

Oct 29 2015

UN FORUM SERIES – What should banks do to take human rights seriously?

Damiano de Felice

This post was contributed by Ryan Brightwell, Researcher and Editor at BankTrack.

The banking sector provides the lending that drives much of the world's economic activity. As such, whether banks apply strong human rights standards to their finance has knock-on effects for all other sectors of business.

However, banks are still a long way from fully and enthusiastically adopting the United Nations Guiding Principles on Business and Human Rights (UNGPs), as research carried out by BankTrack has shown.

Using benchmarking to drive change in the banking sector

BankTrack set out to measure the implementation of the UNGPs by the banking sector in a report, "[Banking with Principles?](#)", published in December 2014. The report was motivated by a perception that, some three and a half years after the Principles' adoption, banks had spent much time discussing amongst themselves how to implement the UNGPs, but not nearly as much time on actually implementing them. We therefore set out to establish which banks had made a start and which were lagging behind, with the aim of kick-starting implementation and spurring a "race to the top".

To meet these aims, we developed criteria which were explicitly based on the text of the UNGPs, to ensure that banks would accept them as credible and objective. We derived 12 criteria across four categories: policy commitment, due diligence commitment, reporting and access to remedy.

The criteria and later the draft scores were sent to banks for comment during the process, leading to some changes in both. Damiano de Felice, who wrote one of the few academic articles on [banks and human rights](#), also provided an independent review of the criteria and the scores.

The results showed that almost all of the 32 banks covered in the report were, as we had suspected, at an early stage in implementing the Guiding Principles. The average score was just 3 out of 12.

Reporting and access to remedy were particularly major gaps: none of the banks examined conducted reporting on specific human rights impacts they had identified and how they had addressed them, as the Principles call for, and none operated anything which could be credibly referred to as a grievance mechanism.

Banks too have a responsibility to provide access to remedy

Given the current absence of grievance mechanisms among private sector banks, it is very welcome that "providing access to effective remedy in the financial sector" is one of the topics on the agenda at this year's [UN Forum on Business and Human Rights](#).

Some in the banking sector have been resistant to the very idea that banks need grievance mechanisms at all. This dissenting view is epitomised by a comment from ING: asked in a 2013 [article](#) on the Thun Group of Banks (the informal grouping of banks that has taken it on itself to develop [guidelines](#) for banks on how to implement the UNGP, of which it is a member) why the banks did not address access to remedy in their discussion paper, ING's spokesperson responded that "most of the time, when a bank is linked to a human rights issue, it's caused by the client rather than by the bank". In that case, she said, the client would be "in a better position to provide access to remedy".

While it is indeed the case that bank customers are more likely to cause human rights impacts directly, this does not absolve banks of responsibility. For a start, the UNGPs do not limit the responsibility to provide remedy only to the business which directly caused it, stating that "business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted". Simply instructing a client to operate a grievance mechanism is not the same as "participating".

For rights-holders, the ability to seek remedy from the financiers of a project as well as the project backers directly would only be to their benefit, not least as the company directly responsible may prove unwilling or unable to remedy the impact. In addition, banks, like any other business, can also cause human rights violations directly, further adding to the need to provide access to remedy.

It is also important to be realistic about the potential for grievance mechanisms, when they do exist, to provide remedy to rights holders.

In the one example of a bank which has established a grievance mechanism, indigenous people affected by the Barro Blanco dam project in Panama [lodged a complaint](#) to the Dutch private-sector development bank FMO regarding its US\$25 million finance for the dam, which would flood their homes against their consent. The independent report into the complaint found that FMO indeed violated its own policies by failing to adequately assess the risks to indigenous rights and the environment, and yet although FMO's response to the findings acknowledged some failings, it did not commit to any measures to address the outstanding policy violations.

To measure the impacts of banks on human rights, we need to know what they are financing

To measure whether banks have made progress on the development of grievance mechanisms, or in other areas of their human rights policy and processes, BankTrack will conduct a new ranking in mid-2016. However, evaluating whether such improved policies and processes have an impact on the ground – in terms of the projects and companies backed by bank finance – is an ongoing challenge.

We can shed some light on this question by looking in more detail, and comparatively, at bank responses to specific alleged human rights impacts. Yet, efforts to measure which banks are most likely to become linked to human rights abuses by their finance, and to evaluate their responses, are hamstrung by the limited transparency from banks on what projects and companies they finance.

Banks in general claim that commercial confidentiality prevents them from disclosing their lending decisions, but as Oxfam Australia has discussed in its [briefing paper on banks and land grabs](#), banks do disclose detailed deal information on loans, bonds and shareholding information to pay-walled financial databases – accessed by their competitors – for marketing purposes.

Systematic reporting of bank finance is both possible and necessary if we are to accurately test whether banks are living up to their commitments, on human rights and also more broadly.

Ryan Brightwell

Ryan Brightwell is Researcher and Editor at [BankTrack](#), where he coordinates the campaigning work on human rights.



This entry was posted in [Indices and ratings](#), [Reporting](#) and tagged [bank](#), [banktrack](#), [guiding principles](#), [human rights](#), [remedy](#), [ryan brightwell](#), [transparency](#). Bookmark the [permalink](#).