BANKTRACK

Human Rights Impact Briefing: Banks and Dirty Diesel

May 2017

A Shell (Vivo Energy) petrol station in Accra, Ghana June 2016 | © Carl De Keyzer – Magnum

Introduction

In September 2016, the Swiss NGO Public Eye published a detailed investigation into the practice by Swiss commodity trading companies of exporting low-quality, high-sulphur "toxic fuels" to countries across Africa – fuels with sulphur levels far higher than those permitted in the companies' European home countries.

For the report, "Dirty Diesel: How Swiss Traders Flood Africa with Toxic Fuels", researchers sampled gasoline and diesel fuel direct from 25 petrol stations in eight West and Central African countries and had them tested. They found that the sulphur content of the diesel was typically hundreds of times higher than European limits. The fuels tested also contained worrying levels of other health damaging substances, such as polyaromatics in the case of diesel and aromatics and benzene in the case of gasoline. Not one drop of the fuel analysed could be sold in Europe.

These fuels were sourced from petrol stations owned, partly-owned or supplied by the Swiss trading companies Trafigura, Vitol and Addax & Oryx Group. The report finds that these companies, and others in the industry, are blending low-quality products to produce fuels that the traders know will damage human health, unnecessarily and for the sake of increased profits. As the report concludes, "this is a form of regulatory arbitrage (taking advantage of weak standards) and it is done at the expense of people's health."

Trafigura and Vitol are privately owned companies and are reliant on private sector banks rather than the equity markets for much of their capital. They have borrowed a total of almost US$105 billion from some 200 different financial institutions since 2012, according to research carried out for this briefing. Almost all the world's largest banks have lent sums in the hundreds of millions to them in this time. We have sought responses from 26 banks that have each provided over $1 billion in finance to these companies over the past five years. (We found no evidence of significant bank support for Addax & Oryx Group, and as such, they are not a focus of this briefing.)

The right to health is a human right, and the banks financing Trafigura and Vitol have responsibilities, established by the UN Guiding Principles on Business and Human Rights, including to seek to prevent or mitigate human rights impacts linked to their services, and to account for how they address such impacts. This briefing investigates how these 26 banks have fulfilled these responsibilities. Each of the banks was presented with a draft version of this briefing, and asked to provide details of their human rights due diligence covering Trafigura and Vitol and their response to the issues identified in the briefing. Further, they were asked to engage with the companies to insist that they stop exports of Dirty Diesel to Africa and elsewhere, and only export low-sulphur fuels which meet European quality standards, as a requirement of receiving further finance.

Box I: The banks and human rights case study series

This briefing forms the third in a series of BankTrack Human Rights Impact Briefings, which investigate how banks manage specific adverse human rights impacts caused by companies or projects that they are involved in financing.

The series aims to shed light on the extent to which banks are living up to their responsibilities under the UN Guiding Principles, which we consider the clearest expression so far of the human rights responsibilities of business.

The cases we focus on in this series are companies and projects linked to significant, recent and well-documented human rights impacts, financed by a number of large commercial banks.

The series of briefings intends to:

- draw attention to the specific human rights impacts and challenge banks linked to them through their finance to explain how this fits with their human rights policies and responsibilities;
- provide real-life examples of human rights impacts linked to the banking sector to inform ongoing debates on implementation of the Guiding Principles (e.g. the OECD's Proactive Agenda Project);
- explore how banks respond to human rights impacts in practice, allowing for a comparison of responses and analysis of good and bad practice; and
- push for banks to meet their responsibilities under the UN Guiding Principles to account publicly for how they address specific human rights impacts.

This briefing has been prepared in collaboration with the Swiss NGO Public Eye.

We received some form of response from 24 of the 26 banks. However only nine banks addressed the issues raised in this briefing directly in their response, with the remaining 15 either providing no comment, confidential responses which cannot be analysed, or presenting their human rights due diligence processes in general terms.

Of the nine banks which did respond substantively, several confirmed that they had engaged with Trafigura and Vitol, but none reported pushing for changes in the companies' business practices. Some indicated explicitly that they were "satisfied" with the companies' approach, and most appear to have accepted at face value the companies' arguments that "unilateral action" from the companies to stop supplying or selling high-sulphur fuel is either impossible or impractical. These arguments do not stand scrutiny, and have already been refuted comprehensively by Public Eye in its engagements with the companies. We analyse the banks' responses in more detail below.

Vitol and Trafigura: background

Vitol and Trafigura are the world's largest and second-largest independent oil trading companies respectively, and two of the world's biggest commodity traders. Both companies are privately held, majority-owned by their top executives, and have major offices in Geneva, Switzerland.

Vitol was founded in 1966 in Rotterdam, The Netherlands, where it is registered, and has its head office in Geneva. Its focus is oil trading, although it also trades other commodities including sugar, metals and grain. On average, the company handles more than five million barrels a day of oil and petroleum products, roughly equivalent to the daily consumption of Japan. In 2015, its revenues fell by 38% to $168 billion as oil prices fell,[1] although its profits rose 22% to $1.82 billion, according to confidential figures leaked to Bloomberg, as the company found ways to profit from increased price volatility.[2] In 2014 it was the ninth largest company in the world by revenues.

The company is renowned for its willingness to do business in war zones and other trouble spots – for example, in 2011 it was the first company to export oil from rebel-held Libya. Vitol was found guilty in 2007 of grand larceny related to the United Nations' oil-for-food program in Iraq, paying a penalty of $17.5 million.[3]

Trafigura was founded in 1993, and is incorporated in Singapore. In 2012 it relocated its head office from Geneva to Singapore, although key management functions remain in Geneva. It is owned by Trafigura Beheer, based in the Netherlands, and its ultimate parent company is based in Curaçao in the Caribbean. In 2016 the company overtook Glencore to become the world's second biggest independent oil trader (behind Vitol), after deals with Russia's largest oil producer Rosneft and US shale operators led to an almost 50% rise in shipments.[4] It traded some 205 million tonnes of oil and petroleum products in 2016, including 86 million tonnes of crude. In most recent reported revenues were $98.1bn for 2016, of which 65% are derived from its Oil and Petroleum Products division.[5]

Trafigura is perhaps best known for the 2006 scandal in which a ship chartered by the company, the *Probo Koala*, was caught dumping toxic waste in Abidjan in Cote d'Ivoire. More than 100,000 people needed medical assistance as a result, and the former CEO Claude Dauphin spent five months in an Ivorian jail.[6]

1 Vitol, 2016 "2015 Key Figures"
2 Bloomberg, 2016 "Vitol Said to Post Highest Profit Since 2011 on Volatility" (5 April 2016)
3 Telegraph, 2011, "Top ten global oil and commodities traders" (15 April 2011)
4 FR, 2016, "Trafigura overtakes Glencore for oil trading volumes" (7 June 2016)
5 Trafigura, 2016, Annual Report
6 Amnesty, 2016, "Trafigura unrepentant 10 years after toxic waste dump" (19 August 2016)

Vitol, Trafigura and the trade in Dirty Diesel

"We move physical commodities from places where they are plentiful to where they are most needed – reliably, efficiently and responsibly." - Trafigura, 2016 Annual Report.

Public Eye's investigation into Dirty Diesel shows how, over the past decade, oil majors have pulled back from Africa's retail business and been largely replaced by Swiss trading companies. While Vitol, Trafigura and other such traders position themselves as benignly moving commodities to where they are needed, the reality is that they are increasingly involved both in the blending of fuel products, and in owning petrol stations.

Expansion into fuel retail

Operating behind the Shell and Puma Energy brands, Vitol and Trafigura, alongside smaller Swiss companies, have built a dominant position in the import and distribution of petroleum products in many African countries, especially in West Africa. In 2010, Vitol expanded its presence in African oil distribution by buying significant amounts of Shell's distribution network in 16 African countries, including a 40% shareholding in Vivo Energy. In 2017 Vitol will increase its stake to 60%, buying Shell's remaining 20% stake.[7]

Meanwhile, Trafigura bought assets from BP through its downstream arm, Puma Energy, which has also been building new petrol stations of its own. The acquisition has helped Trafigura become the biggest foreign company operating in Africa. Trafigura owns 48.4% of Puma, with Angolan state-owned Sonangol and the privately-held Cochan holding 30% and 15% respectively. The remaining shares belong to offshore companies owned by Trafigura's main managers, which puts Trafigura in *de facto* possession of the majority of Puma, although according to Puma the two companies "operate independently".

Public Eye's report asks why Trafigura and Vitol stepped away from their original business model by acquiring hundreds of petrol stations across Africa. Perhaps they saw "a profitable business model that exploited weak fuel standards in Africa by dumping cheap intermediate products from refineries, the chemical industry, and elsewhere, into gasoline and diesel for sale in Africa"?[8]

Producing "African Quality" fuels

Upstream from their new fuel retail businesses, Trafigura, Vitol and other commodity traders are also involved in the process of producing petrol and diesel fuels through blending, as well as sometimes in refining the blendstocks that make up the fuels. In fact, the toxic waste dumped in Côte d'Ivoire by the Probo Koala was the waste product of an experimental refining operation on board the ship to produce intermediate petroleum products ('blendstocks') by washing gasoline with caustic soda. The resulting naphtha fuel, with sulphur levels up to 700 times the European limit, were transported onward for further blending and sale on the African continent.[9]

While both Vitol and Trafigura are involved in refining to some extent, their involvement in blending of refined products is more significant. [10] Blending of different blendstocks is a normal and legitimate process in petrol and diesel production, but *how* fuels are blended determines the ultimate quality of the fuel, including contents of sulphur and

7 Shell, 2016, "Shell agrees sale of stake in Vivo Energy to Vitol Africa BV", (23 December 2016)
8 Public Eye, 2016, "Dirty Diesel: How Swiss Traders Flood Africa with Toxic Fuels" (hereafter "Dirty Diesel"), p11
9 See Dirty Diesel, Chapter 2
10 See Dirty Diesel, p97 for details of the companies' involvement in refining

other toxins. Through blending, fuels are "tailored" to meet the standards of the country in which they will be sold. In practice this means mixing in as much of the cheapest, lowest-quality blendstocks the traders can legally get away with in each jurisdiction, to make what the industry itself describes as "African Quality" fuels.

Legal limits for sulphur contents in the traders' home countries differ vastly from typical African standards. In 2009 the European legal limit for sulphur in diesel was fixed at 10 parts per million (ppm), whereas average sulphur limits in Africa are 2,000 ppm. Examination of diesel sold in Ghana in 2013 and 2014 shows how, when legal specifications change, trading companies quickly adapt to the new standards, keeping as close as possible to the legal limit. Trafigura and Vitol supplied two of the four market leaders in Ghana's fuel industry at this time. As the Public Eye report states, "*The closer to the specification boundary the product lies, the larger the potential margin for the trader.*" This business model of deliberate production and supply of dirty fuels at the expense of people's health may be legal (although this has also been challenged[11]), but has dire health consequences for Trafigura and Vitol's own customers. It has been described by UN Environment Programme (UNEP) as "unethical and unacceptable".[12]

It is important to note that although these fuels could never be legally sold in Europe or the US, much of the fuel is actually shipped from Europe, particularly the ports of Amsterdam, Rotterdam and Antwerp ("the ARA zone") and the US Gulf. This is not because Africa lacks oil production capacity – in fact West African countries provide some of the cleanest, low-sulphur grades of crude oil – but because it lacks refining capacity. As such, Africa exports high-quality crude oil to Europe and elsewhere, while receiving low-quality, high-sulphur fuels from Europe.

Testing fuel quality at the pump

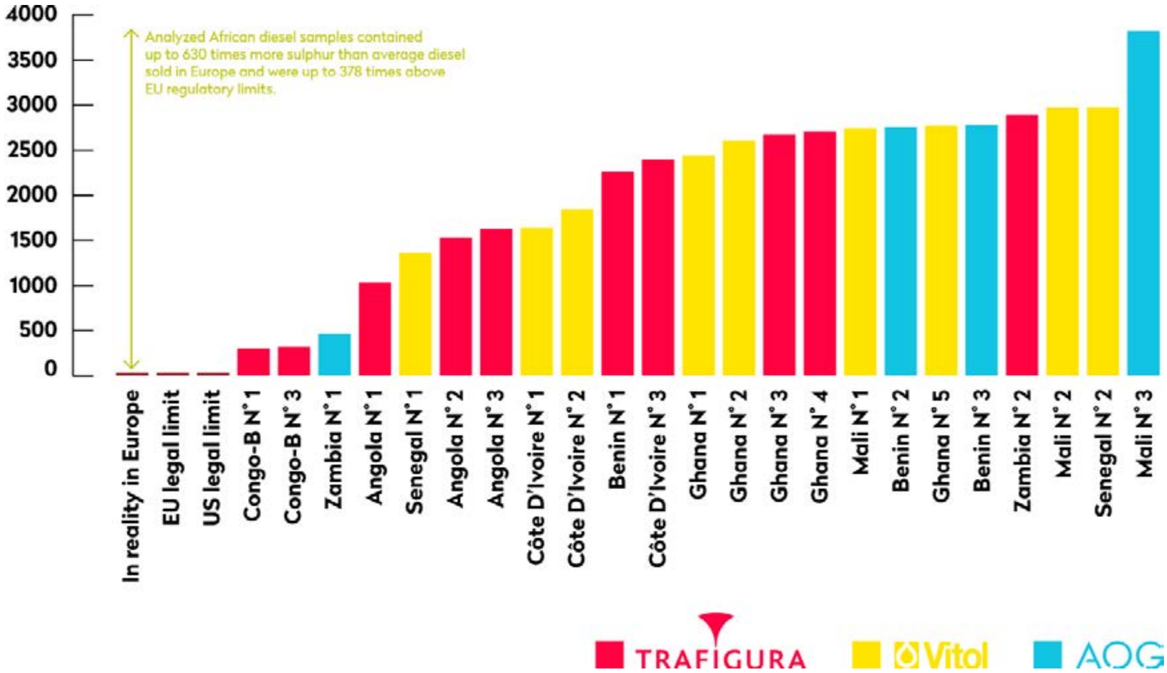
While the legal limits of sulphur and other toxins are well-known, their actual levels are not. There are companies which routinely sample fuels around the world, including in West and Central Africa, but their results are only made available to car manufacturing and oil companies under confidentiality agreements. This is why Public Eye set out to sample the fuels at the pump and have them analysed. Their sample, although it is small and represents just a snap-shot, is the most extensive publicly available data on the fuels sold in West and Central Africa.

Public Eye selected fuels sold at petrol stations owned by Swiss trading companies, in eight countries selected based on the presence of these companies and their weak fuel standards: Angola, Benin, the Republic of the Congo, Ghana, Côte d'Ivoire, Mali, Senegal and Zambia. Sampling fuels from Trafigura, Vitol, Addax & Oryx Group and Lynx Energy, they found that more than two thirds of the diesel samples (17 out of 25) had a sulphur level higher than 1,500 ppm, 150 times the European limit of 10 ppm. Almost half of the gasoline samples (10 out of 22) have a sulphur level between 15 and 72 times the European limit of 10 ppm. They also detected other health damaging substances in concentrations that would never be allowed in a European or US fuel. These substances include polyaromatics (diesel), aromatics and benzene (gasoline). In a number of samples, they found traces of metals that would also contribute to higher emissions of pollutants and damage car engines too.

11 See CIEL report in "Developments since the Dirty Diesel report", below.

12 UNEP, 2016, "Exporting Pollution: Dumping Dirty Fuels and Vehicles in Africa" (15 September 2016)

Sulphur content of analysed diesel samples (in parts per million / ppm)



Source: Public eye

Developments since the Dirty Diesel report

Following the release of the Dirty Diesel report, in December 2016 Nigeria, Benin, Togo, Ghana, and Côte d'Ivoire agreed to ban imports of high-sulphur diesel fuels as part of an initiative organised by the UN Environment Programme, reducing the permitted level of sulphur in imported diesel from as much as 3,000 ppm to 50 ppm.[13] In Ghana and Nigeria the new standard will enter into force in July 2017. Amsterdam City Council also passed a motion to prohibit the export of dirty diesel from the port of Amsterdam. However, Trafigura and Vitol have not taken any action to stop selling high-sulphur fuel in those African countries which have not yet committed to legislate (including Angola, the Republic of the Congo, Mali, Senegal and Zambia) or in many other countries around the world.

The legality of dirty diesel exports has also been challenged by a February 2017 analysis from the Center for International Environmental Law (CIEL).[14] A CIEL study, commissioned by Public Eye and Friends of the Earth Netherlands, found that the Netherlands and Belgium are in breach of the Basel Convention, international customary law, and their human rights obligations by allowing the export of high-sulphur fuels to West African countries. Additionally, CIEL found the countries were breaching their obligations under international human rights law, including regarding the realization of the right to health and to avoid causing harm extraterritorially through actions or omission. Friends of the Earth Netherlands stated they now expect prosecutions of Vitol and Trafigura in the Netherlands. [15]

13 The Guardian, 2016, "Five west African countries ban 'dirty diesel' from Europe" (6 December 2016)

14 CIEL, 2017, "Netherlands and Belgium Violate International Law by Allowing the Export of Dirty Petrol and Diesel" (6 February 2017)

15 Dutch News, 2017, "Netherlands must prosecute dirty diesel exporters: report" (7 February 2017)

Human rights impacts

High-sulphur fuels are a major contributor to worsening air quality in African cities, as rapid urbanisation leads to increased car usage. African mega-cities such as Lagos or Dakar already have worse air quality than Beijing. This has growing impacts on the environment and on public health, contributing to respiratory diseases such as bronchitis and asthma. The Climate and Clean Air Coalition, launched by the UN Environment Programme (UNEP), has estimated that moving to ultra-low-sulphur diesel could prevent almost 25,000 premature deaths per year in Africa by 2030 and almost 100,000 each year by 2050.[16]

In human rights terms, the right to health is established by ICESCR Article 12. Viewing the health impacts through a human rights lens is helpful to clarify the respective roles of the state and business in this regard. The UN Guiding Principles set out that *states have a duty to protect* human rights, while *businesses have a duty to respect* human rights. In this case, states have a duty to protect their citizens from unnecessary public health impacts, and should set stringent fuel quality standards for diesel and gasoline, as five countries announced since the publication of the Dirty Diesel report. However, this does not let Swiss traders off the hook, as business must take their own responsibility to avoid causing or contributing to such impacts, and address them when they occur.

Trading companies argue that the products they deliver comply with national standards. That is usually true. However, there are no practical barriers to the introduction of low-sulphur fuels – only profit implications, set against the health of the companies' African customers.[17] The UN Guiding Principles leave no doubt that the corporate responsibility to respect human rights "exists over and above compliance with national laws and regulations".[18] Trafigura, Vitol and other oil traders should therefore assess risks to health as part of their human rights due diligence process, but are evidently failing to do so.

Financiers of Vitol and Trafigura

As privately owned companies, Vitol and Trafigura are reliant on finance from private sector banks rather than stock markets. Trafigura comments in its annual report that it "funds itself primarily through the banking and debt capital markets … [and] has cemented strong relationships with its lending banks." Research by Dutch economic research company Profundo for BankTrack, carried out at the end of 2016, identified that Vitol and Trafigura together raised almost $105 billion in finance, through bond issues, corporate loans and revolving credit facilities, from almost 200 different financial institutions since 2012.

For this briefing, we have sought responses from 26 banks that each provided over $1 billion in finance to these two companies together, since 2012. These banks are the most significant financial backers of Trafigura and Vitol, representing over half of the total finance that our research identified was raised by the two companies in this time.

16 Heavy Duty Diesel Initiative of the Climate and Clean Air Coalition, 2016, "Cleaning Up the Global On-Road Diesel Fleet: A Global Strategy to Introduce Low-Sulphur Fuels and Cleaner Diesel Vehicles"

17 While Trafigura and Vitol disagree with this assessment, Public Eye's responses to Vitol, Vivo Energy, Trafigura and Puma, and Public Eye and BankTrack's response to Vitol in Appendix III to this report, provide a rebuttal of their arguments.

18 UN Guiding Principles, commentary to Principle 11.

Banks with over $1 billion in exposure to Vitol and Trafigura since 2012[19]

Bank name	Country	Finance for Trafigura, $m	Finance to Vitol, $m	Total, $m
Société Générale	France	3,064	1,512.00	4,576.23
Standard Chartered	UK	2,398	1,340.40	3,738.49
ING Group	Netherlands	2,084	1,506.70	3,590.25
Mitsubishi UFJ	Japan	1,789	1,497.10	3,285.74
BPCE Group	France	1,604	1,132.20	2,736.27
Bank of China	China	1,471	1,219.40	2,690.24
Rabobank	Netherlands	1,846	838.1	2,683.89
Sumitomo Mitsui	Japan	1,211	1,418.70	2,629.24
Mizuho	Japan	1,159	1,248.60	2,407.88
Unicredit	Italy	1,250	1,123.80	2,373.67
RBS Group	UK	1,409	963.2	2,372.34
BNP Paribas	France	1,223	1,046.30	2,269.61
JPMorgan Chase & Co	US	771	1,449.10	2,219.67
Lloyds Banking Group	UK	1,126	1,019.20	2,145.22
Citi	US	1,206	858.9	2,064.81
Crédit Agricole	France	934	1,123.80	2,057.31
Credit Suisse	Switzerland	1,080	838.1	1,917.72
ANZ	Australia	756	1,160.70	1,916.45
National Australia Bank	Australia	728	1,144.50	1,872.52
Commonwealth Bank	Australia	925	782.5	1,707.10
Deutsche Bank	Germany	753	940.6	1,693.57
Industrial & Commercial Bank of China	China	1,181	427.3	1,608.51
HSBC	UK	-	1,543.90	1,543.90
Bank of America	US	644	731.6	1,375.45
Bank of Nova Scotia	Canada	771	566.5	1,337.98
UBS	Switzerland	598	530.6	1,128.44

Bank responsibilities and recommendations

The 26 banks above together provide most of the capital that Vitol and Trafigura have raised to conduct their operations since 2012. Under the UN Guiding Principles, the human rights impacts caused by these companies are (at least) directly linked to the banks providing them with finance, because of these extensive business relationships. As such, these banks have a responsibility to seek to prevent or mitigate these human rights impacts under the UN Guiding Principles (GP13b). They also have a responsibility to report on how they address human rights impacts, particularly when concerns are raised by or on behalf of affected stakeholders (GP21).

19 BankTrack analysis of data provided by Profundo, October 2016.

While some states have moved to address imports of Dirty Diesel, both companies continue to export fuel to countries including Angola, the Republic of the Congo, Mali, Senegal and Zambia, as well as countries outside of Africa, with levels of sulphur and other toxins well above the mandatory limits in their home countries.

In accordance with their human rights obligations, Vitol, Trafigura and others must stop abusing Africa's low fuel quality standards, recognize that if left unchanged their practices will kill more people across the continent, and commit to immediately produce and sell only fuels that would meet low-sulphur fuel standards already in place in Europe. The 26 banks above are in a strong position to demand such a commitment from these companies, and have a responsibility to do so.

We therefore asked each of these 26 banks to:

- confirm whether it has conducted human rights due diligence on Vitol and Trafigura specifically, and if so, outline this due diligence process,
- provide an overview of its response to the human rights impacts identified in this briefing and its efforts to prevent and/or mitigate them,
- engage, if it has not done so already, with Vitol, Trafigura and other companies active in blending and selling high-sulphur fuels it is exposed to, to insist that the companies stop exports of Dirty Diesel to Africa and elsewhere as a requirement of receiving further finance.

Analysis of bank responses

Of the 26 banks we contacted for this briefing, only two (ICBC of China and SMBC of Japan) did not respond at all, with a further two (Bank of America and Bank of Nova Scotia) responding only to confirm receipt. Of the banks that did respond, nine provided responses which engaged with the issue of dirty diesel exports and went some way towards answering our questions. The responses of the remaining 15 banks differ in their level of detail, but none commented on whether the bank has engaged or plans to engage with the companies concerned, or on the bank's view of the issues presented in this case study.

From the nine banks that provided what we term here "substantial responses" (although these also differ in the level of detail provided), the main conclusion to be drawn is that the banks are satisfied with providing finance to Trafigura and Vitol without demanding any changes in their business practices. These responses are remarkably consistent in accepting, apparently at face value, the arguments put forward by Trafigura and Vitol in their responses to the Public Eye report, that only governments can fix the problem of dirty diesel exports, and that "unilateral action" by the companies is either impossible or will not help to address the problem. None of the banks we contacted has indicated that it has sought action from Trafigura and Vitol to stop exports of Dirty Diesel.

This is particularly disappointing as the arguments put forward by Trafigura and Vitol for their inaction do not stand up to scrutiny, as detailed in BOX II below, and have already been comprehensively addressed by Public Eye in its responses to these companies and their subsidiaries.

The responses received from banks are included in full in an external Appendix to this report (Appendix II). In addition, Vitol contacted BankTrack and provided its own response, which we also publish in full together with a commentary by BankTrack and Public Eye (Appendix III).

Substantive responses from nine banks

The nine banks which provided responses that we consider "substantive", are ANZ, BPCE Group, Citi, Credit Suisse, Deutsche Bank, ING Group, JPMorgan Chase, Rabobank and Société Générale. As with previous BankTrack human rights impact briefings, it is not our intention to rank company responses, or to imply that all nine responses which we have classed as "substantive" here are equivalent in their quality or level of detail. Indeed, some are relatively brief and perfunctory, while others provide a welcome degree of detail. However, these responses are the ones that directly address the issues and questions raised in this briefing, to a greater or lesser extent.

These banks' responses differ in whether they explicitly acknowledged their relationship with Trafigura and Vitol, and whether they explicitly confirmed that they had engaged with the companies. Rabobank, for example, did neither, but commented on the response of the companies in general terms, with Rabobank explaining that they could not confirm any banking relationship for reasons of client confidentiality. Others, such as ANZ, stated that they engaged with the companies and are satisfied, but otherwise did not address the issues in the briefing in any detail.

In previous Human Rights Impact Briefings, the issue of customer confidentiality marked far more of a dividing line, only being cited by those banks which also failed to respond to the substance of the briefings. In this report, we see welcome signs of some banks dealing substantively with the issues raised, even as they do not disclose customer relationships. However, it remains a significant concern that bank reluctance to discuss concerns regarding discussing specific customer relationships often stand in the way of their ability to fully meet their reporting responsibilities under the UNGPs.

In substance, the responses of these nine banks are remarkably similar, with two lines of argument recurring in particular: that "unilateral" action by companies will not solve the problem, and that the companies are fulfilling their responsibility by pushing for better regulation. These arguments are considered in more detail in Box II, below. None of the banks indicated that it has sought any action from Trafigura and Vitol.

Banks which addressed the issues raised

Bank name	Confirmed business relationship with Trafigura/Vitol	Confirmed engagement with Trafigura/Vitol
ANZ	-	Yes (with both)
BPCE Group	Yes	-
Citi	Yes (with Trafigura)	Yes (with Trafigura)
Credit Suisse	-	Yes (with Trafigura)
Deutsche Bank	-	Yes (with both)
ING Group	Yes	Yes (with both)
JPMorgan Chase & Co	Yes	Yes (with both)
Rabobank	-	-
Société Générale	Yes	Yes (with both)

BOX II: Bank arguments in support of Trafigura and Vitol examined

"Unilateral" action by fuel traders will not solve the problem

- "[T]he problem is complex and cannot be solved unilaterally by one set of actors, but requires the collaboration among a broader set of stakeholders, first and foremost the national governments" - Credit Suisse
- "To improve the requirements on fuel quality is on the governments that set fuel standards." - Deutsche Bank
- "Poor air quality in African cities is a serious issue which demands action by several parties including governments, and achieving change is a complex challenge and needs time." – ING.
- "[W]e do not share opinions, such as also as expressed in BankTrack's draft briefing … 'that there are no practical barriers to the introduction of low sulphur fuels – only cost implications'." - Rabobank

Most of the banks that responded substantively to this briefing - BPCE, Credit Suisse, Deutsche Bank, ING, JP Morgan and Société Générale – provided some variation on the view that trading companies like Trafigura and Vitol cannot put a stop to the sale of high-sulphur fuels by acting alone, and only regulation or coordinated action involving regulators can solve the problem. Many banks repeated the arguments put forward by the companies themselves verbatim, and three (BPCE, Credit Suisse and Deutsche Bank) referred to "unilateral action" by companies as an unsuitable solution – wording that was also used by Trafigura and Vitol in their responses to the Public Eye report.[20]

It is clear that regulation for improved fuel quality standards is necessary, however this does not preclude "unilateral" action by Trafigura and Vitol to ensure that they only deliver low-sulphur fuels where regulation remains weak. As UNEP has stated: "As we continue to introduce and sharpen standards in African countries, we also need to see action from the mainly western exporters of dirty fuels and vehicles."[21]

French bank BPCE argues that "governments of importing countries control and manage the import of fuels and determine their own fuel specifications", but governments determine only the national limits for sulphur and other toxins. They do not prevent the import of fuels which are of substantially better quality – and the fuel quality already varies substantially within countries, as Public Eye's research showed.

Vitol has argued that such unilateral action would not be effective, as "the importers in West Africa will source from the cheapest reliable supplier" and as low-sulphur fuels are more expensive, they would not be selected. However, when five East African countries improved their fuel standards in 2015 from 500 to 50 ppm, this had no impact on the price at the pump, with analysts concluding that the cost had been absorbed by the traders.

The company has also argued that "it is not possible for any one company to determine the quality of diesel sold at the pump." However, Vitol and Vivo (the fuel retailer subsidiary in which it has a 40% stake) consistently make marketing claims relating to fuel quality, including Vivo claiming that it has access to a "truly global integrated supply chain".

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20 See Public Eye's responses to Vitol, Vivo Energy, Trafigura and Puma.

21 UNEP, 2016, "Exporting Pollution: Dumping Dirty Fuels and Vehicles in Africa" (15 September 2016)

At a more general level, it cannot be acceptable for any company to refuse to accept responsibility for the quality of the product it sells. (See Appendix III for a more thorough examination of Vitol's arguments.)

It is true that unilateral action would not single-handedly "solve the problem" of African fuel quality or air pollution. In some cases, fuels supplied by one trader are "comingled" with fuels from other companies before reaching the pump, meaning low-sulphur fuels could be diluted, and the health impact of a unilateral move by one company would be reduced - although not eliminated. However, the inaction of some companies cannot be an excuse for the inaction of others. Even if all fuel imports to Africa met low-sulphur standards, national refineries would need time to be upgraded for nationally-produced fuels to meet the same standard. But again, there is no reason for the importers to wait for refineries before acting. "Unilateral" action would have significant and immediate positive health impacts, and it is within the power of the companies concerned to take this step. In short, it is irresponsible to do otherwise.

The fuel traders are fulfilling their responsibility by pushing for better regulation

- Vitol and Trafigura are "seeking to engage on the issue using whatever leverage they can" - ANZ
- "Trafigura … expressed support for efforts in Africa to agree to lower-sulfur fuel standards … As the company puts it, in pursuing advocacy on this subject in Africa and Europe, it is acting in conformity with its commitments under the UN Guiding Principles on Business and Human Rights." – Citi
- "Many companies that operate in this sector are supporting the ongoing efforts by national governments to improve fuel quality…" – Credit Suisse
- Trafigura and Vitol are "support efforts by national governments in Africa to reduce permitted sulphur levels in fuel" as members of ARA – ING
- "We also recognise the coordination required between governments and commercial entities to affect change in this area. In that light, we are encouraged by some of the initiatives that are being pursued by regulators, industry organisations and individual companies both within Europe and Africa." - JP Morgan

Several banks argued that Trafigura and Vitol are fulfilling their responsibilities by lobbying national governments to improve air quality standards, for example as part of the African Refiners Association (ARA). However, there is little or no evidence that these companies lobbied for better fuel quality standards prior to the publication of the Dirty Diesel report. In contrast, Public Eye documented how bulk distributing companies in Ghana with close commercial ties to Swiss trading companies lobbied against the lowering of standards there from 5000 ppm to 3000 ppm.[22]

We would welcome any efforts by Trafigura and Vitol to lobby for improved regulation. Apart from West Africa, both companies are also active in high-sulphur countries in other parts of the world, and there remains ample space to lobby for better standards. However we see little concrete evidence of such progressive lobbying, and urge the banks financing both companies to ask for such evidence. Furthermore, while lobbying for progressive regulation is welcome, it does not preclude action from the companies themselves to address their responsibilities directly.

22 E.g. see Dirty Diesel "7.8 – How and Why Importers Lobby Against Better Diesel Standards" (from p77).

Encouraging greater scrutiny

After receiving responses from most of the 26 banks we contacted, we invited representatives of these banks to attend one of two conference calls, held in April 2017 together with Public Eye, in which we discussed the responses of the two companies and invited questions from the bank representatives. Seven banks attended these calls, which were held on a confidential basis, and we held one further call with representatives of another bank. (The calls were held at 8am and 5pm CET to facilitate participation for those located in different time zones.) These calls aimed to encourage banks to look more closely at the responses of Trafigura and Vitol, and prompt further engagement. We hope that the analysis presented here, in Public Eye's responses to Vitol, Vivo Energy, Trafigura and Puma, and in Appendix III to this report, will lead banks to engage more robustly with their clients, demand evidence to support their assertions and seek changes to their business practices.

Other bank responses and non-responses

Of the 17 banks that did not provide "substantive" responses, two - Sumitomo Mitsui Financial Group and Industrial & Commercial Bank of China - did not respond at all, and did not confirm receipt of our message, despite repeated requests. Two more, Bank of America and Bank of Nova Scotia, did not provide responses but did confirm receipt. A further two banks, BNP Paribas and Bank of China, responded confidentially - the latter very briefly by fax. RBS Group also provided a confidential response, but provided a public response in addition to this. Of course, it is impossible to present any analysis of these confidential responses.

The remaining responses vary, with some (e.g. National Australia Bank) providing substantial detail regarding their overall approach to human rights due diligence, and others (e.g. Mitsubishi UFJ) simply stating that they have no comment to make. However, none address the specific issues and questions raised in this briefing.

A number of banks cited "customer confidentiality" as a reason for not providing further information (among them Lloyds, Standard Chartered, Commonwealth Bank), and others stated simply that they do not comment on specific clients or companies (Crédit Agricole, HSBC, Mizuho, RBS, UBS). However it is notable that both Trafigura and Vitol gave their consent to at least one bank to disclose its relationship and certain details of its engagement with the companies (see ING's response). Confidentiality requirements do not normally prevent banks from disclosing such details with client consent.

The responses of the banks listed below are available in full where possible in Appendix III.

Bank name	Response type
Bank of America	No response; confirmed receipt
Bank of China	No public response; brief confidential response
Bank of Nova Scotia	No response; confirmed receipt
BNP Paribas	No public response; confidential response
Commonwealth Bank of Australia	Responded, no comment on the specific issues raised
Crédit Agricole	Responded, no comment on the specific issues raised
HSBC	Responded, no comment on the specific issues raised
Industrial & Commercial Bank of China	No response, no confirmation of receipt
Lloyds Banking Group	Response confirming receipt
Mitsubishi UFJ Financial Group	Response confirming receipt
Mizuho Financial Group	Responded, no comment on the specific issues raised
National Australia Bank	Responded, no comment on the specific issues raised
RBS Group	Responded, no comment on the specific issues raised
Standard Chartered	Responded, no comment on the specific issues raised
Sumitomo Mitsui Financial Group	No response, no confirmation of receipt
UBS	Responded, no comment on the specific issues raised
Unicredit	Responded, no comment on the specific issues raised

Conclusion: Banks should not be "comfortable" or "satisfied" banking Vitol and Trafigura

- "We have engaged with the companies and are satisfied they understand their responsibilities to respect human rights"- ANZ
- "The information provided by the companies give us the comfort that they have addressed the issue you have raised appropriately" – Deutsche Bank

The findings of Public Eye's Dirty Diesel report have triggered considerable debate and action from governments and others to tackle the problem of high-sulphur fuels, most notably the December 2016 agreement to ban high-sulphur diesel imports by Nigeria, Benin, Togo, Ghana, and Côte d'Ivoire (which has not yet been fully implemented). But they have not yet triggered action from the companies producing and retailing these fuels. Of the eight countries in which Public Eye sampled fuel, five – The Republic of Congo, Zambia, Angola, Senegal and Mali – have not yet committed to change their fuel standards. In some of these countries, governance is weak and progressive regulation not so easily obtained.

Although regulation is one very effective *solution* to the problem, the *cause* of the problem is the product supplied and retailed by Trafigura, Vitol and other fuel traders. The companies, and their bankers, claim that the problem is complicated and requires a co-ordinated response from many actors. However, it is really not so complicated. Trafigura, Vitol and others must take responsibility for the health impacts of their product, and go beyond regulatory requirements to make sure the fuels they supply and retail meet low-sulphur standards, as they have been able to do quickly in those countries which have put new regulations in place.

The traders' argument that switching to supply only low-sulphur fuels would price traders out of the market does not stand up to scrutiny, as they have been able to absorb the costs of this switch elsewhere with no cost to the consumer, only a hit to their margins. Their argument that they are unable to control the quality of fuel they retail due to comingling of supplies contrasts with their marketing claims of a "truly global integrated supply chain", as well as with the experience of many other sectors featuring complex global supply chains, in which retailers nonetheless take responsibility for product quality.

None of the 26 banks we contacted, which have together provided $60 billion to Vitol and Trafigura, can be said to have met its responsibility to seek to prevent or mitigate the adverse human rights impacts of their clients in this case, as not one has requested their client take any steps towards preventing or mitigating its impacts. While a number of banks have engaged with their clients, engagement alone cannot prevent or mitigate human rights impacts, particularly when clients' excuses for inaction are accepted at face value.

It cannot be right for Trafigura and Vitol to supply fuels with sulphur levels of more than 2,500 parts per million in Mali for example, while they ensure they only sell fuels of 50 ppm or less in nearby Ghana.[23] Yet the companies' bankers proclaim that they are "satisfied" with the steps taken by their clients. This strikes us as both shockingly complacent, and a huge missed opportunity for these banks to press for necessary changes to their clients' business practices and achieve positive human rights outcomes. We urge these 26 banks, and all others financing Trafigura, Vitol and other fuel traders, to reconsider their approach to this issue, and use their considerable combined leverage to press their clients for urgent action to stop the trade in Dirty Diesel.

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Appendices to this report

The following appendices are provided as a separate annex to this report:

Appendix I: Banks in scope
A table of the 45 large private sector banks considered "in scope" in this series of Human Rights Impact Briefings.

Appendix II: Bank responses in full
The full text of the responses provided by each of the 26 banks contacted where possible.

Appendix III: Vitol's response to BankTrack
The response provided by Vitol to the draft report, followed by commentary by BankTrack and Public Eye.

23 Vivo Energy operates in both markets, and was found to sell fuel with over 2,500 ppm Sulphur in Mali, while 50 ppm is the new fuel standard in Ghana.