

For the attention of the Working Group on the issue of human rights and transnational corporations and other business enterprises (the **Working Group**)

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Dear Members of the Working Group

Submissions in relation to the 2013 Forum on Business and Human Rights

Thank you for the opportunity to provide our suggestions regarding the 2013 Forum on Business and Human Rights.

We would like to begin by congratulating you on the success of the First Annual Forum in December 2012. A five-member delegation from Allen & Overy LLP attended the Forum and we very much enjoyed being part of the discussions on business and human rights with participants of such diverse backgrounds and perspectives. That the event was so well attended is clear evidence of the importance of the subject to enterprises, States and civil society. We found the sessions both informative and thought-provoking.

An international law firm with 42 offices in 29 countries, Allen & Overy has been closely involved in the dialogue on business and human rights. In particular, in October 2012 the firm's Human Rights Working Group launched *The Business and Human Rights Review*, a unique and innovative bi-annual publication which seeks to provide a forum for much-needed debate in the field amongst all the major stakeholders in the business and human rights field, including businesses, states, academics, private practice lawyers, NGOs and international policy-making institutions. To our knowledge no other organisation - law firm or otherwise - has produced a similar publication in this field.

We have two specific suggestions for topics to be covered during the 2013 Forum. First, we believe it would be useful to convene a track of operationally-focused sessions which address implementation of the Guiding Principles from a more granular perspective. These panels could address, for example, organisational design issues related to human rights impact assessments, operational considerations for conducting project due diligence or ongoing supply chain monitoring, or best practices for establishing and managing internal grievance processes. Nearly two years after the endorsement of the Guiding Principles, business enterprises now should have a wealth of experience to share about the ways in which they are putting the Guiding Principles into practice. Providing a forum for more operationally-focused anecdotes, and lessons learned along the way, would be useful for enterprises that are less far along in the process.

To facilitate engagement on this topic and, indeed, to promote a more robust dialogue among key stakeholders, we would encourage greater attendance and participation by business representatives on session panels at the 2013 Forum. It almost goes without saying that business enterprises have a crucial role

in the business and human rights agenda. We believe the Forum dialogue would be greatly enhanced by the active participation of business enterprises drawn from multiple geographies and from across industry sectors.

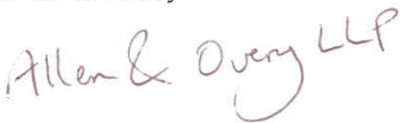
Second, we feel it would be useful for one or more panels at the Forum to address the growth of formal "hard law" legal regimes in response to the Guiding Principles. This trend is evident not only in various regulatory reporting regimes, such as the US Dodd-Frank Act's conflicts minerals rules and US State Department Reporting Requirements for Responsible Investment in Burma (Myanmar), but also in the so-called 'contractualisation' of human rights norms and the imposition of common law duties of care in response to the industry-wide adoption of certain human rights diligence standards. A closely-related topic might include a cross-jurisdictional comparative law panel addressing the prospects for judicial remedies for human rights abuses, including the implications of the US Supreme Court's forthcoming decision in *Kiobel v. Royal Dutch Petroleum* on transnational human rights litigation. We believe that understanding these trends will be important for both business enterprises and stakeholders in effectively implementing diligence processes, grievance programs and other compliance operations.

In addition to its request for specific topics and panels, the Working Group also solicited input on strategies for increasing State and business uptake of the Guiding Principles. To this end, we respectfully submit that the Charter- and treaty-based bodies within the UN system have a critical role to play. For example, the Committee on Economic, Social and Cultural Rights (the **Committee**) currently monitors State Parties' efforts in the implementation of the rights under the International Covenant on Economic, Social and Cultural Rights (**ICESCR**). We note that the Committee has already called on State Parties to include in their initial and periodic reports to the Committee information on "*challenges faced and measures taken in relation to the role and impact of the corporate sector on the realization of economic, social and cultural rights*" (see the Committee's "Statement on the obligations of State Parties regarding corporate sector and economic, social and cultural rights" (forty-sixth session, May 2011)). Similarly, other stakeholders are encouraged to submit relevant information to the Committee in this regard. However, the Committee's sessions subsequent to that Statement do not suggest that State Parties, other stakeholders or indeed the Committee itself have focused much attention on this issue. In their examination of reports submitted by State Parties, the Committee should be encouraged to adopt the Guiding Principles as a framework in reviewing the extent to which State Parties are fulfilling their obligations regarding the impact of the corporate sector on the implementation of the rights under the ICESCR and should question the extent to which State Parties are promoting understanding and awareness of the Guiding Principles within the business community. This may in turn lead to an increased uptake of the Guiding Principles by businesses within those State Parties.

Should you require panellists for any of the sessions at the 2013 Forum, Charles Borden (Public Law), Andrew Denny (Dispute Resolution), Gauthier van Thuyne (Public and Environmental Law), Matt Townsend (Corporate and Environmental Law), Schan Duff (Public Law) and Belinda Richards (Project Finance) of our firm would be well placed to assist. We also would be happy to assist you in coordinating speakers to address any of the topics discussed above.

Thank you again for the opportunity to share our suggestions. We are very much looking forward to another successful Forum in 2013.

Yours faithfully



Allen & Overy LLP