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Moving forward in times of crisis

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An interview with Jelena Madir of Gavi, the Vaccine Alliance

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Contents

Working Towards the Equitable and Sustainable Use of Vaccines 06
An interview with Jelena Madir of Gavi, the Vaccine Alliance

Editors' Note: Professor John Ruggie's Reflections on the United Nations Guiding Principles 12

Insights from a Former Member of the United Nations Working Group on Business and Human Rights 16
An interview with Michael K. Addo

Using Data Analytics to Boost the Effectiveness of Compliance Programmes 20
An interview with Matt Galvin, Research Fellow at Harvard Business School

Remediating Adverse Human Rights Impacts in the Technology Sector 24
Dr Isabel Ebert, Adviser to the UN B-Tech Project

Just Transitions: Business, Human Rights and Climate Action 28
Suzanne Spears, Allen & Overy alumnus

Key Global Legal Developments in Business and Human Rights 32
Sarah Morreau, Bethany Gregory and Justin Tan, Allen & Overy

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Foreword

Maeve Hanna
Partner, Allen & Overy LLP

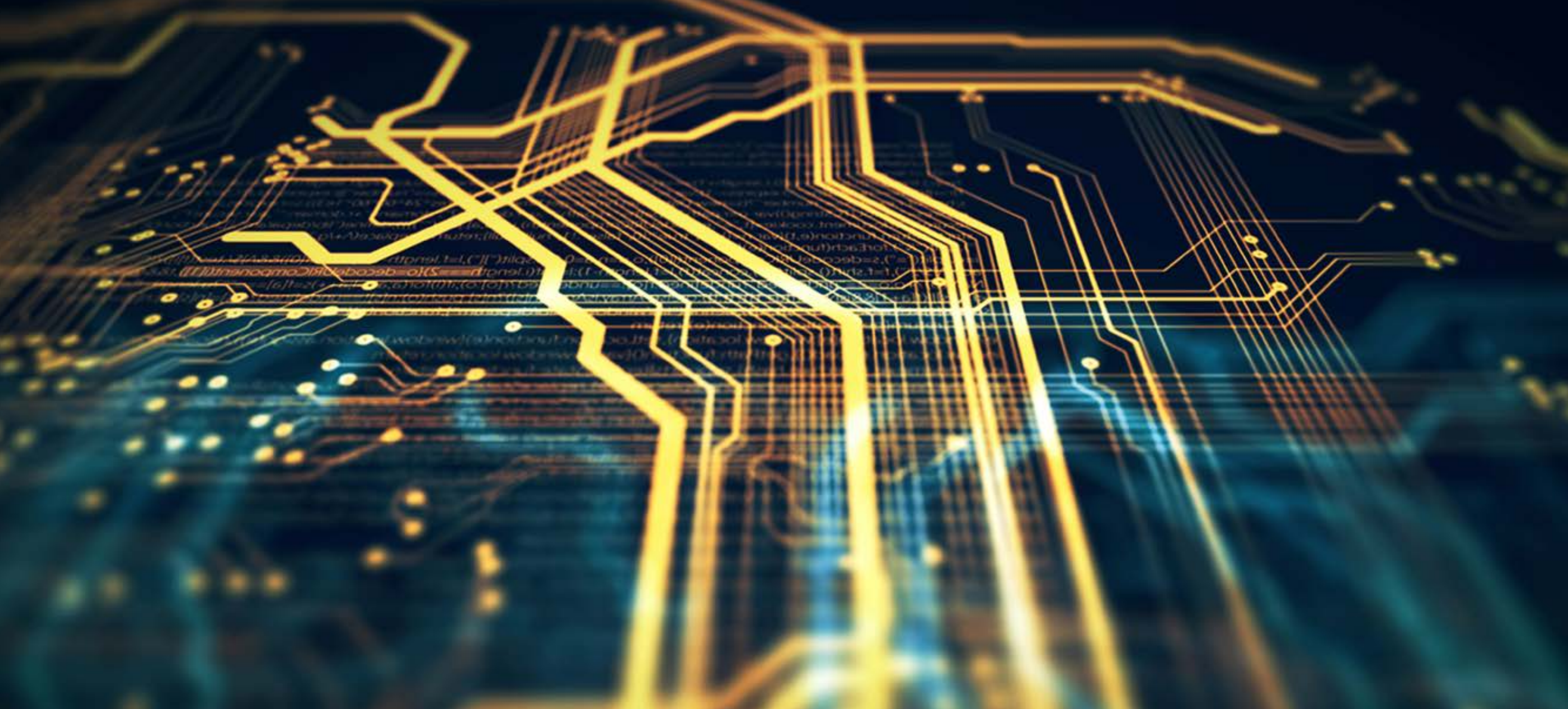
Moving forward in times of crisis

As the world recovers from the Covid-19 pandemic, rebuilding resilience and planning for the future have taken centre stage in 2022. The pandemic brought to the fore many human rights issues, creating new challenges and exacerbating existing systemic issues of global inequality and poverty. These issues have been amplified further following the Russian invasion of Ukraine and the humanitarian and global supply chain crisis that followed. Whether in the domain of health, technology or climate change, businesses as well as governments are coming under increasing pressure to take further action. We are at the juncture of a fundamental shift and it is an important time to take stock and consider how the human rights agenda can shape the world for current and future generations.

A longstanding visionary in this field, Professor John Ruggie, the former United Nations Secretary-General's Special Representative on Business and Human Rights, leaves behind an important legacy after passing away in 2021. Professor Ruggie was instrumental in the development of the United Nations Guiding Principles on Business and Human Rights (the **UNGP**s) in 2011 and was a fervent promoter of the UNGPs. On page 12, we look back at a seminal speech given by Professor Ruggie on the UNGPs in 2013 and the next steps he foresaw at that time.

On page 16, Michael K.Addo of the United Nations Working Group on Business and Human Rights discusses Professor Ruggie's legacy as well as the future of the Working Group and the UNGPs. The UNGPs act as a global standard that incorporates human rights as part of standard business practice. They set out a compelling framework for different actors (public and private, including companies) to work together towards preventing, addressing and remedying business-related human rights harms. This idea of shared responsibility flows from Professor Ruggie's conviction that no single stakeholder can provide effective international governance in the arena of business and human rights on their own – an inclusive process is required.

Against this background of collective action, on page 6, Jelena Madir, General Counsel at Gavi, the Vaccine Alliance, explains the importance of stakeholder engagement in working towards the equitable and sustainable use of vaccines. We are now seeing businesses in the vaccine sector partner up with civil society and humanitarian actors to reach those who are most vulnerable across the world. A coordinated effort is needed when it comes to vaccines, and, on a wider scale, exiting the pandemic will require global cooperation, especially when it comes to the use of technology.



Global problems require global solutions, and technology can help facilitate this. Emerging laws and stakeholder expectations mean companies are increasingly asked to undertake complex human rights due diligence on their entire value chains, putting strain on outdated compliance mechanisms. On page 20, Matt Galvin, Research Fellow at Harvard Business School, discusses how innovative compliance tools developed using data analytics can be deployed to boost the effectiveness of compliance programmes. In doing so, companies can detect non-compliance risks in their own organisations and ecosystems, and pool these indicators with other companies on a distributed ledger for the mutual benefit of an industry as a whole.

While digital technologies can be a powerful tool for achieving positive social and economic outcomes, their ever-growing ubiquity gives rise to concern due to adverse impacts on human rights. On page 24, Dr Isabel Ebert of the United Nations B-Tech Project provides insight on how technology companies can play an important role in providing access to remedy for human rights impacts stemming from or linked with their conduct.

As regulation in the technology space continues to gather speed, lawmakers also have a role to play. On page 32, Sarah Morreau, Bethany Gregory and Justin Tan of Allen & Overy summarise key global legal developments in business and human rights, which include a draft European Commission Regulation providing a framework on artificial intelligence.

Outside of technology, key recent developments include a European Commission proposal for a Directive on corporate sustainability due diligence and a number of high-profile tort cases in the United Kingdom. These cases have recognised, among other things, the possibility of corporate liability of a UK-domiciled company for damage suffered in another jurisdiction.

2021 was a year of transition. COP26 in Glasgow refocused global attention on the growing urgency of the climate crisis, serving also as a reminder that climate-related impacts on human rights, including the rights to life, housing and health, will become more severe as average global temperatures increase, particularly for the most vulnerable members of society. Yet huge gaps in commitment and action remain. Financial institutions have recently come under fire for funding projects that while supposedly 'green' and contributing to energy transition, are not sustainable, because they have adverse impacts on human rights or other adverse environmental impacts. On page 28, A&O alumnus Suzanne Spears considers the need to address the crisis in ways that are consistent with international human rights standards.

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Working Towards the Equitable and Sustainable Use of Vaccines

An interview with Jelena Madir of Gavi, the Vaccine Alliance

Jelena Madir is the General Counsel of Gavi, the Vaccine Alliance. As a member of Gavi's Senior Management Team, she leads a team responsible for all legal aspects of Gavi's day-to-day operations, including commercial contracts, employment matters, treasury operations, issuance of vaccine bonds in the global capital markets and institutional matters. Previously, Jelena was a Chief Counsel at the European Bank for Reconstruction and Development (**EBRD**), where she was a transactional lawyer and led the Financial Law Unit.

Gavi is a public–private global health partnership with the goal of increasing access to immunisation in poor countries.

Gavi facilitates vaccinations in developing countries by working with partners across both the public and private sector. Gavi's board consists of representatives from both developed and developing countries, the World Health Organization, UNICEF, the World Bank, vaccine manufacturers from both developed and developing countries, research and technical agencies, civil society organisations, the Bill & Melinda Gates Foundation and a number of independent directors.

To date, Gavi has helped immunise over 981 million children, preventing over 15 million deaths worldwide. Gavi currently supports the immunisation of almost half the world's children, giving it power to negotiate better prices for the supply of vaccines to the world's poorest countries. In addition to supporting vaccination programmes, Gavi also provides funding to strengthen health systems and train health workers across the developing world.

Gavi is a unique partnership between governments, NGOs, international institutions and the private sector. How have you seen these actors work together to satisfy their respective differing responsibilities with regard to human rights?

Bringing key stakeholders in global immunisation together around one mission and maximising its partners' strengths has always enabled Gavi to combine the technical expertise of the development community with the business knowledge of the private sector. It is precisely this unique partnership model that enabled Gavi to set up and administer the Covid-19 Vaccines Global Access (**COVAX**) Facility, the only global initiative through which donor-funded Covid-19 vaccines are distributed to 92 lower-income economies at the same time as higher-income economies receive their self-financed vaccines.

A key goal of COVAX is to draw attention to those who are left furthest behind and, most importantly, effect a strategy to include them. In reaching the most vulnerable, whether through furthering the scope of our coverage or through partnering with civil society and humanitarian actors to reach high-risk individuals in humanitarian settings, COVAX is laying the foundation to emerge from the Covid-19 crisis with more equitable and sustainable health systems. The gains made through COVAX, for example, in reaching conflict-affected populations in humanitarian settings, will be leveraged to also strengthen routine immunisation in these marginalised communities.

What does a partnership between Gavi and the private sector look like in practice? How do such partnerships help Gavi to achieve its goals?

Since its establishment in 2000, Gavi has worked with a variety of partners, including many in the private sector. Private sector companies want to be part of something transformative and impactful. That is why many companies have joined the Gavi Matching Fund, where their contribution to Gavi is matched by the Gates Foundation or a participating government. In addition to funding, private sector companies also frequently provide their know-how and skills to co-create projects with Gavi.

The Covid-19 pandemic has only increased the prevalence of such co-creation partnerships. For example, logistics giant, the UPS Foundation, has provided both funding and expertise in a healthcare supply chain management project aimed at establishing reliable cold chain networks and expanding the "last-mile" delivery of vaccines. Similarly, through our four-way partnership with Zipline, a medical drone delivery company, the UPS Foundation and the Government of Ghana, millions of Covid-19 vaccine doses have been distributed via drones to vaccination sites that are otherwise difficult to reach. In an effort to mobilise funding for Gavi, Mastercard has adapted its Wellness Pass solution for the Covid-19 response and is connecting with customers and cardholders through its donation platform. These examples represent just some of our many partnerships with the private sector.

As well as partnering with well-established companies in the private sector, Gavi also aims to identify the most promising immunisation-related concepts and technologies through its Innovation for Uptake, Scale and Equity in Immunisation (**Infuse**) programme.

> "Without a global, coordinated effort to ensure access to a vaccine for everyone who needs it, we risk priority access being granted on the basis of ability to pay or on other grounds such as nationality or country of residence, rather than based on the principle of equity."

What are the key business and human rights challenges faced in vaccine development and distribution? Where do you see opportunities for positive human rights impacts?

The UN Economic and Social Council's position is that Covid-19 vaccines are a "global public good" and should not be treated as marketplace commodities available only to those countries and individuals that can afford to pay the asking price. We saw, in the early stages of the pandemic, some wealthy countries reportedly purchasing enough doses of Covid-19 vaccine to vaccinate their entire populations multiple times over by the end of 2021. Without a global, coordinated effort to ensure access to a vaccine for everyone who needs it, we risk priority access being granted on the basis of ability to pay or on other grounds such as nationality or country of residence, rather than based on the principle of equity. Equitable access to vaccines is therefore essential not only to ensure the effectiveness of the vaccination campaigns, but also to protect human rights.

How important is equitable access to vaccines for global development and the right to health? How has the Covid-19 pandemic shifted global perspectives on this?

The easing of supply constraints and increasing confidence in the arrival of vaccines from both COVAX and non-COVAX sources meant we could get countries the products they needed, when they needed them.

COVAX's urgent priority is equity of coverage: supporting countries to turn vaccines into vaccinations – helping them overcome delivery bottlenecks, achieve national targets, and to expand these targets even further. COVAX's focus, in line with WHO SAGE recommendations, will be helping countries protect high priority groups, including with coverage beyond primary series.

What effect has the pressure to urgently develop, manufacture and distribute Covid-19 vaccines had on Gavi's partners?

As a result of the pressure to urgently develop, manufacture and distribute Covid-19 vaccines, vaccine manufacturers have been requesting that they be indemnified for losses incurred in connection with claims related to unexpected adverse effects. In the past, governments have provided such indemnification to pharmaceutical companies producing vaccines against smallpox and influenza. Vaccine manufacturers have therefore argued that, as use of the Covid-19 vaccine is similarly for the benefit of society, they should not be held financially accountable for any consequences resulting from an adverse reaction to the Covid-19 vaccine.

This debate has raised two important questions: first, who will pay compensation if a vaccine causes unexpected adverse effects; and second, what will happen to the

vaccine supply for countries that are unable to provide satisfactory indemnification to manufacturers? With a number of international financial institutions (including, for example, the World Bank) funding various programmes for countries to procure Covid-19 vaccines, a country's inability to meet the manufacturers' indemnity requirements could negatively impact the success of these programmes.

In order to mitigate such issues, Gavi and WHO, through the Covax Facility, have set up a no-fault compensation programme for Covid-19 vaccines for the 92 lower-income economies eligible for support under the Covax Facility (the **AMC 92**). As the first and only vaccine injury compensation mechanism operating on an international scale, the programme represents a significant boost for Covax's goal of equitable global access to vaccines. It is funded by a small levy on each dose supported by the Covax Advance Market Commitment programme.

Gavi's leadership of Covax involves the roll-out of vaccines and other medical tools across countries in a variety of economic circumstances. What considerations are involved in vaccine distribution, and how does Gavi advance the right to health when resources are limited?

As the largest and most complex global vaccination effort in the history of the world, COVAX's efforts have helped raise the proportion of people in lower income countries protected by a full course of vaccines to 49% still below but closing in on the global average of 61%. Almost 1.6 billion doses have been shipped to 146 countries in around 18 months. The delivery of Covid-19 vaccines presented challenges unprecedented in scale, speed and requirements, especially in low and middle-income countries.

In November 2020, Gavi, together with the World Bank, WHO, UNICEF and the Global Fund, rolled out readiness assessments in more than 100 low and middle-income countries.

The assessment produced a number of interesting results. For example, it found that countries' capabilities in vaccinating against other diseases did not predict their readiness to vaccinate individuals against Covid-19. In addition, the assessment revealed surprisingly little correlation between a country's relative wealth and its readiness to deliver vaccines, in part because the novelty, extent and intensity of the pandemic have upended lives and livelihoods in higher-income countries.

In order to support countries in preparing for the delivery of Covid-19 vaccination programmes, Gavi, together with its partners, has provided a Covid-19 vaccine introduction toolbox that has all the resources a country needs to get ready for delivering Covid-19 vaccines. Within this toolbox, training is available for national/subnational focal points and health workers

to equip them with the necessary knowledge and skills. In addition, the AMC 92 economies must each develop a Covid-19 National Deployment and Vaccination Plan, which is reviewed by WHO, UNICEF and other partners to ensure the key readiness criteria are met. Only once a country's National Deployment and Vaccination Plan is approved can they be allocated vaccines through the Covax Facility.

Are there aspects of domestic and global vaccination programmes that you think need more attention from governments and the private sector?

The past two years have transformed the way in which we understand the relationship between health, business, and society.

We can no longer think of public health in siloed terms – from how we deal with pandemics, using data to inform health care solutions, and today, seeing in stark terms the effect of poor global health security on the world's economy, the era of global health and economic development is now.

The ongoing Covid-19 pandemic is estimated to have cost the global economy $11 trillion. However, as we start to see recovery in some parts of the world, the longer-term impacts of the pandemic are still being felt in others, particularly in low-income countries, where the burden is heaviest as these countries may not have the fiscal space to bounce back.

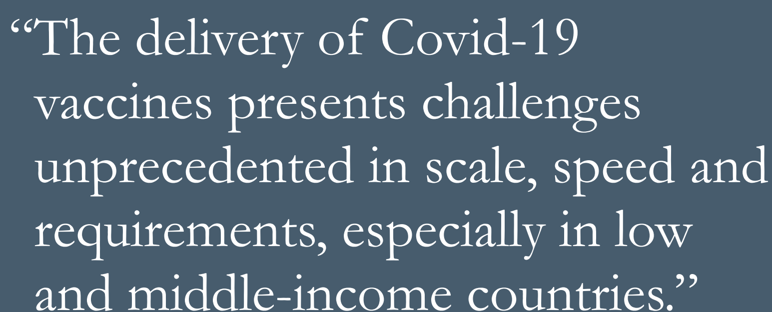
With the threat of disease outbreaks such as Covid-19 now top of mind, and another pandemic an evolutionary certainty, now is the time to leverage the investments made to stem Covid-19, build off the lessons learnt, and support countries in meeting their immunisation goals.

The world and particularly low-income countries cannot afford to have the resurgence of diseases such as measles or be exposed to new diseases.

What lessons have been learned during the pandemic by Gavi, its members and other stakeholders?

First we need to **adopt a global approach that supports a truly global response**. Efforts that focus on tackling Covid-19 at the national level, such as striving to achieve high vaccination coverage within borders far ahead of current global coverage rates, have only prolonged the current pandemic. Infectious diseases need to be simultaneously controlled all across the world, or they will continue to spread, increasing the risk of the emergence of new and potentially more dangerous variants. No one is safe until everyone is safe. COVAX provides many lessons to be learned as the only entity that has attempted a globally coordinated response to Covid-19.

We also need to **support and amplify existing global efforts in order to make the best use of existing networks of collaboration** with various global health agencies, industry and the scientific community, build on existing expertise, infrastructure and resources, in order to provide the speed, agility, flexibility, and the ability to take risks based on the best scientific evidence in decision-making during pandemic response. Many of the new approaches and mechanisms developed through COVAX, such as close engagement with R&D partners and regulators, fair and equitable allocation mechanism, accelerated disbursal of funding for health emergencies, no-fault compensation programme to address indemnity and liability,



and the COVAX Manufacturing Taskforce, would be necessary again for a future pandemic response and should be leveraged.

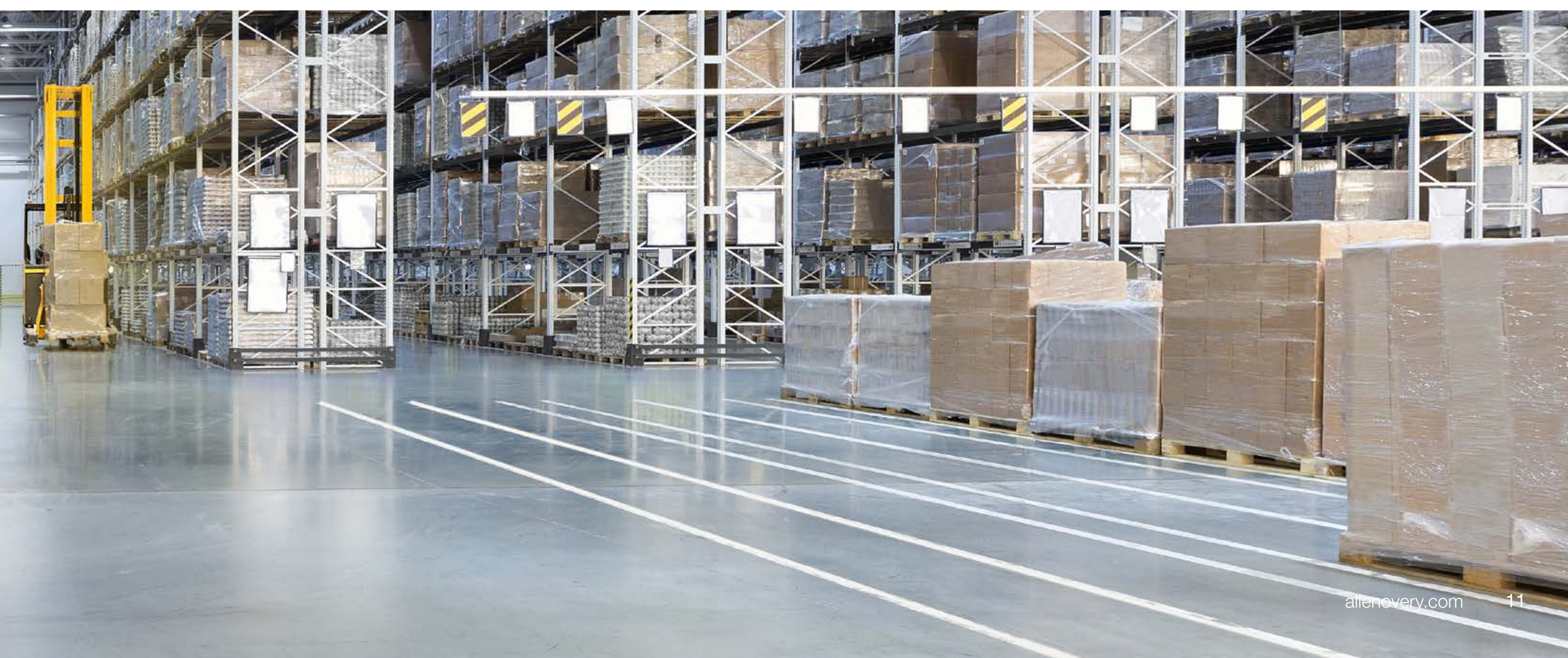
We need to ensure **rapid and agile contingency financing** to support surge capacity and enable a network of global health agencies to orchestrate a rapid and robust global response during a crisis, for instance to support a diversified portfolio for R&D, enable manufacturing at risk that explicitly secures timely and meaningful supply doses and advance procurement of vaccines for lower income economies. The International Finance Facility for Immunisation (**IFFIm**) is one example of a readily available mechanism which could potentially be adapted for pandemic response.

We also need to **strengthen long-term investment in routine immunisation and primary health care** which play a pivotal and ongoing role in preventing outbreaks in the first place and complement country core capacities, such as disease surveillance and health workforce, to enable early detection of and response to outbreaks. Gavi has extensive experience with vaccine programme design and delivery for routine immunisation and is crucial in shaping any future thinking on disease control.

Our focus is also to **prioritise reaching and protecting the most marginalised communities** who often live in the localities of unvaccinated and under-immunised children and are most at risk from outbreaks of known and emerging pathogens. Reaching these communities with routine immunisation can be the first step towards access to primary health care services and building a resilient health system for preventing future pandemics. Through the use of new products, practices and services, Gavi's innovative approach will help unlock more efficient and effective ways that respond to the needs of each country and drive change at scale.

Another focus is to **diversify and expand manufacturing bases in emerging economies** to support sustainable local and regional production and increase global supply of and access to pandemic vaccines when the need arises. The way to do that is to build on existing global supply chains, such as the routine immunisation programmes that are currently used to vaccinate 90 percent of the world's children from vaccine-preventable diseases.

Establishing new vaccine manufacturing capacity is a long-horizon undertaking in order to reach economies of scale. As an alliance that helps vaccinate half the world's children, Gavi is willing to work with partners to help identify business solutions that would support the sustainability and economic opportunities of newly created regional manufacturing capacity. The work of the COVAX Manufacturing Taskforce can also offer valuable guidance.



Editors' Note:
Professor John Ruggie's reflections on the United Nations Guiding Principles

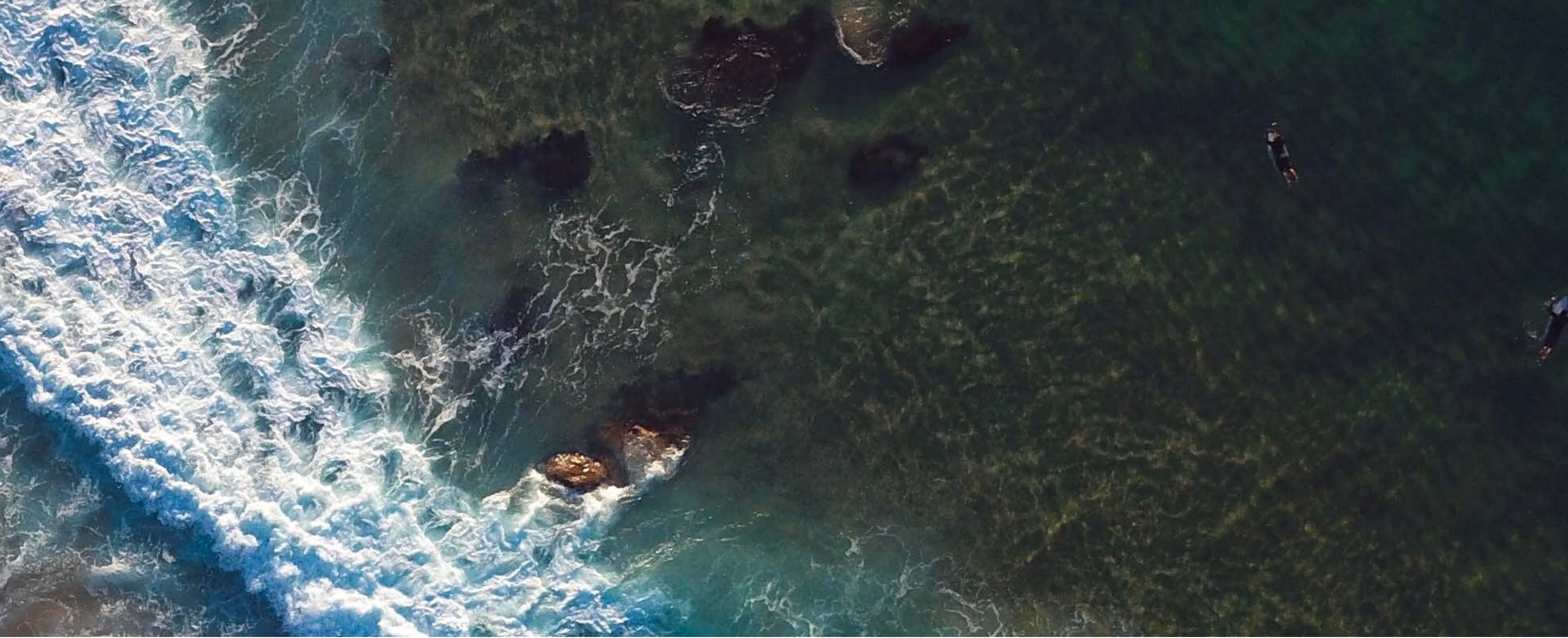
Professor John Ruggie, who passed away on 16 September 2021, was the former Special Representative for the UN Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises (2005-2011) and author of the United Nations Guiding Principles on Business and Human Rights (**UNGPs**). Professor Ruggie was also the Berthold Beitz Professor in Human Rights and International Affairs at Harvard's Kennedy School of Government, and Affiliated Professor in International Legal Studies at Harvard Law School.

To celebrate Professor Ruggie's legacy in the field of business and human rights, and by way of introduction to the interview with Michael K. Addo on the UNGPs, we look back at Professor Ruggie's seminal speech "*Just Business: Multinational Corporations and Human Rights*", given at the Thomas J. Dodd Research Center at the University of Connecticut in 2013 – two years after the UNGPs were endorsed by the UN Human Rights Council.
We are grateful to the Business and Human Rights Initiative at University of Connecticut (**UConn**) and to Mary Ruggie for permitting us to reprint excerpts from the speech, the full text of which is available here.

Back in 2004, the draft "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" were proposed to the UN Commission on Human Rights, but the draft proved divisive and did not attract intergovernmental support. Out of the embers of that failed attempt, then UN Secretary-General Kofi Annan appointed Professor Ruggie as his Special Representative on Business and Human Rights the following year.

Undaunted by the historical difficulties in reaching consensus on this highly contested issue, Professor Ruggie accepted the mandate and commenced an extensive process of consultation and reporting that led to his formulation of the "Protect, Respect and Remedy Framework" in 2008 and the UN Human Rights Council's unanimous endorsement of the UNGPs in 2011.

How did Professor Ruggie find his way forward? In his 2013 speech, he shared what he had learned from his experience with the UNGPs – advice that remains valuable in many international law contexts.
We also comment on the considerable progress that has been made since then, much of it inspired by Professor Ruggie and the UNGPs.



Lessons learned

"First, when we confront global governance challenges the initial instinct often is to strive for some "grand bargain" solution: typically a single, comprehensive command-and-control regulation. For issues like business and human rights, this simply is not feasible:

- *Issues are too complex;*
- *Interests are too divergent;*
- *Global geopolitical changes increase centrifugal forces.*

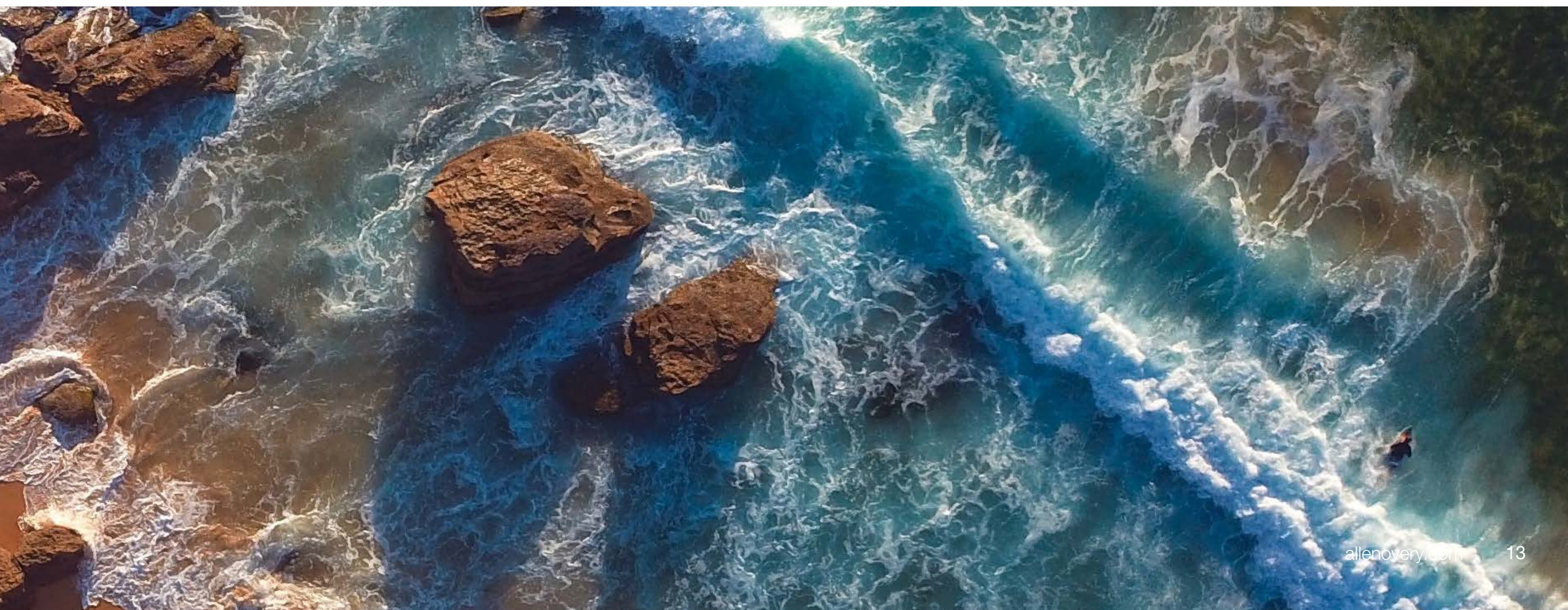
At the same time, self-regulation doesn't go far enough.

The Guiding Principles show that it is possible to induce systematic change by establishing socially legitimated and politically authoritative standards, elements of which may get incorporated into hard law.

Second, major global challenges require innovative approaches under which public and private governance systems—corporate as well as civil—each come to add distinct value, compensate for one another's weaknesses, and play mutually reinforcing roles.

The Guiding Principles embody and illustrate such a polycentric governance model.

Finally, the Guiding Principles rely on a distributed network approach to implementation — establishing the normative platform and high level policy guidance through the UN but involving other actors that have more direct leverage vis-à-vis business in implementation."



A pebble in a pond

Professor Ruggie used his 2013 speech to establish the three key steps that he believed were required to build upon the UNGPs: first, capacity-building; second, development of corporate law and securities regulation; and third, cross-border corporate liability.

Step One: capacity-building

"Limited capacity is a far greater obstacle to rapid progress in business and human rights than we tend to acknowledge... [it] affects the ability of all stakeholder groups, including governments, businesses, NGOs and the UN system to play their necessary roles."

Despite strong intergovernmental support for a global fund to support capacity-building, as reported to the UN Human Rights Council in April 2015, this global fund has not materialised to date.

Capacity-building efforts (and their funding) therefore remain, for the most part, works in progress. They form a key plank of many states' National Action Plans and a major focus of training and support through national human rights institutions as well as projects funded by the UN and other international organisations. Early measures included the publication of "Business and Human Rights: A Guidebook for National Human Rights Institutions" in November 2013 by the International Coordinating Committee for the Promotion and Protection of Human Rights (now called the Global Alliance of NHRIs). Since then, there have been regional training sessions organised by the UN Human Rights Treaty Body Capacity-Building Programme and national human rights institutions to support states in implementing treaty obligations.

Most notably, initiatives such as the Office of the UN High Commissioner for Human Rights (**OHCHR**) Accountability and Remedy Project (**ARP**) have taken forward certain aspects of capacity-building on an international basis. Launched in 2014 with the aim of increasing access to effective remedy for victims and enhancing accountability for business-related human rights abuses, the ARP has delivered three sets of recommended actions to enhance the effectiveness of judicial, non-judicial and non-State-based grievance mechanisms. Like the UNGPs, these recommended actions were drafted in a deliberately flexible format to be implementable in a wide range of legal systems and contexts, while also being practical, forward-looking and reflective of international standards. These materials provide a robust, evidence-based resource for responding to business and human rights challenges, whether at the domestic level or through international institutions and law-making initiatives.

Businesses and civil society also have a significant role to play in capacity-building. We are beginning to see more of this: for example, the work of the Global Business Initiative on Human Rights, a not-for-profit organisation led by a group of cross-industry multinational corporations, which advances corporate respect for human rights through outreach and capacity-building programmes, peer learning and the dissemination of practice-based insights to strengthen business practice.

Step Two: development of corporate law and securities regulation

"Integrating systems for conducting human rights due diligence and managing the resulting information flows constitute complex challenges, especially for large and far-flung companies. And yet the speed and ease with which an enterprise can respond to its potential human rights impacts can be decisive for the effectiveness of managing those risks. Therefore, companies need to institute fully linked-up chains of responsibility across the appropriate levels and functions within the business."

In the years since Professor Ruggie's speech, a number of businesses have taken steps to implement human rights due diligence, and we have seen cross-stakeholder collaboration on building good practice and accountability mechanisms across supply chains. The UN Working Group has reported on partnerships addressing systemic issues ranging from recruitment of migrant workers, access to remedies for the victims of forced labour, protection for human rights defenders, workers' rights in the textile sector, and responsible mineral sourcing.[1]

However, considerable effort is still needed to make human rights due diligence a part of standard business practice and to solidify the norm of expected conduct. The 2020 Corporate Human Rights Benchmark shows that 46% of companies evaluated (across all sectors) failed to score points under the due diligence indicators due to a lack of identifying or mitigating human rights issues in their supply chains.[2] Likewise, the latest UN Global Compact Annual Survey found that 72% of respondent companies are committed to implementing the UNGPs, but 36% noted that extending the UNGPs throughout their supply chain was a challenge.[3] In its report to the 2018 UN General Assembly, the Working Group on Business and Human Rights highlighted how key actors, not least States through reinforcing legal drivers, can contribute to the scaling-up of effective human rights due diligence.[4]

Legislative initiatives may assist to set clear expectations for businesses and there is growing momentum worldwide among States to require companies to undertake human

rights due diligence. This has come to the fore especially in the last five years, with a number of countries, including France[5], Germany[6], and the Netherlands[7], having adopted mandatory due diligence legislation. Moreover, early this year, the European Commission published a proposal for a Directive on Corporate Sustainability Due Diligence. Rather than providing general governance rules, these initiatives seek to impose a general duty on businesses to address adverse human rights and environmental impact throughout their value chains by setting mandatory human rights and environmental due diligence requirements depending on their size. Supporters hope that they will, in turn, prompt the business community to establish internal chains of responsibility, like those envisioned by Professor Ruggie.

Step Three: corporate liability across borders

"The international community no longer regards state sovereignty as a shield behind which such abuses can take place with impunity. In my view, the same surely must be true of the corporate form. Indeed, many of us have thought that this was true all along. But an affirmation through an international legal instrument may be required to settle the matter once and for all."

The year after Professor Ruggie's speech, the UN Human Rights Commission approved a resolution to form the Intergovernmental Working Group (**IGWG**) to elaborate a legally binding instrument to regulate the activities of corporations globally and establish international standards for business and human rights.[8] Commenting on the ongoing work of the IGWG, Professor Ruggie warned on several subsequent occasions that care must be taken to ensure that a treaty does not lock in standards lower than those embodied in the UNGPs, which had received widespread consensus from a broad base of support.[9] As a first step, Professor Ruggie highlighted one critical area on which he believed States could and should find broad agreement: the provision of greater mutual legal cooperation to improve victims' access to judicial remedies against business actors. This has been echoed by the IGWG, who on 17 August 2021, released the Third Revised Draft of the proposed binding treaty on business and human rights.[10] The Third Revised Draft clarifies and refines a number of the key articles in the draft text, including those on the rights of victims of human rights abuses in the context of business activities, access to remedies, mutual legal assistance and international judicial cooperation. It also addresses corporate liability for business-related human rights abuses by requiring that States ensure domestic law provides for a comprehensive and adequate system of legal liability. This would establish civil and criminal liability of businesses (without prejudice to the liability of individuals), while not making civil liability contingent upon a finding of criminal liability.

Looking forward

As Professor Ruggie stated when he presented the UNGPs to the Human Rights Council in 2011, they will not ***"bring all business and human rights challenges to an end. But Council endorsement of the Guiding Principles will mark the end of the beginning, by establishing a common global platform for action, on which cumulative progress can be built, step-by-step, without foreclosing any other promising longer-term developments."***[11]

Having reflected on developments in the business and human rights landscape since Professor Ruggie's 2013 speech, it is clear that soft law can function as a stepping-stone towards greater change in the long-term. While much remains to be done, foundations now exist to help businesses further embed the human rights agenda into corporate frameworks and continue to evolve to reflect new realities going forward.

1. https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163
2. https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/WBA-2020-CHRB-Key-Findings-Report.pdf
3. https://www.unglobalcompact.org/what-is-gc/our-work/social/human-rights
4. https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163
5. The French Duty of Vigilance Law of February 2017.
6. The Supply Chain Due Diligence Act, passed by the German Parliament in June 2021 and entering into force in January 2023.
7. Bill for Responsible and Sustainable International Business Conduct, submitted to the Dutch Parliament in March 2021. This law would replace the Child Labour Due Diligence Law, which was passed in 2019.
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Insights from a Former Member of the United Nations Working Group on Business and Human Rights

An interview with Michael K. Addo

Michael K. Addo was a member of the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (also referred to as the Working Group on Business and Human Rights or the **Working Group**) from 2011-2018.

The Working Group has a mandate to promote, disseminate and implement the 2011 United Nations Guiding Principles on Business and Human Rights (**UNGPs**). The group of five independent experts of balanced geographic representation also has a mandate to exchange and promote good practices and lessons learned on the implementation of the UNGPs, and to assess and make recommendations.

Professor Addo's career in international human rights law stretches for over 30 years. He is a member of the Ghana Bar, holds a master of law and doctoral degrees from the University of Essex, and a diploma in international human rights law from the University of Strasbourg. Currently, he is Professor of Law at the University of Notre Dame Law School and Director of the Notre Dame London Law programme.

The Business and Human Rights Review interviewed Professor Addo about the importance of the UNGPs, the role of the Working Group and the future of Business and Human Rights (**BHR**).

Professor Addo, how did you become involved in the development of BHR?

As I am sure you know, what has come to be known as BHR has a long history and pedigree. Going back to my time in graduate school, I remember Richard Barnet and Ronald Müller's *Global reach: the power of the multinational corporations* and Susan George's *How the other half dies* raising questions about the role of business in society. In those days, developing countries' call for a New International Economic Order to end what they saw as economic colonialism raised similar issues.

I also had some personal experiences that piqued my interest in BHR. For example, I followed with interest the heated discussions by my law school professors about the widely publicised renegotiation of the terms of the investment agreement between the government of Ghana and Kaiser International of California (a U.S. company) to build the Volta dam. I also had an internship with the United Nations Centre for Transnational Corporations, the secretariat for the negotiation of the Draft UN Code of Conduct on Transnational Corporations (the **UN Code**). This solidified the connection between my two research interests at the time – international economic law and human rights.

After the UN Code failed, we had the UN Norms on the Responsibilities of Transnational Corporations (the **UN Norms**), which also failed, and then the successful UN Global Compact and the UNGPs.

How did you view the UN Norms and the UNGPs, which ultimately took their place as the key international instrument in the field of BHR?

Like many, I was disappointed to see the UN Norms fail, but valuable lessons were learned. It had proved to be premature to seek to apply international human rights law, originally made for States, directly to companies. The drafters of the UN Norms also struggled to come up with a document that blended discordant voices.

Professor John Ruggie was successful as the UN Secretary General's Special Representative on Business and Human Rights and author of the UNGPs because he had taken note of the shortcomings of the UN Norms' process. He adopted an approach that he called "principled pragmatism", in which he acknowledged and affirmed the importance of key societal values that are sometimes in tension with one another, such as the freedoms of the individual and the freedom of the market.

The UNGPs are, in essence, a guide to reconciling these freedoms and the actors associated with them. They focus on ways to prevent economic actors from having adverse impacts on rights holders, especially by way of human rights due diligence. Professor Ruggie also sought to consider everyone's voices, including businesses', through a lengthy global consultation process. The concept of shared responsibility between States and companies, which permeates the UNGPs themselves, influenced the norm-making process and led to their successful endorsement by the UN Human Rights Council.

What is the greatest contribution of the UNGPs?

To my mind, the idea of shared responsibility remains the greatest contribution of the UNGPs. This idea flows from Professor Ruggie's conviction that no single stakeholder, not even the State, can address the challenges in the BHR field on its own. Other stakeholders, including businesses, must act if we are to create an effective system for the promotion and protection of human rights in the business arena. The UNGPs are based on societal expectations of how business should be conducted everywhere, with or without State-based legal standards.

While shared responsibility is the greatest contribution of the UNGPs, it is not an innovation. It simply seeks to return us to the basic societal thinking that sees business as a part of society with responsibilities. The corporate responsibility to respect human rights is entrenched conceptually, philosophically, legally, and morally, in our culture. The UNGPs are therefore more of a reminder, which was very much needed at that point in time and at that junction in history.

How would you characterise the UNGPs? Clearly, they are not law, but rather a soft-law instrument. But are they also a risk management framework, a set of standards by which to judge companies or something else?

While the UNGPs are not legally binding, they are not without legal significance. They are increasingly incorporated by reference in legislation and their concept of human rights due diligence is also featuring in legislation.

The UNGPs differ from a conventional risk management framework in that they relate to the risk of adverse human rights impacts to others, not risks to the business. It is important for companies to recognise and appreciate this broader conception of "risk" when operating in places where the law may not adequately protect human rights. Companies that ignore these societal expectations pose risks not only to human rights, but also to their reputations and may face liability in their home countries.

Many people look to the Working Group as an authoritative body to interpret and apply the UNGPs in the absence of any other such body. What would you say is the role of the Working Group?

The mandate of the Working Group is set out in resolution 17/4 (2011) of the UN Human Rights Council, which, contrary to what some may think, does not nominate the UN Working Group as an authoritative body to interpret and apply the UNGPs.

The Working Group may well claim a privileged position in overseeing and shepherding the implementation of the UNGPs on account of its engagement across all stakeholder communities. That privileged position enables the Working Group to perceive the wider and deeper implications of the UNGPs than individual stakeholders whose views may occasionally be limited by context and circumstances.

Because of the enormity and complexity of the tasks included in the mandate of the Working Group, it can only operate effectively through strategic partnerships with stakeholder groups. The Working Group plays a liaising and shepherding role through its many consultations, research and responses to specific requests from all stakeholders.

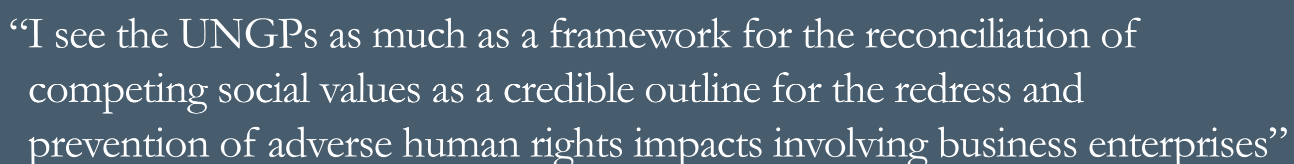
Furthermore, the Working Group is not an adjudicative body and it does not have an express mandate, unlike some Special Procedure mandate holders, to receive communications. In fact, by the process-oriented character of the UNGPs, an authoritative interpretative body would not be appropriate.

What was the most important contribution of the Working Group while you were a member?

I think we did a good job of keeping the BHR ship sailing in the early years of the Working Group, when the seas were quite rough. The UNGPs represented a breakthrough from the heavily polarised situation that doomed the UN Norms. But there were still challenges in their aftermath. Ensuring the continuity of the conversation without relapsing into division was an important achievement for the Working Group.

In the early years, the Working Group established strategic partnerships with other organizations such as the OECD, the EU, the African Union and the ILO, alongside business associations and civil society groups. These organisations communicated the messages of the Working Group in the languages of their communities.

The Working Group also engaged in consultations, conferences, workshops and visits inside and outside of Geneva to garner further support for the UNGPs and help unpack the UNGPs in a manner that was acceptable to all stakeholders. This helped diverse stakeholders feel that the ship belonged to them. For example, when the Working Group went on a country-visit, it met with governments, businesses and associations as well as indigenous communities and civil society organisations, and tried to make diverse stakeholders feel heard and included in the UNGPs project.



"I see the UNGPs as much as a framework for the reconciliation of competing social values as a credible outline for the redress and prevention of adverse human rights impacts involving business enterprises"

Are there any specific country-visits that you thought were particularly important during your time in the Working Group?

Two country-visits stand out to me. The first is the visit to Kenya in 2018, because the Working Group's visit appears to have influenced Kenya's National Action Plan on Business and Human Rights. The Working Group was rather pleased to see that the government was working on a Plan and suggested that it include plans for involving potentially affected people in decision-making regarding agricultural and extractive projects in particular. This idea was subsequently included in Kenya's Plan.

The other memorable country-visit was to the United States because of the contrasting views people had of human rights. On the one hand, it was surprising to see the limited awareness or understanding of internationally recognised human rights and of the UNGPs, especially within the business community. In fact, some businesses strongly resisted the idea that international labour standards had any relevance to them.

Yet, during that same visit, the Working Group also saw some very innovative approaches to addressing labour-rights issues in global supply chains, such as the Fair Food Program, aimed at strengthening the protection of internationally recognised labour rights in the tomato-growing sector based on a partnership between farmworkers, Florida tomato growers and participating buyers. This is my favourite initiative yet.

What do you think about the future of BHR and specifically the negotiations that are underway at the UN for a binding international instrument on BHR?

Professor Ruggie often remarked that the UNGPs were just the end of the beginning for BHR. Certain things that were not ripe for discussion in 2011, may ripen for discussion in the near future. The treaty may be as good a starting point as any into the future, although that depends on the type of treaty and how the negotiations are conducted.

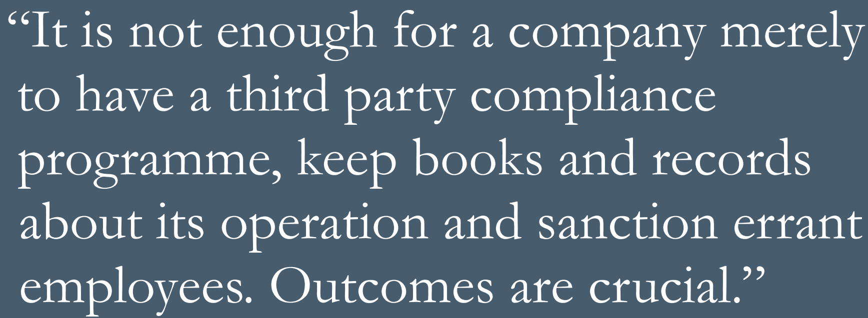
For example, for a treaty like the UN Norms, seeking to impose top-down international law obligations onto companies may still be premature. Similarly, it is not entirely clear whether a treaty modelled on traditional international human rights treaties and negotiated primarily by States will ever be viable. One lesson that the UNGPs taught us is the importance of developing standards based on the consensus of all stakeholders.

Using Data Analytics to Boost the Effectiveness of Compliance Programmes

An interview with Matt Galvin, Research Fellow at Harvard Business School

The BHRR interviewed Matt Galvin, Research Fellow at Harvard Business School. In his previous role as Global Vice President for Ethics and Compliance at Anheuser-Busch InBev (**AB InBev**), Matt designed BrewRIGHT: a data analytics project to streamline compliance processes. We discussed the use of consortium analytics to manage value chain risk and its potential application in the human rights sphere.

Companies are increasingly asked to undertake human rights due diligence on their entire value chains in accordance with emerging EU and other laws, and stakeholder expectations. Current compliance mechanisms may not be up to the enormity and complexity of this daunting task. In this article, we speak to Matt Galvin, Research Fellow at Harvard Business School, about innovative compliance tools AB InBev has been developing using cutting-edge technology and a collaborative approach, and ask about their potential for conducting human rights due diligence on a global scale.



> "It is not enough for a company merely to have a third party compliance programme, keep books and records about its operation and sanction errant employees. Outcomes are crucial."

AB InBev has been at the forefront in using cutting-edge technology solutions for its third-party compliance programmes. Why are you seeking to develop new compliance methods?

Today, regulators, particularly in the UK and the US, are focusing more on the effectiveness of compliance programmes – meaning their ability to influence human behaviour and show positive results. Regulators want to see a company disrupt the agency relationships and market incentives that fuel corruption and other illegal and unethical practices. It is not enough for a company merely to have a third-party compliance programme, keep books and records about its operation and sanction errant employees. Outcomes are crucial.

Lawyers who design and operate compliance programmes need to respond to this shift in emphasis. They need to gain a deep understanding of the environment in which their business operates, apply the behavioural sciences when designing programmes and measure programmes' effectiveness in influencing behaviour once they are operational. That is what we are seeking to do in developing new, technology-assisted compliance tools.

How can technology help you apply the behavioural sciences to compliance programmes?

Data analytics and distributed ledger or blockchain technology can make compliance programmes more effective. Companies can use algorithms to detect non-compliance risks in their own organisations and ecosystems, and pool that information with the information of other companies on a distributed ledger for the mutual benefit of the sector or economy in which they operate. We call this "consortium analytics".

By way of example, companies can pool information regarding indicators of fraud or corruption in a particular market, create profiles of members of the value chain that are safe from compliance risk and then use distributed ledger technology to vet prospective relationships and transactions. They are able to measure the effectiveness of the system and the system itself is constantly learning. Third parties who are vetted are incentivised to comply in order to maintain their profiles on the ledger as safe business partners.

Consortium analytics also allows companies to diversify their suppliers while still managing vendor risk. Companies often try to keep their number of vendors low to make it easier to monitor and ensure consistency in terms of policies, procedures and compliance mechanics. This has two major shortcomings. First, it limits the number of relationships, which can exacerbate market conditions that give rise to corruption in the first place. Second, it ignores the presence of subcontractors and other tiers of the value chain, wherein the greatest risk of illegal or unethical conduct often lies. In short, it is a strategy that may be ineffective or even exacerbate compliance risk.

Distributed ledger and blockchain technologies allow companies to work with a bigger set of vendors and to monitor their supply chains beyond the first tier. This is a win for both the development of a more diverse market and the management of risk.

How does consortium analytics function in practice?

Consortium analytics uses "federated learning models". That means that, instead of working off a common data set, we review how the compliance models of members of a network function. We create algorithms for each organisation to risk profile all of its transactions and vendors. The system learns from how the organisation sorts and prioritises risks. Learnings are fed back as anonymised data and consolidated with data from other organisations.

Think of it as each organisation tending to its data in its own swimming pool, and the water then pooling together into a larger data lake. By bringing together the learnings from each source to that hub lake in an anonymised way, we will be able to see the wisdom of the crowd. It will allow for differential training of a company's own algorithm, but also for very effective algorithms of large group behaviour to provide the consortium with broader insights and perpetual benchmarking.

Does consortium analytics need to be third-party verified or assured to ensure that information entered into the system is reliable?

While some kind of third-party assessment will be required in the short term, the distributable ecosystem will quickly become self-sufficient and rely on members of the network to compile and score transaction and vendor profiles.

This is another benefit of consortium analytics. Traditional third-party compliance systems could only be verified by the low-value and time-consuming work of matching entities in numerous jurisdictions to lists. Bad actors are able to manipulate this system easily, for instance, by creating shell companies. The distributed ledger system will prevent such manipulation because the network would be able to identify such behaviour efficiently on the basis of data and artificial intelligence, akin to how credit card fraud is identified. Additionally, such collective action would significantly reduce the motivation for manipulation.

Can you tell us about BrewRIGHT and your new non-profit compliance collective C2CRIGHT?

BrewRIGHT is AB InBev's proprietary global compliance analytics system. Through BrewRIGHT, we consolidate external data (for instance, a CPI index or World Bank indices) and internal data from AB InBev's compliance, investigation and diligence systems. The system then applies machine learning to predict and identify patterns of behaviour within the accounting system and train the models that AB InBev uses. We use the resulting data to build new compliance applications and solve problems.

C2CRIGHT is the non-profit compliance collective through which we aim to democratise access to compliance analytics. The goal is to bring BrewRIGHT-like compliance technology at affordable prices to a consortium of companies.

"Companies can use algorithms to detect non-compliance risks in their own organisations and ecosystems, and pool that information with the information of other companies on a distributed ledger for the mutual benefit of the sector or economy in which they operate."

How do these systems handle data privacy concerns?

The C2CRIGHT platform is designed to ensure that underlying data will not be shared. Every participating company will receive information on how to normalise its data, a set of algorithms to test against the data and a workflow that allows them to visualise, process and interrogate the data. Company data will go into a unique 'swimming pool' as opposed to a common reservoir.

Each organisation's 'swimming pool' will share features of the central hub, such as a specific algorithm risk profiling transactions or vendors that operate from the hub, which will allow a company to organise its data uniformly but within its own cloud.

The company will then analyse the data independently and refine the output of the resulting algorithm for its specific risks. The central hub will only receive the refined algorithm and analytics on how the results were reached. This allows us to update and improve the models from a centralised place. Therefore, despite the underlying information not being shared, we can still identify key features of the information, which can help us come to a collective conclusion on compliance risk.

Why is a collective approach so important for this project and the broader compliance agenda?

Companies cannot deal with issues such as bribery and corruption in isolation. Unless we manage the risk together, we are all subject to the troubling market dynamics. We have to overcome the collective action problems we face to find practical ways to combat the scourge of corruption.

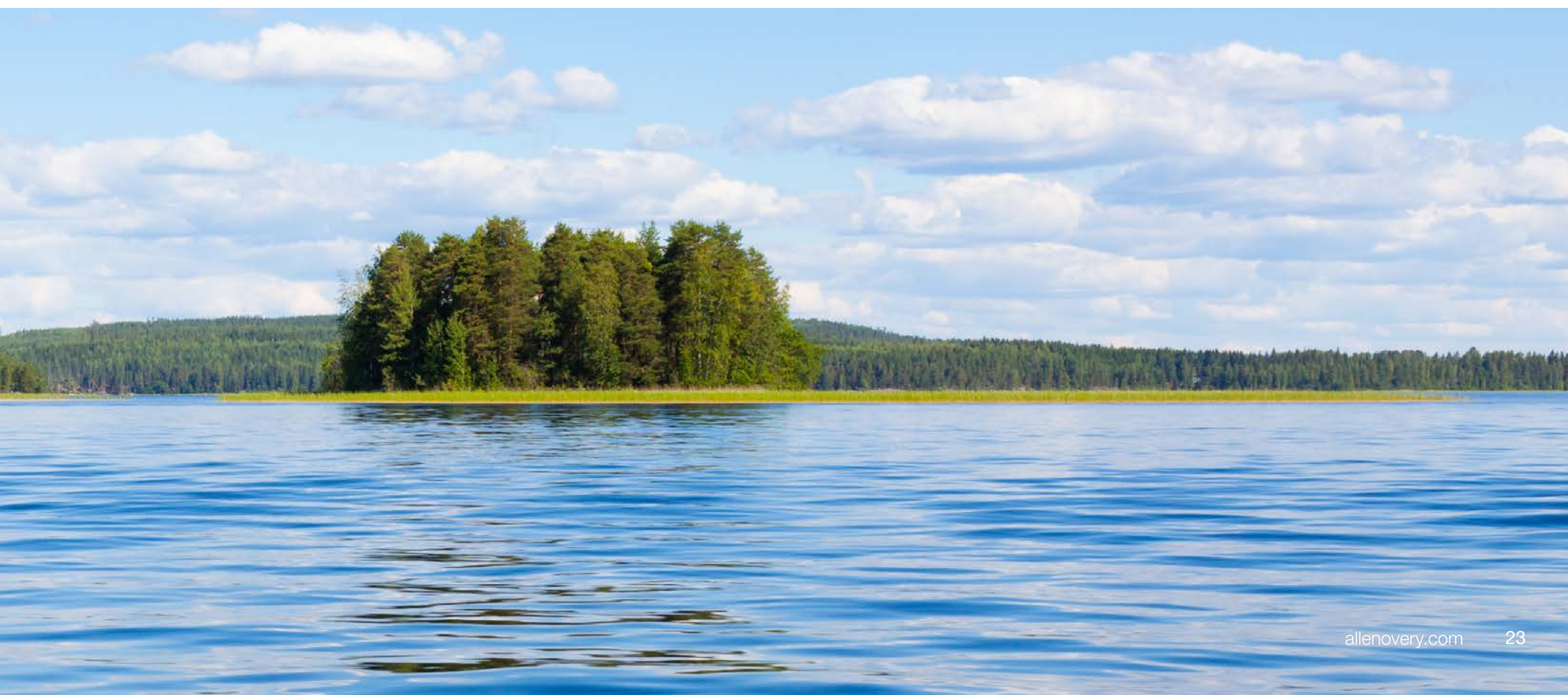
Right now, we are building the algorithms for BrewRIGHT and offering partnerships in the consortium, which will provide companies with: (i) a pre-existing system to operate BrewRIGHT-like models; (ii) the ability to compare individual models against others in the network; and (iii) access to central models that are trained on the collective activity of the group. Soon we will extend the technology to supply chain and value chain analytics, and begin virtual profiling.

Would consortium analytics work in other sectors and with respect to other global problems, such as modern slavery and human rights abuse?

Consortium analytics can be applied to any industry, subject matter and region. I currently have 15 different models operating in 80 different countries. Some models will be useful for every company, as our risk tends to lie in the same areas (for example in emerging markets and service sector economies).

In theory, the same technology can be used to identify human rights transgressions. For example, we can identify risks of modern slavery if we create a list of risk factors. To create this list, we would start by looking at the various factors and scanning for outliers or certain attributes. It could then be combined with the group validation level process I described earlier. If we combine it further with blockchain technology, we can then start to create smart contracts down the value chain.

When you combine smart contract technology with distributed ledger logic, you gain real insight and consortium validation to drive transparency. The technology is allowing us to know what happens on the ground, and now is the time to invest in it to get there. It can seem like a large investment, but it is achievable at scale if there is a group effort.



Remediating Adverse Human Rights Impacts in the Technology Sector

Dr Isabel Ebert, Adviser to the UN B-Tech Project

Dr Isabel Ebert is a Senior Research Fellow at the University of St. Gallen in Switzerland and an adviser to the UN Human Rights Business and Human Rights in Technology Project (**B-Tech Project**) at the Office of the UN High Commissioner for Human Rights (**OHCHR**). The B-Tech Project was launched to develop principled and pragmatic ways to address and prevent human rights harms connected with the development of digital technologies and their use by government and non-government actors, including companies and individual users. With a specific focus on the technology sector, the B-Tech Project develops authoritative guidance and resources to enhance the quality of implementation of the UN Guiding Principles on Business and Human Rights (**UNGPs**). The author would like to express her gratitude to Dr Jennifer Zerk, the B-Tech Project and the OHCHR Accountability and Remedy Project for their reflections and contributions.

Over the past decade, a fundamental shift has occurred regarding the impact of digital technologies on people's lives. The ever-growing ubiquity of digital technologies is affecting societies all over the world and across many spheres of professional and private activities. We are currently witnessing an unprecedented availability of granular, information-rich data and affordable, sophisticated data analysis techniques, as well as accelerating computer power. Thanks to these developments, digital technologies are playing a crucial role in achieving positive social and economic developmental outcomes. However, these same digital technologies can cause and contribute to adverse impacts on human rights, giving rise to a need to develop workable models for remedy and accountability in the tech sector.

The Role of Tech Companies in the Remedy Ecosystem

The UNGPs provide a compelling framework for how effective remedies should be delivered to people and communities affected by human rights harms that may arise from the way tech companies develop, implement and make use of their products and services.[1] Effective remedies can take different forms, and assessing the needs and perspectives of affected people and groups in deciding what kind of remedy is required in a specific situation is essential.[2] Whilst the UNGPs rely heavily on the foundational role of judicial systems, they also highlight the need for a 'remedy ecosystem' to respond to *all* types of human rights risks posed by business activities, and not just a narrow set of issues such as freedom of expression or privacy.

The UNGPs touch upon different types of remediation mechanisms, each of which forms part of the remedy ecosystem, including judicial mechanisms (such as domestic courts), State-based non-judicial mechanisms, (such as regulators, "National Contact Points" under the OECD Guidelines for Multinational Enterprises,[3] and national human rights institutions), and non-State-based grievance mechanisms (which are implemented and operated by private entities, such as companies, industry associations, and multi-stakeholder groups).

The role of companies in the remedy ecosystem is significant. Whilst there are benefits and shortcomings to each type of remediation mechanism, it is rare for non-judicial mechanisms in particular to deliver an effective remedy on their own.[4] This is recognised in the UNGPs, which call on businesses (including tech companies) to *"establish or participate in effective operational-level grievance mechanisms"* for affected individuals and communities to enable early and direct resolution of grievances arising from adverse human rights impacts.[5]

Due to their market size and the global reach of their services, tech companies' online (and other) operations are susceptible to contributing to and, in some cases, causing human rights abuses. Beyond their risk exposure, tech companies often also possess the resources and influence to contribute positively to access to remedy.

Even when tech companies do not directly cause or contribute to adverse human rights harms, there are circumstances where their operations, products or services may be linked to those adverse harms.[6] For example, the features of dating apps for LGBTQ+ individuals, such as geolocation, may be used by authorities to prosecute individuals based on their real or imputed sexual orientation or gender identity in jurisdictions where such activity is illegal. A survey conducted by ARTICLE 19 of more than 400 individuals in Egypt, Lebanon and Iran, and accompanying focus groups with local organisations and LGBTQ+ activists, showed that, at the time, many dating and messaging apps lacked fundamental security features (such as secure geolocation markers, and registration and verification processes).[7] This demonstrates the propensity, which is often inadvertent, for digital technologies to be linked to adverse human rights harms.

The State of Play of Company-led Grievance Mechanisms in Tech

Often, the companies operating digital technologies hold the most useful information about retracing potential wrongdoings that involve those technologies and thus are best-placed to offer effective grievance mechanisms. By establishing company-led grievance mechanisms for access to remedy, tech companies can provide a much needed and easily accessible addition to State-based mechanisms and other types of non-State-based mechanisms.[8] Companies in the technology sector are typically in an ideal position to undertake a data-based ex-post assessment of why adverse human rights impacts have occurred in relation to digital technologies due to the volume, variety and quality of the data they process as part of their day-to-day business transactions. Yet this enormous potential for companies in the technology sector to leverage their access to such data for the purposes of effective company-led grievance mechanisms seems to not have been tapped into widely across the sector. While comparative empirical data on operational grievance mechanisms by technology companies is emerging, it remains scarce.

The Ranking Digital Rights Index provides a helpful basis of indicators for remedial mechanisms and evaluates annually companies' disclosure on such mechanisms. The index demonstrates that there is ample room for improvement by digital platforms and telecommunications companies in their offering of grievance mechanisms as, besides very few exceptions, such companies rank far below 50% in respect of their providing *"clear and predictable grievance and remedy mechanisms to address users' freedom of expression and privacy concerns".*[9]

During a consultation hosted by the B-Tech Project,[10] tech companies described the following recommendations in their approach to grievance mechanisms:

- ensure real human engagement in the remedy process, with effective channels for end users to appeal harms;
- adopt related product/user principles and process assessments and training to put these principles into practice along with an ethics advisory board;
- create a proactive rather than reactive framework for responses to grievances;
- be aware of non-corporate options for remedy, such as the OECD National Contact Points for the OECD Guidelines for Multinational Enterprises, in order to inform users about additional channels for seeking remedy; and
- establish a developing set of mechanisms to address complaints as tools and products mature and reach more users, and as new technologies enter the market.

Despite efforts to implement effective grievance mechanisms, corporate representatives acknowledged that, at present, there are no best practices specific to the tech sector. Whilst it may be helpful to look to practices within other sectors, the global nature of digital technologies requires a broader set of interventions and an understanding that users and potential victims also comprise a larger, and more diverse, global population.

A Human-Centred Approach to Grievance Mechanisms in Tech

Building on the effectiveness criteria in the UNGPs, the B-Tech Project calls for a **human-centred approach** to designing and implementing company-based grievance mechanisms through three recommendations.[11]

1. ***Involving affected people and groups in the design and oversight of company-based grievance mechanisms****.*
   This requires proactively engaging with representatives of affected people and groups, such as civil society organisations, trade unions and other advocates, with respect to the design, implementation, performance and, importantly, the outcomes of the mechanisms. For digital technologies, such outreach could, for example, be structured along the lifecycle approach of a technology/product from development, deployment and end-use. Applying a lifecycle approach is essential to guarantee that all potential sources of adverse human rights impacts are addressed by the grievance mechanism. Piloting or sandboxing approaches to test the grievance mechanisms will further ensure that potential unintended consequences are minimised, for example, revealing the identity of the complaining party through data sharing.

2. ***Ensuring that affected people and groups are aware of the existence of relevant company-based grievance mechanisms and how they work.***
   For instance, the grievance mechanisms should be accessible online (for example, prominently placed on customer-facing platforms) and easy to use.

3. ***Ensuring that any risks to the personal safety of the complaining party are identified and addressed.***
   In order to ensure that the mechanism appears credible to the target audience, companies could display a process model about the stages that a complaint will go through, which includes any final assessment and how the outcome will be communicated to the complaining party. Further, company-led grievance processes could be annually reviewed by a special advisory board with a credible and balanced set of perspectives, such as human rights experts, civil society advocates, data protection experts and data scientists.

In addition to the human-centred approach, it is vital that tech companies specifically work with relevant external stakeholders through collaborative approaches, regarding potential cumulative and/or collective impact in inter-connected value chains.[12] Well-known examples include issues of bias and “toxicity” in machine-learning algorithms.

Multi-stakeholder initiatives, such as the Global Network Initiative (**GNI**), demonstrate the benefits of companies and other key relevant stakeholders working together to address salient human rights issues in the tech sector. GNI provides a platform for tech companies, civil society organisations, investors, and academics to forge a common approach to protecting and advancing free expression and privacy online. GNI has developed a set of principles and implementation guidelines (which align with the UNGPs) to guide responsible company, government, and civil society action when faced with requests from governments around the world that could impact the freedom of expression and privacy rights of users. Participating companies are regularly assessed by independent third parties against the GNI principles. Exchanging best practices on company-led grievances and working on collective impacts together could build on such existing collaborative platforms.

The technology sector itself represents a diverse pool of issues and interests and the mechanisms for responding to grievances from rightsholders need to mirror this diversity.

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Just Transitions: Business, Human Rights and Climate Action

Suzanne Spears, Allen & Overy alumnus

Suzanne Spears was the co-head of Allen & Overy's Global Business and Human Rights practice and now has set up her own boutique business and human rights practice, Paxus LLP. In this article, she comments on the potential of energy transition business activities to protect human rights from dangerous climate change and also to pose human rights challenges. She counsels that financial institutions and businesses of all types will need to develop, embed and implement human rights due diligence techniques throughout their operations in order to meet their responsibility to respect human rights when engaged in decarbonisation-related activities.

Human rights and climate change are linked. Climate change has been called "the greatest human rights challenge of the 21st century",[1] "a code red for humanity",[2] and a "death sentence" for some people, like those in small island nations.[3] Climate-related impacts on fundamental human rights, including the rights to life, housing and health, will become more severe as average global temperatures increase, particularly for the most vulnerable members of society.

At the same time, efforts to arrest climate change are said to pose tremendous opportunities to protect human rights and benefit those engaged in related economic activities.[4] There is hope yet that the worst impacts may be averted and that significant opportunities posed by climate change may be seized, as climate action has been gaining momentum over the past year. Many governments have increased their Nationally Determined Contributions to meet the goals of the Paris Agreement, which will require reducing greenhouse gas emissions to 45% below their 2010 levels by 2030, and reaching 'net zero' emissions by 2050. Many now agree on the need to move away from carbon-intensive products and towards the development and diffusion of zero-emission technologies.

A growing number of businesses and financial institutions have also released plans to align their operations with the goals of the Paris Agreement and made commitments to reach net zero by 2050. Many are addressing their direct (Scope 1) and indirect (Scope 2) emissions, while some are starting to divest from carbon-related industries and a few are starting to vet their business relationships for carbon intensity (Scope 3 emissions).

The climate crisis – do businesses have human rights responsibilities?

Voluntary commitments by governments and businesses to align their operations with the Paris Agreement have been welcomed from a human rights perspective. Yet, as the editors of this volume report in more detail below, some regulators and courts recently have found that steps to decarbonise are or should be legally required as well.

For example, in a landmark ruling in May 2021, the District court in The Hague held that a company, Royal Dutch Shell, has a legal responsibility to act in accordance with the goals of the Paris Agreement.[5] As a private actor, Shell is not directly bound by any obligations under the Paris Agreement. However, the Court found that Shell's responsibility to act in line with the Paris Agreement is based on the United Nations Guiding Principles on Business and Human Rights (**UNGP**s), a "soft law" instrument.

The Court relied on its earlier holding from the 2015 Urgenda case against the Dutch State that human rights standards, and the European Convention on Human Rights (**ECHR**) and the International Covenant on Civil and Political Rights (**ICCPR**) in particular, offer protection against the impacts of dangerous climate change.[5] Then, disregarding concerns about the legal status of the UNGPs, the court asserted that since 2011, the European Commission has expected European businesses to meet their responsibilities to respect human rights, as formulated in the UNGPs. The Court then ordered Shell to reduce its CO2 emissions by 45% by 2030, compared to 2019 levels, across the group's "entire energy portfolio," including Scopes 1, 2 and 3 emissions.

While the judgment will set a legal precedent only if the higher courts uphold it on appeal, it represents an important normative development. It established, for the first time, that corporations have a duty to take action to comply with international human rights law, including as it relates to climate change.

Human rights and the energy transition

It is now generally accepted that the transition to a net-zero economy is a necessary step for the protection of human rights and that companies, including financial institutions, are expected to participate in that transition. According to the guidance set forth in the UNGPs, companies are also expected not only to seize the opportunities that the transition presents, but also avoid infringing on human rights and address any adverse human rights impacts in which they are involved when engaging in transition-related activities. That means that they should take care to respect human rights in the context of each of the various transitions that make up the transition to a net-zero economy.

These are just some of the other transitions that the transition to a net zero economy will require and examples of the potential human rights concerns they raise:

The transition out of fossil fuels

The transition to a net zero economy will require a transition out of fossil fuels, including oil and coal. Just as oil and coal assets risk being 'stranded' in the years ahead as their markets dry up, oil and coal mining-dependent communities risk being 'stranded' unless provision is made to transition them to other forms of livelihoods. The potential for adverse impacts on human rights is particularly great for such communities living in areas that are embroiled in or emerging from conflict, where the political settlements are fragile or where inequality is extreme. In such places, social unrest caused by economic dislocation could spiral into violence, with the attendant risk of excessive use of force by State security forces.

The transition into renewable energy

The necessary transition into renewable energy also raises human rights concerns. Renewable energy projects, such as solar and wind farms, can require significant amounts of land and accordingly can have significant social footprints. Communities of indigenous peoples, who may have traditional but not formal title to the land or reside in disputed territories, are particularly vulnerable to adverse impacts on their human rights in connection with renewable energy projects. Failure to consult them regarding the use of their lands and natural resources would violate international law and risk provoking or exacerbating conflicts with the State.

The transition of the workforce

Transitions in many sectors, such as into new forms of transportation, the built environment and agriculture, as well as energy, will have economic and social impacts on their workforces. For example, 'green jobs' may utilise higher-level skills and can offer better remuneration, which may advantage workers in certain geographies and necessitate education and training programmes to enable workers in other geographies to stay in or enter the workforce. There will be impacts throughout the supply chains of carbon-intensive industries as they engage in the transition and in the supply chains of green-industries as they seek to meet demand for their products. For such businesses to be legitimately classified as "sustainable", they will need to identify and attend to the human rights impacts of their businesses on workers.

The transition into more mining projects and operations

Many components of the energy transition such as the turn to battery electric vehicles (**EVs**), rely on minerals. The growth in demand for the mineral components of EV batteries has the potential to boost public revenues and economic development in countries that are home to these mineral resources. However, some of the countries where these minerals are found have suffered from governance challenges that have made it difficult for citizens to access the economic opportunities associated with the mining sector.

They have also faced other human rights challenges, including the prevalence of child and forced labour, and health and safety challenges, which have affected the mining sector. It is becoming clear that, for EV powered vehicles and other green products to be considered sustainable, their supply chains must be seen to be free of adverse human rights impacts such as these.

The transition in geopolitical terms

The energy transition is accompanied by a transition in geopolitical terms. For most of the past century, geopolitical power was intimately connected to fossil fuels. In the world of clean energy, countries or regions that master clean technology, export green energy or import less fossil fuel stand to gain from the new system, while those that rely on exporting fossil fuels could see their power decline. Some of the countries which are coming to dominate the market for technology and manufactured products for the energy transition stand accused of using forced labour in manufacturing, while some of the countries which are exporting green energy stand accused of using the resources of indigenous communities without their consent.

The transition in the financial economy

Finally, the transition to a net zero economy means a transition in the financial economy. Some banks have come under fire for financing projects that, while supposedly 'green' and contributing to the energy transition, are not sustainable, because they have adverse impacts on human rights or have other adverse environmental impacts.

In particular, banks have been criticised for their financing of biomass, a type of renewable energy. In a number of countries, biomass production is competing directly with food production, having a detrimental effect on local biodiversity and causing deforestation. Deforestation can have serious implications for both climate change and human rights, particularly of indigenous peoples who depend on the forest for their cultures and livelihoods.

Implications for business

The transition to a sustainable economy is coming at a time when governments are incorporating the human rights due diligence concept set out in the UNGPs, as part of companies' responsibility to respect human rights, into national legislation. Thus, mandatory human rights due diligence now applies to many companies and financial institutions. The transition towards minerals is also occurring at a time when courts are extending their reach over parent company liability claims and possibly supplier claims, often focused on mining. Companies and financial institutions also face an increasing risk of claims for misstatements and omissions in their disclosures, including claims regarding their green or human rights credentials or lack thereof.

Thus, there is a legal imperative, in addition to the moral imperative, for companies to consider respect for human rights when undertaking their business activities, even when those activities are ostensibly aligned with the goals of the Paris Agreement. Business has an important role to play in respecting our planet and the people who inhabit it. Companies that take proactive steps in the energy transition, while engaging with the human rights impact of the transition, will be on the front foot in this evolving legal landscape.

1. Mary Robinson, Mary Robinson Foundation for Climate Justice, cited in OHCHR, "Understanding Human Rights and Climate Change," p. 6. https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf
2. António Guterres, United Nations Secretary General, cited in https://www.un.org/press/en/2021/sgsm20847.doc.htm
3. Mia Mottley, Prime Minister of Barbados, cited in https://www.businessinsider.com/powerful-speech-barbados-prime-minister-climate-change-cop26-2021-11?r=US&IR=T
4. John Kerry, U.S. Climate Envoy, remarking that the net zero transition to address climate change poses "the greatest economic opportunity since the Industrial Revolution", https://www.ft.com/content/b044fe94-ae00-4363-9362-3906a9b92cf8
5. Milieudefensie et al. v. Royal Dutch Shell plc, Dutch District Court Judgment, 26/05/21, available at https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339

Key Global Legal Developments in Business and Human Rights

Sarah Morreau, Bethany Gregory and Justin Tan, Allen & Overy

For legal advice regarding these developments or other matters raised in this Review, please contact Andrew Denny (**andrew.denny@allenovery.com**), Matthew Townsend (**matthew.townsend@allenovery.com**), Kenneth Rivlin (**ken.rivlin@allenovery.com**) or Gauthier Vanthuyne (**gauthier.vanthuyne@allenovery.com**).

Since our previous update, there have been numerous key developments in the Business and Human Rights space on both a national and international level. Due diligence requirements remain a focal point for state regulation, particularly in Europe, with legislation passed in Germany and Norway and draft legislation under way in the European Union, Belgium and The Netherlands, amongst others. At an inter-state level, work continues on the International Treaty on Business and Human Rights.

In addition to changes in the regulatory space, there have been several significant cases across a number of jurisdictions. For example, the English courts have recently permitted mass claims brought against UK companies to proceed to trial. The English courts have also recognised potential liability for UK companies with respect to harm occurring in another jurisdiction. On the other hand, the U.S. Supreme Court has rejected the possibility of claims brought under the Alien Tort Statute against U.S. companies where the underlying factual basis involves only limited conduct in the U.S.

In this article, we set out some noteworthy developments since Q4 2020, including several key changes that may have significant impact in the future.

Europe

European Union

Human Rights Sanctions Regime

March 2021 saw the first sanctions imposed under the EU's global human rights sanctions regime (the **GHRSR**). The GHRSR allows the EU to adopt restrictive measures in response to human rights abuses and violations: (i) a travel ban applying to individuals; (ii) the freezing of funds and economic resources of individuals and entities; and (iii) the prohibition of making funds and economic resources available to targeted individuals and entities.[1]

Proposal on Corporate Sustainability Due Diligence Directive

The European Commission published its proposal for a Corporate Sustainability Due Diligence Directive in February 2022, which would apply to EU and non-EU companies that meet certain threshold criteria. Under the proposal, companies must take appropriate measures to identify actual adverse human rights and environmental impacts arising out of their own operations, operations of subsidiaries, and of the business relationships within their value chains. The proposed Directive also requires companies to take appropriate action to prevent, mitigate and (where necessary), remediate any adverse impacts. Companies must also have a compliant due diligence framework in place.
In addition to these substantive obligations, the proposed Directive requires companies to establish procedures to deal with complaints, and provides for administrative enforcement as well as civil liability under certain circumstances.[2]

Draft regulation for artificial intelligence

The European Commission published in April 2021 a proposed Regulation providing a framework on artificial intelligence. The proposal prohibits certain artificial intelligence systems if their use is considered unacceptable as contravening European Union values, for instance by violating fundamental rights. It also proposes to subject to extra scrutiny any artificial intelligence systems that are considered to create a high risk to health and safety or fundamental rights. Fines for non-compliance could reach the greater of EUR 30 million and 6% of a company's global annual turnover.[3]

United Kingdom

Municipio de Mariana v BHP Group plc [2022] EWCA Civ 951

In July 2022, the UK Court of Appeal overturned an earlier High Court decision and held that English courts could hear a claim brought under Brazilian law by over 200,000 claimants against UK company BHP Group plc and its Australian affiliate BHP Group Ltd in relation to a dam collapse in Brazil. The decision provides guidance on, among other things, the English courts' approach to abuse of process and *forum non conveniens* in the context of alleged torts committed abroad against numerous claimants.

Okpabi v Royal Dutch Shell Plc [2021] UKSC 3

In *Okpabi and others v Royal Dutch Shell Plc and another*, decided in 12 February 2021, the UK Supreme Court ruled that the English courts have jurisdiction to hear a claim by over 40,000 Nigerian individuals against a UK-domiciled parent company and its Nigerian subsidiary in relation to adverse environmental and human rights impacts allegedly caused by the subsidiary.
The decision provides an insight into the factors and circumstances that may give rise to such a duty of care and liability for a breach of that duty. The case is now expected to proceed to full trial.[4]

Hamida Begum v Maran (UK) Limited [2021] EWCA Civ 326

In *Hamida Begum v Maran (UK) Limited*, the UK Court of Appeal found it was arguable that a shipping company in the UK selling a vessel to a third party to arrange for that ship to be dismantled could owe a duty of care to the workers dismantling the ship. That was the case even where there were third parties involved and the shipping company, Maran, had no direct relationship with the workers.

Belgium

Bill for mandatory value chain due diligence

On 22 April 2021, the Belgian Chamber of Representatives voted in favour of considering a legislative proposal introduced by members of various political parties. The proposal establishes the principle of corporate responsibility to respect human rights, labour rights and the environment as well as mandatory due diligence obligations for all companies established or active in Belgium, with respect to their entire value chain. It envisages an extensive liability regime, including criminal sanctions and collective legal redress for victims.[5] An amendment to the proposal was put forward in August 2022 and is currently under consideration by the Chamber of Representatives.

Netherlands

Bill for Responsible and Sustainable International Business Conduct

The Bill for Responsible and Sustainable International Business Conduct was submitted to the Dutch Parliament in March 2021. The Bill requires certain companies to implement due diligence on actual and potential negative impacts of their activities on human rights, labour rights and the environment in countries outside of the Netherlands. Pursuant to the Bill, companies will face potential fines for non-compliance and criminal liability in the event of repeated failures to stop activities that cause or contribute to negative impacts, or failure to provide remedy. It is proposed that third parties would also be able to hold companies responsible for harms suffered as a result of violation. This law would replace the Child Labour Due Diligence Law, which was passed in 2019.[6]

Germany

Supply Chain Due Diligence Act

In June 2021, the German Parliament passed the new Supply Chain Due Diligence Act, which is due to enter into force on 1 January 2023. The new rules affect companies operating in Germany that regularly employ more than 1,000 individuals. Companies within the scope of the Act are required to establish, implement and update due diligence procedures to assess compliance with specified fundamental human rights and, to a more limited extent, certain environmental standards in supply chains. Not only does the Act introduce sanctions for non-compliance (namely fines of up to 2% of yearly global turnover and exclusion from public tender procedures), but it also allows for representative actions by trade unions and non-governmental organisations on behalf of potential tort victims.[7]

Norway

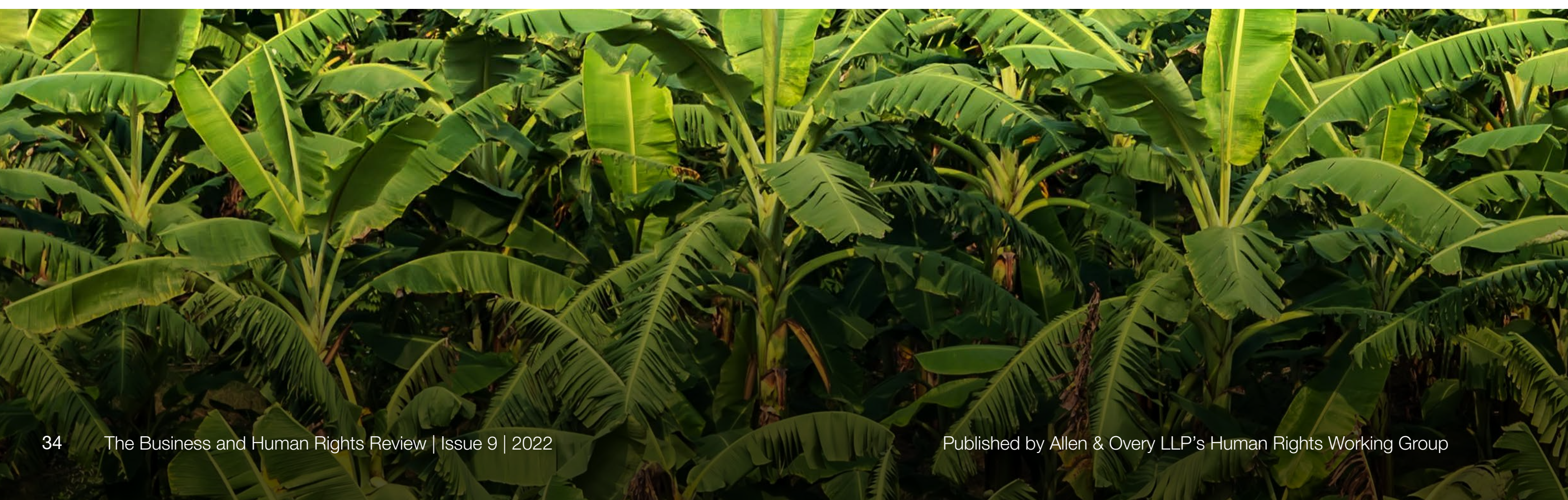
Transparency Act

The Transparency Act, passed in June 2021, entered into force on 1 July 2022. The Act focuses on fundamental human rights and working conditions. It requires large companies (identified according to certain parameters set out in the Act) to carry out due diligence through their value chains and provide public access to relevant information upon request. In the event of non-compliance, sanctions such as fines, prohibitions and orders may be imposed.

Finland

Memorandum on national due diligence legislation

On 12 April 2022, the Finnish government published a memorandum setting out options for new legislation imposing human rights and environmental due diligence obligations for Finnish companies. It addresses alternative options for: (i) the content of the obligation; (ii) the scope of application; and (iii) remedial action or sanctions. The proposals being considered include, among other things, imposing a general obligation to carry out due diligence (while recognising that the assessment will be context-specific) versus specifying particular steps that need to be carried out in a specific context.



Americas

Canada

Fighting Against Forced Labour and Child Labour in Supply Chains Act, Bill S-211

In June 2022, Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff* passed its second reading in the House of Commons. The current draft Bill imposes reporting obligations on entities that produce, sell, distribute or import goods in Canada, as well as entities controlling other entities engaged in such activities. The Bill applies to entities that: (1) are listed on a stock exchange in Canada, (2) are identified by regulations, or (3) meet one of three conditions in the past two financial years, (a) having at least CAD 20 million in assets, (b) generating at least CAD 40 million in revenue, or (c) employing an average of at least 250 employees. These entities will be obliged to provide an annual report outlining steps taken to prevent and reduce the risk of forced and child labour in their supply chains. All reports must be publicly available, including through publication on the relevant entity's website. Certain reporting requirements are also imposed for government entities.

In addition to the reporting requirements outlined above, the Bill amends the Customs Tariff to allow the Governor in Counsel (on recommendation of the Ministry of Finance) to impose restrictions on goods that are manufactured or produced using forced labour or child labour.

USA

Nestle USA, Inc v Doe et al; Cargill, Inc v Doe et al 593 U.S. ___ (2021)

The U.S. Supreme Court confirmed in *Nestle USA, Inc v Doe et al* and *Cargill, Inc v Doe et al* that Nestle and Cargill cannot be sued in the U.S. for alleged aiding and abetting of forced labour overseas. Amongst other issues, the majority of the Court clarified that, to succeed under the Alien Tort Statute, plaintiffs will need to establish that their claims have a sufficient U.S. nexus, beyond simply showing that general corporate decisions by the relevant defendant companies were made in the U.S.[8]

Inter-American Court of Human Rights

Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras (2021)

In *Case of the Miskito Divers*, decided in August 2021, the Inter-American Court of Human Rights reaffirmed that State Parties to the American Convention on Human Rights have a positive obligation to prevent third parties, including private companies, from violating protected rights under the American Convention on Human Rights. Pursuant to this obligation, the Court found that States should adopt measures to ensure that businesses have: (a) appropriate policies for the protection of human rights; (b) due diligence processes dealing with human rights violations; and (c) processes to remedy human rights violations. Accordingly, in addition to the remediation agreed to by Honduras in the friendly settlement agreement, the Court required Honduras to adapt relevant regulations so as to require companies to adopt human rights policies, due diligence processes and processes to remedy human rights violations.

Latin America and the Caribbean

Escazú Agreement

The Escazú Agreement (the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean), adopted in March 2018, entered into force on 22 April 2021. As at August 2022, it has been ratified by 13 of the 24 signatories. The Agreement aims to guarantee the right of current and future generations to a healthy environment and sustainable development. Amongst other things, it requires that each state party guarantee the right of every person to live in a healthy environment, and guarantee the right of access to justice in environmental matters. It further provides that each party should encourage companies to prepare sustainability reports reflecting their social and environmental performance.

Colombia

National Action Plan on Business and Human Rights 2020-2022

Colombia launched its second National Action Plan on Business and Human Rights in December 2020. The plan covers the period of 2020-2022. The National Action Plan is primarily based on the commitment to an Open Government: a governance model based on transparency, accountability, innovation and technology to strengthen democracy. There is a focus upon the development of the local economy, supporting and strengthening the productive fabric of micro and small businesses.

Peru

National Action Plan 2021-2025

In June 2021, Peru launched a National Action Plan for the years 2021-25. The National Action Plan consists of five strategic guidelines. This includes: (1) acting in accordance with the international standards framework for human rights in business; (2) public protection policies preventing human rights violations in business; (3) public protection policies encouraging accountability and investigation; (4) promotion of diligence procedures; and (5) strengthened remedy mechanisms for those who fall victim to human rights abuses.

Africa

Uganda

National Action Plan on Business and Human Rights 2021-2025

In August 2021, the government of Uganda launched its third National Action Plan on Business and Human Rights. The stated aim of the plan is the elimination of human rights violations and abuses in business activities by any person or entity. The plan prioritises eight different areas, including women, vulnerable and marginalised groups, land and natural resources, and access to a remedy.

Kenya

National Action Plan on Business and Human Rights 2020-2025

In April 2021, the Kenyan cabinet approved an updated National Action Plan on Business and Human Rights. The plan aims to protect against human rights abuses by businesses, whether private or government-owned. It focuses on five themes: land and natural resources, labour rights, revenue transparency, environmental protection and access to remedy.

Erick Otieno Ogumo & others v Chigwell Holdings Limited & others [2022] eKLR

In March 2022, the Kenyan High Court recognised and ordered remediation of human rights breaches by a private entity. In particular, the Court held that Chigwell Holdings Limited, the developer of an estate in Lang'ata, had violated the rights of homeowners and their children to dignity and reasonable standards of sanitation by failing to provide clean and safe water. The High Court also found that the developer had violated the children's right to dignity by failing to provide designated playing areas, with the result that the children had to play in dangerous locations such as carparks. Accordingly, the developer was ordered to install water filtration systems and play areas for children.

Asia Pacific

Bangladesh

International Accord for Health and Safety in the Textile and Garment Industry

In August 2021, numerous fashion brands and retailers entered into a new agreement designed to protect garment workers in Bangladesh. This agreement follows the original accord reached after the Rana Plaza factory fire in 2013 and the Transition Accord in 2018. The new agreement is valid until October 2023. Under the new agreement, parties have reconfirmed their health and safety commitments. Parties have also committed to the expansion of the health and safety programs, including the possibility of expansion into other countries and exploring the possibility of including human rights due diligence.

Ratification of ILO Minimum Age Convention 1973

In March 2022, Bangladesh ratified the ILO Minimum Age Convention 1973, thus completing its ratification of all eight ILO fundamental conventions. The Minimum Age Convention requires States to set a minimum age requirement for certain types of employment, as well as progressively raise the minimum age for admission to employment or work to a level that allows for the fullest physical and mental development of young people.

Pakistan

National Action Plan on Business and Human Rights 2021-2026

Pakistan launched its first five-year National Action Plan on Business and Human Rights for the period 2021-2026. It aims to bring existing legislation up to date with international commitments. Amongst other objectives, Pakistan intends to issue business and human rights guidelines for business enterprises and bring relevant policies into line with State guidelines. The National Action Plan details how Pakistan will ensure, through judicial, administrative, legislative, and other appropriate means, access to an effective remedy where human rights abuses occur.

China

Ratification of ILO conventions on forced labour

In August 2022, China ratified two ILO treaties on forced labour: the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105). Convention No. 29 requires States to suppress and outlaw the use of forced labour, while Convention No. 105 targets, among other things, the use of forced labour as a means of "racial, social, national or religious discrimination".

Australia

Ratification of Protocol of 2014 to the ILO Forced Labour Convention 1930

In April 2022, Australia ratified the Protocol of 2014 to the ILO Forced Labour Convention 1930. This Protocol requires States to support due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour.

Review of Modern Slavery Act 2018

On 31 March 2022, the Australian government announced a statutory review of the Modern Slavery Act 2018. The review will consider the operation of the Act thus far and whether any amendments are required. It will also consider compliance with the Act over the period since the Act's commencement, and whether it is necessary for an independent body to oversee implementation and/or enforcement of the Act. Under the Act, businesses with a consolidated revenue of at least AUD 100 million are required to report on the risks of modern slavery in their operations and supply chains, as well as any steps taken to address those risks. The review will have regard to, among other things, whether this is the appropriate threshold for reporting requirements.

New Zealand

Public consultation on modern slavery and worker exploitation legislative proposal

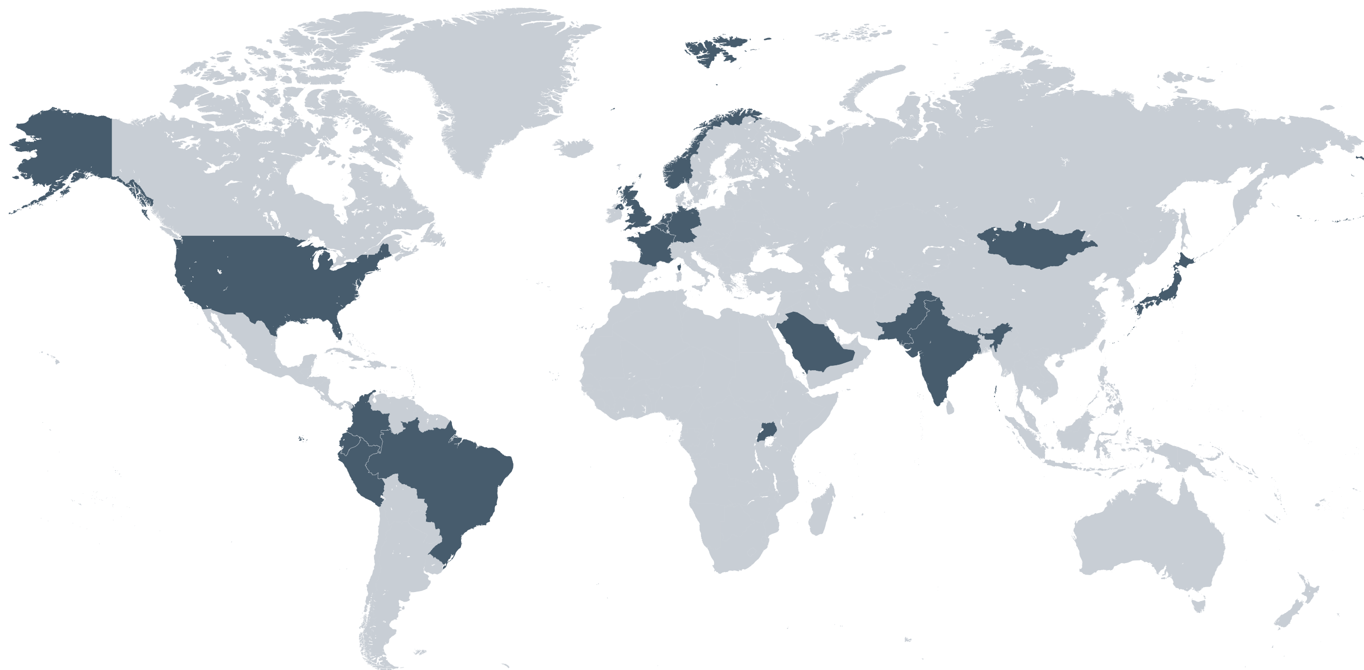
On 9 April 2022, New Zealand opened public consultation on proposed legislation targeting modern slavery in New Zealand and overseas. The proposed legislation would require all companies to report any modern slavery they discover within their operations and supply chains. It also requires medium-to-large businesses (those with an annual revenue of NZD 20-50 million) to report on steps taken to manage the issue, and large businesses (those with a revenue of over NZD 50 million) to undertake due diligence to prevent, mitigate and remedy modern slavery in their operations and supply chains.

Middle East

Saudi Arabia

Ratification of Protocol of 2014 to the ILO Forced Labour Convention 1930

In May 2021, Saudi Arabia became the first member of the Gulf Cooperation Council to ratify the Protocol of 2014 to the ILO Forced Labour Convention 1930. This Protocol requires States to support due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour.



International

Third Draft International Treaty on Business Human Rights

On 17 August 2021, the Intergovernmental Working Group (**IWG**) released the Third Revised Draft of the proposed binding treaty on business and human rights. The treaty seeks to establish international standards for business and human rights and has been in progress for a number of years. The Third Revised Draft clarifies and refines a number of the key articles in the draft text, including rights of victims of human rights abuses in the context of business activities, prevention and access to remedies. An IWG session was held on October 2021 to discuss the draft, with a further session scheduled for October 2022.

United Nations Guiding Principles on Human Rights

The United Nations Guiding Principles on Business and Human Rights (**UNGP**s) reached their tenth anniversary in 2021. To mark the milestone, the Working Group on Business and Human Rights took stock of the implementation of the UNGPs so far and released the UNGPs 10+ Roadmap, thereby providing updated recommendations for businesses. This includes, but is not limited to, embedding human rights due diligence in corporate governance and business models, improving the tracking of business impacts and performance and encouraging states to increase access to remedies for business-related human rights abuses.

International Labour Organisation Fundamental Principles and Rights

In June 2022, delegates at the International Labour Conference agreed to add health and safety to the ILO Fundamental Principles and Rights at Work. This is the first extension of ILO fundamental rights since the original four rights were adopted in 1998 (freedom of association, elimination of forced labour, abolition of child labour, and elimination of discrimination). Under the ILO Declaration of Fundamental Principles and Rights at Work, ILO Member States commit to respect and promote these rights, regardless of whether they have ratified the relevant ILO Convention.

1. For more information on the GHRSR, please see here: https://www.allenovery.com/en-gb/global/news-and-insights/publications/the-eu-adopts-a-new-global-human-rights-sanctions-regime
2. For more information on the proposed Directive, please see here: https://www.allenovery.com/en-gb/global/news-and-insights/publications/the-eu-commissions--proposal-for-a-directive-on-corporate-sustainability-due-diligence
3. For more information on this draft regulation, please see here: https://www.allenovery.com/en-gb/global/news-and-insights/publications/key-provisions-of-the-draft-ai-regulation
4. For more information on the decision and its impact, please see here: https://www.allenovery.com/en-gb/global/news-and-insights/publications/okpabi-supreme-court-rules-that-nigerian-communities-can-sue-shell-and-its-nigerian-subsidiary-in-england
5. For more information on the proposal's key features, please see here: https://www.allenovery.com/en-gb/global/news-and-insights/publications/focus-falls-on-corporate-vigilance-and-accountability-in-belgium and for subsequent updates on progress, see: https://www.allenovery.com/en-gb/global/news-and-insights/publications/progress-towards-adoption-of-the-belgian-corporate-vigilance-and-accountability-act
6. For further information on this Act, see: https://www.allenovery.com/en-gb/global/news-and-insights/publications/mandatory-human-rights-due-diligence-laws-the-netherlands-led-the-way-in-addressing-child-labour-andcontemplates-broader-action
7. For more information on the details of this Act, please see our series of briefings here (including the three further parts in the 'Recommended content'): https://www.allenovery.com/en-gb/global/news-and-insights/publications/germanys-new-supply-chain-act
8. For more information on the U.S. Supreme Court's judgment, please see here: https://www.allenovery.com/en-gb/global/news-and-insights/publications/nestle-v-doe-us-supreme-court-further-defines-scope-of-alien-tort-statute

FOR MORE INFORMATION, PLEASE CONTACT:

BHRR Editorial Board
BHRR@allenovery.com

Andrew Denny
Tel +44 20 3088 1489
andrew.denny@allenovery.com

Gauthier van Thuyne
Tel +32 2 780 2575
gauthier.vanthuyne@allenovery.com

Kenneth Rivlin
Tel +1 212 610 6460
ken.rivlin@allenovery.com

Matthew Townsend
Tel +44 20 3088 3174
matthew.townsend@allenovery.com

Sarah Morreau
Tel +44 20 3088 2228
sarah.morreau@allenovery.com

Godwin Tan
Tel +44 20 3088 1791
godwin.tan@allenovery.com

Camille Leroy
Tel +32 2 780 2493
camille.leroy@AllenOvery.com

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