



# Finance and human rights

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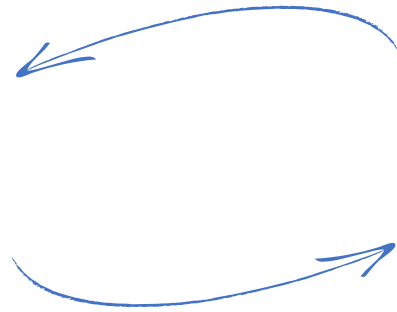
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# A (real) story

'Ana'



'John'







Down the value chain:  
Slavery, indigenous and  
vulnerable groups, human  
rights infringements by the  
business sector

**Political science**  
**International law**  
**Business ethics**  
**Anthropology**  
**Sociology**

**Business and human  
rights**



Up the value chain:  
Corporate governance;  
profits, wealth

**Economics**  
**Finance**



While not traditionally a topic for management and econ scholars, more research now on business and human rights

Interdisciplinary business and human rights scholarship (Wettstein, 2012)



Most studies focus on sectors such as agriculture, mining, utilities, or manufacturing

Hardly anyone has ever investigated the responsibility of **investors** financing the businesses involved in the abuses

# History of business and human rights

Table 1  
Timeline BHR Discussion.

Developments	
1970s	<ul style="list-style-type: none"> <li>● 1974: UN Draft Code and Center on Transnational Corporations</li> <li>● 1976: OECD Guidelines for Multinational Enterprises</li> </ul>
1980s	<ul style="list-style-type: none"> <li>● 1984: Bhopal gas disaster</li> <li>● Controversy over Western businesses in apartheid South Africa</li> </ul>
1990s	<ul style="list-style-type: none"> <li>● 1995: Execution of Ken Saro-Wiwa in Nigeria</li> <li>● Various high profile reports by prominent Civil Society Organizations on corporate human rights abuse</li> <li>● 1993: Abandonment of Center for Multinational Corporations and of UN Draft Code</li> <li>● 1998: Start of drafting of UN Draft Norms</li> </ul>
2000s	<ul style="list-style-type: none"> <li>● 2000: Launch of the UN Global Compact</li> <li>● 2004: Abandonment of UN Draft Norms</li> <li>● 2005: Beginning of mandate of the UN Special Representative on business and human rights (SRSG)</li> </ul>
2010s	<ul style="list-style-type: none"> <li>● 2011: Conclusion of mandate of the SRSG and Publication of UN Guiding Principle on Business and Human Rights (UNGPs) →</li> <li>● 2011: UN Working Group on BHR</li> <li>● Various home state initiatives; National Action Plans on BHR</li> <li>● 2015: Start of treaty negotiations in the UN Human Rights Council</li> </ul>

## THREE PILLARS of the UN GUIDING PRINCIPLES



# How big is the problem of business-related abuses of human rights?

Research in business and human rights is normative and based on anecdotal or case-study evidence

Data on business-related abuses are scarce  
Quantitative analyses are rare



# Where we stand now

- More systematic evidence of abuses, but data issues persist
- Policy agenda on business and human rights has progressed (e.g. EU Sustainability Due Diligence Directive)
- But the general view is that impunity is predominant among the firms involved in the abuses internationally
- Corporate impunity increasingly perceived as a threat to democracy (victims of abuses no longer trust democratic institutions)
- Financial sector often out of the radar



In 2023, the **UN Working Group on Business and Human Rights:**

*a key challenge is that most financial actors fail to connect human rights standards and processes with ESG criteria and investment practices because of a prevailing lack of understanding of how human rights issues should be reflected in social criteria, environmental and governance indicators*

- Human rights only considered as one 'S' component of ESG ratings
- Often no understanding of what human rights are – *often equalling human rights to genocide or torture* – while human rights concern E, S and G dimensions

**Environmental:** an oil spill can damage the health of communities or their right to clean water



**Social:** violations of workers' rights (fair wages, rights of assembly, etc.)



**Governance:** gender discrimination, or aggressive tax avoidance



# In search of (more) evidence

178 Forbes Global 2000 banks observed 1990-2018

Europe (36%), North America (33%), Asia-Pacific (24%), Central America (1%), South America (3%), and Africa (3%)

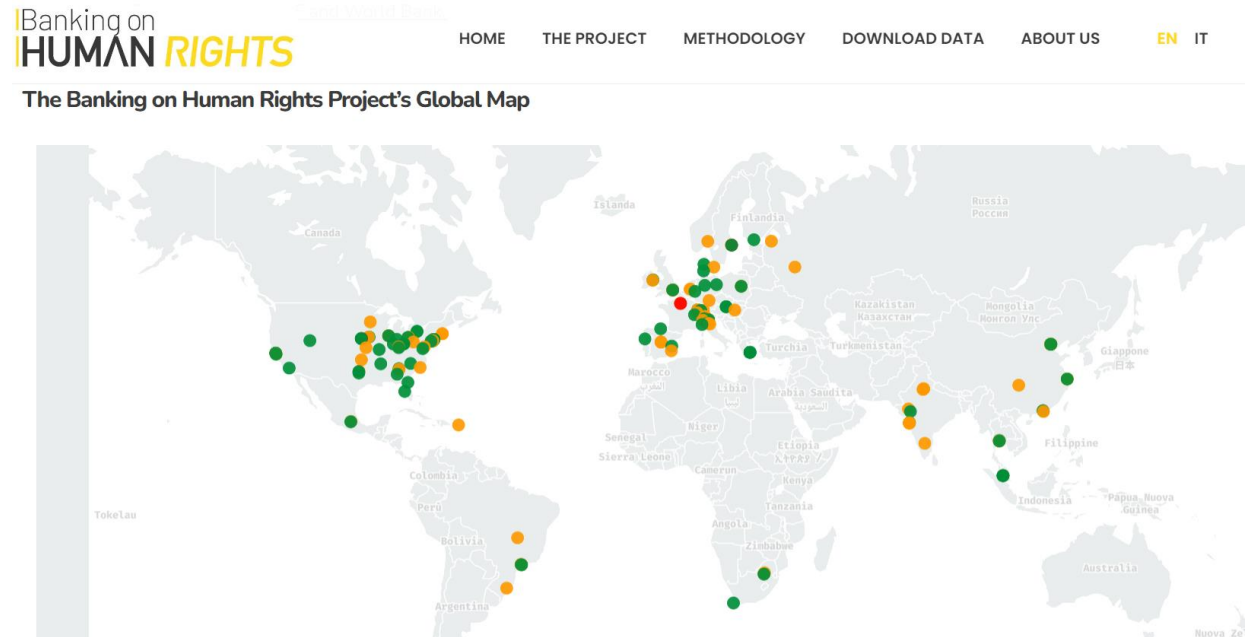
Manual coding of evidence of abuses of human rights where involvement of the focal bank is documented

Source: Business and Human Rights Resource Center, plus additional sources



**232 events** of negative human rights impacts occurred between 1990 and 2018

**36% of the banks** in our dataset are involved in at least one abusive event



<https://bankingonhumanrights.org/>



## **33% *cause an abuse directly***

When financial institutions “on their own remove or reduce a person’s (or group of persons’) ability to enjoy a human right” (OHCHR response to BankTrack, 2017, p. 5). The OHCHR points out that “in the context of a bank’s activities, such situations are most likely to arise in the context of a bank’s own employees, for example if a bank discriminates against women or racial minorities in its hiring practices” (OHCHR, 2017, p. 5).

## **33% *intentionally contributes to abuses by third-party actors***

When banks’ actions or omissions contribute to an adverse impact and when “influenced the client in such a way as to make the adverse human rights impact more likely” (OHCHR, 2017, p. 5).

## **84% *is linked to abuses by third-party actors***

Instances in which the impacts are directly linked to the bank’s operations, products or services by its business relationships (UNGPs, GP 13(b)). This type of involvement *does not entail a causality element* and can arise also in the context of non-controlling minority shareholding (OHCHR, 2017, p. 5; OECD, 2014) as well as lending portfolios.

# So what?

- Increasing acknowledgement that the financial sector has human rights responsibilities
- But, human rights abuses associated to the financial sector are largely overlooked and underestimated
- Yet, the UNGPs requires the financial sector to act responsibly

# Frequent pitfalls

- Approving project financing for a client despite reasonably knowable ongoing or potential adverse human rights impacts;
- Providing general corporate loans without human rights and environmental due diligence requirements, despite an awareness that such financing might lead to adverse human rights impacts due to the nature of the client's business model;
- Investing in green bonds despite an awareness that such financing might lead to adverse human rights impacts due to the nature of the client's business model;
- Investing in projects without ensuring meaningful consultation with all affected communities including free, prior and informed consent by Indigenous peoples;
- Sovereign wealth fund investments that may result in environmental, social and governance concerns and human rights abuses in host States; and
- Providing transactional or underwriting support that enables clients' harmful business activities.

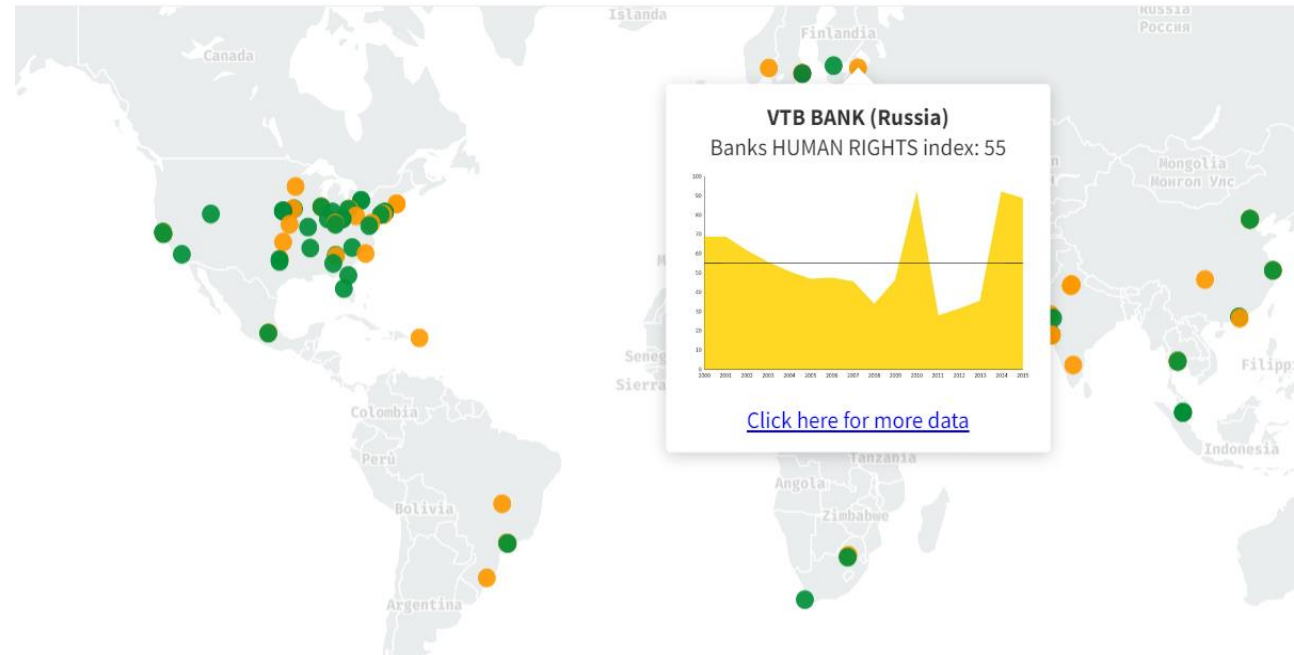
# Market solutions to this problem

- Need to go beyond the ‘magic’ of ESG ratings
  - Accounting for human rights abuses based on the UNGPs approach to business and human rights
  - Focus on human rights’ adverse impacts, positive KPIs cannot compensate harm (human rights are not tradable)
  - Avoid companies’ voluntary disclosure, focus on secondary data by other sources
  - Methodology needs to be transparent and replicable (unlike most ESG ratings)
  - Human rights abuses need to be coded according to when they occur not when they are sanctioned or communicated by the press
  - Rating needs to account for the different exposure of companies to media and NGO activism
- Risk needs to shift from risk for the business/financial sector to risk for the victims



# An **alternative** to standard ESG

- M-quantile regression approach (Breckling and Chambers 1988) with discrete dependent variable (Tzavidis, Ranalli, Salvati, Dreassi and Chambers, 2015)
- Human rights abuses (number, number by typology) at time  $t$ , conditioned for time and exposure to media and NGO scrutiny (or sector, size, etc.)
- Limitations due to lack of official data



Fiaschi, D., Giuliani, E., Nieri, F., & Salvati, N. (2020). How bad is your company? Measuring corporate wrongdoing beyond the magic of ESG metrics. *Business Horizons*. Elsevier, 63(3), 287-299.

# Other solutions

- Set up a national accountancy on human rights abuses by the business sector, including finance, exploiting records by:
  - Labour departments; occupational safety & health administrations,
  - Environmental protection agencies
  - Consumer product safety commissions
  - Other regional/national agencies/organizations
  - UNGPs/OECD National Contact Points also a source of information
- Useful to/for
  - Ranking firms
  - Policies conditioning State support to human rights ratings
  - Procurement for businesses scoring better
  - More/better access to finance

# Other solutions

- New policies with the financial sector supporting the implementation of the UNGPs
  - Undertaking their own human rights due diligence (HRDD)
  - Placing HRDD and access to remedy requirements for existing and prospective clients
  - Acting as shareholders calling on portfolio businesses to respect human rights
  - Board oversight on human rights risk management

# Final considerations

- If we care about the victims of business-related abuses of the world, we need to change approach
- Normative approach more adequate than instrumental business-case (Hahn et al, 2014; Wettstein et al., 2019)
  - Use of ESG ratings in academic research is mostly oriented at testing whether they pay off financially for firms or investors
  - After 20 years+ of research testing whether CSR pays off, management scholarship realized this was an irrelevant question (Walsh and Margolis, 2003), why start again with ESG?
- Solutions are at hand, they could be used to minimize harm without further delay (see also divestment cases)





**Thank you!**

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