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TO:
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS
C/O LENE WENDLAND
OHCHR, CH-1211
GENEVA 10,
SWITZERLAND

REFERENCE:
CALL FOR INPUT IMPLEMENTATION REPORT

SUBJECT:
BANKS AND THE 'PROTECT, RESPECT AND REMEDY' FRAMEWORK

26 MARCH 2012

Dear Madam,

As you may know, BankTrack is a global network of 36 civil society organizations based in 14 countries. We are a unique confederation of advocacy groups dedicated to advancing environmental and social sustainability in the commercial/investment banking sector.

We launched our network in January 2003 with the publication of the Collevocchio Declaration.¹ This statement, the first of its kind released by civil society groups, was endorsed by over 100 organizations. Already then it expressed civil society's expectations regarding the role and responsibility of financial institutions in advancing sustainability. The Declaration also identified human rights as an important issue for financial institutions to address.

Banks have a specific role in enabling or preventing possible human rights violations. Banks are different from other corporations as they are one step behind the companies that may directly perpetrate or enable human rights violations and remain invisible players to affected communities or victims on the ground. At the same time, as financiers, they are crucial for any business operation to go forward and "but for" their financial role, many human rights abuses would not happen.

Over the last years we have actively engaged with the SRSG John Ruggie in the process leading to the formulation of the PPR framework. Our objective was to ensure that the text of this framework would

¹ <http://tinyurl.com/7ofgdm9>



clearly identify the differentiated responsibility of banks to respect human rights. While the final text of the PPR framework does not make such a distinction we are pleased that the Guiding Principles to the PPR Framework include clear references to bank activities.

Already the wording chosen in the “foundational principles” of the Corporate Responsibility to Respect – “with which [business enterprises] are involved”² – clarifies that companies are not only called upon in cases of direct causation of human rights abuses, but also in situations where their support or indirect involvement may lead to, or may have led to human rights abuses.

The 13th principle of the Guiding Principles further clarifies the responsibility for such impacts on human rights. It states that companies must “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”³

The explanatory comment on this principle elaborates further on this: “‘Business relationships’ are understood to include relationships with business partners, entities in the value chain [...] directly linked to its business operations, products or services.”⁴ This formulation clearly includes banks and their financing activities, as Dr. Ruggie further clarified in his Interpretive Guide. As the first “Example of adverse impacts that are directly linked to an enterprise’s operations, products or services by their business relationships” he mentions: “providing financial loans to an enterprise for business activities that, in breach of agreed standards, result in the eviction of communities.”⁵

We therefore conclude that the differentiated responsibility of banks in upholding human rights is clearly recognized in the framework. It is up to banks to adapt their business operations in recognition of this responsibility.

BankTrack continuously monitors the standards that private sector banks use to manage their activities in sectors where human rights violations may occur. From this, we may safely conclude that the efforts of banks to integrate human rights issues in their business operations are still at their infancy. Very few banks have adopted an explicit human rights policy. Even fewer banks have adopted a policy that references the International Bill of Human Rights and the ILO core Labor Standards. Sector standards (such as those focused on mining, oil and gas, dams, forestry, large scale agriculture etc.) often pose quite substantial social and environmental conditionality on clients but remain weak when it comes to human rights safeguards and conditions.

Given this situation, we would like to encourage the working group to further elaborate on the specific implementation challenges of the Guiding Principles for banks, and financial institutions in general.

² A/HRC/17/31, p. 13.

³ A/HRC/17/31, p. 14.

⁴ A/HRC/17/31, p. 14.

⁵ The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>



We kindly ask you to consider the following steps:

1. Please take into account the earlier BankTrack submissions to the SRSJ John Ruggie, annexed to this letter. While our ideas clearly evolved over time, we think that these documents still contain valuable ideas and suggestions.
2. The UN Special Representative mentions the possibility to integrate human rights due diligence into existing risk management systems. This option presents itself to banks that already have processes to deal with environmental and reputation risk. A group of banks (the so called 'Thun Group' under the lead of Barclays, Credit Suisse, UBS and Unicredit) is currently developing an implementation Guide for the financial sector.⁶ We expect that members of your Working Group will be approached for comment and urge you to engage with this initiative.
3. The SRSJ has made a crucial remark on the inclusion of human rights issues into existing (reputational) risk management procedures. He stated that this is possible "[P]rovided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders."⁷ This reversal of perspective is a crucial characteristic that distinguishes the human rights approach from all other forms of risk management in corporations. From our discussions with Bank representative we know that the risks to rights-holders is not a concept that is easily understood. It is therefore crucially important how the risks to rights-holders are framed in the forthcoming Thun Group proposal. We would strongly welcome a public statement of the working group on the specific implementation challenges of the Guiding Principles for banks and financial institutions.
4. The SRSJ has stressed the importance of "showing", which refers to transparency: "Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders [...]."⁸ We expect that the Thun Group proposal will provide guidance on how to implement human rights aspects into existing (reputational) risk management procedures. These procedures, policies and standards of many banks are still not transparent. This poses a challenge as transparency is an essential element of a company's responsible approach on human rights. We therefore would welcome a call from your working group for more transparency within the financial sector.
5. As the Institute for Human Rights and Business notes: "[A]dherence to voluntary initiatives does not constitute fulfillment of a company's responsibility to respect human rights."⁹ Given a widespread 'tick the box' mentality in the financial sector when it comes to social and

⁶ <http://www.business-humanrights.org/media/documents/thun-group-of-banks-statement-guiding-principles-19-oct-2011.pdf>

⁷ A/HRC/17/31, p. 16.

⁸ A/HRC/17/31, p. 20.

⁹ Institute for Human Rights and Business, *From Red to Green Flags, The corporate responsibility to respect human rights in high-risk countries*, 2011, p. 40.



environmental issues, some further clarification by the Working Group might be needed in order to prevent a shallow and superficial implementation of the forthcoming Thun Group proposal.

We would be pleased to support the Working Group in focusing on the specific implementation challenges of the Guiding Principles for banks and financial institutions. Meanwhile BankTrack will do its share and continue to put pressure on banks to make respecting and promoting human rights a integral part of everyday banking.

With best wishes

Andreas Missbach

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