

BANKTRACK

To:

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
ATTN. MS. LENE WENDLAND, CHIEF, HUMAN RIGHTS AND ECONOMIC AND SOCIAL ISSUES SECTION
PALAIS DES NATIONS,
CH-1211 GENEVA 10,
SWITZERLAND

SUBJECT:

RESPONSIBILITIES OF PRIVATE SECTOR BANKS UNDER UN GUIDING PRINCIPLES

06 MARCH 2017

Dear Ms. Wendland,

We are writing to request advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector, in light of previous guidance produced by the OHCHR on related issues.

BankTrack has worked since 2011 to advocate for comprehensive implementation of the UN Guiding Principles by private sector banks. In January 2017, the Thun Group of banks published a “Discussion Paper on the implications of UN Guiding Principles 13 and 17 in a corporate and investment banking context”.¹ BankTrack has, together with over 30 other civil society organisations and individuals, signed an open letter responding to this Paper.² We take note that the Thun Group paper is intended to initiate constructive dialogue and discussion amongst stakeholders on the corporate responsibility to respect human rights in the banking sector. We also note that other processes and fora are engaged in “unpacking” the implications of the UN Guiding Principles for banks and other parts of the financial sector.³

We welcome any constructive, multi-stakeholder dialogue aimed at enhancing the understanding of the practical implications of implementing the UN Guiding Principles. To further inform these efforts and to ensure that there is clarity amongst all stakeholders about the understanding of key elements of the UN Guiding Principles, we seek your advice and clarification on the following issues:

1. OHCHR previously provided advice in a letter of November 2013 to the OECD Working Party on Responsible Business Conduct on when a financial institution may be considered to be “directly linked” to a human rights impact through a business relationship.⁴ Can the OHCHR elaborate on which factors would influence whether a bank is (a) causing or contributing to an impact or (b) having a direct link to an adverse impact via a business relationship?

¹ https://business-humanrights.org/sites/default/files/documents/2017_01_Thun%20Group%20discussion%20paper.pdf

² <https://business-humanrights.org/sites/default/files/documents/170214%20Open%20letter%20to%20Thun%20Group.pdf>

³ E.g. the OECD process on responsible business conduct in the financial sector (<https://mneguidelines.oecd.org/rbc-financial-sector.htm>), and the Dutch Banking Sector Agreement of 2016 (<https://www.ser.nl/nl/publicaties/overige/2010-2019/2016/dutch-banking-sector-agreement.aspx>)

⁴ <http://mneguidelines.oecd.org/global-forum/GFRBC-2014-financial-sector-document-3.pdf>



2. Where a bank has contributed to an adverse impact through its finance, what are the differentiated responsibilities of the bank and the company or vehicle leading the project to provide for or cooperate in remediation under Principle 22?
3. How should the responsibilities of banks to “establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by their operations” under Guiding Principle 29 be interpreted with regard to adverse impacts that a bank may cause or contribute, or those to which the bank may have a direct link through its finance? In particular, in the context of impacts that a bank has not caused through its *own* activities, what would be the differentiated responsibilities of the bank and the company which has directly caused an impact to establish a grievance mechanism, and how should the term “operational level” be interpreted in this regard?

We acknowledge that more complex issues will require further consideration and consultation that will be outside the scope of a response to this letter. Indeed we are keen to ensure that a consensus is reached on the understanding of the UN Guiding Principles that can be agreed upon by all stakeholders, and to participate in such consensus-building.

We would very much welcome a response which indicates which areas the OHCHR considers as well established, and which require further detailed consideration.

I would be happy to provide any further background or other information which may be helpful in relation to this request.

With thanks in advance for your consideration in this regard,

Ryan Brightwell



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