

# BANKTRACK

**To:**

THE THUN GROUP OF BANKS (BARCLAYS, BBVA, BNP PARIBAS, CREDIT SUISSE AG, DEUTSCHE BANK, ING, RBS, STANDARD CHARTERED, UBS GROUP AG, UNICREDIT), WITH J.P. MORGAN,

C/O CHRISTIAN LEITZ,  
HEAD, CORPORATE RESPONSIBILITY MANAGEMENT,  
UBS SWITZERLAND AG

**SUBJECT:**

THUN GROUP RESPONSE TO CIVIL SOCIETY CONCERNS

14 MARCH 2017

Dear Christian and the Thun Group of Banks,

Many thanks for your letter of 28<sup>th</sup> February addressed to BankTrack, in response to the open letter of 14<sup>th</sup> February from 38 civil society organisations and academics, which BankTrack signed and coordinated. We have shared your response with all signatories to that letter, and we respond on behalf of those signatories.

We welcome the invitation to meet in Thun in June, which we also understand as also extended to other interested signatories to the letter. However, we have some concerns at this point about whether such a meeting will contribute to the constructive dialogue that we both seek. As such we would like to seek some reassurances prior to the meeting.

Firstly, as mentioned in our open letter, the Thun Group made a commitment following its last open meeting in June 2014 to define a stakeholder engagement strategy. However, this commitment has not yet been met. For constructive dialogue to take place it is vital that commitments made at such meetings are upheld. In addition, the absence of a meaningful and inclusive stakeholder engagement strategy is at the heart of the concerns we set out in our open letter.

The UN Working Group made the point in its response to the Thun Group paper that initiatives like this paper, which seek to interpret the meaning of the UNGPs in a sector-specific context, “should be subject to a process of consultation and review by other stakeholders to ensure accuracy, robustness and legitimacy”. In line with this, we ask the Thun Group to meet its commitment to establish a stakeholder engagement strategy, and do so in a way which takes on board this recommendation from the UN Working Group, in time for its forthcoming meeting.

Secondly, we have asked the Thun Group to withdraw and reconsider its recent paper, and subsequently the UN Working Group and Professor Ruggie have both made clear that, on the central question of whether banks can contribute to adverse human rights impacts through their provision of finance, the premise of the paper is wrong. However, the response from the Thun Group has not indicated any willingness to revise the paper. We continue to believe that the Thun Group’s stated objective of generating constructive dialogue would be best served by making clear that it is prepared to reconsider and revise its paper based on feedback received, and we therefore seek reassurance that you are prepared to take steps to address the inaccuracies and inconsistencies with the UNGPs which have been drawn to your attention.



We would be happy to engage in further dialogue in Thun this coming June and in the future, provided such assurances are forthcoming.

Further, I attach **on the following page** some comments on the more detailed points made in your letter.

Best wishes,

Ryan Brightwell

A handwritten signature in black ink, appearing to read 'R. Brightwell', with a long horizontal stroke extending to the right.

Researcher and Editor, BankTrack

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The letter of 28<sup>th</sup> February raises four specific points. To respond briefly to each of these:

**On your first point**, that the OECD RBC project on institutional investing concurs with the Thun Group's interpretation: the OECD paper on Responsible Business Conduct for Institutional Investors is limited in scope to bank activities as they relate to institutional investment. We agree with the consensus view put forward in the paper that a minority shareholder relationship, particularly in listed equities, is unlikely in general to lead to substantial contribution to an adverse impact under the Guidelines in the vast majority of cases. However, this finding does not relate to the question of whether banks can contribute to human rights violations through the actions of their *clients*.

**On your second point**, that you do not agree that the examples given by the UN OHCHR fall within the definition of "contribution": we referred to a [letter of 27 November 2013](#) sent by the OHCHR to the OECD, which advises that financing can contribute to a human rights impact, "such as if financing is provided for a project that will result in widespread displacement of communities, without safeguards in place". Your letter states (incorrectly) that we referred to a letter of [3 December 2013](#) letter from the UN Working Group to the OECD, which states: "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." We would like to further note that a similar example is given in the [FAQ to the UNGPs](#): "A company may contribute to an adverse impact if it provides financing to a construction project that will entail forced evictions" (Q32, p31).

Your letter states that in the Thun Group's analysis, the example given by the UN Working Group cited above falls within the definition of "directly linked" – i.e. the Thun Group disagrees with the UN Working Group's analysis. As we pointed out in our letter, it is the UN OHCHR and the UN Working Group which, together, have a mandate to provide guidance on the interpretation and implementation of the UN Guiding Principles. Both these UN bodies, together with Professor Ruggie, have provided consistent explanations of the Guiding Principles on the question of contribution and direct linkage, and we recommend the Thun Group accept these explanations. However, in the event of a fundamental disagreement with this guidance, the onus is on the Thun Group to actively seek its resolution by contacting them directly.

**On your third point**, that examples we cited by UNEP-FI and the UN Interpretive Guide relate to impacts of an enterprise's own activities rather than its clients: the example cited by UNEP-FI states "a bank could contribute to an adverse human rights impact by assisting, facilitating, or incentivizing *the conduct of another entity*". It is clear to us that this does not refer to impacts arising because of a bank's own activities. Similarly, the example in the Interpretive Guide of the business that "lends vehicles to security forces that use them to travel to local villages and commit atrocities" relates to impacts arising from the actions of a different entity to the lender.

**On your final point**, that the open letter implies that categorizing a business relationship as "directly linked" exonerates a bank from considering and acting upon potential human rights impacts associated with the client in that relationship: we apologise if our letter carried that implication, as this was certainly not our intention, and we welcome the Thun Group's view that a bank must take significant steps when directly linked to an adverse human rights impact. Notwithstanding this point, banks have a different and higher level of responsibility in cases where they cause or contribute to a human rights impact, and it is well established in the examples above that such contribution can occur because of a bank's decision to finance an activity which results in a human rights abuse.

