ADVISORY PANEL ON RESPONSIBLE BANKING
NEDERLANDSE VERENIGING VAN BANKEN (NVB)

BY EMAIL

CASE SUBMISSION: DID BANKS CONTRIBUTE TO DAKOTA ACCESS PIPELINE HUMAN RIGHTS IMPACTS?

30 APRIL 2019

Dear NVB Advisory Panel members,

With this letter we would like to present a case for the Panel's consideration and advice, concerning the relationship between banks and the human rights impacts of the Dakota Access pipeline (DAPL). In doing so, we are mindful of the Panel's focus on considering dilemmas relating to interpretation of the OECD Guidelines and UN Guiding Principles, and on offering lessons of wider relevance to the financial sector and which banks and others may learn from.

We are also mindful that there has been considerable discussion, debate and controversy within the banking sector, civil society and other observers over when and how a bank might "contribute" to an adverse human rights impact through its finance, and therefore share responsibility for its remediation. Despite this extensive discussion, there has been, to date, no specific case in which an accountability mechanism or other independent body has considered or produced an opinion regarding whether a bank has contributed to a particular human rights impact.[1]

The circumstances surrounding the financing and construction of the DAPL, including the human rights impacts of the project, are well-known and have been reported on in detail in the media, by banks involved in financing the pipeline or its backers, by civil society organisations and others. Much of this information is gathered on BankTrack's profile of the project.[2] The human rights impacts of the project – including violations of the rights of the Standing Rock Sioux Tribe and excessive and unjustified force against those who resisted the pipeline's construction – have been similarly well documented, and have been noted by many of the banks linked to the project. We are happy to provide further details of these circumstances and impacts on request.

A consortium of 17 banks provided a USD 2.5 billion project loan for the construction of DAPL in August 2016.[3] This consortium includes banks participating in the Advisory Panel (e.g. Intesa Sanpaulo) and several other NVB member banks (e.g. ING, Citibank, Mizuho, ICBC, TD Bank).[4] ING has since sold its stake in the pipeline loan, and detailed other actions in response to learning of the opposition of the Standing Rock Sioux to the project.[5]

[1] BankTrack has set out cases in which it considers banks may have contributed to adverse human rights impacts (including related to DAPL) in a 2017 briefing paper: https://www.banktrack.org/download/how_banks_contribute_to_human_rights_abuses
[2] https://www.banktrack.org/project/dakota_access_pipeline
[3] See: https://www.banktrack.org/project/dakota_access_pipeline#financiers
[4] BankTrack set a letter on behalf of some 500+ groups calling on these banks to halt the project loan in November 2016.
[5] https://www.ing.com/Newsroom/All-news/Features/ING-and-the-Dakota-Access-pipeline.htm

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Several other banks were not part of the consortium but committed substantial financing to the Energy Transfer family of companies prior to and following the completion of the pipeline project.[6] These include at least one bank participating in the Advisory Panel, ABN AMRO, which financed Energy Transfer Equity and in February 2017 announced it was withdrawing from providing further finance for the company "until there is clarity regarding the situation and an acceptable outcome has been achieved".[7]

We would like to briefly state that we consider that many of the adverse impacts of this project were foreseeable at the time the project loan was made. The final route of the pipeline – underneath the Missouri River, the primary drinking water source for the Standing Rock Sioux, across disputed and unceded Sioux territory, and within about 500 feet (150 m) of the border with the Sioux reservation – was reportedly known as early as September 2014.[8] The Sacred Stone Camp, formed in resistance to the pipeline, was established in April 2016.[9] Banks providing the project loan were therefore in a position to be aware that the project impacted the rights and resources of the Standing Rock Sioux and was the subject of active opposition.

We have highlighted NVB member banks and Panel participant banks in the above request to highlight the relevance of this case to the Panel, and not to draw any distinction between these banks and other financiers. We acknowledge and welcome the steps that some banks, including ING and ABN AMRO, have taken to distance themselves from DAPL and its backers following their initial finance for the project or its backers.

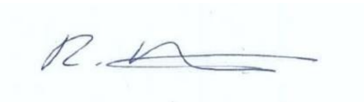
However, neither these banks nor other financiers have, to our knowledge, expressed a view on the nature of their link to the human rights impacts in this case (e.g. whether they consider that they contributed to the impacts via their finance), leaving open questions about the extent of their responsibilities to provide for or cooperate in remediation of these impacts.

With this in mind, we would like to ask the Panel to consider the following questions:

- In the Panel's view, did the banks providing **project lending** for DAPL *contribute* to the human rights impacts arising from its construction?
- Did the banks providing **general corporate finance** to companies in the Energy Transfer family of companies *contribute* to the human rights impacts arising from the DAPL project?

We ask the Panel to consider these questions in the hope that its advice will provide clarity on the nature of the link between banks and the human rights impacts arising from this specific project, and beyond this, provide wider transferrable lessons for the banking sector, its stakeholders and observers, by establishing a benchmark against which other cases can be tested in future and by exploring the factors that influence an assessment of a bank's relationship to a particular human rights impact in practice.

With thanks in advance for your consideration of this case,



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[6] https://www.foodandwaterwatch.org/news/who%27s-banking-dakota-access-pipeline
[7] https://www.abnamro.com/en/newsroom/newsarticles/2017/the-situation-regarding-the-dakota-access-pipeline-is-being-monitored-closely.html
[8] See for example, Time, October 2016; ABC, November 2016; Global Research, January 2017; New York Times, March 2017, IHRB, September 2016.
[9] https://standingrockclassaction.org/?page_id=5137