



Law Council  
OF AUSTRALIA

# BUSINESS AND HUMAN RIGHTS **AND** THE AUSTRALIAN LEGAL PROFESSION

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# BUSINESS AND HUMAN RIGHTS BACKGROUND PAPER

## CONTENTS

Purpose .....	4
Summary .....	4
What is 'Business and Human Rights'? .....	5
International Efforts to Implement the Guiding Principles .....	7
Global Compact .....	8
Business and Human Rights Resource Centre .....	9
United Kingdom's National Action Plan .....	9
The Guiding Principles and the Legal Profession .....	10
Guiding Principles and the International Bar Association .....	12
IBA Guidance for Bar Associations .....	12
IBA Guidance for Business Lawyers .....	14
Guiding principles and the Law Society of England and Wales .....	16
Establishment of a business and human rights advisory group .....	16
Recommendations .....	17
Business and human rights program .....	18
Business and Human Rights and the Australian Legal Profession .....	19
Guiding Principles, the Law Council and Constituent Bodies .....	19
Benefits and Challenges for the Australian Legal Profession .....	20
Strategies to Overcome Challenges .....	22
Further Resources .....	24
Information about the Guiding Principles .....	24
General Tools and Guidance .....	24
Guidance and Commentary for the Legal Profession .....	25
ANNEXURE A: What are human rights? .....	26

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## **PURPOSE**

The purpose of this Background Paper is to provide a summary of the concept of Business and Human Rights and its relevance to the Australian legal profession.

## **SUMMARY**

Business and Human Rights is emerging as an issue of strong interest for the international community and for Australia. The concept of 'business and human rights' is articulated in the *Guiding Principles on Business and Human Rights* (the Guiding Principles). These Principles outline both the State's duty to protect against human rights abuses by third parties, including business and the corporate responsibility to respect human rights (for more details on what are human rights see Annexure A). The Principles also set out a framework for ensuring greater access by victims to effective judicial and non-judicial remedies.

There is a critical need for industry bodies in Australia to take a leadership role in raising awareness of and encouraging compliance with the Guiding Principles. This opportunity is underscored by developments at the international level, which may result in aspects of the Guiding Principles becoming binding international law.

This Background Paper summarises the development of the Guiding Principles as well as international and national efforts to implement the Guiding Principles across business sectors, including the legal profession.

The Background Paper also outlines the benefits of compliance with the Guiding Principles for Australian businesses, including law firms. It notes that the Guiding Principles have been used as: a risk assessment tool; a mechanism to engage communities as stakeholders in business decisions; a platform for negotiating with other governments; a reporting framework; a basis for achieving regulatory compliance; and in the development and delivery of corporate social responsibility policies. The Background Paper also describes the particular benefits for lawyers and law firms, including providing a framework to conduct effective due diligence and as a mechanism to promote and preserve corporate reputation and to attract and retain talented staff.

As the Background Paper identifies, hard questions persist in relation to how to implement the Guiding Principles but many industry sectors and individual businesses are successfully navigating these issues in a way that is promoting business growth and innovation as well as delivering human rights outcomes.

The experiences summarised in this Background Paper provide guidance in relation to the development of materials for the Australian legal profession and help identify a range of strategies to address these challenges and reduce the risks associated with the Law Council's leadership role in this area. A list of further resources is also provided.

## WHAT IS 'BUSINESS AND HUMAN RIGHTS'?

In June 2011, the United Nations ('UN') Human Rights Council unanimously endorsed the *Guiding Principles on Business and Human Rights* ('the Guiding Principles') to provide a global standard for preventing and addressing the risk of adverse human impacts linked to business activity. Much of this work has been led by Professor John Ruggie, the *Special Representative of the UN Secretary-General on business and human rights*, who developed the *Protect, Respect and Remedy Framework for Business and Human Rights* ('The Framework').

The Framework provided an authoritative statement on the relationship between business and human rights, recognising that while governments have the primary duty to protect and promote human rights, businesses have a distinct responsibility to respect human rights. It also recognised the importance of access to effective judicial and non-judicial remedy when things go wrong. The Framework comprises three core pillars:

- Pillar 1 - the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
- Pillar 2 - the corporate responsibility to respect human rights, which means to avoid infringing on the human rights of others and addressing adverse human rights impacts with which they are involved; and
- Pillar 3 - the need for greater access by victims to effective remedy, judicial and non-judicial.

On 16 June 2011, the Human Rights Council unanimously endorsed the Guiding Principles as a means of providing concrete and practical guidance for implementation of the Framework.<sup>1</sup>

The Guiding Principles make it clear that they should not be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.<sup>2</sup> Rather they are to be understood:

*... as enhancing standards and practices with regards to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.*<sup>3</sup>

The Guiding Principles set out the State's duty to protect human rights, which includes the duty to: protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises;<sup>4</sup> and set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.<sup>5</sup> The Guiding Principles then set out a range of operational principles that explain how a State should meet their duty to protect. These include: enforcing laws that are aimed at or have the effect of requiring business enterprises to respect human rights, and to assess whether there are any gaps in these laws;<sup>6</sup> and exercising adequate oversight in order to meet their international human rights obligations when they contract with or legislate for business enterprises to provide services that may impact upon the enjoyment of human rights.<sup>7</sup> The Guiding Principles also contain specific principles relating to States' duty to support business for human rights in conflict areas.<sup>8</sup>

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1 See Session Report for the 17th session of the UN Human Rights Council (30 May - 17 June 2011) available at [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session17/Pages/17RegularSession.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session17/Pages/17RegularSession.aspx).

2 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (21 March 2011) A/HRC/17/31 Annex p. 6.

3 Ibid, p. 6.

4 This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. Ibid, p. 6 Part I, Foundational principles; Principle 1.

5 Ibid, p. 7 Part I, Foundational principles; Principle 2.

6 Ibid, p. 8 Part I, Operational principles; Principle 3.

7 Ibid, p. 10 Part I, Operational principles; Principle 5.

8 Ibid, pp. 10-12 Supporting business respect for human rights in conflict-affected areas.

The unique feature of the Guiding Principles is that they are not limited to State duties to protect human rights. They also contain principles relating to the *corporate responsibility to respect human rights*. 'Human rights' means, at a minimum, those rights expressed in the International Bill of Human Rights<sup>9</sup> and the principles concerning fundamental rights set out in the International Labour Organization's *Declaration on Fundamental Principles and Rights at Work*. These principles require business enterprises (regardless of size, sector, operational context, ownership or structure)<sup>10</sup> to:

- respect human rights - this means that businesses should avoid infringing upon the human rights of others and should address adverse human rights impacts with which they are involved;<sup>11</sup>
- avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts as they occur; and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, services or business relationships;<sup>12</sup> and
- have in place policies and processes appropriate to their size and circumstances.<sup>13</sup>

The Guiding Principles then set out a range of operational principles that explain how a business enterprise should meet their duty to respect human rights. These include the requirement that business enterprises:<sup>14</sup>

- express their commitment to respect human rights through a statement of policy that is approved by the most senior level of the business enterprise, is informed by relevant internal and or external expertise, and is publicly available and communicated internally and externally;
- carry out human rights due diligence that should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed;
- identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships;
- integrate the findings of their impact assessments across relevant international functions and processes and take appropriate action;
- track the effectiveness of their response to any adverse impacts and be prepared to communicate this externally, particularly when concerns are raised by or on behalf of external stakeholders; and
- provide for and cooperate in remediation through legitimate processes, if they have caused or contributed to adverse impacts.

The Guiding Principles also include a section aimed at providing access to remedy for those experiencing business-related human rights abuses. This section is primarily directed at States and requires States to:<sup>15</sup>

- take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to an effective remedy;
- take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to a remedy; and
- provide effective non-judicial grievance mechanisms, and other ways to facilitate access to effective non-State-based grievance mechanisms dealing with business and human rights harms.

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9 This consists 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).

10 Ibid, p. 14 Part II Foundational principles; Principle 14.

11 Ibid, p. 13 Part II Foundational principles; Principle 11.

12 Ibid, p. 14 Part II Foundational principles; Principle 13.

13 Ibid, p. 15 Part II Foundational principles; Principle 15.

14 Ibid, pp. 15-20, Part II Foundational principles; Principles 16-22.

15 Ibid, pp. 22-27, Part III Access to remedy, Foundational principle; Principles 25-31.

## INTERNATIONAL EFFORTS TO IMPLEMENT THE GUIDING PRINCIPLES

As noted above, the Guiding Principles do not expressly impose binding obligations on states to ensure that corporations respect human rights or provide remedies for aggrieved individuals. However, there has been a recent international push toward the creation of a binding legal instrument to regulate the activities of transnational corporations and other business enterprises that have a transnational character in their operational activities.

In September 2013, Ecuador proposed the making of such a binding instrument by introducing a declaration that was supported by a number of African, Asian and Latin American countries, as well as more than 100 non-government organisations ('NGOs').<sup>16</sup> The declaration was later ratified in Geneva at the 2nd Forum on Business and Human Rights on 3 and 4 December 2014.<sup>17</sup>

The declaration gave rise to an international debate as to whether adopting a binding international instrument is the most effective way to implement the Guiding Principles and to promote corporate compliance with human rights. Some leaders in this field, including Professor Ruggie, have expressed concern that any rushed attempt to forge a treaty may fail to attract meaningful worldwide support given the legal and logistical complexities around development and enforcement of international human rights laws against businesses directly rather than via States.<sup>18</sup> This debate led to the passage of two separate UN Human Rights Council resolutions in 2014. The two resolutions provided for:

- the establishment of a working group to develop an international legally binding human rights instrument for transnational corporations;<sup>19</sup> and
- the commissioning of a report on the positives and negatives of this approach.<sup>20</sup>

Although many consider that these resolutions constitute the most significant international developments in business and human rights responsibilities since adoption of the Guiding Principles, it remains too early to determine whether they will result in any further legally binding obligations on States or business.<sup>21</sup>

In the meantime, there are a range of well-established global efforts designed to assist multi-national, transnational and national businesses to implement the Guiding Principles. Two of the most well known and successful global implementation mechanisms are described below, as well as the United Kingdom's National Action Plan.

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16 Statement on behalf of a Group of Countries at the 24rd Session of the Human Rights Council General Debate – Item 3 'Transnational Corporations and Human Rights' Geneva, September 2013 available at <http://business-human-rights.org/en/binding-treaty/un-human-rights-council-sessions>.

17 See Business and Human Rights Centre webpage on 'UN Human Rights Council sessions' (accessed on 5 November 2014) available at [http://business-humanrights.org/en/binding-treaty/un-human-rights-council-sessions#twenty\\_six\\_session](http://business-humanrights.org/en/binding-treaty/un-human-rights-council-sessions#twenty_six_session).

18 See Allens Online Publication 'Focus: UN resolution could be the start of a binding treaty on business and human rights' (13 August 2014) available at [www.allens.com.au/mobile/page.aspx?page=/pubs/ibo/foibo13aug14.htm](http://www.allens.com.au/mobile/page.aspx?page=/pubs/ibo/foibo13aug14.htm)

19 Human Rights Council 26th Session Agenda Item 3 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights' (24 June 2014) A/HRC/26/L.22/Rev.1. On 26 June 2014, a resolution drafted by Ecuador and South Africa was adopted at the twenty-sixth session of the UNHRC (with 20 votes in favour, 14 votes against and 13 abstaining). The resolution establishes 'an open-ended intergovernmental working group' with the mandate to 'elaborate an international legally binding instrument to regulate, in international human rights law, the activities of Transnational Corporations and Other Business Enterprises'. The working group will hold its first session next year, with the first two sessions being dedicated to considering the content, scope, nature and form of the future international instrument, and collecting inputs from states and stakeholders on 'possible principles, scope and elements'. It is required to submit a report on its progress at the UNHRC's thirty-first session. For further information see [http://business-humanrights.org/en/binding-treaty/un-human-rights-council-sessions#twenty\\_six\\_session](http://business-humanrights.org/en/binding-treaty/un-human-rights-council-sessions#twenty_six_session).

20 A/HRC/26/L.1, Rev.1, Geneva, 27 June 2014. On 27 June 2014, a resolution drafted by Norway (and supported by 22 countries, including Australia) was adopted by the UNHRC without a vote. The resolution requests the Working Group to launch an 'inclusive and transparent consultative process' to consider legal and practical measures to improve access to remedies for victims of business-related human rights abuses and to prepare a report on its findings. For further information see [www.norway-geneva.org/Humanrights/State-ments/26th-Session-of-the-Human-Rights-Council/Item-3-Promotion-and-protection-of-human-rights/Business-and-Human-Rights-Resolution-/#.Vjv9a026FaR](http://www.norway-geneva.org/Humanrights/State-ments/26th-Session-of-the-Human-Rights-Council/Item-3-Promotion-and-protection-of-human-rights/Business-and-Human-Rights-Resolution-/#.Vjv9a026FaR).

21 See Allens Online Publication " Focus: UN resolution could be the start of a binding treaty on business and human rights" (13 August 2014) available at [www.allens.com.au/mobile/page.aspx?page=/pubs/ibo/foibo13aug14.htm](http://www.allens.com.au/mobile/page.aspx?page=/pubs/ibo/foibo13aug14.htm).

## GLOBAL COMPACT

The UN Global Compact ('the Global Compact') predates the Guiding Principles. It is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. Its governance framework was adopted on 12 August 2005 by the then UN Secretary-General Kofi Annan, as a result of international consultations, research and analysis performed jointly by Georg Kell, Executive Director of the UN Global Compact and Professor John Ruggie, the then Special Advisor to the Secretary-General.

With over 12,000 corporate participants and other stakeholders from over 145 countries, it is the largest voluntary corporate responsibility initiative in the world.

The Global Compact aims to support business, as a primary driver of globalisation, to help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere.<sup>22</sup> It also facilitates collaboration between business and governments, civil society, labour and the UN.

Endorsed by chief executives, the Global Compact gives rise to a practical framework for the development, implementation, and disclosure of sustainability policies and practices, offering participants a range of management tools and resources to help advance sustainable business models and markets.<sup>23</sup>

The UN Global Compact takes a two-pronged approach to business and human rights by raising awareness of:

- (1) what human rights are and why they are relevant for business; and
- (2) what business can do within their own operations and more broadly in their sphere of influence to respect and support human rights, including how to avoid being complicit in human rights abuse.<sup>24</sup>

The UN Global Compact seeks to achieve this by:

- emphasising the importance of adopting a systematic management approach to identifying and addressing human rights impacts. It recommends that such impacts and risks of impacts be considered from the perspective of people affected and the environment impacted by the business's operations and business relationships, and not merely from the perspective of the business;
- advocating a broad and integrated concept of corporate sustainability – the creation of long term value in economic, social, environmental and ethical terms;
- encouraging its participants to utilise the Guiding Principles as a framework to fulfill their corporate responsibility to respect human rights. This includes the provision of guidance on implementing effective policies and procedures and communicating with stakeholders about progress; and
- taking a keen interest in helping to find practical solutions to human rights dilemmas that companies face. It acknowledges that while human rights principles may be straightforward, implementing them into the thinking and practice of businesses worldwide can raise a number of practical dilemmas, e.g. the right approach when you discover that there are underage children working in your supply chain; and avoiding discrimination against women where gender discrimination is enshrined in law or custom in the country where you are operating in.

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22 See Global Compact 'About Us' webpage accessed 5 November 2014 available at [www.unglobalcompact.org/AboutTheGC/index.html](http://www.unglobalcompact.org/AboutTheGC/index.html).

23 Ibid.

24 Ibid.

The UN Global Compact also seeks to foster the development and dissemination of practical tools and other guidance to aid businesses in meeting their human rights responsibilities and commitments, and on developing the business case for human rights. Key guidance materials available include: a [case studies](#) series that provides more detail about efforts to implement human rights, the challenges that companies face in addressing human rights and, most importantly, how they are endeavoring to address them and an [online Human Rights and Business Learning Tool](#),<sup>25</sup> and webinars in which experts in various fields present and lead discussions on current issues in respecting and [supporting human rights](#).

The Global Compact also supports Local Networks, including the [Global Compact Network Australia](#) ('the UNGCNA').<sup>26</sup> The UNGCNA aims to offer practical help to Australian UN Global Compact signatories to integrate and operationalise the Ten Principles of the UN Global Compact within their business practices. It does this by providing a national and international platform for dialogue, learning and influence and by facilitating and coordinating learning, development and knowledge exchange. The founding partners of the UNGCNA are: [Accenture](#), [Allens Linklaters \('Allens'\)](#), [Australia Post](#), [KPMG](#), [Nestle Australia](#), [St James Ethics Centre](#), [Westpac](#) and [Woolworths Ltd](#).

The UNGCNA was instrumental in facilitating an [Australian Dialogue on Business and Human Rights](#) held on 31 July 2014 and co-hosted by the Australian Human Rights Commission ('AHRC'). The Dialogue included 100 representatives of a number of Australia's biggest companies, NGOs, government departments, investors and academia and was designed to discuss ways in which corporate strategies can be shaped with human rights objectives. A [follow up Dialogue](#) was held on 19 August 2015, similarly co-hosted with the AHRC. The Dialogue explored current practices, challenges and opportunities through the 'protect, respect and remedy' pillars of the Guiding Principles.

## BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE

In addition to the range of practical tools and resources available through the Global Compact, the Business and Human Rights Resource Centre ('the BHRC') also offers a range of materials designed to draw global attention to the human rights impacts (positive and negative) of companies in their region, [seek responses from companies](#) when civil society raises concerns, and establish close contacts with NGOs, local businesspeople and others.

The BHRC website includes information in seven languages,<sup>27</sup> and provides information from researchers based in Brazil, Colombia, Hong Kong, India, Kenya, Japan, Lebanon, Myanmar, Senegal, South Africa, United Kingdom ('UK'), Ukraine and USA. The BHRC website provides [free Weekly Updates](#) and sends the top stories on business and human rights to 18,000 subscribers. It also prepares [Briefing Papers](#) for key countries like Myanmar, covering key issues like internet freedom and major sporting events, plus annual briefings for all regions of the world, as well as a range of bulletins including [quarterly and annual Corporate Legal Accountability briefings](#). The BHRC website also collects materials relating to implementation of the Guiding Principles through its [Tools and Guidance Portal](#).

## UNITED KINGDOM'S NATIONAL ACTION PLAN

The UN Working Group strongly encourages all States to develop, enact and update a national action plan as part of the State's duty to protect human rights. The UK, The Netherlands, Italy, Denmark, Spain, Finland and Lithuania have all produced national action plans. Many other countries are in the process of developing a national action plan, such as Argentina, France, Jordan, Mauritius, Myanmar, Slovenia and the US.

A national action plan is an evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the Guiding Principles. There are four criteria which are regarded as indispensable for an effective national action plan. It must 1) be founded upon the UNGPs, 2) respond to specific challenges of the national context, 3) be developed and implemented through an inclusive and

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25 The tool aims to provide managers and staff of companies with essential knowledge and understanding of what human rights are, why human rights are relevant for business, and the key elements of what it means to respect and support human rights in practice. The tool explains concepts such as: making a policy commitment to human rights, the human rights due diligence cycle, and operational-level grievance mechanisms. It provides a foundation upon which companies can build the knowledge of their workforce about human rights and help strengthen the integration of human rights into their corporate culture and into their business relationships. See [www.unglobalcompact.org/resources/3](http://www.unglobalcompact.org/resources/3).

26 The UNGCNA Australian Network was launched in Parliament House Canberra by Minister Nick Sherry, then Minister for Superannuation and Corporate Law and Executive Director of the UN Global Compact, Mr Georg Kell, Canberra in May 2009. For further information see <http://www.unglobalcompact.org.au/about-us/>.

27 Materials are available in English, Arabic, Chinese, French, Portuguese, Russian and Spanish.

transparent process, and 4) be regularly reviewed and updated.<sup>28</sup>

In September 2013, the UK Government tabled in Parliament its national implementation plan for the Guiding Principles: *Good Business: Implementing the UN Guiding Principles on Business and Human Rights* ('the Action Plan').<sup>29</sup> The Action Plan details the key features of the State's duty to protect that are set out in the Guiding Principles and describes the existing UK legal and policy framework.

The Action Plan lists the Government's expectations of business, which include: compliance with all applicable laws; adoption of appropriate due diligence processes to identify, prevent and mitigate human rights risks; consultation with people affected by business projects at all stages of design and implementation; careful consideration of supply chains in the UK and overseas; the adoption of or participating in appropriate grievance mechanisms; and the adoption of transparent policies, activities and reports.

The Action Plan includes a list of actions taken by the Government to support business implementation of the Guiding Principles, which includes the development of an Overseas Business Risk service, and an update of the UK Government's Business and Human Rights Toolkit.

The Action Plan lists a range of further action planned by the UK Government and describes actions taken by the UK Government to support business to implement these responsibilities, including encouraging trade associations/sector groupings of companies to develop guidance relevant to their members' sector of activity on developing human rights policies and processes and sharing examples of good practice.

The Action Plan also contains a section on the UK Government and access to remedy for human rights abuses resulting from business activity, setting out actions including: disseminating lessons from the 2012 experience of the London Organizing Committee of the Olympic and Paralympics Games; advising UK companies on establishing or participating in grievance mechanisms; encouraging companies to extend their domestic UK practice of providing effective grievance mechanisms to their overseas operations; and supporting progress through the Human Rights and Democracy Program Fund.

## THE GUIDING PRINCIPLES AND THE LEGAL PROFESSION

Law firms and legal practitioners played an active role in supporting the development of the Guiding Principles and are at the front line in terms of advising businesses on their application. By counseling clients (whether business or government) on their need to take effective steps to prevent and remediate negative human rights impacts, law firms can meet their own responsibility to respect human rights, resulting in a win-win-win for law firms, their clients and society.<sup>30</sup>

As identified by the Law Society of England and Wales ('LSEW'), there are several other compelling reasons why the legal profession should take keen, proactive interest in understanding and promoting compliance with the Guiding Principles.<sup>31</sup> These include:

- lawyers' special role in upholding the rule of law, which is critical to the ability of companies to respect human rights;
- the growing awareness among individual lawyers about the Guiding Principles and the need to identify and share best practice;

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28 UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights*, Version 1.0, December 2014. Available at: [www.ohchr.org/Documents/Issues/Business/UNWG\\_%20NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf).

29 Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty (September 2013).

30 Advocates for International Development, *Law Firms' Implementation of the Guiding Principles on Business and Human Rights*, Discussion Paper (November 2011) p. 2.

31 Law Society of England and Wales, *Business and Human Rights Advisory Group Recommendations* (March 2014), paras [18] and [19] available at [http://international.lawsociety.org.uk/files/BHRAGfinal\\_0.pdf](http://international.lawsociety.org.uk/files/BHRAGfinal_0.pdf).

- demand from clients to receive legal advice about how to comply with the Guiding Principles. There is increasing evidence that clients are ahead of their professional advisers in this area. Law firms cannot afford to be following their clients, particularly in an increasingly competitive and globalised legal business market;
- while the Guiding Principles themselves do not impose legal obligations on companies, their principles are increasingly being reflected and referred to in law, regulation, bilateral contracts, and litigation;
- the current public and political mood in relation to business and their interactions with society has shifted and scrutiny of business behaviour, including by law firms and lawyers, is likely to continue and intensify. Respect for human rights can help protect and enhance law firms' and solicitors' reputations; and
- potential employees are increasingly seeking out employers with high ethical standards. Acknowledging their responsibility to respect human rights can help law firms attract and retain the best talent, contributing to lower rates of staff turnover and increased employee motivation.

In addition to these reasons, Professor Ruggie has developed a separate set of principles for responsible contracting, to enable lawyers and others responsible for drafting long term investment contracts with potential human rights impacts to negotiate provisions that will prevent and address these impacts in order to make these contracts sustainable over the life of the investment.<sup>32</sup> As the International Bar Association ('IBA') has noted, such advice not only presents an opportunity for firms, but also constitutes a key measure by which law firms can meet their own responsibility to respect human rights.<sup>33</sup>

While compelling, these reasons do not obviate the range of challenges faced by law firms and legal practitioners seeking to implement the Guiding Principles, which include:<sup>34</sup>

- how to deal with clients that have not respected human rights, having regard to lawyers' ethical duties to their client and the need to operate in a framework of legal privilege and confidentiality;
- how law firms can respect human rights relating to favorable working conditions while operating on a billable hours structure;
- how law firms can avoid being deemed complicit in the human rights impacts of a supplier or client;
- the circumstances in which a law firm should terminate its relationship with a supplier or client; and
- how a law firm can align itself with the Guiding Principles while also being consistent with the requirements of legal professional codes.

These and other factors have led legal representative bodies across the world to recognise the relevance of the Guiding Principles for their members and to develop statements and materials to promote implementation of the Guiding Principles in legal practice. For example:

- in November 2011, the Advocates for International Development developed *The UN Guiding Principles on Business and Human Rights: a guide for the legal profession*. The Guide is designed to help law firms consider how they can balance the responsibility to respect human rights with their unique professional ethical duties;
- in 2012, the American Bar Association ('ABA') endorsed the Guiding Principles;<sup>35</sup>

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32 Professor John Ruggie, *Principles for responsible contracting: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators* (May 2011) available at [www.ohchr.org/Documents/Issues/Business/A.HRC.17.31\\_Add.3.pdf](http://www.ohchr.org/Documents/Issues/Business/A.HRC.17.31_Add.3.pdf).

33 See for example IBA/UN Global Compact 'Lawyers as Leaders—Human Rights' video, available at [www.ibanet.org/lawyersasleaders\\_hr.aspx](http://www.ibanet.org/lawyersasleaders_hr.aspx).

34 Advocates for International Development, *Law Firms' Implementation of the Guiding Principles on Business and Human Rights*, Discussion Paper (November 2011) p. 2 - 3.

35 See American Bar Association *ABA Policy on the United Nations Framework and Guiding Principles and the OECD Guidelines* (2012) available at: [www.americanbar.org/groups/human\\_rights/projects/business\\_and\\_human\\_rights.html](http://www.americanbar.org/groups/human_rights/projects/business_and_human_rights.html).

- the Council of Bars and Law Societies of Europe has issued a report on Corporate Responsibility and the Role of the Legal Profession, which outlines the relevance of the Guiding Principles for the legal profession;<sup>36</sup>
- in March 2014, the IBA established a working group on business and human rights in recognition of both the increasingly global nature of legal practice and the fact that it is imperative that bar associations globally share experiences and best practices in this rapidly evolving area. These materials are discussed in detail below; and
- in March 2014, the LSEW developed a set of materials for the implementation of the Guiding Principles within the legal profession in England and Wales. These materials are discussed in detail below.

## GUIDING PRINCIPLES AND THE INTERNATIONAL BAR ASSOCIATION

In October 2013, during the IBA Annual Conference in Boston, the IBA Legal Projects Team held a brainstorming meeting with 15 bar representatives from different jurisdictions to discuss the relevance of the Guiding Principles to the legal profession. There was agreement to set up a working group with two main objectives:

- (1) to exchange best practices and experiences; and
- (2) to establish a capacity building programme for bar associations based on a Business and Human Rights Guidance for Bar Associations.

In March 2014 the IBA Guiding Principles Working Group was officially established under the auspices of the IBA Corporate Social Responsibility Committee with special input from the IBA Bar Issues Commission.<sup>37</sup>

In October 2014, the IBA's Business and Human Rights Working Group published draft guidance on the implementation of Guiding Principles.<sup>38</sup> The *IBA Guidance* is divided into two working documents, one for bar associations and the other for business lawyers practising as in-house counsel and in law firms. In October 2015, the draft guidance for bar associations was passed by the IBA Council. The draft guidance for business lawyers is yet to be approved by the IBA Council.

### IBA GUIDANCE FOR BAR ASSOCIATIONS

The IBA Guidance for Bar Associations was adopted by the IBA Council at the Association's Annual Conference on Thursday 8 October 2015 in Vienna, Austria.<sup>39</sup> The IBA Guidance for Bar Associations understands that different national bar associations will be at different stages in their implementation of business and human rights initiatives. Instead of attempting to define every means by which a bar association may wish to design a business and human rights strategy for its own jurisdiction, it aims to:

- help lawyers understand the relevance of the Guiding Principles in respect of the advice that they provide to clients in relation to all types of commercial and business transactions. For example, it recommends that bar associations:
  - establish and support an appropriate structure for the management and development of the topic of business and human rights within the association;<sup>40</sup>

36 Council of Bars and Law Societies of Europe *Corporate Responsibility and the Role of the Legal Profession* (2 July 2012) available at: [www.ccbel.eu/fileadmin/user\\_upload/NTCdocument/EN\\_07022013\\_CSR\\_and\\_1\\_1361955115.pdf](http://www.ccbel.eu/fileadmin/user_upload/NTCdocument/EN_07022013_CSR_and_1_1361955115.pdf).

37 The Group is chaired by John F Sherman III, former Co-Chair of the IBA CSR Committee and Secretary, and currently General Counsel and Senior Advisor to Shift, an independent, non-profit centre for business and human rights practice, chaired by Professor Ruggie. The members of the Working Group are: Stephane Brabant, Co-Chair, IBA Corporate Social Responsibility Committee; Horacio Bernardes-Neto, Chair, IBA Bar Issues Commission and Brazilian Bar Association; Gonzalo Guzman, Head of Legal Projects, IBA; Umit Herguner, American Bar Association and Turkish Bar Association; Robert Heslett, Law Society of England and Wales; Isabel Jimenez Mancha, Spanish National Bar; Tatsu Katayama, Japan Federation of Bar Associations; Deidre Saulsm Law Society of Namibia.

38 The IBA Guidance was presented and discussed at the 2014 IBA Annual Conference in Tokyo, Japan, during the IBA Showcase *We're All Human Rights Lawyers Now – The Convergence of Business and Human Rights and What it Means for You*.

39 International Bar Association Council, 'IBA Business and Human Rights Guidance for Bar Associations', 8 October 2015. Available at: [www.ibanet.org/Article/Detail.aspx?ArticleUid=d8f1452c-3515-42e6-83c1-82632a301efc](http://www.ibanet.org/Article/Detail.aspx?ArticleUid=d8f1452c-3515-42e6-83c1-82632a301efc)

40 Ibid, Art 1.

- consider the following implementing milestones, which can help to ensure an effective initiative regardless of its scale and dimension: setting specific objectives; devising a realistic timescale; considering the sustainability and legacy of the project; identifying indicators of success; and the allocation of responsibility for implementation;<sup>41</sup>
  - use all available resources to raise awareness of the existence and relevance of business and human rights instruments and principles among all members;<sup>42</sup>
  - actively promote, participate and/or establish educational programmes on the relevance of business and human rights principles for the practice of law;<sup>43</sup> and
  - 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;<sup>44</sup>
- incentivise the use of the Guiding Principles by members of the legal profession and provide technical assistance to practitioners and other interested stakeholders and:
  - assist 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;<sup>45</sup>
  - provide ways through which legal professionals can share examples of best practice and experiences of dealing with the topic of business and human rights;<sup>46</sup> and
  - publicly acknowledge successful business and human rights measures or programmes adopted by legal practitioners in their jurisdiction;<sup>47</sup>
- positively represent the legal profession and bar associations as champions of business and human rights in local and international fora:
  - bar associations should ensure that the legal profession is active in all discussions to implement business and human rights principles in domestic legislation, as well as in the work of international organisations, particularly the establishment or review of existing principles and standards.<sup>48</sup>

Although the IBA Guidance for Bar Associations is addressed to bar associations, its recommendations may also be relevant to other professional legal organisations, associations of law firms, regulators of the legal profession, or any other institutions with the ability to influence the profession. It is noted that the Guidance is aspirational rather than binding and does not impose a business and human rights compliance obligation on the legal profession or on individual bar associations.

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41 Ibid, Art 2.

42 Ibid, Art 3.

43 Ibid, Art 4.

44 Ibid, Art 5.

45 Ibid, Art 6.

46 Ibid, Art 7.

47 Ibid, Art 8.

48 Ibid, Art 9.

## IBA GUIDANCE FOR BUSINESS LAWYERS

The separate IBA Guidance for Business Lawyers<sup>49</sup> is intended for lawyers globally who are involved in advising businesses, including those in law firms as well as in-house counsel. It aims to assist lawyers in understanding the core content of the Guiding Principles, to explore the ways in which they may be relevant to the advice and other services they provide to business clients, and to recognise the relevance of the Guiding Principles for law firms as business enterprises themselves. The IBA Guidance for Business Lawyers is arranged in three parts, including a focus on how lawyers can help businesses respect human rights. This part is summarised by the IBA as follows:<sup>50</sup>

- Relationship of the Guiding Principles to national law (section I).

This section explains that the Guiding Principles do not and cannot impose legal obligations on companies directly, but neither are they voluntary, as aspects of the responsibility to respect human rights may be, and often are, compelled by national law. It explains that business lawyers can help make their clients aware that respecting human rights is not solely a matter of legal compliance and advise them on practical strategies to adopt where national law is absent, weak, unenforced, or in tension with international human rights standards, or where they may be at risk of causing or contributing to gross human rights abuses. Such strategies are increasingly seen as important for the sustainability of a business in the medium to long term.

- Legal risk management (section II).

This section explains that a company's failure to manage its human rights risks can have serious adverse consequences for the company itself, including legal risks. This section provides leading examples of changes in law and the legal landscape that can affect a company's legal risk exposure, specifically in relation to human rights reporting and disclosure, financial regulation, and litigation in response to emerging business and human rights concerns.

- Legal professional codes of conduct (section III).

This section explains that lawyers must adhere to professional codes of conduct. It notes that the Guiding Principles were not intended to trump such codes, given the critical role that lawyers play in upholding the rule of law. Indeed, the Guiding Principles explicitly recognise the importance of preserving client confidences. The legal profession codes in a number of jurisdictions have strong points of alignment with the Guiding Principles, and some of them mention human rights as a component of ethical lawyering. Where tensions arise, this should be a subject of review by individual national bar associations and law societies, in line with the IBA Guidance for Bar Associations on this topic.

- Specific legal practice areas (section IV).

This section explains that there are few areas of business legal practice where lawyers do not have at least the potential to influence a company's respect for human rights. This section aims to provide a non-exhaustive list of some key practice areas in which lawyers are increasingly being asked to provide, or are proactively providing, advice to enable their clients to respect human rights, specifically: reporting and disclosure; contracts and agreements; and dispute resolution and non-judicial grievance mechanisms.

The IBA Guidance for Business Lawyers looks in some detail at how the Guiding Principles interact with legal professional codes of conduct. It notes that the professional legal codes of a number of jurisdictions can be seen to align with the Guiding Principles in several key respects and suggests that a useful starting point is the IBA's 2011 *International Principles on Conduct for the Legal Profession* ('IBA International Principles'), which consists of ten principles common to the legal profession worldwide and which 'express the common ground which underlies all the national and international rules which govern the conduct of lawyers, principally in relation to their clients'.<sup>51</sup>

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49 This Guidance forms an Annex to the IBA Business and Human Rights Working Group 'Guidance for bar associations and business lawyers on the implementation of the United Nations (UN) Guiding Principles on Business and Human Rights' (23 October 2014). It will be open for consultation and piloting by national bar associations through late 2015, during which time all comments to help nuance and further improve the contents will be welcomed. The Guidance will then be revised and finalised by the IBA Business and Human Rights Working Group.

50 Ibid, p. 17.

51 The IBA's International Principles are available at [www.ibanet.org/Article/Detail.aspx?ArticleUid=bc99fd2c-d253-4bfe-a3b9-c13f196d9e60](http://www.ibanet.org/Article/Detail.aspx?ArticleUid=bc99fd2c-d253-4bfe-a3b9-c13f196d9e60).

The IBA's Guidance also recognises that advising business clients on how to manage their legal risks by preventing and mitigating their involvement in negative human rights impacts falls within a lawyer's ethical obligations under the IBA International Principles, which explicitly take into account the 1948 UN Declaration of Human Rights – a key source of the internationally recognised human rights standards that the corporate responsibility to respect relies on.

For example, it notes that Principle 5 (Clients' Interest) in the IBA International Principles provides that '[a] lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, *and to maintain ethical standards*' (emphasis added). Principle 1 (Independence) states that lawyers must maintain their independence 'in order to give clients unbiased advice and representation', and the commentary states, '[c]lients are entitled to expect independent, unbiased and candid advice, irrespective of whether or not the advice is to the client's liking' (Commentary 1.2).

The ABA drew upon the IBA International Principles when it endorsed the Guiding Principles in 2012. As the IBA explains, the ABA explicitly linked its own rule requiring that lawyers provide independent and candid advice – Model Rule of Professional Conduct 2.1 – to the need for lawyers to provide advice on the Guiding Principles to business clients, where relevant. It found that the Guiding Principles are 'likely to influence legal regulations and processes' and that 'corporations may find more clarity in standards and compliance requirements, states may step-up investigation and enforcement, and individuals harmed by corporate activities may benefit from enhanced causes of action and access to justice.'<sup>52</sup>

The IBA also notes that other jurisdictions explicitly refer to human rights as a component of ethical lawyering, including Rule 1.1 of the European Bar's Code of Conduct for Lawyers in the European Community (stating that lawyers' moral and ethical obligations include those that they owe to 'the public for whom a free and independent profession...is an essential means of safeguarding human rights in the face of the power of the state and other interests in society'); Article 1 of Japan's Basic Rules on the Duties of Practising Attorneys; and the non-discrimination provisions of the Canadian Bar Association's *Code of Professional Conduct*.<sup>53</sup> South African lawyers are subject to similar rules.<sup>54</sup>

As the IBA notes, this strong foundation of compliance with human rights principles within professional legal codes does not completely ameliorate the potential tensions between a lawyer's responsibilities under applicable codes of conduct and the Guiding Principles. Some of these tensions are described above and explored in further detail in the 2013 report of the Advocates for International Development.<sup>55</sup>

The IBA's Guidance concludes that whether and the extent to which such potential tensions restrict the ability of lawyers to help their clients respect human rights as a practical matter is a subject for review by individual country bar associations.

The IBA's Guidance for business lawyers also includes a table summarising the Ruggie Principles for Responsible Contracts. These principles include:

- the parties should be adequately prepared and have the capacity to properly address the human rights implications of projects during negotiations;
- responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalised;
- the laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project;

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52 See American Bar Association Resolution No. 109, February 6, 2012 and Report, available at [www.americanbar.org/content/dam/aba/administrative/house\\_of\\_delegates/resolutions/2014\\_hod\\_annual\\_meeting\\_109.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2014_hod_annual_meeting_109.authcheckdam.pdf).

53 See Davis, *Human Rights and the Model Rules of Professional Conduct: Intersection and Integration*, 42 Colum L Rev 157, 182 (2010), quoting from Code of Conduct For European Lawyers (19 May 2006), available at [www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/2006\\_code\\_enpdf1\\_1228\\_293527.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2006_code_enpdf1_1228_293527.pdf); Japan Federation of Bar Associations, Basic Rules (preliminary provision, adopted 10 November 2004) Art 1 available at: [www.nichibenren.or.jp/en/about/regulations.html](http://www.nichibenren.or.jp/en/about/regulations.html).

54 See A4ID, *The UN Guiding Principles on Business and Human Rights: A Guide for the Legal Profession* (2013) p 46, available at [http://a4id.org/sites/default/files/user/A4ID%20Business%20and%20Human%20Rights%20Guide%202013%20\(web\).pdf](http://a4id.org/sites/default/files/user/A4ID%20Business%20and%20Human%20Rights%20Guide%202013%20(web).pdf).

55 Ibid.

- the project should have an effective community engagement plan through its life cycle, starting at the earliest stages of the project; and
- individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.

As noted above, these principles were designed to assist multinational businesses seeking to comply with the Guiding Principles with developing and performing contractual arrangements, as well as a mechanism to assist law firms themselves to implement the Guiding Principles when providing legal advice.

The IBA Guidance is forecast to be presented for approval at the IBA's Council meeting in Barcelona in May 2016.

## **GUIDING PRINCIPLES AND THE LAW SOCIETY OF ENGLAND AND WALES**

In March 2014, the LSEW released a set of recommendations prepared by its Business and Human Rights Advisory Group designed to raise awareness of the Guiding Principles and how they can and should be applied to the legal profession it represents. The LSEW President explained the relevance of the Guiding Principles to the legal profession in England and Wales as follows:

*Utilising the [Guiding Principles], which reflect existing norms, will ensure our profession retains a competitive advantage in what is an increasingly globalised marketplace. More importantly, promoting business respect for human rights is the right thing to do. Particularly so for a profession like ours, which has a deep and abiding commitment to human rights, equality before the law and justice.<sup>56</sup>*

### **ESTABLISHMENT OF A BUSINESS AND HUMAN RIGHTS ADVISORY GROUP**

In 2013, the LSEW set up a business and human rights advisory group<sup>57</sup> ('the BHRAG') to evaluate how the LSEW can best assist the profession to consider the implications of the Guiding Principles, including in regard to practical guidance for its members.<sup>58</sup> The BHRAG found that the Guiding Principles are relevant to the legal profession in respect of each of the three interconnected pillars of protect, respect and remedy. The BHRAG focused on the following areas:

- establishing the business case – testing the belief that the Guiding Principles are relevant and important for the legal profession;
- regulation – considering the balance between the regulatory ethical framework for solicitors and the Guiding Principles; and
- guidance, education and training – considering what practical guidance could and should be provided by the LSEW for its members.

In addition to the BHRAG, the LSEW set up an internal working group<sup>59</sup> to look at what steps the LSEW as an organisation needs to take to develop a meaningful policy on human rights in relation to its own activities.

56 Law Society of England and Wales, *Business and Human Rights Advisory Group Recommendations*, March 2014, Foreword, available at: [http://international.lawsociety.org.uk/files/BHRAGfinal\\_0.pdf](http://international.lawsociety.org.uk/files/BHRAGfinal_0.pdf).

57 The BHRAG comprised of: Robert Heslett, Chair of the BHRAG, Law Society International Issues Committee and Council member and Law Society IBA Council member; Juliya Arbisman, Law Society Human Rights Committee member; Nicole Bigby, Partner, Director of Risk, Berwin Leighton Paisner; Daniel Cooke, Counsel, Global Projects BP plc, Law Society International Issues Committee member; Andrew Denny, Partner, Allen & Overy LLP; Marjon Esfandiary, Law Society Human Rights Committee member; Jonathan Exten Wright, Partner, DLA Piper UK LLP; Rae Lindsay, Partner, Clifford Chance LLP; Shanta Martin, Solicitor, Leigh Day and Law Society Human Rights Committee member; Ruby Sandhu, Business and Human Rights Consultant, Amsterdam & Partners LLP; Johanna Hull, Business & Human Rights Associate, Herbert Smith Freehills.

58 The terms of reference of the BHRAG were to: look at the issue of Business and Human Rights and the role that LSEW as a bar association should play in terms of providing advice and guidance to its members in this area. The BHRAG focused its work around the Guiding Principles.

59 The internal group comprises representatives of the legal team, international department, legal policy department, HR, procurement, equality and diversity and CSR. The group is in the process of conducting an audit of policies/processes across the business that will need reviewing in relation to the Guiding Principles.

One particular motivation for the LSEW engaging in these efforts was the steps taken by the UK Government in 2013 to adopt a National Action Plan (described above).<sup>60</sup> The Action Plan explicitly mentions the need for trade associations/sector groups of companies to develop guidance relevant to their members' sector of activity on developing human rights policies and processes, including due diligence.<sup>61</sup>

## RECOMMENDATIONS

The BHRAG found that the Guiding Principles are relevant to the legal profession both in their capacity as advisers and from the perspective of law firms as business enterprises,<sup>62</sup> and apply to law firms as employers, consumers of goods and services and as providers of professional legal services to clients. This gives rise to different challenges depending on the size of the firm and the nature of its practice. The BHRAG recommended that the LSEW should:

- adopt the position that members who work at law firms have a responsibility to respect human rights in accordance with the Guiding Principles, and that this should be reflected in firms' business operations and in the advice that they provide to clients, as appropriate. This would include putting in place a human rights policy in line with the Guiding Principles;<sup>63</sup>
- develop advice, guidance and training that addresses those issues relating to law firms arising from their business operations which are common to many businesses, but that also addresses specific issues relating to law firms as providers of professional legal services;<sup>64</sup> and
- undertake further consultation to better understand the particular issues concerning in-house lawyers and small and medium size firms that arise with respect to implementation of the Guiding Principles, prior to issuing any specific guidance regarding such lawyers.<sup>65</sup>

The BHRAG looked specifically at the relevance of the Guiding Principles to the conduct and regulation of the legal profession. It found that solicitors and law firms have specific responsibilities, by virtue of their role as regulated professionals and trusted advisors.<sup>66</sup> It also discussed how the Guiding Principles interact with a range of issues commonly affecting the practice of law, including: due diligence; access to legal advice; retainers; client relationships; the requirement to act in the client's best interest; confidentiality; and the leverage legal representatives may have over the business activities of their clients.<sup>67</sup>

The BHRAG did not have sufficient time to consider practical guidance on all of the above issues; however, it did conclude that the current regulatory regime for the solicitors' profession does not conflict with the principles set out in the Guiding Principles.<sup>68</sup> It recommended that the LSEW should:

- encourage members to adopt appropriate human rights policies and due diligence procedures;<sup>69</sup>
- undertake further work on areas such as: confidentiality, retainers, due diligence and what leverage means in the context of legal services provision, in order to be able to provide practical guidance to its members;<sup>70</sup>
- consider further, with appropriate input from relevant stakeholders, what issues arise for lawyers in relation to Pillar 3 of the Framework (access to remedy) and the LSEW's role in providing appropriate guidance on these.<sup>71</sup>

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60 United Kingdom Government, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, September 2013, available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf).

61 *Ibid.*, p.15.

62 LSEW, *Business and Human Rights Advisory Group Recommendations* (March 2014), [18].

63 *Ibid.*, Recommendation 1.

64 *Ibid.*, Recommendation 2.

65 *Ibid.*, Recommendation 3.

66 *Ibid.*, [21].

67 *Ibid.*, [22].

68 *Ibid.*, [23].

69 *Ibid.*, Recommendation 4.

70 *Ibid.*, Recommendation 4.

71 *Ibid.*, Recommendation 5.

Part of the terms of reference of the BHRAG was to consider the relevance of the Guiding Principles to legal education and training. The BHRAG found that knowledge of the Guiding Principles was not widespread within the profession and that many lawyers held an imperfect understanding of what the Guiding Principles mean for the legal profession overall, and in relation to specific practice areas (for example, different transactional contexts and litigation). The BHRAG also noted concerns among the profession relating to compliance burdens, similar to when the anti-money laundering requirements were introduced. It also identified concerns surrounding the resources needed to ensure that lawyers are equipped with the skills and training to spot human rights risks during client representations, and where appropriate integrate these into advice.

The BHRAG agreed a useful first step would be for the LSEW to produce a template of a human rights policy commitment; with guidance on developing and embedding that commitment. It recommended that the LSEW should encourage firms to develop policies and procedures to implement firms' responsibility to respect human rights, which will be an evolving process. The BHRAG considered that LSEW guidance material needs to be practical, user friendly, and develop over time reflecting best practice. The initial guidance should include a template human rights policy commitment.<sup>72</sup>

The BHRAG was careful to note that law firms in England and Wales are extremely diverse and range from large multinational firms to small/medium sized firms to sole practitioners, and cover a wide variety of practice areas. It considered that a risk-based approach would require those firms most likely to be engaged in matters involving potential risks to the human rights of others to have the highest level of focus on these issues.<sup>73</sup> The BHRAG further recommended that, in order to alleviate some of the concerns that there will be an additional compliance burden for law firms, the LSEW should ensure that:

- any guidance it provides is incorporated into and aligns with other LSEW policies and guidance;<sup>74</sup> and
- human rights be incorporated as an integral part of legal training requirements and continuing professional development.<sup>75</sup>

The BHRAG also recommended that the LSEW continue to actively engage in developing and sharing best practice for the legal profession both domestically and internationally.<sup>76</sup>

## BUSINESS AND HUMAN RIGHTS PROGRAM

The LSEW is currently working with a leading team of business and human rights experts to undertake a process of engagement and consultation with members on the implications for law firms in England and Wales.<sup>77</sup> The program will incorporate diverse modes of engagement and services to support members including:

- free in-person consultations with our expert team to discuss business needs and support in developing effective policies and procedures within their solicitors' firms;
- a series of workshops and consultative forums in London, Cambridge, Leeds, Manchester, Birmingham and Cardiff;
- opportunities for members to become more familiar with recent developments in the area of business and human rights and the implications of these for their practices; and
- opportunities to share their views through our online survey and written submissions.

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72 Ibid, Recommendation 6.

73 Ibid, [27].

74 Ibid, Recommendation 7.

75 Ibid, Recommendation 9.

76 Ibid, Recommendation 8.

77 Law Society of England and Wales, 'Law Society leads the way with business and human rights engagement programme', 16 July 2015. Available at: [www.lawsociety.org.uk/news/press-releases/law-society-leads-the-way-with-business-and-human-rights-engagement-programme](http://www.lawsociety.org.uk/news/press-releases/law-society-leads-the-way-with-business-and-human-rights-engagement-programme)

# BUSINESS AND HUMAN RIGHTS AND THE AUSTRALIAN LEGAL PROFESSION

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At the recent Australian Dialogue on Business and Human Rights (described above), the current Australian Government explained that it was keen to engage closely with business on issues relating to the Guiding Principles. It remains committed to supporting the work of the AHRC and others in promoting awareness of and encouraging compliance with the Guiding Principles.

The AHRC has developed a range of [Fact Sheets on Business and Human Rights](#). A number of Australian NGOs have also commenced planning programs designed to provide guidance to certain industries on particular aspects of the Guiding Principles. This section of the Background Paper looks at the particular relevance of the Guiding Principles to the Australian legal profession.

## Guiding Principles, the Law Council and Constituent Bodies

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Through the Law Council and its Constituent Bodies, the Australian legal profession has played an active role in supporting respective Australian Governments contribute to the development and promotion of the Guiding Principles. For example, on 12 April 2013, the Law Council wrote to the UN Working Group Business and Human Rights, noting that it had been liaising with the Australian Government through the Department of Foreign Affairs and Trade (DFAT) in relation to the implementation of the Guiding Principles. In the letter, the Law Council supported consideration of the Guiding Principles and the Framework on the basis that it had the potential to: complement a range of other initiatives related to social corporate responsibility; offer protection for human rights by encouraging States and corporations to prevent and address the human rights impact of business; and provide a valuable template for translating human rights norms and obligations into a set of clear, accessible principles that can be integrated into existing standards and practices and adapted to apply in range of business or industry environments.

In addition to its engagement with the UN, the Law Council has participated in discussions with Government Departments and business leaders about the implementation of the Guiding Principles in Australia. For example, during 2014, the Law Council President Mr Michael Colbran QC had a number of discussions with his counterparts in other legal representative bodies, including the IBA, about the relevance of the Guiding Principles for the legal profession.

Following on from that engagement, in September 2014, the Law Council's Executive Board resolved to establish a Working Group on Business and Human Rights to help lead the legal profession's engagement on business and human rights. The Working Group's goals are to:

- help lawyers understand the relevance of the Guiding Principles to their practice and the advice they provide;
- encourage the consideration of the Guiding Principles by members of the legal profession; and
- positively represent the Australian legal profession as champions of business and human rights in local and international fora.

Throughout 2015 the Law Council has endeavored to develop networks with key stakeholders in the business and human rights space. This has included government agencies such as DFAT, AHRC, the Attorney-General's Department and the Treasury Department, academics, non-government organisations and industry associations.

A core component of the Working Group's activities will be education. Pursuant to that goal of educating the legal profession, some of the preliminary activities that the Working Group has identified include:

- organising events on the Guiding Principles and their applicability to the legal profession, inviting key stakeholders from the legal, business, government and human rights communities;
- publicly acknowledging the successful business and human rights practices of law firms;
- encouraging the development of Law Council Constituent Body Committees or Working Groups on business and human rights to provide education at the local level;

- working with policy and Continuing Professional Development (CPD) staff to develop specific business and human rights events for Constituent Bodies;
- designing booklets and flyers to provide advice to the legal profession on the Guiding Principles;
- providing case study examples of how law firms can use their leverage with clients to identify, avoid or mitigate negative human rights impacts; and
- using Law Council's online communication tools, such as the website, Twitter, YouTube and key publications to distribute material on the Guiding Principles.

On 24 November 2015, the Law Council held a Symposium titled 'The legal profession and the implementation of the United Nations Guiding Principles on Business and Human Rights', with the support of the AHRC in Sydney.<sup>78</sup> Senior representatives attended from the legal profession, non-government organisations, academia, industry associations and the federal government.

One of the Law Council's Constituent Bodies, the Law Institute of Victoria ('the LIV') has been particularly active in raising awareness of the Guiding Principles among the legal profession in Victoria and celebrating stories of leadership in this area by Victorian law firms.<sup>79</sup> Constituent Bodies are also becoming increasingly engaged through the development of CPD programs to educate and advise the legal profession.

Many individual Australian and Australia-based multinational law firms have also demonstrated leadership in this area. For example, Australian law firm Allens has a long history of engagement with the Guiding Principles and actively incorporates the Guiding Principles into its business model and its delivery of legal services. Allens was one of 15 corporate law firms to assist Professor Ruggie in his six-year mandate as the UN Special Representative for Business and Human Rights, which culminated in the establishment of the Guiding Principles.

The Law Council, as the national body representing the legal profession in Australia and with its particular relationship with Law Firms Australia, is uniquely placed to take a leadership role in raising awareness about the Guiding Principles, their relevance to the Australian legal profession and highlighting best practice examples of the excellent work already being done in this area by lawyers in Australia.

## Benefits and Challenges for the Australian Legal Profession

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The Australian legal profession has a central role to play in advocating for the implementation of the operational principles for States and corporations referred to in the Guiding Principles. The adoption of the Guiding Principles by Australian lawyers and law firms is a first step to creating a dialogue with the business community as to the voluntary implementation of the Guiding Principles by all business entities operating in Australia.

The benefits of raising awareness and encouraging the implementation of the Guiding Principles by Australian lawyers and law firms are outlined in detail above and include the following:

- the Guiding Principles can serve as an effective risk management tool for good corporate governance<sup>80</sup> - as American legal practitioners have identified, the overall contours of the processes that enable a company to respect human rights should be familiar to lawyers who advise companies and their boards on corporate governance. Since the risks of adversely affecting human rights can prevent businesses from achieving these goals, businesses must manage the risks properly as a matter of corporate governance.<sup>81</sup>

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78 Law Council of Australia Media Release, 'Law Council hosts Business and Human Rights Symposium', 1 December 2015. Available at: [www.lawcouncil.asn.au/lawcouncil/images/1554\\_-\\_Law\\_Council\\_hosts\\_Business\\_and\\_Human\\_Rights\\_Symposium.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/1554_-_Law_Council_hosts_Business_and_Human_Rights_Symposium.pdf).

79 See for example Dora Banyasz, Susanna Kirpichnikov and Jonathan Kelp 'Opportunities for law firms to lead the way on human rights.' (2013) Law Institute Journal, Jan/Feb 2013 Issue.

80 John F. Sherman 'The UN Guiding Principles: Practical Implications for Business Lawyers', In-House Defense Quarterly, Winter 2013.

81 Lipton, Guiding Corporate Social Responsibility: A United Nations Blueprint to Promote Human Rights (Wachtel, Lipton, Rosen, & Katz, Nov. 23, 2010), available at: <http://business-humanrights.org/sites/default/files/media/documents/ruggie-wachtel-lipton-rosen-katz-guiding-corporate-social-responsibility-24-nov-2010.pdf>.

- the Guiding Principles encourage law firms to adopt complete and rigorous due diligence processes,<sup>82</sup> - including impact assessments, integration of findings, and adequate tracking and communication of responses. This effort minimises the potential for failure on the ground and addresses identified adverse human rights impacts.
- the Guiding Principles align with and enhance internationally accepted professional conduct rules - for example, in the report supporting the ABA resolution endorsing the Guiding Principles, the ABA Human Rights Committee noted that the Principles pour content into the independent and candid advice that lawyers must provide to corporate clients under ABA Model Rule 2.1; the rule's commentary notes that 'moral and ethical factors impinge on most legal questions and may decisively influence how the law will be applied.'<sup>83</sup> This resonates with professional codes of responsibility in countries like Japan, Europe, and Canada, which acknowledge that lawyers must balance their role as guardians and advocates for the interests their clients with their role as gatekeepers for the interests of courts and society.<sup>84</sup>
- it will lay the foundation for consultations with Australian parliaments for the enacting of legislative reforms to ensure compliance by all Australian businesses with international human rights standards and to ensure that effective remedies are made available to the victims of contraventions of those standards.

However, as the experiences of other legal representative bodies and other industry groups have shown, successful leadership in this area demands careful consideration of the particular challenges the Guiding Principles pose for the highly regulated, highly competitive Australian legal profession. These challenges include:

- overcoming perceptions that the Guiding Principles apply only to large multinationals;
- meeting expectations of business and human rights advocates;
- ensuring a critical mass of top firms, Constituent Bodies and other stakeholders are engaged and supportive of the Guiding Principles and the Law Council's role in promoting the implementation of the Guiding Principles within the legal profession;
- addressing queries and concerns from the profession as to whether the Guiding Principles add to or conflict with existing regulatory and conduct regimes;
- reaching consensus on the appropriate approach, and providing succinct, clear guidance on how the Guiding Principles should be applied in a range of interactions between lawyers and clients (such as what to do if it becomes apparent that a client is or will act in a way that has a negative human rights impact) and between lawyers and clients (such as how far down the supply chain a law firm should go to determine whether or not a supplier complies with human rights standards);
- producing guidance which is comprehensive, relevant and useful to nearly all membership sectors (i.e. large and small firms, in house); and

Addressing these issues will help engender a deeper understanding of the Guiding Principles and provide the Australian legal profession with the confidence that the Guiding Principles are not only relevant to their practices but also of benefit to their firms, their clients and the communities in which they work.

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82 Cheryl Joseph, Stanford Law School, and Julia Cherlow 'Developing Corporate Human Rights Policies and the Role of Legal Counsel', Stanford Law School for UN Global Compact Human Rights Working Group, Dec 2012, available at: <http://business-humanrights.org/en/un-global-compact-releases-good-practice-notes-on-human-rights-0#c69492>.

83 John Sherman, General Counsel, Shift 'Professional Responsibility of Lawyers under the Guiding Principles', Apr 2012, available at: <http://business-humanrights.org/en/professional-responsibility-of-lawyers-under-the-guiding-principles>.

84 Ibid.

## STRATEGIES TO OVERCOME CHALLENGES

The experiences summarised in this Background Paper suggests that the following approaches may operate to address these challenges:

- Making it clear that the Guiding Principles do not entail the application of subjective moral judgments, but are grounded in internationally recognised human rights law;<sup>85</sup>
- Undertaking careful, considered efforts to address the relationship between the Guiding Principles and the professional legal standards of conduct to which lawyers must adhere, which may involve:<sup>86</sup>
  - as a first step, law firms understanding the human rights impacts related to the services they perform for their clients (i.e. firms conducting their own human rights investigations of clients) and developing operational level policies demonstrating how the firm will address human rights issues with clients, which can then be communicated to clients and can clarify expectations; and
  - the lead organisation conducting a comprehensive survey of the relevant professional codes with respect to: whether and the extent to which professional codes prevent, permit, encourage or require lawyers to take human rights impacts into account in their client advice; the ability of the firm to get factual information about human rights impacts from the client; the circumstances under which the law firm would be permitted to withdraw in order to avoid involvement in human rights violations; and the ability of firms to demonstrate that they have taken appropriate steps to advise their clients not to become involved in human rights impacts.
- Developing high-level human rights policy commitments by law firms that are fully integrated into the firm's corporate governance structure, which may involve;<sup>87</sup>
  - assigning senior managers to drive the process and involving all business operations in policy development, implementation and reviews as suggested by the [Global Compact's guidance on how to develop a human rights policy](#).
- Developing strategies to use the Guiding Principles to fill gaps in firms' existing due diligence processes.<sup>88</sup> Due diligence processes will vary for each firm, but should include, at a minimum the following five steps: assess the human rights impacts of the firm's operations, directly or indirectly on all people connected to the company's business activities; adopt, implement and integrate a human rights policy throughout the firm and supply chain; ensure compliance with all local laws and professional codes of practice; implement a credible and transparent system of internal and independent monitoring and reporting; develop partnerships with other companies, NGOs, community groups, unions, Indigenous and other local communities and government to ensure respect for those human rights impacted by the firm or its clients' business operations and appropriate systems to address grievances.<sup>89</sup>
- Identifying strategies (such as internal surveys) for firms to assess existing workplace policies (such as policies that promote diversity and inclusion and prohibit discrimination) and providence guidance as to how to use the Guiding Principles to enhance these policies. Guidance in this area may be provided by the [LSEW Diversity and Inclusion Charter](#).
- Distributing guidance regarding the steps that firms should take to avoid being deemed complicit in any adverse human rights impacts of suppliers and clients.<sup>90</sup> Guidance in this area may be provided by the [LSEW Protocol on Legal Procurement](#). [Guidance from the Global Compact](#) also suggests adopting a systematic management approach to identifying and addressing human rights impacts that considers impacts and risks of impacts from the perspective of people affected and the environment impacted by the business's operations and business relationships, as well as the business itself.

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85 See A4ID, *The UN Guiding Principles on Business and Human Rights: A Guide for the Legal Profession* (2013) p 46, available at [http://a4id.org/sites/default/files/user/A4ID%20Business%20and%20Human%20Rights%20Guide%202013%20\(web\).pdf](http://a4id.org/sites/default/files/user/A4ID%20Business%20and%20Human%20Rights%20Guide%202013%20(web).pdf).

86 Ibid.

87 Ibid.

88 Ibid.

89 Australian Human Rights Commission, *Good practice, good business: Fact Sheet 3* (2009) available at <https://www.humanrights.gov.au/good-practice-good-business-fact-sheet-3>.

90 See A4ID, *The UN Guiding Principles on Business and Human Rights: A Guide for the Legal Profession* (2013) p 46, available at [http://a4id.org/sites/default/files/user/A4ID%20Business%20and%20Human%20Rights%20Guide%202013%20\(web\).pdf](http://a4id.org/sites/default/files/user/A4ID%20Business%20and%20Human%20Rights%20Guide%202013%20(web).pdf).

- Providing case study examples of how law firms can use their leverage with clients and suppliers to identify, avoid or mitigate negative human rights impacts.
- Establishing an internal working group to look at what step the lead organisation needs to take to develop a meaningful policy on human rights and its own responsibility to respect human rights, through the implementation of the Guiding Principles, and making this working group permanent thus ensuring that organisation's internal dialogue on business and human rights continues to evolve and develop.<sup>91</sup>

Links to further reading and materials are contained below.

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91 Law Society of England and Wales, *Business and Human Rights Advisory Group Recommendations* (March 2014), available at [http://international.lawsociety.org.uk/files/BHRAGfinal\\_0.pdf](http://international.lawsociety.org.uk/files/BHRAGfinal_0.pdf).

## FURTHER RESOURCES

### INFORMATION ABOUT THE GUIDING PRINCIPLES

- [UN Guiding Principles](#): the State's duty to protect human rights, corporate responsibility to respect human rights, and enhancing access to remedies.
- [Resolution adopted by the Human Rights Council](#)
- [Protect, Respect and Remedy: A Framework for Business and Human Rights](#)
- [Interpretative Guide to the Guiding Principles](#)

### GENERAL TOOLS AND GUIDANCE

- [Business & Human Rights Resource Centre](#) - a neutral, non-profit organisation - probably the world's largest online repository of information on business and human rights and a source of guidance, research and case studies, including: [Human Rights And Business Dilemmas Forum](#); [Embedding Human Rights in Business Practice IV](#); [Business and Human Rights Learning Tool](#)
- [Good practice, good business – eliminating discrimination and harassment in the workplace](#), AHRC
- [Development and indigenous land: A human rights approach](#), AHRC
- [Human Rights Compliance Assessment, Quick Check](#), Danish Institute for Human Rights
- [A guide to integrating human rights into business management](#), Business Leaders Initiative on Human Rights
- [Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#), Organisation for Economic Co-operation and Development ('OECD')
- [Human rights translated – a business reference guide](#), International Business Leaders Forum, UN Office of the High Commissioner for Human Rights, Castan Centre of Human Rights Law
- [Protect, respect and remedy: a framework for business and human rights](#), UN Special Representative on Business and Human Rights
- [UN Global Compact Management Model](#) - this model presents an integrated approach to corporate sustainability issues, including human rights
- [Embedding Human Rights Case Study](#) series - explore the practical application of the UN Global Compact's human rights principles and offer detailed examples of what businesses from all over the world are doing to implement human rights within their own operations and spheres
- [Ethical Trading Initiative](#): alliance of companies, trade unions and NGOs that work in partnership to improve the lives of poor and vulnerable workers across the globe who make or grow consumer goods
- [Department for Business Innovation and Skills \(BIS\) - OECD Guidelines for Multinational Enterprises](#): these are voluntary principles and standards of corporate behaviour in areas such as human rights, the supply chain, employment and industrial relations, the environment, and combating bribery.
- [Children's Rights and Business Principles](#)

- [Human Rights COP Reporting Guidance](#) provides practical information on how companies can improve reporting on human rights within the context of their annual Communication on Progress (COP).
- A [Resource Guide to Human Rights Reporting](#) is intended to help companies begin a process of translating human rights relevant issues into meaningful and effective reporting.

## GUIDANCE AND COMMENTARY FOR THE LEGAL PROFESSION

- Law Society of England and Wales, [Business and Human Rights Advisory Group Recommendations](#) (March 2014)
- [IBA's International Principles](#)
- IBA Business and Human Rights Working Group [Guidance for bar associations and business lawyers on the implementation of the United Nations \(UN\) Guiding Principles on Business and Human Rights](#) (23 October 2014)
- A4ID, [The UN Guiding Principles on Business and Human Rights: A Guide for the Legal Profession](#) (2013)
- American Bar Association [ABA Policy on the United Nations Framework and Guiding Principles and the OECD Guidelines](#) (2012)
- Council of Bars and Law Societies of Europe [Corporate Responsibility and the Role of the Legal Profession](#) (2 July 2012)
- Professor John Ruggie, [Principles for responsible contracting: integrating the management of human rights risks into State-investor contract negotiations : guidance for negotiators](#) (May 2011)
- [Corporate Duty and Human Rights Under Australian Law](#), Allens Arthur Robinson
- ['The UN Guiding Principles: Practical Implications for Business Lawyers'](#), John F. Sherman, In-House Defense Quarterly, Winter 2013
- ['Developing Corporate Human Rights Policies and the Role of Legal Counsel'](#), Cheryl Joseph, Stanford Law School, and Julia Cherlow, Stanford Law School for UN Global Compact Human Rights Working Group, Dec 2012
- ['The UN Guiding Principles on Business and Human Rights: the implications for enterprises and their lawyers'](#), Jonathan Bonnitcha, London School of Economics in Business and Human Rights Review, Autumn 2012
- ['UN Guiding Principles for Business and Human Rights: What Lawyers Should Know'](#) (video), The American Bar Association's Center for Human Rights, Northeastern University School of Law's Program on Human Rights and the Global Economy, Columbia Law School's Human Rights Institute, 6 Jun 2012
- ['Professional Responsibility of Lawyers under the Guiding Principles'](#), John Sherman, General Counsel, Shift, Apr 2012
- ['Final report: International civil litigation for human rights violations'](#), Intl. Law Association, 2012 also provided: Sofia Guidelines on best practices for intl. civil litigation for human rights violations
- ['The Global Lawyer: How Not to Be an Evil Law Firm'](#), Michael D. Goldhaber, American Lawyer Daily, 7 Dec 2011

## ANNEXURE A: WHAT ARE HUMAN RIGHTS?

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Human rights recognise the inherent value of each person, regardless of background, where we live, what we look like, what we think or what we believe.<sup>92</sup>

They are based on principles of dignity, equality and mutual respect, which are shared across cultures, religions and philosophies. They are about being treated fairly, treating others fairly and having the ability to make genuine choices in our daily lives.<sup>93</sup>

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts to promote and protect human rights and fundamental freedoms of individuals or groups.<sup>94</sup>

The protection of fundamental human rights was first expressed in comprehensive form through the Universal Declaration on Human Rights (UDHR). Rights protected in the UDHR include:

Article 1 – Right to equality

Article 2 – Freedom from discrimination

Article 3 – Right to life, liberty and personal security

Article 4 – Freedom from slavery

Article 5 – Freedom from torture and degrading treatment

Article 6 – Right to recognition as a person before the law

Article 7 – Right to equality before the law

Article 8 – Right to remedy by a competent tribunal

Article 9 – Freedom from arbitrary arrest and exile

Article 10 – Right to fair public hearing

Article 11 – Right to be considered innocent until proven guilty

Article 12 – Freedom from interference with privacy, family, home and correspondence

Article 13 – Right to free movement in and out of the country

Article 14 – Right to asylum in other countries from persecution

Article 15 – Right to a nationality and freedom to change it

Article 16 – Right to marriage and family

Article 17 – Right to own property

Article 18 – Freedom of belief and religion

Article 19 – Freedom of opinion and information

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92 Australian Human Rights Commission, What are human rights?, available at: <https://www.humanrights.gov.au/about/what-are-human-rights>.

93 Ibid.

94 United Nations Office of the High Commissioner for Human Rights, What are human rights?, available at: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

Article 20 – Right of peaceful assembly and association

Article 21 – Right to participate in government and free elections

Article 22 – Right to social security

Article 23 – Right to desirable work and to join trade unions

Article 24 – Right to rest and leisure

Article 25 – Right to adequate living standard

Article 26 – Right to education

Article 27 – Right to participate in the cultural life of community

Article 28 – Right to a social order that articulates this document

Article 29 – Community duties essential to free and full development

Article 30 – Freedom from state or personal interference in the above rights

Australia has entered into a series of international treaties for the protection and promotion of human rights. The Australian Government has agreed to uphold and respect the following core human rights treaties:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities.

Every treaty to which Australia is party is binding upon it, and must be performed by it in good faith. The human rights treaties which Australia has entered into set out in clear terms Australia's international human rights obligations. Australia is bound to comply with their provisions and to implement them domestically.

International law and practice recognises three types or levels of obligations to respect, to protect and to fulfil human rights. The obligation to respect requires States to refrain from interfering directly or indirectly with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil requires States to adopt appropriate positive measures to facilitate the enjoyment of human rights.

These values are reflected in the Guiding Principles, however the Guiding Principles are not binding international human rights law. Additionally, they are not designed to limit or undermine any legal obligations a State may have undertaken or be subject to under international law with regard to human rights. Nonetheless, direction on the Guiding Principles and what human rights are can be gained from existing international human rights law.



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