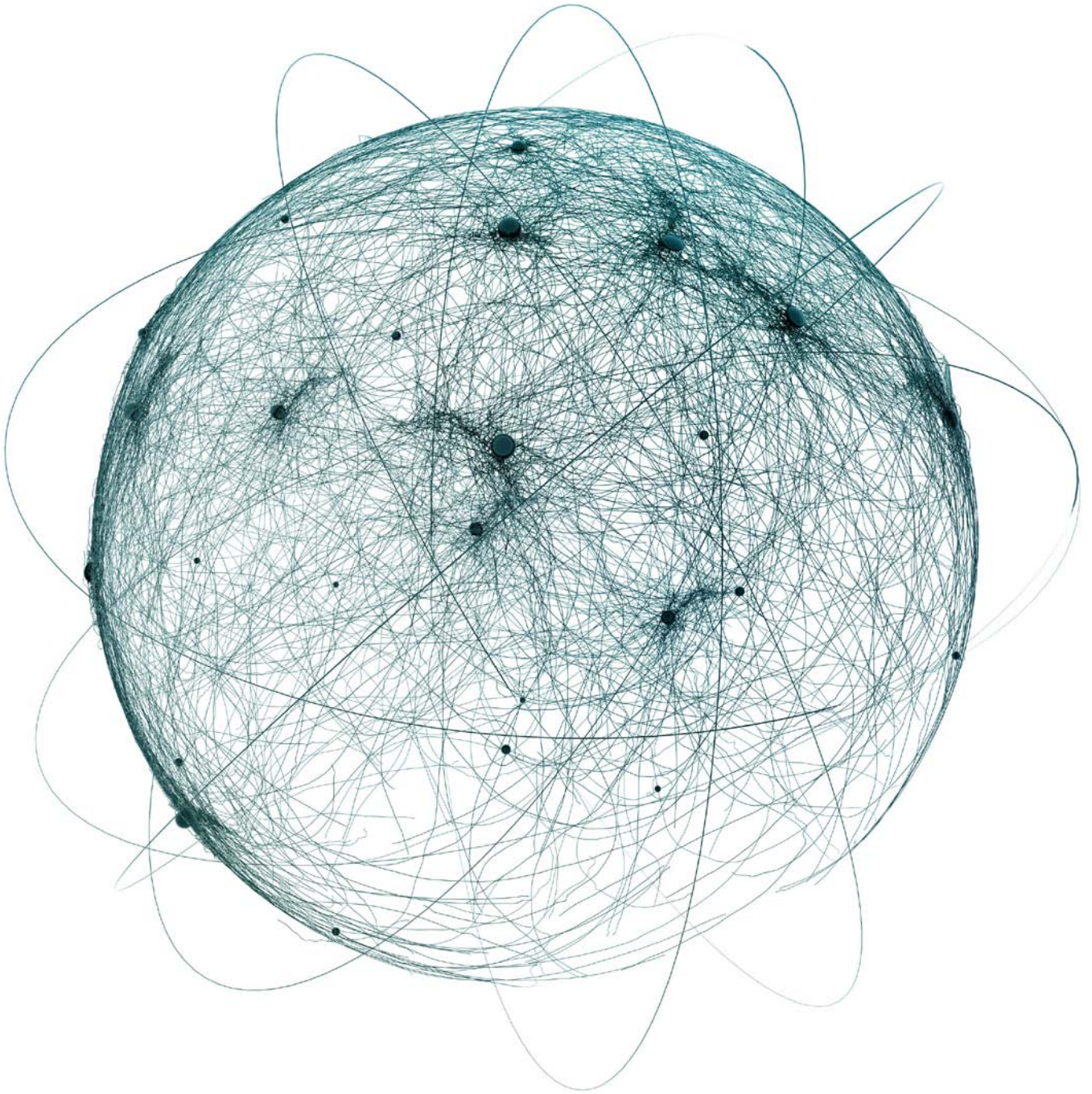


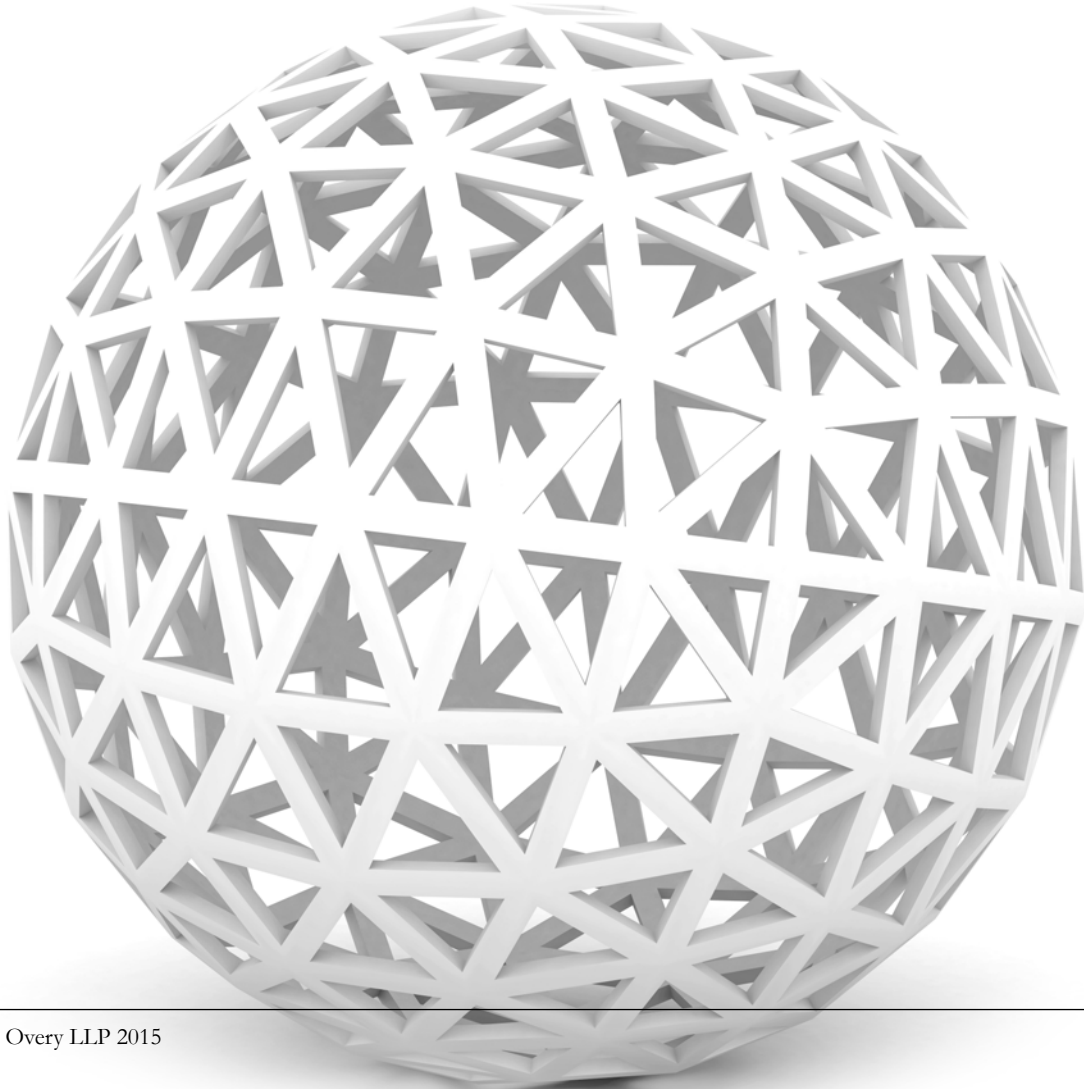
# ALLEN & OVERY



## Business and Human Rights

**THE UN "PROTECT, RESPECT AND REMEDY" FRAMEWORK**

Protect	Respect	Remedy
State duty to protect against human rights abuses by third parties, including business Ensure appropriate policies, regulation and adjudication	Corporate responsibility to respect human rights Act with due diligence to avoid infringing on human rights of others to address adverse impacts with which they are involved	Access by victims to effective remedy State should provide both judicial and non-judicial grievance mechanisms, and businesses should have operational level mechanisms



# Business and Human Rights

Under international law, the primary obligation to protect human rights is on nation states. Historically, dialogue around human rights was limited to the role of the state with little engagement from the business community. Today, in an increasingly interconnected world, questions about the responsibilities of multinational enterprises with respect to human rights abound, particularly when their activities involve jurisdictions where the rule of law is weak.

In June 2011, this culminated in the unanimous endorsement by the United Nations Human Rights Council of the Guiding Principles on Business and Human Rights proposed by UN Special Representative John Ruggie (the Guiding Principles). The Guiding Principles provide operational guidance on the implementation of the “Protect, Respect and Remedy” Framework (the UN Framework) adopted by the Human Rights Council in 2008, which identifies a responsibility on businesses to respect human rights. According to the Guiding Principles, businesses can discharge this responsibility by: (i) conducting due diligence to identify actual and potential adverse human rights impacts; (ii) embedding a policy commitment to respect human rights into business operations; and (iii) having processes in place to remedy human rights issues which arise.

The Guiding Principles are a sign of the world’s changing attitude towards corporate human rights issues. Although relatively new, they are gaining traction as a benchmark against which conduct can be measured by NGOs, states and civil society, and the corporate responsibility to respect has already been referred to in a number of other internationally recognised frameworks upon which the environmental and social impacts of business are measured, including the OECD Guidelines for Multinational Enterprises and the Equator Principles. As such, they cannot be ignored.

While the Guiding Principles undoubtedly present new challenges for business, they also offer a framework for businesses to understand and reduce their human rights impact and manage their reputational and legal exposure in the human rights context. In this new era, boardrooms across the world are grappling with the question of how to give effect to the Guiding Principles through conducting appropriate human rights due diligence of their operations and supply chains and adopting policies and processes which best suit the nature of their businesses.

## Our Human Rights Working Group

Allen & Overy set up our Human Rights Working Group (the HRWG) in 2011 to co-ordinate our human rights focused work. The HRWG was formed in response to the growing importance to our clients of the interplay between human rights protection and business activity.

The HRWG comprises a core team of specialists drawn from across our international network.

As well as our multi-jurisdictional coverage, a key strength of our business and human rights practice is that we bring together lawyers from different disciplines including our

litigation/arbitration group, environmental compliance and risk management experts, anti-bribery specialists, public law experts as well as transactional lawyers from our Global Projects, Energy and Infrastructure Team.

Members of our team have direct experience of the practical challenges that companies face on the ground when implementing the corporate responsibility to respect.

# Advisory work

## Transactional compliance advice

As a global firm operating in many different sectors we routinely advise clients when human rights issues arise on transactions.

For example our Global Projects, Energy and Infrastructure Team frequently advise sponsors and lenders on transactions involving the application of the Equator Principles and the OECD Common Approaches for Environment and Export Credits. As such, we are aware of the way that environmental and social issues are dealt with in the context of these transactions.

Many of the transactions on which we advise are in emerging markets and in sectors where challenging issues arise, for example energy, oil & gas and mining, and major infrastructure projects. Under both the Equator Principles and OECD Common Approaches, there is now express recognition of the Guiding Principles and the corporate responsibility to respect. We work with sponsors to ensure that they are aware of these requirements and can ensure that their projects are structured to incorporate these issues into their planning process. We also advise sponsors, borrowers and lenders during the financing process as to how environmental and social issues, including human rights requirements are addressed in loan documentation.

## Policies and procedures

We also assist organisations in developing, reviewing and implementing their human rights policies and procedures.

- We worked with a European financial institution on implementation of their human rights policy across their operations, reviewing their policies and procedures and advising on necessary revisions; reporting on the provisions of the European Convention on Human Rights (ECHR) which were not or insufficiently covered in their policy; and provided more specific advice on human rights issues that have arisen in respect of the conduct of their business.
- We have provided assistance to the Institute for Human Rights and Business (IHRB) on a pro bono basis to look at how commercial due diligence processes can be applied in the business and human rights arena. The report, produced by lawyers from across each of A&O's core practice groups, was used by the IHRB as input into its work and reports on human rights due diligence.

## Raising awareness

The Guiding Principles are a major step towards better defining the obligations of states and businesses with respect to human rights. However, the business and human rights agenda is still at an embryonic stage and we recognise that the Guiding Principles are a new and challenging issue for many of our clients. Despite this, the feedback that we had received from many businesses was that they had not been engaged by their legal advisers on the relevance of human rights to their businesses.

It was in this context, that we sought proactively to engage with our clients and other stakeholders about what the Guiding Principles mean for business by establishing the Business and Human Rights Review (BHRR). The BHRR is a market leading publication that is a collaboration between business, academia, private practice lawyers, NGOs and multilateral bodies. The BHRR provides a forum for debate and thought leadership on issues pertaining to business and human rights and allows clients to share their experiences of addressing the human rights issues that they face on a day-to-day basis.

If you would like to be added to the distribution list for the BHRR please contact [BHRR@allenoverly.com](mailto:BHRR@allenoverly.com).

In addition, our business and human rights practitioners produce client alerts on important developments about business and human rights and regularly present at briefing sessions on the Guiding Principles. For example, we have been present at key meetings such as the UN Working Group's Forum on Business and Human Rights held in Geneva.

## Supply chain risks

We understand that businesses are increasingly under scrutiny from investors, the media and NGOs in respect of their approach to managing supply chain risks and liabilities. This can cover a wide variety of issues from more traditional compliance issues such as environment and health and safety to workforce conditions, grievance mechanisms, displacement and security. We work closely with clients to manage their risks in these areas. We have developed a range of human rights compliance policies for clients, undertaken supply chain diligence, advised on specific compliance issues and provided strategic support to clients in sensitive matters.

## Seminars and training

We have conducted a number of training sessions with clients about what the Guiding Principles mean for their businesses. These range from top level introductions to the Guiding Principles to more bespoke training sessions where we explain how the Guiding Principles and a company's human rights policy interrelate and what this means for legal teams focused on a specific area.

– Working with Business in the Community, we conducted workshops to introduce practitioners to the Guiding Principles. This comprised an introduction, including analysis of “hard” and “soft” law implications of the corporate responsibility to respect, and a practical exercise to highlight how the operations of companies in different industries may impact on the human rights of third parties.

– Delivering a round table workshop to a leading financial institution's IT legal team in London. We worked through what the firm's human rights policy meant specifically for the IT legal team, identifying the key human rights risks for that part of the business and practical steps that the team could take in order to implement the company's human rights policy and remedy breaches.



# Assisting charities & NGOs

In addition to our work with businesses on human rights issues we also assist human rights charities and international NGOs on a pro bono basis in the delivery of their work, for example by representing marginalised communities in court, submitting interventions and *amicus curiae* briefs and undertaking international comparative research projects to inform policy work. We have been actively engaging civil society organisations in discussions on business and human rights issues, including the Guiding Principles.

## Our experience includes advising:

- Bail for Immigration Detainees (BID) on several interventions, including on an intervention in the Supreme Court in WL (Congo) and KM (Jamaica), which raised issues of constitutional significance concerning judicial oversight of executive deprivation of liberty, and the relationship between unlawful detention, the tort of false imprisonment, and Article 5 of the ECHR.
- JUSTICE in applying to intervene in the appeal brought by the UK Government against the Court of Appeal's decision to grant a writ of *habeas corpus* on the petition brought by Yunus Rahmatullah, a Pakistani national captured by British forces in Iraq but handed over to US forces and transferred to Bagram airbase in Afghanistan. The Supreme Court held that Rahmatullah's rendition and detention was a breach of international human rights law, and that the Geneva Conventions applied to prisoners taken in Iraq.
- Prisoners on death row in the Commonwealth Caribbean in appeals to the Privy Council and human rights bodies (such as the Inter-American Commission for Human Rights and the United Nations Commission on Human Rights).
- Fair Trials International (Fair Trials) on the implementation of the European Arrest Warrant (EAW) regime in different EU jurisdictions. Lawyers from nine A&O offices carried out research, which showed inconsistencies in the level of protection afforded to human rights. The findings are being used by Fair Trials to campaign for reform to the EAW regime and were presented at a major event at the European Parliament. Our work with Fair Trials continues with research on whether third party interventions can be brought by NGOs in the courts of nine EU member states.

# Key contacts



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