banking sector, that the UN Guiding Principles apply to all parts of a bank's business. BankTrack welcomed the paper, but pointed out that some important gaps remained to be filled.[8] In particular it was disappointing that after two and a half years of deliberation, the group omitted to discuss the issue of access to remedy. The Thun Group has subsequently committed to explore this issue in future.

6 Summarised from "Dodgy Deal" profiles on the BankTrack website: www.banktrack.com
7 Thun Group, Discussion Paper for Banks on Implications of Principles 16-21, 2013
8 BankTrack, On the Thun Group paper on banks and human rights, 2013

Since the UN Guiding Principles were unanimously endorsed by the UN Human Rights Council in 2011, businesses have been slow to act.[9] The banking sector is no exception in this regard. While the continuing discussions of the Thun Group are a positive development, almost four years on from the launch of the Guiding Principles it is time to examine the extent to which banks have begun to implement the Principles in their own policies and processes. This is what this report sets out to do.

Box 2: The Equator Principles: legitimacy at risk?

The Equator Principles (EPs) are voluntary guidelines signed by 80 banks, governing the management of environmental and social risks when financing large infrastructure projects. Following the release of the UN Guiding Principles, the EPs were revised in June 2013. The newly updated EPs explicitly referenced the Guiding Principles, and noted that "in limited high risk circumstances, it may be appropriate for the client to complement its Assessment Documentation with specific human rights due diligence."[10]

This statement falls short of the requirements of the Guiding Principles, which call for business enterprises to conduct due diligence, at a level appropriate to the nature and context of a business' operations, without restricting this to "limited high risk circumstances".

In addition, the EPs failed to act on the Guiding Principles' recommendation that "industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available" so that concerns can be raised when the commitments in question are not met.

While the Equator Principles say that banks should ensure that the projects they finance establish grievance mechanisms of their own, the Principles themselves have always lacked any kind of complaints mechanism. BankTrack has called on the Equator Principles to introduce a grievance mechanism since their establishment in 2003, and the UN Guiding Principles now give greater impetus to this call. As the notes to GP30 say quite starkly, "*the legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms*" (GP30).

Strengths and weaknesses of the Guiding Principles

Like many others in civil society, we are clear that the Guiding Principles are no panacea.[11] For example, they do not incorporate explicit reference to the full body of human rights laws and standards that is relevant for the assessment of the corporate responsibility to respect human rights; e.g. the UN Declaration on the Rights of Indigenous Peoples. And the follow-up process to the Principles has not included establishing a grievance or complaints mechanism that victims of business-related human rights abuses can access for remedy.

However, as Human Rights Watch has said, the Guiding Principles "bring us closer than we have ever been to a shared understanding of how businesses should think about at least *some* of their core human rights responsibilities".[12] This study takes the Guiding Principles as its starting point, as we believe that full implementation of the Principles will bring the banking sector forward towards greater respect for human rights, and thereby reduce the incidence of rights violations.

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9 Institute for International Economic Policy, "Putting the Blame on Governments: Why Firms and Governments have Failed to Advance the Guiding Principles on Business and Human Rights", 2014

10 The Equator Principles, June 2013

11 For more on the strengths and shortcomings of the Guiding principles, see Christopher Albin-Lackey at Human Rights Watch: "Without Rules: A Failed Approach to Corporate Accountability" (2013), and the invaluable guidance document by SOMO, CEDHA and Cividep India, "How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy" (2012).

12 Ibid.

Methodology

This study assesses the progress of 32 of the world's largest banks towards implementing the UN Guiding Principles on Business and Human Rights.[13] It benchmarks each bank against a set of 12 criteria in four categories: **policy commitment**; **due diligence commitment**; **reporting** and **access to remedy**. For each criteria, a score of 0 (non-compliance), 0.5 (partial compliance) or 1 (full compliance) was assigned.[14]

Consultation with the banks scored has taken place throughout the process. BankTrack notified contacts at all 32 banks in early September 2014, providing the opportunity for feedback or comments to be provided on a draft of the assessment criteria.[15] Draft scores were sent to the banks and an opportunity to provide feedback was given. In total, 16 of the 32 banks covered took the opportunity to provide feedback. Four banks' scores were upgraded as a result of their responses. One bank commented on this process:

> *"The process of this benchmarking exercise has been transparently communicated (scope, timelines, methodology) and clear in execution (scoring, i.e. about points accorded and how the published information was rated). We will be interested to read the final report in early December."* – **A bank respondent.**

Scoring is based on publicly available policies. While some banks provided private internal policies as part of their feedback, these have not been taken into account. While some banks disagreed with this approach, it follows from the commentary to the Guiding Principles, which states that "business enterprises need to *know and show* that they respect human rights" (GP15).

External assessment of results: To ensure the criteria were consistently and rigorously applied, we contracted an external expert to provide an independent assessment of the entire process. This assessment was carried out by Damiano De Felice, the director of the London School of Economics' Measuring Business & Human Rights project. His statement is included towards the end of this report (page 15). De Felice reviewed the initial criteria, the initial draft scores, and the changes made to the draft scores on the basis of bank feedback. His input has been invaluable and we thank him for this contribution.

Limitations: No scoring method can hope to fully capture the extent of a bank's commitment to human rights, and as discussed in the introduction, a key limitation of this methodology is that it does not seek to assess the *outcomes* of banks' policies on rights holders, e.g. through the projects that banks finance.

It should also be made clear that the study does not seek to assess the *depth* or *efficacy* of human rights due diligence, but only the commitment to perform it, as stated in bank policies. Likewise the study does not assess the quality of human rights reporting, but only whether it meets certain minimum standards. Therefore a full score for a bank's human rights reporting should not be taken as meaning the bank's reporting is sufficiently detailed.

Benchmarking criteria

The criteria used to score banks' policies are as follows. The criteria have been based on those Guiding Principles which are directed at business enterprises, and the wording of the criteria has been based as closely as possible on the text of the Guiding Principles themselves. Not all Principles lend themselves to assigning a score, and as such the criteria are based only on those elements of the Principles that best lend themselves to scoring. Further information on the requirements for a half or full score is given in Appendix I.

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13 These 32 banks were selected with a focus on the largest commercial banks by asset value, the Thun Group of Banks and banks which are known to be more active on the human rights agenda. Resource constraints have prevented us from benchmarking a larger corpus of banks at this time.

14 Note that a score of 0.5 does not indicate 50% compliance.

15 Despite our best effords, it was not possible to identify a responsible individual at every bank.

Criteria	Guiding Principle
Category 1: Policy commitment	
1.1 Has the bank adopted a statement of policy through which it expresses its commitment to respect human rights?	GP 11, GP 15a
1.2 Does the bank's policy commitment explicitly refer to the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work?	GP 12
1.3 Does the bank's policy commitment stipulate its human rights expectations not only of personnel, but also of business partners and other parties directly linked to its operations, products or services?	GP 13 (a and b)
1.4 Is the bank's human rights policy commitment explicitly approved at the most senior level of the business?	GP 16a
Category 2: Due diligence commitment	
2.1 Does the bank commit to carry out human rights due diligence covering adverse impacts that the bank may cause or contribute to through its activities, or which may be directly linked to its operations, products or services by its business relationships?	GP 17 (a and b)
2.2 Does the bank show how its due diligence process draws on internal or external human rights expertise, and involves meaningful consultation with potentially affected groups?	GP 18 (a and b)
2.3 Does the bank clearly allocate responsibility for addressing human rights impacts to specific levels and functions within the business enterprise?	GP 19 (a(i))
Category 3: Reporting	
3.1 Does the bank report formally on how it addresses its human rights impacts?	GP 21
3.2 Does the bank verify whether adverse human rights impacts are being addressed, by tracking the effectiveness of its response?	GP 20
3.3 Does the bank's reporting provide information that is sufficient to evaluate the adequacy of its response to its human rights impacts?	GP 21 (b)
Category 4: Access to remedy	
4.1 Does the bank have a process in place to provide for, or cooperate in, the remediation of any adverse human rights impacts to which it may have caused or contributed?	GP 22
4.2 Has the bank established or participated in a grievance mechanism for individuals and communities which may be adversely impacted by its activities?	GP 29

RESULTS

The full results of this benchmarking exercise are provided on page 16, and a summary table is presented in the Summary section at the front of this report. The benchmarking exercise resulted in banks achieving scores of between 0 and 8 points out of a possible 12, showing a range of levels of implementation of the Guiding Principles. The average score received was just 3 points out of 12, showing that overall the banking sector's efforts to implement the UN Guiding Principles are at an early stage.

At the bottom end of the ranking is a group of eleven banks which scored 1.5 points or less out of 12, indicating a wholly inadequate consideration (or in some cases, no consideration at all) of human rights in their policies or reporting. Perhaps unsurprisingly, this includes the four Chinese banks included in the exercise – all of which are among the top ten largest banks in the world by asset value, underscoring the importance of their human rights impacts. But it also includes banks from the United Kingdom, Germany and United States, where discourse on human rights is more advanced.

At the top end of the ranking is a group of banks which clearly show in their polices and reporting that they have made efforts to integrate the UN Guiding Principles into their business practices. However, even in this relatively high achieving group, there is significant progress to be made. Particular areas for improvement are reporting, where banks should provide a level of information which is adequate to assess their particular human rights impacts and their responses to these impacts; and access to remedy, where banks should meet their commitment to establish or participate in grievance mechanisms, in order to allow communities and individuals whose human rights are impacted by banks and the projects they finance to seek justice.

- **Eight banks out of 32 achieved a score of 50% or over (at least 6 out of 12).** Of these, six are European, one is from the United States, and one is Australian. Four of the (European) banks are associated with the Thun Group. Rabobank, a Netherlands based co-operative bank, gained the highest score, while the two major Swiss banks - UBS and Credit Suisse - complete the top three.

- **Eleven banks fared particularly badly, scoring less than 2 out of 12.** All four Chinese banks and all three Japanese banks benchmarked in this study fell into this category. Two British banks (HSBC and Standard Chartered), alongside Deutsche Bank and Bank of America, complete this list.

- **Three of four Chinese banks failed to score.** The only Chinese bank to score was Industrial & Commercial Bank of China (the largest bank in the world by assets), which discussed how it implemented its human rights commitments under the UN Global Compact. The four Chinese banks covered are among the largest ten banks in the world by assets.

- **A majority of banks (17 out of 32) received no points for reporting**. This indicates that these banks did no substantive reporting on their human rights impacts at all, beyond mentioning the policies they have in place. Human rights reporting among banks is, on the whole, inadequate at this time.

- **Banks are failing to recognise their responsibilities to remedy human rights impacts.** None of the banks have grievance mechanisms in place which meet minimum standards, meaning that communities which wish to raise a (potential or actual) human rights abuse have no transparent mechanism through which to do so. And none has a clearly described process in place to remedy even those human rights abuses identified by their own due diligence.

Results for each of the main categories benchmarked are discussed in more detail below.

POLICY COMMITMENT

- **Only half of banks (16 out of 32) have a clear, public policy commitment to "respect" human rights in place.** This is despite this policy commitment being a foundation and basic expectation of the Guiding Principles (GP11, GP15). Policies or statements which did not clearly commit to respect human rights were not scored. Examples of such policies are those which "respect the protection of human rights" (used in the Global Compact, and replicated by e.g. Commerzbank), a formulation which appears to locate the responsibility to respect human rights elsewhere, and those which are merely aspirational (Barclays, ANZ).

- **Seven banks have policies which explicitly refer to the International Bill of Human Rights (IBHR) and the International Labour Organization (ILO) Fundamental Principles.** The UN Guiding Principles state that the business responsibility to respect human rights should be understood as referring to these instruments "at a *minimum"* (GP12). A further eight banks were given half-scores for referencing either (a) the IBHR, or (b) the Universal Declaration of Human Rights (UDHR) as well as the ILO Fundamental Principles.[16]

- **Most banks do recognise that their human rights commitments extend to their finance.** Seventeen banks scored a full point for having human rights policies which refer not only to the bank's own operations (e.g. its impact on staff), but also to others directly linked to its operations, products or services, such as suppliers and customers (GP13). Note that banks were awarded points here regardless of whether their policies constituted a clear commitment to respect human rights.

- **Ten banks have human rights policies which are explicitly approved at the most senior level of the business.** This is required by the Guiding Principles (GP16). One bank, RBS, scored a point here after updating its policy to make this approval clear in response to BankTrack's initial draft scores.

Due Diligence commitment

- **Thirteen banks had clear commitments to carry out human rights due diligence** (although it has not been possible to assess the quality of such due diligence, or in most cases verify that it has taken place). Only eight banks clearly allocate responsibility for addressing human rights impacts to specific levels and functions within the business enterprise. Human rights due diligence is the primary means by which the Guiding Principles expect businesses to identify, prevent and mitigate their human rights impacts (GP17).

- **The views of rights holders themselves are being almost entirely omitted from banks' human rights due diligence**. Human rights due diligence should involve meaningful consultation with potentially affected groups and other stakeholders, as well as drawing on "internal and/or external expertise" (GP18)**.** Yet only one of the banks (Rabobank) has processes in place which appear to meet this standard, detailing a stakeholder engagement process in its human rights policy which is "particularly important in relation to identifying, assessing and remedying grievances". (Rabobank also reports on stakeholder engagement, although the quality and frequency of its engagement with rights holders as part of due diligence is difficult to assess.)

Reporting

- **Formal reporting by banks on their human rights impacts and efforts to address them is minimal.** Communicating how impacts are addressed is a key part of the human rights due diligence process set out in the Guiding Principles (GP17), rather than something separate. In addition, the Guiding Principles say that "formal reporting by enterprises is expected where risks of severe human rights impacts exist" (GP21, commentary). Yet, a majority of banks received no points for their reporting, indicating no substantive reporting on human rights impacts at all.

- **One bank commented that it does not believe its operations pose risks of severe human rights impacts "directly", and therefore reporting is not required.** However the Guiding Principles do not differentiate between severe human rights risks which are linked to business operations and those which a business causes directly – rather, the focus is on the severity of the impact. Given the severe impacts outlined in the introduction, to which banks are linked through their finance, we consider it clear that banks have a duty to report formally on their human rights impacts.

- **There is little evidence that banks are tracking the effectiveness of their response to human rights impacts.** The Guiding Principles state that such tracking is needed to verify whether human rights impacts are being assessed (GP20). For a full score, reporting on the outcomes of such tracking was required; however, no bank met this standard. Just two banks (ANZ and UBS) indicated publicly that a process was in place for tracking effectiveness, without discussing its outcomes.

16 The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights.

Access to remedy

- **Only five out of 32 banks have a commitment in place to remedy human rights impacts that they identify.** None of the banks benchmarked detailed a clear process for remediating such human rights impacts.

- **None of the banks benchmarked has a grievance mechanism in place.** The Guiding Principles require business enterprises (including banks) to "establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted". When assessing what can be considered a "grievance mechanism", the effectiveness criteria in the Guiding Principles were used as the benchmark for a full point (GP31). A minimum criteria for half a point was for a grievance mechanism which met certain minimum criteria, e.g. being open to external stakeholders (and not just customers or staff); including a clear policy on how grievances are handled (e.g. with timeframes); and including a registry of complaints. None of the banks met this standard.

- **Some banks pointed to email contact centres as grievance mechanisms, although in most cases these were only targeted at staff and customers.** While these may be useful, they do not meet the standards required of a grievance mechanism.

- **Banks also pointed to requiring, in certain circumstances, that clients establish their own grievance mechanisms at a project level.** Again, this is a positive step, in that it requires the client to fulfil its responsibilities under the Guiding Principles. But it does not obviate the bank's own responsibility under GP29 to establish or participate in a grievance mechanism.

Discussion of Thun Group response on Access to Remedy and Grievance Mechanisms

A number of Thun Group banks provided the following coordinated response to BankTrack's draft scores, to which we respond below.

> *"Access to remedy is one of the key matters under discussion with the Thun Group of Banks. This was also highlighted during the Thun Group's multi-stakeholder meeting in June. In particular, the Thun Group of Banks recognizes the need for greater clarity in relation to access to remedy measures and related implications.*
>
> *"We agree that remedy measures depend on how the company is related to the impact. As universal banks our implications in adverse human rights impacts can vary significantly depending on the type of activities, on our relation to the impact and on the impacted stakeholders (i.e. employees, suppliers, individual and corporate clients, etc.). It is our responsibility to bring the most accurate response, in line with the UN Guiding Principles recommendations, and taking into consideration the specificities of our business activities.*
>
> *"Discussions are currently on-going within the Thun Group of Banks and we will keep BankTrack informed of our discussions in this matter. In the meantime, however, it would be premature for BankTrack to give scores on a topic that continues – as was shown clearly in the stakeholder discussions at the Thun Group meeting in June 2014 - to be subject to much debate and has not been conclusively interpreted yet."*
>
> – **Response provided by Thun Group Banks**

There is a debate to be had over banks' responsibilities under the Third Pillar of the Guiding Principles, and the Thun Group's forthcoming discussions of these responsibilities are welcome. However, we consider that a baseline assessment of how banks are meeting their responsibilities under the Guiding Principles, rather than being premature, is likely to be a helpful contribution to this ongoing debate.

Further, BankTrack raised the Thun Group's omission of the topic of access to remedy from their initial discussion paper in October 2013 (as well as the absence of consultation with civil society at this stage) as a key shortcoming of this process[17]. Had banks included discussion of all relevant Guiding Principles at this early stage, the sector may well have made greater progress than has been made to date in addressing this issue. To accept that it is premature to give scores on this topic would be to accept banks' own timelines for integrating the Guiding Principles, however glacial this may be.

17 BankTrack, On the Thun Group paper on banks and human rights, 2013

There are also growing signs that interpretation of banks' responsibilities to establish or participate in grievance mechanisms are moving ahead. FMO, the Dutch development bank, has become the first Equator Principles bank to establish an independent grievance mechanism. And in addition, the Compliance Advisor Ombudsman (CAO) of the World Bank and its private sector arm the IFC, recently concluded that the IFC's policies require clients to have grievance mechanisms, and that this includes banks.[18]

Closing Remarks

Much of the progress which has been seen in banks' environmental and social performance to date has come about through a growing realisation that the bank's impacts on the environment and society can present *risks to the bank*. Projects which encounter community opposition or which cause severe pollution incidents risk protests, delays, cost over-runs, legal challenges and perhaps cancellation, all of which can lead to late loan payments or defaults, hitting the bank's bottom line. This realisation has enabled sustainability teams to "make the business case" for environmental and social risk management.

However, the UN Guiding Principles make clear that respect for human rights means must go "beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders" (GP17). The Thun Group discussion paper has recognised this crucial distinction, although many of the Thun Group banks have not yet integrated it into their policies.

Banks should now take steps to clearly show how impacts on rights-holders (meaning, of course, all of us) are at the centre of their approach to human rights. Establishing communications channels through which banks can listen to the communities who may be affected by their activities, including as part of due diligence and through complaints mechanisms, will be a critical step.

Finally, while this report shows that there remain significant gaps in bank approaches to human rights, it is clear that the direction of travel is positive. We hope that banks will be spurred by this publication to move further and faster, towards one day acting with genuine respect for human dignity throughout their operations.

18 CAO, "CAO Investigation of IFC Environmental and Social Performance in relation to: Investments in Banco Financiera Comercial Hondureña S.A.", 2014

Independent Reviewer's Statement

BankTrack engaged me to provide independent scrutiny on the scores of the 32 banks benchmarked in this report.

Methodology

The independent scrutiny consisted of two phases.

During the first phase, I assessed whether preliminary scores were consistent with the methodology outlined in the report, and whether the results faithfully reflected information contained in banks' publicly available policies. In order to form my conclusions, I performed the following steps for each of the 32 banks:

1. a review of publicly available sources and policies as of October 2014, including: Annual Reports, CSR Reports, Human Rights Policies, Environmental and Social Policies, Codes of Conduct or Sectorial Policies;

2. a review of each score, and of the explanation behind it.

As a result of this first round of review, I suggested 20 modifications (out of 384 scores in total, i.e. 12 for each of the 32 banks). 15 changes referred to the category of policy commitment, 4 to due diligence and 1 to reporting. There was full agreement with respect to the scores on access to remedy.

During the second phase, I checked the final scores on the basis of feedback provided by 16 banks. Again, I examined the scores and explanatory notes against the methodology outlined in the report.

As a result of the second round of review, I agreed with changing 4 scores. Two of the changes resulted from new or updated policies. Several banks referred to private information not included in publicly available policies. This information has not been taken into account.

Conclusion

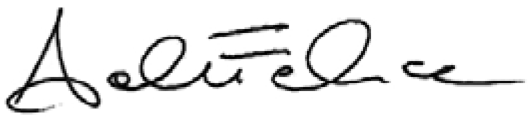
Based on the procedures I have performed and the evidence I have obtained, nothing has come to my attention that causes me to believe that the scores of the 32 banks have not been assigned in accordance with the methodology outlined in this report, or that they are not consistent with information contained in banks' publicly available policies (as of October 2014).

Research team

The scrutiny on the scores of the 32 banks benefitted from research and comments by Estela Casajuana Artacho.

Independence

I have not been involved in the drafting of this report, nor am I associated with Banktrack.



Damiano de Felice is the co-director of Measuring Business & Human Rights (MB&HR), an innovative research project that aims to advance the capacity of business managers and corporate stakeholders to assess the extent to which companies meet their responsibility to respect human rights. Damiano is also a researcher at the London School of Economics, a Board Member of the European Society of International Law Interest Group in business and human rights, and a member of the World Economic Forum Global Agenda Council on Human Rights.

Full Table of Results

Category	Category 1: Policy commitment				Category 2: Due diligence commitment		
Bank	**1.1**	**1.2**	**1.3**	**1.4**	**2.1**	**2.2**	**2.3**
ABN AMRO	1	1	1	0	1	0	0
Agricultural Bank of China	0	0	0	0	0	0	0
ANZ	0	0.5	1	0	1	0.5	1
Banco Santander	1	0	0.5	1	0.5	0	1
Bank of America	0	0	0	0	0.5	0	0
Bank of China	0	0	0	0	0	0	0
Barclays	0	0.5	1	0	1	0	1
BBVA	1	0.5	1	0	0	0	0.5
BNP Paribas	1	1	1	1	0.5	0.5	0
China Construction Bank Corporation	0	0	0	0	0	0	0
Citi	1	0.5	1	0	1	0.5	0.5
Commerzbank	0	1	1	0	1	0	0.5
Crédit Agricole	0	0.5	0.5	1	0.5	0	0
Credit Suisse	1	1	1	1	1	0.5	1
Deutsche Bank	0	0	0	0	1	0.5	0
Goldman Sachs	1	0	1	0	1	0	0
HSBC	0	0	0.5	0	0	0	0
Ind. & Comm. Bank of China (ICBC)	0	0	0	0	0	0	0
ING	1	0.5	1	1	1	0	1
JPMorgan Chase & Co	1	0	1	0	0.5	0.5	1
La Caixa	1	1	1	1	0	0	0
Mitsubishi UFJ Financial Group	0	0	0	0	0	0	0
Mizuho Financial Group	1	0	0	0	0.5	0	0
Morgan Stanley	0	0.5	1	0	1	0	0
Rabobank	1	1	1	1	1	1	1
RBS Group	1	0	1	1	1	0	0
Société Générale	0	1	0	0	0.5	0	0
Standard Chartered	0	0	0.5	0	0.5	0	0
Sumitomo Mitsui Financial Group	0	0	0	0	0	0	0
UBS	1	0	1	1	1	0	1
Unicredit	1	0.5	1	1	0.5	0	0.5
Wells Fargo	1	0	0	0	0	0	0

Category	Category 3: Reporting			Category 4: Access to remedy		Total score / 12
Bank	**3.1**	**3.2**	**3.3**	**4.1**	**4.2**	
ABN AMRO	0.5	0	0.5	0	0	**4**
Agricultural Bank of China	0	0	0	0	0	**0**
ANZ	1	0.5	0.5	0	0	**4**
Banco Santander	0	0	0	0	0	**3**
Bank of America	0	0	0	0	0	**0**
Bank of China	0	0	0	0	0	**0**
Barclays	0	0	0	0.5	0	**3**
BBVA	0	0	0	0.5	0	**2**
BNP Paribas	0.5	0	0.5	0	0	**4**
China Construction Bank Corporation	0	0	0	0	0	**0**
Citi	1	0	0.5	0	0	**4**
Commerzbank	0.5	0	0.5	0	0	**3**
Crédit Agricole	0	0	0	0	0	**1**
Credit Suisse	0.5	0	0.5	0	0	**6**
Deutsche Bank	0	0	0	0	0	**1**
Goldman Sachs	0	0	0	0	0	**3**
HSBC	0.5	0	0	0	0	**0**
Ind. & Comm. Bank of China (ICBC)	0.5	0	0	0	0	**0**
ING	0.5	0	0	0	0	**5**
JPMorgan Chase & Co	0	0	0	0	0	**3**
La Caixa	0	0	0	0	0	**4**
Mitsubishi UFJ Financial Group	0.5	0	0	0	0	**0**
Mizuho Financial Group	0	0	0	0	0	**1**
Morgan Stanley	0	0	0	0	0	**2**
Rabobank	0.5	0	0	0.5	0	**7**
RBS Group	0	0	0	0	0	**4**
Société Générale	0	0	0	0.5	0	**1**
Standard Chartered	0	0	0	0	0	**0**
Sumitomo Mitsui Financial Group	0.5	0	0	0	0	**0**
UBS	0.5	0.5	0.5	0	0	**5**
Unicredit	0.5	0	0.5	0.5	0	**3**
Wells Fargo	0.5	0	0.5	0	0	**1**

Appendix I - Criteria for Half and Full Scores

Criteria: policy	Criteria for full/half score
Category 1: Policy commitment	
Has the bank adopted a statement of policy through which it expresses its commitment to respect human rights?	Full score: a written commitment to "respect" human rights, as part of a statement of policy. No half score.
Does the bank's policy commitment explicitly refer to the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work?	Full score: the bank's policy commitment to respect human rights refers to the International Bill of Human Rights (or all of its constituent parts: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the ILO Fundamental Principles. Half score: the bank's policy commitment to respect human rights refers to EITHER: (a) the Universal Declaration of Human Rights (but not the covenants) and the ILO Fundamental Principles, or (b) the International Bill of Human Rights, but not the ILO fundamental Principles. No scores are awarded for being a signatory to the UN Global Compact, as the criterion assesses the bank's own statement of policy.
Does the bank's policy commitment stipulate its human rights expectations not only of personnel, but also of business partners and other parties directly linked to its operations, products or services?	Full score: the bank's human rights commitment clearly extends beyond personnel, e.g. to its provision of finance. Half score: the bank's commitment excludes certain financial services.
Is the bank's human rights policy commitment explicitly approved at the most senior level of the business?	Full score: the bank's human rights policy commitment is explicitly approved at the most senior level of the business. No half score.
Category 2: Due diligence commitment	
Does the bank commit to carry out human rights due diligence covering adverse impacts that the bank may cause or contribute to through its activities, or which may be directly linked to its operations, products or services by its business relationships?	Full score: an explicit commitment to carry out due diligence in which human rights are a factor. Note that the quality of human rights due diligence is not assessed, and a score here does not infer a judgment on the quality of this due diligence. Half score: human rights are factored into due diligence for certain sectors, is piecemeal, or the due diligence process only takes into consideration certain human rights.
Does the bank show how its due diligence process draws on internal or external human rights expertise, and involves meaningful consultation with potentially affected groups?	Full score: the bank shows how its due diligence process draws on internal or external human rights expertise as well as involving meaningful consultation with potentially affected groups. Half score: the bank draws on internal or external expertise, but with no process for consultation with affected groups, or with a process limited to certain groups (e.g. indigenous peoples).
Does the bank clearly allocate responsibility for addressing human rights impacts to specific levels and functions within the business enterprise?	Full score: differentiated responsibilities of front line (e.g. business development) staff, ESG staff etc. are detailed; escalation processes and ultimate responsibilities are included. Half score e.g. where main team responsible is indicated, but without details of referral process, escalation, ultimate responsibility etc.

Criteria: policy	Criteria for full/half score
Category 3: Reporting	
Does the bank report formally on how it addresses its human rights impacts?	Full score: reporting should provide details of the steps taken to address the bank's impacts. Reporting does not need to be adequate to evaluate its response at this stage (this is scored below). Half score: some reporting on human rights developments in sustainability reporting (beyond mentions of the existence of a policy etc.).
Does the bank verify whether adverse human rights impacts are being addressed, by tracking the effectiveness of its response?	Full score: the bank reports appropriate quantitative indicators on the effectiveness of its response, following the text of GP 20. Note: large banks covered in this research are considered enterprises "where risks of severe human rights impacts exist", therefore formal reporting is expected. Half score: e.g. a process is described for tracking effectiveness, but the outcome is not shown.
Does the bank's reporting provide information that is sufficient to evaluate the adequacy of its response to its human rights impacts?	Full score: following the text of Principle 21b, the bank should report on how it identifies and addresses adverse impacts on human rights, and include indicators or KPIs relating to due diligence. It should "provide information that is sufficient to evaluate the adequacy of [the bank's] response to the particular human rights impact involved". Therefore reporting should detail specific impacts and the enterprise's response. Half score: the bank provides indicators on human rights, e.g. regarding transactions subjected to human rights due diligence (separately or broken out from other E&S issues).
Category 4: Access to remedy	
Does the bank have a process in place to provide for, or cooperate in, the remediation of any adverse human rights impacts to which it may have caused or contributed?	Full score: a process for remediating (providing for or cooperating in the remediation of) human rights impacts is detailed. Half score: the bank makes a clear commitment to remediation of human rights impacts or an indication that a process is in place without detailing the process.
Has the bank established or participated in a grievance mechanism for individuals and communities which may be adversely impacted by its activities?	Full score: the bank operates a grievance mechanism which meets the effectiveness criteria established in Principle 31. Half score: the bank has established a grievance mechanism which meets minimum criteria: being open to external stakeholders; having a clear policy on how grievances are handled (e.g. with timeframes); and a registry of complaints.

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