

Research Group on Banks and Human Rights from the Second University of Rome "Tor Vergata."

In brief, we are a Research Group on Banks and Human Rights from the Second University of Rome 'Tor Vergata.' We are a team of researchers that have been researching the issue of "Increasing relevance of human rights principles and norms in banking and financial activities" since 2010. As such we also attended the first conference held by the Working Group on Business and Human Rights in Geneva last year. The initiative was timely and very much appreciated considering that we are the only research group in Italy with a multi-sectoral focus on this subject.

Please see attached a concept note of our project explaining the purpose, background and methodology underlying the research and key issues involved.

The project (still in progress) is based on a review of over 170 cases of human rights violations violations that have had an impact on or involved banks and financial institutions over the last 10 years. It examines both actual and alleged violations against banks and financial institutions, and thus includes cases that were adjudicated in court and also those that were never brought before an adjudicatory mechanism. It was realized with the support of UniCredit, Italy.

We are very interested in attending, and hopefully presenting our research project at the Human Rights and Business forum this year as it would be the first presentation of our research work.

Specifically, we would be interested in one or more of the following activities at the forum -

1. Panel discussions with other interested partners (such as banks, law firms, human rights organizations) and we can assist you to corral these partners if needed;
2. Side events discussing our research project, either individually or within a broader area of interest (such as business and due diligence) that are organized during the forum; and
3. Publication of a research paper/report – distribution of a summary of our research project including future projects, key findings and key areas of interest at any event.

Please let us know if you need anything else from us and we look forward to hearing from you.

All the best,

Alessandro Costa



**Concept Note dated 18 April 2013**

**THE PROMOTION OF BANK'S**  
**COMPLIANCE TO HUMAN RIGHTS**

The Research Group aims to create a platform for ongoing dialogue and exchange of ideas and seeks to explore key themes, new developments and different ways of thinking with other interested stakeholders at the UN Forum on Business and Human Rights 2013 in Geneva.

It intends to achieve this by discussing the results of its research project, organizing *ad hoc* seminars and encouraging a continuous flow of information and exchange of ideas among various stakeholders such as: academic researchers, human rights practitioners, CSOs, NGOs, international organizations and the private sector.

**This research project was supported by UniCredit.**



## Background

The issue of accountability of banks, both as direct actors and as indirect financing agents in respect of human rights violations has come under the spotlight and deserves renewed attention as the risk of involvement of banks and other financial institutions' is notably increasing.

This is especially pronounced following the adoption by the UN Human Rights Council of the report of Prof. J. Ruggie, establishing the "*Protect, Respect and Remedy*" framework. Consequently, several private banks are developing and adopting human rights standards and codes of conduct within their policies.

Under the current regime, banks can be directly held liable for human right violations of employees, ; but in some cases, they can also be held indirectly liable for human rights violations resulting from the business activities of their clients through the concept of complicity and the communities within which they operate.

Thus, because a bank often performs a facilitative role to the business activities of its clients, its conduct will also be evaluated on a broader basis to assess whether it contributes, facilitates or supports human rights violations committed by other actors.

This research project seeks to explore such new trends whereby banks' impugned conduct is perceived to fall beyond direct human rights violations, to also include indirect conduct by way of complicity, if violations are committed by enterprises financed by those banks. The conclusions of the research are especially interesting regarding:

- The extent of Banks' responsibility through the concept of complicity;
- Judicial versus non-judicial remedies;
- Extraterritorial competence of national courts; and
- The increasing supervisory role of CSOs and NGOs as human rights watchdogs.



## Key findings and potential benefits

The research underlines and provides an overview of:

- **the consistent, concurrent and unequivocal action of international and national public bodies towards a stronger compliance to human rights principles and norms by businesses, including banks and financial institutions** (the Global Compact, the new IFC Performance Standards and the revised version of OECD Guidelines for Multinational Enterprises, as well as the ECAs incoming OECD's Council Recommendation on Common Approaches Officially Supported Export Credits and Environmental and Social Sustainability (the 'Common Approaches') and the human rights compliance requirements by the Sustainability Rating Agencies, by Sustainability Indexes such as FTSE4GOOD and Dow Jones).
- **the expansion of the jurisdiction of national courts and positivist attitudes to adjudicating international human rights standards and norms at the domestic level:** many scholars already speak of strategic or **innovative litigation** and there is an increase in positivist judgements from national courts in the face of rising pressures of public opinion to hold businesses accountable for human rights violations. In addition to courts, there are other adjudicatory mechanisms such as national and international human rights defenders, prosecutors and ombudsmen that have an investigative and sometimes adjudicative function, as is the case with the IFCs Ombudsman or the OECD Contact Points.
- the tendency of some national courts such as the US courts that are more willing to review the day-to-day functioning of banks and would sometimes examine the **corporate culture of a bank to determine a bank's corporate liability (usually through complicity)** for human rights violations.
- **an increasing supervisory role performed by CSOs and NGOs** often beyond - and in addition to - Government and national courts. CSOs are considered to be more efficient 'watchdogs' and now more frequently bring to attention human rights violations, using innovative techniques such as requests of explanations. Another actor that also performs a supervisory role is NGOs (both international and national).
- **the commonalities and key trends that would be useful to make banks and other financial institutions aware of the potential nature of the risk deriving from human rights violations.** In this regard, potential risk may be caused directly as a result of its own conduct or indirectly, as a result of the conduct of its borrowers/customers. An inadequate, irresponsible or unsuccessful management of human rights allegations could be costly for banks and financial institutions, especially CEOs and Board members given their duties to both the company, stakeholders and shareholders.
- **the consistent finding in the analysis that all types of bank operation can potentially be the subject of an alleged human right violation with different levels of risk:** from project finance, to general lending to enterprises, acquisition of stocks and subscription bonds, etc. Client evaluation thus becomes more complex. Banks are increasingly requested to review the activities of its corporate clients to look beyond simple financial analysis to judge credit worthiness of clients to a deeper understanding of the nature of its clients activities.



More precisely, the research deals with the following aspects:

- ✓ Banks are increasingly alleged to be involved in human rights abuses through the principle of complicity
- ✓ Growing international momentum in the business and human rights field: banks and business compliance under scrutiny
- ✓ The attitude of the most relevant international Institutions
- ✓ The attitude of the National Overseas Investment and Credit Guarantee Agencies as well as the National Banking Associations
- ✓ The attitude of an increasing number of the largest world private banks
- ✓ Human rights are increasingly a parameter for the evaluation of banks and businesses by the sustainability rating agencies
- ✓ The increasing number and importance of watchdogs and reinforced activism of some investors which use ESG screening criteria
- ✓ The increasingly stringent requirements of national corporate laws
- ✓ The expansion of the jurisdiction of competent national courts to adjudicate human rights abuses committed abroad
- ✓ The increasing tendency of national courts and public administration bodies to consider corporate culture as a parameter for evaluating the level of corporate responsibility in respect to the one of individual managers or employees
- ✓ Increasing number of cases involving banks
- ✓ The enlargement and diversification of the type of bank operations in respect to potential human rights abuses
- ✓ The dimension of the damages suffered by the banks, both economic and reputational, due to involvement in human rights abuses
- ✓ The increased availability of information on invested companies and bank clients
- ✓ The structure of the contracts for the most relevant transactions, especially for large works and investments in developing countries increasingly contain clauses referring to the respect of human rights
- ✓ Human rights compliance can boost motivation and performance of staff, workers and management

- **The research aims to promote and facilitate greater compliance to international human rights norms and standards by banks and other financial institutions.** This can be achieved in a number of ways, including development and revision of existing policies, encouraging change in corporate culture and increased training of management and staff. In particular, embedding human rights compliance within the corporate culture of banks maybe a challenging medium term goal, but it would yield long-term benefits.
- **Research indicates that stronger human rights compliance is conducive to building an effective relationship with civil society and communities, far beyond judicial assessments.**
- The research also provides recommendations developed using the case law analysis and current literature to date. It discusses innovative ways in which banks may respect, protect and remedy human rights within their individual corporate structures and **analyzes the effectiveness of risk management measures such as internal policy statements, due diligence processes and other mitigation measures.**
- *In conclusion and more importantly, the research showed that the underestimation of the risks connected with human rights violations can cause long-term damage (both reputational and economic) to banks, financial institutions and any overarching holding companies.*



## Project description and methodology

The research study has been structured on two different grounds: theoretical and empirical. The first approach has been conducted through the study and review of existing literature, international law and relevant national legislation with the aim to respond to the underlying premise of the project: "Why should banks comply with human rights?"

The empirical component of the research study was conducted by reviewing 170 cases of alleged violations of human rights that have had an impact on or have involved banks in the last 10 years. This provided the research project with a deeper level of understanding to gauge how risk was perceived and how responsibility was allocated within specific fact matrices. As a result of this analysis, certain general remarks can be made with respect to how banks maybe liable in the future for potential human rights violations. The research team has also developed a casebook matrix used for its analysis that illustrates alleged violations of human rights violations that have had an impact on or such to involve banks and other businesses.

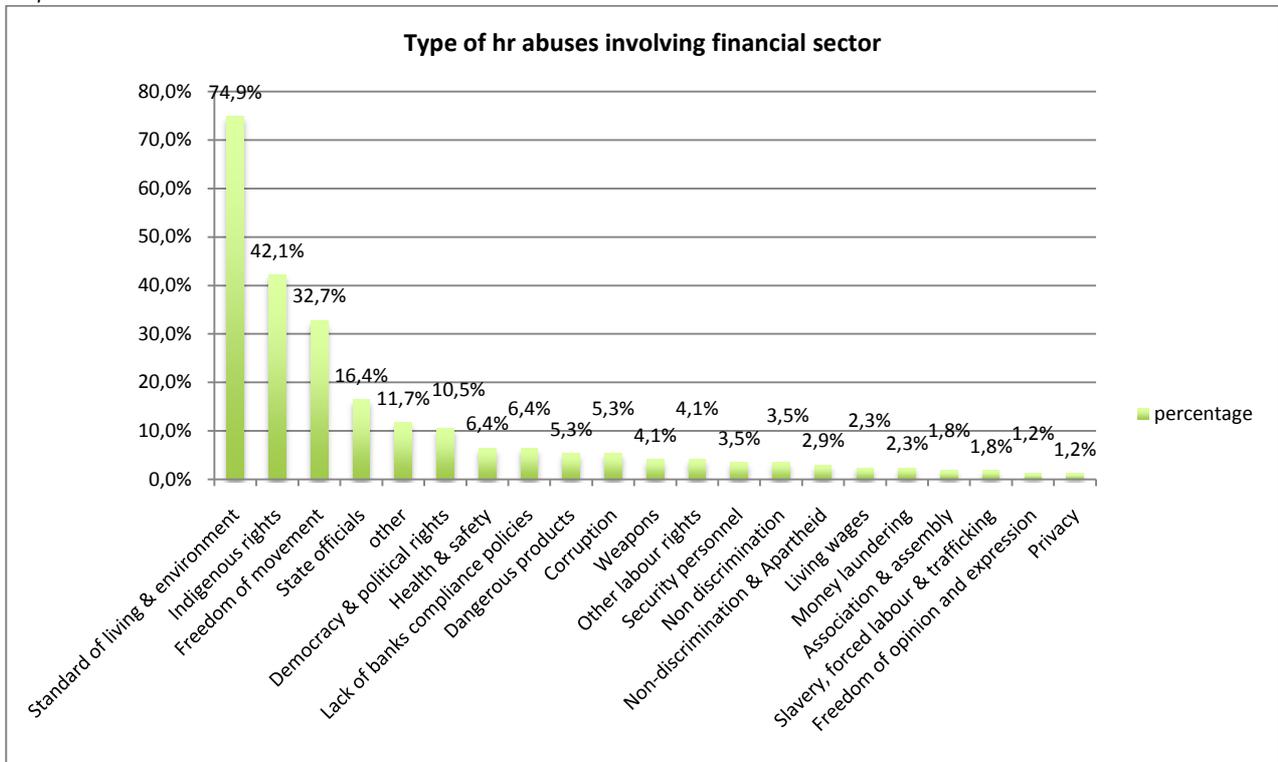
The cases are categorized using the following parameters:

- geographic localization of the alleged violation
- the nature of the human rights norm under question
- human rights violations by industry sector
- length of the dispute resolution process
- type of human rights violation involving banks or other entities in the financial sector
- groups of human rights more frequently violated (right to life, labour rights, etc.)
- type of banking or financial operation allegedly involving human rights violations
- relevance of cases reported
- quantification of damages

The thorough review of key cases has allowed unorthodox aspects of the litigation process to emerge, such as the role of CSOs, the level of judicial and non-judicial enforceability of human rights norms, the role of social mobilization including media campaigns that bring banks conduct to public attention, an attempt to quantify of reputational and other damages suffered by banks and financial institutions.

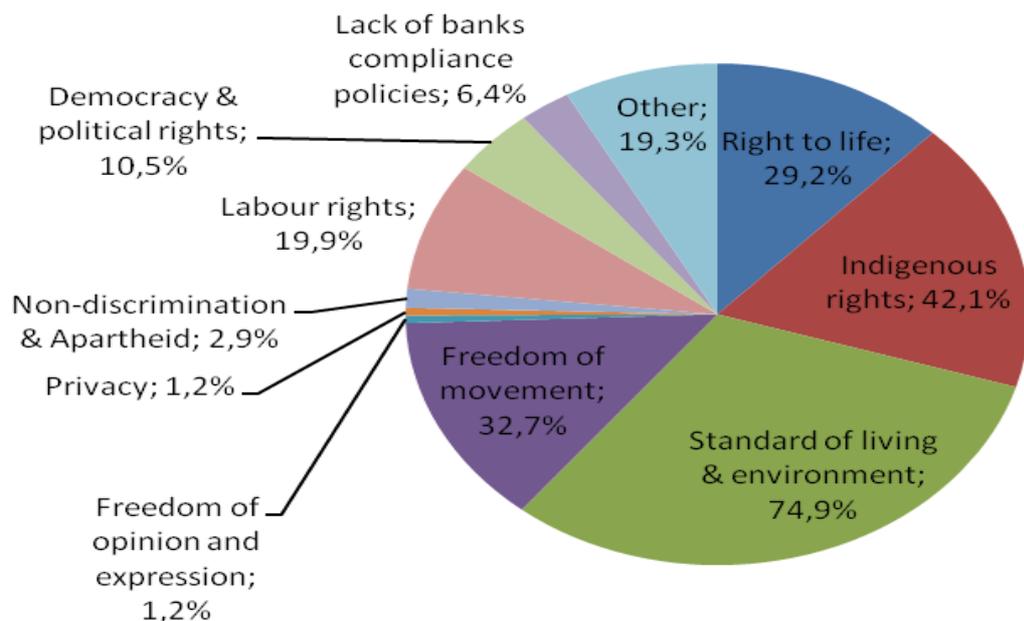
Among the graphs summarizing the cases surveyed, the ones below show that the financial sector has been the subject of alleged violations across the full spectrum of human rights considered within the present study.

Graph n. 1



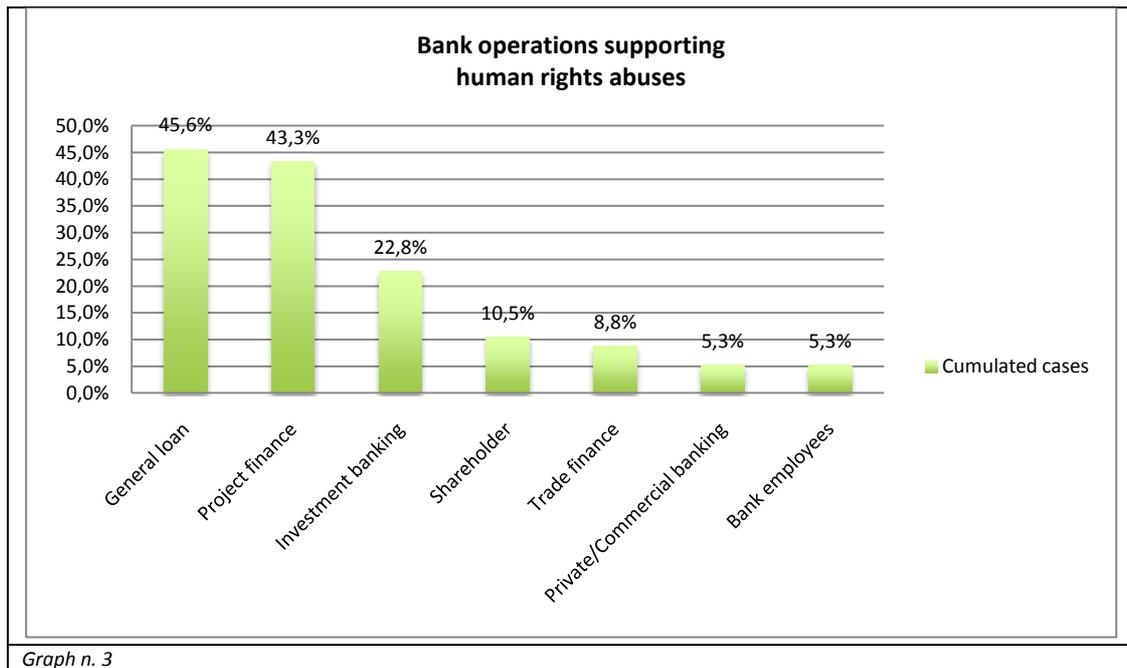
Graph n. 2

## HR groups more frequently abused



The analysis also focused on the specific banking or financial activities that were subject of the alleged violation. Alleged violations fell into two categories and were either directly the subject of a human rights violation or indirectly through the provision of funds to partners or customers.

Graph 3 below illustrates the frequency of type of lending connected with Human Rights violations.



### The Research Group

The group is composed by independent researchers from the University of Rome Tor Vergata led and coordinated by Professor Alessandro Costa.

**Alessandro Costa** Born in 1949. Juris Doctor, specialisation in the USA. His practice focuses on international financial and legal relations, with special emphasis on Human Rights, EU law, international contracts, project finance, anti-trust law, practice and procedures of international financial institutions. He has served as adviser to international institutions (EU, UNIDO, IFC, UNDP) and national ones (Italian Bilateral Aid, International Agencies of the Italian Chambers of Commerce). Former Professor of International Economic Law and presently of International Environmental Law in the University Parthenope of Naples, he is consultant to the main Italian training institutions in matters of International Trade Law. He is the coordinator of the research of Second University of Rome on Human Rights and Economy. He authored monographs on International Economic Law, the EU policies, the World Bank and on international business techniques and financial instruments for joint ventures.

**Antonella Sarro** Born in Rome in 1957. Juris Doctor. Presently professor at the Institute of European Studies Alcide De Gasperi. Her experience includes criminal law and international business law, EU Law, international contracts, project finance, drafting and management of training schemes for international



managers. Consultant to several firms, public institutions and Chambers of Commerce in matters relating to internationalisation of enterprises, she authored the Compendium of Italian Bilateral Aid Legislation as well as numerous articles on industrial collaboration with developing and eastern European countries. She led numerous technical missions in Iraq, Lebanon, Serbia, Albania and Romania.

**Marta Bordignon** PhD student in International Law at Rome Tor Vergata University (Italy), graduated in Political Sciences (BA) at LUISS Guido Carli University, Rome (Italy), Master in International Relations at LUISS Guido Carli University, Rome (Italy), final dissertation in Economics and Politics of Countries in Transition: "Ukraine and the European integration: the political and economic impact on the country and on the relations with Russia". Master in Diplomatic Studies at SIOI (Italian Society for International Organizations) in Rome. Assistant lecturer of Geopolitics and Economics and Politics in Transition at LUISS Guido Carli University in Rome. Coordinator of the Italian students' team at the YICGG 2010 "Glocalization" (Youth International Competition on Global Governance) in Shanghai (China), at the YICGG 2009 "Global Governance and Innovation 2020: Challenge for One Economy, One Environment, One Finance, One Security, Many Cultures" in Tbilisi (Georgia), at the YICGG 2008 "Growth and Innovation 2020" in Rome (Italy).

**MariaCristina Caracciolo** obtained a Ph.D. in Comparative Law in January 2010 from the Faculty of Political Studies and for European and Mediterranean High Education "Jean Monnet" of Second University of Naples (SUN). She is a connoisseur of International Law at University of Rome "Tor Vergata" since 2006. She is also a member of the Rome Bar since 2009. She was also Contract Professor of International and European Law.

**Bandini Chhichhia** is an Australian lawyer working in international development and rule of law. By way of background, she completed her Bachelors of Law and Commerce (Accounting major with Distinctions) from the University of New South Wales in Sydney. After graduating from her BComm\LLB degree she worked as a Researcher to the New South Wales Court of Appeal (the highest appellate court in the state) and also as Judicial Assistant to Acting Justice Sackville. She then worked as a commercial lawyer in Australia for Allens Arthur Robinson, within their banking and finance, environment, construction and litigation teams. She recently completed her Masters in Rule of Law for Development at the Loyola University of Chicago, at the Rome campus and is currently working as a legal consultant to the International Development of Law Organisation (IDLO) based in Rome.

**Damiano De Felice** is a PhD student in International Relations at the London School of Economics and Political Science (LSE). His dissertation deals with human rights conditionality in foreign aid. In particular, the dissertation aims to explain the variation in the application of human rights conditionality by different EU member states since the end of the Cold War. Damiano is also the editor of Millennium: Journal of International Studies, a peer-reviewed journal based at LSE. Damiano holds a Laurea Specialistica in International Relations from the University of Pisa and a Diploma di Licenza Specialistica in Political Science from the Scuola Superiore Sant'Anna. Damiano has also studied International Law at the École Normale Supérieure in Paris and Chinese Language at the University of Chongqing. He has worked as an intern at the Diplomatic Mission of Italy to the United Nations in Geneva and at the Italian Chamber of Deputies in Rome.



**Silvia Fratini** After a Bachelor Degree in European Economics at Tor Vergata University in 2007, and a 6-months academic experience at the Universidad de Granada, she moved to Milan at Bocconi University, where has attended a Master of Science in Economic and Social Science. During her studies, she collaborated with the Department of Economics and Institutions of Tor Vergata, working as data collector for a research project on Italian manufacturing companies. In September 2009 she moved to Brussels for a 6-months traineeship at EJC – Roberti ed Associati, a consulting firm specialized in antitrust litigations. After the graduation, she moved to Rome to join as a trainee the Economic Evaluation Team at the Antitrust Italian Authority for three months. Thereafter collaborated with VVR - Verto Value Regeneration as a Junior Consultant for a research project focused on craft industry and craft professional training. Currently, she works in the Transfer Pricing Team at KStudio Associato – KPMG in Rome since October 2010.

**Giada Lepore** She received her Law Degree from the University of Tor Vergata in Rome with a final dissertation on the role of NGOs in Human Rights protection and enforcement. She has collaborated in research programs within the University of Tor Vergata in the field of human rights and economy, and she has also worked as a legal consultant in a consulting firm specialized in development cooperation. She holds a LL.M. magna cum laude in Intercultural Human Rights at St. Thomas University School of Law (Miami) and she is currently enrolled at the same university with a doctoral program researching on Business and Human Rights.

**Silvia Solidoro** holds a PhD in Economic and Market Law from the Institute of Advanced Interdisciplinary Studies (ISUFI) in Lecce, Italy. As a research fellow, she completed a dissertation on 'Cross Border Insolvency, Multinational Enterprise Groups and Conflicts of Law' in 2011. She served as a Lecturer and Teaching Assistant on International Law at the Faculty of Law of the University of Salento. Silvia was admitted to the Italian Bar in 2009. She is currently working at the Investment Climate Department of the International Finance Corporation (IFC) of the World Bank Group, consulting on competition policy and antitrust matters.