

4.3 Human Rights

4.3.1 What is at stake?

The [Universal Declaration of Human Rights](#), adopted by the United Nations in 1948, provides an overview of the rights and freedoms every human being is entitled to “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. It has been generally agreed that states have the primary responsibility to respect, promote and secure the human rights described in the Universal Declaration.

However, state responsibility is neither exclusive nor sufficient. As the Universal Declaration makes clear, “every organ of society” has its own human rights obligations.¹⁵³ This includes business enterprises. As the reach and impact of such enterprises have grown, their human rights obligations have grown as well.

In 1966 the Universal Declaration of Human Rights was complemented by the [UN International Covenant on Civil and Political Rights \(UNCCPR\)](#) and the [UN International Covenant on Economic, Social and Cultural Rights \(UNCESCR\)](#). These covenants clarify that international human rights include civil, political, cultural, economic and social rights, and the right to development.¹⁵⁴

Business enterprises have the potential to impact upon these rights, both positively and negatively, in a multiplicity of ways. For example, the manner by which a company hires and fires its workers, structures and manages its production processes, purchases supplies and services, conducts itself in its host community, provides essential public services and interacts with governments and regulatory authorities can all profoundly affect the promotion or realisation of human rights.¹⁵⁵

The evolution of concepts such as “complicity” and “spheres of influence” increasingly exposes the private sector to legal liability and scrutiny regarding human rights violations. International law and jurisprudence recognize that corporations have legal personality, and therefore corresponding legal rights and obligations. Corporations also have duties to refrain from assisting others in human rights abuses. In this respect it is indisputable that financial institutions, as a specific category of enterprises, have human rights obligations and responsibilities.¹⁵⁶

As an organ of society, business enterprises have a responsibility to respect, promote and secure human rights in all their operations. The bank’s policy should ensure that it will only be involved in the financing of companies which meet this clear criterion. In developing such a policy, the bank could make use of the best international standards available as described below.

4.3.2 Best standards available

The most comprehensive and authoritative treatment of the human rights obligations of businesses is the [Draft United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights](#) (the *UN Human Rights Norms for Business*).¹⁵⁷ These norms apply existing international human

rights principles to business operations. They also clarify that transnational corporations and other business enterprises are obliged to promote, protect, respect and secure the fulfilment of human rights “within their respective spheres of activity and influence”.

The commentary on the *UN Human Rights Norms for Business* provides further clarification of what is a company’s respective sphere of activity and influence. It states: ‘Transnational corporations and other business enterprises shall have the responsibility to use due diligence in ensuring that their activities do not contribute directly or indirectly to human rights abuses, and that they do not directly or indirectly benefit from abuses of which they were aware or ought to have been aware’.

The *UN Human Rights Norms for Business* addresses standards in a number of substantive areas, including:¹⁵⁸

- the right to equal opportunity and non-discrimination, irrespective of race, gender or religion;
- the right to security of the individual;
- the rights of workers;
- respect for national laws and sovereignty;
- economic, social and cultural rights;
- corruption;
- consumer protection;
- legal protections against forced evictions;
- environmental protection; and
- indigenous peoples.

In August 2003 the *UN Human Rights Norms for Business* were unanimously adopted by the *UN Sub-commission on the Promotion and Protection of Human Rights*, but the full *UN Human Rights Commission* has not yet taken a decision on the norms. To prepare a broader discussion on the norms, Dr. John Ruggie was appointed *Special Representative of the UN Secretary General on business and human rights* in July 2005.¹⁵⁹ The [second report of the Special Representative](#) mapping current obligations of business was presented to the *UN Human Rights Council* in February 2007.¹⁶⁰

Although not as comprehensive as the *UN Human Rights Norms for Business* the [UN Global Compact](#) is also worth mentioning, as it has included two human rights principles among its ten principles: “Businesses should support and respect the protection of internationally proclaimed human rights” and “Businesses should make sure that they are not complicit in human rights abuses”.¹⁶¹

A more specific issue is the use of force by (private or public) security forces protecting the operations of a company. This issue is dealt with in the [UN Code of Conduct for Law Enforcement Officials](#) and the [UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#). Upon these statements the [Voluntary Principles on Security and Human Rights](#) have been developed in a multi-stakeholder process, to give guidance to companies.

4.3.3 Content of a bank policy

Although banks may not be directly involved in human rights abuses, they can be complicit in human rights violations by their clients undermining the rights to life, property, home, health, livelihood and development of communities. This may occur in several ways:¹⁶²

- **Direct complicity** may occur when a bank intentionally finances a project or company, while the bank is fully aware that its financial assistance contributes to the commission of the human rights abuses by the client.
- **Indirect complicity** may occur when a bank profits from transactions with a client committing human rights abuses. Profits can be in terms of financial rewards or market share and the bank's financing need not be directly related or intended to support to the human rights abuses which take place.
- The notion of **silent complicity** reflects the expectation that banks should respond to human rights abuses by notifying the appropriate authorities or taking steps to object to and/or try to prevent or stop the human rights violations and/or withdrawing from their association with the abuse. Where banks do not respond, silent complicity may arise.

To avoid these various forms of complicity, banks need clear and detailed human rights standards and policies. These instruments require banks systematically to consider risks to human rights in the operations they support, and to take effective action to mitigate those risks.¹⁶³

Policies merely containing aspirational language will not pass the test when it comes to avoiding complicity to human rights abuses. Amongst other things, an elaborate human rights policy should include:

- Defining a clear bottom-line: which activities and practices are no-go zones to the financial institution?
- Assessing the banks' portfolio and defining sectors, countries and clients that need explicit scrutiny and due diligence concerning human rights obligations.
- Establishing procedures or advisory groups that address human rights issues.

Good guidelines are provided by the *UN Human Rights Norms for Business* and their commentaries, which prescribe a number of specific steps that companies must take to be in compliance. 'The Norms' state that each transnational corporation or other business entity should adopt, publicly disseminate and implement internal rules of operation in compliance with the *UN Human Rights Norms for Business*. In addition, banks should; periodically report on and take necessary measures to implement the *UN Human Rights Norms for Business*; provide for independent investigation of complaints they receive; and apply and incorporate the *UN Human Rights Norms for Business* to their supply chains or other business relationships through their contracts, transactions or other arrangements to ensure that they only support businesses that follow these or substantially similar principles.¹⁶⁴

Perhaps most importantly for financial institutions, before a business enterprise pursues a major initiative or transaction, it must study the human rights impact of that

transaction in light of the *UN Human Rights Norms for Business*. A client should therefore produce a human rights impact statement that includes a description of the transaction, its anticipated benefits, an analysis of any anticipated human rights impacts, an analysis of reasonable alternatives, and identification of ways to avoid any negative human rights consequences. The *UN Human Rights Norms for Business* further declare that the results of this assessment should be made available to relevant stakeholders and that the sponsor should consider any reactions from stakeholders.¹⁶⁵

The bank's human rights policy can either be a stand-alone policy, next to other policies which directly reflect human rights norms, e.g. labour and indigenous peoples policies, or policies of which only parts cover human rights issues, e.g. dams or forestry. Clearly, consistency between policies is crucial. A human rights policy can be seen as the overarching policy on human rights issues, while policies on labour and indigenous peoples give more detailed guidance on two more specific and very important human rights areas. Because of this close relationship between the three policies, the bank could also decide to integrate its human rights policy with its labour policy and its indigenous peoples policy. In this case, it is important to include more specific issues discussed in paragraph 4.5 on labour and paragraph 4.4 on indigenous peoples.

4.3.4 Scoring table

The considerations in the previous paragraphs lead to the following scoring table with regard to bank policies on human rights:

0. *The bank has no policy on this issue;*
1. *The bank's policy is vaguely worded or aspirational, for instance by endorsing the Global Compact or the Universal Declaration of Human Rights, with no clear commitments;*
2. *The bank's policy defines a clear bottom-line on human rights-related activities and practices which will not be financed OR requires a meaningful Human Rights Impact Assessment for relevant transactions, sectors and countries;*
3. *The bank's policy defines a clear bottom-line on human rights-related activities and practices which will not be financed AND requires a meaningful Human Rights Impact Assessment for relevant transactions, sectors and countries;*
4. *The bank's policy is fully in line with the UN Human Rights Norms for Business.*

Signatories of UN Global Compact and/or the UN Principles for Responsible Investment score 1 point on human rights. These collective standards are discussed further in paragraph 7.1. The scores for these collective standards are awarded to all signatories, unless the bank's own human rights policy scores higher. Scores of individual and collective standards are not added up; only the highest score is awarded.

4.3.5 Results

Twelve banks have developed statements or guidelines for human rights practices. Others have included general human rights statements in their principles of ethical business conduct. However, just like climate statements, the human right statements and policies are mostly targeted at the banks' own operations. They do not restrict

lending to clients that violate human rights or of the people who are affected by the clients' activities.

There are several banks that have proposed not to finance activities in countries led by oppressive regimes (such as Burma). However, they do not exclude financing of companies that operate in those countries, even when these companies collaborate with those regimes. These statements are therefore not considered as a decent human rights policy.

Only Rabobank (the Netherlands) has developed a comprehensive human rights policy, which sets clear screening and exclusion criteria based on the guidelines from international conventions, amongst others the *UN Human Rights Norms for Business*, the *OECD Guidelines for Multinational Enterprises* and the four *ILO fundamental principles and rights at work*. The human rights policy is applicable to the bank's entire credit portfolio.

Scores on Human Rights policies					
Rabobank	3	HSBC	1	Westpac	1
ABN AMRO	1	ING	1	Bank Mandiri	0
ANZ	1	Intesa Sanpaolo	1	Bank of America	0
Banco Bradesco	1	JPMorgan Chase	1	Bank of China	0
Banco do Brasil	1	KBC	1	China Construction	0
Banco Itaú	1	Mitsubishi UFJ	1	Goldman Sachs	0
Barclays	1	Mizuho Financial	1	ICBC	0
BBVA	1	Nedbank	1	Merrill Lynch	0
BNP Paribas	1	RBS	1	Morgan Stanley	0
Citi	1	Santander	1	Royal Bank of Canada	0
Crédit Agricole	1	Société Générale	1	Saudi-American Bank	0
Credit Suisse	1	Standard Chartered	1	Scotiabank	0
Deutsche Bank	1	UBS	1	Standard Bank	0
Dexia	1	Unicredit	1	State Bank of India	0
Fortis	1	WestLB	1	Sumitomo Mitsui	0
