

IBA Business and Human Rights Guidance for Bar Associations

Adopted by the IBA Council on
8 October 2015

With Commentaries
2015



the global voice of
the legal profession

IBA Business and Human Rights Guidance for Bar Associations

With Commentaries
2015



the global voice of
the legal profession

International Bar Association
4th Floor, 10 St Bride Street
London EC4A 4AD
United Kingdom
Tel: +44 (0)20 7842 0090
Fax: +44 (0)20 7842 0091
www.ibanet.org

ISBN: 978-0-948711-27-5

All Rights Reserved
© International Bar Association 2015

No part of the material protected by this copyright notice may be reproduced or utilised in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage and retrieval system, without written permission from the copyright owner.

Contents

Introduction	1
The UNGPs on Business and Human Rights	2
General commentary on the Bar Association Guidance	4
Chapter I: Devising A Sustainable Strategy	7
Article 1. Organisational structure	7
Article 2. Ensuring effective implementation	8
Chapter II: Awareness Raising, Training and Education	10
Article 3. Awareness raising	10
Article 4. Comprehensive education	11
Chapter III: Professional conduct	13
Article 5. Increasing awareness of lawyers as to the UNGPs	13
Chapter IV: Capacity building and technical assistance	14
Article 6. Guidance and technical assistance	14
Article 7. Sharing examples of best practice	15
Chapter V: Recognition and incentives	16
Article 8. Acknowledgement	16
Chapter VI: Business and human rights action	17
Article 9. An active legal profession	17



the global voice of
the legal profession

Introduction

This Business and Human Rights Guidance for Bar Associations is intended to enable bar associations around the world to increase awareness and understanding of lawyers who advise business clients on the relevance of business and human rights, and particularly of the UN Guiding Principles on Business and Human Rights (the ‘UNGPs’), and the various laws, policies, and standards that promote business respect for human rights.

The IBA was founded in 1947, inspired by the vision of the United Nations (UN), with the aim of supporting the establishment of law and administration of justice worldwide. In 2011, following six years of research and multi-stakeholder consultations, the UN Human Rights Council unanimously endorsed the UNGPs authored by Harvard Kennedy School Professor John Ruggie, the former Special Representative of the UN Secretary-General on Business and Human Rights (the ‘SRSG’). The IBA significantly contributed to, and strongly supported, the SRSG’s UN mandate.

The European Union has recognised the UNGPs as ‘the authoritative policy framework’ addressing corporate social responsibility (CSR) and has called on states to implement them through national action plans. As the CCBE notes in its Corporate Social Responsibility and the Legal Profession: Guidance II, ‘[t]he EU Commission expects all European enterprises to meet the Corporate Social Responsibility to respect Human Rights as defined in the UN Guiding Principles.’ The G7 has expressed ‘strong support’ for the UNGPs and also welcomed the efforts by states to develop national action plans.

The UNGPs have since been a strong influence on other international standards (collectively, ‘other business and human rights standards’). For example, the new 2011 human rights chapter of the OECD Guidelines on Multinational Enterprises was based entirely upon the SRSG’s articulation of human rights due diligence, which is embedded in and supported

by an enforcement mechanism (National Contact Points).

The ISO 26000:2010 Guidance on Social Responsibility's human rights chapter was likewise strongly influenced by the human rights due diligence approached embedded in the UNGPs, along with other issues relevant to CSR.

The UN Global Compact uses the substantive content of the UNGPs to respect human rights and avoid complicity in human rights abuse when its participants join the Global Compact.

In addition, business and human rights standards have also been developed for specific industries, sectors, countries and human rights issues, in such areas as the use of private security forces, abusive conditions in global supply chains, internet privacy and freedom of expression, responsible sourcing from conflict-afflicted areas, transparency and accountability, and human rights reporting, to name a few. Such standards have been and will continue to be a critical way to drive forward meaningful implementation of the responsibility to respect human rights under the UNGPs.

The UNGPs on Business and Human Rights

The UNGPs are based on the three pillar UN 'Protect, Respect and Remedy' Framework, under which (1) states have a duty to protect against human rights¹ abuses by third parties, including business, through appropriate policies, laws, regulation and adjudication; (2) all business enterprises have a responsibility to respect human rights, which means to

1 The UNGPs refer to 'internationally recognised human rights', an authoritative list of which is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), together with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work (Commentary to Guiding Principle 12).

avoid infringing on the rights of others and to address negative impacts with which they may be involved; and (3) there is a need for access to effective remedy for victims of business-related human rights abuses.

The UNGPs have enjoyed wide global uptake and are regarded as the global authoritative standard on business and human rights. They are increasingly reflected in public policy, law and regulation, commercial agreements, international standards that influence business behaviour, the advocacy of civil society organizations, and in the policies and processes of companies worldwide.

There is also growing recognition that a strong business case exists for respecting human rights and that the management of risks, including legal risks, increasingly means that lawyers, and particularly business lawyers, need to take human rights into account in their advice and services. The UNGPs are relevant to many areas of business legal practice, including but not limited to corporate governance, reporting and disclosure, litigation and dispute resolution, contracts and agreements, labour and employment, tax, intellectual property, lobbying, bilateral treaty negotiation, and arbitration.

In order to help bar associations and lawyers to better understand these issues, the IBA is currently preparing a Practical Guide for Business Lawyers on the Guiding Principles (the 'Practical Guide'), which will set out in detail the core content of the UNGPs, how they can be relevant to the advice provided to clients by individual lawyers subject to their unique professional standards and rules (whether they are in-house or external counsel acting in their individual capacity or as members of a law firm) and their potential implications for law firms as business enterprises with a responsibility to respect human rights themselves. The Practical Guide is expected to be issued in 2016.

As a business enterprise with its own responsibility to respect human rights and to be consistent with its mission and objectives, the IBA wishes to use its leadership role in the global legal profession to encourage bar associations around the world to take affirmative steps to develop an overall strategy

for integrating the UNGPs and other business and human rights standards into their work for the legal profession.² The activities of bar associations are important means for lawyers to increase their ability to help their clients to respect human rights. As a result, this Guidance for Bar Associations provides information on how bar associations can consider increasing the awareness and understanding of business and human rights for themselves and their members, integrating the UNGPs and other business and human rights standards into the mainstream of legal practice, and creating tailored programmes for their member lawyers.

The IBA welcomes the measures already taken by bar associations (which throughout this document include law societies), law firms and individual legal practitioners to recognise the importance of the UNGPs and other business and human rights standards to the legal profession and to integrate this topic into their practice at a domestic and international level. Given the global reach of the UNGPs and the increasingly global nature of legal practice, bar associations, law societies and lawyers may wish to collaborate on sharing experiences and best practices in this rapidly evolving area.

General commentary on the Bar Association Guidance

1. This Guidance aims to inform bar associations about how they may promote, launch and develop business and human rights initiatives that are relevant to practitioners in their jurisdictions. National and regional bar associations are better positioned than the IBA to assess the specific needs of their own jurisdictions and to balance those needs with their capacity and available resources.

2 This Bar Association Guidance draws upon the precedent of the IBA Anti-Corruption Guidance for Bar Associations: Creating, Developing and Promoting Anti-Corruption Initiatives for the Legal Profession, drafted by the IBA Legal Projects team in 2013, available at http://anticorruptionstrategy.org/AC_strategy_legal_profession_bar_guidance_and_forum.aspx.

2. This Guidance groups its recommendations under three different objectives.
3. To increase the awareness and understanding of bar associations, law societies and their members of the UNGPs, and their relevance to the advice and services that lawyers provide to clients in all types of commercial and business transactions;
 - a. To inform about the appropriate use of the UNGPs by members of the legal profession and provide technical assistance to practitioners and other interested stakeholders; and
 - b. To positively represent the legal profession and bar associations as champions of business and human rights in local and international fora by participating, for example, in initiatives to increase protection by States of human rights and in the development of multi-stakeholder standards that encourage and enable businesses to respect human rights.
 - c. This Guidance for Bar Associations does not attempt to define every means by which a bar association may wish to design a business and human rights strategy for its own jurisdiction. Rather, the measures are suggestive but not exhaustive.
4. The IBA understands that national bar associations will be at different stages in their implementation of business and human rights initiatives. Some bar associations will have already considered the issues and implemented a number of the recommendations set out in this document, while other bar associations do not yet have the capacity or the authority to do so.
5. Although this Guidance for Bar Associations is addressed to bar associations, its recommendations may also be relevant to other professional legal organisations, and associations of law firms.
6. This Guidance for Bar Associations is aspirational rather than binding. The IBA has neither the intention nor the authority to impose business and human rights compliance obligations on the legal profession or on individual bar associations.

7. The Council confirms that, in line with the provisions of the UN Basic Principles on the Role of Lawyers as resolved by the UN General Assembly in its 'Human rights in the administration of justice' resolution of 18 December 1990 (the 'Basic Principles'), nothing in the IBA Business and Human Rights Guidance for Bar Associations or in the IBA Practical Guide for Lawyers (once approved) shall be interpreted as reducing respect for the fundamental human right of effective access to legal services provided by an independent legal profession to all in need of such services, including that all lawyers should always be able to fulfill their duties and responsibilities and enjoy the guarantees provided for by the Basic Principles, consistent with their legal and professional responsibilities.

Chapter I: Devising a sustainable strategy

Article 1. Organisational structure

Bar associations may wish to establish and support an appropriate structure for the management and development of the topic of business and human rights within the association.

Commentary

1. In order to promote, launch, and develop an efficient and sustainable business and human rights strategy, bar associations may wish to support it with an effective organisational structure. Doing so will likely enhance the effectiveness and legacy of any initiatives through appropriate policies, procedures and mechanisms approved at the most senior level.
2. A bar association may choose to establish an independent committee on the subject of business and human rights or to establish a sub-committee or working group. Regardless, bar associations may wish to ensure that the responsible body welcomes members from:
 - a. All legal practice backgrounds, including human rights, commercial law, dispute resolution, environmental law, employment law and others;
 - b. All different legal communities, including but not limited to those coming from private practice, in-house counsel, government, not-for-profit, the judiciary, and academia.
3. Depending on its means and capacity, a bar association may wish to consider supporting the strategy with the assignment of appropriate staff and budget.

4. A bar association may wish to delegate this mission to an appointed or a selected group of individuals with special interest in the topic. Nevertheless, a successful programme requires the public commitment of the bar association, with full support and oversight of the bar association's top management and leadership, supported by appropriate policies and procedures to embed the commitment in the activities of the association and its member lawyers.

Article 2. Ensuring effective implementation

Bar associations may wish to consider the following implementing milestones, which can help to ensure an effective initiative regardless of its scale and dimension:

- a. **Setting specific objectives;**
- b. **Devising a realistic timescale;**
- c. **Considering the sustainability and legacy of the project;**
- d. **Identifying indicators of success; and**
- e. **Allocating responsibility for implementation.**

Commentary

1. Article 2 indicates some practical issues that bar associations may wish to consider when implementing a strategy on business and human rights.
2. *Setting specific objectives:* once the bar association or the law society has considered its own authority, means, plans, priorities and political possibilities, it may wish to consider setting specific objectives in order to create a clear path that allows the organisation to address the more pressing needs of its membership. For example, some bar associations or law societies may focus on establishing a vibrant committee or convening a widely attended annual gathering on the subject. Others may choose to produce guidance for law firms or to help law schools in their jurisdictions to include business and human rights in their

curricula. Some bar associations or law societies may feel prepared to work on several objectives in parallel. It is advisable that all objectives and plans be discussed and consulted on among those responsible for steering the project (see Commentary 4 of Article 1) or, preferably, more broadly among members and other stakeholders.

3. *Devising a realistic timescale:* it would be appropriate to accompany each objective with a realistic timescale for completion, considering the existing resources and the level of interest and knowledge of the subject among members at any given time.
4. *Considering the sustainability and legacy of the project:* the topic of business and human rights is evolving and will continue to grow and gain relevance for legal professionals. Therefore, although initiatives introduced should be enduring, they should be able to adjust and to improve them over time.
5. *Identifying indicators of success:* in addition to identifying objectives, bar associations may wish to consider identifying metrics that show that their business and human rights programmes are achieving the desired results; eg, assessing whether training on the UNGPs is effective, and whether answers to requests for information about the UNGPs and other business and human rights standards from lawyers were helpful in practice. Approaches could include surveys of lawyer, client, and public perceptions.
6. *Allocation of responsibility for implementation:* bar associations may wish to appoint individuals or groups of individuals to lead these initiatives. Delegating responsibility can help to ensure that the project is accountable and clearly focused. Rotation in the project's leadership can help to involve a wider group of interested members and incentivise the development of new ideas and plans.

Chapter II: Awareness raising, training and education

Article 3. Awareness raising

Bar associations may wish to use all available resources to raise awareness of the existence and relevance of business and human rights instruments and principles among all members.

Commentary

1. Bar associations may wish to take advantage of all possible opportunities to raise awareness of the existence of the UNGPs. These efforts could readily target all audiences within the legal profession, regardless of the level of prior knowledge in the subject matter or whether they work directly with businesses.
2. Although the primary focus of the awareness-raising efforts by bar associations will be on the legal profession, these campaigns may also extend to the general public.
3. Awareness-raising campaigns can use different avenues, methods and formats, including:
 - a. Special sessions on business and human rights in conferences, seminars and other similar events;
 - b. Specific sections of the bar association's website dedicated to the theme of business and human rights;
 - c. Specific business and human rights sections in existing publications or new publications on the topic, including newsletters, bulletins, books and journals; and

- d. Videotaped business and human rights material available on social media or online.

Article 4. Comprehensive education

Bar associations may wish to actively promote, participate and/or establish educational programmes on the relevance of business and human rights principles for the practice of law. This effort could be extended comprehensively to all different stages of legal education, including:

- a. **Law schools and/or universities;**
- b. **Programmes for newly qualified lawyers;**
- c. **Continuing professional development; and**
- d. **Programmes for senior-level practitioners.**

Commentary

1. Article 4 highlights the role of education in raising awareness within the legal profession at every stage of a professional legal career. Lawyers who work in law firms, companies, governments, and civil society organisations may have very different approaches to the same matter. Educational programmes can reduce those differences by helping to provide a common understanding of evolving developments and expectations in this field.
2. Article 4(a) brings to the attention of bar associations the option of urging law schools and/or universities to incorporate business and human rights programmes into their curricula. Some bar associations may also choose to develop their own seminars for law students or to promote these courses jointly with educational institutions. In addition to law schools, other faculties – such as humanities, business, accountancy, and engineering – can play an important role in the promotion of business and human rights in the legal profession.
3. Articles 4(b), (c) and (d) recognise the importance of developing educational programmes and tools on business and human rights for qualified legal

practitioners who may not have been exposed to the topic at law school.

4. It could be very useful for bar associations to develop practical advice for lawyers and provide case-based examples of how lawyers can apply the UNGPs in specific practice areas.
5. Bar associations may wish to consider addressing the following items in their educational programmes:
 - a. Information about the international human rights framework, including all applicable laws, principles and standards at the international, regional and/or domestic levels;
 - b. The role that the legal profession can play in promoting business and human rights principles and the importance of advising client on these matters;
 - c. The incentives, opportunities and the business case for lawyers to integrate business and human rights principles into the practice of law – and the disincentives and risks if they do not do so; and
 - d. Practical advice for lawyers that addresses the needs of both in-house and external counsel.

Chapter III: Professional Conduct

Article 5. Increasing awareness of lawyers as to the UNGPs

Bar associations may wish to consider drawing to their members' attention the ethical considerations which a lawyer should take into account in the field of business and human rights when advising clients.

Commentary

Codes of professional conduct are key instruments for the promotion of best practices in a range of areas, including business ethics and human rights. The codes of a number of bar associations are already strongly aligned with the UNGPs, although it is possible that there will be tensions and dilemmas arising from their application in practice. Therefore, individual bar associations, to the extent they have authority to do so in their respective jurisdictions, may wish to consider whether, and the extent to which, their own professional codes of conduct prevent, permit, encourage or require lawyers to take the risk of human rights impact into account in their advice to business clients and how to address potential dilemmas.

Bar associations may also wish to consider, in examining their codes of professional conduct, the differing roles that lawyers play in addressing business human rights issues: that is, as technical advisers, or as trusted advisors, or as leaders of the institutions in which they work. They may also wish to consider the impact of the differing institutions in which lawyers work and address business and human rights issues, such as outside law firms, in house counsel departments, governments, and civil society, among others.

Chapter IV: Capacity Building and Technical Assistance

Article 6. Guidance and technical assistance

Bar associations may wish to consider assisting their profession through technical assistance and guidance to help them strengthen their institutional and human capacity to adopt more effective practices in the area of business and human rights.

Commentary

1. Article 6 stresses the role bar associations may have in providing support and guidance to the legal profession together with education in order to enhance integration between education and implementation.
2. The convening authority of bar associations as a focal point of the legal profession in each country may be utilised to provide expertise, create forums for discussion, and the identification of best practices.
3. Technical assistance can consist of non-financial support such as sharing information and expertise, transferring skills or know-how, and supporting the administration, management, policy development and capacity building for those lawyers that wish to include viewing the advice they provide to their clients through a human rights lens.
4. Through a strong supporting structure, bar associations may help, guide and lead lawyers to reach better outcomes in integrating the UNGPs into the practice of law by focusing on the particular needs and priorities identified by the legal profession.

5. It is essential that lawyers have access to international and domestic business and human rights instruments, preferably in their own language.

Article 7. Sharing examples of best practice

Bar associations may wish to provide ways through which legal professionals can share examples of best practice and experiences of dealing with the topic of business and human rights. The sharing of knowledge and experience can assist in creating a coherent strategy for the legal profession.

Commentary

1. Article 7 brings to the attention of bar associations the importance of sharing examples of best practice. An important role that bar associations can play is bringing the legal profession together and enabling lawyers and law firms who have had particular success in embedding business and human rights principles in the advice they provide to clients to share those experiences.
2. As well as encouraging their members to share examples of best practice, bar associations may wish to share experiences, ideas, and best practices with one another when implementing their business and human rights strategies. Learning from the best practices and challenges faced by other bar associations around the world can improve and strengthen a bar association's own human rights programme.
3. In order to accomplish the foregoing, bar associations may wish to consider publishing the steps that they are taking to address the question of business and human rights.

Chapter V: Recognition and Incentives

Article 8. Acknowledgement

Bar associations may wish to publicly acknowledge successful business and human rights measures or programmes adopted by legal practitioners in their jurisdiction.

Commentary

Article 8 brings to the attention of bar associations the option of publicly acknowledging successful business and human rights initiatives in the legal sector. Legal professionals may be incentivised by recognition from their bar association. This acknowledgement could be manifested in a number of forms, for example:

- a. Providing awards for outstanding performance or improvement in advising on these issues;
- b. Promoting the work of successful business and human rights programmes by individual lawyers in bar association publications;
- c. Keeping a record or publishing a list of, or potentially providing certification to, lawyers and law firms who have consistently adopted a business and human rights lens in the advice they provide to clients; and
- d. Giving an ambassadorial role to lawyers with great interests and achievements in the area of business and human rights so that they can promote and raise awareness of the bar association's programme in different local and international forums.

Promoting the work of successful business and human rights initiatives is closely related to the sharing of best practice as considered above in Article 7.

Chapter VI: Business and Human Rights Action

Article 9. An active legal profession

Bar associations may wish to take appropriate steps to involve the legal profession in relevant public debates in order to implement business and human rights principles in domestic legislation, as well as in the work of international organisations, particularly the development or review of industry or issue specific principles and standards relating to business and human rights.

Commentary

1. Governments are increasingly translating global business and human rights principles into domestic policy or legislation. Likewise, international and multi-stakeholder organisations create or revise global and industry or issue specific standards that are of general interest and application to business, and are therefore of concern for the legal profession. In most of these processes there are public consultations phases where all interested parties are invited to participate.
2. A bar association or a law society may wish to ensure that the views of the legal profession are represented in these processes, and that lawyers play a role in shaping these laws and standards, in order better to ensure that laws protect human rights, that businesses respect human rights, and that victims are provided with greater access to remedy. This may also assist other academic disciplines and professions in aligning with the UNGPs.
3. A bar association or a law society may wish to explore the establishment of working partnerships or alliances with other stakeholders for the

promotion of best practices and the establishment of industry and issue specific standards in the area of business and human rights.



the global voice of
the legal profession