

Submission to the new UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises on key thematic priorities and activities

2011

The UN Framework on Business and Human Rights: The Importance of Financial Institutions

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Applying the UN Framework and Guiding Principles on Business and Human Rights to financial institutions poses a particularly acute challenge that merits dedicated scrutiny by the new UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises. As the last few years have amply demonstrated, the financial sector is uniquely placed in relation to human rights because it is such an enormous and deeply integrated system that malfunctioning financial markets can easily derail access to basic goods needed for human rights enjoyment. A global recession brought on by poor decision making and bad risk management within financial institutions can have far-reaching impacts for human rights by undermining years of efforts to advance poverty alleviation and the Millennium Development Goals, as was witnessed in 2008-9.

Currently, as the Working Group begins its task of overseeing the implementation of the UN Framework and Guiding Principles on business and human rights, the world is once again facing the prospect of significant disruption to the international financial system and to the global economy, this time by problems in the Eurozone. The exposures that financial institutions have built up to over-indebted European nations, which can easily trigger cascading problems right through the world's financial institutions thanks to deep systemic interconnections, could cause another major worldwide recession which will be catastrophic for the human rights of the poorest and most vulnerable. Potentially this crisis will be more painful and more enduring than that of 2008-9 because the States that were then able to bail out the system and stabilise markets are now at the core of the problem: the debts taken on partly to effect that rescue of international finance is what now threatens to plunge the world back into crisis.

The problem from a human rights perspective is that currently, the international human rights machinery has no answer to any of these problems because so little of the day-to-day activity of financial institutions has been brought within the ambit of human rights principles. Whereas a lot of scrutiny has been dedicated to areas like project finance and ethical investing where the human rights impacts are most immediate and readily traceable from financial activity to negative human rights impact, these only account for a fraction of daily activity of the world's financial institutions. Collectively, global financial markets are now at least ten times bigger than the world economy – indeed, even individual financial markets like the bond markets are

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substantially bigger than world GDP. Some individual financial institutions, particularly the large, complex financial institutions (LCFIs) that are deemed 'too big to fail', have notional derivatives exposures that are larger than world GDP.

And this is precisely why the financial sector merits – indeed urgently needs – dedicated scrutiny by the Working Group. The financial sector overshadows the world economy, which makes poor governance of financial institutions a human rights issue because problems in financial institutions are very difficult, if not impossible, to isolate and contain within those institutions. The human rights enjoyment of the poorest and most vulnerable is inevitably impacted as 'collateral damage' of bad risk management, poor governance, liquidity problems and poor decision-making within financial institutions. However, as we have seen since 2008, financial institutions are rarely, if ever, held accountable for those human rights impacts precisely because no mechanisms currently exist for doing so.

The UN Framework provides a very timely opportunity to address this lacuna because it establishes a comprehensive principle that businesses must respect human rights across their operations – i.e. not just in the areas where the impacts can most readily be traced to their operations. It also establishes the principle that States must ensure that the legislative and supervisory framework they provide to enable businesses to operate also enables or obliges those businesses to respect human rights. Hence the regulatory framework of international finance could also be brought within the ambit of the UN Framework. How does or should the Framework change the way States manage financial institutions and the expected outcomes of financial transaction and, in particular, market failures? How should it change the conduct of financial institutions in areas like derivatives or bond trading, for example, that have not traditionally been viewed as linked to human rights? The comprehensiveness of the new UN Framework and Guiding Principles, and the unavoidable impacts that the ongoing financial crisis has had and continues to have, invest a sense of urgency in these questions precisely because financial malfunction and poor decision making within financial institutions imperils a whole range of human rights.

The challenge in doing this, and the importance of the Working Group taking a lead in highlighting these issues, is twofold. On the one hand, the current deficit of understanding of the complex chains of causation that run from opaque and sometimes esoteric parts of the financial sector to the rights of the poorest and most vulnerable of the world needs to be addressed. Few financial products are understood from a human rights angle, which means

that the vast majority of financial activity is currently beyond accountability for eventual human rights impacts. The specialisation and technical complexity of many financial products and activities mean that existing initiatives like the Equator Principles cannot simply be scaled up to deal with the system as a whole. Understanding needs to be built of different market segments, products and different risks and how these relate to enjoyment of basic rights. Secondly, a framework needs to be developed showing how the responsibility to respect human rights as a foundational principle of international business can be applied in a very practical way to the day-to-day activities of financial institutions in order to protect human rights from the far-reaching impacts of their commercial decisions. Because of the technicality of many financial products, it is a meaningless exercise to simply remind financial institutions of their responsibility to respect human rights across their operations. From an operational point of view, this tells them very little. And while, for example, the UN's recent *Interpretive Guide on the Corporate Responsibility to Respect Human Rights* provides some useful explanatory materials for many mainstream business sectors, it provides no elucidation for the financial services sector. Further work is needed to show how this translates into tangible changes to business practices or policies.

The Working Group is eminently well placed to take a lead on these issues by its ability to foster cross-sector dialogue and cooperation on this with financial institutions. It is also a very timely juncture in the history of the international trade and financial system at which to do this. The legacy of the problems that emerged in financial institutions in 2007-8 and the catastrophic, far-reaching impacts this had for people worldwide has thrown a long shadow over financial institutions' social license to operate. There is a need to rebuild public trust in financial institutions, and there is an openness within the financial and economic policy elite to new ways of thinking about these urgent problems. The Working Group is well placed to examine the impact of financial institutions on human rights and how the UN Framework can be used to address them, and should take up this challenge as a central part of its future work programme.