

To: ALL PARTICIPANTS IN THE THUN GROUP OF BANKS
C/O CHRISTIAN LEITZ
HEAD, CORPORATE RESPONSIBILITY MANAGEMENT
UBS SWITZERLAND AG
BY EMAIL

SUBJECT: RE: SIGNIFICANT CONCERNS REGARDING THUN GROUP DISCUSSION PAPER

Nijmegen, 22nd March 2018

Dear Thun Group participants,

In February 2017 many of our organisations wrote to you raising serious concerns regarding the Thun Group's January 2017 Discussion Paper.¹ We note that the Thun Group published an update to this Discussion Paper in December 2017, and would like to take this opportunity to comment on the revision.

Our comments focus on three areas; the communication of the paper's revision, the changes made in the revision, and recommendations for the Thun Group's next steps.

Whose misunderstandings?

Before addressing the content of the revised paper, we would like to express our concern at the way the paper's revision was communicated. An email message from the Thun Group's convener Christian Leitz to all attendees of the group's June 2017 meeting stated that the Thun Group "agreed to clarify some of the statements in its Discussion Paper published in January 2017 *that had led to misunderstandings*" (our emphasis).

The clear implication here is that any misunderstandings are not on the part of the Thun Group banks that signed the paper, but on the part of the paper's critics, including BankTrack, the 30+ civil society organisations and academics that signed the initial letter, the UN Working Group and Professor Ruggie. This adds insult to the injury of the concerns we raised in February.

The revised paper does remove statements from the original which we highlighted as being out of line with the UN Guiding Principles, for example that "access to remedy ... does not apply" in circumstances of a direct link. This seems to acknowledge that the paper needed to be revised, at least in part, due to misunderstandings *in the paper itself*.

We regret that in its communications to stakeholders the Thun Group has passed up on the opportunity to acknowledge any error or misunderstanding on its own part, as it has done throughout this process.

Underlying assumptions remain unchanged

We welcome the clear acknowledgement in the revised paper that banks *can* contribute to adverse human rights abuses via their finance. We hope that this acknowledgement helps open the way for further discussion and policy consideration of the role banks should play in addressing and remedying such impacts when they occur.

While it is welcome, this acknowledgement does not address our initial concerns regarding the paper. At the core of these concerns was the paper's underlying assumption that banks do not

¹ [Civil society open letter to the Thun Group, February 14, 2017](#)

generally contribute to human rights impacts through their finance. While the paper now acknowledges clearly that such contribution may occur “in exceptional circumstances”, the underlying assumption that it does not generally occur remains unchanged.

This is made explicit, for example, in the assertion that “directly linked” is “the appropriate focus for banks if their clients ... cause or contribute to adverse human rights impacts”, and more generally in the unchanged categorisation of the link between banks and impacts in the case studies.

Only under exceptional circumstances?

The revised paper’s assertion that banks may contribute to human rights abuses through their finance only under “exceptional circumstances” suggests the Thun Group has not fully taken on board the subsequent feedback and guidance received from the UN Working Group, the Office of the High Commissioner and Professor Ruggie, but has rather sought to manage and contain it. As much of this feedback focussed on clarifying that banks may contribute to adverse human rights impacts through their finance, and pointing to circumstances in which this might occur, it seems self-evident that such contribution should be considered not as purely theoretical, but as a material possibility, worthy of detailed consideration.

We consider that banks can and unfortunately do contribute to human rights violations when providing financial products and services, and that while such occasions may not represent a high proportion of a bank’s transactions, in absolute number they are rather common, and their impact is significant. Several cases in which banks are likely to have contributed to such impacts through their finance are outlined in a recent BankTrack paper, “How banks contribute to human rights violations”.²

A particularly problematic aspect of the revised paper is that it fails to address the comments by Professor Ruggie that the first three case studies considered in the paper could all fall into the category of “contributing to” harm, depending on additional situational factors. In presenting these case studies without revision, and given its repositioning simply a “paper” rather than a “discussion paper”, the implication is that the categorisation of impacts is no longer up for discussion, and that the Thun Group feel Professor Ruggie’s critique can be simply brushed off.

Again, this represents a missed opportunity to reconsider the assessment in the paper of the nature of the linkage between banks and impacts, through a participative multi-stakeholder process. As it stands, the categorisation of these cases detracts from the valuable contribution they might otherwise provide to understanding bank approaches to human rights impacts.

Where next for the Thun Group?

It is vitally important that banks continue to participate in discussions on how to interpret and fully implement their responsibilities under the UN Guiding Principles. Thun Group has in the past played a valuable role in this discussion, and we hope that it can do so again. We also recognise the sincere interest in moving the human rights agenda forward that motivates many of the individual bank representatives who participate in Thun Group meetings and publications.

However, we consider that further discussion papers or other publications from Thun Group will *only* play a constructive role in these discussions if it fully takes on board the advice of the UN Working Group, namely that “practice tools which seek to interpret the meaning of the UNGPs in a sector-specific context should be subject to a process of consultation and review by other stakeholders in order to ensure accuracy, robustness and legitimacy.”³

² [“How banks contribute to human rights abuses”, BankTrack, December 2017](#)

³ [UN Working Group letter, February 2017](#)

We urge the Thun Group to show that it has learned lessons from its January 2017 paper by developing such a process for consultation and review. In so doing, it can also honour its outstanding commitment, made in 2014, to elaborate a stakeholder engagement strategy.

If the Thun Group were to proceed with further publications seeking to interpret the UN Guiding Principles without heeding this advice, we would seriously question whether it is able to act as the partner for constructive dialogue that civil society seeks, and we would encourage bank representatives that do wish to move forward in good faith on these discussions to explore other avenues for doing so, outside the Thun Group, in ways that do take care to ensure robustness and legitimacy.

We hope the Thun Group will show that it can act as a force for progress towards improved business respect for human rights in 2018 and beyond.

Sincerely,

BankTrack, Netherlands – Ryan Brightwell, Human Rights Campaigner (ryan@banktrack.org)

Accountability Counsel, United States - Kindra Mohr, Policy Director

Conectas Human Rights, Brazil - Caio Borges, Attorney

Etika, Luxembourg, Alexander Feldmann, Project Manager

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Friends of the Earth US, United States - Katharine Lu, Sustainable Finance Coordinator

Global Witness, United Kingdom - Shauna Leven, Campaign Director, Corruption

GREENPEACE, International - Daniel Mittler, Head of Political and Business Unit

Inclusive Development International, United States - David Pred, Managing Director

Klimaallianz Schweiz, Switzerland - Christian Lüthi, Director

Mineral Policy Institute, Australia - Charles Roche, Executive Director

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Public Eye, Switzerland - Andreas Missbach, Joint Managing Director

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