

Responsible Investment

The finance sector and human rights: the evolving debate



In 2007, the United Nations Environment Programme Finance Initiative (UNEP FI) established a Human Rights Workstream to explore and clarify how human rights relate to the activities of financial institutions and to develop practical tools and guidance that can be used by the sector to better assess and manage its human rights-related risks. In June 2008, the Workstream published a CEO Briefing, co-authored by Rory Sullivan of Insight, that provides an introduction to the business and human rights debate and sets out some of the key actions that financial institutions can take to ensure that they make a real contribution to the protection and promotion of human rights. The briefing is available at: <http://www.unepfi.org/fileadmin/documents/CEOBriefingHumanRights.pdf>.

In this article, we explain what human rights are, why financial institutions should be concerned about them and the key actions that financial institutions should take to manage human rights issues effectively.

What are human rights?

Human rights can be defined as basic rights that allow individuals the freedom to lead a dignified life, free from fear or want, and free to express independent beliefs. The 1948 Universal Declaration of Human Rights (UDHR) has formed the basis for the key international human rights instruments (The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, and the Core Conventions of the International Labour Organisation). The UDHR encompasses the right to life, liberty and security of person; the right to recognition before the law; freedom of thought, conscience and religion; freedom from torture; freedom from slavery; freedom from imprisonment for debt or from retroactive penal legislation. The preamble to the UDHR calls on 'every individual and every organ of society' to respect and promote the rights set out in the UDHR. It is, therefore, widely argued that these obligations also apply to companies.

Does the finance sector have a role to play?

Perhaps the most important contribution that the finance sector can make is helping overcome the economic barriers to the realisation of human rights. This contribution may be through improving living standards and creating employment (by financing projects and other forms of economic activity), or through the provision of finance for energy, water or other key infrastructure. The finance sector can also help through ensuring that projects are developed and implemented in a socially responsible manner, through its philanthropic activities, and through actively supporting the promotion of human rights.

Notwithstanding these important contributions, the sector has been criticised for providing financial support to companies or activities that violate human rights. For example, the sector has been accused of facilitating the enrichment of corrupt and oppressive regimes through capital flight and money laundering, providing finance for the weapons trade, supporting extractive industries operating in conflict zones and financing projects that pose a threat to human rights in developing countries.

While it is difficult to put figures on the business costs and benefits of human rights, the broad connections are clear. Companies that are perceived as being associated with human rights violations may be targeted by non-governmental organisations (NGOs) or the press, with consequent impacts on their brand or reputation, their share prices, their ability to access markets and their ability to recruit the best employees. Conversely, organisations with a good human rights record should be able to capture a range of commercial benefits, such as enhanced reputation and image, more secure 'licence to operate', improved employee recruitment and retention, reduced risk of litigation, opportunities for new business and better stakeholder relationships. There may also be broader social benefits as a consequence of

The finance sector and human rights: the evolving debate

businesses operating in a responsible manner, such as increased trust between business and the community or, depending on the country, a decline in social unrest. Despite the potential benefits of having a good human rights record, there may be trade-offs between short-term costs (e.g. the risks of losing some business to competitors with lower standards) and these longer-term benefits.

Challenges

While there are strong arguments for companies in the finance sector to take a proactive approach to human rights, the specific actions that financial services companies should take are by no means clear. First, because international human rights law is addressed to states, rather than companies, there is, as yet, no agreement as to what the specific expectations of companies are. Even though NGOs such as Amnesty International, have sought to define the human rights obligations of companies, their definitions have not been universally accepted and the specific expectations of companies remain the subject of discussion. The absence of an agreed normative framework therefore makes it difficult for companies to clearly delineate the scope of their obligations. It also means that, even when companies have taken highly proactive approaches to managing human rights issues, it may be difficult to demonstrate that all human rights issues have been identified and properly managed.

Second, it is not clear how far responsibility extends and, clearly, the degree of a company's responsibility is restricted by its ability to exert influence. A company can, of course, be held responsible for the realisation of human rights within its own operations and activities. In the context of the finance sector, this relates to employees (encompassing issues such as non-discrimination, health and safety, equal opportunities, security) and, to a lesser extent, supply chains (in particular, issues such as health and safety, and the other issues covered by the Core Conventions of the International Labour Organisation). For the finance sector, the more difficult (and contentious) issue relates to situations where the provision of loans, insurance or other financial services exposes the financial institution to the human rights concerns of its clients. That is, even though it may not have particular control or influence over the activities of a client, financial institutions (because of their scale and profile) may find themselves linked with human rights violations perpetrated by a client.

Third, many lending or investment decisions present banks and investors with difficult dilemmas. For instance, lending to companies in conflict zones is not necessarily bad; the acceptability of this action depends on the circumstances, conduct and integrity of the parties concerned, and subsequent benefit to the country's population and

standards of living. Sometimes the most appropriate and responsible course of action in human rights terms may not be the most popular with external stakeholders. For example, the purpose of the Equator Principles is not to stop banks from funding projects on social and environmental grounds, but rather to ensure that better projects are financed, by allowing project financiers to understand and mitigate social and environmental risks prior to lending.

Taking action

Despite the evolving nature of the debate around the role that finance should play in promoting human rights, there are a number of immediate practical steps that companies can take; indeed, many of the larger banks and financial institutions have already taken many of these.

The first set of actions relates to management preparedness. Companies should seek to develop relevant management tools, including processes for ensuring that human rights are built into core business activities such as risk management, project management, purchasing, product or service development, customer relationship management and marketing.

Of particular importance for financial institutions is building human rights considerations into assessment processes – due diligence, credit rating, environmental and social impact assessment – for new projects or clients. These appraisal processes provide a critical opportunity for the financial institution to assess the human rights performance of a client or project before deciding whether or not to proceed with financing. One example of the sector's work in this regard is the online guidance tool being developed under the auspices of the UNEP FI Human Rights Workstream to enable front-line lending managers to identify, evaluate and mitigate human rights risk when considering new business relationships or transactions. Further information is available at <http://www.unepfi.org/humanrightstoolkit/>.

Identifying human rights concerns at an early stage in the process should not only minimise the financial risks but also allow financial institutions to take action to protect human rights. This could mean incorporating specific covenants on human rights into contracts, engaging with the client or establishing monitoring requirements. These actions should, in turn, help reduce the likelihood of potentially destabilising and costly (in financial and reputational terms) human rights-related controversies.

The finance sector and human rights: the evolving debate

The second set of actions relates to the wider role of financial institutions in influencing their clients and other parties (e.g. governments) to protect human rights. This could be through expressing public support for the UDHR, as many financial institutions have already done, or through contributing to development activities. Companies, including financial services organisations, can also seek to influence their industry peers by encouraging high standards across the sector. An example is the work of the UNEP FI Human Rights Workstream (as mentioned in the introduction).

Conclusion

The debate around finance and human rights is evolving, with emerging clarity on what financial institutions can do to promote human rights. But there is much work to be done, both to clarify the responsibilities of financial institutions and, more importantly, to ensure the finance sector plays its part in the realisation of human rights across the world.

For more information on the UNEP FI Human Rights Workstream, see:

http://www.unepfi.org/work_streams/human_rights/index.htm

October 2008.

Produced by the Insight Responsible Investment Team

Web: http://www.insightinvestment.com/responsibility/investor_responsibility_home.asp
Tel: 020 7321 1162

 Part of the HBOS Group

© 2008. Issued by Insight Investment Management (Global) Limited. Registered office 33 Old Broad Street, London EC2N 1HZ. Registered in England and Wales. Registered number 827982. Authorised and regulated by the Financial Services Authority.

06139-10-08