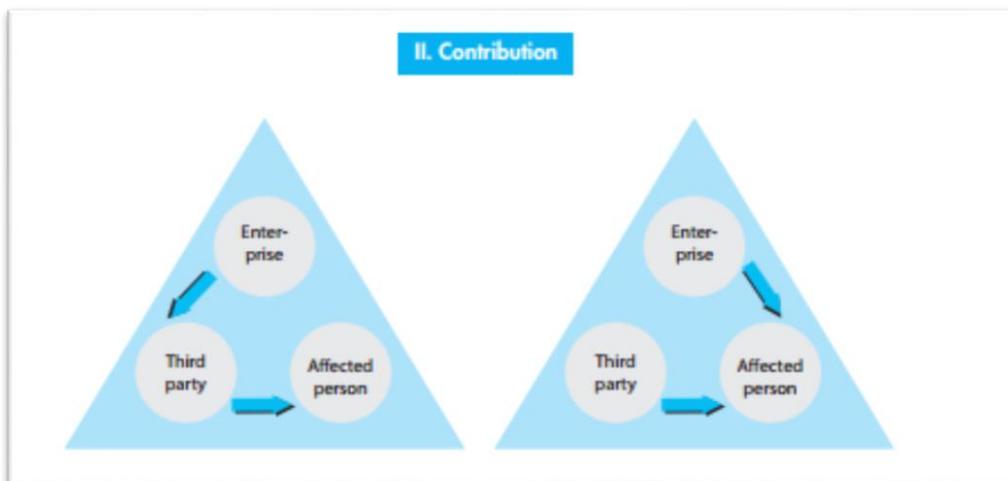


FACT SHEET: “CONTRIBUTION” AND “DIRECT LINKAGE” TO HUMAN RIGHTS IMPACTS THROUGH BANK FINANCE

What’s the issue: The responsibility to respect human rights, as defined by the UN Guiding Principles, sets out a different, higher level of responsibility for businesses if they *cause or contribute* to a human rights impact, than if they are directly linked to an impact through a business relationship but do not contribute to the impact. The Thun Group’s January 2017 paper considers only situations in which banks are (according to its analysis) *directly linked* to a human rights impact via its finance, stating that “Under UNGP 13, a bank would generally not be considered to be causing or contributing to adverse human rights impacts arising from its clients’ operations because the impact is not occurring as part of the bank’s own activities”. However, this contracted earlier advice from UN agencies responsible for interpreting the Guiding Principles.

What advice had been published on this topic before the Thun Group’s 2017 paper?

1. The UN Interpretive Guide to the Corporate Responsibility to Respect Human Rights makes clear in a chart that an enterprise can *contribute* to an adverse human rights impact either via a third party, or together with a third party.¹ This on its own contradicts the Thun Group’s argument that a bank would not generally contribute to an adverse human rights impact arising from its clients’ operations *because the impact is not occurring as part of the bank’s own activities*.



The Interpretive Guide also gives an example of an “adverse impact that is *directly linked* to an enterprise’s operations, products or services by its business relationships, but where the enterprise itself may not to have contributed to it: – Providing financial loans to an enterprise for business activities that, in breach of agreed standards, result in the eviction of communities”.² The OHCHR later elaborated on this example - see below.

Finally, the Interpretive Guide stated that an enterprise “may either cause or contribute to an adverse human rights impact through its own activities. It may contribute to an impact, for example, [...] if it lends vehicles to security forces that use them to travel to local villages and commit atrocities.”³ This establishes that an enterprise can contribute to an impact through *lending* (in this case, of vehicles), and that the impacts of *lending* can be considered part of the lender’s own activities.

¹ [The Corporate Responsibility to Respect Human Rights, An Interpretive Guide](#), United Nations, 2012, page 16

² *Ibid.*, Box II, p17

³ *Ibid.* Q39 (page 41).

2. The UN’s Frequently Asked Questions about the Guiding Principles, published in 2014, addressed the question of the difference between contributing to an impact, on the one hand, and an impact being “directly linked” to a company’s operations, products or services on the other, with the example: “a company may *contribute to* an adverse impact if it provides financing to a construction project that will entail forced evictions.”⁴

3. The Office of the UN High Commissioner for Human Rights (OHCHR) elaborated on the above examples in a November 2013 letter to the OECD, stating that, in the example of providing financing to a mine, “depending on the specific context, the financing could either *contribute to* a specific impact (as per GP 13(a)) (such as if financing is provided for a project that will result in widespread displacement of communities, without safeguards in place), or the impact could be *directly linked* (as per GP 13(b)) to the products and services of the financial institution (such as where risks are mitigated and safeguards in place, but an adverse impact nevertheless occurs in violation of agreed standards).”⁵

4. The UN Working Group on the issue of human rights and transnational corporations and other business enterprises provided a consistent example in a letter to the OECD in December 2013, stating: “Contributing to adverse human rights impacts [...] can happen through businesses’ own operations or through outside entities. Examples of this in the financial sector include: lending money to a company to construct a large processing plant built on a community land where a village was displaced to make way for the project without appropriate consultation or compensation as per international resettlement standards (...)”.⁶

In summary, by 2014, the UN had already provided advice clearly establishing:

- contribution to an adverse human rights impact occurs, by definition, via a third party or in concert with a third party,
- a business can contribute to a human rights impact through providing finance, for example to a construction project that will entail forced evictions, and
- critical factors in determining whether financing has *contributed to* a human rights impact include *whether the bank had ensured that safeguards were in place to prevent the impact and whether it has ensured international standards are being followed*.

The Thun Group’s January 2017 paper came to different conclusions, but did not reference any of the above documents.

Conclusion: The debate on whether banks can contribute to human rights impacts through its finance was already settled by 2014, and discussions in the banking sector should now focus on how banks can align their operations with the UN Guiding Principles in a manner consistent with UN advice, including the June 2017 interpretive advice note from the OHCHR.⁷ This should include how banks can play a role in remediating human rights impacts to which they have contributed, and how to meet the responsibility to establish or participate in a grievance mechanism. Banks should engage with the UN bodies responsible for provide guidance on the interpretation of the Guiding Principles (the Working Group and OHCHR) in the event of questions, and seek to resolve any disagreements with this advice through constructive dialogue.

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⁴ [Frequently Asked Questions about the Guiding Principles](#), United Nations, 2014, Q32

⁵ [Expert letters and statements on the application of the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights in the context of the financial sector](#), OECD, 2014. OHCHR letter, paragraph 19.

⁶ Letter: “[Request for guidance on specific aspects the Guiding Principles and their meaning in the context of financial transactions and institutions](#)”, UNWG, 3 December 2013

⁷ [OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector](#), OHCHR, 13 June 2017

