The upside to being upstanding

The human rights imperative for banks

Contents

Introduction

When people think of banks, they think about money. Can I get a loan? Can I get more credit? Is my money safe? But banks are much more than a trusted place to store and borrow cash.

They are the gatekeepers of the financial system and, as such, they have enormous influence on society. Upward mobility is often predicated on affordable access to financing. Banks can strengthen or hobble individual businesses and whole communities alike by supporting or limiting their access to funding. And they can accelerate or slow the economy based on the sum of the lending decisions they make.

Banks' role in society therefore positions them as a front-line guardian of basic human rights (see "What are human rights?"). Banking, after all, is fundamentally a business built around connections to people from all walks of life, which makes respecting human rights essential to their mission, purpose, and success. As "duty-bearers" on human rights, banks have a disproportionate responsibility in society. For instance, laws require banks to treat customers fairly and promote financial health and access. Banks need to evaluate the beneficiaries of their business as worthy recipients, lest their access to funding be used for illicit purposes. And they have a moral obligation to keep out of the market financial instruments and service offerings that can perpetuate social inequities.

By connecting the "S" pillar of their environmental, social, and governance (ESG) agendas to human rights, banks can get credit for the work they are already doing while prioritizing engagement with stakeholders most at risk for harm, or "rightsholders" (see "Stakeholders vs. rightsholders"). Society needs to know that companies understand human rights risks and are committed to measurable progress in preventing and managing abuses.

By being more proactive in this way, banks can accrue measurable financial benefits, from managing risks better, to creating new sources of value, to protecting reputations and increasing brand value (figure 1). Numerous studies, including those looking specifically at the banking industry's record, have shown that the link between social and financial performance is positive.[1] This makes respecting and protecting human rights a commercial imperative in addition to a social and ethical one.

Figure 1: The business case for human rights

Manage risk	Create value	Improve relationships	Protect reputation	Meet expectations
Improving social performance is directly linked to improving financial performance	Rethinking social performance creates opportunities for new products in new markets	Leading on social performance builds, improves, and sustains business relationships	Managing social performance protects a brand's reputation and increases brand value	Prioritizing social performance manages stakeholder expecta-tions and responses to investor resolutions

What are human rights?

In 1948, the General Assembly of the United Nations (UN) adopted a set of declarations that state 31 basic rights and fundamental freedoms to which all human beings are entitled (figure 2). The Universal Declaration of Human Rights (UDHR) is widely recognized as having inspired and paved the way for the adoption of more than 70 human rights treaties.

In 2011, the agency released the United Nations Guiding Principles (UNGPs) that called out business enterprises as duty-bearers with respect to protecting human rights. Specifically, the UNGPs established that businesses have a responsibility to avoid causing or contributing to adverse impacts to human rights caused directly by their own activities or through their business relationships.

Figure 2. Basic human rights under UDHR

Speech	Liberty	Travel	Freedom	Legal defense	Property	Health and life
Religion	Education	Marriage and family	Residence	Public trial	Creativity	Social service
Leisure	Social security	Privacy	Asylum	Bodily autonomy	Safety	Culture
Assembly	Democracy	Nationality	Protection	Innocence	Living standard	Personhood
	Labor and equal pay		Equality		Social order	

Stakeholders vs. rightsholders

Giving equal weight to all stakeholder perspectives disregards the unique experience of rightsholders—those most at risk for harm. Not all stakeholders are rightsholders, but all rightsholders are stakeholders.

Rightsholders–direct impact

Employees

Employees expect fair and ethical treatment amongst staff, and customers, including **a commitment to diversity, equity, and inclusion**. Companies are expected to have **appropriate governance arrangements and policies and procedures** to **empower employees**.

Suppliers

Suppliers and vendors expect financial institutions to conduct business in a **professional and ethical manner,** e.g., maintaining confidentiality, avoiding conflicts of interest and complying with all laws and regulations. Vendors may also expect support in cyber resilience.

Customers

Consumer-facing companies **face scrutiny around their value chains and how consumers themselves might be impacted by products or services**. Additionally, implications for customers of online banking and fintech services has been a major topic in recent years as it relates to customer privacy.

Communities

Communities expect **non-discriminatory, fair and equal access to financial products and services**. Financial institutions should provide financial education programs, particularly to low- to moderate-income communities. Communities expect financial institutions to **invest and support developments that address local needs** with open dialogue around concerns.

Other stakeholders–indirect impact

Regulators

Conduct diligence to **identify and prevent human rights abuses** and provide remedies when they occur. Avoid enabling human rights abuses or repression of democracy throughout the world. **Ensure labor-intensive supply chains follow fundamental rights related to labor**. Some regulators require disclosing actions taken against modern slavery.

Investors

Investors expect financial institutions to apply **enhanced due diligence and escalation procedures** to clients and transactions identified as posing higher human rights risk. They also expect financial institutions to **seek assurances from their clients that adequate policies and processes** exist to self identify, prevent, and mitigate human rights risks associated with their activities.

Media and NGOs

The media will focus on financial institutions' ability to **prioritize ethical behavior, provide transparency and accountability, and avoid scandals** and similar legal hazards associated with human rights violations. NSOs expect financial institutions to **invest in socially responsible initiatives** that are aligned with their mission and often promote divestment campaigns for those that do not.

Human rights risks related to banking

In addition to human rights risks faced by all organizations, banks face their own unique set of risks they need to manage across the four major groups of rightsholders who are affected by them (figure 3). Since the UDHR was published more than seven decades ago, regulators around the world have enacted a broad sweep of regulations designed to protect human rights in select geographies and sectors. Today, banks and other financial services firms are governed by rules seeking to guarantee equal access to credit and consideration when buying a home or applying for other loans, protect consumers' privacy, and provide basic banking services in low- and moderate-income communities, among other objectives.

More recently, regulators such as the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) have made or proposed changes to Unfair, Deceptive, or Abusive Acts or Practices (UDAAP), the Community Reinvestment Act (CRA), and small business data reporting expectations in an effort to ensure that products are useful, affordable, and delivered responsibly. In these efforts to promote financial inclusion, regulators are increasingly favoring approaches that strengthen enforcement versus voluntary compliance.

Figure 3: Banking human rights risks across rightsholder groups

Human rights risks for banks

From a social standpoint, a financial services institution broadly has four main roles–an employer, a provider of banking products and services, a procurer of services, and a community participant. Under each of these roles, its stakeholders can be exposed to a wide range of human rights risks.

Employees

- Equal opportunity
- Equal renumeration
- Conduct and professionalism
- Employee wellbeing
- Employee health and safety
- Bribery and corruption
- Employee privacy
- Access to remedy

Customers

- Predatory lending
- Discriminatory lending
- Financial inclusion
- Adverse impacts and client misconduct
- Customer privacy
- Access to remedy

Supply chain

- Modern slavery and supplier misconduct
- Supplier diversity

Communities

- Industry and project adverse impacts
- Commodities investing adverse impacts

But perhaps the biggest prod for change is coming from the market itself. Institutional shareholders and customers are homing in on companies' ESG activities, paying increasing attention to what companies are doing under the "S" pillar. As part of this appraisal, banks are coming under heavy scrutiny given their gatekeeping role in society.

In recent years, shareholder proposals have sought to force banks to publicly commit to mitigating adverse human rights impacts directly linked to their business relationships, to regularly disclose their efforts to prevent harassment of and discrimination against protected classes of employees, and to assess and mitigate the potential negative effects of their activities. One such proposal, for instance, sought to force a multinational bank to develop a human rights due diligence tool for assessing and mitigating the potential negative effects of the financialization of single-family rental housing.[2] At the same time, divestment campaigns have put additional pressure on financial institutions to reduce or eliminate investments in countries, industries, and companies with a track record of human rights abuses.

Banks now face a commercial imperative to not only address human rights but create products and services that put human rights at their core. Those who lead the way on this stand to gain access to new and fast-growing markets, strengthen their financial performance, lower their cost of capital, enhance their ability to attract and retain talent, and reduce their reputational and regulatory risk.

From concept to action

Addressing human rights within financial services requires turning abstract concepts into measurable observations and related actions. Three concepts, in particular, come into play when developing a human rights strategy and acting on it: salience, leverage, and remedy (see "A conceptual framework"). Each is tied to a definite step that banks can consider as they develop a human rights strategy and operationalize it.

A conceptual framework

Salience	While materiality focuses on the disclosure of key issues, salience focuses on the prevention and management of those issues while prioritizing those at risk of the most severe impacts.
Leverage	This refers to the ability of a financial institution to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.
Remediation	These are the steps that should be taken to restore victims of human rights abuses, to the extent possible, to their lives and to the enjoyment of their rights before they were violated.

Step 1. Salience: Focus on the risks that matter most

To date, some banks have made progress when it comes to assessing the materiality of human rights risks, disclosing key issues as soon as they arise. But salience is about being more proactive, focusing on the prevention and management of key issues while prioritizing those at risk of the most severe negative impacts to key stakeholders through a company's footprint, operations, geographies, products and services, and relationships.

This is why some banks often conduct a saliency assessment when first developing their human rights strategy. These assessments examine the scope of human rights risks the organization faces and prioritize those with the most grave, widespread, and difficult-to-remedy impacts. They then assess the organization's current state in managing each risk and make recommendations for closing key gaps between the current state and what's required (for instance, by the UNGPs).

Step 2. Leverage: Look for opportunities to effect change

Due to their role in society, banks have the power to influence industry and markets based on what they require or expect as part of the banking relationship. Banks have a moral responsibility to seek to prevent or mitigate the impact of a client that is adversely impacting a community, and they may even be legally liable if they lack the proper controls to identify such activities and behaviors.

Of course, not all transactions allow the same level of visibility into potential adverse human rights impacts. Providing financing at a corporate level, for instance, can diminish a bank's ability to influence how that money is deployed. That means banks need to work to better understand where they have leverage to effect change. Banks can work to improve their clients' awareness and business practices when they suspect the potential of human rights abuses. They can also commit, as some banks already have, to reevaluate and possibly terminate relationships with clients that have a track record or relative commitment to improvement that doesn't meet their standards.

Step 3. Remediation: Right the wrongs of the past

Companies can help ensure that victims of human rights abuses have access to effective remedies. In the human rights arena, remediation can take many forms, but there are five internationally recognized elements: restitution, compensation, rehabilitation, satisfaction, and guarantee.

Consider the example of a bank that wrongfully foreclosed on a customer. The bank might seek restitution by returning the house to the customer if the bank was shown to have violated consumer protection laws during the foreclosure process. They might provide compensation to cover attorney fees if the customer brought a related lawsuit. They might go a step further by providing financial planning and financial education at no cost in a bid to rehabilitate the borrower. To ensure the customer is satisfied, the bank could issue a public apology. And the bank could detail the steps it's taking to improve transparency and increase oversight of its foreclosure processes, as part of a guarantee to limit or eliminate future violations.

Ensuring efficacy and relevance

Of course, banks have a responsibility to take proactive measures to prevent harm before it occurs. Living up to this duty means banks must be able to measure progress against their social performance objectives and also to revise their objectives as stakeholder expectations change.

Measurement has to be tailored when it comes to managing human rights risks. Banks are no strangers to key performance indicators (KPIs), but the KPIs required to measure social progress will differ materially from those tracking industry metrics such as delinquencies and bad loans.

For instance, banks looking to curb discriminatory lending practices might set a goal of increasing the number of branches in underserved communities or minority homeowners. To promote financial well-being, they might set targets for the number of financially inclusive products they offer or for the number of participants enrolled in their financial literacy initiatives. To strengthen the local communities they serve, banks might set percentage goals for sustainable investments in projects that target positive social outcomes.

In addition to data, the other important input for ensuring relevance is stakeholder feedback. Banks need to decide which stakeholders to engage with as well as when and how. Rightsholder consultation—in the form of company surveys, focus groups and market research, industry working groups and roundtables, and community townhalls—helps companies set the right goals and communicate their progress.

Stakeholder engagement is critical to learning and improvement. It may be that a human rights goal a bank set five years ago is no longer relevant or achievable. Or it might be that community members don't have a full appreciation for the work the bank is already doing to right past wrongs. Reevaluating goals through the lens of a rightsholder almost always leads to a deeper awareness of human rights impacts and opportunities, which is key to refining social impact targets, building the right story around human rights efforts, and making real progress.

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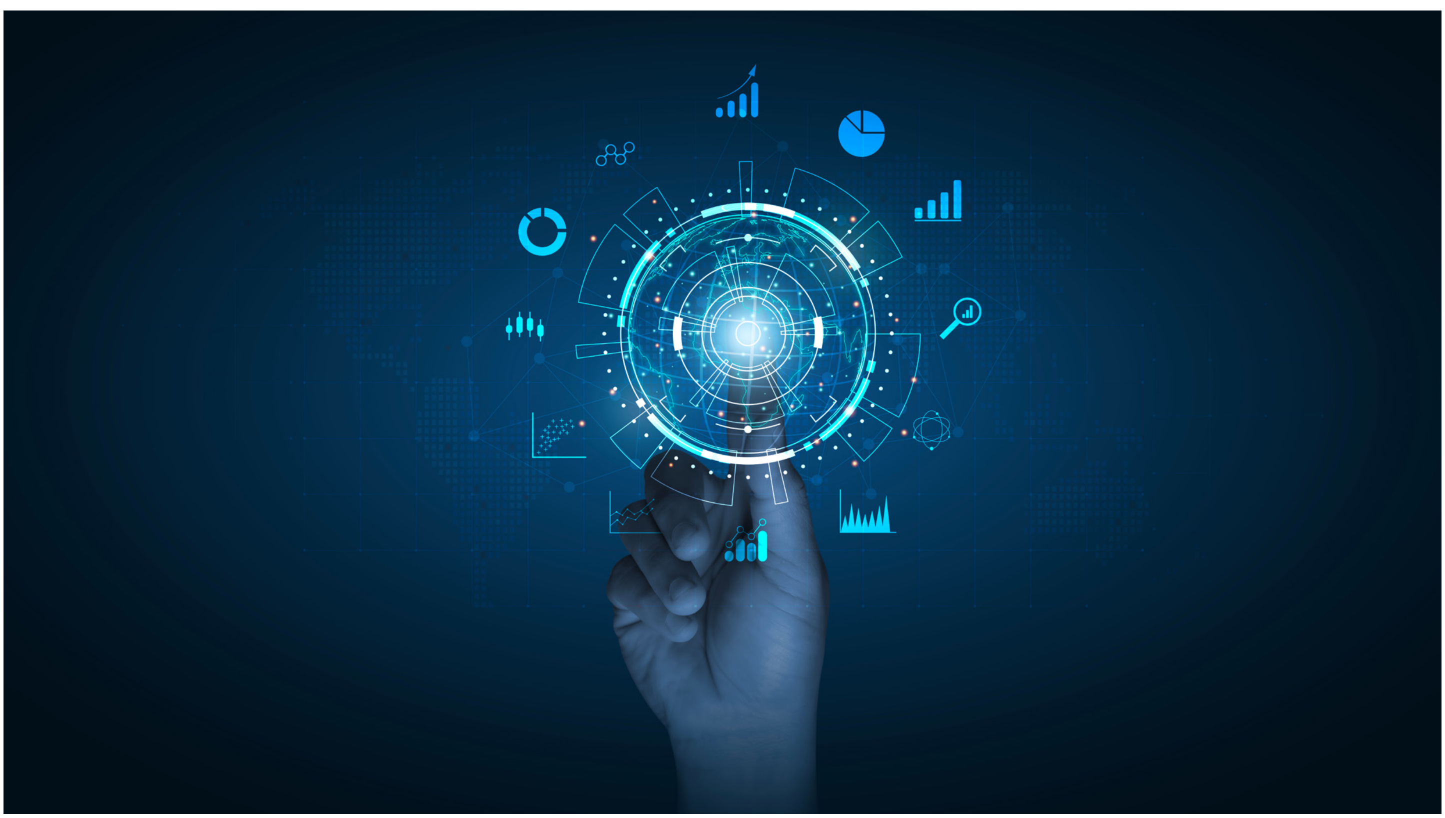
Conclusion

As banks reevaluate their performance in respecting and protecting human rights, they have an opportunity to use human rights as a lens through which to advance their business agendas. The end goal isn't simply staying on the right side of the law and minimizing related penalties. It's much more expansive than that: Here is a chance to fundamentally change the relationship between banks and their employees, customers, shareholders, and other partners in the community and build and sustain their trust. Banks that get this right not only will be recognized for it—they will attract new customers, new employees, and new business partners as well through the process. The stakes couldn't be any higher—and not just for the banks.

Of course, knowing where to start building a human rights agenda can be difficult. Incremental gains may help at the margin but likely won't sustain broad and lasting impacts. For that, banks need a disciplined and programmatic approach that incorporates the expectations of their rightsholders and other stakeholders and develops a step-by-step plan of action for addressing them from an enterprise-wide perspective.

As a longtime trusted adviser of the banking industry, Deloitte can help your organization develop and execute such a plan and start connecting the dots between your social and financial performance.



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Endnotes

1. Pablo Esteban-Sanchez, Marta de la Cuesta-Gonzalez, and Juan Diego Paredes-Gazquez, "Corporate social performance and its relation with corporate financial performance: International evidence in the banking industry," *Journal of Cleaner Production* 162 (2017): pp. 1102–10; W. Gary Simpson and Theodor Kohers, "The link between corporate social and financial performance: Evidence from the banking industry," *Journal of Business Ethics* 35 (2002): pp. 97–109; Jonathan Luffarelli et al., "The effect of corporate social performance on the financial performance of business-to-business and business-to-consumer firms," *Corporate Social Responsibility and Environmental Management* 26, no. 6 (2019): pp. 1333–50.
2. Bank of Montreal, *Notice of Annual Meeting of Shareholders and Management Proxy Circular*, April 13, 2022.

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