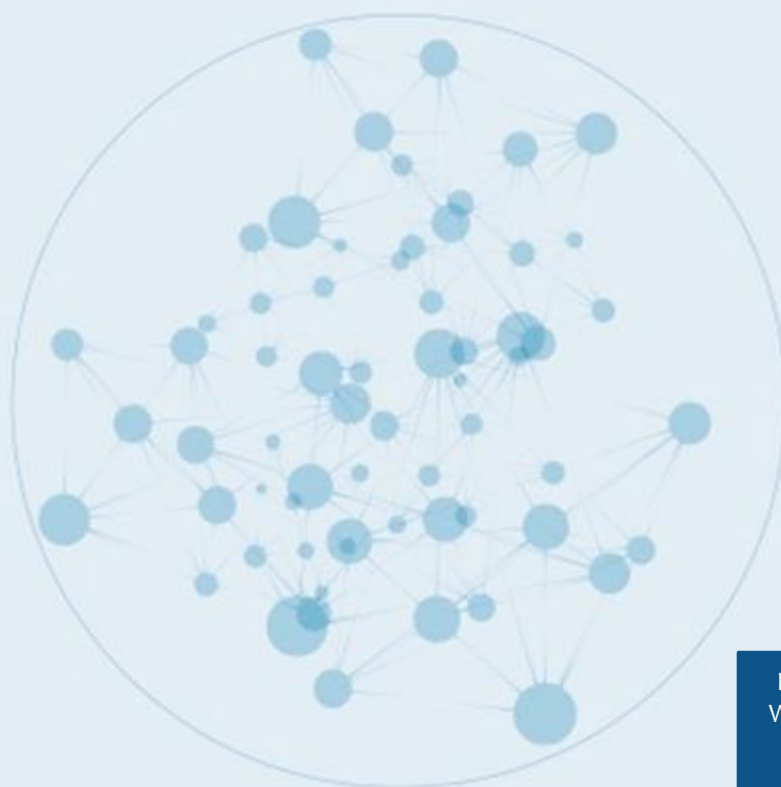




HUMAN RIGHTS AND SUSTAINABLE FINANCE

Exploring the Relationship



INQUIRY
WORKING
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The UNEP Inquiry

The Inquiry into the Design of a Sustainable Financial System has been initiated by the United Nations Environment Programme to advance policy options to improve the financial system's effectiveness in mobilizing capital towards a green and inclusive economy—in other words, sustainable development. Established in January 2014, it published its final report, *The Financial System We Need*, in October 2015.

More information on the Inquiry is at: www.unep.org/inquiry and www.unepinquiry.org or from: Ms. Mahenau Agha, Director of Outreach mahenau.gha@unep.org.

About IHRB

IHRB is a global centre of excellence and expertise - a think and do tank - on the relationship between business and internationally proclaimed human rights standards. The Institute works to raise corporate standards and strengthen public policy to ensure that the activities of companies do not contribute to human rights abuses, and in fact lead to positive outcomes. IHRB works with business leaders, government officials, civil society, and trade unions to address problems where the law may be unclear, where accountability and responsibility may not be well-defined, and where legitimate dispute settlement mechanisms may be non-existent or poorly-administered.

IHRB has presence in London, Brussels, Geneva, and Washington, DC, in addition to three responsible business centres in Colombia, Kenya, and Myanmar, and is part of a consortium that works on business and human rights in China.

Much of IHRB's sectoral and thematic focus is based on key "global flows" that underpin globalization. This paper is part of IHRB's program of work on the global flow of finance.

Authors

Margaret Wachenfeld is the Director of Research and Legal Affairs at IHRB. Motoko Aizawa is Managing Director USA at IHRB. Mary Dowell-Jones is a Research Fellow at the Human Rights Law Centre, University of Nottingham, specializing in the financial sector and human rights. Her work focuses on ethics and governance of the global financial system, systemic risk and financial crisis, and financial regulation.

About this paper

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Comments are welcome and should be sent to nick.robins@unep.org.

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Abbreviations

AFI	Alliance for Financial Inclusion
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlement
CDS	Credit Default Swaps
CGAP	Consultative Group to Assist the Poor
CISL	Institute for Sustainability Leadership, University of Cambridge
ECB	European Central Bank
E&S	Environmental and Social
ESIA	Environmental and Social Impact Assessment
ESG	Environmental, Social and Governance
FSAP	Financial Sector Assessment Programme
FSB	Financial Stability Board
G8	Group of 8
G20	Group of 20
GEF	Global Environment Facility
G-SIB	Global Systemically Important Banks
IAIS	International Association of Insurance Supervisors
ICP	Insurance Core Principles
IFC	International Finance Corporation
IFI	International Financial Institutions
IMF	International Monetary Fund
ILO	International Labour Organization
IOSCO	International Organization of Securities Commissions
MNE	Multinational Enterprises
OECD	Organisation for Economic Co-Operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PRI	Principles for Responsible Investment
PSI	Principles for Sustainable Insurance
RFF	Responsible Finance Forum
SBN	International Finance Corporation's Sustainable Banking Network
SDG	Sustainable Development Goals
SEC	US Securities and Exchange Commission
SRI	Socially Responsible Investing
SSI	Sustainable Stock Exchanges Initiative
UNEP	United Nations Environment Programme
UNEP FI	United Nations Environment Programme Finance Initiative
UNGP	UN Guiding Principles on Business and Human Rights

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EXECUTIVE SUMMARY

Designing and building a sustainable financial system requires a broad focus on what sustainability requires in all its aspects and how finance can help deliver on that important objective. This task includes not only delivering financing for sustainable environmental outcomes and addressing climate change, but it also includes attention to the needs of a sustainable society. Societies in which segments of the population suffer extreme poverty, marginalization and discrimination, lack access to basic health care and education, or lack the rule of law or freedom of speech, or must cope with dysfunctional, corrupt or unaccountable public institutions, create social pressures which, in turn, strain environmental and economic resources. It is difficult if not impossible to address the needs of a sustainable planet without taking into account the critical role that a sustainable society plays. It follows that a sustainable future for all requires a coherent vision of how the layers of society, economy, environment, and finance interact, and the role of the financial system in facilitating sustainable livelihoods and societies.

This joint paper (the Paper) between the UNEP Inquiry on the Design of a Sustainable Financial System and the Institute for Human Rights and Business,² together with Mary Dowell-Jones, aims to contribute to this debate through considering the role of human rights in delivering a sustainable finance system. Human rights set out a vision of the key values and fundamental social goods that are essential to stable societies and sustainable economies. These include the rule of law, democratic accountability, rights to life, liberty, security of person, and freedom of speech, and broader economic rights such as the right to work, the right to social security, and the rights to education and health care, among others. As well as being human rights, these are also recognized as key economic goods which help to underpin development, growth and stable societies through providing accountable institutions, healthy, educated and skilled workers, security in old age, and a safety net in times of economic disruption or transition.

The International Bill of Human Rights³ and the newer 2011 United Nations Guiding Principles (UNGPs) on Business and Human Rights⁴ remind states of their obligations to protect these human rights, including by appropriately regulating businesses, including financial institutions, to ensure that they respect human rights. The UNGPs framework set an expected global standard of conduct for all businesses, including financial institutions, that they respect human rights. While this is a soft law standard, it is an authoritative global standard⁵ and one that is moving from soft law to hard law as it is incorporated by reference into other international standards,⁶ domestic law, and contracts. As human rights become increasingly coded into other areas of international law, including international commercial law, they offer the only shared framework of basic values and critical social goods which can be used as a reference point for a code of ethics and standards of expected conduct in the financial sector.

A premise of the UNEP Inquiry on the Design of a Sustainable Financial System is that a bold new vision is needed to put the world on a sustainable path. The financial system is the lifeblood of the economy at the local, national, and global level. As such, it has an important positive role to play in supporting poverty alleviation efforts and the realization of human rights. The opportunity that lies ahead is the evolution of a sustainable financial system that is more closely aligned with that vision of social sustainability, as signalled by the international human rights framework.⁷ This is the optimistic message from this Paper based on changes in the sector already underway. But the other message from the Paper is that there is still a long way to go. The Paper provides an overview of several key areas where human rights are currently applied in the financial system, highlights the need for further expansion of the application of human rights to the sector and for further research. The increasing attention given to these issues by international organizations, and the research cited throughout the Paper point to a

growing interest and appetite across the financial sector and human rights sector to engage in these important discussions.

The Paper analyses three levels of interaction between the financial system and human rights: (i) the **systemic** level, that looks at regulatory actors and key regulatory leverage points for (further) incorporating human rights into regulatory approaches, as well as considering the more diffuse impacts on human rights of the operation of the financial markets; (ii) the **client** level, which looks mainly at how financial institutions in certain segments of the market (banking, investment and insurance) address the identifiable human rights impacts of their sovereign and corporate clients' activities while also highlighting that further work is needed to identify and explore ways to manage the human rights impacts of more complex products and services; and (iii) the **consumer** level, which looks mainly at how financial institutions in certain segments of the market (banking, investment and insurance) address the human rights impacts of their products and services directly on consumers and promote human rights enjoyment through new products and services.

By looking at these three levels, the Paper seeks to highlight the multi-faceted roles and contribution that human rights can make to a more sustainable and more ethical financial system. At the systemic level, human rights are an ideal and an inspiration for a vision of a better society, an expression of ethics grounded in the belief of the inherent dignity and equal and inalienable rights of all members of the human family that is an important foundation not only for ethical approaches to the financial sector's business, but also a benchmark against which to measure its consequences. They expose the technical agnosticism of the modern financial system, based around abstract mathematical formulas and quantitative models. At the client level, they are an expression of the social externalities that governments and businesses are expected to internalize, if the world is to move in a more sustainable direction. They are considerations for risk management to help financial institutions assess the conduct of corporate and sovereign clients to ensure that they are not linked to human rights abuses. They also help financial institutions determine how to fund economic activity in a way that does not further contribute to human rights abuses and expose themselves to risk but instead contributes to the enjoyment of human rights. At the consumer level they are an expected standard of conduct for financial institutions, and provide a benchmark for respecting and treating the interests of consumers fairly and without discrimination. They underpin legal frameworks to be deployed to protect people from harm and defend against injustice. In other words, there is more than one concept of human rights that is useful to improving the sustainability and inclusiveness of our complex financial system.

At the **systemic** level, the Paper highlights that a key challenge in moving from modern finance to sustainable finance is the methodological disconnect between the capabilities of mathematical finance and ethics. Financial markets have a long history as part of human society, and for much of that time they have been reasonably straightforward support services for facilitating economic activity where the economy and finance were seen as part of the social fabric, rather than as a separate, self-governing system.⁸ Over the last twenty years, as the financial system has changed beyond recognition, this implicit relationship between financial markets and a context of unspoken, broadly accepted social values has broken down. Not only is there a need to improve the data and the assumptions that go into the mathematical formulas and quantitative models so that they better reflect the social complexity in which financial products are used, but significantly, there is also a need for regulatory checks on what can in practice be widespread negative and unsustainable social, economic, and financial consequences. In order to build a more sustainable and resilient financial system for the future, it is essential that the broad range of social impacts of financial activity are included in the debate on the management and

regulation of the financial system. A human rights lens can help to integrate these social impacts more deeply into the financial architecture.

Also at the **systemic level**, with respect to financial regulation, the role of central banks vis-à-vis human rights has been little discussed to date, yet major central banks have recently expressed concern over the impact of extraordinary monetary policy measures in stoking global inequality, which is also a key issue for the human rights community. There is scope and arguably a need for human rights considerations to play a role in central bank economic research and monetary policy deliberations, so that the range of social impacts of monetary policy decisions on different groups – including the marginalized – are included in debate. Central banks also have controlling systemic risk as a core mandate. Some central banks are beginning to recognize that human rights abuses leading to social instability can create systemic risks for the financial system and, as such, are an appropriate consideration in financial sector supervision. The financial system can also create systemic risks for human rights, as the recent financial crisis demonstrated. It is this potential threat to macro-level stability over a longer time horizon arising from micro-level risks to human rights that needs to be conveyed to capture the attention of further financial system regulators. The Paper also examines nascent steps of regulators of other selected segments of the financial market – banking, investment and insurance – in beginning to address social issues, much less human rights issues, as part of their mandates, and finds that there is in most cases a very long way to go for most regulatory frameworks.

At the **client level**, individual financial institutions have made progress over the last decade or so, building on the experience of environmental due diligence by some banks and insurance companies, in defining what steps they should take in respecting human rights in their business relationships with their sovereign or corporate clients. Financial institutions are seeing human rights as a new dimension of risk in their risk management, particularly in connection with long-term finance and equity investments, usually as part of the “S” in considering environmental, social and governance (ESG) issues. Indeed, a human rights lens ensures that “S” issues are consistently and comprehensively organized and addressed. And yet human rights also address “E” (for environment) and “G” (for governance) in the ESG triumvirate – environmental degradation directly affects human rights, and corporate governance rules require that stakeholders’ interests are taken into account. At the same time the “S” dimension of due diligence is often the weakest and least explored part of the ESG triumvirate.

At the **consumer level** is where the positive opportunities have been seized most visibly, where financial inclusion, impact investing, and impact insurance are starting to take off, having a direct impact on poverty reduction, and is also making fulfilment of certain human rights a reality. The financial system has helped to spur the innovation in technology and services that have allowed millions of previously excluded people to access financial services, such as mobile banking. Insurance products, such as microinsurance and weather insurance, help protect individuals and livelihoods, however small. At the same time, the continued cases of predatory lending, miss-selling and other financial misconduct involving consumers indicate that there is a clear need for re-emphasizing a top-down and bottom-up ethical approach for the sector while improving access to remedy and ensuring protection for consumers, even in the financial inclusion agenda.

The Paper also addresses the core human rights principles of participation and engagement, transparency, and accountability and the role they can play in strengthening the governance structure and accountability in the sector. Broadening and strengthening the voice and participation of stakeholders in international economic decision-making and standard setting will enhance global

economic governance, and is a first step toward a governance structure that is consonant with human rights. At a time when the UNGPs are pushing for accountability and remedy to individuals harmed, the financialization of so many products and services is pushing in the opposite direction, making it increasingly difficult to hold any financial institutions to account to individuals, due to complex structuring and attenuated chains of responsibility. Building further accountability and remedy into the system will be a crucial test of building a sustainable financial system.

CONCLUSIONS AND RECOMMENDATIONS

- The international human rights framework is an integral part of defining the **purpose** of the financial system in serving society. The framework calls for the financial system at systemic, client, and consumer levels to avoid harming people's rights, make finance accessible to all, and create innovative financial policies, regulations, products, and services to help build a resilient economy and society. Resilient societies supported by such a framework in turn promote a resilient financial system.
- There is **significant room to embed human rights across all levels and all institutions of the global financial system**, with many benefits of doing so. The internationally agreed human rights framework provides the only universally agreed ethical framework that can be applied to the financial system immediately. The human rights framework also provides a comprehensive reference point for risk management and due diligence for individual financial institutions, whether dealing with their corporate clients or individual consumers. For institutions providing financial products and services, a human rights orientation can provide a road map to the kinds of positive outcomes society expects.
- As a matter of **policy coherence**, the UNGPs Guiding Principles on Business and Human Rights provide a relevant framework for this embedding process and should be promoted. They remind states of their obligation to protect human rights through their regulatory requirements and their regulatory authorities, including financial regulators and financial regulation. They also set out the global expectation that individual businesses, including financial institutions, should respect human rights. And they highlight the importance of accountability and remedy – an important current theme in rebuilding trust in the financial sector. The OECD Guidelines on Multinational Enterprises (MNE) and the forthcoming work by the OECD's Proactive Agenda Project on Responsible Business Conduct in the Financial Sector may provide concrete, useful guidance on how the financial sector can apply the OECD Guidelines, particularly the human rights provisions, to its work.
- There is far greater scope for **directing finance through policy and regulatory interventions** to avoid harm to human rights at a minimum, and to maximize the potential in fulfilling human rights. The Paper identifies a number of opportunities to build on. Perhaps the most important starting point is sparking an interest with regulators to even consider the topic of human rights. There are a few nascent signs: the impact of the financial crisis and growing inequality has sparked, if not ignited, an interest among some regulators in considering the need for inclusive capitalism where human rights can play an important role in framing considerations around inequality. The growing attention to unwanted environmental and social externalities of current modes of production and the social tensions this can cause is beginning to register with financial supervision authorities. Regulators are worried about the identified need to rebuild trust in the sector, where financial leaders take values as seriously as valuation. In other words, the conversation has begun but further work is needed:
 - There should be a more explicit focus on and inclusion of human rights terminology in policymaking and regulation design for the financial sector. The nascent discussions suggest that policymakers and regulators are starting to reflect on these issues. A more explicit approach would provide a clearer mandate to policymakers and would also prompt more open engagement with a far wider set of stakeholders on the purpose and functioning of the financial system.

- Regulators should identify where policies and regulations act as obstacles to financial institutions integrating human rights considerations in their lending, investment, and underwriting practices, and remove those obstacles. The Inquiry has focused on identifying barriers to environmentally responsible financing. These can be often extended to human rights considerations but are not entirely transferable and do not fully cover the wide scope of human rights impacts, so further research is needed to identify human rights-specific barriers (such as discrimination, violation of privacy, and lack of access to information).
- As part of their state duty to protect human rights, regulators should adopt specific requirements for financial institutions on the corporate responsibility to respect human rights. Attention to human rights is moving along the same trajectory as other sustainability evolutions, moving from voluntary corporate social responsibility by leading companies to public-private, co-created soft law, and in some cases, to hard law approaches. However, human rights might not be material for many financial institutions as yet, hence relying on the ‘business case’ can lead to omissions in identifying or addressing impacts. These trends of increasing hard and soft liability will accelerate the prompt to businesses and financial institutions to internalize the costs necessary to respect human rights, rather than imposing them as social costs on individuals and society more generally. These policy interventions are therefore important in moving the financial system along the path towards sustainability, including social sustainability.
- Further work on strengthening accountability and the provision of remedy for those harmed by financial transactions is required. Those who have suffered harm as a result of financial transactions have few opportunities to seek remedy, beyond the important but limited opportunities for consumers through domestic mechanisms. The OECD MNE Guidelines National Contact Points mechanism is one of the very few available, especially for cross-border claims.⁹ Litigation is increasing around corporate accountability for human rights abuses more generally¹⁰ and a process was recently launched to develop a business and human treaty at the UN.¹¹ While there is only very limited jurisprudence to date involving liability of financial institutions for human rights impacts, the evolving clarity around human rights responsibilities of financial institutions may change these dynamics. Further guidance from states would provide clarity to financial institutions and victims.
- There has been a reluctance to address the issue of grievance mechanisms in the financial sector more generally. More broadly, the financial crisis brought into sharp relief the broad social cost of private misbehaviour and the failure of systems in place to prevent the crisis or malpractice within financial institutions. The crisis also highlighted the failure of accountability mechanisms to hold those responsible to account, at the corporate level or through judicial systems. Achieving remedy at this level will take much further research and discussion to come up with appropriate solutions.
- Measures that will **enhance market practice** around risk analysis and management and disclosure of human rights risks are already starting to appear but need a more explicit push.
 - The UNGPs approach prompts financial institutions to carry out human rights due diligence. This due diligence approach resonates with banks, investors and insurers, providing clear synergies to build on. Banks, insurers, and investors have a built-in capacity for due diligence that can potentially serve a dual purpose of helping them address human rights risks to

themselves, and importantly, risks to rights holders. Regulators should encourage such due diligence; meanwhile the human rights community needs to be far more articulate and specific about the benefits and processes for making human rights a core part of and organizing framework for the “S” agenda in risk management and due diligence, and to articulating the relevance to the “E” and “G”. Simultaneously, there is a need to explore innovative and effective methods of due diligence on more diverse and complex financial products and services, such as derivatives and swaps, beyond the more limited areas such as project finance, direct equity investments and corporate insurance where human rights due diligence approaches are currently being tested.

- The UNGPs expect businesses to both “know and show” that they have done their due diligence and addressed human rights risks and impacts. Further discussion is needed on the appropriate boundaries around disclosure between financial institutions and their clients for specific transactions, particularly around confidential information, but that should not foreclose meaningful disclosure by financial institutions on their human rights due diligence systems and impacts. Disclosures on human rights by financial institutions required under the EU Non-Financial Disclosure Directive¹² will open new ground and should be encouraged in other jurisdictions. Information is the lifeblood of the market and is crucial to the exercise of many human rights. It is an area where financial regulators and the human rights community have a common interest in improving the transparency of the sector as access to information is important in empowering stakeholders.
- The positive messages on the role of the financial sector coming out of the Financing for Development and Sustainable Development Goals discussions are putting social and indeed, human rights issues, far more squarely on the table as an important condition to take into account in financing discussions, particularly when **harnessing the public balance sheet**.¹³ The ramping up of financial inclusion programmes to a wider range of audiences and products and services, and other innovative approaches to addressing social needs, such as social performance bonds, provide specific opportunities to contribute to the fulfilment of human rights, particularly for the most vulnerable and marginalized. But even these socially beneficial programmes require appropriate safeguards.
- However the move towards a more sustainable finance system must be about taking a more **integrated and holistic approach**. Green and climate finance is not equivalent to sustainable finance; too little attention has been paid to the social and human rights dimensions of these transactions. Equally, creating positive environmental or social impacts through a specific project, asset class or funding vehicles does not make a financial institution sustainable. The UNGPs are very clear that positive human rights impacts in one area of the business do not offset negative human rights impacts from another area of a financial institution’s business. Carbon offsetting may work for climate change impacts but there is no such concept of human rights offsetting.
- Human rights should be part of the **cultural transformation** of the sector that needs to put integrity, respect for customers, and accountability at the heart of its agenda. The financial system has been rocked by the financial crisis and the steady stream of scandals which have emerged from the sector, engendering a profound lack of trust. Refocusing the financial system on promoting general economic and social welfare, on acting in the best interests of clients and stakeholders, and on embedding a culture of ethics and accountability throughout the sector could assist regulators and the sector in regaining trust and stability. Transparently building adherence to human rights norms

into the regulatory structure (and enforcement) would provide a tangible indication to stakeholders that a realignment of the system to serve the needs of society is underway.

- **Broadening and strengthening the voice and participation of stakeholders** in international economic decision-making and standard setting will enhance global economic governance, and is a first step toward a governance structure that is consonant with the human rights of: participation and engagement; transparency; accountability and rule of law. In terms of governance structures of key macro-institutions that govern the global financial system, inclusiveness is an important concept that is not consistently implemented in practice. Existing governance structures either exclude certain states altogether or do not give sufficient voice or vote in their decision-making process. Given the experiments and innovation under way in some emerging economies, where central banks and banking regulators are starting to provide guidance to banks on environmental, social, and human rights risk management, a more inclusive governance structure of institutions should be explored to ensure that innovations can be shared with all countries. For the micro-level financial institutions, the closer alignment between corporate governance and human rights, as seen in the recent G20/OECD Principles for Corporate Governance, could help shape the governance agenda of financial institutions in the near future in tangible ways. This alignment could send a strong signal to corporate boards about their responsibility toward stakeholders and the need for internal controls to manage human rights impacts, and to investors about the importance of taking human rights into account in their investment and engagement strategies.

1 SETTING THE SCENE

1.1 About this Paper

In November 2014, the UNEP Inquiry on the Design of a Sustainable Financial System asked the Institute for Human Rights and Business (IHRB) to co-produce a paper on the relationship between a sustainable financial system and human rights (the Paper). This Paper is intended to inform the work of the Inquiry generally by: (i) observing the state of play with respect to consideration of human rights by key actors in the global financial system; (ii) exploring the deeper linkages between finance and human rights in some areas of the financial system that have not been explored; (iii) making policy recommendations where possible; and (iv) pointing to areas for future research. The Paper aims to inform the “inclusive” side of the “green and inclusive” discourse, and contribute toward the policy and regulatory recommendations made by the Inquiry in its October 2015 Global Report.

Building on the Inquiry’s Framing of a Sustainable Financial System: Building a Green and Inclusive Discourse

From the 1970s onward, national and international environmental protection movements gradually gained footing in areas such as pollution prevention and biodiversity and ecosystem protection, and made progress with advocacy, the creation of international and domestic legal frameworks, impact assessment, mitigation and management systems, and financing mechanisms. On to this environmental agenda, social issues were added, initially as a manifestation of physical environmental impacts, and eventually as a full agenda to be addressed in its own right. Today’s environmental and social impact assessments (ESIAs), for example, cover a fuller scope of social issues, from labour, to community impacts (livelihoods, resettlement, health, etc.), to impacts on vulnerable groups, such as indigenous peoples. Notwithstanding this state of practice, environmental experts and anthropologists struggle to fully grasp the breadth and depth of human rights, and how a human rights lens can expand the stakeholder group approach to social issues used in ESIs.

The investment community equally struggles with the “S” or “social” dimension of “ESG” or environmental, social and governance dimensions of investee company performance. There is a broad recognition that the “E” is the most advanced, “G” trailing in second place, with the most work to be done in the “S” dimension. Even though some boutique investment advisors explicitly review investee performance in human rights, usually the depth of analysis is lacking and the definition of the human rights dimensions has serious inconsistencies.

The 2008-9 financial crisis coincided with several concurrent crises of food, water, energy, and in fact, of sustainability. This presented an opportune moment for the “environmental crowd” and the “human rights crowd” to tear down the silos that separate them. About the same time, the UN climate change and human rights communities began to make efforts to come together (see Box 16:). Notwithstanding these opportunities, the silos that separate the different disciplines continue to present barriers to genuine collaboration.

That silo mentality is evident in many of the green finance products on the market. Environmental or green finance is a type of debt or equity financing that is generally intended to benefit the environment, and more recently the climate. The early experiments encouraged financing for environmentally beneficial projects to support certain multilateral environmental agreements, such

as the Convention on Biological Diversity, under special financial mechanisms, such as the Global Environment Fund (GEF). The World Bank¹⁴ and other multilateral development banks (MDBs) also provided financing with innovative structures to promote energy efficiency¹⁵ and renewable energy projects while some private sector boutique firms were set up to target investments in these areas for profit. More recently the focus of such financing has been to blend public and private financing in order to better mobilize, sequence and target financial interventions to combat climate change.

Although these projects are intended to be environmentally beneficial, they are not devoid of negative environmental impacts. For example, siting a wind turbine project in a migratory path for birds, or building a large storage dam on an ecologically sensitive watercourse will likely create negative environmental impacts. Nor are they necessarily devoid of social impacts. Social impacts in environmentally beneficial projects can often be detrimental but are frequently forgotten. The objections of indigenous peoples, local communities, and workers in environmental projects are well documented.¹⁶

The MDBs and some bilateral financial institutions generally apply their own environmental and social safeguard, sustainability, or equivalent policies to environmentally beneficial financing (including projects they implement on behalf of others, such as the GEF). As the safeguard policies are updated to include social issues, the MDBs generally apply these updated safeguards to environmentally beneficial projects. New climate financing mechanisms, such as the Adaptation Fund, declared in 2013 that their projects shall respect and promote international human rights, and the Green Climate Fund has its own sustainability standards.¹⁷ But generally the level of awareness is lower for the negative environmental as well as social and human rights impacts of green financing among private sector investment vehicles. In addition, the accelerated pace of infrastructure financing, including crucial energy infrastructure and urban transport projects that create climate benefits, also has many concerned that they do not adequately incorporate environmental and social risks,¹⁸ and even if they did, the MDB safeguards apply too far downstream in the investment process in order to be meaningful. Beyond these observations, the stark reality is that there is no equivalent of the GEF that is dedicated to supporting specific international human rights instruments.

Public and private sector green and climate investments are expected to explode following the September 2015 announcement of the 2030 Agenda for Sustainable Development and the December 2015 Paris climate treaty. It is important that financing mechanisms intended to benefit the climate and the environment keep in mind both the negative environmental and social impacts and externalities of green projects they finance, while aiming to create synergistic new opportunities for positive externalities and impacts from green *and* inclusive finance.

This Paper addresses not only these opportunities around green and climate finance but also the broader opportunity the Inquiry presents: to revisit and revise the core premise upon which the financial system is constructed to ensure that finance positively supports rather than undermines sustainable development. As the new Sustainable Development Goals (SDGs) underline, human rights are a core foundation of sustainable development.¹⁹

1.2 Human Rights and the Purpose of the Financial System

The human rights set out in the International Bill of Human Rights – the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on

Economic, Social and Cultural Rights – cover the fundamental social goods that are essential to stable societies and sustainable economies. These include the rule of law, democratic accountability, rights to life, liberty and freedom of speech, and broader economic rights such as the right to work, the right to social security, and the rights to education and health care. As well as being human rights, these are also recognized as key economic goods which help to underpin development, growth and stable societies through providing accountable institutions, healthy, educated and skilled workers, security in old age, and a safety net in times of economic disruption or transition. As such, the key goods embodied in international human rights law overlap neatly with key features of healthy, stable economies. They are therefore important elements in building a stable, sustainable global economy, and encapsulate key goods that such an economy would need to deliver.

While human rights help define the important elements of a stable, sustainable global economy, they can also signal key points of failure in the market system, where it is failing to address or negatively impacting on the welfare of particular groups in society.²⁰ This is becoming of increasing concern to regulators and policymakers with the growth in global inequality and the serious impact of periodic financial instability on global social welfare. A basic principle of modern financial theory is the idea that liberalized financial markets will tend to produce optimal outcomes in terms of the allocation of the world's capital and other economic resources, as well as the management of risk. Aggregate enhancements to human welfare are assumed to flow from the free functioning of global financial markets. Despite the growth in global wealth over recent decades, developments in global inequality, financial instability, financial misconduct and environmental degradation have led to concern over the distribution of the welfare effects of globalized finance. Aggregate welfare gains from global financial flows can mask unequal impacts on groups and individuals, and even co-exist with declines in the welfare of certain groups. Human rights provide an important benchmark for addressing these effects which can help to address the “social costs of systemic risk” and to protect “innocent bystanders within the wider economy” from the impacts of global finance.²¹

The scale of the financial crisis of 2008-9 highlighted the potential of global financial markets to impact on the realization of human rights, undermining access to food, shelter, water, housing, health care and education, and other human rights, through its impacts on jobs, incomes and livelihoods, and its effects on state finances. It pointed to the need for coherent responses to the human impacts of financial disruption. Financial integration transmits financial, economic and social problems rapidly around the globe, and has made it very difficult to build effective firewalls into the global system to protect countries and their populations from the effects of crisis. The recent financial crisis (and those that preceded it), and the austerity measures that followed it, highlighted the importance of an accompanying basic floor of rights protections as part of the design of a sustainable financial system.²² Framing social impacts in terms of human rights signifies to global leaders the importance of addressing these impacts alongside efforts to restore stability to international financial markets and institutions. One of the striking features of the crisis was the disparity between the hundreds of billions of dollars made available to recapitalize banks and the cuts to social and development budgets as bank losses were nationalized and state finances came under severe, ongoing pressure. A human rights framework helps to ensure consistency in responses to financial and social impacts in order to restore growth, stability and equity to the world economy. It could also help spur attention to the need to put in place mechanisms to deal with the often catastrophic social impacts of financial crisis, alongside efforts to put the financial system on a more resilient footing.

Growing global inequality is another problem which has come to the fore since the crisis and it also raises systemic and sustainability issues. It impacts social stability, economic opportunity and mobility, poverty reduction, and the sense of justice and fairness in a system which was premised on increasing opportunity and living standards for all.²³ The financial system has played a role in growing inequality: large-scale purchases of assets and ultra-low interest rates have benefited borrowers at the expense of savers,²⁴ and fuelled asset-price inflation, hurting rights such as the right to housing. Inequality raises policy challenges for central banks because it may have a direct bearing on the fragility of the financial system.²⁵

Mark Carney, Governor of the Bank of England and Chairman of the Financial Stability Board (FSB), refers to “inclusive capitalism ... delivering a basic social contract comprised of relative equality of outcomes, equality of opportunity and fairness across generations”, reflecting the “trinity of distributive justice, social equity and intergenerational equity.”²⁶ Those concepts need a framework: all are grounded in the international human rights framework which provides the analytical framework, international legal grounding, and the policy justification for driving these issues into the redesign of the global financial system.

A premise of the Inquiry is that a bold new vision is needed to put the world on a sustainable path, and human rights provide an important tool in mapping, understanding and guiding the distribution of welfare impacts of globalized finance. The financial system is the lifeblood of the economy at the local, national and global level. As such, it has an important positive role to play in supporting poverty alleviation efforts and the realization of human rights. The opportunity that lies ahead is the evolution of a sustainable financial system that is more closely aligned with that vision of what social sustainability looks like – from policies to regulations to tools that are better tuned to supporting the kinds of changes signalled by the human rights framework – such as where providing decent work rather than exploitative labour becomes a key point of inquiry for financing; where access to services for all from public infrastructure is built into the financing plan; where commodity trading is conducted in a way that minimizes impacts on the poorest in society; where the fiduciary duties of investment managers clearly define impacts on stakeholders as part of the core mandate; and where the deliberations of monetary policy committees consider impacts on the most vulnerable.²⁷ These opportunities have been seized most visibly at the consumer level, where financial inclusion, impact investing, and impact insurance are starting to take off, having a direct impact on poverty reduction, and is also a making fulfilment of certain human rights a reality. This is the optimistic message from this Paper. But the other message from the Paper is that there is still a long way to go.

1.3 Human Rights and the Operation of the Modern Financial System

Financial markets have a long history as part of human society, and for much of that time they have been reasonably straightforward support services for facilitating economic activity and mercantile exchange. In the main, however, the financial system has played a largely secondary role in economic exchange through supporting commercial activity with loans, bonds and share issues.

Adam Smith’s *Wealth of Nations*, which was a companion volume to his *Theory of Moral Sentiments*, highlights that moral values of conduct were taken as a given context in understanding the rules of economic and financial exchange, because the economy and finance were seen as part of the social fabric, rather than as a separate, self-governing system.²⁸

Over the last twenty years, as the financial system has changed beyond recognition, this implicit relationship between financial markets and a context of unspoken, broadly accepted social values has broken down. The exponential growth in the size of financial markets and the simultaneous increase in complexity have led to a system that is at its core remote from any inherent code of shared social values. The system now reaches far more deeply and profoundly into economic and social processes around the world than ever before, and can have transformative effects on societies. The scale and reach of finance means that it interacts inexorably with situations of entrenched social injustice and human rights violations – extreme poverty, corruption, lack of access to justice, lack of health care, education, water, decent housing, and lack of the rule of law. Yet the system is not designed to deal with such complexities because in many ways these are seen as externalities to finance – locally-specific issues to be dealt with by local institutions or international agencies.

One of the key challenges in moving from modern finance to sustainable finance is the methodological disconnect between the capabilities of mathematical finance and ethics. Modern finance is built heavily on theories of physics, mathematics and statistics, and belief in finance as a separate scientific discipline. The methodology of finance became self-referential within this scientific discipline: the prevailing quantitative methodology dominates the search for solutions, and has become the reference point for the definition of new problems in international finance. These do not immediately mesh with any code of ethics – or even on a more basic level with the social complexities within which the financial system operates. A quantitative approach to a problem such as risk is more concerned with finding the right algorithm to capture the problem, rather than testing the validity of theories against lived social experience or ethical expectations and weighing the outcome against a set of values. Modern finance has thus become arguably one step removed from the broader societal context in which the finance sector operates because of the heavy focus on data and statistical method.

A complex, highly quantitative framework of modern financial theory has provided the technical means for much of the enormous expansion of globalized financial markets over the last few decades, particularly in the field of derivatives, many of which were unknown a few decades ago. Theories of mathematical finance and risk, for example, provided the backdrop for the massive explosion in credit default swaps (CDS), which were a key feature of the crisis. In just six years, CDS outstanding grew from US\$600 billion to US\$62 trillion – an amount equivalent to the value of world GDP. Since the advent of modern portfolio theory and the developments in information technology that have allowed the capture and processing of ever-larger quantities of data, finance has become seen as a science with a focus on frictionless markets, rational behaviour, market equilibrium and a belief in the financial markets as a key engine for the transfer and transformation of society's risks.

As a result, one of the key weaknesses of models-based finance is that it is heavily reliant upon the type of information which can be coded into an algorithm, which pre-disposes it to heavily focus on numbers and data that can be calculated rather than data drawn from the lived experience of individuals and communities with financial transactions (recognizing that while both types of data often exist at least in developed countries, they do not in developing countries, and there has been little attempt to “translate” the latter into the former). Quantitative models do not harmonize easily with an overlay of qualitative criteria such as human rights or social values, which cannot readily be transformed into quantitative variables. That is, the direct social impacts of financial processes are not captured directly within the underlying models or technical rules.

In addition, these models are heavily dependent upon the assumptions around how society or a given market works that are used to build the model. As a result, they can be highly sophisticated and their outcomes can be immediately plausible, but they lack a reference point in lived social experience which can cause the models to break down. In other words, their sophistication does not mean they are correct, as was dramatically demonstrated in the latest financial crisis. For example, the models and algorithms which underpinned subprime credit derivatives failed in part because the sophistication of the mathematics became the prime focus. After the fact, commentators and regulators pointed to the fact that due diligence on the underlying credit quality, i.e., the effect of the subprime mortgage mis-selling and easy credit on ordinary borrowers, should have been essential, but this was largely discounted by financial institutions as “noise”; they relied instead on mathematical risk models and ratings. During the boom years of the financial crisis, there was little sense that financial institutions involved in the chain of mortgage origination or structuring had any form of ethical responsibility towards their mortgage customers.²⁹

In this sense, finance became dangerously disconnected from its roots in broader social processes, with devastating consequences for the global economy, and society. The crisis illustrated the broad, systemic level impacts of the financial system on human rights: aggregate welfare gains can be wiped away by financial instability and the ensuing aftermath of austerity. In the United States, foreclosures and evictions from homes purchased with subprime mortgages have affected many people and led to one of the largest legal settlements in US financial history. Across the lower income countries, impacts of the financial crisis included: increases in poverty, decreases in nutrition and school enrolments, decreases in health care use, a rise in infant mortality, and reductions in food consumption for children between birth and age two which can have lasting deleterious effects on cognitive and physical development. This implies the potential for negative intergenerational impacts from financial crisis.

The key question, therefore, is whether the functional, technical agnosticism of the modern financial system, based around abstract mathematical formulas and quantitative models, needs a rethink. Not only is there a need to improve the data and the assumptions that go into the models so that they better reflect the social complexity in which financial products are used, but significantly, there is a need for regulatory checks on what is coming out of the models. Technical processes and products built on quantitative models which can in practice have widespread negative and unsustainable social, economic and financial outcomes need to be grounded in a more complex and realistic view of the consequences.

In response to the financial crisis, global financial regulators are busy strengthening the resilience of the global financial system. As they do so, they need to confront the issue of how the modern financial system operates but also, as noted above, the complexity of the context in which it operates in order to better understand and control its impacts. The focus to date has been on the internal resilience of financial institutions and the financial system but the lesson learned from the financial crisis is the importance of understanding and addressing a broader array of system interactions.

Studies in ecological resilience have emphasized the mutual dependence of systems – the resilience of an ecosystem is intimately linked to the resilience of the communities and societies which draw from it and which depend upon it.³⁰ Stability in one system such as finance depends upon and draws upon the stability and resilience of other interlinked systems – economic, legal, political, cultural, ecological and social. Sustainable finance is therefore a collective concept that encompasses how the system interacts with and impacts upon societies, communities, and ecologies. It is a dynamic process that simultaneously draws from the top-down (finance-economy-society-community-ecology) and bottom-up (ecology-

community-society-economy-finance) through various interlinked systems -- it is a dynamic feedback process rather than a one-way flow. That is, the resilience and sustainability of the financial system cannot be determined purely on the basis of the financial system's own metrics – it requires a far broader perspective than simply assuring the stability of a given financial institution. It also requires an analysis of how the financial system is interacting with and affecting other inter-linked systems.

Nassim Taleb, a leading commentator on financial risk, has emphasized how artificially suppressing volatility in a system can lead to disruptive black swan events which spill over to other systems. The financial crisis and the political crisis across the Arab world stem, in his view, from “the rise of complexity, interdependence, and unpredictability” and that in this complex world, “to make systems robust, all risks must be visible and out in the open”.³¹ In other words, making the full range of risks visible – risks to financial institutions, to other systems, to societies and to individuals is crucial to understanding how risks interact. For example, development economists are increasingly stressing the importance of robust institutions in a nation's development. They emphasize the key role that successful transformation of a country's institutions plays in underpinning a sustained shift to a higher level of growth, and that better run, more accountable institutions are essential to development.³² As the scale of the financial system continues to expand, it plays an important role through financing relationships in shaping such institutional transformation and developmental trajectories. Where national institutions are not performing well, or are affected by corruption or mismanagement, human rights impacts often attest to the institutional failings or areas where national institutions need to be strengthened. Adding a human rights lens to a broader focus on financial and global resilience can therefore help bring more of these critical interdependencies and risk to the fore, which can in turn help strengthen the financial system through identifying a wider range of vulnerabilities.

As another example, if financial institutions provide financing for extractive operations which displace local people and disrupt livelihoods and the availability of basic goods, this can strain ecological resources in another location as communities are moved, strain the social resources of the community to cope, or the resources of the state to provide for displaced people. Where this leads to protest, it can disrupt societies and the investment, and directly impact the financial institutions involved. Several central banks have begun to understand these interconnected, dynamic relationships between the finance system and environmental and social systems in which they operate, and that social instability can endanger the financial system and the financial system can be fuelling that instability through its finance. As a result, several central banks have begun to impose new requirements, including around human rights, as part of their supervisory mandates. This signals a nascent trend in exploring and regulating complex system interactions, even if this is currently only at the national level. (See Box 5:).

1.4 A Short Explanation of Human Rights

International human rights are comprised of a series of international human rights treaties and other instruments adopted since 1945 which confer legal form on inherent human rights. Other instruments have been adopted at the regional level reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection. Most states have also adopted constitutions and specific laws that formally protect basic human rights.

Although there is a predictable patchwork of signature, ratification and exceptions across states and across the international human rights conventions, the two core covenants of the International Bill of Rights (see Box 1:) have been ratified by the vast majority of states³³ and all member states of the ILO are committed to respecting and promoting the ILO core labour standards.³⁴ These apply to everyone on the

territory of states which have agreed to be bound by them, in addition to applying them in some circumstances extra-territorially.

At a basic level, the range of human rights express basic moral aspirations of a good society – rights to life, liberty, security, an adequate standard of living, etc. However, through their codification in international, regional and national laws, they have stronger force: states have a legal obligation to implement and enforce the international human rights treaties they adopt. That means that states have duties to: (i) respect people’s human rights – this is essentially a do no harm/do not deprive standard; (ii) protect people’s rights – take action to make sure that others, such as business, do not deprive people of their rights, such as by adopting legislation to regulate business activities; and (iii) fulfil people’s human rights – establish political, economic and social systems that provide access to rights, like health care systems, education systems, and justice systems. Where people are unable to provide for themselves, states must provide food distribution or free health clinics. States are held to account for their actions to uphold these rights through various mechanisms, such as international reporting procedures under UN human rights treaties. Individuals also have capacity under various instruments to lodge formal complaints against their governments where they feel their rights have not been upheld, or have been infringed by state activity. Many states have incorporated a wide range of these rights into the domestic legal frameworks, with accompanying domestic accountability mechanisms.

At the heart of the concept of human rights is the notion that each and every individual around the world is born with these rights and should be able to claim them – not because they are “nice to have” or a basic “need” but because they are a right that is owed to them. This is a crucial distinction – whereas an unfulfilled need leads to dissatisfaction, a right that is not respected leads to a violation. The person whose right has been violated has a legitimate and potentially legal claim to a remedy for what was violated – for a government to make health services available, for it to lift censorship bans, to provide police protection and shelters for women sexually abused, for businesses to pay back wages, to change discriminatory selling practices, or protect personal data. All of those claims are more powerful because they are made from a position of defending a human right.

Box 1: International Human Rights Instruments

International human rights law has evolved into a large body of binding treaties covering a wide range of issues including:

- The **International Bill of Human Rights**, consisting of the Universal Declaration of Human Rights (UDHR), and the two binding international conventions based the UDHR: the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- **Seven further conventions** specify **core human rights** related to the elimination of all forms of racial discrimination; the elimination of all forms of discrimination against women; the prohibition of torture and other cruel and inhuman or degrading treatment and punishment; the rights of the child; protection of the rights of migrant workers and their families; protection from enforced disappearance; and the rights of persons with disabilities.³⁵
- The **International Labour Organization (ILO)** has developed a wide range of labour rights standards that states are expected to abide by, four of which have been designated core labour standards.³⁶ These core labour standards and many other international human rights

are reflected in most countries' national laws, though with notable exceptions.

There are numerous other human rights instruments covering a wide range of topics, some of which are binding and others non-binding guidance,³⁷ and regional human rights instruments such as the European Convention on Human Rights, the Inter-American Convention on Human Rights, and the African Charter on Human and Peoples' Rights.³⁸

In 2011, the United Nations Human Rights Council unanimously endorsed the UNGPs. These emerged out of a five-year process of global consultation and enquiry into the growing importance of business in impacting the enjoyment of human rights around the world. They are the most authoritative UN text on the conduct of business and human rights, and although not a binding document, they set out clear, globally accepted expectations of business, which are backed up by a wide range of laws. Today, the UNGPs enjoy strong support by governments and businesses.³⁹

Box 2: The UN “Protect, Respect, Remedy Framework” and the UN Guiding Principles on Business and Human Rights

The UNGPs have a three-pillar structure (built on the UN “Protect, Respect, and Remedy Framework”) which focus respectively on states, businesses and victims of corporate human rights abuses:

- (i) **States** have a **duty to protect** against human rights abuse by third parties, including business enterprises,
- (ii) **Businesses** have a **corporate responsibility to respect human rights**, and
- (iii) **Victims** of human rights violations and abuse should have **remedies** through judicial and non-judicial mechanisms.

In the business context, the corporate responsibility to respect human rights applies to all businesses, including the financial sector, and encompasses all internationally recognized human rights. This includes, at a minimum, the International Bill of Human rights and the principles concerning fundamental rights set out in the International Labour Organization's (ILO) Declaration on the Fundamental Principles and Rights at Work.⁴⁰ The UNGPs also specify that depending on circumstances, additional standards on specific groups should be considered by businesses. These include: the rights of indigenous peoples; women, national or ethnic, religious or linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict, enterprises should respect the standards of international humanitarian law.⁴¹ Companies are expected to carry out human rights due diligence to “know and show” to stakeholders that they have identified and managed their human rights risks in their own operations and with their business relationships.

The state duty to protect human rights under the UNGPs includes the duty to regulate businesses through effective policies, legislation, regulations, and the provision of adjudication mechanisms to resolve grievances. They should also ensure policy coherence across government departments, agencies and other state-based institutions that shape business practices so that they are aware of and observe the state's human rights obligations when fulfilling their respective mandates.⁴² This is particularly relevant for the discussion that follows on financial regulation.

1.5 Analysis Framework for the Paper

This Paper explores the linkages between finance and human rights. It does so through a two-way lens on the interaction between finance and human rights at three levels:

	Impacts of Finance on Human Rights <i>Positive and negative impacts</i>	Impacts of Human Rights on Finance <i>Can human rights drive policy change in the national, regional and global financial systems, and if so how?</i>
Chapter 4: Systemic Level	Systemic human rights impacts on society	Human rights as framework of core ethical standards for the financial system
Chapter 5: Client Level	Human rights impacts on affected stakeholders through actions of corporate and sovereign clients	Human rights as a dimension of risk management and benefits enhancement
Chapter 6: Consumer Level	Direct human rights impacts on consumers and users of financial products and services	Human rights as a source of protection against harm and enabler to realize rights

The financial sector can play an even more effective role when human rights become a more explicit dimension of the design of a sustainable financial system at all levels of the system. Each level is intended to address a different dimension of the financial system:

- The **systemic level** looks at the wider, systemic human rights impacts of the financial markets on society and in particular regulatory players and approaches in addressing human rights – or not.
- The **client level** looks mainly at how financial institutions in certain segments of the market (banking, investment and insurance) address the identifiable human rights impacts of their sovereign and corporate clients while also highlighting that further work is needed to identify and explore ways to manage the human rights impacts of more complex products and services.
- The **consumer level** looks mainly at how financial institutions in certain segments of the market (banking, investment and insurance) address the human rights impacts of their products and services directly on consumers.

While each of the levels is dealt with separately, it is recognized that the analysis could be structured in many different ways, with inevitable trade-offs in any approach to trying to address such a complex system (see Section 1.6). The interlinkages between the levels provide additional complexity that must be untangled.

1.6 Issues Not Addressed in the Paper

This Paper does not systematically investigate all three levels of impacts created by the activities of existing global and national financial systems. Instead, it aims to illustrate the linkages between human rights and finance by focusing on three important segments of the global financial system: banking, investment, and insurance. Banking is responsible not only for the extension of credit and other basic banking services; it also operates our payment system, without which neither consumers, corporations, nor governments can function. Investments in debt and equity instruments provide needed capital for corporate activities, but they are also increasingly regulated through exchanges, which are becoming important centres of regulation of the ESG and human rights dimensions of corporate activities. Finally,

insurance is a sector that potentially holds much promise to adapt its products to protect human rights. Consumers, corporations, and the state actively participate in all of the three segments, hence they work well with the analysis frame presented above.

The framework is intended to separate the complex and overlapping layers of activities within our financial system to help illustrate the typical human rights considerations associated with banking, investment, and insurance. In the process, the framework inevitably created boundaries that appear arbitrary in places. For example, to the extent that banks are involved in trading of shares or commodities, they are subject to exchange regulations in addition to banking regulations; however, the analysis of banking in this paper does not extend to banks' role as investors. Impact investment typically does not involve investments in corporations, so the topic is treated under the consumer level, even though these investments are not made by individuals or impact individuals directly.

Furthermore, the analysis framework had to exclude other activities and institutions that could also contribute to the sustainability of the financial system, such as rating agencies, and shareholders and investors of financial institutions. The relationship between these entities and human rights merit separate dedicated research in the future. These are the unsatisfactory consequences of attempting to impose an analysis framework on the huge, messy, and sprawling phenomenon of a global financial system. Due to the complexity of the system and the already lengthy discussion, the interactions between the different levels have not been explored sufficiently but should be in future research.

In addition, it is important to point out that the Paper does not specifically address the role of public financial institutions such as multilateral development banks (MDBs) and export credit agencies. These were left out of the analysis because any analysis of finance and human rights until very recently largely focused on the public sector financial institutions and their important role in financing development that is intended to be aligned with sustainable development objectives, although that is at times contested. In particular, there have been ongoing debates about the absence of human rights considerations in the recent proposed revision of the World Bank safeguard policies.⁴³ General concerns about the direction of the two newest MDBs – Asian Infrastructure and Investment Bank and the New Development Bank by the BRICS countries – are also beginning to surface.⁴⁴ Given the significant role that such public financial institutions are expected to play in the financing of the SDGs,⁴⁵ it is crucial that they align their safeguard approaches with the underlying values of the SDGs, including human rights.⁴⁶

The next chapter begins to review the role that human rights can play at each of the three levels of analysis under this framework – systemic, client, and consumer levels – and to examine the value that human rights can add in the creation of a sustainable financial system.

2 THE POSITIVE ROLE THAT HUMAN RIGHTS PLAY IN THE DESIGN OF A SUSTAINABLE FINANCIAL SYSTEM

The analysis below demonstrates the multifaceted nature of human rights. They are at the same time an ideal and an inspiration for a vision of a better society, an expression of ethics grounded in the belief of the inherent dignity and equal and inalienable rights of all members of the human family, an expression of the social externalities that governments and businesses are expected to internalize if the world is to move in a more sustainable direction, and a legal framework to be deployed to protect people from harm and defend against injustice. In other words, there is more than one concept of human rights that is useful to improving the sustainability and inclusiveness of our complex financial system. The analysis below unpacks these different roles that human rights can play at three different levels of the financial system. This illustrates the value they can add to any analysis of how the system can be better designed to serve the needs of a sustainable society.

2.1 Systemic Level: Human Rights as an Ethical Framework for the Financial Sector

Human rights, embedded in international law and widely endorsed by states, companies and financial institutions, can provide that anchoring, overarching code of ethics. As a nearly universal set of legal norms, set out in the global legal architecture, national constitutions and national laws, their strength is in their framing as a set of moral and legal claims that should be included as a core consideration in developing a coherent perspective on managing globalized finance and the broad social impacts of finance. Policy coherence requires that human rights become a consideration across financial sector policies, regulations, and business models.

Human rights provide a benchmark around which the core values of the financial system can be structured and articulated. The financial system's sustainability will be defined by reference to the outcomes it produces for people, communities, economies and nations, and not solely on the basis of the internal stability of the system itself. A system where participants behave in clearly unethical ways, where gains are captured by the elite or system insiders, or one that produces social impacts which are unethical, unjust or unconscionable and creates social tensions, is inherently unsustainable. Human rights are therefore core to thinking about the fundamental question: who is the financial system designed for?

The financial system has been rocked over the last eight years by the financial crisis and the steady stream of scandals which have emerged from the sector. This has engendered a profound lack of trust in the regulatory framework, regulators, financial institutions and markets themselves. Refocusing the financial system on promoting general economic and social welfare, on acting in the best interests of clients and stakeholders, and on embedding a culture of ethics throughout the sector, rather than a narrow focus on profits and individual rewards, could assist regulators and the sector in regaining trust and stability. Mark Carney has noted that “the scale of misconduct in some financial institutions has risen to a level that has the potential to create systemic risks”, and the Financial Stability Forum has established a working group on the issue.⁴⁷ The UK's Parliamentary Commission on Banking Standards characterized the crisis as a “crisis in banking standards” and noted that “measures aimed at improving financial stability will not remedy other underlying causes of poor standards and culture.”⁴⁸

Recent scandals and the financial crisis have led to calls for a new approach to overhaul the values underpinning the sector, for an overarching code of ethical practice which sets clear standards for the way the financial system interacts with other systems, with its customers, stakeholders and broader society. Many initiatives in the last decade developed and implemented codes of ethics for particular

areas of the financial market. The difficulty with this approach is that a tailored code of ethical standards for one product or process can be easily circumvented by channelling financial activity through other products, markets or financial institutions.⁴⁹ As Christine Lagarde recently noted, “[m]ost importantly of all, it requires investors and financial leaders taking values as seriously as valuation, culture as seriously as capital.”⁵⁰ But “values” need definition, a reference that is globally acceptable. Human rights can provide that global reference point – they are the barometer of universal standards of conduct, grounded as they are in a fundamental concept of integrity and fairness that is embedded in international law and that has been widely endorsed by states and corporations. They therefore offer a starting point for building a moral code for the global financial system by setting out a shared platform of core values, anchored in basic respect for the dignity of the human person.

However, integrity and codes of ethics must be backed up with accountability if they are to be credible. The financial crisis brought into sharp relief the broad social cost of private misbehaviour and the failure of systems in place to prevent the crisis or malpractice within financial institutions. The crisis also highlighted the failure of accountability mechanisms to hold those responsible to account, at the corporate level or through judicial systems in various countries; only a small number of people were penalized for harms caused. There is a clear emphasis in the human rights approach on accountability in all its forms – responsibility, accountability and remedy – and they can therefore help underpin the development of more robust scrutiny and accountability processes within financial institutions and at the sectoral level. Human rights provide a framework for regulators, managers and those charged with governance at financial institutions for improving conduct.

Human rights are also relevant to the notion of “fair markets” and “efficient financial markets” which are long-standing tenets for financial system regulators. What sort of economic and social outputs should it aim to facilitate? Has the link between market efficiency and maximizing social welfare become so attenuated and complex in light of the dramatic changes in the financial system in the last twenty years that it calls for renewed scrutiny? How do we begin to redefine the link between finance and the sustainable economy? The renewed global focus on sustainable development and on addressing growing inequality as an important part of social sustainability is prompting a broader lens on the discussion around these concepts. The SDGs reinforce the human rights vision of social sustainability – a world where poverty, inequality, and injustice are eliminated. Judged on that basis, the markets are clearly “fair” to far too few and operate in ways that are deepening exclusion along a series of often overlapping deprivations. (See Section 1.2 for further discussions on this point).

The role of policy making and regulation in the financial sector in addressing these points is further elaborated in Chapter 3.

2.2 Client Level: Human Rights as a Dimension of Risk Management and Opportunities

The human rights framework is starting to be used as a reference point to improve risk management of financial institutions. When financing corporate or sovereign clients, the human rights framework provides an analytical framework for capturing and assessing social externalities associated with the corporate or sovereign activities financed, and to identify ways to turn these externalities into opportunities.⁵¹

The adoption of the UNGPs was the culmination of a long-term movement to put human rights on the business agenda. The increasing uptake of the UNGPs by a wide range of other organizations such as the OECD⁵² and the active focus on them by businesses, civil society and governments⁵³ attest to the growing

interest of stakeholders in human rights as an expression of social externalities and good business practice. While it may save the business money to conduct its operations in a way that undermines human rights, the UNGPs recognize that in reality such impacts should be internalized.⁵⁴ The UNGPs expect financial institutions, as well as other businesses, to identify and manage these potential impacts by carrying out human rights due diligence as part of their risk management systems and to remedy harms where the business/financial institution has caused or contributed to harms. Applying a human rights lens to such due diligence can produce a sharper focus on the impacts on people and society that are not always considered or captured in the at times haphazard list of issues that are classified as social issues as part of the environmental, social, governance or environmental and social agenda.

Some financial institutions have developed bespoke environmental and social risk management systems (or environmental, social and governance risk management systems) to respond to the environmental and social risks their clients generate or face. These often go well beyond regulatory requirements, especially in emerging markets where the rule of law may not be sufficiently well established to regulate the impacts of corporate conduct on stakeholders and the environment. In these environments, human rights can be an important part of risk management for the financial institution itself, in addition to protecting rights holders, by signalling areas where the financing of corporate operations may come into contact with situations of human rights denial, extreme poverty, abuse of power and institutional failure. The range of risks faced by a company in these circumstances, and the range of risks that a corporate client can generate for a financial institution, goes well beyond legal compliance, and human rights provide an important framework within which to identify, manage and mitigate these risks.

What is picked up in environmental and social risk management systems has evolved over time and continues to expand, driven by a combination of advocacy, research and catastrophic events that galvanizes public opinion and puts new risks on the corporate agenda, such as the BP Deepwater Horizon oil spill in 2010, or the Rana Plaza factory collapse in Bangladesh in 2013.⁵⁵ Environmental issues have moved from fringe to mainstream and a highly regulated topic in a relatively short period of time, followed by corruption. Financial integrity issues, such as a review of corporate tax evasion and avoidance, and beneficial interest ownership, are now coming under increased global scrutiny, and are part of broader enterprise risk management, alongside environmental and social risk management.

Regulated risks should (in theory) be built into compliance costs around transactions and thus move from externalized costs to internalized costs. Risks covered by voluntary environmental and social risk management systems should move along that same continuum. But even where environmental and social risk management systems are in place, they may work well to reduce risk to the financial institution, should work well to reduce risks to stakeholders, but often fail when it comes to redressing impacts. This means that, while some externalized costs of corporate activity are increasingly being internalized, those related to prevention and mitigation are not. Where harm is happening, those costs often remain with those harmed, especially in countries with weak legal regimes. Part of the value that the human rights framework brings is focusing on the full scope of impacts and seeking to ensure that the cost of repairing harm is a core part of a more sustainable approach to doing business.

This can help drive financial institutions to create new and innovative financial mechanisms and products that can protect stakeholders from harm by corporate actors. For example, even when corporations act consistently with the UNGPs and promise stakeholders measures to mitigate adverse social impacts, they may fail to or be prevented from implementing them, become bankrupt or close the business and have no provisioning for compensation. Financial mechanisms, such as human rights performance bonds, mine

closure funds, legal aid and compensation funds that can exist independently of corporate operations, can greatly benefit affected communities, and also provide additional assurance to financial institutions backing the business.

These issues are further elaborated in Chapter 4.

2.3 Consumer Level: Human Rights as a Source of Protection against Harm and Enabler of Rights Realization

Consumer financial protection regulations are increasingly aligned with human rights concepts as both seek to protect individuals from harm or provide redress when they have been harmed by mis-selling or other poor practices. Recent trends include consumer protection in regional human rights instruments,⁵⁶ or national constitutions.⁵⁷ Human rights concepts spurred anti-discrimination and other litigation by consumers of financial products and services after the 2008 financial crisis, and are likely to provide the legal basis for more lawsuits in the future.

The human rights framework is also about identifying opportunities to enhance human rights. Increasing attention to financial inclusion and access to finance⁵⁸ through targeted financial products and services like mobile banking, the rise of impact investing, and the insurance sector's focus on providing an ever-wider range of microinsurance products are all about servicing formerly underserved populations, especially the poor, disadvantaged, or marginalized. This aligns closely with the human rights principle of focusing on the most vulnerable.

What has not yet emerged is an articulated vision of what “respect your customer” would look like at the consumer level. While financial institutions are familiar with the narrow concept of “know your customer”, through the stress placed on anti-money laundering and corruption prevention, an articulated vision of a broader “respect your customer” concept could act as an overarching principle of good business conduct. Such a concept dovetails with codes of conduct within financial services, and the expectation that financial institutions will act in the best interests of their clients. Such a concept could link into post-crisis calls to re-embed ethics within the sector.

These issues are further elaborated in Chapter 5.

Box 3: Signals from the Addis Ababa International Conference on Financing for Development

In July 2015, Addis Ababa hosted the International Conference on Finance for Development.⁵⁹ This is the third conference of its kind – the initial gathering took place in Monterrey in 2002, followed by the 2008 meeting in Doha. The third conference took stock of progress since Doha, assessed emerging issues, and discussed ways to create global partnerships as a vehicle for strengthening international cooperation for implementation of the post-2015 development agenda. The outcome document⁶⁰ released following the conference contains a lengthy list of action areas.

Notable among the action areas is a clear commitment for a social compact, affirming the right to basic social services, such as free health care, education, and a basic income. Countries must establish national spending targets in essential public services in order to implement this commitment. This is an important statement that is strongly supportive of human rights, consistent with the input from the United Nations Office of the High Commissioner for Human Rights in advance of the conference.⁶¹

Provision of social services will be dependent on strengthened mobilization and effective use of

domestic public resources. As a result, the outcome document identifies good governance and better tax systems as key ingredients that would help secure and allocate government funds for social services. To this end, the document lists key financial integrity challenges to be overcome, such as transparency in financial transactions between governments and companies to tax authorities, control of illicit flows, the fight against corruption, combating money-laundering and financing of terrorism, transparency of extractive industries, international tax cooperation, strengthening of national control or audit mechanisms, transparency in the national budgeting process, and so on. Tackling these issues would mean that public funds are collected, secured, and allocated toward essential social services for people to realize their social and economic rights, but it would also mean enforcement efforts target those who commit financial crimes, many of whom are also involved in human rights violations, such as human trafficking, forced or slave labour, and pillage.

Although the outcome document does mention human right in several places, including an explicit reference to the UNGPs, as well as the three dimensions of sustainable development (economics, environmental and social), important parts of the discourse on finance, particularly the macro level issues, do not integrate human rights considerations in any meaningful way. For example, under the heading of “Addressing Systemic Issues” (paragraphs 103 to 113), the outcome document takes stock of global economic governance improvements since the 2008 crisis, and lists outstanding challenges. The section does not mention the impacts of the financial crisis on people and society, or a more holistic view of systemic risks and a readiness to explore these issues in the coming years. These are missed opportunities in an otherwise useful document with some notable references to development finance and human rights.

3 SYSTEMIC LEVEL: HUMAN RIGHTS AND FINANCIAL POLICY AND REGULATION

3.1 Introduction

This Chapter reviews the extent to which financial policy makers and regulators have and can integrate a human rights orientation into their evolving policy or regulatory regimes. It covers central banks (both their monetary and supervisory roles), banking, investment and insurance policy, regulations and regulators.

Financial policy goes beyond regulation; its task may include creating incentives or institutions that address a social need. According to the 2009 Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System, financial policy should include “providing incentives for catalysing the creation of financial institutions or instruments that help meet social needs – mortgages that help individuals manage the risks of home ownership better, student loans with lower transaction costs, banking the un-banked, or insuring the uninsured. In short, it entails ... better alignment of social and private benefits.”⁶²

Financial market regulation has several important forms according to the same report:

1. protecting consumers and investors (rules against fraud, market manipulation, misrepresentation of products, and laws promoting competition);
2. ensuring the safety and soundness of individual institutions;
3. ensuring competition;
4. ensuring systemic stability;
5. promoting deep financial development, particularly long-term finance; and
6. ensuring access to finance.⁶³

These building blocks of financial policy and regulation as defined by the 2009 Report of the Commission of Experts have deep resonance with human rights. In fact, policymakers and regulators are taking initiatives to address the social and human rights dimensions in their work, and this Paper provides brief snapshots of such initiatives, and identifies possibilities for further integration and research.

As noted under Section 4.1, for financial sector regulators, the UNGPs and the work under the OECD MNE Guidelines are important reference points for policy setting, regulating or providing guidance to financial institutions on their responsibility to respect human rights.

3.2 Policy Setting and the Regulatory Role of Central Banks

3.2.1 Central Bank Mandates

Central banks are governed by their mandates that set out in law the scope of their activities and objectives, and these differ from country to country. Mandates generally include fighting inflation, price stability and responsibility for monetary policy; they can also include in some cases promoting full employment, financial sector supervision, oversight of financial stability, and increasingly in developing countries, promoting financial inclusion. Central banks have a broad focus on the social welfare impacts of monetary policy, and the dynamic interaction of monetary policy with labour markets and wages has long been a core concern of central banks.⁶⁴ Although central bank mandates have not so far been directly linked to international human rights norms,⁶⁵ they have a direct bearing on many human rights.

Legal rules function in monetary policy to define “broad goals of aspiration”, setting the context for the exercise of policy discretion that is based largely on economic analysis and modelling.⁶⁶ The ‘science’ of central banking, which focuses on econometric models and highly technical rules of financial regulation, is not at first glance easy to reconcile with basic human rights protections because it is not directly concerned with human rights issues. Most central bank analysis is focused at the aggregate macroeconomic level and on statistical economic indicators, whereas human rights advocates have tended to focus on impacts on individual or community rights-holders, defined often in qualitative, rather than quantitative terms. However, central banks play a key role in impacting peoples’ human rights and living standards, and this opens up potential for alignment.

Central banks can play an important role in generating the economic conditions that are conducive to economic stability, mobility, rising standards of living and job creation. But policy missteps or mistakes by central banks can destroy wealth and contribute to creating financial and economic crises, which lead to job losses, inflation and adverse impacts on people’s basic standard of living and access to basic goods.⁶⁷

As central banks are public institutions created by law, they are subject to the rule of law, as with any other public institution.⁶⁸ As organs of the state, they are bound by the state’s international treaty obligations and it behoves them not to act in a manner which would bring the state into contravention of its international obligations. Where human rights protections have been enacted into domestic law, such as through a statute as in the case of the UK’s Human Rights Act, or embedded in the national constitution, the central bank will also as a principle of law be bound by those provisions. In principle, therefore, central banks are subject to the state’s international human rights obligations as are all other organs of the state. Defining and clarifying what this means in practice for the conduct of their operations may require targeted policy guidance from the government and/or the development of policy statements and procedures from central banks themselves on how they will take human rights into account in their operations. In order to underpin transparency, these should be in the public domain and subject to public discussion.

At a broad level, this indicates that central banks should include in their policy deliberations an analysis of the impact of their policy decisions on the rights of all groups in society and an assessment of whether possible negative impacts on particular vulnerable groups could be mitigated. For example, monetary policy committees could publish information on how they weighted the likely impacts of an interest rate rise on pensioners, mortgage holders, those with business and consumer debt and savers, and how they weighted these differential impacts in making their decision. Certain central banks such as the Bank of England already publish this type of analysis, although it is heavily couched in economic terms and the rights dimensions could be made more explicit. This could help to signal to other organs of government any anticipated impacts of rate changes which they should be aware of. For example, a rate rise which a central bank deems necessary to tackle inflation may risk pushing households into financial difficulty where there are high levels of consumer debt in the economy. This may result in a rise in the number of households needing social assistance.

The objectives of central bank mandates are not set in stone – they evolve over time to reflect advances in economic thinking and economic conditions as well as policy priorities.⁶⁹ The move to a focus on sustainability in international affairs could therefore affect the priorities of central bank policy making, and it opens the way for human rights to be incorporated more explicitly in their processes. The active role that central banks in several developing countries have taken in building financial inclusion highlights this potential, and points to scope for central banks to pay increased attention to human rights within

the framework of their existing mandates. However, there is currently a large gap in understanding how and where human rights obligations apply to core central bank functions, and there is still a long way to go in fully understanding the economic dimensions of social and cultural rights, such as the right to work, right to social security, right to housing, etc. that are in most cases more directly applicable to central banks' monetary policy operations than civil and political rights, such as the right to freedom of expression.

Box 4: Central Bank Resolution and Human Rights

The Bank of England's new resolution regime provides an example of the application of human rights in practice. In the aftermath of the 2008-9 financial crisis and the heavy costs that the failures of many major financial institutions imposed on the public purse, concerted efforts have been made by international regulators to devise a means of safely 'resolving' a failing bank, i.e. preventing its disorderly failure and market disruption. One of the tools for doing this is for the relevant resolution authority to transfer a failed bank's business into public ownership and to obtain the bank's shares without the need for consent from shareholders, or bail-in creditors. This ensures that bondholders, or creditors, suffer their share of the losses. The Bank of England has stressed that such resolution activity must be conducted in a manner compliant with the rights protected under the European Convention on Human Rights, enacted into UK law in the Human Rights Act 1998 that addresses expropriation or interference with property rights. "Care was therefore taken when developing the United Kingdom's SRR (Special Resolution Regime) to impose certain of the public interest objectives as pre-conditions to the use of the [SRR] powers".⁷⁰

3.2.2 Monetary Policy Role

"All public policy is re-distributional and monetary policy is no exception."⁷¹ This ties central bank activity directly to international human rights law which is designed to ensure a certain floor of protections for basic living standards of all people. The setting of interest rates and money supply conditions directly affect people's enjoyment of their human rights through affecting the distribution of wealth in society, prices, standards of living, access to basic goods, economic growth and stability, availability of employment, credit conditions and financial stability. Higher interest rates will benefit savers such as older people living off pensions and lifetime savings, while disadvantaging borrowers including homeowners with mortgages and first-time homebuyers. Low interest rates, on the other hand, benefit borrowers while disadvantaging savers. Financial market rises fuelled by low interest rates and cheap credit can benefit standards of living, availability of employment and productive investments in societies. However, this can lead to asset bubbles and financial crises that are devastating globally for human rights, particularly for the poorest and most vulnerable who tend to be the hardest hit as they have the least social and economic protection.⁷²

Central banks face a difficult task in managing monetary policy so that it is optimal for all segments of society, and trade-offs will normally have to be made between the impacts of different rate decisions on different groups within the overarching framework of their mandate. An important question is how human rights could help central banks in navigating these trade-offs to produce more sustainable outcomes. Mark Carney has called on central bankers to play a role in supporting inclusive capitalism: "[t]he Bank of England's mission 'to promote the good of the people of the UK by maintaining monetary and financial stability' suggests that central banks have an important role to play in supporting social welfare."⁷³ A human rights dimension to monetary policy deliberations could include an assessment of

likely impacts of different rate decisions on different groups in society, and also an assessment of how different groups were faring under prevailing economic conditions, rather than a focus on aggregate statistics.

The monetary policy response to the financial crisis has highlighted the importance of this challenge because of the enormous impact of central bank policy on rights and economic stability, and its differential impact across society. The financial crisis has led to the most prolonged period of ultra-low interest rates in history in the major economies, coupled with quantitative easing which has massively expanded central bank balance sheets and pumped huge amounts of liquidity into the global financial system.

One of the consequences of these trends is growing global inequality, which has led to central banks engaging with social welfare issues.⁷⁴ Although this trend has several underlying drivers, ultra-low interest rates, easy funding conditions and high returns to financial activity have all played a key part by increasing wealth among the top quartile of society. This has far outstripped wealth among the lowest quartile as lower skilled wages have been suppressed by global integration and the move to a high technology economy. As Andrew Haldane, Executive Director of Financial Stability at the Bank of England has commented, inequality “is not the business of a central banker. ... Yet inequality has appeared on central banks’ radar during the crisis, sometimes flashing red. That is because, at least over the shorter-term, central bank policies can and probably have reshaped patterns of inequality. Some have gone further, arguing that central bank policies of extra-ordinary monetary accommodation have, by boosting asset prices and wealth, exacerbated inequalities.”⁷⁵

This could be part of the reason for increasing attention by central bankers to the distributional impacts of central bank activity, despite a narrow mandate of price stability. Yves Mersch, a member of the Executive Board of the European Central Bank, has noted that “until relatively recently, such consequences [the distributional impacts of policy] have been largely ignored in the theory and practice of monetary policy. ... Central banks are not charged with the task of addressing inequalities in the distribution of wealth, income or consumption – nor are they dealing with the broader challenge of promoting economic justice for society as a whole. ... But particularly at a time of exceptionally low interest rates and non-standard monetary policy measures, it is essential for us to be aware of all collateral effects – including the distributional ones, i.e. the potential economic damage to some parts of society.”⁷⁶ A fellow member of the Executive Board of the ECB has stressed “[i]nequality is a cause for concern for all European institutions, since social cohesion is one of the statutory objectives of the EU.”⁷⁷

The willingness of central banks in large economies to consider the distributional implications of unconventional monetary policy hints that there is scope for human rights principles to play a role in their discussions. An increasingly unequal society is unlikely to be a sustainable one, and therefore a focus on the distributional impacts of policy through an inclusion of a human rights lens in monetary policy research and analysis could help in this endeavour. Janet Yellen, Chair of the Board of Governors of the Federal Reserve, has emphasized that central banks are important economic research institutions, and that considerations of distributional and economic inequality issues can support their work in understanding the economy.⁷⁸ This signals that central banking authorities may be prepared to broaden the research agenda to include the social welfare and distributional impacts of monetary policy, and the challenge of addressing the “how” around taking inequality impacts into account in monetary policy deliberations.

As a sustainable financial system needs to respond to the needs of all segments of society, a human rights focus could provide an important complement to technical monetary policy models. As monetary policy models do not tend to differentiate between developed and developing countries – despite the differences in economic conditions and institutional quality⁷⁹ – a human rights focus could also arguably enrich monetary policymaking in emerging economies where struggles to access basic rights are acute, and sensitivity to small price changes in access to basic goods like food, water, housing, education and medicine is very high. An awareness of the impacts of economic conditions, monetary policy and credit conditions on basic rights could provide central banks with a fuller understanding of the economic situation and help them respond more fully to the broad range of social impacts of their policy decisions. In a world of fungible money and rapid transmission of monetary policy decisions at a global level, it could also help to embed greater coherence in central bank activity at the national and international level towards building a sustainable financial system and addressing systemic risk.

Box 5: Human Rights and Austerity: Example of the European Central Bank and Eurozone Debt Crisis

The role of the European Central Bank (ECB) in the succession of Eurozone debt crises raises a further angle in which human rights apply to central bank mandates: the negotiation of austerity measures as part of bail-out deals for effected countries.⁸⁰ The Eurozone sovereign debt crisis mirrors earlier crises and bailouts by the IMF. However, the ECB, as a reasonably new institution, has not been the focus of human rights advocacy. Its role in the Eurozone debt crisis, particularly in Greece, highlights the important role that human rights should play in designing austerity packages in order to ensure their legitimacy and sustainability.

As an organ of the European Union (EU), the EU's human rights treaties are binding on the ECB; they are also binding on the member states with which the ECB is negotiating. They therefore form part of the legal framework within which negotiations should take place. These include the European Convention on Human Rights (ECHR), the Charter of Fundamental Rights (CFR) and the European Social Charter (ESC). The ECB has referenced the ECHR and the CFR in technical papers.⁸¹

A range of economic and social rights, including the minimum wage, pensions, education and health care, labour rights, basic income and an adequate standard of living, and access to basic goods like food, and social security schemes, are directly impacted by the austerity packages that the ECB negotiates with European countries like Greece. From available information, it does not appear that the ECB was guided by its obligations under the European human rights framework in its negotiations of bail-out conditionality for Greece, nor that it took their provisions into consideration.⁸² The reports of the task force overseeing the bailout loans and adjustment measures in the Greek economy also do not refer to the EU's human rights framework.⁸³ The Memoranda of Understanding have been described as in breach of the EU's human rights obligations,⁸⁴ and austerity policies have created adverse human rights impacts in Greece and exacerbated the crisis.

The austerity measures have been subject to complaints lodged under the collective complaints mechanism of the European Social Charter, particularly in regard to the cuts to pensions. Several of these complaints have been upheld by the European Committee of Social Rights on the basis that restrictions to pensions violated the right to social security under the European Social Charter.⁸⁵ While the situation in Greece is extremely complicated, and the ECB also had responsibilities to other European taxpayers in agreeing to extend financing to Greece in exchange for austerity

measures, a case can be made that the EU's human rights framework should have been taken into consideration in formulating austerity packages. Given that fundamental rights are part of the legal architecture of the EU, a basic floor of protections for fundamental rights could have been included within creditor agreements. Indeed the question arises whether the ECB and EU breached the fundamental rights protections of the EU charter by not including a consideration of these provisions in the bail-out conditionality and austerity measures, and whether this would have contributed to a more stable, sustainable outcome.

3.2.3 Financial Sector Supervision Role

States are also required to protect against human rights abuse by third parties, including business enterprises. This is a “standard of conduct” which is particularly relevant to central banks whose mandates include financial stability and financial sector regulation and supervision. Under the UNGPs, they have a duty to ensure that financial institutions under their supervisory authority respect human rights throughout their operations. This would also apply to the structures of global governance of the financial system of which central banks and regulators are a part, such as the FSB and the Basel Committee on Banking Supervision (BCBS).

Depending on their mandate, some central banks have responsibility for financial sector supervision and regulation, while others have a general responsibility for financial system stability. Human rights have not traditionally been applied by central banks in the conduct of either role, although the financial crisis highlighted the correlation between failings in financial sector oversight and negative impacts on basic rights around the world. These impacts can persist long after the financial sector has recovered and can influence the economy's return to growth (thereby interacting with monetary policy). Therefore there is scope to consider whether the addition of a rights-based lens to these roles could assist in building a more sustainable financial system.

As with monetary policy, a human rights lens could add valuable insights to financial sector oversight alongside technical rules and models by focusing on the actual impacts of financial sector practices and dynamics on individuals, to complement the existing focus on financial institutions. For example, the abuse of individual rights by mortgage fraud, particularly in the subprime market, was widespread during the financial boom and could have indicated to regulators the existence of growing problems. Some government agencies in the US tried to raise these issues as early as 2004,⁸⁶ although this was largely dismissed by financial sector regulators such as the Federal Reserve who were focused on aggregate metrics and the persuasive sophistication of new credit risk models. In reality these masked the underlying problems which a more detailed focus on individual experience of the mortgage market could have afforded to those tasked with financial system oversight.⁸⁷ An awareness of how financial institutions' practices are playing out with respect to their impact ultimately on their customer's and their individual rights such as through financial (mis)conduct, mis-selling scandals or failures to act in the best interests of customers or by broad market dynamics, could help in alerting regulators to emerging issues before they become systemic. A central bank's role in financial sector supervision and financial stability could therefore benefit from the inclusion of consideration of the impacts of financial dynamics on basic human rights as an additional indicator of imbalances, emerging risks and unsustainable financial practices, alongside existing indicators of risk and system stability.

Central Banks in emerging economies have begun to recognize more explicitly the relevance of considering human rights risks specifically and social risks more broadly as an essential aspect of

supervision in maintaining the overall stability of the banking system. This has been sparked in part by growing social conflict around major projects, such as extractive and infrastructure projects. In the case of China, the China Banking Regulatory Commission stepped forward in 2007 with its Green Credit Policy,⁸⁸ and set a solid example for IFC's Sustainable Banking Network⁸⁹ which in turn initiated the current trend of central banks and banking regulators in emerging markets providing guidance for environmental and social risk management at regulated banks.⁹⁰ China's drive for this initiative was in part due to the significant level of environmental pollution, as well as fear of social conflict stemming from pollution as well as the rapid rate of national economic development generally.

The commodities boom of the late 2000s brought a huge inflow of investments into mining and oil and gas projects in emerging markets, which has caused critical social conflicts with affected communities in many areas. These have had a direct impact on the human rights of affected communities, leading to increasing social instability, which in turn has threatened the financial viability of major projects, increased credit risk to banks financing the projects and wider potential financial instability. This cascade of events has now begun to capture the attention of a number of emerging market central banks which have put in place specific environmental and social management requirements – and in two cases specific human rights requirements – for banks under their supervision.

Box 6: Examples of Central Banks Addressing Human Rights and Social Risks in their Supervisory Role

Brazil: The Central Bank of Brazil adopted a mandatory Environmental and Social Responsibility Resolution in 2014 that requires financial institutions and other entities authorized to operate by the Central Bank to adopt a social and environmental responsibility policy.⁹¹ The Central Bank Resolution addresses what it considers a market failure and a failure of voluntary actions to cover risks adequately based on identified deficiencies in current practice among Brazilian financial institutions that can lead to risks for the whole financial sector. It therefore decided to adopt a regulation to level the playing field and ensure that Brazilian financial institutions adopt minimum standards on environmental and social responsibility to ensure efficient governance and risk mitigation. The Central Bank will evaluate the policies and management systems the banks put in place, including the environmental and social risks considered. In doing so, the Central Bank has stated that it will consider international norms, such as the OECD MNE Guidelines that provide important guidance on identifying and managing risks.⁹² As noted elsewhere in this report, the OECD Guidelines also include a chapter on identifying and managing human rights risks. In addition, the Brazilian Central Bank regulations of 2010 cover a very specific human rights issue: slave labour.⁹³

Mongolia: The Mongolian Sustainable Finance Principles, developed by the Mongolian Central Bank together with the Financial Regulatory Commission, the Mongolian Bankers Association and several other actors, are to be implemented by all Mongolian banks from 2015. Like the Nigerian Principles, the Mongolian Sustainable Finance Principles include a specific principle on human rights: “*Principle 2: Protect People and the Communities. We will respect and uphold human rights and labour standards; and protect the health and safety of people and local communities.*” The Principles also reflect the wider concepts of human rights identified throughout this report, committing banks to upholding ethical principles and strengthened corporate governance and to accountability and transparency, and promoting financial inclusion.⁹⁴

Nigeria: the Nigerian Central Bank is an early leader in the field with the development of the

Nigerian Sustainable Banking Principles in 2012⁹⁵ in furtherance of a “commitment to delivering positive development impacts to society while protecting the communities and environment in which financial institutions and their clients operate.” They include a specific principle on human rights: “*Principle 3 | Human Rights - We will respect human rights in our Business Operations and Business Activities*” in addition to other related principles on women’s empowerment and financial inclusion. The Central Bank has required implementation by all banks, discount houses and development finance institutions by developing systems to manage environmental, social and human rights risks. Supervision is based in part on regular mandatory reporting on implementation.

Peru: Peru has adopted new laws and regulatory guidance⁹⁶ which effectively mirror the Equator Principles by requiring banks to oversee the environmental and social rights risks of projects they fund through requiring companies operating the project to engage in consultation with affected stakeholders, to operate grievance mechanisms, and to manage identified risks. The new regulations specifically refer to the UNGP and the OECD MNE Guidelines as international standards relevant for consideration in Peru.⁹⁷

Vietnam: The State Bank of Vietnam issued the Directive on Promoting Green Credit and Managing Environmental and Social Risks in lending activities in March 2015.⁹⁸ The Directive requests all financial institutions operating in Vietnam to set up an environmental and social risk management system as well as to develop innovative products to enable lending in environmental and social friendly business activities. The Directive’s guidance to credit institutions addresses a number of human rights issues: “threatening the safety, security and health of the community, labour inequality and forced resettlement.”

3.2.4 Role as Employers and Procurers of Services

Human rights are also directly applicable to the operations of central banks through its relationships with its employees and suppliers. At the outset of its functioning, the European Central Bank concluded an agreement with representative trade unions to engage in social dialogue with employee representatives.⁹⁹ In the US, the Dodd-Frank Act established an Office of Minority and Women Inclusion at various federal financial regulators and required them, among others, to develop standards to assess the diversity policies and practices of entities that they regulate.¹⁰⁰ The Reserve Bank of South Africa includes ‘respect for human rights’ in its personnel security vetting process in its procurement activities: “the employee’s right to privacy, religion, belief, opinion, freedom of expression, freedom of association, freedom of movement and residence, and political rights will be duly respected by the bank.”¹⁰¹

3.3 Policy and Regulation in the Banking Sector

3.3.1 Preliminary Points on the Banking Sector and Human Rights

Banking is a heterogeneous industry with many different business models operating under the broad ambit of ‘banking’. At one end of the scale, the Global Systemically Important Banks (G-SIBs)¹⁰² are enormous institutions whose balance sheets can dwarf the GDP of their home countries and whose failure can imperil the stability of the global financial system. These are the ‘too big to fail’ institutions that came to the forefront of regulatory concern during the financial crisis. They can operate through hundreds of subsidiaries and related legal vehicles, and their activities can span the whole range of financial products and markets. At the other end of the scale are local cooperatives or savings banks that can count a village, town, or local area as their client base. These types of institutions tend to be much

closer to the traditional model of a simple banking business, with customers' savings and deposits used to fund mortgages and basic loan products.

There has been some movement in the banking sector on assessing the human rights impacts of their operations in certain areas of its business. UNEP FI brings together a wide range of financial institutions to discuss sustainability issues and since 2007 has had a work stream to better understand human rights risks and responsibilities for the financial sector, in particular banks,¹⁰³ and several large European banks have come together in the "Thun Group" to discuss human rights issues in several areas of their business (see Section 5.2). However, the business case for integrating human rights across other banking operations has so far not encompassed much of the activity of the G-SIBs and other large banks whose operations are highly technical and one step removed from immediate human rights harm. This highlights areas where more research and scholarship is needed in the coming years to connect the wider set of banking operations to human rights.

3.3.2 Human Rights and International Regulation of the Banking Sector – the Basel Framework

The Basel Framework is the core international regulatory framework for banks. It is negotiated by banking supervisors from around the world and sets out the key requirements for national banking regulation. It therefore provides an internationally agreed framework of rules which are incorporated into national systems of banking sector regulation and oversight. It is overseen by the Basel Committee on Banking Supervision (BCBS), hosted by the Bank for International Settlements (BIS) in Basel.¹⁰⁴

The first Basel Accord was drafted in 1988; it was updated and expanded in 2004 (Basel II); and then updated and expanded again in 2013 in response to the financial crisis (Basel III). The Accords are extensive and highly technical documents of banking regulation which focus heavily on ways in which banks should capture, measure and manage the various risks they are exposed to, and how supervisory authorities should oversee this. As technical documents, they have not yet considered broader risks such as environmental, social, human rights or sustainability risks.

In 2014, UNEP FI, in association with the Institute for Sustainability Leadership at the University of Cambridge (CISL) published a report entitled: 'Stability and Sustainability in Banking Reform: Are Environmental Risks Missing in Basel III?' (UNEP FI and CISL report).¹⁰⁵ It argues:

"The role of the financial system in the economy and broader society is to provide the necessary financing and liquidity for human and economic activity to thrive – not only today but also tomorrow. In other words, its role is to fund a stable and sustainable economy. The role of financial regulators is to ensure that excessive risks that would threaten the stability of the financial system – and hence imperil the stability and sustainability of the economy – are not taken. ... The regulatory framework that governs today's banking system may not be being used to its full capacity ... Basel III is arguably overlooking an important source of risk to the financial system and broader economy."

The UNEP FI and CISL report focuses on systemic environmental risks and their impact on banking sector stability – which will become more pronounced and complex as humanity breaches more planetary boundaries. It analyses Basel III's three-pillar framework (Pillar 1 - Minimum Capital Requirements; Pillar 2 - Supervisory Review Process; and Pillar 3 - Market Discipline) and asks whether Basel III addresses systemic environmental risks. Its analysis could be extended to systemic social and human rights risks.

Even before Basel III, numerous environmental groups have argued that banks' capital adequacy rules under Basel II should explicitly correlate to the magnitude of environmental risks they take, in order to

disincentivize such risk-taking. They initially argued this point mainly from the perspective of transactional risks that affect the borrowers' ability to repay loans. The UNEP FI and CISL report recognizes these transaction-specific risks in Basel III and acknowledges the concern that higher capital charges on longer-term project finance loans might have had the unintended consequence of undermining environmentally sustainable economic activities. It makes a more nuanced observation that the relevance of capital requirements varies depending on the market context – the tenor and structure of financing environmentally sustainable projects, rather than the magnitude of environmental risks taken by banks, will determine capital charges – and as such Basel III's Pillar 1 plays at most a marginal role in influencing a bank's decision to finance green projects.¹⁰⁶

The UNEP FI and CISL report highlights examples from emerging markets where market/regulatory practices have gone beyond the existing Basel III framework to encourage environmental risk management, including “1) Greater interaction between the regulator and the bank in assessing wider portfolio level financial, social and political risks [Pillar 2], and 2) Banks' enhanced disclosure to the market regarding their exposures to systemic environmental risks [Pillar 3]”.

Systemic environmental risks can profoundly affect human rights – from the right to food, shelter, health, livelihoods, to the right to life itself. In this sense the UNEP FI and CISL report also tangentially addresses many of today's human rights issues which are connected with climate change, environmental degradation, and resource depletion. The recommendations made on the power of the interaction between the bank and banking supervisors, pursuant to Pillar 2, and the power of relevant disclosure of information that would inform the market on the bank's capital, risk exposures, risk management processes, and hence the capital adequacy of the bank, pursuant to Pillar 3, are also directly relevant to human rights risks and their relationship with Basel III. The report pinpoints a need to explore how the Basel III framework also relates to the global human rights situation. Could banking regulation be used to better integrate social risk management and transparency around the human rights impacts of banking into banking practice?

Integrating social and human rights risks into Basel III requires as a first step recognition of the potential relationship between human rights risks and their effects on the bank's portfolio/risk exposures, as well as on macro-prudential risk. Although much attention is focused on the work spearheaded by the Peruvian Banking Superintendent on human rights risks (see Box 6:), significant additional work is needed to formulate policy recommendations for the BCBS and national banking regulatory authorities, including research on:

- the scope of dialogue between a bank and its supervisor on both material financial risks and salient non-financial risks, including human rights risks,
- the risk reporting framework for supervisory purposes, as well as the reporting framework to investors and the public, covering material financial and salient non-financial risks, including human rights risks (see Sections 3.4.3 and 6.2.2), and
- an appropriate social stress-test methodology.

3.4 Policy and Regulation in the Investment Sector

3.4.1 Preliminary Points on the Investment Sector and Human Rights

Like the banking sector, the investment industry ranges from very large scale institutional investors and sovereign wealth funds down to boutique socially responsible investors (SRI) and the newer entrants in

the sector – impact investors. Investors come together in the UN-supported Principles for Responsible Investment initiative¹⁰⁷ (PRI) which recently released a report on the extractive sector and human rights,¹⁰⁸ under the UNEP FI¹⁰⁹ as well as in other networks such as the Sustainable Investment Forums (SIFs).¹¹⁰

Among financial actors, investors can have a direct relationship with the human rights impacts of corporate operations because investments involve taking a direct ownership share in a company through equity investments. Specific types of investors have gone one step beyond this in linking human rights to their activity: (i) long-term investors who consider sustainable development issues and see human rights as an important part of the sustainability equation in building more stable societies;¹¹¹ (ii) investors with specific norms-based mandates, or who use norms-based frameworks – including SRI, charity-based or religious investors; and (iii) investors such as teacher’s pension funds where the fund’s beneficiaries and human rights norms are aligned. Deeper integration of human rights into the investment sector is likely to come from several angles: from regulators, from listing requirements at stock exchanges, from practice among investors themselves and from the increasing evidence that companies with high sustainability performance outperform the market.¹¹² Human rights are also increasingly seen as an important part of the both the “G”¹¹³ (governance) and the “S”¹¹⁴ (social) agenda within the growing attention of mainstream investors to environmental, social and governance (ESG) issues.

3.4.2 Human Rights and International Standard Setting for the Investment Sector – the International Organization of Securities Commissions (IOSCO) Principles

This section focuses on one area of investment regulation – securities. The International Organization of Securities Commissions (IOSCO) is the international standard setting body for securities regulation. Its membership covers over 120 countries and more than 95% of the world’s capital markets. The IOSCO Principles are one of the 12 key standards and codes the FSB recognizes as key to sound financial systems.¹¹⁵

Following the financial crisis, IOSCO’s regulatory role has included a renewed focus on rebuilding trust in the financial system’s safety and soundness, regaining the confidence of investors in the markets, and pushing for stronger corporate governance, backed up by strong enforcement and sanctions. Its principles are based on three core objectives: protecting investors; ensuring that markets are fair, efficient and transparent; and reducing systemic risk.¹¹⁶ In a presentation at OHCHR on the financial crisis, the organization framed its contribution to human rights as one of “encourage[ing] capital formation and economic development, and reduc[ing] incidence on the common man.”¹¹⁷

Box 7: Suggestions on Building Human Rights into IOSCO’s Standard Setting

Beyond the organization’s overview of its contribution to human rights, additional possibilities also exist for integrating human rights into IOSCO’s regulatory instruments that could be part of a longer-term agenda:

- IOSCO could develop a new standard on **sustainability reporting**, building on the practices of an increasing number of its members that already have mandatory reporting requirements (see below).
- The IOSCO mission is focused on “fair” markets. As with other areas of the financial sector, the financial crisis has prompted further reflection on protecting those within their mandate but not wider considerations of broader impacts on society. Fairness is defined with respect

to investor protection: “[i]nvestors should be protected from misleading, manipulative or fraudulent practices, including insider trading, front running or trading ahead of customers and the misuse of client assets.”¹¹⁸ Could **fairness of markets be considered** through a broader lens to include impacts on the **wider society**?

- IOSCO carries out regulatory impact assessments¹¹⁹ as a precursor to standard setting. The impact assessment process is grounded in a cost-benefit analysis looking at regulatory and market failures and the options for addressing those failures. Could its guidance on **cost-benefit analysis be expanded to include broader costs and benefits to society – such as the environmental and social costs that are a core part of the sustainability agenda**?

IOSCO, in common with other financial regulators, focuses on risk. The business and human rights approach is also based on identifying, managing and mitigating risk, although both communities are using very different concepts of risk. Could the **linkages or disjunctures between the human rights concept of severe human rights risk and the financial sector concept of materiality be addressed** so that human rights risk becomes material to IOSCO’s mandate?

3.4.3 Stock Exchanges and Other Exchanges

3.4.3.1 Listing/Participation Requirements

Stock exchange listing requirements provide an important route for addressing human rights issues in corporate operations and reinforcing the importance of corporate respect for human rights as part of their governance frameworks. Listing requirements can specify human rights criteria as part of the due diligence process prior to listing, and also as part of ongoing membership of an exchange. Exchanges can exclude companies that have been involved in serious human rights abuses and provide positive incentives for companies to engage in better human rights performance. For example, in 2000, Oryx Diamonds was prevented from joining the London Stock Exchange’s Alternative Investment Market (AIM) because the UK regulatory authorities warned of the “utter unacceptability of a London listing for a company involved with the Zimbabwean military in the exploitation of diamonds in a conflict zone”.¹²⁰ The London Bullion Market Association’s Responsible Gold Guidance is mandatory for all gold refiners wishing to sell into the London Bullion Market, and is intended to assure investors and consumers that all London gold stocks are conflict-free and not contributing to human right abuses through compliance with an audited, conflict-free process.¹²¹

3.4.3.2 Stock Exchange Reporting/Disclosure Requirements

The Sustainable Stock Exchange Initiative (SSE Initiative) is a peer-to-peer learning platform for exploring how exchanges, in collaboration with investors, regulators, and companies, can enhance corporate transparency – and ultimately performance – on ESG issues and encourage sustainable investment.¹²² Partner stock exchanges make a voluntary commitment to promoting improved ESG disclosure and performance among listed companies. Of the 55 exchanges reviewed, seven require some environmental and social reporting for all their listed companies,¹²³ while an additional five exchanges require such reporting for companies of a specific size or within a specific industry.¹²⁴

The SSE Initiative is advocating mandatory sustainability reporting initiatives on a ‘comply or explain’ basis, to establish a clear set of disclosure expectations while allowing for flexibility. Some existing mandatory human rights reporting requirements on companies that are modelled on a ‘comply or explain’ approach are already important examples for regulators to build on.¹²⁵ The SSE Initiative also

highlights the option of basing sustainability reporting initiatives on an international reporting framework. On the assumption that these frameworks are built on international sustainability norms, the frameworks themselves are fruitful grounds for including human rights requirements grounded in international human rights standards.¹²⁶ In March 2014 the Investor Initiative for Sustainable Exchanges submitted the Investor Listing Standards Proposal to the World Federation of Exchanges. This proposal for a global standard in stock exchange listing requirements on sustainability reporting would include mandatory reporting on human rights. Ceres identified human rights (alongside several other categories of issues including employee relations and community relations) as capturing areas of opportunity, broad systemic risk, and externalization of costs.¹²⁷

3.4.3.3 *Stock Exchange Sustainability Indices and Other Human Rights Indices*

As of 2014, sustainability indices remain the most popular type of sustainability initiative among stock exchanges, with 23 of the 55 partner exchanges of SSE Initiative offering at least one index integrating social and/or environmental issues.¹²⁸ Some of those indexes have specific human rights requirements.¹²⁹ For example, the FTSE Johannesburg Stock Exchange Socially Responsible Index launched in May 2004 requires that in addition to running socially responsible businesses, companies in the index must meet the basic selection criterion on respecting human rights.¹³⁰ Other indexes and benchmarks are being created that specifically focus on human rights performance generally or specific dimensions of human rights,¹³¹ targeted to investors.

Box 8: The Corporate Human Rights Benchmark¹³²

The Corporate Human Rights Benchmark (CHRB) will be the world's first free and public benchmarking of hundreds of companies' human rights policy and performance around the world. It will build on a competitive approach to incentivize better human rights performance by companies through developing a transparent, publicly available and credible ranking of corporate human rights policy and performance. There is already considerable evidence that public transparency combined with public rankings of companies' performance can help to drive a race to the top. A new survey by the Economist Intelligence Unit on business and human rights has found that 39% of the CEO respondents felt benchmarking companies on their human rights performance would make the biggest difference on the issue.¹³³

3.4.3.4 *Regulation at the Regional and National Level*

- **Regulation of Capital Markets - ESG Considerations**

The PRI maintains the “Global ESG Regulatory Mapping” that, while not exhaustive, is a working document of standards, codes and regulation that supports responsible investment.¹³⁴ The list covers a wide range of countries and approaches from exclusion of certain products (such as cluster munitions), to mandatory adoption of corporate social responsibility policies, to mandatory reporting, including on human rights.¹³⁵ Many of the measures include the ESG triumvirate, indicating that one of the clearest ways that human rights will make their way into the regulatory agenda is as part of the ESG agenda. However, legislators are responsive to the public's concerns about specific human rights issues as recent legislation on human trafficking or modern day slavery indicates.¹³⁶

- **Sustainability Reporting Requirements**

Of the 32 IOSCO board members, more than one third (12) belong to a securities regulatory agency that has introduced a sustainability reporting instrument, either as a regulatory initiative or a best-practice guideline. Only one of these policies is voluntary in nature, while the rest are either mandatory or include a mandatory ‘comply or explain’ element. Securities regulators in almost half of the G20 membership have already introduced regulation for disclosure of at least some social or environmental issues. Combined, all but one member of the G20 require disclosures of at least some sustainability issues.¹³⁷ While the sustainability reporting requirements are often broadly worded, they provide an opening for addressing human rights or building further more detailed requirements for human rights. More importantly, these developments signal that securities regulators have already identified that sustainability or ESG issues are material to investor decision-making, hence the particular focus on mandatory reporting.

3.4.3.5 *Fiduciary Duty, Materiality and Stewardship Codes*

In 2005, the UNEP FI “Freshfields Report”¹³⁸ paved the way for ongoing efforts to clarify the boundaries of fiduciary duty and the legal scope for integrating ESG considerations into investment mandates and decision-making. Given the significant level of uncertainty and lack of clarity around the boundaries of the fiduciary duty of investors and its relation to responsible investment, the UNEP Inquiry, UNEP FI, Global Compact and PRI have launched a multi-year project to end the debate about whether fiduciary duty is a legitimate barrier to investors integrating environmental, social and governance (ESG) issues into their investment processes.¹³⁹ Drawing on research around recent developments such as the UK Law Commission’s review of the fiduciary duties of investment intermediaries, the Japanese Stewardship Code and the Code for Responsible Investing in South Africa, the report shows that under a contemporary understanding of fiduciary duty, a failure to consider ESG issues as one driver of long-term investment value is a failure to exercise fiduciary duty.¹⁴⁰

The report goes on to highlight that materiality is a dynamic concept, and the materiality of ESG issues evolves over time, driven by changes in legislation and policy, by changes in risk and the understanding of risk, by changes in the social, environmental and economic impacts, and by changes in societal (and beneficiary) expectations and norms.¹⁴¹ While the report notes, once again, that the “S” issues are often the least researched and the least understood and therefore often the least likely to be considered material, the “indicators” for the increasing materiality are progressively evident for human rights issues¹⁴² – not least as a result of the recent EU Directive on Non-Financial Reporting that requires large companies to report on human rights issues. Moving human rights along that trajectory from softer law to harder law is one of the most obvious routes to clarifying the materiality of the issue. Recent work dedicated to examining the materiality of human rights issues to investment processes and to fiduciary duty has been broadly accepted particularly in relation to egregious human rights violations.¹⁴³

Civil society has now called on the US Securities and Exchange Commission (SEC) to issue interpretive guidance to explain how material human rights information should be incorporated into existing securities reporting in the US. They have also called for the SEC to promulgate a new rule specifically requiring disclosures of human rights information, organized in a new reporting item for periodic reports or proxy disclosures.¹⁴⁴

The updating of Stewardship Codes¹⁴⁵ around the world provides another opportunity to strengthen and clarify investment mandates to take ESG considerations into account. To the extent these can become more specific, human rights can and should be incorporated.

3.5 Policy and Regulation in the Insurance Sector

3.5.1 Preliminary Points on the Insurance Sector and Human Rights¹⁴⁶

As with other parts of the financial sector, the insurance sector ranges from large-scale multinationals in insurance and reinsurance, to small mutuals owned by policy holders. Mutuals and co-ops exist in other areas of the financial sector as well (although perhaps not to the same extent as in insurance) and one area for further research is whether the choice of business form, such as a mutual, would make it easier for these types of organizations to incorporate human rights principles into their choice and delivery of products and services.

Insurance has the potential for its business to align closely and intuitively with human rights for several reasons. First, insurance is based on a protection mandate. The purpose of the sector is to identify risk, and help prevent and respond to it to ensure that people (and businesses) are protected from harm. This protection mandate resonates with the underlying principles of human rights – to protect people and their human rights from harm so that life can be enjoyed to its fullest. The provision of insurance, particularly to those in vulnerable or marginalized economic groups, can play an important role in furthering their human rights enjoyment. In this respect, the insurance sector is in a position to go beyond simply respecting human rights (a “do no harm” approach), helping to fulfil human rights directly or in partnership with government as set out in the following examples.¹⁴⁷ Insurance also plays a role in remedy – it can be a source of ensuring that harm is compensated for and where it is available, provides a mechanism by which people can pursue remedy.

The insurance sector often has an important role to play in providing a safety net at the individual or household level, together or separately from government-provided social insurance schemes, in fulfilment of the human right to social security. Social protection insurance can have additional, indirect positive impacts on other rights as well, such as the rights of the child to education by protecting family income and eliminating the need to take children out of school and put them to work to respond to income shocks. Insurance can also provide a means through which people enjoy the human rights to an adequate standard of living, health, food, and housing. At the enterprise level, insurance is part of the package of actions to ensure that worker’s rights are respected. Insurance provides a source of compensation for harm to workers that occurs in the course of their employment, but is also an incentive for business owners to reduce risks in order to reduce premiums.

Recent discussions on the role of insurance in mitigating the impacts of natural disasters and climate change have brought the potential for positive reinforcement of its protective mandate into sharper focus. Insurance services that are immediately able to respond to natural disasters and provide support can help fulfil the rights of life, livelihood and shelter.¹⁴⁸

Second, other principles that are traditionally at the root of the insurance mechanism are aligned (or can be better aligned) with the values of human rights – the idea of solidarity and the principle of mutualization of risk. Insurance has an inherent connection to the concept of solidarity by sharing risks out among a pool and using the resources of one member to protect another. How these principles can be further strengthened in the design of new insurance products could be usefully integrated into the sector’s reflections on its contribution to the SDGs, which are themselves built on human rights principles.¹⁴⁹

3.5.2 Human Rights and International Standard Setting for the Insurance Sector – the Insurance Core Principles (ICP)

Numerous global financial institutions have some regulatory or supervisory oversight of insurance,¹⁵⁰ but the International Association of Insurance Supervisors (IAIS) is the only global body focusing exclusively on the regulatory and supervisory issues of the insurance sector. Its members, insurance industry regulators and supervisors, as well as the IMF, the World Bank, the OECD and the European Commission, cover approximately 97 per cent of the global insurance market.¹⁵¹

One of the major activities of the IAIS is the development and implementation of its Insurance Core Principles (ICPs) which, though not legally binding, provide a globally accepted framework for the regulation and supervision of insurance and reinsurance companies (whether private or government-controlled) that foster convergence towards a globally consistent supervisory framework.¹⁵² In addition to the almost universal uptake of the ICPs, their status as global minimum requirement for good practice in the insurance area is reinforced by their designation by the Financial Stability Board (FSB) as the key standard for insurance in its *Compendium of Key Standards for Sound Financial Systems*.¹⁵³ The ICPs are therefore the most obvious leverage point for introducing key principles and standards for the insurance sector that will then be adopted by national regulators.

The ICP do not yet include any specific references to broader sustainable development risks either in the aggregate or as separate environmental or social risks. The Insurance Core Principles Standards Guidance and Assurance Methodology Standards¹⁵⁴ set out key requirements that are fundamental to the implementation of the ICP and are updated periodically to accommodate changing circumstances. The IAIS also issues Guidance documents, for example on anti-money laundering/terrorism financing; it could be encouraged to issue a guidance document on sustainable development issues including human rights.

Box 9: Building Human Rights Requirements into the Insurance Core Standards, Guidance and Assessment Methodology

Key ‘hooks’ in the Insurance Core Standards, Guidance and Assessment Methodology (2011) could serve as a basis for incorporating human rights principles and approaches in these areas in the next round of the update of the Standards and Guidance. Those hooks include:

ICP 7 Corporate Governance: This includes a requirement to act in accordance with ethical values, setting the ‘tone at the top’, including by setting the fundamental corporate values, directors duties to exercise due care and diligence; acting in the best interests of the insurer and policyholders and putting those interests ahead of his/her own interests; creating a culture of sound risk management, compliance and fair treatment of customers.

ICP 8 Risk Management and Internal Controls: The insurer must have a system to identify, assess, monitor, manage and report on its key risks in a timely way. Where a risk is not readily quantifiable, for instance some operational risks or where there is an impact on the insurer’s reputation, an insurer should make a qualitative assessment that is appropriate to that risk and sufficiently detailed to be useful for risk management.¹⁵⁵

ICP 9 Supervisory Review and Reporting: The supervisor must have a mechanism to check periodically that its supervisory framework pays due attention to the evolving nature, scale and complexity of risks which may be posed by insurers and of risks to which insurers may be exposed.

ICP 19 Conduct of Business: This includes requirements around the fair treatment of customers and

encompasses concepts such as ethical behaviour, acting in good faith and the prohibition of abusive practices. Insurers must take into account the nature of the customer and the type of insurance provided, which provides an opening for considering the vulnerabilities of particular customers.

ICP 20 Public Disclosure: This includes appropriately detailed information about the company profile, including the nature of its business, a general description of its key products, the external environment in which it operates and information on the insurer's objectives and the strategies in place to achieve them.

ICP 10 Prevention and Corrective Measures, 11 Enforcement and 21 on Countering Fraud in Insurance: Treating customers fairly; the need for supervisory powers that permit a supervisor to detect vulnerability in the insurer's ability to protect policyholders, and to intervene to order to take preventive and corrective measures.

4 CLIENT LEVEL: HUMAN RIGHTS IMPACTS THROUGH CORPORATE AND SOVEREIGN CLIENTS

4.1 Introduction

This Chapter examines steps taken by private sector financial institutions to integrate a human rights analysis into the products and services offered to corporate and sovereign clients, as it is through these clients that individual financial institutions are likely to have the largest impact on human rights.

As an important example of the interplay between the three levels, a few selective financial institutions are taking these actions for risk management purposes, not least, for reputation management, rather than in response to any regulatory requirements. A broader uptake of the nascent regulatory changes noted above and the trend of human rights shifting from a soft law approach to hard law through national laws and binding international standards would move the consideration of these issues from a voluntary, risk management approach among a few large players in the market to a much wider selection of financial institutions. Interim approaches between voluntary and regulatory are also appearing: for example the Dutch Government has required the financial sector (and twelve other high impact sectors) to enter into “sector covenants” with trade unions and NGOs to address environment, labour and human rights risks.¹⁵⁶

4.1.1 Human Rights Due Diligence on Corporate and Sovereign Transactions

The UNGPs are applicable to all business sectors everywhere in the world, including the finance sector. According to the UNGPs, businesses should adopt a human rights policy commitment, carry out “human rights due diligence” and provide a remedy for harms caused or contributed to. “Human rights due diligence” describes the process of assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed (Principle 17 of the UNGPs). This includes identifying and assessing potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. The findings should be integrated into the business’ internal functions and appropriate action taken to prevent and mitigate risks. Appropriate action will vary according to whether the business enterprise *causes* or *contributes* to an adverse impact, or whether it is involved solely because the impact is *directly linked* to its operations, products or services by a business relationship.¹⁵⁷

As financial institutions begin to consider how to incorporate due diligence around human rights risks into their risk management systems, three potential areas for confusion require particular attention:

- i. The focus of the risk assessment for human rights risks is on humans, rather than on the business. According to the UNGPs, “[h]uman rights due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.”¹⁵⁸ This rights-centric approach to human rights due diligence makes such diligence challenging for financial institutions, as it means the due diligence must focus first on risks created by the financial institution and its clients on people that the financial institution or client impact. Those impacts may be material to its consideration of the financial transaction or important from a reputational risk management point of view, but may not rise to the level of materiality in a financial sense and therefore may be ignored under a traditional due diligence approach. Yet addressing impacts on human rights is at the core of the human rights due diligence approach, starting with those that

have the most severe impact, and not limiting the exercise only to those financially material to the financial institution. This has clear operational implications for the scope and design of the due diligence that should be addressed early on.

- ii. As used in the UNGPs, the term “human rights due diligence” goes beyond the traditional use of “due diligence” in transactions to include the identification of key risks and the management and communication of those risks as well.¹⁵⁹
- iii. For financial institutions, most (but not all) of the human rights risks will be created by the clients financed or in the course of using financial services or products. According to a report prepared for the OECD, representatives of financial institutions initially understood impacts caused by their clients to be “indirect impacts” and thus potentially outside the scope of application of the OECD Guidelines (and hence the UNGPs).¹⁶⁰ The OECD rejected this interpretation, and its position was reinforced by the Office of the High Commissioner for Human Rights in relation to the UN Guiding Principles.¹⁶¹ The UNGPs or the OECD Guidelines do not refer to “indirect impacts”; instead, both refer only to “directly linked” impacts in business relationships. Financial institutions can contribute to or be directly linked to the impacts of their clients through their financial products and services, which puts the impacts of client’s operations and their use of funds within the scope of the application of the UNGPs and the OECD Guidelines and therefore within the scope for human rights due diligence.

How financial institutions should deal with their responsibility to respect human rights, and how they should separate their responsibilities from that of their corporate (and in some cases their sovereign) clients that they finance is a challenging issue.¹⁶²

The current approach among the limited set of financial institutions addressing human rights can be summarized as follows:

- Explicit recognition that the financial sector and individual companies within it have a responsibility to respect human rights.
- Exposure to human rights risks, and the responsibility to deal with those risks, is as broad as the range of different business sectors that the financial services industry provides financing to, and therefore potentially broader than for most other sectors. In addition, the MNE Guidelines make it clear that due diligence must extend to the supply chain of the corporate entity, as many severe human rights impacts are often hidden in the supply chains.
- Exposure to risk comes from both the transaction itself, through contributing to or being directly linked to the human rights impacts of its clients’ behaviour; it also flows from the reputational risks of being associated with a client that is abusing human rights.
- Human rights due diligence must address and prioritize the risks to rights-holders, not just material risks to the financial institution.
- Carrying out such due diligence can strengthen the social responsiveness of the underlying transaction and potentially identify areas where positive impacts on human rights can be enhanced.
- Acknowledging the positive relationship between respecting human rights and the quality of a client/investee’s management system.¹⁶³

A 2013 report on behalf of the OECD explored the relationship between the MNE Guidelines and the financial sector.¹⁶⁴ It found that awareness and implementation of the UNGPs are variable, with many financial institutions at the early stages of understanding the implications for their institutions. Furthermore, the report noted that few financial institutions are using the MNE Guidelines in their implementation of environmental and social due diligence as they are seen as too “generic”. As a follow-up, the OECD has launched a “proactive agenda” project on the financial sector to help clarify the application of the OECD Guidelines chapter on human rights to the financial sector, in relation to a wide range of investment products throughout 2015-2016, and has already issued a number of clarifications on the application of the OECD Guidelines to the financial sector (see Section 6.1.2.2).¹⁶⁵ Due to this development under the OECD MNE Guidelines, and for other reasons described below, there is growing awareness among financial institutions of the human rights impacts that could result from business relationships, and human rights due diligence and risk management methodologies are slowly becoming more accepted.

However, the span of current practice is very concentrated in obvious areas, and limited in comparison to the range of financial products and services offered, partly because appropriate due diligence models have not been developed for the remaining vast range of financial products and services. Decades of stakeholder pressure and leadership from socially responsible investors has concentrated mostly on MDB and private sector long-term finance and responsible investment, missing other areas of operations. As a result, there is a real and pressing need to either extend or adapt existing due diligence methods (other than environmental and social due diligence) to human rights risks, or create new due diligence models beyond those that focus on the specific use of proceeds of long-term financing and their physical environmental and social impacts (as in the case of environmental and social due diligence in project finance), and those that focus on corporate level ESG performance (as in the case of ESG due diligence for investors). For banks, applying the Equator Principles-style due diligence to short-term finance or conducting ESIA for each commodity trade will be neither efficient nor effective. Derivatives and similar products remain entirely outside the scope of current practice. In the investment arena, the focus on corporate level ESG performance may be insufficient when distinct and significant operations in specific geographic locations or around particular types of investments (such as real estate) create human rights impacts.

4.1.2 Access to Remedy and Liability on Corporate and Sovereign Transactions

One of the three “pillars” of the UNGPs is dedicated to addressing access to remedy for victims of human rights abuse by businesses, signalling the intention to improve access to remedy for victims. Governments should have judicial and non-judicial mechanisms in place to hear complaints, and businesses, including financial institutions, are expected to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.¹⁶⁶ Like other businesses, a financial institution would be expected as a general matter to have in place or participate in an operational level grievance mechanism that is ready to address situations where it has caused or contributed to adverse human rights impacts or it is alleged to have caused or contributed to such impacts.¹⁶⁷

With respect to particular cases of adverse human rights impacts involving clients, there has been some uncertainty about how these UNGP expectations should apply to the financial sector. Where a business enterprise identifies that it has caused or contributed to adverse impacts in a particular situation, the UNGPs require that it should provide for remediation, but this does not apply to situations where a

business is directly linked to the impact of its clients.¹⁶⁸ In this latter case, a financial institution is not obliged to provide a remedy but may participate in doing so.¹⁶⁹ Even where it is clear that a financial institution does not have an obligation to provide a remedy under the UNGPs in a particular case, it would still be expected to exercise its leverage with its client to urge the client to remediate and take steps to prevent further harm, including by establishing the kinds of operational-level grievance mechanisms described in the UNGPs¹⁷⁰ or participate in other collaborative initiatives to provide remedy.

While the Equator Principles, through a reference to IFC Performance Standard 1, embed the requirement for corporate clients to establish grievance mechanisms, there is no provision for a grievance mechanism at the financier's level, or at the level of the Equator Principles. The discussion on grievance mechanisms is also notably absent from the Thun Group discussion paper,¹⁷¹ and indeed the financial sector has been reluctant to address the issue of grievance mechanisms. In contrast, many of the development banks have their own accountability mechanism that provide the opportunity for those affected by the projects they finance to make claims,¹⁷² and some bilateral financial institutions are following this trend.¹⁷³

While judicial remedy against the company that is the source of harm or the financial institution funding it should in theory remain an option for people whose rights have been impacted by a project financed, in many jurisdictions, the option is illusory, given the many obstacles in the way of victims bringing claims in national or international courts.¹⁷⁴

There is little jurisprudence globally on financial institution liability for involvement in human rights abuses, apart from areas involving labour protection or non-discrimination. Nor would international or national level jurisprudence establishing a financial institution's liability and its obligation to provide remedy for the activities of a client (private or sovereign) necessarily be based on the same distinctions used in the UNGPs – cause, contribute, directly linked. Instead, it is likely that jurisprudence on the liability of financial institutions for the action of the clients would develop from national jurisprudence around aiding and abetting (a concept under criminal law) or other theories of liability, such as tort law.

One such area of jurisprudence that provides a precedent is lender liability for environmental damages. In the US, federal law¹⁷⁵ provides a safe harbour or “secured creditor exemption” from owner or operator liability for rehabilitating Superfund sites (a program established by the US federal government to fund the clean-up of toxic sites). So long as the creditor avoided participation in the management of the borrower prior to foreclosure or owning or operating the property after foreclosure, they could avoid lender liability. This prompted bank regulators to advise banks to carry out environmental assessments on borrower property to avoid Superfund liability.¹⁷⁶ It is an interesting example of the banking regulators stepping in to prompt the financial sector to take proactive action or face liability. The practical outcome was to prompt banks to develop systems to carry out environmental due diligence. Some of those systems have evolved into environmental and social due diligence systems used today. Other jurisdictions, such as the UK¹⁷⁷ and Brazil¹⁷⁸ provide for lender liability for environmental harm.¹⁷⁹

On rare occasions, bank officers have faced criminal and civil liability for their alleged involvement in international crimes.^{180,181} Such cases have arisen in both international tribunals and domestic courts, and typically allege that the officers were complicit in such crimes through the provision of goods and services to the primary perpetrators, using concepts such as pillage. Overall, since Nuremberg, few cases at international tribunals have alleged that corporate officials, or corporations themselves, were complicit in international crimes. The International Criminal Tribunal for Rwanda explored whether the head of a Rwandan parastatal company could be found guilty of involvement in genocide and other

international crimes under the theory of superior responsibility.¹⁸² Indeed, the trial chamber found him guilty of genocide and crimes against humanity.¹⁸³ To date, corporations themselves have not faced criminal prosecutions at international criminal tribunals because none of the tribunals explicitly provide for jurisdiction over legal persons. However in October 2014, the appeals chamber of the Special Tribunal for Lebanon interpreted its statute to permit jurisdiction over legal persons for certain proceedings,¹⁸⁴ arguing that its position was consistent with a general movement in international human rights and international criminal law. It is too soon to know whether other tribunals might adopt this reasoning. If they were to do so, it would represent a significant shift in international criminal law.

This does not, however, imply that corporations have not faced claims that they assisted international crimes in recent years. Rather, the vast majority of such claims have been brought in national courts claiming that financial institutions aided and abetted international crimes by providing loans to perpetrators, or by holding ill-gotten goods. However, the varying outcomes of these cases indicate a significant lack of a common understanding of when financial institutions can be held legally responsible for the provisions of products and services to human rights abusers.

Sanctions and anti-money laundering laws are potent tools driving financial institutions to identify the risk that they will provide financial services to human rights abusers. Sanctions usually seek to cut off funding to regimes associated with nuclear proliferation or aggression against neighbouring states, or target drug smugglers and terrorists. Anti-money laundering laws seek to prevent organized crime, tax evasion, or corruption and theft of state assets by blocking access to the financial system. Although not primarily aimed at addressing human rights abuses, sanctions and anti-money laundering laws are occasionally able to target entities and public officials (politically exposed persons) implicated in international organized crime or corruption, which are also often linked to serious human rights abuses.

On the investment side, the possibility of a legal challenge to a pension fund alleging that it is breaching its fiduciary duty by not considering the potential impacts of climate change on its investments could signal new challenges around fiduciary duty involving a wider range of ESG issues.¹⁸⁵

Consistent jurisprudence that provides a clear understanding of the scope of legal liability for financial institutions would help drive policy and practice. Better guidance from governments to the financial sector regarding how they should seek to avoid providing services to individuals and entities involved in human rights abuses and when the provision of financial services rises to the level of legal complicity would be useful. This should include clearer guidance about the boundaries of responsibility between financial institutions and their clients and how far financial institutions should go in intervening in the affairs of their clients to avoid or mitigate adverse human rights impacts and whether the tolerance level for intervention should vary where more severe impacts are anticipated. The law can establish the level of legal liability for financial institutions' actions or omissions that result in human rights impacts, creating a safe harbour from civil liability for negative human rights impacts of their corporate or sovereign clients when they can demonstrate appropriate and sufficient human rights due diligence.¹⁸⁶

4.1.3 Adding Value

Sections 4.1.1 and 4.1.2 focused on ways to manage human rights risks and negative impacts of corporate and sovereign clients of financial institutions. Significant untapped opportunities also exist for financial institutions to innovate on specific financial services and products for their client to manage the potential human rights impacts they can create. These can be creative ways to provide long-term finance to small and medium-sized enterprises, including local financial institutions that finance such enterprises that

supply goods and services to the corporate client, and trade finance. The most recent financial crisis triggered in multiple sectors and regions massive redundancies in and bankruptcies of smaller firms, starved of capital as financial institutions and multinational buyers or their brokers pulled away. The example of the Asian garment industry, where tens of millions of young women were affected, is well documented.¹⁸⁷ Eventually, multilateral financial institutions stepped in to provide financial incentives for local financial institutions and buyers. Such measures, while effective, are short-term and ad hoc in nature. A more systematic and constant intervention by the financial sector is needed in order to ensure adequate capitalization of the supply chains, as well as necessary employment for workers. Such SME financing should come with some human rights screening with a view to preferring those enterprises with a good track record of implementing labour and basic environmental standards, for example. In addition, financial institutions can consider human rights performance bonds/insurance products to guard against unfulfilled promises to mitigate human rights impacts, escrow or sinking funds, including those used to compensate for the environmental and social consequences of closure of operations, compensation funds for victims, and others. Many of these products can support the third pillar of the UNGPs, the access to remedy pillar.

4.2 Banking

4.2.1 Project and Corporate Finance

Across the spectrum of banking activity, banks can interact with and impact the enjoyment of human rights in a wide range of ways.¹⁸⁸ This is why some banks have for some time been carrying out environmental and social risk management, mostly in connection with long-term finance, such as project or corporate finance. This is done as part of the bank's overall enterprise risk management, credit risk management, or reputational risk management, though there is some diversity in the scope of issues captured through such risk management.

UNEP FI, the World Bank Group, regional development banks, bilateral financial institutions and some national government agencies have been encouraging environmental and social due diligence by banks for more than two decades. The World Bank's environmental and social safeguard policies¹⁸⁹ were widely referred to by both public and private financial institutions in their lending, and more recently, the IFC Performance Standards¹⁹⁰ became the standard of choice for private sector cross-border financing. While the World Bank safeguard policies are silent on human rights (other than those of Indigenous Peoples),¹⁹¹ the 2012 version of the IFC Performance Standards contains provisions that are consistent with the corporate responsibility to respect human rights under the UNGPs. The OECD Common Approaches, used by the OECD export credit agencies,¹⁹² refer to the IFC Performance Standards in the case of private sector projects, and the Equator Principles, an environmental and social risk management framework for international banks, are based on the IFC Performance Standards. According to the Equator Principles website, 80 banks in 35 countries have officially adopted the EPs, covering over 70 per cent of international project finance debt in emerging markets.¹⁹³ First adopted in 2003 by ten international banks engaged in project finance, the Equator Principles were updated for the third time in 2013 to align with the 2012 IFC Performance Standards. The updated version of the Principles broadened their scope from project finance alone to project advisory, project-related corporate loans, and bridge loans, and specifically mentions human rights due diligence as part of Principle 2.¹⁹⁴ Another initiative by the Thun Group of banks (comprised of seven European banks), announced in October of 2013, has a specific focus on implementation of Principles 16-21 of the UNGPs.¹⁹⁵

As a result, international financial institutions are gradually moving toward some kind of human rights due diligence in connection with their long-term lending, either in addition to or as an extension of their environmental and social risk management. The business case for a risk management function covering environmental and social issues has proven particularly persuasive to financial institutions. Some recent precedents of bank defaults tied directly to mismanagement of environmental risks underscore the importance of such due diligence from a financial risk management point of view.¹⁹⁶ However, it is not yet clear whether banks frequently use human rights due diligence, as opposed to or in addition to general environmental and social due diligence, since many banks are likely to be following the IFC Performance Standard approach of reserving human rights due diligence for cases of high risk situations only. Where that due diligence process includes ESIAAs, some have begun to add a human rights lens to the ESIAAs to address additional human rights issues, or as noted, in some high risk circumstances, to carry out bespoke human rights impact assessments (HRIAs).¹⁹⁷ HRIA are emerging as a new variation on classic impact assessment processes that seeks to put impacts on human rights as the centre of focus.¹⁹⁸ It is also unclear if banks link human rights due diligence to financial risks and the stability of the bank itself, or whether the main motivation is reputational risk management.

Beyond the Equator Principles, there is anecdotal evidence that banks do investigate the environmental and social performance of their corporate clients, including research on the client's adherence to voluntary or multistakeholder initiatives that are relevant to the client's sector, for example participation in commodity roundtables¹⁹⁹ in the case of financing clients in the agricultural sector. A number of these roundtable initiatives reference human rights in their standards.

There is also anecdotal evidence that some banks use their existing non-environmental and social due diligence mechanisms to ascertain human rights risks, such as know-your-customer and anti-money laundering due diligence, and legal compliance checks. However, to the extent these types of due diligence are used only to address risks to the bank, they do not serve the full purpose of human rights due diligence as spelled out in the UNGPs. The processes could be improved to align with the UNGPs; for example, banks could explore whether certain countries are the site of severe human rights abuses carried out by the state or private actors, and identify whether those are already marked as high risk by their existing systems. They can add certain human rights-related search words to their "Know Your Customer" systems to flag actors involved in human rights abuses to which they will not provide services, using reports by the UN and NGOs to identify actors that are allegedly involved in human rights abuses, including pillage, as well as other war crimes and crimes against humanity.

4.2.2 Other Activities of Banks

While it is generally agreed that the lending institution should follow through the environmental and social impacts of long-term money going into physical assets, the same consensus does not exist for general corporate finance, where funds cannot be traced to specific assets. Short-term finance, trade finance, SME finance, and on-lending to financial intermediaries do not point to any obvious human rights due diligence methodology.²⁰⁰ Beyond these lending activities, many financial products and services to corporate clients by banks, including underwriting, investment banking, risk management services, and custodian services, are not covered by the Equator Principles, or any other attempt to integrate environmental and social concerns into the bank's existing risk management processes.

4.3 Investment

4.3.1 Direct Equity Investments

Currently, where investors are specifically considering human rights in making investment decisions, several approaches are being taken: (i) exclusions or screening out of particular countries (for example South Africa, Myanmar and Sudan) or products (cluster bombs) for human rights reasons; (ii) issue- or sector-specific screening or engagement on human rights issues – for example around child labour or human rights and the extractive sector;²⁰¹ (iii) using research on compliance with human rights conventions for screening and/or engagement – for example, some ESG service providers specifically track companies involved in controversies around different human rights conventions; (iv) considering human rights as one issue among many in a broader, more systemic approach to ESG issues in the various products (as has been highlighted above).

As a result of the OECD National Contact Point (NCP) cases involving the Norwegian Sovereign Wealth Fund,²⁰² and the Dutch pension fund ABP and its pension fund administrator APG²⁰³, there is already a higher level of clarity about what the responsibility to respect human rights looks like for investors. Essentially, the expectation is the same as for other financial sector actors: investors have direct responsibilities to their own employees and for the impact of their own actions on human rights. The NCP case also made clear that investors should have in place a management system approach to human rights so that the investor can more systematically address human rights issues in the companies in which it invests. Recognizing that some investors have a vast range of holdings, the human rights due diligence approach focuses resources on where human rights impacts are most likely to be severe within their investment portfolios.²⁰⁴ The NCP case and subsequent findings from the OECD have made clear that the responsibility applies whatever the size of the investor's holding, including minority shareholdings, and whatever the structure of the transaction. What differs is whether investors have the leverage to prompt a change. But as leverage is “not a mathematical equation,” the NCP final statement highlights a number of ways investors, even minority investors, can exercise their leverage with their investee companies to prompt them to address and remedy the harm they have caused.²⁰⁵

As investors work to strengthen their ESG management systems, the human rights framework is increasingly recognized to provide an important benchmark to consolidate and systemize an approach to a wide range of social issues in ESG due diligence. But to date investors (and others) have used a broad and not always consistent mix of issues under the ‘social’ dimension of ESG, such as labour, indigenous peoples, resettlement, human capital, many of which are covered by international human rights instruments. The international human rights framework offers specific standards and process requirements that provide a structured benchmark for assessing company action in relation to “S” issues, and in many cases, these are translated into legal requirements that reinforce the approach.²⁰⁶

4.3.2 Other Types of Investments

Just as in the banking sector where initial forays have been made to incorporate human rights due diligence into more obvious transactions like project finance, but not so far into more complex products like derivatives, it is not clear whether investors are addressing human rights issues beyond direct equity investments. Investors manage assets through many different vehicles, and each presents its own type of exposure to risk and its own leverage points for integrating human rights issues. However, it is unclear whether or to what extent investors and their advisers are analysing how human rights requirements can

be built into more complex investment structures, into manager mandates, or how human rights can be applied to whole asset classes. For example:

- Real estate funds impact upon and may be affected by human rights issues related to land acquisition, including displacement and relocation and the claims of vulnerable groups (such as women, children, indigenous peoples and those who do not have formal legal rights to land or assets, but who have a claim to land that is recognized or recognizable under national law).
- Investments in private equity infrastructure funds in emerging markets may have negative impacts on a range of human rights including with respect to land, food, and water as well as on vulnerable groups including migrant workers and children.
- Trading and investing in commodities, particularly agricultural commodities, can affect the rights to food, water and health as well as land use. A number of investors have withdrawn from food commodities under pressure from campaign organizations that have linked commodity trading to food price spikes and impacts on the right to food.²⁰⁷
- Widespread human rights abuses that create political risk, as well as non-achievement of economic and social rights such as the right to education and the right to health can be relevant to a sovereign's credit rating and to its ability to raise sovereign debt.²⁰⁸
- Private equity deals that result in massive layoffs have come under the spotlight from labour unions that are increasingly focused on addressing the responsibility of private equity funds as employers in buyouts.²⁰⁹

4.3.3 Green Bonds

Currently, green bonds are a popular mechanism to raise funds for projects with intended environmental or climate benefit. The European Investment Bank was the first to issue a "Climate Awareness Bond" in 2007,²¹⁰ followed by other multilateral development banks. The green bond market has since grown exponentially. Today, municipalities and corporations are also tapping into this market, issuing bonds that claim to raise funds for green buildings, energy efficiency and renewable energy projects, including hydropower and geothermal, and urban transport and other infrastructure projects. Green bonds are expected to raise more than US\$100 billion in 2015.²¹¹

Issuers of green bonds self-label bonds as green and inform investors on the green eligibility criteria for use of proceeds. Typically, the multilateral green bonds come with environmental and social due diligence, consistent with these banks' own environmental and social standards,²¹² and municipal green bonds are also backed by some environmental due diligence, but corporate green bonds usually are not. Issuers' green assertions have no legal teeth – the bonds do not come with any covenants on eligibility criteria or use of proceeds, or annual reporting. Part of the problem has to do with the conspicuous absence of any universally agreed definition of green bonds.²¹³

More worrisome is the fact that there is no discernible initiative to have green bonds address the social and human rights impacts of projects that are financed by these bonds. An urban green transport or a largescale hydropower project will likely involve a large construction workforce with labour standards and occupational health and safety issues, as well as resettlement of people and possible changes in their livelihoods, access to services, and living standards. If these projects were to rely on project finance funding, there is a good chance that they will be required to apply the IFC Performance Standards or the Equator Principles, which mandate that all potential social and human rights issues be identified and

managed. But if the funds are raised via green bonds, issuers undergo no impacts identification or management process. While some expect that bond issuers will eventually back up their green claims out of reputational concerns, China is exploring a green bond regulation.²¹⁴

4.3.4 Investments Involving Sovereigns

The UNGPs remind states that they have an obligation to not only respect human rights, but also to protect human rights through their own actions, through their own agencies and when contracting. States are expected to “take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the state or receive substantial support and services from state agencies.”²¹⁵ These obligations apply to the state’s role in raising finance. Beyond this, there has been as yet very limited exploration of the link between the State’s obligations to respect, protect and fulfil human rights and its choices around what it finances and how or with respect to what role its own human rights performance has in influencing its ability to raise financing at a reasonable rate.²¹⁶

4.3.4.1 Sovereign Bonds and Sovereign Debt

The sovereign bond market plays a key role in providing funding for public services which are closely aligned with the state’s human rights obligations. Sovereign bonds can be issued to make up shortfalls in tax revenue and ensure the continuing provision of public services where there are fiscal deficits. Sovereign bonds also provide funding for large scale public projects like the building of schools or hospitals. Sovereign bonds therefore play a positive role in supporting human rights realization. But there has been little discussion of how human rights apply in the actual decisions around designing and implementing what is financed; for example, how the right to education should shape the choices about which type of schools to finance and where and whether the process to arrive at those decisions respects human rights principles. And there has been even less discussion on a human rights lens on the debt or bond process itself.

Sovereign bonds can also be linked to negative human rights impacts. The austerity crisis in Europe is a clear example of human rights being negatively impacted as a consequence of overspending and overborrowing by states in the bond markets. The Greek crisis has led to wide-scale negative impacts on the social and economic human rights of the Greek people, although the IMF and European institutions did not refer much to human rights obligations in European and international law while negotiating austerity measures with Greece.

Moreover, the deep financial integration of global markets can transmit risks from sovereign overborrowing rapidly to other financial markets, creating financial stability risks as well as broad human rights risks. Previous sovereign debt crisis – whether bond or loan financed – have caused significant negative human rights impacts, and there is a need to examine how human rights can be protected in these situations. The UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing do not refer explicitly to human rights, but they remind lenders that the sovereign borrowers owe a responsibility to the citizens on whose behalf they act, and that appropriate due diligence should be carried out prior to lending decisions.²¹⁷ Human rights could be included in such due diligence, particularly when a country has a poor human rights record.²¹⁸

There are also moves towards the establishment of a multilateral framework for sovereign debt restructuring and sovereign bankruptcy.²¹⁹ This aims to provide principles for an orderly workout of sovereign overindebtedness which helps the country return to growth and avoids lengthy and costly disputes with creditors. The UN General Assembly called attention to the serious social consequences of

sovereign overindebtedness, and this mechanism will help to protect human rights by enabling states to extricate themselves from overindebtedness, protecting public services, and by minimizing the risk of financial disruption caused by disorderly sovereign defaults. Although the resolution itself does not refer to human rights, the Greek situation indicates the need to include human rights assessments and protections in this mechanism. Protection for human rights is particularly necessary where hold-out creditors frustrate restructuring.²²⁰

Another area where the links are clear between bond markets and/or sovereign lending, and human rights is odious debt. In international law, this concept is that the debts of a regime that has engaged in egregious violations of human rights, such as military dictatorships, are not legally the debts of the nation, but personal debts of the regime. The state can, under this theory, repudiate the debt and refuse to pay. But very few countries have done so. Most countries continue to pay such debt, or renegotiate with creditors rather than repudiating it lest they alienate the bond market.²²¹ For example, at the end of apartheid, the new South African government decided to honour the apartheid regime's debt. Given that such debt can weigh heavily on state finances and affect the state's fulfilment of its human rights obligations, the human rights obligations of the sovereign borrower and responsibilities of creditors need to be clarified in these cases.

4.3.4.2 Sovereign Wealth Funds

As representatives of the state, sovereign wealth funds carry the state's duties to respect, protect and fulfil human rights as a matter of policy coherence. As a state-owned enterprise, sovereign wealth funds should be well placed to incorporate their government's policy objectives. Yet to date, the Santiago Principles, developed by the world's sovereign wealth funds in 2008, do not incorporate any reflection of human rights, much less broader sustainability goals.²²² But that is changing as sovereign wealth funds are increasingly under the spotlight from civil society for their role in large scale land grabbing, through the high profile case before the Norwegian NCP on the Norwegian Sovereign Wealth Fund's application of the human rights chapter of the OECD Guidelines (see Box 10:), subsequent discussions in the OECD Investment Committee on the application of the OECD Guidelines by sovereign wealth funds²²³ and further pressures to move from transparency to sustainability.²²⁴ The discussions on financing the SDGs, as the world looks to large scale investors to align with new approaches in the Financing for Development conclusions coming out of the Addis Abba meeting, will further drive this trend.

Box 10: Sovereign Wealth Funds and Human Rights: the Example of Norway

The Norwegian Sovereign Wealth Fund has been in the spotlight and at the forefront of human rights issues among sovereign wealth funds for a number of reasons:

- Early on in the life of the Fund, the Norwegian Parliament set up an Ethical Council for the Fund that screens out companies that may be involved in severe human rights violations. The Ethical Council makes its assessments public (which are followed by some other investors around the world) and has screened out investments on a number of human rights grounds.
- The Fund was the first one to be involved in a case before the OECD National Contact Point. It sparked off discussion and subsequent work in the OECD on the application of the Guidelines chapter on human rights to the financial sector (see Section 6.1.2.2). The Norwegian National Contact Point identified several dimensions of the responsibility to respect human rights that provide important guidance to investors: the importance of

setting up a system to identify and manage human rights risks in the portfolio and the need to exercise what leverage it has over a portfolio company when it is involved in human rights impacts to take actions to remedy abuses and prevent them reoccurring.²²⁵

- As a result of this case, the OECD Investment Committee has confirmed that the OECD MNE Guidelines apply to minority investors.²²⁶
- The Norwegian Parliament has since asked the Government to request the Norwegian Sovereign Wealth Fund to create an “expectations document” that sets out its expectations on human rights from the companies it invests in. The Fund already has such a document on expectations of its clients around children’s rights.²²⁷

4.4 Insurance

4.4.1 Corporate Risk Insurance

4.4.1.1 *Considering what is Included or Excluded from Insurance Coverage*

As a preliminary matter, insurers need to consider how their products and services align with human rights. Insuring activities that result in severe human rights violations or even international crimes by providing political risk or other types of insurance for activities in high-risk countries creates moral hazards on multiple levels.²²⁸ Insurers may also already have policy provisions in place that provide a basis for excluding coverage in these instances, but are not recognizing the connection to abuse of human rights, or not exercising their options to exclude coverage on this basis. For example, engaging in illegal activities or “coercive practices” may invalidate certain types of insurance. The human rights community has drawn attention to many instances of illegal use of force to evict residents – for example, land grabbing involving “coercive practices” in infrastructure, agriculture and extractives projects that typically have significant insurance coverage and may increasingly focus attention on highlighting the role of insurance companies in situations of such human rights abuses, and the leverage they have to prompt clients to address the situation by potentially triggering coercive practice clauses.²²⁹

4.4.1.2 *Building on a Due Diligence Approach*

Addressing human rights as part of the “S” in ESG appears to be the main avenue through which human rights risks are beginning to be addressed in corporate risk insurance. The CRO Forum²³⁰ Report ‘Human Rights and Corporate Insurance’ recognizes that “as risk managers and long-term investors, the insurance industry supports all sectors of the economy and has a critical interest in countries’ stability and sustainable development, at the core of which lies the protection of and respect for human rights.”²³¹ Significantly, the CRO Forum paper also explicitly recognizes that corporate risk insurance links the insurance industry to many potential human rights violations through clients’ activities. While some parts of the financial sector have been quite resistant to acknowledging that responsibility extends beyond their own employees and operations, the CRO Forum paper specifically recognizes that the extension of insurance directly links it to the wide range of human rights risks and impacts its clients may create. These risks are both transactional and reputational and are transmitted through the provision of insurance products and services to corporate customers and investments of group assets in corporate bonds and equity. But significantly, the report also specifically acknowledges the often strong correlation between respecting human rights and the quality of insured risks – highlighting the value in carrying out the due diligence.

To address these risks, the CRO Forum paper recommends a risk-based approach that enables the highest-risk transactions and investments to be made a priority, in line with emerging ESG practice and the approach suggested in the UNGPs. By focusing on the most severe adverse human rights impacts, identified on an industry- and country-specific basis, the due diligence process is practical and feasible.²³²

The UNEP FI “Principles for Sustainable Insurance” (PSI) do not explicitly address human rights.²³³ Instead, the Principles refer more generally to the management of ESG issues. As in many other areas of finance, what is within the scope of the “S” in ESG is still being explored, and defined, and will continue to evolve. Indeed, representatives of the PSI participated in the UNEP FI forum panel on human rights issues at the last UNEP Global Roundtable to explain the steps being put in place by some members of the group to address human rights risks.²³⁴

5 CONSUMER LEVEL: HUMAN RIGHTS IMPACTS ON CONSUMERS

5.1 Introduction

This chapter addresses recent developments in the provision of financial services by financial institutions to consumers. An increasing range of services are targeted towards particularly underserved populations, which is aligned with the human rights principle of focusing on the most vulnerable, an important trend. At the same time, in light of the financial crisis, some markets give enhanced attention to consumer protection and remedy for financial services customers. What has not yet emerged is an articulated vision of what an approach based on the notion of “respect your customer” rather than the prevalent and legally required notion of “know your customer” would look like at the consumer level.

5.2 Banking

Financial Inclusion and Financial Literacy Banks and some non-bank financial institutions are actively supporting the expansion of financial inclusion and access to financial services by the un-banked and underbanked (typically, the poor, disadvantaged, or marginalized groups) through targeted financial products and services. Some of these are aimed at the poor, such as microfinance, microcredit or microsavings. Other programmes, such as community banking, or small business finance, are generally mandated by national law and ensure access to finance by communities traditionally not served by banks or small businesses in need of capital to grow. Mobile banking, which has experienced explosive success in some countries such as Kenya, enables funds transfer and other financial activities via cell phones, including remittances and government transfers. Today, about 70% of the Kenyan population uses the MPesa service. In other countries, such as Ecuador²³⁵ and India, central banks have taken on an explicit role to promote financial inclusion in order to promote economic growth and job creation.

Financial products and services extended to individuals, businesses and communities that are financially excluded or underserved by the financial sector help people realize their human rights, such as the right to food, housing, health, education, and jobs, through supporting their economic participation. While the early innovators in financial inclusion and financial literacy activities were NGOs and small nonbank financial institutions, mainstream commercial banks are increasingly engaged in this subsector. Given the entrance of commercial, profit-seeking institutions into the field, building these networks poses some new challenges, particularly at the regulatory level where frameworks for consumer protection and regulatory oversight of these new products and customer groups are currently in their infancy. The risk of predation is real where vulnerable groups are involved. Another concern has been the potential for debt build up amongst those newly accessing financial products through microcredit or mobile banking, creating new problems of indebtedness rather than contributing to financial solvency.

An accompanying programme of financial literacy or education programmes in addition to regulatory protection and oversight are key to building financial participation, and have been championed by various central banks as part of efforts to build mobile banking networks. They have also become particularly popular following the 2008 financial crisis as regulators and consumer groups identified financial illiteracy as one contributory factor in the mis-selling abuses that took place. They serve an important purpose of ensuring that consumers of financial products and services understand them, including the consequences of not following their terms, as well as how to manage money, create a budget, and so on.²³⁶ Given the complicated array of financial products available to consumers, these educational programmes are an important element of consumer protection, with employers, schools, local, national and international agencies, and numerous websites providing them. Financial inclusion and

education complement each other well in that better educated and protected consumers of financial products and services tend to present smaller credit risks to the lender. As a result, there can be a win-win relationship between the two. But the inherent conflicts of interest that can result from profit-seeking financial institutions running financial inclusion need to be addressed through appropriate safeguards.

Financial regulators sometimes do not consider the adverse consequences of their regulations or do not pay attention to those consequences falling on the poorest and most vulnerable. The Know Your Customer (KYC) criteria, developed to tackle anti-money laundering (AML), are one clear example as they make it harder to implement financial inclusion strategies because the poor and marginalized often lack sufficient identification documents normally required to satisfy the KYC/AML criteria.²³⁷

Based on these developments, further integration of human rights into financial inclusion and education programmes can be expected in the future, some of which will take the shape of new national laws and regulations. The success of community banking in the United States is one example that other national regulators can emulate, as well as the growth of financial inclusion in countries such as Ecuador and India.

Box 11: Examples of Institutions that Promote Financial Inclusion/Financial Literacy

- **Responsible Finance Forum (RFF)**, founded by the German Federal Ministry for Economic Cooperation and Development (BMZ), the Consultative Group to Assist the Poor (CGAP), and IFC, brings together multiple organizations in a Community of Practice for knowledge exchange and consensus building on responsible finance.
- **Alliance for Financial Inclusion (AFI)** is a global network of financial policymakers from developing and emerging countries working together to increase access to appropriate financial services for the poor.
- **Consultative Group to Assist the Poor (CGAP)** – is a global partnership of 34 leading organizations that seek to advance financial inclusion. It is housed at the World Bank.
- **International Labour Organization (ILO)** has programmes for financial education.²³⁸

5.2.1 Access to Remedy and Liability for Consumer Transactions

Financial institutions in some jurisdictions face additional expectations under domestic laws that help protect human rights. Specifically, in recent decades, financial institutions have faced numerous lawsuits for discrimination in the provision of products and services. The subprime mortgage crisis in the US, for example, spurred a wave of such lawsuits.²³⁹

The financial crisis resulted in tougher consumer financial protection laws and institutions in some jurisdictions.²⁴⁰ The US established the Consumer Financial Protection Bureau, and the UK set up the Financial Conduct Authority. Each country also offers consumers a complaints mechanism, a place to seek redress from illegal or improper conduct of a financial institution (subprime mortgages, predatory lending, withholding financial services for economically disadvantaged communities, businesses or individuals; mis-selling pensions, etc.) such as the Financial Ombudsman Service in the UK.

Box 12: Aligning Consumer Rights in Finance with Human Rights

While the foregoing consumer protection initiatives do not make an explicit connection with human rights and the financial inclusion movement has been making steady progress largely without

referencing the human rights framework, several developments are noteworthy:

- Under the European Charter of Fundamental Rights, which entered into force in 2009, consumer protection is set out as a human right. This means that human rights principles, such as non-discrimination, transparency, and access to information, are explicitly linked to consumer protection.
- A number of countries include consumer protection as a single protected value in their constitutions (e.g. Brazil, Lithuania, Serbia, Thailand) and others recognize particular consumer “rights” (e.g. Argentina, Portugal, Poland, Timor-Leste).²⁴¹ The significance of treating consumer protection rules as human or fundamental rights is debated,²⁴² and yet undoubtedly these constitutions can strengthen national law providing for the standard of protection as well as the measure of remedies.
- The US Consumer Financial Protection Bureau articulates economic rights, including prohibition against discrimination in all manner of financial credit transactions, as enshrined in the 40-year old Equal Credit Opportunity Act, as civil rights.
- Financial inclusion practitioners are increasingly realizing that they need to take a client-centric approach in financial inclusion and education, such as a closer focus on poor clients’ right to privacy in connection with group activities that are often used to make financial inclusion and education more cost-effective. Some practitioners also use the human rights framework to prioritize and target communities most in need, such as the disabled.
- Provision of grievance mechanisms for consumers is consistent with the third pillar of UNGPs, and is a general trend within the financial system even though there is still a significant mismatch between the complaints and the mechanisms that can address them.

Financial institutions are increasingly asserting that financial inclusion in and of itself is a human right.

5.3 Investment

5.3.1 Impact Investing

The Global Impact Investing Network defines impact investing as “investments made into companies, organizations, and funds with the intention to generate social and environmental impact alongside a financial return” thus making the intention to generate positive social and/or environmental impacts through investments an essential component of impact investing.²⁴³ In this small but growing field, the fifth annual JP Morgan survey highlighted that most respondents seek to achieve impact by investing in organizations that either sell products or services that benefit a target population or provide employment to target populations.²⁴⁴ Impact investing is not necessarily driven by a human rights mission as is evident from the standard set of indicators developed by the Global Impact Investing Network which contain few human rights-specific indicators. However, impact investing provides an important avenue to strengthen a human rights approach:

- It has the potential to establish business models that may help deliver on human rights (see examples below).
- As the survey notes, it is often driven by a focus on a target population that may lend itself more readily to a human rights approach to that group.

It can prompt investors to acknowledge and consider the opportunities presented around improving social impacts, and thereby lead to consideration of human rights.

Box 13: Examples of Social Impact Bonds Delivering on Human Rights

In one of the early examples of impact investment, Goldman Sachs launched a Pay for Success (PFS) initiative to reduce recidivism and improve employment outcomes for young men at high risk of re-offending in the Boston, Chelsea, and Springfield, Massachusetts areas. Under this initiative, a service provider is only paid when a third-party evaluator determines that the initiative has achieved specific outcomes that create benefits to society and generate savings for the government. The social impact bond provides a unique model for incentivizing an alternative to incarceration and prompting a second opportunity for juvenile offenders, which is very much in line with a rights-based approach to juvenile justice.²⁴⁵ However the programme was recently cut short because it did not achieve the agreed reduction in recidivism rates.²⁴⁶

In another example, an early childhood development social impact bond is expected to result in children entering kindergarten better prepared, which in turn means fewer children will use special education and remedial services in kindergarten through 12th grade.²⁴⁷ This results in cost savings for school districts, the State of Utah and other government entities while at the same time helping to fulfil the right to education for the children involved.

5.3.2 Access to Remedy and Liability for Consumer Transactions

Investor protection is a core principle of securities regulation. The financial crisis highlighted failures of investor protection in areas of transactions in complex products, which is leading to reinforced protections, particularly for retail investors. The strengthening of protections for individual retail investors should benefit individual investors who are able to seek remedy and strengthen accountability in the sector.

Since the crisis there has also been an increased focus on whistle-blower protections which help to encourage individuals to raise concerns, increasing transparency, accountability and reducing a sense of impunity.²⁴⁸ While cases generally do not involve human rights concerns, they can help to set important precedents around non-retaliation that may in the future be applied to other areas of the law, such as those involving human rights abuses.

5.4 Insurance

5.4.1 Non-discrimination in the offering of insurance products

Several human rights principles have been woven into the core of the insurance approach in developed markets, while other human rights that are equally relevant have received little attention. As a matter of further research, it would be important to understand why some human rights have found purchase in the insurance approach while others have not – is it because some human rights have been incorporated into constitutions and so it is the constitutional values that are driving the integration, or is it that certain types of human rights (civil and political rights) are traditionally more readily considered? There has been and will continue to be extensive discussion and case law on the application of the human right to non-discrimination to insurance products, for example, whether insurers can differentiate between male and female applicants, whether people can be excluded from coverage on the basis of health status such as HIV/AIDS or mental health, or disability. National jurisprudence can have significant impacts on a wide

range of products and services and therefore should be considered as a legal risk in jurisdictions with constitutional provisions on human rights or significant human rights legislation that applies to the insurance sector.

Box 14: Developing a Set of Core Principles on Non-Discrimination and Insurance

Given the differences in national and regional approaches to non-discrimination, it is unlikely that one unified interpretation of the application of non-discrimination principles to the insurance sector could emerge. Instead, an institution like the IAIS could convene a multi-stakeholder group that includes regulators, consumer organizations and human rights organizations to develop a set of core, high level principles on non-discrimination that could be further integrated into the Insurance Core Principle (ICP) around unfair practice and then applied in national regulatory requirements. A brief review of jurisprudence in this area indicates that such a set of principles could include provisions such as the insurance industry should:

- Not continue indefinitely to use discriminatory criteria for rate setting.
- Strive to avoid setting premiums based on the grounds set out in international human rights law as a prohibited basis of discrimination and include more updated concepts of non-discrimination (such as sexual orientation).
- Not contravene those same non-discrimination grounds when proposing new risk classification systems.
- Permit exceptions to the principle of non-discrimination only where there is an apparent causal connection between the alleged discriminatory risk factor and the intended purpose of the insurance.
- Encourage the establishment of a joint industry, consumer and government mechanism that would promote dialogue on issues related to human rights in insurance on an ongoing basis.
- Develop approaches to protecting the most vulnerable.

5.4.2 Inclusive insurance

The inclusive insurance movement focuses on providing risk management services to millions of previously excluded clients – both individuals/households and micro, small and medium-sized enterprises, in the formal or informal sector.²⁴⁹ This is largely due to collaboration with national governments, but also because of more active interest by commercial insurers. In 2011, 33 of the world's 50 largest insurance companies offered microinsurance.²⁵⁰ By being able to share out risks using community-based mechanisms, the inclusive insurance movement seeks to reverse the familiar pattern in which low income, vulnerable households have no insurance, suffer adverse events and are forced into costly strategies to cope with the loss. This pattern typically exacerbates and prolongs poverty, sometimes across generations. By counteracting shocks, inclusive insurance contributes to social and economic development.

Microinsurance or inclusive insurance started as, and is generally characterized as, a poverty alleviation measure, but it is also an opportunity for the insurance sector to respect and fulfil human rights. Inclusive insurance seeks to provide tailored, accessible, affordable insurance to match particular vulnerabilities and boost productivity. It is significant from a human rights point of view because it is increasingly offered to provide access to an expanding range of human rights – the right to social security, to food, health, and housing. Microinsurance therefore plays a role in fulfilling people's rights. For example,

insurance can increase health-seeking behaviour mainly by reducing the cost of care following a health shock.²⁵¹ It also “provides a critical safety net for households, preventing them from falling into poverty by avoiding the damaging costs of emergencies and ... devastating risk coping measures such as putting children to work, eating less food, or selling productive assets.” As noted in a recent report on natural hazard risk, insurance systems (operating via public, private or mutual sectors) have contributed to realizing the basic human rights to life, livelihood and shelter in the following ways: i) providing policyholders (individuals, corporates and sovereigns) with financial protection against losses, ii) influencing risk reduction and resilience through the conditions and incentives in insurance contracts and iii) enabling financial inclusion, access to credit and creating deeper reserves of capital at the individual and collective level.²⁵²

Microinsurance schemes tend to focus on those underserved by mainstream commercial and social insurance schemes and on the most vulnerable; in that way they also align with human rights where the approach is not only focusing on the most vulnerable, but doing so in a way that is tailored to their needs to address their vulnerabilities.

While inclusive insurance can play an important role in helping to fulfil human rights, as with other positive initiatives, it will be important to ensure that human rights are also respected in offering inclusive insurance products – for example the right to privacy, right to non-discrimination, addressing the most vulnerable and to be treated with dignity. Consumer protection against unfair dealings will also be important given that the products are often offered to the most vulnerable in society. Brazil, India, Mexico, Peru, the Philippines, and Chinese Taipei have already implemented some level of regulation, both to support the adoption of microinsurance and to protect consumers by requiring that providers use simple terminology in the descriptions of their plans.²⁵³

5.4.3 Access to Remedy and Liability for Consumer Transactions

Accountability and access to remedy when abuses occur are core human rights principles that are already reflected in general in the ICP. The Principles include provisions on the unfair treatment of customers and already provide a significant basis for protecting consumers and for building on further human rights protections. A human rights lens would be relevant as an analytical basis in:

- determining what is “unfair”;
- considering whether there has been appropriate due process in addressing customer complaints; and
- considering whether remedies offered meet relevant human rights requirements. This would be relevant in considering both the government duty to provide judicial and non-judicial avenues of remedy as well as in considering whether any grievance mechanisms, complaints handling or mediation mechanisms offered by companies meet the “effectiveness criteria” established for operational level grievance mechanisms under the UNGPs.

In addition to insurance commissioners or supervisors that can hear complaints involving insurance issues, some countries also have National Human Rights Commissions/Institutions that can hear human rights complaints. Some of these have heard insurance cases and issued specific human rights guidance for the insurance industry. In addition, in OECD countries, the OECD National Contact Points which hear cases on the OECD Guidelines on Multinational Enterprises, have begun to receive complaints on the human rights aspects of insurance. In November 2013, the New Zealand NCP received a request for

review from an NGO alleging that an insurance company had breached the human rights provisions of the OECD Guidelines. The complaint alleged that people had suffered adverse impacts on their right to health as a result of the way the company had dealt with their insurance claims after an earthquake in the Canterbury region. The NCP undertook an initial assessment of the specific instance, in consultation with the Australian NCP, and concluded that the issues raised warranted further examination. The NCP has offered its good offices to help the parties resolve the issues.²⁵⁴

Box 15: Upholding Consumer Rights – The Financial Ombudsman Service

As part of the regulatory framework for the protection of consumer rights, a Financial Ombudsman Service (FOS) acts as an independent alternative dispute resolution mechanism for financial products. It provides an independent means to resolve complaints that avoids the need to pursue a claim through the courts, and is therefore a quicker, easier, cheaper and more accessible means for consumers to uphold their rights. In the UK, the FOS covers all types of financial products including: bank accounts; credit cards; insurance; mortgages and loans; investments, financial advice and pensions; money transfer services; store cards and consumer finance such as car finance.

The service enables consumers who are unhappy about the way a financial services company has dealt with their complaint to seek an independent review of the case by an Ombudsman. The Ombudsman is empowered to make a determination on the circumstances which are legally binding on the financial services firm, and to award a remedy which is designed to rectify the harm suffered by the consumer. The remedy aims to put the consumer back into the position they would have been in had the failure or misconduct at the financial services company not occurred. It is not a punitive role – the award of damages, if any, is not designed to punish misconduct; it is designed to rectify the harm suffered by the consumer.

The FOS in the UK has seen a growing number of complaints about financial products over the last decade as the financial services industry has expanded and as consumer awareness about their rights and ability to complain has increased. In 2005, the FOS received 110,000 cases, which rose to over half a million in 2013-14, and 329,500 new cases in 2014-15. On average, over half of complaints across all products were upheld in 2014-15, although in cases of systematic mis-selling such as payment protection insurance, this can be as high as over 80%.

6 GOVERNANCE AND HUMAN RIGHTS

Human rights provide important principles that should be included in financial sector policy, regulation and governance. This Chapter addresses the benefits of human rights in helping to strengthen the governance and accountability of both macro- and micro-level financial institutions, such as international and national financial regulators and private sector financial institutions respectively. It then asks how the governance structure of the key global financial institutions as well as private financial institutions might change if they incorporated an explicit human rights orientation.

The approach builds on core human rights principles of: participation and engagement; transparency; accountability and rule of law.²⁵⁵

6.1 Participation and Engagement

6.1.1 By Global Financial Institutions with their Stakeholders

Global financial institutions that set policies and rules for the financial system have very little interaction with a wider set of stakeholders. For example, central banks are meant to act independently of political pressure. Such independence is valued because independent central banks are said to avoid the inflationary bias that occurs as a result of self-interested political intervention.²⁵⁶ According to this school of thought, central bank mandates should be narrowly set to preserve such independence, because broad mandates could create opportunities for political influence.²⁵⁷ Research also shows that more independent central banks tend to be more transparent.²⁵⁸ Although central banks often do engage widely with the academic economic community, central bank independence does not necessarily enhance accountability to its population, and it could constrain the ability and willingness of central banks to engage broadly with the public and stakeholder organizations.²⁵⁹

The global financial institutions that consist of representatives of national financial institutions, such as the Basel Committee on Banking Supervision (BCBS) which represents 60 central banks, or the Financial Stability Board (FSB), established in 2009 and consisting of central bank governors and ministers of finance, seem generally remote from stakeholder engagement. These institutions are independent self-governing bodies with their own rules of procedure and are not directly accountable to the public.²⁶⁰ However, the highly technical nature of their work can often preclude direct engagement with the public.

In contrast, private sector financial institutions can be more open to engaging with civil society, although they also tend to be reluctant to disclose information about their operations and human rights risks and impacts. Many banks are legally required to file financial risk reporting but neither the bank nor banking supervisors disclose such information, even though stability of banks is a matter of public concern (see Section 6.2.2).

6.1.2 By Global Financial Institutions with Other International Organizations

The following examples highlight the types of engagement on the topic of finance and human rights that is taking place within the UN family, OECD and IFIs. It demonstrates that financial policy and rule-making institutions are engaging with stakeholders, but this is generally sporadic and limited to select stakeholders. However, given the magnitude of the challenges in the global financial system, opening macro-level policy and regulatory institutions to deeper engagement with citizens, civil society, academics, and other interested parties could help to build better understanding of the significant linkages between the two communities identified throughout this paper. Organizations such as the

Group of Thirty (Consultative Group on International Economic and Monetary Affairs),²⁶¹ which is made up of current and previous top officials from important public and private financial institutions around the world, could potentially facilitate a dialogue between the financial and the human rights community.

6.1.2.1 *United Nations Family on Finance and Human Rights*

The severe impacts of the financial crisis on human rights have spurred efforts to bridge the gap between the human rights and financial organizations in the UN family. While the UN human rights organizations often exhort the international financial institutions (such as the World Bank and IMF and the governments that make up those institutions) to take account of human rights in their work the discussions have become more specific only recently. Various UN bodies have begun to pay specific attention to the issue of finance and human rights. For example:

- A series of workshops organized by the OHCHR examined the impact of the financial crisis and austerity on human rights.²⁶²
- UN Special Rapporteurs on Extreme Poverty have examined the effects of the financial crisis and austerity programmes on human rights.²⁶³
- A series of resolutions from the UN General Assembly and the UN Human Rights Council as well as reports have been produced on the topic of vulture funds.²⁶⁴
- The UN Independent Expert on Foreign Debt and Human Rights has visited Greece to examine the austerity and debt crisis.²⁶⁵
- The Guiding Principles on Foreign Debt and Human Rights have been endorsed by the Human Rights Council.²⁶⁶
- A global programme of engagement with business, including consultation meetings dedicated to the finance sector by the Special Representative of the Secretary General on business and human rights, lead to the endorsement of the UNGPs by the Human Rights Council in 2011.²⁶⁷
- Special Procedures mandate holders sent a letter to the World Bank concerning the limited scope of review of its environmental and social safeguard policies applicable to Bank lending, and particularly its failure to address human rights sufficiently.²⁶⁸
- Interpretive opinions have been produced by the OHCHR on the application of the UNGPs to the financial sector.²⁶⁹
- The OHCHR and other UN agencies have provided input on the human rights dimensions of the third Finance for Development Conference (see Box 3).²⁷⁰
- UNEP FI has a work stream on finance and human rights.²⁷¹
- The PRI, UNCTAD, UNEP FI and Global Compact fostered the Sustainable Stock Exchange Initiative.²⁷²
- ILO has Social Finance²⁷³ and Impact Insurance²⁷⁴ Programmes.

Box 16: Interaction between climate change and human rights

Since the United Nations Human Rights Council's resolution on human rights and climate change in 2008, expressed concern that climate change "poses an immediate and far-reaching threat to people and communities around the world," the UN-based climate change and human rights communities have come together regularly to discuss the human rights implications of climate change. As the December 2015 Conference of the Parties to the United Nations Framework Convention on Climate Change in Paris approaches, the pace of dialogue between the climate change and human rights communities is accelerating, and new initiatives and coalitions are taking

shape. For example, in February 2015, 18 states signed the Geneva Pledge for Human Rights in Climate Action, through which the signatory countries voluntarily commit to facilitate the sharing of best practices and information among human rights and climate experts at a national level. On the occasion of World Environment Day, all the UN Special Procedures signed a joint statement on climate change, drawing attention again to the grave harm climate change poses to the worldwide enjoyment of human rights, and urging states to include language in the 2015 climate agreement providing that the Parties shall respect, protect and fulfil human rights, in all of their climate change related actions.²⁷⁵

6.1.2.2 Organisation for Economic Cooperation and Development (OECD) on Finance and Human Rights

The OECD has several work plans that involve intersections with finance and human rights, but it is unclear if there is coordination across the streams of work listed below:

- Work of the Investment Division of the Directorate for Financial and Enterprise Affairs concerning the application of the OECD Guidelines chapter on human rights to the financial sector, namely:
 - Clarifying opinions on the application of the following aspects of the OECD Guidelines chapter on human rights to the financial sector:²⁷⁶
 - the scope and application of “business relationships” in the financial sector, including minority shareholdings.²⁷⁷
 - the concept of “adverse impacts directly linked to financial sector operations, products or services by a business relationship.”²⁷⁸
 - Forthcoming “proactive agenda” programme on the application of the human rights chapter of the Guidelines to the financial sector that is expected to explore how human rights due diligence can be carried out on a wider range of financial products.
- Work on revising the OECD Principles of Corporate Governance, which now includes repeated references to human rights²⁷⁹ (see Section 6.4.2).
- Work of the Working Party on Export Credits and the Credit Guarantees Working Group to coordinate the OECD export credit agencies’ application of the UN Guiding Principles on Business and Human Rights to export credits through the Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence.²⁸⁰
- Work on tax avoidance through the Base Erosion and Profit Shifting action.²⁸¹
- Ongoing surveys of the quality of life in OECD member states with a view to understanding the impacts of the financial crisis and subsequent austerity measures.²⁸²

6.1.2.3 IFC, World Bank Group

IFC had a measure of success in engaging a number of central banks from developing countries in discussions on the desirability of guiding banks in their environmental and social risk management. The main objective of IFC’s Sustainable Banking Network programme is to facilitate the collective learning of its members and to support them in policy development to create drivers for sustainable finance practices.²⁸³ While most of the discussions and guidance made available by central banks have focused on the environment to date, there are also examples of social risk guidelines and guidance on human rights which can be further strengthened and expanded (see Box 6:).

6.2 Access to Information and Transparency

If information is the lifeblood of the market, access to information is crucial to the exercise of many human rights. It is an area where the interests of financial regulators and the human rights community clearly overlap. There are opportunities to promote standardized formats for reporting that includes the disclosure of human rights risks, as well as opportunities to take advantage of improved third party risk assessments, indicators, and scorecards that take into account human rights risk factors. Putting information in the hands of stakeholders empowers them to make better informed decisions and participate in policymaking.

6.2.1 Macro-Level: The Financial Sector Assessment Program (FSAP)²⁸⁴

Following the Asian financial crisis in the late 1990s, the IMF and the World Bank created the FSAP to alert countries to likely financial sector vulnerabilities and to assist the World Bank, the IMF and the international community in designing appropriate assistance in response to the assessments. The FSAP has three main components: (1) an assessment of stability of the financial system, including macroeconomic factors; (2) an assessment of the extent to which relevant financial sector standards, codes, and good practices are observed – this signals to policymakers that they need to pay attention to them beyond financial stability because they contribute to sound markets; and (3) an assessment of the financial sector's reform and development needs.

Even though the FSAP programme failed to predict the 2008 financial crisis and was blamed for being too soft on some countries, it presents an interesting opportunity to factor in additional considerations, possibly under the heading of market integrity. These could include how well a national financial system takes into account potential social issues that may contribute to instability of a financial institution and possibly wider systemic instability. Once countries begin to incorporate the new OECD Corporate Governance Principles that direct boards to take into account human rights issues where relevant, the FSAP will be a way of linking up these agendas and may demonstrate a different type of systemic risks in a country's financial system.

6.2.2 Micro Level: Financial Institution's Self-Reporting

Currently, US banks report their financial risks individually, each using its own format. Since internal risk models are considered proprietary, risk methodologies are not disclosed to the public. The robustness and reliability of risk models is uncertain, and it is also not clear whether a meaningful internal review of such reports or validation by supervisors can be performed. There is an opportunity to standardize and improve transparency and disclosure practices of these institutions, using an open platform, and potentially with citizen input in the process, including input on human rights risks to the financial institutions.²⁸⁵ Such reporting format should take care to handle the issue of materiality or salience of human rights risks from a non-financial point of view. This is to ensure that the financial materiality lens currently used in financial reporting does not exclude salient but financially non-material issues, such as instances of human rights abuses (by the financial institutions or their clients) that are limited in scope but severe in nature.

Large financial institutions in the European Union will soon have to report on their human rights impacts, like other large companies. The EU Non-Financial Reporting Directive²⁸⁶ requires certain large companies to disclose in their management report information on policies, risks and outcomes as regards environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors.

6.3 Accountability, Remedy and Rule of Law

The concepts of accountability, remedy and the rule of law are at the heart of the human rights system. Under these principles, states are answerable to their population for the observance of human rights. Individuals, the media, civil society, and the international community play important roles in holding governments accountable for their obligation to uphold human rights. As highlighted above, states must also hold business to account for respecting human rights, and put in place effective judicial and non-judicial remedies for those who have been harmed by businesses.

With respect to remedy at the systemic level, the financial crisis highlighted the difficulty of holding financial institutions to account for their contribution to the systemic, diffuse and widespread impacts of the crisis. Very few individuals or financial institutions were held accountable for the crisis – indicating the difficulty of establishing clear causal links between one financial institution’s actions and human rights harm when dealing with systemic risk. At a time when the UNGPs are pushing for accountability and remedy to individuals harmed, the financialization of many products and services is pushing in the opposite direction, making it increasingly difficult to hold any financial institutions to account to individuals, due to complex structuring and attenuated chains of responsibility.²⁸⁷ This leaves individuals with little recourse and regulators struggling to implement effective regulatory structures to manage this complexity. Other, broader impacts, expressed as externalities around financing choices, go largely unaccounted for,²⁸⁸ even where there are tools such as cost-benefit analysis that could in theory capture such externalities.²⁸⁹

Box 17: Measuring how finance serves society - the Citizens’ Dashboard of Finance

The “Citizens’ Dashboard of Finance” is a civil society initiative led by Finance Watch²⁹⁰ that aims to answer the question: is finance serving society? Its purpose is to fill a gap in the official response to the financial and economic crises, by defining what civil society itself wants from the financial sector, measuring how well those needs are being met, and proposing ways to improve them. It is based on the “dreams and nightmares” of dozens of civil society representatives, who have worked together for more than a year to develop the concept.²⁹¹

At the heart of the project is a “dashboard” of more than 20 official and other data sources that measure the real impacts of finance on society, which are rarely found in the impact assessments that accompany proposals for new financial regulation. These include the sector’s effectiveness in allocating capital to productive activity, its stability, its political influence, its contributions to tackling climate change, and its effect on social inclusion and equality, among other things.

Examples of indicators include the average holding periods for securities, lobbying expenditure, funding for renewable energy, access to basic bank account and pay ratios. The data will be verified by experts through the Dashboard’s scientific committee.

The project is open to new stakeholders (including academics, policymakers, sustainable businesses and finance practitioners) who can help develop the vision, propose indicators and contribute change proposals. The current list of indicators is the result of workshops and research involving nearly 30 civil society organizations and other experts, including consumer groups, trade unions, environmental and other NGOs such as ShareAction, Friends of the Earth Europe, Caritas, NFU, BEUC and others. The project was initiated in 2014 by Finance Watch, a public interest advocacy set up to act as a counter-weight to the financial industry lobby.

The data raises fascinating and fundamental questions that go beyond the objectives of official reform efforts. By using empirical data to pose questions about whether the financial system is making society more or less sustainable, more or less fair, more or less productive, and more or less democratic, the hope is that the Dashboard will provide a starting point for exciting new policy directions in financial reform.

Box 18: Global Financial Governance and Impact Reports

The New Rules for Global Finance²⁹² is a non-governmental organization, with the aim to promote reforms in the rules and institutions governing international finance and resource mobilization, in order to support just, inclusive and economically sustainable global development. One of its flagship publications is the annual Governance and Impact Report, which provides critical assessment of the major global institutions engaged in international financial rule-making: the FSB, G20, IMF, OECD, World Bank, and tax rule-making bodies comprised of OECD, the IMF, and the UN Tax Committee. Now in its second edition, the report measures governance impacts of these organizations using the following four criteria: transparency, accountability, inclusiveness, and responsibility. The 2014 report is based on an improved methodology to assess the impact of these organizations, with the aim to evaluate how these global financial institutions affect poverty and inequality. The 2014 report observed that all institutions' overall governance scores remain at moderate to poor levels.

At the corporate level, even where banks have been involved in serious, international crimes, prosecutions are rare. Lender liability jurisprudence for human rights harms, even serious harms, is nascent (see Section 4.1.2). The recent raft of cases involving banking misconduct in the US and UK are based on fraud rather than human rights and in some cases do not compensate individuals for harm suffered as a result of their activities – another clear gap from the human rights principle of accountability to individuals harmed.

As specified under Pillar III of the UNGPs, operational level grievance mechanisms created and managed by companies offer a route for resolving grievances before they turn into major disruptions; they also provide valuable information about the company's operations and areas of improvement from a human rights perspective. However, in the financial sector, these mechanisms are still a rarity, except among development banks (see Section 4.1.2).

At the consumer level, as mentioned above, consumer financial protection legislation in numerous jurisdictions provides ombudsman or complaints mechanisms so that consumers of financial products and services can bring complaints against specific financial institution. It is expected that these mechanisms will proliferate in the coming years. While such developments are helpful to individual consumers, these grievance mechanisms may not be well suited to handling complaints on extremely complicated financial products or products that are global in nature and create diffused local impacts.

6.4 Human Rights and the Governance Structure of Macro- and Micro-Level Institutions that Shape the Global Financial System

Good governance is a key element in enhancing relationships with an organization's stakeholders, as well as promoting improvements in processes and accountability. Broadening and strengthening the voice and participation of stakeholders in international economic decision-making and standard setting will enhance global economic governance, and is a first step toward a governance structure that is

consonant with human rights principles such as participation and engagement, transparency, accountability and the rule of law. This section looks into some aspects of the governance structure of macro- and micro-level financial institutions to see whether an explicit human rights orientation in these organizations will require improvements in the governance structure.

6.4.1 Macro-Level Institutions

The global nature of the 2008 financial crisis highlighted the need for necessary reforms that are also global in nature, rather than reforms initiated by a self-selected group, whether the G7, G8, G20, or otherwise. A global and inclusive response means efforts for reforms must encompass representatives of the entire planet, “the G-192”.²⁹³ Not only is this inclusive configuration consistent with the human rights principles of participation and engagement, but it also enables a much needed interaction between innovations occurring in the global south, particularly those taken up by central banks and banking regulators in relation to human rights risks and their possible effects on stability and the resilience of national financial systems.

In fact, the key macro-level financial institutions, such as the BCBS, FSB, IMF and the World Bank are already under pressure to evolve their governance structures to ensure inclusiveness. For example, the IMF instituted a process in 2010 to reform its Executive Board and the quota system,²⁹⁴ and the World Bank also undertook a voice and participation reform process to ensure greater participation of developing and transition countries.²⁹⁵ The Third Finance for Development Conference (see Box 3:) called on the IMF and the World Bank to make further governance improvements to adapt to changes in the global economy and invited the Basel Committee and other main international regulatory standard setting bodies to continue efforts to increase the voice of developing countries in norm-setting processes to ensure that their concerns are taken into consideration.²⁹⁶ While these are cautious incremental changes in governance structures, and the changes do not relate to human rights in any explicit ways, they will result in more inclusive governance structures.

Compared to the BCBS, IMF or the World Bank, the FSB is the newest global governance body and has an explicit focus on the stability of the international financial system. Its membership extends well beyond the G20 countries, though it is by no means universal – it is largely comprised of representatives of financial institutions from the advanced economies. Despite its recent establishment, and because of its important mandate, many observers have already called for improvements to the FSB’s governance structure.

In 2011, the High-Level Panel on the Governance of the FSB, an independent initiative by the Brookings Institution with several other institutions coordinated by the New Rules for Global Finance, issued a set of twelve recommendations to improve the governance of the FSB.²⁹⁷ The recommendations are wide ranging and cover substantive issues as well as recommendations around the FSB’s corporate form, chair, staff, membership, and transparency. The following three recommendations are particularly worth noting for the purposes of this paper:

- Recommendation 1. The mandate of the FSB should cover all systemically relevant issues, including those originating from the interaction between the macroeconomy and the financial system, whether or not the G20 articulates them specifically.
- Recommendation 4. The FSB should establish a working group to explore ways to simplify and rationalize the existing institutional patchwork of SSBs and other similar groupings.

- Recommendation 10. The membership of the FSB's regional consultative groups should be determined using a bottom-up approach through broad consultations with national authorities.

While the first recommendation is aimed at having the FSB investigate issues such as cross-border capital flows, currently a gap area, a broader mandate would be welcome for a series of systemically relevant issues, such as the relationship between financial institutions' human rights risk management and systemic risks to financial institutions.²⁹⁸ Recommendation 4 refers to SSB or Standard Setting Bodies, which set out the relevant economic or financial standards listed in the Compendium of Standards.²⁹⁹ The suggested Working Group could investigate the efficacy of including or at least linking up to standard setting bodies that set human rights or social standards applicable in finance. Finally, while the High-Level Panel clearly preferred universal membership, in the meantime, it recommended regional consultative groups to carry out broad consultation with national authorities.³⁰⁰ Such an approach could enable the FSB to pay closer attention to innovations occurring in developing countries in environmental and social risk management by banks, and its relationship to microprudential and macroprudential risks (see Section 3.2.3).

6.4.2 Micro-Level Institutions

Commentators note that human rights are increasingly relevant to corporate governance.³⁰¹ As a result, corporate boards as well as investors are beginning to be exposed to the relevance of the UNGPs to their responsibility, by way of corporate governance principles. This alignment could send a strong signal to corporate boards about their responsibility toward stakeholders and the need for internal controls to manage human rights impacts, and to investors about the importance of taking human rights into account in their investment and engagement strategies.

This trend has been recently reinforced by the newly updated G20/OECD Principles of Corporate Governance.³⁰² As the FSB notes, increasingly, governments have recognized that corporate governance is a key element in improving growth and ensuring market integrity and financial stability. These Principles focus on publicly traded companies, and can be used by policymakers to develop the legal and regulatory frameworks for corporate governance. They specify what is needed to ensure the strategic guidance of the company by its board and the effective monitoring of management, explain the role of stakeholders in corporate governance, and “outline in a principles-based manner what is needed to ensure timely and accurate disclosure on all material matters regarding the corporation.”

The new Principles emphasize “active co-operation between corporations and stakeholders” – under the Principles, stakeholders include employees, creditors, customers, suppliers and local communities³⁰³ – and underline the importance of recognizing the rights of stakeholders established by law or through mutual agreements. In addition, “many firms make additional commitments to stakeholders. ... For multinational enterprises, this may in some jurisdictions be achieved by companies using the OECD Guidelines for Multinational Enterprises for due diligence procedures that address the impacts of such commitments.”³⁰⁴ As mentioned already, the MNE Guidelines include a chapter on human rights, consistent with the UNGPs. Companies should (or in some countries are obliged to) disclose relevant information to stakeholders, as part of the overall non-financial risk reporting on “ethics, the environment, ... social issues, human rights and other public policy commitments.”³⁰⁵

Consistent with the foregoing emphasis on stakeholders, the Principles make clear that the role of the board includes taking into account the interests of stakeholders,³⁰⁶ as part of their responsibility to apply high ethical standards, and that companies could create codes of conduct, or create commitments in

reference to the MNE Guidelines. In addition to promoting ethical commitments and behaviour, the board must also ensure the effectiveness of internal controls that comply with applicable laws, including “... those relating to taxation, human rights, the environment, fraud, and money laundering”.³⁰⁷

These new provisions in the Principles remove any doubts about whether human rights risks have a proper place in the agendas of boards of directors’ meetings, and affirm the human rights underpinning of the corporation’s approach to ethics, and the need to address human rights risks as part of the corporation’s internal controls. This also implies that board sub-committees, such as the risk or audit committee, should address any financial and non-financial risk implications arising from human rights risks faced by companies, including financial institutions, prompting boards to ask whether they have sufficient capacity to address the diverse mix of risks that should be addressed by boards and board committees. Such an inquiry could result in a more diverse membership of boards and board committees that reflect the diversity of corporate stakeholders, and can begin to address the rights and interests of stakeholders. These developments at the board level should set the tone at the very top of the corporation, and should influence the competency, behaviour and performance of management, and could lead to changes in management structure, as well as incentives.

Thus, the new Principles could be one of the more significant business and human rights developments since the UNGPs, influencing how companies and boards view human rights through the corporate governance lens, and possibly shape future governance structures within micro-level financial institutions.

¹ Meeting Report. Available at: <http://www.ihrb.org/pdf/2014-12-04-IHRB-UNEP-Inquiry-Meeting-Report.pdf>

² www.ihrb.org

³ OHCHR, International Bill of Rights. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

⁴ United Nations (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Available at: http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

⁵ Ra’ad Al Hussein, Z. (2015). Ethical Pursuit of Prosperity. at Law Society Gazette, 23 March 2015. Available at: <http://www.lawgazette.co.uk/analysis/comment-and-opinion/ethical-pursuit-of-prosperity/5047796.fullarticle>

⁶ For example see OECD Guidelines for Multinational Enterprises (2011). Available at: <http://www.oecd.org/corporate/mne/> And ISO 26000. Available at: <http://www.iso.org/iso/home/standards/iso26000.htm>

⁷ The 2009 Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System put it well on what the reform of the international system must have as its goal: the improved functioning of the world’s economic system in support of the global good. This entails simultaneously pursuing long-term objectives, such as sustainable and equitable growth, creation of employment in accordance with the ‘decent work’ concept, responsible use of natural resources, reduction of greenhouse gas emissions, and more immediate concerns, including addressing the challenges posed by food and financial crises and global poverty (p.13). United Nations (2009). Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System. Available at: http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf

⁸ Smith, A. (1776). An Inquiry into the Nature and Causes of the Wealth of Nations, Penguin, 1982; Smith, A. (1759). The Theory of Moral Sentiments, Penguin, 2010.

⁹ OECD National Contact Points have handled 36 specific instances involving the financial sector to date.

¹⁰ See for example <http://business-humanrights.org/en/corporate-legal-accountability-quarterly-bulletins>

¹¹ See the series of blogs on the proposed treaty: <http://www.ihrb.org/tags.html?tag=business+and+human+rights+treaty>

¹² Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups amends the Accounting Directive 2013/34/EU. Available at: http://ec.europa.eu/finance/accounting/non-financial_reporting/index_en.htm

¹³ See Institute for Human Rights and Business (2015). Business and the Sustainable Development Goals: Mind the Gap, Chapter 3. Available from: <http://www.ihrb.org/publications/reports/state-of-play-series.html>

¹⁴ See Sustainable Energy for All (SE4ALL). Available at: <http://www.se4all.org/>

¹⁵ See for example IFC’s China Utility-Based Energy Efficiency Finance Program (CHUEE). Available at: http://www.ifc.org/wps/wcm/connect/RegProjects_Ext_Content/IFC_External_Corporate_Site/Home_CHUEE/

¹⁶ For example, complaints that were investigated by the World Bank Inspection Panel or IFC Compliance Advisor Ombudsman.

¹⁷ In the case of the Green Climate Fund, it chose to use the IFC Performance Standards as their interim due diligence standard. See Green Climate Fund’s Guiding Framework and Procedures for Accrediting National, Regional and International Implementing Entities and Intermediaries, Including the Fund’s Fiduciary Principles and Standards and Environmental and Social Safeguards. Available at: http://gcfund.net/fileadmin/oo_customer/documents/MOB201406-7th/GCF_Bo7_02_Guiding_Framework_for_Accreditation_fin_20140512_16.30_hrs.pdf

¹⁸ <http://www.project-syndicate.org/commentary/g20-infrastructure-investment-by-nancy-alexander-2015-07>

¹⁹ United Nations (2015). Transforming our world: the 2030 Agenda for Sustainable Development. Available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>

²⁰ Dowell-Jones, M. and Kinley, D. (2011). Minding the Gap: Global Finance and Human Rights. Ethics & International Affairs, Volume 25, No. 2, 2011; Dowell-Jones, M. (2012). International Finance and Human Rights: Scope for a Mutually Beneficial Relationship. Global Policy, Volume 3, No. 4, 2012

²¹ Comments by Andrew Haldane, Executive Director for Financial Stability, Bank of England, at the Institute of Regulation & Risk, Hong Kong, 30 March 2010.

²² See for example <http://www.socialprotectionfloor-gateway.org/index.html>

²³ Piketty, T. (2014). Capital in the Twenty-First Century. Harvard University Press, 2014; Piketty T., & Zucman, G. (2014). Capital is Back: Wealth-Income Ratios in Rich Countries 1700-2010. Quarterly Journal of Economics, Volume. 129, Number. 3, 2014, p. 1255-1310.

²⁴ Carney, M. (2014). Inclusive Capitalism: Creating a Sense of the Systemic. Selected Speeches and Essays from Participants at the Conference on Inclusive Capitalism. London (2014), p. 35.

²⁵ Haldane, A. (2014). Unfair Shares. Remarks given by Andrew Haldane, Executive Director, Financial Stability, Bank of England, at the Bristol Festival of Ideas, Bristol, 21 May 2014. Available at: <http://www.bankofengland.co.uk/publications/Pages/speeches/2014/732.aspx>

²⁶ Carney, M. (2014). Inclusive Capitalism: Creating a Sense of the Systemic. Selected Speeches and Essays from Participants at the Conference on Inclusive Capitalism. London (2014), p. 33.

²⁷ See note 7.

²⁸ See note 8.

²⁹ Financial Crisis Inquiry Commission (2011). Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, Public Affairs, New York, 2011, Chapter 7, pp.102-126 for an

overview of the underlying mis-selling practices which were masked by demand for subprime mortgage products and the over-reliance on statistical models for risk and valuation.

³⁰ Berkes, F. and Folke, C., eds. (1998). *Linking Social and Ecological Systems: Management Practices and Mechanisms for Building Resilience*. Cambridge University Press, 1998. Complex systems science also emphasizes the co-dependency of systems, with complex feedback processes and transmission mechanisms spanning the networks inherent in such systems

³¹ Taleb, N. N. and Blyth, M. (2011). *The Black Swan of Cairo: How Suppressing Volatility Makes the World Less Predictable and More Dangerous*. *Foreign Affairs* Volume 90, Number.3, 2011, pp. 33-39, at p. 34.

³² Trebilcock, M. J. and Mota Prado, M. (2011). *What Makes Poor Countries Poor? Institutional Determinants of Development*. Edward Elgar, 2011; Rodrik, D. (2008). *One Economics, Many Recipes: Globalization, Institutions and Economic Growth*. Princeton University Press, 2008; Dowell-Jones, M. (2012). *Investing in Emerging Markets: The Ethical Context*. *The Journal of Corporate Citizenship*, Issue 48, Winter 2012, pp.75-90.

³³ http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx

³⁴ The Declaration on Fundamental Principles and Rights at Work commits Member states to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. ILO Declaration on Fundamental Principles and Rights at Work (1998). Available at: <http://www.ilo.org/declaration/thedeclaration/lang-en/index.htm>

³⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

³⁶ <http://www.ilo.org/declaration/thedeclaration/lang-en/index.htm>

³⁷ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

³⁸ <http://bangkok.ohchr.org/programme/regional-systems.aspx>

³⁹ Ruggie, J., “The [corporate] responsibility to respect [human rights] is not a law-free zone.” International Bar Association Interview (2010). Available at: <http://www.ibanet.org/Article/Detail.aspx?ArticleUId=4b5233cb-f4b9-4fcd-9779-77e7e85e4d83>

⁴⁰ There are four core labour standards supported by eight core ILO conventions set out in the Declaration, which together address child labour, forced labour, non-discrimination, freedom of association and collective bargaining. ILO Declaration on Fundamental Principles and Rights at Work (1998). Available at: <http://www.ilo.org/declaration/thedeclaration/lang-en/index.htm>

⁴¹ United Nations (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Commentary to Principle 12 of the UNGPs. Available at: http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

⁴² Ibid. Principle 8 of the UNGPs.

⁴³ At the time of this report, the World Bank safeguard policies were in the process of being updated. The draft policies released by the World Bank were severely criticized for failing to acknowledge human rights impacts in Bank lending and Bank process of assessing environmental and social impacts. See for example the comment of Philip Alston, the Special Rapporteur on Extreme Poverty. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15275&LangID=E>. See also the letter of 28 special mandate holders to the World Bank President. Available at: <http://www.ohchr.org/Documents/Issues/Epoverty/WorldBank.pdf>

⁴⁴ See for example: Hassan, R. NGO Forum on ADB (2015). *Civil society concerns on AIIB’s draft environment and social framework (ESF) consultation plan* Available at: <http://business-humanrights.org/en/asian-infrastructure-investment-bank-aiib-holds-consultations-on-its-environmental-social-framework-ngos-say-process-is-grossly-inadequate>

⁴⁵ Third Financing for Development Conference (2015) Outcome Document. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.227/L.1

⁴⁶ Institute for Human Rights and Business (2015). *Business and the Sustainable Development Goals (SDG): Mind the Gap – Challenges for SDG Implementation*. Available at: <http://www.ihrb.org/publications/reports/state-of-play-series.html>

⁴⁷ Carney, M. (2015). Letter to G20 Finance Ministers and Central Bank Governors, 9 April 2015.

⁴⁸ Parliamentary Commission on Banking Standards. *Changing Banking for Good: First Report of Session 2013-14, Volume 1: Summary, and Conclusions and Recommendations*, UK House of Commons Library, June 2013, p.20, para.32.

⁴⁹ Dowell-Jones, M. (2013). *Financial Institutions and Human Rights*. *Human Rights Law Review*. Vol. 13, No. 3, 2013. pp.423-468.

⁵⁰ Lagarde, C. (2014). *Economic Inclusion and Financial Integrity*, in *Making Capitalism More Inclusive*, London, 27 May 2014, p. 10

⁵¹ Mulder, H. (2015). *The Role of Financial Institutions in Advancing Responsible Value Chains – Insights from a Dialogue Series with Dutch Financial Institutions*. Available at: http://www.dsfi.nl/wp-content/uploads/2014/09/Herman-Mulder-2015_The-Role-of-Financial-Institutions-in-Advancing-Responsible-Value-Chains_Duisenberg-Strategy-Series-201503-1.pdf

⁵² For example the UNGPs have been incorporated into the updated 2011 OECD Guidelines on Multinational Enterprises, in ISO 26,000, were referenced by the G7 in their latest statement and in the 2012 IFC Performance Standards and 2014 revision of the Equator Principles.

⁵³ See for example the wide range of activities reported daily on the Business and Human Rights Resource Centre. Available at: <http://business-humanrights.org/>

⁵⁴ See for example www.trueprice.org, a social enterprise that helps organizations quantify, value, and improve their impact on society.

⁵⁵ <http://www.ihrb.org/commentary/rana-plaza-factory-collapse-two-year-anniversary.html> and http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_374239/lang-en/index.htm

⁵⁶ Under the EU Charter of Fundamental Rights, consumer protection is considered a fundamental right. Available at: http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

⁵⁷ See Box 12: for a list of countries with constitutions that refer to consumer protection.

⁵⁸ http://www.communityinvestment.org.uk/?page_id=486

⁵⁹ <http://www.un.org/esa/ffd/ffd3/>

⁶⁰ http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.227/L.1

⁶¹ <http://www.ohchr.org/Documents/Issues/MDGs/Post2015/HRAndFinancingForDevelopment.pdf>

⁶² United Nations (2009). Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System, p. 52.

⁶³ Ibid.

⁶⁴ There is a large literature on these subjects. See for example: Lawler, P. (2001). Monetary Policy, Central Bank Objectives, and Social Welfare with Strategic Wage Setting. Oxford Economic Papers, Volume. 53, 2001, pp.94-113; Lawler, P. (2004). Monetary Uncertainty, the Appropriate Choice of Central Banker and Social Welfare. Economic Issues, Volume. 9, Number.2, 2004, pp.43-50; Tervala, J. (2012). International Welfare Effects of Monetary Policy. Journal of International Money and Finance, Volume.12, Number.2, 2012, pp.356-376; Blanchard, O. and Gali, J. (2008): Labor Markets and Monetary Policy: A New-Keynesian Model with Unemployment. National Bureau of Economic Research, NBER Working Paper no. 13897, March 2008.

⁶⁵ In response to the financial crisis of 2007-9, and the Eurozone sovereign debt crises, some NGOs have started to address issues relevant to central bank mandates. See in particular Righting Finance, www.rightingfinance.org/?s=central+banks and the Center for Economic and Social Rights' 'Rights in Crisis' work: <http://cesr.org/section.php?id=139>.

⁶⁶ Cottier, T. and Satragno, L. (2014). 'The Potential of Law and Legal Methodology in Monetary Affairs.' In Cottier, T. et al, eds. The Rule of Law in Monetary Affairs. Cambridge University Press, 2014, supra note 68, pp.411-433, at p. 411.

⁶⁷ And thus having an impact on rights like the right to work, right to just and fair conditions of labour (particularly wage setting), an adequate standard of living, right to housing, food and other basic goods, and, through the impact of interest rates on pensions and savings, the right to an adequate standard of living in old age.

⁶⁸ Lastra, R. (2006). Legal Foundations of International Monetary Stability. Oxford University Press, 2006; Cottier, T., Lastra, R., Tietje, C. and Satragno, L., eds. The Rule of Law in Monetary Affairs. Cambridge University Press, 2014.

⁶⁹ The goal of 'stable prices' was only added to the US Federal Reserve Act in the 1970s as monetarism came to the fore of economic thinking Section 2(a) of the Federal Reserve Act (12 USC 225a), which was added by Act of 16 November 1977 (91 Stat 1387).

⁷⁰ To the extent that these powers involve the expropriation of, or interference with, property rights, they must be consistent with Article 1 Protocol 1 of the European Convention of Human Rights. Article 1 Protocol 1 (which is incorporated into domestic law by the Human Rights Act 1998) prevents individuals and legal entities within the European Union from being deprived of their possessions and property rights except in the public interest. See Davies, G. and Dobler, M. (2011). Bank Resolution and Safeguarding the Creditors Left Behind. Bank of England, 2011 Quarterly Bulletin Q3, pp.213-223, at p.216. The same point has been made in relation to the European resolution mechanism: "for the [resolution] regime to be lawful, it must satisfy the requirements of human rights provisions". Attinger, B. J. (2011). Crisis Management and Bank Resolution: Quo Vadis, Europe? European Central Bank Legal Working Paper Series No. 13, December 2011, p.10.

⁷¹ See note 25.

⁷² The impacts of the financial crisis on the most vulnerable was catalogued in World Bank: The Global Monitoring Report 2010: The MDGs After the Crisis, Washington D.C., World Bank, 2010.

⁷³ Carney, M. (2014). Inclusive Capitalism: Creating a Sense of the Systemic, Speech given by Mark Carney, Governor of the Bank of England, at the Conference on Inclusive Capitalism, London, 27 May 2014.

⁷⁴ Turner, A. (2014). Wealth, Debt, Inequality and Low Interest Rates: Four Big Trends and Some Implications. Cass Business School, 26 March 2014; Haldane, A., et al, Capital in the 21st Century, Bank of England, Quarterly Bulletin, 2015, Q1, pp.36-46; Haldane, A. (2014). Unfair Shares. Remarks given by Andrew Haldane, Executive Director, Financial Stability, Bank of England, at the Bristol Festival of Ideas, Bristol, 21 May 2014. Available at: <http://www.bankofengland.co.uk/publications/Pages/speeches/2014/732.aspx>; Yellen, J. (2015). Economic Inequality and Mobility. Opening Remarks by Janet Yellen, Chair of the Board of Governors of the Federal Reserve System, at the 'Economic Mobility: Research and Ideas on Strengthening Families, Communities and the Economy' Conference, Washington D.C., 2 April 2015; Coeuré, B. (2012). What Can Monetary Policy Do About Inequality? Speech by Benoit Coeuré, Member of the Executive Board of the European Central Bank, at the 'Extreme Poverty and Human Rights, Fourth World Committee' Event, European Parliament, 17 October 2012.

⁷⁵ See note 25.

⁷⁶ Mersch, Y. (2014). Monetary Policy and Economic Inequality. Keynote Speech by Yves Mersch, Member of the Executive Board of the European Central Bank, at the Corporate Credit Conference, Zurich, 17 October 2014.

⁷⁷ Coeuré, B. (2012). What Can Monetary Policy Do About Inequality? Speech by Benoit Coeuré, Member of the Executive Board of the European Central Bank, at the 'Extreme Poverty and Human Rights, Fourth World Committee' Event, European Parliament, 17 October 2012.

⁷⁸ Yellen, J. (2015). Economic Inequality and Mobility. Opening Remarks by Janet Yellen, Chair of the Board of Governors of the Federal Reserve System, at the 'Economic Mobility: Research and Ideas on Strengthening Families, Communities and the Economy' Conference, Washington D.C., 2 April 2015; Coeuré, B. (2012). What Can Monetary Policy Do About Inequality?

⁷⁹ Huang, H. and Wei, S. J. (2006). Monetary Policy for Developing Countries: The Role of Institutional Quality. Journal of International Economics, Volume. 70, 2001, pp.239-252.

⁸⁰ Krajewski, M. 'Human Rights and Austerity Programmes.' In Cottier, T. et al., eds. (2014). *The Rule of Law in Monetary Affairs*, supra note 68, pp. 490-518.

⁸¹ For example, mandatory action to recapitalize a credit institution can be undertaken "provided that fundamental rights are respected". Opinion of the European Central Bank of 29 April 2014 on the legal framework for the recapitalization through the HFSF of credit institutions in Greece, CON/2014/29, April 2014.

⁸² See Greece, Letter of Intent, Memorandum of Economic and Financial Policies, Technical Memorandum of Understanding on Specific Economic Conditionality (European Commission and European Central Bank, International Monetary Fund, 6 August 2010. The document does not refer to human rights; it does refer to protecting vulnerable groups/consumers in the context of energy market liberalization and reform of labour market institutions, at 8 and 46.

⁸³ See the details of the financial assistance programme to Greece and review reports. Available at: www.ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility.

⁸⁴ Fischer-Lescano, A. (2014). Human Rights in Times of Austerity Policy: The EU Institutions and the Conclusion of Memoranda of Understanding. Legal Opinion Commissioned by the Chamber of Labour, Vienna, February 2014.

⁸⁵ Complaint No. 111/2014 Greek General Confederation of Labour v. Greece, registered 26 September 2014; Complaint No. 80/2012 Pensioner's Union of the Agricultural Bank of Greece v. Greece, registered 2 January 2012; Complaint No. 79/2012 Panhellenic Federation of Pensioners of the Public Electricity Company v. Greece, registered 2 January 2012; Complaint No. 78/2012 Pensioners Union of the Athens-Piraeus Electric Railways v. Greece, registered 2 January 2012; Complaint No. 77/2012 Panhellenic Federation of Public Service Pensioners v. Greece, registered 2 January 2012; Complaint No. 76/2012 Federation of Employed Pensioners of Greece v. Greece, registered 2 January 2012.

⁸⁶ Financial Crisis Inquiry Commission (2011). *Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, Public Affairs, New York, 2011, pp.67-102.

⁸⁷ Dowell-Jones, M. and Kinley, D. (2012). 'The Monster Under the Bed: Financial Services and the Ruggie Framework', in R. Mares, ed., *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation*, Martinus Nijhoff, 2012, pp. 193-216.

⁸⁸ Aizawa, M. and Yang, C. (2010). Green Credit, Green Stimulus, Green Revolution? China's Mobilization of Banks for Environmental Cleanup. *The Journal of Environment & Development*, Volume.19, Number.2, June 2010, pp.-119-144

⁸⁹ The IFC Sustainable Banking Network is a knowledge-sharing platform for central bankers and regulators from emerging markets to assist them in developing an enabling regulatory environment for sustainable banking, to enable central banks and regulators in member countries to devise effective regulatory and oversight mechanisms for environmental and social risks. Available at: www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Partnerships/Sustainable+Banking+Network/

⁹⁰ <http://www.cbrc.gov.cn/EngdocView.do?docID=3CE646AB629B46B9B533B1D8D9FF8C4A>

⁹¹ Resolution No. 4,327 of April 25, 2014

⁹² IHRB (2014). Workshop Report, "Implementation of the OECD Guidelines in the Financial Sector", São Paulo, at the Brazilian Central Bank, 28 January 2014, pp. 9-10.

⁹³ www.bcb.gov.br/pre/normativos/res/2010/pdf/res_3876_v1_O.pdf

⁹⁴ See *Mongolian Sustainable Finance Principles Brochure*.

⁹⁵ <http://www.cenbank.org/out/2012/ccd/circular-nsbp.pdf>

⁹⁶ <http://www.sbs.gob.pe/principal/categoria/otros-documentos/2675/c-2675>

⁹⁷ Schydlosky, D. and Thompson, R. (2014). Reducing the Risk of Social Conflict. *Americas Quarterly*, Spring 2014, pp.83-86.

⁹⁸ www.ifc.org/wps/wcm/connect/8861c20047ede4e1bd50fd299ede9589/Directive+on+Green+Credit+and+E%26S+Risk+management.pdf?MOD=AJPERES

⁹⁹ European Central Bank (1999). *Social Dialogue with Regard to the European System of Central Banks*. November 1999. The Standing Committee of European Central Bank Unions (SCECBU) has however been critical of ECB policies towards it staff. Available at: www.scecbu.org.

¹⁰⁰ Aguilar, L. A. (2015). *Failing to Advance Diversity and Inclusion*, 11 June 2015

¹⁰¹ See e.g. South African Reserve Bank: Tender No. BM/16-2014, Project Name: Consultant Quantity Surveyor for the air-conditioning upgrade project at Head Office Building, August 2014, p.22; Tender No. JF005/2014, Project Name: Appointment of External Auditor, May 2014, p.33.

¹⁰² The 'Global Systemically Important Banks' are the 30 largest banks in the world whose size and complexity poses a particular risk to the stability of financial markets. This category of banks was defined by global regulators after the crisis of 2008, and the Financial Stability Board maintains a list of these banks, which are required to hold a higher level of capital than smaller banks. See Financial Stability Board: 2014 Update of List of Global Systemically Important Banks (G-SIBs), 6 November 2014.

¹⁰³ <http://www.unepfi.org/work-streams/social-issues/>

¹⁰⁴ <http://www.bis.org/bcbs/basel3.htm?m=3%7C14%7C572>

¹⁰⁵ Available at: www.unepfi.org/fileadmin/documents/StabilitySustainability.pdf

¹⁰⁶ Project finance loans which are typically longer term loans will end up incurring higher capital charges, whereas short-terms loans will incur less, resulting in banks possibly preferring shorter term instruments, which may not suit the environmental objectives of the project.

¹⁰⁷ <http://www.unpri.org/about-pri/about-pri/>

- ¹⁰⁸ See PRI (2015). Human rights and the extractive industry: Why, who and how to engage. Available at: http://2xjmlj8428u1a2k50341m71.wpengine.netdna-cdn.com/wp-content/uploads/PRI_Human-rights-extractive-industry_part01.pdf
- ¹⁰⁹ <http://www.unepfi.org/work-streams/investment/>
- ¹¹⁰ See for example <http://www.ussif.org/about> and <http://www.eurosif.org/about/governance/board/>
- ¹¹¹ <http://www.unpri.org/areas-of-work/policy-and-research/long-term-responsible-investing-literature-review/>
- ¹¹² See for example Eccles, R. G., Ioannou, I., Serafeim, G. (2012). The Impact of a Corporate Culture of Sustainability on Corporate Behavior and Performance [Working Paper]. Harvard Business School. Available at: http://cgt.columbia.edu/wp-content/uploads/2013/12/Corporate_culture_of_Sustainability.pdf and DB Climate Change Advisors (Deutsche Bank Group) (June 2012). Sustainable Investing: Establishing Long-Term Value and Performance. Available at: https://www.dbadvisors.com/content/_media/Sustainable_Investing_2012.pdf
- ¹¹³ International Corporate Governance Network Viewpoint (April 2015). Human Rights <https://www.icgn.org/policy/viewpoints/human-rights>
- ¹¹⁴ Wachenfeld, M. (2015). Strengthening the ‘S’ in ESG: What New Developments in Human Rights and Business Bring to the Table for Investors. In Responsible Investment Banking (2015). Available at: <http://www.springer.com/us/book/9783319103105>
- ¹¹⁵ Financial Stability Board, Compendium of Key Standards. Available at: <http://www.financialstabilityboard.org/what-we-do/about-the-compendium-of-standards/>
- ¹¹⁶ https://www.iosco.org/about/?subsection=display_committee&cmtid=19&subSection1=principles
- ¹¹⁷ Singh, T. (2013). Deputy Secretary General, IOSCO. Human Rights and the Financial Crisis Perspectives on Causes and Responses. Available at: https://www.iosco.org/media_room/?subSection=speeches&subSection1=IOSCO_Deputy_Secretary_General
- ¹¹⁸ IOSCO (2010). IOSCO Objectives and Principles of Securities Regulation, Section 4.2.1. Available at: https://www.iosco.org/about/?subsection=display_committee&cmtid=19&subSection1=principles
- ¹¹⁹ IOSCO (2011). IOSCO Assessment Methodology. Available at: <http://www.financialstabilityboard.org/what-we-do/about-the-compendium-of-standards/>
- ¹²⁰ Rights and Accountability in Development (2012). Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights, p. iv. The report provides a detailed overview of failure of compliance concerning the listing of another mining company.
- ¹²¹ The Guidance is based on OECD Due Diligence for Responsible Supply Chains & Gold Supplement that are grounded in a human rights due diligence approach. Available at: <http://www.lbma.org.uk/responsible-gold>
- ¹²² <http://www.sseinitiative.org/about/>
- ¹²³ See the recent consultation from the Hong Kong Stock Exchange on the proposed amendments to its Environmental, Social and Governance (ESG) Reporting Guide. Available at: <http://csr-asia.com/csr-asia-weekly-news-detail.php?id=12504>
- ¹²⁴ 2014 Sustainable Stock Exchanges Report: A Report on Progress. Available at: www.sseinitiative.org/wp-content/uploads/2012/03/SSE-2014-ROP.pdf
- ¹²⁵ See for example the EU Non-Financial Reporting Directive - Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups amends the Accounting Directive 2013/34/EU. It requires companies concerned to disclose in their management report, information on policies, risks and outcomes as regards environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors. Available at: http://ec.europa.eu/finance/accounting/non-financial_reporting/index_en.htm
- ¹²⁶ Both the Global Reporting Initiative (<https://www.globalreporting.org>) and the International Integrated Reporting Framework (<http://integratedreporting.org/resource/international-ir-framework/>) include human rights.
- ¹²⁷ Ceres, Proposals released for standardized stock exchange requirements on sustainability reporting (2014).
- ¹²⁸ See note 124.
- ¹²⁹ For example the London Stock Exchange’s FTSE4Good Index, BOVESPA’s ISE listing. See suggestions to strengthen further the human rights dimension of the ISE listing requirements: <http://www.conectas.org/en/actions/business-and-human-rights/news/23159-stock-exchange>
- ¹³⁰ http://www.jse.co.za/About-Us/SRI/Introduction_to_SRI_Index.aspx
- ¹³¹ See for example Oxfam’s Behind the Brands. Available at: <https://www.oxfam.org/en/campaigns/behind-brands>
- ¹³² <http://business-humanrights.org/en/corporate-human-rights-benchmark>
- ¹³³ Economist Intelligence Unit (2015). The Road from Principles to Practice. Today’s challenges for businesses in respecting human rights. Available at: <http://www.economistinsights.com/business-strategy/analysis/road-principles-practice>
- ¹³⁴ <http://www.unpri.org/areas-of-work/policy-and-research/responsible-investment-standards-codes-and-regulation/>
- ¹³⁵ See for example the EU Non-Financial Reporting Directive - Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups amends the Accounting Directive 2013/34/EU. Available at: http://ec.europa.eu/finance/accounting/non-financial_reporting/index_en.htm
- ¹³⁶ See for example UK Modern Slavery Act (2015). Available at: <https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed>
- ¹³⁷ Sustainable Stock Exchanges Initiative Report 2014. Available at: <http://www.sseinitiative.org/publications/>
- ¹³⁸ UNEP FI (2005). Freshfields Report on Legal Framework for the Integration of ESG Issues into Institutional Investment. Available at: http://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf

¹³⁹ UN Global Compact, UNEP FI, PRI, UNEP Inquiry (2015). Fiduciary Duty in the 21st Century. Available at: <http://www.unpri.org/wp-content/uploads/Fiduciary-duty-21st-century.pdf>

¹⁴⁰ Ibid.

¹⁴¹ Ibid. p. 19.

¹⁴² See for example the new UK Modern Slavery Act 2015 as an example of new domestic legislation on human rights as one indicator. Available at: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

¹⁴³ Roca, R. and Manta, F. (2010). Values Added: The Challenge of Integrating Human Rights into the Financial Sector. Danish Institute for Human Rights, 2010; Stewart, G., Berard, S. and Fruscella, E. (2012). Trends in Environmental, Social and Governance Investing. BNY Mellon, 2012; Sullivan, R. and Hachez, N. (2012). 'Human Rights Norms for Business: The Missing Piece of the Ruggie Jigsaw – The Case of Institutional Investors.' In Mares, R., ed. (2012). The UN Guiding Principles on Business and Human Rights: Foundations and Implementation. Martinus Nijhoff, 2012, pp. 217-244; Dowell-Jones, M. 'Investors: Models and Strategies for Engaging with Human Rights.' In Baumann-Pauly, D. and Nolan, J., eds. Business and Human Rights – From Principles to Practice. Routledge, 2016 (forthcoming).

¹⁴⁴ International Corporate Accountability Roundtable (2014). Knowing And Showing - Using U.S. Securities Laws To Compel Human Rights Disclosure. 2014

¹⁴⁵ Stewardship codes address the effort and activities undertaken by and on behalf of institutional shareholders to monitor, engage and intervene on matters that may affect the long term value of companies and the capital invested in them.

¹⁴⁶ This section addresses the insurance, not the investment function.

¹⁴⁷ It is important to note, however, that the concept of “protection” offered by insurance products differs from the classical use of the term “protection” in human rights law which refers to a government taking steps to protect people from harm – in particular through adopting legislation to regulate activities that may create harm. Under human rights law, states have legal obligations to respect, protect and fulfil human rights, each with specific definitions around what each term means. Fulfil includes the duty to provide what is needed for people to realize or enjoy the right, especially for more marginalized members of society who may not be able to realize the right themselves, through their own means. As noted above, businesses are expected to only respect rights as a minimum requirement for all businesses, not fulfil them but they can take on fulfilment. Under human rights law, when a third party, such as private sector businesses, step into the shoes of the government in fulfilling human rights, it also steps into the government’s obligations to deliver those services in line with human rights.

¹⁴⁸ Gonzalez-Palaez, A. and Von Dahlen, S. (2015). Insurance regulation for sustainable development: Protecting human rights against climate risks and natural hazards. 2015. Available at: <http://www.cisl.cam.ac.uk/publications/insurance-regulation-for-sustainable-development>

¹⁴⁹ UNEP Inquiry and UNEP FI, Insurance 2030: Harnessing Insurance for sustainable development (2015). Available at: http://www.unepfi.org/psi/wp-content/uploads/2015/10/Insurance_2030_FINAL6Oct2015.pdf

¹⁵⁰ The Geneva Association (2012). <http://www.scor.com/fr/sgrc/economie-finance/risque-systemique/item/2144-the-institutional-framework-for-global-insurance-regulation-and-supervision-the-changing-landscape/2144-the-institutional-framework-for-global-insurance-regulation-and-supervision-the-changing-landscape.html>

¹⁵¹ Geneva Association, p. 44

¹⁵² National Association of Insurance Commissioners. Available at: http://www.naic.org/cipr_topics/topic_insurance_core_principles.htm

¹⁵³ The FSB uses these standards in the evaluation of supervisory regimes under the Financial Sector Assessment Program (FSAP) conducted jointly by the World Bank and the IMF. The designated standards are relied on as a way to measure observance with accepted financial supervision practices. Available at: <http://www.financialstabilityboard.org/cos/index.htm>

¹⁵⁴ <http://iaaisweb.org/index.cfm?event=getPage&persistId=09D17B23155D896B00865E320A7E6EFE>

¹⁵⁵ A recent report on insurance regulation noted that “Supervisors have also increasingly reached the conclusion that establishing a strong risk culture is an essential element of good risk governance and that if they are to ‘stay ahead of the curve’ in undertaking their roles, than a reassessment of how they oversee risk management is required.” KPMG, 2014. Available at: [Evolving Insurance Regulation](#)

¹⁵⁶ Mulder, H. (2015). The Role of Financial Institutions in Advancing Responsible Value Chains – Insights from a Dialogue Series with Dutch Financial Institutions. 2015 p. 10. Available at: http://www.dsf.nl/wp-content/uploads/2014/09/Herman-Mulder-2015_The-Role-of-Financial-Institutions-in-Advancing-Responsible-Value-Chains_Duisenberg-Strategy-Series-201503-1.pdf

¹⁵⁷ United Nations (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises. UNGPs 18 and 19. Available at: http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf.

¹⁵⁸ Ibid. Commentary to Principle 17 of the UNGPs.

¹⁵⁹ Ibid. UNGPs Principle 17: the human rights due diligence “process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”

¹⁶⁰ Sustainable Finance Advisory (2013). Environmental and Social Risk Due Diligence in the Financial Sector: Current Approaches and Practices Available at: <http://sustainablefinanceadvisory.com/2013/08/18/environmental-and-social-risk-due-diligence-in-the-financial-sector/>

¹⁶¹ Ibid. p.5. Available at: <https://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-1.pdf>

¹⁶² The precise boundaries of a bank's own environmental and social and/or human rights due diligence and the bank's client's due diligence are not yet completely clear. Generally, financial institutions review the clients' due diligence, in addition to ensuring adherence to their own legal and internal compliance requirements. The Equator Principles, for example, specify that clients carry out the environmental and social impact assessment process, and list the specific requirements for such assessment. Equator banks review their clients' adherence to these requirements. Banks may also initiate their own studies and assessments. While a bank's active involvement in the client's due diligence is key, excessive involvement in the client's affairs could expose them to lender liability. It is also not clear whether banks should conduct their own stakeholder consultations in relation to projects they finance, and if so, whether the consultations should address project issues under management by clients or the banks' role in providing financing.

¹⁶³ CRO Forum (2014). Human Rights and Corporate Insurance. Available at: <http://www.thecroforum.org/human-rights-corporate-insurance/>

¹⁶⁴ http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/2013_WS1_1.pdf

¹⁶⁵ <http://mneguidelines.oecd.org/rbc-financial-sector.htm>

¹⁶⁶ United Nations (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. UNGP 29. Available at: http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

¹⁶⁷ Ibid. UNGP 29 and 30.

¹⁶⁸ Ibid. UNGP 22 and 29.

¹⁶⁹ Ibid. UNGP 22 Commentary: "Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so." Where the dividing line is between "contribution" and "directly linked", and therefore the requirement to provide remedy or not, will not always be clear cut. This may be one of the issues the OECD may address in its forthcoming "proactive agenda" project on the financial sector.

¹⁷⁰ Ibid. UNGP 30-31.

¹⁷¹ See for example http://www.banktrack.org/show/news/banktrack_welcomes_thun_group_paper_on_banks_and_human_rights

¹⁷² See for example the IFC Compliance Adviser Ombudsman, www.cao-ombudsman.org. See also the Dutch NGO SOMO which has several publications reviewing MDB complaint mechanisms. Available at: <http://somo.nl/themes-en/human-rights-grievance-mechanisms>

¹⁷³ DEG, the German bilateral institution, and FMO, the Dutch bilateral institution, share a joint accountability mechanism. Available at: <https://www.deginvest.de/International-financing/DEG/Die-DEG/Verantwortung/Beschwerdemanagement/> and <https://www.fmo.nl/project-related-complaints>

¹⁷⁴ The ongoing OHCHR "Initiative on enhancing accountability and access to remedy in cases of business involvement in human rights abuses," is cataloguing the practical and legal challenges that victims face in bringing criminal and civil claims for business related human rights abuses (Available at: <http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx>). This is with a view to developing credible, workable guidance to states to enable more consistent implementation of the UNGPs in the area of access to remedy. While the study does not specifically address the financial sector, its conclusions and recommendations will be relevant to the financial sector and are likely to increase attention to the issue of remedy (or lack thereof) for victims.

¹⁷⁵ Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9601 et seq.

¹⁷⁶ Federal Reserve Bank: Supervisory Letter SR 91-20 (FIS) on environmental liability – October 11, 1991. Available at: <http://www.federalreserve.gov/boarddocs/srletters/1991/SR9120.HTM>

¹⁷⁷ <http://www.reedsmith.com/Brownfield-land-in-the-UK-lenders-liability-04-30-2014/>

¹⁷⁸ S.T.J.-T2, REsp 650728, Relator: Min. Benjamin Herman, 23.10.2007, R.S.T.J., 02.12.2009 (Braz); Zambão.

¹⁷⁹ A French bill proposes to introduce in French law a "duty of vigilance" ('devoir de vigilance') on parent companies and companies subcontracting work. The current draft of the bill requires companies to create a "vigilance plans" ('plans de vigilance') that include measures to identify and prevent bodily injuries, environmental harm, and health hazards, resulting from the activity of the parent company itself, companies directly or indirectly controlled, and sub-contractors and suppliers, when the parent company has a decisive influence on them. This proposal ("proposition de loi") was adopted by the Assemblée Nationale (Available at: <http://www.assemblee-nationale.fr/14/ta/ta0501.asp>) and will proceed to be discussed by the other chamber, the Senate (Available at: <http://www.senat.fr/dossier-legislatif/pp14-376.html>). There is not yet any indication about the date of the discussion, but the next window could be late October 2015.

¹⁸⁰ For a more detailed discussion, see: <http://www.unepfi.org/fileadmin/documents/BanksandHumanRights.pdf>

¹⁸¹ Further research would be required to determine if there are similar cases involving insurers or investors.

¹⁸² See for example, e.g., The Prosecutor v. Alfred Musema, Case NO. ICTR-96-13-A, January 27, 2000, at paras. 131-133.

¹⁸³ Id.

¹⁸⁴ Case Against New TV SAL Karma Mohamed Tahsin al Khayat (2014). Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, Oct. 2, 2014, Case No. STL 14-05/PT/AP/AR126.1. Available at: <http://www.stl-tsl.org/en/decision-on-interlocutory-appeal-concerning-personal-jurisdiction-in-contempt-proceedings>

¹⁸⁵ Wheelan, H. (2015). UK pension fund faces groundbreaking legal test case on fiduciary duty and climate change. Green light expected shortly on lawsuit to challenge asset owner's position on financial implications of environmental damage. Responsible Investor. 16 February 2015.

¹⁸⁶ Obviously, such safe harbour should not be used to absolve banks of international crimes on the basis that they have carried out appropriate human rights due diligence.

¹⁸⁷ See for example, http://natlex.ilo.ch/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_162597.pdf

¹⁸⁸ See for example UNEP FI's Online Human Rights Guidance Tool for the Financial Sector. Available at: <http://www.unepfi.org/humanrightstoolkit/>

¹⁸⁹ <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html>

¹⁹⁰ http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes

¹⁹¹ See note 37.

¹⁹² <http://www.oecd.org/tad/xcred/oecd-recommendations.htm>

¹⁹³ <http://www.equator-principles.com/> However, project finance is much harder to obtain following the 2008 financial crisis and occupies a very small space within the overall lending by banks in the world.

¹⁹⁴ "... in limited high risk circumstances, it may be appropriate for the client to complement its Assessment Documentation with specific human rights due diligence", Principle 2, the Equator Principles.

¹⁹⁵ Available at: <http://business-humanrights.org/en/statement-by-the-thun-group-of-banks-%E2%80%9Cthe-guiding-principles-an-interpretation-for-banks%E2%80%9D-banks-in-barclays-bbva-credit-suisse-ing-bank-rbs-group-ubs-unicredit>

¹⁹⁶ Asia Pulp and Paper default example, referenced in Endnote 2 of the letter of SOMO, The Berne Declaration (for BankTrack) and Friends of the Earth Europe dated 6 March 2009, citing. Matthew and J.W. van Gelder, "Paper Tiger, Hidden Dragons – The responsibility of international financial institutions for Indonesian forest destruction, social conflict and the financial crisis of Asia Pulp and Paper", Friends of the Earth England Wales and Northern Ireland, May 2001; Shari, M., "Asia's Worst Deal", Business Week, 13 August 2001.

¹⁹⁷ See a current collection of HRIA tools. Available at: <http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-companies/type-of-step-taken/human-rights-impact-assessments>

¹⁹⁸ See in particular the five key points identified in Gotzmann, N. (2014). Human Rights Impact Assessments – Conceptual and Practical Considerations in the Private Sector Context. Available at: <http://www.humanrights.dk/publications/human-rights-impact-assessment>

¹⁹⁹ See for example Roundtable on Sustainable Palm Oil; Roundtable on Responsible Soy; Bonsucro; Better Cotton Initiative; Roundtable on Sustainable Biomaterials, etc.

²⁰⁰ IFC and other MDBs have internal procedures for addressing these types of finance but they have been little uptake by others.

²⁰¹ PRI currently has an engagement initiative around extractives and human rights. Available at: <http://www.unpri.org/areas-of-work/clearinghouse/coal-mining-collaborative-engagements/>

²⁰² Norwegian National Contact Point (2013). Final Statement, Complaint From Lok Shakti Abhiyan, Korean Transnational Corporations Watch, Fair Green And Global Alliance And Forum For Environment And Development Vs. Posco (South Korea), ABP/APG (Netherlands) And NBIM (Norway) (Forum v NBIM). Available at: <http://www.responsiblebusiness.no/en/assessment-of-complaints/nbim/>

²⁰³ Netherlands National Contact Point (2013). Final Statement, ABP/APG - Lok Shakti Abhiyan, KTNC Watch, Fair Green and Global Alliance and Forum for Environment and Development. Available at: <http://www.oecdguidelines.nl/binaries/oecd-guidelines/documents/publication/2015/1/6/final-statement-abp-apg---somo-bothends/final-statement-somo-bothends-apg-abp2.pdf>

²⁰⁴ See note 197.

²⁰⁵ Ibid. Section 4.2.2.

²⁰⁶ See note 114.

²⁰⁷ Teevs, C. (2013). Taking Responsibility!: German Banking Giant Quits Food Speculation. Der Spiegel Online, 27 May 2013. Available at: <http://www.spiegel.de/international/business/large-german-bank-quits-agricultural-commodities-speculation-a-902151.html>

²⁰⁸ Institute for Human Rights and Business (2013). Investing the Rights Way – A Guide for Investors on Business and Human Rights, 2013, p. 15.

²⁰⁹ http://www.ituc-csi.org/IMG/pdf/ITUC_casino.EN.pdf

²¹⁰ <http://eib.europa.eu/attachments/fi/eib-cab-factsheet.pdf>

²¹¹ <http://www.eenews.net/stories/1060019301>

²¹² See for example <http://treasury.worldbank.org/cmd/pdf/ImplementationGuidelines.pdf>

²¹³ The Green Bonds Principles are frequently referred to by issuers. These are voluntary process guidelines that recommend transparency and disclosure, and promote integrity in the issuance of a Green Bond; however, they do not provide any definition of green bonds. Available at: <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/green-bonds/>

²¹⁴ Green Finance Task Force (2015). Establishing China's Green Financial System: Final Report of the Green Finance Task Force. UNEP and the People's Bank of China. Available at: <http://asria.org/publications/establishing-chinas-green-financial-system-report-of-the-green-finance-task-force/>.

²¹⁵ United Nations (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. UNGP 4. Available at:

http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

²¹⁶ The PRI started an initial discussion on ESG risks in sovereign bonds that brings together initial research on correlating social factors with sovereign creditworthiness and investment performance. The report does not specifically address human rights but some of the initial correlations use human rights factors in determining sovereign creditworthiness and stability that should be followed up on. PRI (2013). Sovereign Bonds: Spotlight on ESG Risks. Available at:

<http://2xjmlj8428u1a2k5034l1m71.wpengine.netdna-cdn.com/wp-content/uploads/SpotlightonESGrisks.pdf>

²¹⁷ United Nations (2012). Conference on Trade and Development: The Principles on Promoting Responsible Sovereign Borrowing and Lending, 10 January 2012.

²¹⁸ Independent Expert on Foreign Debt and Human Rights (2014), Bohoslavsky, J. P., Report on Financial Complicity: Lending to States Engaged in Gross Human Rights Violations, UN Doc. A/HRC/28/59, 22 December 2014.

²¹⁹ UN General Assembly Resolution 68/304, 9 September 2014. ‘Towards the Establishment of a Multilateral Legal Framework for Sovereign Debt Restructuring Processes’

²²⁰ See the UN General Assembly Resolutions and UN Human Rights Council Resolutions on vulture funds. Available at:

<http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Debtstructuringvulturefundsandhumanrights.aspx>

²²¹ Bohoslavsky, J. P. and Cernic, J. L., eds. Making Sovereign Financing and Human Rights Work. Hart Publishing, 2014. For a consideration of the Argentine case see Verbitsky, H., & Bohoslavsky, J. P. The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts. Cambridge University Press, 2015.

²²² Sovereign Wealth Funds – General Principles and Practices – “Santiago Principles.” Available at: <http://www.iwg-swf.org/>

²²³ The OECD Working Party on Responsible Business Conduct has addressed the application of the OECD Guidelines to Sovereign Wealth Funds at the request of the Norwegian Government but the final document prepared by the OECD Secretariat on the topic has not been declassified and made public.

²²⁴ Moles Lo Turco, C. C., Sovereign Wealth Fund Law Centre. Sovereign Wealth Funds: From Transparency To Sustainability (2013), noting that “Globally, the rapid evolution of SWFs has pushed the discussion from transparency to sustainability, increasing the importance of those SWF behavioural features that previously were not considered in the overall evaluation of SWFs.”

²²⁵ See note 197.

²²⁶ <http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-2.pdf>

²²⁷ www.nbim.no/globalassets/brochures/childrensrights.pdf?id=2813

²²⁸ See for example http://www.redflags.info/index.php?page_id=16&

²²⁹ The Munden Project (2013). Global Capital, Local Concessions: A Data-Driven Examination of Land Tenure Risk and Industrial Concessions in Emerging Market Economies.

²³⁰ The CRO Forum was formed in 2004 to advance risk management practice in the insurance industry. Its member companies are large multi-national insurance companies. Our members are headquartered across the world with a concentration in Europe. Available at: <http://www.thecroforum.org/about-cro-forum/>

²³¹ See note 163.

²³² See note 163.

²³³ However the two UNEP FI reports that led to the creation of the PSI do explicitly recognize human rights (particularly the second): UNEP FI (2007). Insuring for Sustainability. Available at: http://www.unepfi.org/fileadmin/documents/insuring_for_sustainability.pdf and UNEP FI (2009). The Global State of Sustainable Insurance: Understanding and Integrating Environmental, Social and Governance Factors in Insurance. Available at: http://www.unepfi.org/fileadmin/documents/global-state-of-sustainable-insurance_01.pdf

²³⁴ UNEP FI 2013 Global Roundtable, panel on human rights. Available at: <http://www.unepfi.org/grt/2013/>

²³⁵ ILO (2015). Financial inclusion policy in Ecuador: Role of the Central Bank towards economic growth and job creation, 2015.

²³⁶ See for example the Community Investment Coalition, <http://www.communityinvestment.org.uk/>

²³⁷ This has also affected poor populations reliant on remittances. See the discussion of the impact of AML restrictions on remittances to Somalia. Available at: <http://blogs.worldbank.org/peoplemove/anti-money-laundering-regulations-can-somalia-survive-without-remittances>

²³⁸ http://www.ilo.org/empent/areas/social-finance/WCMS_206163/lang-en/index.htm

²³⁹ See for example Thompson, C. (2013). Disparate Impact and Fair Housing: Seven Cases You Should Know. Propublica, Feb. 12, 2013. Available at: <http://www.propublica.org/article/disparate-impact-and-fair-housing-seven-cases-you-should-know>. Interestingly, the recent wave of lawsuits alleged not that the lenders had a discriminatory intent -- indeed the loans were made to minorities -- but that they had a discriminatory impact.

²⁴⁰ See also <http://blogs.worldbank.org/psd/category/tags/financial-inclusion>

²⁴¹ Devenney and Kenny, European Consumer Protection, 2012, Chapter 17.

²⁴² Ibid.

²⁴³ <http://www.thegiin.org/cgi-bin/iowa/resources/about/index.htm>

²⁴⁴ Global Impact Investing Network and JP Morgan (2015). Eyes on the Horizon: The Impact Investor Survey. May 2015, p. 9.

- ²⁴⁵ <http://www.goldmansachs.com/what-we-do/investing-and-lending/impact-investing/case-studies/massachusetts-social-impact-bond.html>
- ²⁴⁶ Mair, V. (2015). Can SIBS be Rehabilitated? ESG Magazine, Issue 01, Summer 2015, p. 16. Available at: <http://www.esg-magazine.com/>
- ²⁴⁷ <http://www.goldmansachs.com/what-we-do/investing-and-lending/impact-investing/case-studies/salt-lake-social-impact-bond.html>
- ²⁴⁸ See for example White, M.J. (2015). ‘Chairman’s Address at SEC Speaks 2015’ on the US SEC’s largest-ever whistle-blower award – over US\$30 million
- ²⁴⁹ See for example World Bank (2014). World Development Report, The Role of the Financial System in Managing Risk, p. 199.
- ²⁵⁰ <http://www.impactinsurance.org/about/facts-on-microinsurance>
- ²⁵¹ ILO (2013). Research Paper 35: Literature Review on the Impact of Microinsurance, p. 5. Available at: <http://www.impactinsurance.org/publications/rp35>
- ²⁵² CISL (2015). Insurance Regulation for Sustainable Development: Protecting Human Rights from Climate Risk and Natural Hazards. Available at: <http://www.cisl.cam.ac.uk/publications/sustainable-finance-publications/insurance-regulation-for-sustainable-development>
- ²⁵³ BSR (2014). Four Microinsurance Trends for Large Insurers. Available at: http://www.bsr.org/en/our-insights/blog-view/four-microinsurance-trends-for-large-insurers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+bsrblog+%28BSR+Blog%3A+The+Business+of+a+Better+World%29
- ²⁵⁴ OECD MNE Guidelines – Database of Specific Instances - Human rights issues following insurance claims in New Zealand. Available at: <https://mneguidelines.oecd.org/database/instances/nz0003.htm>
- ²⁵⁵ <http://www.unfpa.org/resources/human-rights-principles>
- ²⁵⁶ <http://www.imf.org/external/pubs/ft/fandd/2014/06/pdf/jacome.pdf>
- ²⁵⁷ Ibid.
- ²⁵⁸ <http://www.imf.org/external/pubs/ft/wp/2008/wp08119.pdf>
- ²⁵⁹ The Bank of England seems to be one of the few exceptions – it is organizing an Open Forum in November 2015 with stakeholders around the topic of “Building Real Markets for the Good of the People.” Available at: <http://www.bankofengland.co.uk/markets/Pages/openforum.aspx>
- ²⁶⁰ As an illustration, in a submission to the Chairman of the Basel Committee on Banking Supervision, SOMO, The Berne Declaration (for BankTrack) and Friends of the Earth Europe expressed their deep concern about the “behind-the-scenes meeting with central bankers and regulators to discuss the post-crisis regulatory framework” and “one-sided involvement of the financial industry within the Basel framework”; the letter asked for information about the closed meetings to be published and for engagement with civil society (which did not take place at that time), submission dated 6 March 2009.
- ²⁶¹ <http://www.group30.org/about.shtml>
- ²⁶² <http://www.ohchr.org/EN/Issues/Development/Pages/PromotingHRbasedfinancialregulationmacroeconomicpolicies.aspx>
- ²⁶³ <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>
- ²⁶⁴ <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Debtstructuringculturefundsandhumanrights.aspx>
- ²⁶⁵ <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Overview.aspx>
- ²⁶⁶ <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/162/01/PDF/G1216201.pdf?OpenElement>
- ²⁶⁷ See Ruggie, J. (2013). Just Business: Multinational Corporations and Human Rights.
- ²⁶⁸ <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf>
- ²⁶⁹ <http://www.ohchr.org/Documents/Issues/Business/LetterSOMO.pdf>
- ²⁷⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/financingfordevelopment.aspx>
- ²⁷¹ See note 103.
- ²⁷² <http://www.sseinitiative.org/>
- ²⁷³ <http://www.ilo.org/employment/areas/social-finance/lang-en/index.htm>
- ²⁷⁴ <http://www.impactinsurance.org/>
- ²⁷⁵ See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E#sthash.QbS1Sbz7.dpufall>. See more generally on OHCHR work on Climate Change and Human Rights: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimatChangeIndex.aspx>
- ²⁷⁶ See also the expert opinions received on these matters: <http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-3.pdf>
- ²⁷⁷ See note 221.
- ²⁷⁸ <http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-1.pdf>
- ²⁷⁹ <http://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>
- ²⁸⁰ <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en>
- ²⁸¹ <http://www.oecd.org/ctp/beps.htm>
- ²⁸² <http://www.oecd.org/social/>
- ²⁸³ http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Partnerships/Sustainable+Banking+Network/
- ²⁸⁴ Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTFINANCIALSECTOR/0,,contentMDK:22142161~menuPK:6459396~pagePK:210058~piPK:210062~theSitePK:282885,00.html>

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- ²⁸⁵ Ho Hwang, J. (2014). A Proposal for an Open-Source Financial Risk Model. Systemic Risk Centre Discussion Paper No 9, 2014.
- ²⁸⁶ See note 12.
- ²⁸⁷ Rossman, P., Greenfield, G. (2006). Financialization: New Routes to Profit, New Challenges for Trade Unions. Labour Education, the Quarterly Review of the ILO Bureau for Workers Activities 1/2006 (No. 142). Available at: <http://www.iufdocuments.org/www/documents/Financialization-e.pdf>
- ²⁸⁸ An Aviva White Paper (2015). Roadmap to a Sustainable Capital Markets: How Can the UN Sustainable Development Goals Harness the Capital Markets?, 2015
- ²⁸⁹ For example see Corner House (2012). More than Bricks and Mortar: Infrastructure as Asset Class: A Critical Look at Private Equity Infrastructure Funds. Available at: <http://www.thecornerhouse.org.uk/resource/more-bricks-and-mortar>
- ²⁹⁰ See <http://www.finance-watch.org/>
- ²⁹¹ See <http://www.citizensdashboardoffinance.org/>
- ²⁹² www.new-rules.org
- ²⁹³ United Nations (2009). Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System. Available at: http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf
- ²⁹⁴ <http://www.imf.org/external/np/sec/misc/consents.htm>
- ²⁹⁵ [http://siteresources.worldbank.org/DEVCOMMINT/Documentation/22553921/DC2010-006\(E\)Voice.pdf](http://siteresources.worldbank.org/DEVCOMMINT/Documentation/22553921/DC2010-006(E)Voice.pdf)
- ²⁹⁶ http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.227/L.1, Para 106
- ²⁹⁷ <http://www.new-rules.org/what-we-do/fsb-unlocking-the-black-box/hlp-on-fsb-governance>
- ²⁹⁸ It is already evident that FSB's mandate and areas of inquiry continues to expand. For example, it is expected that FSB's November 2015 report to G20 will include important issues, such as remittances, green/climate finance, and impact assessment of total loss absorbing capacity
- ²⁹⁹ <http://www.financialstabilityboard.org/what-we-do/about-the-compendium-of-standards/>
- ³⁰⁰ In fact, at the end of 2014, G20 expanded seats for its Emerging Markets and Developing Economies members, and issued a standing invitation to the non-member co-chairs of the FSB's regional consultative groups to attend plenary meetings, corresponding to recommendation #1 and 10, mentioned in the text above.
- ³⁰¹ Compere (2015). Human rights through a corporate governance lens. Harvard Law School Forum on Corporate Governance and Financial Regulation, April 2015. Available at: <http://corpgov.law.harvard.edu/2015/05/22/human-rights-through-a-corporate-governance-lens/>
- ³⁰² <http://www.oecd.org/g20/topics/financing-for-investment/Corporate-Governance-Principles-ENG.pdf>
- ³⁰³ Ibid. p. 51.
- ³⁰⁴ Ibid. p.37. The Principles also note upfront (p.10) that the interests of stakeholders in contributing to the long-term success and performance of the company, and that factors, such as the environment and ethical concerns, are considered not only in the MNE Guidelines, but also in the UNGPs, among others.
- ³⁰⁵ Ibid. p.43.
- ³⁰⁶ Ibid. p.53.
- ³⁰⁷ Ibid. p.56.



Inquiry: Design of a Sustainable Financial System

International Environment House
Chemin des Anémones 11-13
Geneva,
Switzerland
Tel.: +41 (0) 229178995
Email: inquiry@unep.org - Twitter: @FinInquiry
Website: www.unep.org/inquiry/



Institute for Human Rights and Business

34b York Way
London N1 9AB
United Kingdom
Tel.: +44 (0) 203 411 4333
Email: info@ihrb.org- Twitter: @IHRB
Website: www.ihrb.org