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GUIDANCE IN BUSINESS AND HUMAN RIGHTS FOR EUROPEAN LAW SOCIETIES

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Preface:

These guidelines seek to be a flexible and useful tool for Law Societies throughout Europe and strives solely to promote consideration of the challenges, as well as to contribute ideas and potential lines to explore in order to help with the effective implementation of the Guiding Principles on business and human rights in the legal profession. Each Law Society must define its own strategy for dealing with this challenge.

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1.- Business and Human Rights and the United Nations Guiding Principles.

Since the second half of the twentieth century, companies have been adopting an ever more relevant role as social agents in the framework of the process of globalization. Their public role has taken on more and more significance in a global setting where their operations and influence are not limited to the territory of a single state. For these reasons, and in the light of the transformation of the institutional characteristics of the world's economy, the need to "anchor market globalization in shared institutional values and practices" and in respect for its basic rules has become a priority for the United Nations (UN).

In this way, and following a long discussion process, the United Nations Human Rights Council endorsed, in June, 2011, the report entitled Guiding Principles on Business and Human Rights: implementing the United Nations "protect, respect and remedy" framework (UNGP)¹, written and presented by John Ruggie, then the UN Secretary General's Special Representative for Business and Human Rights.

Thus, the UNGP were drafted as a document defining responsibilities and contributing guidelines to implement effectively the current international framework and in order to prevent and remedy the adverse consequences of business activities on human rights. In accordance with these principles, companies have to "know and demonstrate" that they do not violate any human rights in their commercial activities or operations. To do so, they have to adopt a human rights policy and apply due diligence, a responsibility that includes the assessment of the real and potential impacts of business activities on human rights, the integration of the results into the company's management and acting to alleviate these impacts. Remedying the negative effects caused by companies' actions whenever these impact the exercise and enjoyment of human rights by affected individuals and communities is also defined as part of company's moral responsibility.

The process of drafting the Framework and the Guiding Principles influenced, and was influenced by, other international initiatives in the area of Business and Human Rights, such as the OECD Guidelines on Transnational Corporations, the standards of the International Finance Corporation – World Bank, ISO 26000, the Global Compact, the Strategy on Social Responsibility within the European Union (EU), among others.

With the aim of promoting and achieving the deeper application of the UNGP, the United Nations created a Business and Human Rights Working Group in 2012 with a mandate that included several areas. The main ones focussed on the promotion of the dissemination and effective global application of the Guiding Principles at national level. For this purpose, it highlighted the need to promote the interchange of best practices and lessons learnt, to encourage qualifications and draft recommendations in this regard. A fundamental part of that mandate was the promotion of

¹ United Nations - Human Rights Council, *Guiding Principles on business and human rights: implementing the United Nations "protect, respect and remedy" framework*, 17th period of sessions, March 21st, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_SP.pdf



the adoption of National Action Plans on Business and Human Rights (NAP), as a means to transpose the UN Resolution into the national arena and so achieve the embodiment of this provision in soft law.

Since then, several States have been gradually developing their strategies and National Action Plans in the field of Business and Human Rights, with measures in both the regulatory area and also public policy and oversight. These initiatives are intended to provide a response to Pillar I of the UNGP and the “duty to protect Human Rights”, as well as Pillar III, which deals with the States’ obligations with regard to “access to effective remedy” when there is a breach of human rights in connection with business activity. These measures, in addition to complying with the obligations of States, seek to influence a better exercise by companies of their “responsibility to respect Human Rights”, as well as their responsibilities in connection with remedy, as established in Pillars II and III of the Guiding Principles.

An NAP is a public policy instrument constructed through the participation of all social players in order to ensure respect for human rights in business activities². The United Nations Working Group recommended the creation of independent and exclusive National Plans on Business and Human Rights, where each of the different state contexts can give rise to their inclusion in other areas of public policy related to economic development, human rights or corporate social responsibility. In any case, the NAP must be adjusted and co-ordinated with the rest of the strategies and state plans.

The efforts of the UN Working Group have borne fruit. In June, 2017, there was a public record of 16 approved and launched NAP in place. The first was adopted in the United Kingdom in September, 2013, followed by Finland, the Netherlands, Sweden, Lithuania, Denmark, Norway Colombia, Switzerland, Italy, United States of America, Germany, France and Poland. Another countries had already begun the process for the creation and/or approval of an NAP, for instance Spain, Belgium, Mozambique, Myanmar or Chile. In another countries, despite not having begun any kind of formal process at institutional level, civil society movements aimed at promoting these plans have been identified.

²According to the United Nations, the definition of a National Action Plan on Business and Human Rights is an ‘evolving political strategy developed by a State to protect against negative impacts on human rights by companies in accordance with the United Nations Guiding Principles on Business and Human Rights’. *Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights, December, 2014, http://www.ohchr.org/Documents/Issues/Business/UNWG_%20PNAGuidance.pdf*



2.- The role of lawyers on Human Rights.

While the Social Function of the legal profession has traditionally been framed within the Corporate Social Responsibility of solicitors, it is a concept that transcends these limits. In fact, the Social Function of the legal profession transcends this concept and includes, in balance with its role in the defence of their clients' interests, the essential function of lawyers as guardians of the best interests of Society, under the concept of the Rule of Law.

In line with the CCBE Code of Conduct³ and its adoption by other Codes of Conduct of the legal professions in several countries, solicitors play a fundamental role in the defence of the rule of law and human justice, thus offering protection for the highest interests of the State.

This therefore defines a two-fold task for lawyers: on the one hand, defending the interests of their clients and, on the other, respecting the defence and consolidation of the higher values underlying society and the human condition itself. The technical aspects and knowledge needed to give legal advice and defend rights provided by a lawyer would be of no use unless their skills are aimed at serving the essential value backing them up, namely the defence of the rights corresponding to each individual. In short, it is necessary for the legal professions always to bear in mind the high function entrusted to them by society: the effective defence of individual and collective rights whose recognition and respect constitute the backbone of the Rule of Law as an institution.

The goal, therefore, is for the Law to continue to fulfil its main function, i.e. placing itself at the service of the society it regulates. And lawyers, as such, have among their functions the improvement of Law, both as the guarantor of its proper application and also by proposing changes and adjusting to the changing social reality, by submitting reports in the regulatory processes and the creation of new rules.

The UN Guiding Principles focus, in essence, on the translation of the States' obligation to protect and the companies' responsibility for respecting human rights in business activities.

In this sense, the role of solicitors is crucial and the implementation of the UNGP highlights specific aspects in their relationships with clients, too, thus understanding lawyers as economic agents⁴. They have a role to play vis-à-vis all kinds of clients but this will however change, depending on whether they are companies (by acting as corporate lawyers or external counsel, advising them on

³ Council of Bars and Law Societies of Europe (CCBE), *Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers*, 2008 (rev 2013), http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf

⁴ In this sense, there are a number of initiatives aimed at exploring more deeply and developing the role of the legal professions and their Councils for the implementation of the UN Guiding Principles. Some of these initiatives have given rise to documents, reports or opinions published by institutions, professional associations, research centres and civil society organizations that are benchmarks in this area, such as the International Bar Association (IBA), American Bar Association (ABA), Shift, ECCJ, ICAR or New York University Stern Center for Business and Human Rights, Sustentia Social Innovation, among others.



their risks and legal compliance) or representatives of the interests of the State or of persons whose rights have been affected by some business activity. There are therefore multiple variants in the role played by lawyers in the area of Business and Human Rights.

Lawyers are, first and foremost, economic actors in their own right, insofar as they engage in economic activities as service providers, whether as freelancers, employees or business managers of a law office with a staff of multiple lawyers.

Secondly, although some responsibilities are shared, lawyers have different responsibilities when rendering advisory services to corporate clients, whether as an external consultant or *in house* legal counsel. In this sense, it is necessary to bear in mind, the specific responsibilities arising in those cases where lawyers are at the service of the State, whether through passing a competitive exam to become a public servant or else through a fixed-term contract with the State or a state-owned company or quango.

In any of these cases, the Law Societies can play a decisive role. Regardless of the contractual relationship between lawyers and their clients, the corresponding Law Society can offer support and become a beacon for professionals performing their functions under the principles of freedom, independence and due diligence inherent to them, and in accordance with the ethical and deontological principles of the profession.

When it comes to defining the role that each Law Society wishes to play and, in consequence, the activities each one decides to implement, it is necessary to take into account the nature and circumstances of each particular Law Society. Starting from this premise, the main actions a Law Society can assume are varied and can be combined together as required. They include:

- a) Disseminating international standards in Business and Human Rights and, particularly, the UN Guiding Principles, as well as how to incentivize their application by members of the legal professions.
- b) Encouraging greater training and education of lawyers in the area of Business and Human Rights.
- c) Boosting the role lawyers must play for the effective respect of human rights by companies and the effective provision of remedy whenever impacts on human rights arise due to their activities.
- d) Driving advances in the establishment of criteria and ethical guidelines to help solicitors resolve dilemmas that may arise in of practice.
- e) Encouraging the constitution of adequate structures within Law Societies for the development of their capacities in the area of Business and Human Rights.
- f) Taking part in the most significant initiatives under way in specific economic sectors with the aim of being able to develop an *ad hoc* standard of a similar nature for the legal arena.



3.- The role of European lawyers.

The European Union (EU) recognizes the UNGP as the authorized policy framework when aligning its Strategy in Corporate Social Responsibility⁵ and has developed other documents following this same line⁶. It also wishes to take on a leadership role in Business and Human Rights through the European Commission, as it believes an adequate roll-out of the UNGP would contribute to the EU's targets with respect to specific aspects of human rights, such as child labour, forced labour, working conditions, gender equality, non-discrimination, freedom of association and the right to collective bargaining⁷.

On July 15th, 2015, the Council of the European Union (EU) approved its new Action Plan on Human Rights and Democracy 2015-2019⁸ and adopted the main recommendations offered by the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy in its Joint Declaration dated April 28th⁹. In the introduction, the new Action Plan 2015-2019 highlights the need for the EU to promote the basic principles of non-discrimination, gender equality and female empowerment.

Furthermore, there is a note worthy commitment to guarantee the integration of Human Rights into its Foreign Policy and, in particular, with regard to migrations, trade and investment, development co-operation and anti-terrorism. All these aspects have been identified as challenges requiring Europe to redouble its efforts, both internally and externally, as they are all inherent to basic rights in danger of being affected by business activity as well.

This Plan, in addition to emphasizing the advances made previously by the European Union in the sphere of Corporate Social Responsibility or Business and Human Rights, includes a specific section devoted to Business and Human Rights, namely section 18 "Advancing in Business and Human Rights", which includes three actions, with their respective action timeframes and the bodies in charge of implementing them¹⁰:

- a) Develop capacity and knowledge on the implementation of Business and Human Rights guidelines, in particular as regards the UN Guiding Principles on Business and Human Rights (UNGPs) and other tools/initiatives that contribute to the implementation of the UNGPs; strengthen the role and expertise of EU Delegations and Member State embassies in this context; raise awareness on the UNGPs and corporate social responsibility in external action and policy dialogue with partner governments and regional organisations; promote the adoption of National Action Plans (NAP) by

⁵ European Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, October 25th, 2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>

⁶ In this sense, two deserve special mention: European Commission, *My business and human rights. Guide to human rights for small and medium-sized enterprises*, dated December 1st, 2012, http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_es.pdf; and the European Commission, *Tips for Advisers. Guidance Tool on CSR for small and medium-sized enterprises*, 2013, http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/tips-tricks-csr-sme-advisors_es.pdf

⁷ European Commission Staff Working Document 14/07/2015, on Implementing the UN Guiding Principles on Business and Human Rights - State of Play, http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8374

⁸ European Union, Action Plan on Human Rights and Democracy 2015-2019 <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

⁹ Joint Communication on the new EU Action Plan on Human Rights and Democracy 2015-2019, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/joint_communication_on_human_rights_and_democracy_en.pdf

¹⁰ European Union, Action Plan on Human Rights and Democracy 2015-2019, July, 2015, p. 17 (free translation).



against corruption and impunity among public servants. The Recommendation reminds the 47 Member States that they must refrain from engaging in intimidation or reprisals against the people defending human rights and proposes the adoption of a series of measures to improve their protection.

European challenges in Business and Human Rights

Even though these regulatory advances have been achieved, Europe nowadays confronts certain risks and impacts on human rights that need to be managed correspondingly.

Since the business muscle of Europe lies precisely in facing these challenges with a wide-ranging approach, covering the implementation of the UNGP in both the internal European context and also the international area of operations by European companies. In both contexts, there are multiple fields in which high risks have been identified in terms of business management, such as compliance with labour standards, gender equality, non-discrimination, freedom of association, the right to collective bargaining, child labour and forced labour. The current situation of economic crisis has brought to light serious impacts and a widespread cutback in the enjoyment of the standards attained in the realm of human rights.

One of the groups most affected by this reduction is that of migrants who, in addition to suffering impacts of the same intensity as European citizens with respect to their rights, have seen other rights violated, including those relating to equal working conditions, non-discrimination, the right of asylum or access to Justice, all basic rights for ensuring integration into the host society.

The EU has addressed the issue of Business and Human Rights, among other routes, through its External Action Service. On this point, great relevance is given to the preparation and contents of its Commerce and Investment Treaties, both internally and with third countries. In fact, the new Human Rights and Democracy 2015-2019 Action Plan reflects actions for these agreements to take account of the UNGP, and foresees the strengthening of its capacities in terms of Business and Human Rights and promoting the respect for human rights among companies, for example by including impact audit clauses and obligations in the negotiations, making the EU's collaboration conditional on the fulfilment of certain prerequisites regarding respect for human rights, demanding greater transparency and obligations in the annual reports of large companies, or promoting partnerships between companies and civil society.

On the other hand, both the EU and the CoE are making advances in the extraterritorial scope of the implementation of the UNGP.

The EU is of the opinion that its Attribution Principle (article 5 of the Treaty on the Functioning of the European Union, "TFEU") limits its competencies originating from the treaties signed to within the limits of the Union, with the competency for matters outside its frontiers lying to the Member States. Nonetheless, the EU Charter of Fundamental Rights, which is legally binding following the approval of the Lisbon Treaty (article 6 of the European Union Treaty), obliges both the EU and its Member States to comply with human rights standards even beyond where EU rules are in force¹³.

The regulatory competency of the EU differs depending on the specific legal or political area of human rights in question, in the light of the scope of the competency transferred to the EU by the Member States. Therefore, there are specific aspects, such as access to Justice in Business

¹³Please refer to note 7, page 4.



and Human Rights cases¹⁴, where the current framework accepts, in certain circumstances, extra-territorial access to the remedy for those persons whose human rights have been breached through business activities. Member States can prosecute perpetrators registered within the EU even if they commit offences outside the EU in connection with their business operations. In such cases, the Member States may resort to domestic and international instruments, including bilateral and multilateral treaties (on extradition, mutual aid or transfers of proceedings), and co-operation with third-party states and international organizations.

For its part, the CoE offers a more extensive approach to the extra-territorial issue and, in particular, with respect to the pre-existing relations and responsibility between the parent company and its subsidiaries.

A special mention is warranted for the question of the transfer of criminal liability from a private individual in a company to the body corporate represented.

Advances and challenges at national level

Europe is the leading continent in terms of the approval of National Action Plans in Business and Human Rights (NAP) at national level. The first State to do so was the United Kingdom, in September, 2013. In June, 2017, there was a public record of 16 approved and launched NAP in place. The United Kingdom NAP, was followed by Finland, the Netherlands, Sweden, Lithuania, Denmark, Norway, Switzerland, Italy, Germany, France and Poland. Each of these States has developed its own Plan, with different characteristics and responding in a variety of ways to the contents of the UNGP.

Another 12 European countries have already begun a process for the creation and/or approval of their respective NAP. These are: Belgium, Greece, Ireland, Latvia, Portugal, Scotland, Slovenia, and Spain.

These processes are with different approaches. Germany completed its National Baseline Assessment¹⁵ in May, 2015, as a prelude to the approval of its NAP; Italy and Switzerland have conducted consultation of different types with a variety of stakeholders. For its part, Spain drew up a draft in 2014 but this was not approved at this time.

World-wide, there are 28 States that had begun some kind of process in this regard as of April, 2016. And in another 6 States, despite no institutional steps having been taken to begin any process of this kind, civil society movements aimed at promoting them had been identified, with Poland the only European State in this situation¹⁶.

¹⁴ For the purposes of the present Guidelines, “Business and Human Rights cases” are deemed to be those judicial or non-judicial cases in which, due to a business activity, risks or impacts have been generated for the Human Rights of individuals or collectives.

¹⁵ In this sense, special mention must be made of the model draw up by the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR) in the preparation of a template for the development of National Baselines: “National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks. Toolkit Component 1: The National Baseline Assessment (NBA) Template”, ICAR-DIHR, June, 2014, <http://icar.ngo/wp-content/uploads/2014/06/Toolkit-Component-1-The-NBA-Template1.pdf>

¹⁶ According to data from the Business & Human Rights Resource Centre, the following 28 countries were at one or other of the preparatory stages for the approval of their National Action Plan as of April, 2016: Germany, Argentina, Australia, Azerbaijan, Belgium, Brazil, Chile, France, Greece, Indonesia, India, Ireland, Italy, Jordan, Kenya, Latvia, Malaysia, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Portugal, Scotland, Slovenia, Spain, Switzerland, and



Mention should be made of processes other than approval of an NAP that also contribute to the roll-out of the UNGP. One interesting case is that of France: although the NAP was not yet been approved, it has approved before a Draft Bill relating to the Due Diligence of the parent company and of the subsidiaries, adopted at a plenary session of the French National Assembly on March 30th, 2015. If finally passed, this Law would oblige French multinationals to monitor their subsidiaries abroad, and to implement due diligence mechanisms, so that their suppliers respect Human Rights.

On the other hand, it is necessary to underline other processes in line with the UNGP, such as those aimed at strengthening transparency and reporting requirements for companies. These include the EU Directive on Non-Financial Reporting or the national initiatives developed in this regard in France, Denmark and Sweden.



4.- The UNGP for Law Societies.

Human rights have traditionally not been treated as an area of importance in their own right at Law Societies, but rather are dealt with either as an aspect inside other areas (Constitutional Law, Criminal Law, International Law) or else as a separate part of their structure (please consider, for instance, a Human Rights Observatory related to the Law Society).

However, in the wake of the latest evolutions seen in the international standards, a trend has been identified towards the inclusion of human rights in the portfolios of services offered to members by the Law Societies. This tendency must be given a more extensive scope: open to members, the State, social players, people in general.

This way of approaching their role with respect to human rights is more in line with the role Lawyers should be playing as another social player. And their efforts, as an economic agent in society, must also be viewed as if they were enterprises in their own right (whether as a self-employed individual or as an employee in a law office), and from the perspective of advisers to other companies. As an organization representing the interests of Lawyers, a Law Society must be structured coherently with the services and activities, carried out in the area of Business and Human Rights.

In this same line, Law Societies themselves are also social players and, as such, they must include within their aims and objectives the provision of contributions to the society around them. At the same time, Law Societies should play an active role in Business and Human Rights at institutional level and offer guidance for solicitors to comply with their duty to respect human rights and also increase their ability to help and influence their clients so that these also respect human rights in their operations. A Law Society could, for example, take on a proactive role when explaining to the legal community how and why lawyers are acting in their clients' favour when suggesting and offering technical advice on the observance of the UNGP in terms of due diligence in human rights, responsibility to respect and the duty of remedy.

In order to carry out these goals, Law Societies are able to implement different initiatives and tools, starting from the basic premise that the Law Societies themselves are in an optimal position to evaluate the specific needs of their own jurisdictions, and to respond to these in so far as their abilities and available resources allow them to.

Among these initiatives, these Guidelines offer the following: establish an adequate structure to respond correctly to their role in Business and Human Rights; offer awareness-raising and training on these matters, as well as deontological support. It is also proposed that, whenever the nature and circumstances of the Law Society in question so allow, they should offer technical assistance to their members and also to society at large, as well as playing a lobbying role at institutional and legislative levels. These Guidelines constitute, in short, a compendium of different recommendations and routes available for Law Societies in order to place the UNGP as the central reference of the profession and the practice of law.



In this sense, the associations grouping together Law Societies also have a role to play in order to encourage and advise Law Societies on how to implement the UNGP, adapting them to the individual characteristics of each one.

Specifically, the European Bars Federation (FBE), in its activity of grouping Law Societies together, exchanging experiences and improving the 250 Law Societies in Europe, stands before an excellent opportunity to drive leadership among its members in the realm of Business and Human Rights, as well as the promotion of novel international standards. These Law Societies operate in a variety of jurisdictions, with different legal systems (civil law, common law, etc.) and are structured in different modes, responding to the regulation governing the profession of solicitors and barristers in each one.

Over and above the different natures and characteristics of each jurisdiction and legal system, the FBE, as the meeting space for the exchange of experiences between European Law Societies, strives to offer solutions in this field for its members and, with this in mind, has fed on the efforts of others already in place or under way in the area of the application of the UNGP on Business and Human Rights and, in particular, with regard to the practice of law¹⁷.

The aim of these Guidelines is to improve the understanding of the Law Societies in the FBE about the relevant role of lawyers, to contribute practical recommendations about how they can support the effective roll-out of the UNGP, and to propose lines of work and actions that could be implemented by the Law Societies themselves, both inside and outside their organizations, in supporting and offering criteria to professionals and offices (and also to society whenever possible) about how to put into practice due diligence with respect to human rights.

This Guide proposes, in short, open and adaptable guidelines for each Law Society to draw on the most suitable routes and solutions to respond to their responsibilities in connection with the three pillars of the UNGP: the State's Duty to Protect, Companies' Responsibility to Respect, and the duty to offer Access to Remedies on the part of both the State and Companies. Through these Guidelines, the FBE offers its member Law Societies an open door into due diligence in Human Rights.

¹⁷ It is worth highlighting the various major processes under way for the drafting of guidance or manuals on Business and Human Rights for lawyers and law societies. These efforts are being carried out by The International Bar Association (IBA), The European Bars Federation (FBE), The American Bar Association (ABA), The Law Society of England and Wales and The Law Council of Australia.



5.- Recommendations for Law Societies in Europe

Bearing in mind the heterogeneity of the Law Societies and Bar Associations in Europe, the present Guidelines aims to present a series of recommendations that should be understood as a catalogue of ideas, in which each Law Society can identify guidance and inspiration pertinent to the reality, capacity and organization of its mission.

On the one hand, there is advice on how to organize the process of planning and implementing a Business and Human Rights work plan. Subsequently, ideas and recommendations are presented for inclusion in the services rendered by Law Societies to their members. Guidance is also provided on the role Law Societies must play vis-à-vis public authorities to influence their legislative and executive function. And finally some ideas are given about services that Law Societies could provide for the citizenry, always related to the subject of Business and Human Rights.

a. Processes for planning implementation

This section is aimed at offering operational advice for the process of implementing criteria about business and human rights in Law Societies. Recommendations are given for dealing with the introduction of the Guiding Principles into the strategy and operations of Law Societies in an orderly and consistent way.

1.- Public Commitment

It is vital for Law Societies to make a public commitment to the principle of respect and remedy of human rights affected by business activities, in accordance with the United Nations Guiding Principles (UNGP nº 16). This commitment must be approved by the governing bodies of each Law Society.

Although a general declaration, it should show the basic lines of the commitment guiding the strategy each Law Society is going to follow in order to implement it. This commitment must be consistent with the 3 pillars reflected in the UN Guiding Principles and should identify how, generally speaking, these are going to be responded to by its functions and services.

It should also include an explicit mention that this commitment will be materialized in specific actions listed in the Law Society's plan, whether an Action Plan specifically for Business and Human Rights, or as part of a more extensive operational plan. In addition, it would be recommendable to indicate that these actions will be evaluated.

It would be appropriate to identify the main functions responsible for fulfilment within the Law Society, including at least one member of the institution's governing body.

2.- Action Plan for implementing B&HR at Law Societies

Although this section reflects the Plan as a specific process relating to business and human rights, it could also form part of a wider planning process at the Law Society. In this sense, it is recommendable for the Law Society, in a first approach to the topic, to carry out a specific exercise to analyse the context and plan ahead for business and human rights, so that this can later be incorporated into the strategic and operational planning logic of the Law Society.



The goal of the Plan is to translate the commitment to protect, respect and remedy into specific action lines that adapt to the reality and circumstances of each Law Society.

Each Law Society should identify those points that arouse the greatest need, on the one hand, among its members and, on the other, within its scope of action or social setting. It should conduct the corresponding analyses with these in mind.

The Plan should respond to both the needs and interests detected in this area among members and also the priorities identified as being of general interest in connection with human rights. All this in accordance with the nature of each Law Society, and its ability to transform and influence.

Following the concept of severity outlined in the UN Guiding Principles, which prioritize the prevention and remediation of the most serious negative impacts on human rights, each Law Society will choose the most suitable criteria depending on their characteristics and setting, whether in the activities with its members or at social level.

The design of the Plan and the actions included requires a realistic alignment with the resources available. The priorities chosen by each Law Society should be related to the existing resources.

The Plan should set out clear, realistic goals whose fulfilment can be evaluated and associated to pre-existing deadlines.

The actions prioritized should focus on incorporating Business and Human Rights criteria into the services planned for members and also into other programmes implemented as part of the mission of each Law Society in its own social setting (services to citizens, support for NGOs, etc.). It may also consider the design and roll-out of new services or programmes to fulfil this undertaking.

Each Law Society's Plan should include, among others, the following contents:

- Specific goals.
- Calendar.
- Description of the actions to be implemented to achieve the public commitment.
- Indicators for monitoring and evaluation.
- Responsibilities for implementation and accountability.

It is recommended that the Law Society's governing body should assign responsibility for drawing up this Plan to a member of its senior management, with the task of leading a Working Group with representatives from the different management areas in the Law Society. This Working Group should carry out all the necessary work for performing the contextual analysis and drafting the proposed Action Plan, taking advantage of the contributions from the different stakeholders, especially its members. Specifically, it is recommended to carry out activities to collect information on their needs and expectations for the contextual analysis and also participation activities for the definition and prioritization of the actions in the Plan.

The Plan must be approved by the governing body of the Law Society and published prominently.



3.- Structure and operation of Law Societies

It is necessary for the highest levels in each Law Society to oversee the adequacy of the Law Society's operation and structure to the new goals in Business and Human Rights.

The policies, procedures and mechanisms approved by the Law Society must take account, as an overarching element, of respect for human rights and the remediation of negative impacts, with special attention to the business environment.

Each Law Society should include in its structure the new functions and responsibilities needed in the area of Business and Human Rights. For example, the Ethics Committee should assume among its functions the discussion and provision of solutions to the ethical dilemmas that may arise in the day-to-day practice of Business and Human Rights.

Furthermore, it is recommendable for the Law Society to set up an Advisory Team on Business and Human Rights comprising professionals with expertise in this area, so as to enable the Law Society to provide qualified consultancy services to its members. This team could be made up of internal personnel and also external collaborators, with the option of choosing between different degrees of co-ordination in their operation and of institutionality in their responses.

b. Services of Law Societies for their members

This section focuses on the actions and services Law Societies can offer their members to promote and facilitate their practice of the profession in the area of Business and Human Rights.

1.- Awareness-raising and Training

a) Awareness-raising and incentivization among the legal community

In the face of a topic that is still not generally well known in the legal profession, it is of great importance for the Law Society to establish itself as the focal point for the profession.

The Law Society must make an effort to ensure the general dissemination within the legal profession of the need to protect, respect and remedy human rights in all business activities. This is regardless of the prior level of knowledge among intended recipients. With this in mind, advantage should be taken of all spaces, events, courses and communications organized in order to convey the contents of the UN Guiding Principles.

Campaigns could also be carried out to tie in with symbolic dates related to human rights through different routes, methods and formats: face-to-face chats, text documents, videos, forums, discussions.

The Law Society could promote debates and dialogues on how to cope with the dilemmas arising in the practice of legal professionals working in the area of business and human rights in order to facilitate respect on the part of professionals and their clients. An example might be the problems related to a potential conflict between the principle of the prevalence of the



client's best interest¹⁸ as opposed to the lawyer's responsibility for advising clients to show effective respect for Human Rights in their operations and decisions.

Law Societies can also look for formulas to incentivize their members in the exercise of the protection of human rights in cases of breaches due to business activities. The fundamental incentive can be based on offering useful knowledge to develop the exercise of the legal profession more diligently.

Other instruments related to the public recognition by the Law Society can also be defined. These other incentives can be targeted at members characterized by completing a specialized training process at the Law Society, for their exercise of the profession, or for success in lawsuits, among others. Recognition instruments may include: accreditation of the specialization, inclusion on lists of qualified professionals for referral of clients requesting assistance from the Law Society, the award of prizes, or other methods that enhance the reputation of the practitioner in this field.

b) Qualification

The Law Society should include a strategic line aimed at encouraging the qualification of its members in the area of Business and Human Rights. This qualification should be aimed at facilitating the incorporation of a vision of Business and Human Rights in to their services, practices and lawsuits related to clients, as well as at providing instruments and criteria to enable them to achieve a diligent professional development.

This generation of abilities should facilitate the incorporation of useful criteria for the taking of decisions by professionals in the face of ethical dilemmas in the area of Business and Human Rights, as well as information about lawsuits, regulatory developments, initiatives and tools in this regard.

The design of this qualification should consider, in addition to the needs expressed by the members themselves, information about the risks and impacts on human rights of the most relevant business activities in the context where the law professionals are practising, as well as the regulatory trends and case law that might foreseeably affect them.

Although the training strategy may have a greater emphasis on different areas of legal practice (civil law, business law, criminal law, etc.), the approach to Business and Human Rights should cover all of them and, whenever appropriate, provide additional depth in those legal practices of greatest relevance for the Law Society.

The inclusion of Courses on Business and Human Rights in the Law Society's annual catalogue of training offers, as part of the education and training of its members, may pursue various goals:

- Creation of new abilities in connection with a novel subject matter,
- professional recycling and refreshing knowledge,
- in-depth study based on practical case studies (case law)

¹⁸ This expression should be understood to refer to the Anglo-Saxon term "*client's best interest*".



- provision of practical advice on how to deal with legal practice in the area of Human Rights related to clients' activities
- publication of the criteria issued by the Ethical Committee arising out of the cases analysed

To achieve these goals, the qualification could include contents dealing with:

- the international framework for Human Rights, including legislation, principles and rules applicable in the international, regional and national planes;
- the role played by the legal profession in the implementation of the principles behind Business and Human Rights;
- useful technical knowledge to advise clients about how to apply due diligence in human rights matters;
- information about incentives, opportunities and feasibility of lawyers integrating the principles of Business and Human Rights into their practice of the law - and the risks and lack of incentives when not doing so;
- practical advice dealing with the needs of internal and external lawyers;
- working on the dilemmas facing the profession through practical examples and cases related to human rights and companies on the basis of the Code of Conduct.

It is also recommended to evaluate the inclusion of the subject matter of Business and Human Rights as part of the Courses for Admission to the Profession, in so far as the Law Society is able to have an impact on course contents. Subject matter always has to be updated from time to time in order to respond to the main risks in Business and Human Rights that the Law Society faces all the time.

Law Societies can explore the possibility of establishing relationships with the different local, regional and national educational systems¹⁹ in order to support them with qualification resources wherever appropriate.

Moreover, the topic of Business and Human Rights can be included in the stable relationships Law Societies maintain with Universities in the area of extra-curricular training (events, clinics, specialist workshops) and in connection with the pre-existing schemes for internships for students.

2.- Deontological Support

1. Professional Codes of Conduct

It is recommended to conduct a review of the ethical codes of conduct to adapt them to the contents of the UN Guiding Principles. This requires a detailed study to assess to what extent the Ethical Code, Deontological Code or Code of Conduct for the profession responds to the contents of the three pillars of the UNGP: protect, respect and remedy. In many cases, these codes have a national scope so the role of the Law Societies must be to promote these changes at the pertinent institutions and then take part in the ensuing process.

¹⁹ This idea is developed more extensively in part 5.(d) Public Impact of Law Societies.



For any such review, it is important to count on the advice of professionals with experience and know-how in the area of Business and Human Rights, as well as the participation of the varying sensitivities within the profession.

In addition, any institutional document expanding on these Codes should be adapted for implementation in accordance with the UN Guiding Principles, offering guidance on dilemmas or tensions that may exist when applying them in practice.

2. Assistance in the face of ethical dilemmas

The Ethical Committee should strengthen its abilities in this area in order to be able to assume among its functions the discussion and provision of solutions to the ethical dilemmas that may arise in the day-to-day practice of Business and Human Rights. The Business and Human Rights Advisory Team²⁰ can support the Ethical Committee in both the strengthening of its abilities as well as practical advice on the subject of Business and Human Rights.

It is also recommended that the Ethical Committee should issue legal technical positionings on Business and Human Rights. Supplementarily, guidelines could be drawn up for inclusion of clarification on possible ethical dilemmas, as well as criteria for dealing with these within the legal profession.

A query consultation service could try to resolve the doubts raised by practising members in connection with the interpretation and application of the deontological regulations and transposition into the daily exercise of the profession.

Law Societies can establish an ethical guidance service for professionals, or include inside pre-existing services the ethical dilemmas arising in connection with Business and Human Rights. This would strive to respond to queries and provide technical guidance for the resolution of any tensions between the codes of conduct day-to-day legal practice. This function could be carried out by the Business and Human Rights Advisory Team.

²⁰ Please refer to the recommendation on the establishment of a Business and Human Rights Advisory Team contained herein in Section a) 3. Structure and Operation of Law Societies.



DILEMMA 1. Confidentiality in the relationship between lawyers and clients.

If we have regard for the different jurisdictional regulations, it is possible to appreciate different scopes when regulating the right and duty of professional secrecy existing in the lawyer-client relationship, especially if we compare jurisdictions of common law with those of civil law.

Although professional secrecy could be understood to be limited by the solicitor's duty to prevent certain crimes (such as might be the case in the right to life, physical wellbeing, health, freedom or sexual liberty), it could be wondered to what extent this characteristic of the relationship between lawyers and their clients could also be modified in other situations where the client is in breach of human rights. In some regulatory aspects related to the prosecution of crimes such as money-laundering or corruption, certain jurisdictions have a tendency to call this confidential relationship into question vis-à-vis the lawyer's obligation to report these crimes. This reveals the tension that might also arise between principles in the area of business and human rights, thus posing dilemmas that professionals have to resolve, and that Law Societies can therefore provide helpful criteria.

Similarly, the question of where the limits of the lawyer's liability lie could be asked in connection with the human rights behaviour of a client, bearing in mind that the relationship in question may be a long-standing relationship of trust where the client decides how much information should be shared with counsel.

3.- Offer of support and technical assistance for lawyers

In its goal of promoting the protection of human rights in the business context, Law Societies can consider different mechanisms. In this sense, there are different options when supporting the work that the lawyers in their association undertake for the protection of their clients' human rights, without the Law Society thereby being affected by any conflict of interest vis-à-vis other lawyers.

The nature of human rights and the identified need to reduce the existence of objective obstacles hindering their protection and remedy may constitute solid motives for the Bar Association to offer measures and tools tending to shrink that gap. Having regard for the circumstances and its competencies, each Law Society can design its own plan to support its members, which may be focussed on the mere provision of resources, regulations, the creation of spaces in which to share best practices and lessons learnt, or even reach the offering of technical assistance, either from the Law Society itself or else by facilitating access to such assistance externally.

1. Support of the Law Society to professional law firms or individual lawyers

One of the ways that Law Societies can develop to encourage respect for human rights in the professional activities of their members is through support for members, whether they are working individually, in professional law firms or as in house legal counsel. In order to make the support provided by the Law Society useful, the services and initiatives undertaken should adjust to each of these three types of practice. The execution and implementation of different initiatives will require, on the part of the Law Society, the availability and allocation of the necessary resources, whether these are financial or non-financial.



With respect to financial resources, when drawing up the annual budgets with which the Law Society operates, these should be assigned after taking into consideration, among other aspects, the adjustments made in the structure of the Law Society itself, as well as in its procedures, institutional plans or services included in its Annual Plan.

Likewise, it would be necessary for the Law Society to take into account the needs implicit in these adjustments in terms of non-financial resources, whether personnel or material, that will be of capital importance for the successful completion of the initiatives and measures such as those listed below implemented from the Law Society.

In order to achieve the goals suggested above, it would be appropriate to foresee and assign the resources necessary for the promotion of transfer of knowledge, skills or technical ability. In this sense, consideration should be given to this route as one of the practical options for promoting among its members the assumption of matters related to Business and Human Rights, an aspect mentioned by the team of the former UN Special Representative for Business and Human Rights, John Ruggie, as a priority judicial obstacle.

Another relevant way to support members is through the promotion of spaces for the interchange of information and technical knowledge. These spaces would be intended for the optimization of the efforts of those members who are familiar with the subject matter and can offer their colleagues an informed view. There is the option to structure these spaces in different ways, focussing on a more local perspective, or also taking advantage of external experts.

These spaces can be used as a platform for another of the goals that the Law Society may set itself: the promotion of the socialization of lawyers' best practices for Business and Human Rights. In this sense, it is worth exploring the options that exist for the creation of networks in which professionals can exchange information, for example on how they proceeded in paradigmatic cases relating to Business and Human Rights.

This socialization can be achieved in face-to-face meetings or online, through documents or events, and in structured groups on an occasional or stable basis. The building of trust in such cases is an excellent basis for a fruitful exchange of lessons learnt.

Both these spaces for the interchange of information and technical know-how as well as the initiatives for the socialization of best practices can be structured in order to serve different aims and, therefore, with different characteristics. These might include:

- Among members. The Law Society has the possibility of building bridges of this nature among its own departments or even among workers in different areas of legal practice. Similarly, in this same area, those lawyers or law firms starting out with the incorporation of the UN Guiding Principles on Business and Human Rights into their practice could benefit from the tips or advice of those who have been particularly successful in the exercise of these activities.
- With other Law Societies. A useful measure for each Law Society could be the encouragement or strengthening of the spaces for interchange that already exist with other domestic or international Law Societies to be able to share experiences, ideas and best practices when implementing their internal and external strategies on Business and Human Rights.



- Between “associations” of Law Societies. Through the different associations of Law Societies that exist, Law Society members can explore the possibility of sharing resources and driving spaces for the exchange of knowledge and best practices or even for developing and creating new resources in a co-ordinated fashion. These could entail various approaches, such as documents or groups of sectoral experts.
- With other social players. Similarly, the Law Societies can open up stable forms of collaboration for the exchange of know-how (reports, analyses, evaluations, etc.) with other institutions or organizations working on the subject of Business and Human Rights, even from other perspectives outside the Law. For example: with local, regional or national institutions of the State; with international organizations; or with civil society bodies.

In its support function, Law Societies can also be very useful to their members through the publication of practical guidance and explanatory documents. In this sense, any document drafted for the purpose should take into account and try to complement the documents published previously, and bearing in mind the obstacles they encountered²¹.

As another service offered to the legal community within their sphere of action, each Law Society can set up a Business and Human Rights Advisory Team (as mentioned above) with representatives from the various areas of legal practice and the diverse legal communities, with a view to resolving the queries of the Law Society’s professionals in their day-to-day practice.

Some contents that could be covered by this Business and Human Rights Advisory Team, or be included in the publications to be drafted and discussed in the spaces for information exchange and the interchange of experiences as mentioned above, might include the following:

- Types of potential legal and practical risks facing clients as a result of failing to comply with their corporate responsibility to respect Human Rights.
- Useful tools for the correct administration, management and drafting of policies for those lawyers wishing to include the Business and Human Rights perspective among their services (as specified in the scope of capacity training).
- Guidance that lawyers should take on board to comply correctly with the protection of their client’s best interest. This guidance will be particularly useful for lawyers in the case of a business client, and in those cases where the corporate responsibility to respect human rights exceeds hardlaw.

The aspects discussed below each affect certain types of legal practitioners, whether they are individual lawyers defending access to remedy for people who have suffered impacts on their human rights due to business activities, or lawyers working in law offices or as in house counsel and have to confront complex situations while maintaining a balance between seeking their client’s best interest and their responsibility to respect human rights, as well as assisting their clients to do the same in their business operations. Law Societies can offer different types of support for these situations.

²¹ Please refer to note 17.



a. Judicial obstacles

In view of their nature, Law Societies can play a decisive role when it comes to mitigating the judicial obstacles hindering the protection and remediation of human rights violations caused by business activities. Measures and initiatives such as those mentioned previously and based on the preparation and dissemination of knowledge and the interchange of information, are just some of those available and other options could be weighed up. Some judicial obstacles for which Law Societies could offer recommendations or technical assistance to their members could include the following:

- 1) Extra-territorial jurisdiction, *Forum Non Conveniens* and the judicialization of cases for human rights violations due to business activities in the country where the corporate headquarters is located and not the activity causing the violation²².
- 2) Criminal liability of bodies corporate in the civil and criminal courts. This aspect is discussed later in these Guidelines.
- 3) Time limits on the submission of claims. Although contained in Rome II Regulation 864/2007, these limitations nonetheless depend to a large extent on national law.
- 4) Immunities and legal thinking on the impossibility of bringing lawsuits. By way of example, consider the case of companies entering into contracts with States.
- 5) The burden of proof in human rights violations and the rules on the discovery and publication of information.
- 6) High costs of transnational litigation, including the difficulties that exist for people to benefit from the services of Legal Aid or the designation of an *ex officio* lawyer, the payment of provisions limiting access to justice for some claimants, the participation of third parties in lawsuits, or procedural and logistical obstacles, and the cost of class suits and collective remedies.
- 7) Difficulties in gaining access to the remedy through the structural web of the Corporate Group, as well as the principle of “limited liability” (also referred to as the “corporate veil”).
- 8) Obstacles in the enforcement of transnational judgments, mainly with regard to the effective access to the remedy.

One initiative that might help mitigate some of these obstacles would be to offer technical support to law offices or individual lawyers taking on cases involving people whose human rights have been violated due to business activities. Since the difficulty in finding qualified lawyers willing to take on such cases has already been identified, it might be possible to consider defining an action line on the part of the Law Society to provide technical and legal support in certain significant cases in the area of Business and Human Rights in order to limit the risks assumed by the professionals or the law firms, and to strengthen the litigation strategy. Some of the obstacles cited among the members of the legal profession when taking on cases are based on the following:

- High inherent risk in this kind of cases.
- High procedural costs and the uncertainty of collecting.
- Conflicts of interest. These include those lawyers who, as a consequence of assuming the legal representation of people whose human rights have been violated in the course of business activity, are pressured by their other corporate clients.

²²In this sense, attention should be given, among other rules, to the Rome II Regulation 864/2007 dated July 11th, 2007, of the European Parliament and of the Council on the law applicable to non-contractual obligations, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0040:0049:EN:PDF>



- Fear of losing future clients, mainly in connection with large business corporations.

Another initiative that could be brought into consideration would be the definition of a working line to strengthen access to Justice through a Legal Aid programme in the light of cases of human rights violations. These programmes would aim at strengthening the Legal Aid systems that already exist and would focus particularly on the area of Business and Human Rights, as this is an area that suffers from additional judicial obstacles.

Programmes of this type may be particularly indicated for those jurisdictions where the tools guaranteeing access to remedy and reparation suffer from low efficiency and appear to be especially weak in practice. This working line could focus on international co-operation projects and technical assistance to other Law Societies outside Europe, or support for lawyers defending Human Rights²³.

DILEMMA 2. The judicial obstacles present in access to Justice.

Given its serious impact on the protection and effective remedy of rights, the team of the former UN Special Representative for Business and Human Rights has published a series of reports aimed at underlining and analysing certain obstacles facing access to remedy in the courts of law. One of these in particular should be highlighted as it already pointed in 2010 to three main types of obstacles for guaranteeing access to remedy in the judicial arena²⁴: cost, the presentation of representative aggregated lawsuits, and the negative incentives for offering legal and other kinds of assistance to victims.

Other reports have gone more deeply into these matters²⁵, alerting to serious obstacles in access to remedy for people whose human rights have been impacted in the course of business activities²⁶. In 2016, no noteworthy improvements have been identified in this area, and this begs the question of what role Law Societies can play in order to reduce these obstacles and facilitate access to remedy when human rights have been violated by business activities. To this end, it might be possible to devise strategies and support programmes for lawyers defending Human Rights who have been threatened or criminalized, technical assistance for Law Societies in other jurisdictions in order to strengthen them in the area of Business and Human Rights cases and access to due process. In short, Law Societies could identify any action line considered to help break down the practical barriers facing the people and communities affected in real and effective access to remedy in the case of impacts on their Human Rights.

²³ European Union, *European Union Guidelines on Human Rights Defenders*. General Affairs Council held on December 8th, 2008, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:I33601&from=EN>

²⁴ Ruggie, John. *Business and Human Rights: Further steps toward the operationalization of the 'protect, respect and remedy' framework*. United Nations, A/HRC/14/27, Geneva, April 2010, paragraphs 109-113.

²⁵ Among others, this document is worthy of note: Taylor, Mark B; Thompson, Robert C; Ramasastry, A. *Overcoming Obstacles to Justice. Improving Access to Judicial Remedies for Business Involvement in Grave Human Rights Abuses*, FAFO Report 2010:21, 2010, p. 26, <http://www.shiftproject.org/publication/overcoming-obstacles-justice-improving-access-judicial-remedies-business-involvement-gra>

²⁶ A summary of the main judicial obstacles has been listed earlier in these Guidelines, in this same section on "a) Judicial obstacles".



b. Conflicts of interest

The support that Law Societies may decide to render to their members facing cases of human rights violations due to business activity could mean, depending on how they are approached, that there is a conflict of interest dilemma within the institution. This conflict of interest may lie mainly in the duty of fairly supporting all its members. Nonetheless, there are examples where the Law Societies adopt measures among their members to promote priority attention for certain areas over others (whenever they believe that, in view of the circumstances, this support is justified) or even encouraging or giving an award to the work of a group of their members based on their alignment with the principles guiding the mission of the Law Society in question, for instance.

Conflicts of interest in which a Law Society can offer support may arise for the Law Society itself as an institution or else for its members in their professional activity. One of these situations may appear when implementing measures for the promotion and strengthening of access to remedy. The mitigation of this kind of conflicts of interest by Law Societies could however be based on the application of international standards when adopting their position and therefore the services they offer. These standards are, in essence, UN Resolutions and the Recommendations and Resolutions of the EU and other international organizations, as well as the legal texts transposing those decisions into the national legal corpus.

As support for members facing the presentation of conflicts of interest when practising labour law, Law Societies could offer technical and material assistance. For example, with conflicts of interest entailing an obstacle to accept the defence of victims of human rights abuses, Law Societies could strengthen the lawyer's position through:

- The issuance of professional opinions or formal reports advising against the inclusion of contractual clauses limiting the exercise of the profession in defence of individuals and collectives whose Human Rights have been affected.
- The elimination of these clauses from the contract templates offered by the Law Society to its professionals.
- The subordination of these clauses to the presence of certain circumstances in the employment relationship established between the Company and the Lawyer, etc.

Measures of this kind undertaken by Law Societies can reinforce the solicitor's position vis-à-vis a given conflict of interest and offer arguments and technical guidelines to reduce the impact on their professional practice.

c. The role of the Law Society vis-à-vis judicial disputes with large companies.

In view of the special characteristics of the relationship between solicitors and corporate clients, it could be thought that Law Societies are in a suitable position to provide general guidelines on how to act, or tips and suggestions about how a lawyer can deal with the function of legal adviser (also referred to as "leverage", a concept developed later on) or as its representative in a court of law.

Focussing on the judicial arena, Law Societies have the possibility of making specific recommendations aimed at ensuring that the procedural strategy of solicitors defending large companies against claims from individuals always pursues the greatest benefit for their clients, but without undermining the basic rights of the other party.



This aspect belongs to the due diligence in human rights that must be exercised by lawyers in the performance of their activities. In this sense, it can be thought that it is possible for Law Societies to issue recommendations and indications aimed at showcasing the relevance lawyers have to give to non-legal aspects in their technical assistance to clients. These non-legal aspects constitute risks that, although not contrary to legality, may have negative effects on the client's activity: for example the contextual constraints, the political, social, environmental, cultural and other circumstances, etc.

Similarly, within the framework of their function for guiding the profession, Law Societies are able to develop mechanisms supporting those professionals receiving threats as a result of judicial conflict involving Business and Human Rights. This guidance, together with public communications expressing support, may help reduce practices such as these in the professional setting.

2. Instruments and plans for lawyers vis-à-vis their clients

a. Consultancy on risks in connection with human rights

In the light of UNGP nº 17²⁷ and as part of its objective to implement the UNGP, Law Societies could undertake specific measures and strategies to ensure law offices, individual lawyers, and their respective corporate clients assume the analysis of human rights risks in their corresponding activities as a basic part of the due diligence in the exercise of both the legal profession and their business activities.

In this line, Law Societies can consider offering indications and general or specific practical guidance in response to the needs each Law Society has identified as the most relevant for their context and activities. Specifically, consideration can be given to the specialized drafting of individual guides to deal with the legal and non-legal risks encountered in human rights depending on the business activity sector, prioritizing those implying a larger workload for their members.

Likewise, it is possible to promote risk-based methodologies and processes among Law Societies. When it comes to drafting methodologies for the identification and management of risks, a Law Society could consider applying a prioritization based on the severity of the negative consequences of the company's activities on Human Rights as set out in the UNGP²⁸. The severity of these consequences must be determined in the light of their scale, scope and irremediable nature.

²⁷ United Nations - Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework: "HUMAN RIGHTS DUE DILIGENCE. Principle 17: In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed". Please refer to Note 1.

²⁸ United Nations - Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework: Principle 14 of the UNGP states, in this sense, that "The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts." Please refer to Note 1.



Each Law Society should identify which departments are qualified to offer its members support in the area of human rights risks and whether or not it makes sense to develop a service aimed at fulfilling this goal. Thought should be given to whether the Ethics Committee and the possible Business and Human Rights Advisory Team might offer indications and technical tips in their corresponding areas, both in the more general plane of the Ethical Committee and in the more specific plane of the Advisory Team, if any.

Each Law Society should ponder on specific support for corporate lawyers (i.e. in house counsel) engaged in or overseeing claim mechanisms at operational level implemented by their business clients in order to ensure they conform to the provisions contained in UNGP nº 29. These business mechanisms offer a channel for claims from those who consider that they have been (or are going to be) negatively impacted by the company's operations but, at the same time, this information can be used by the company to identify its human rights risks and impacts so as remedy them accordingly.

Law Societies can also offer support for the configuration and monitoring of joint solutions on operational claim mechanisms so that these guarantee availability in practice, as reflected in UNGP nº 30. This assistance could offer support for the configuration and adaptation of Codes of Conduct, operational rules or national framework agreements between companies and trade unions.

b. Corporate litigation strategies

Through the various mechanisms of awareness-raising, qualification and provision of technical assistance described above, Law Societies will be able to offer their members tools and solutions so that they can incorporate into their litigation an overview of Business and Human Rights in line with the human rights due diligence expected of all lawyers.

At the same time, there is the possibility of drawing up a set of criteria to guide the trial strategy mainly aimed at alerting the parties to the limits lawyers' actions should not exceed in the defence of their clients, should this imply a direct or indirect impact on the exercise and enjoyment of the other party's rights.

Tools and criteria of this type could also be included in compilations, as general criteria for guidance, or in specific action areas. In this regard, it would be possible to propose an internal reflection at each Law Society about the possibility of prioritizing the compilation of criteria relating to lawsuits on specific rights of groups subject to particular vulnerability.

Bearing in mind the novel nature of the Business and Human Rights area and the scant dissemination to date of knowledge of it among the legal community, Law Societies could opt to offer special routes for support. For instance, they could create a space for direct practical queries, where they could offer solutions involving a variety of technical aspects while maintaining the necessary confidentiality. The Business and Human Rights Advisory Team mentioned earlier could be the body in charge of resolving these guidance issues in the area of litigation strategy, either at meetings of all its members or through individualized technical advice given by its technical specialists, or even through the co-ordination of some kind of external technical support.



DILEMMA 3. Legal relations between the parent company and its subsidiaries.

There is an ever growing trend towards the recognition of liability on the part of the parent company for the human rights impacts caused by one of the subsidiaries for which it is responsible. Various resolutions and international documents are pointing in this direction²⁹, particularly the Recommendation of the Council of Europe dated March, 2016³⁰.

The use of complex corporate structures that include multiple countries and partners between the parent company and the operational subsidiary that may be causing negative human rights impacts hinders the determination of liability in legal terms and in many cases real barriers to the effective access to remedy.

The concept of the parent company's control over the management of its subsidiaries, as a criterion for determining liability, is being shown to be insufficient for the effective fulfilment of the duty of reparation for affected parties by the companies causing the negative impacts. For this reason, the profession has the dilemma of how a fair and effective response can be given to this challenge related to access to justice and remedy.

3. Offering resources to members.

One of the ways that may be most useful for Law Societies to provide support to their members may be through the provision of documentation and technical information aimed at updating solicitors on the regulatory trends in the subject matter, information about best practices and lessons learnt, the dissemination of key cases handled by other colleagues, or the pros and cons of implementing certain instruments and approaches in cases involving Business and Human Rights.

In this setting, it may be particularly useful for members to have access to information about the progress and outcomes of the activities that the Law Society has begun or completed in the area of Business and Human Rights, whether this is part of its organic function (in a Law Society Plan for Business and Human Rights) or else carried out sporadically.

This information should include internal consistency to facilitate access and searching, and there is the possibility of it being included as a distinct section in the Transparency and Accountability systems in place at the Law Society in question. For example, if the Law Society has an online Transparency Portal with frequent updates, this could be an accessible information point for members. This would enable information to be offered in both an

²⁹ Gwynne Skinner, *Rethinking Limited Liability of Parent Corporations for their Subsidiaries' Extraterritorial Violations of Human Rights Law*, Columbia Law School, February 10th, 2016: "In order to ensure that victims of business-related human rights and gross environmental abuses in countries that host transnational business (host countries) are able to have the ability to seek and obtain a remedy for their harm, courts should ignore the separate legal personality of parent corporations operating in countries with weak or corrupt judicial systems where the victims cannot otherwise obtain a remedy against the subsidiary, allowing corporate parents to be held liable for such harm. In such situations, the corporate parents are the entities that can best, and normatively should, remedy the victims' harm, even if they do not "control" the subsidiary or are directly responsible for the harm." In <http://clsbluesky.law.columbia.edu/2016/02/10/rethinking-limited-liability-of-parent-corporations-for-their-subsidiaries-extraterritorial-violations-of-human-rights-law/>

³⁰ Council of Europe, *CM/Rec (2016)3*: "Member States should consider allowing their domestic courts to exercise jurisdiction over civil claims concerning business-related human rights abuses against subsidiaries, wherever they are based, of business enterprises domiciled within their jurisdiction if such claims are closely connected with civil claims against the latter enterprises." Please refer to Note 11.



internal and external dimension, with a different amount or type of information depending on whether it is targeted at members or society in general.

Should such a section be set up, a specific area devoted to Business and Human Rights contained on the Law Society's Web and frequently updated might also be useful, at the same time, as a source of social intelligence for all departments in the Law Society, in order to encourage the anticipation and early or preventive management of internal and external human rights risks.

In addition to information about the execution of Business and Human Rights activities by the Law Society, some of the Business and Human Rights contents that might appear in the Law Society's Information Portal could be:

- A database on international regulation of Business and Human Rights, particularly with regard to trends in the judicial resolutions of foreign and international courts.
- A documentation database at association level with a specific section on Business and Human Rights, including not only institutional sources but also those of a widely varied nature: institutional bodies, NGOs, academia and experts.
- A national database for the systematic presentation of best practices provided by the members themselves: lessons learnt throughout the process of prevention and remediation of human rights abuses in the corporate sphere.

If the Law Society does not have available the resources or willingness to implement an online Information Portal, another option might be the inclusion in the Law Society's Annual Report of a chapter on the actions undertaken in connection with Business and Human Rights. However, it is necessary to point out that this option does not enable any frequent updating of the contents, which would diminish its interest and usefulness in terms of a timely and speedy reaction to members' needs. Whichever method is used, it would be a good idea for this information to accompany the details on the system for interacting with stakeholders and accountability for the other activities the Law Society carried out.

a. Best practices with respect to leverage or influence over the client for respecting human rights

Law Societies could take on a relevant role when providing professional criteria to their members in order to give guidance on the lawyer-client relationship in the area of Business and Human Rights.

When offering suggestions for corporate lawyers (whether in house or external), they should target the strengthening of the lawyers' ability to provide legal counsel whenever they are advising their clients, and make available the key aspects regarding the responsibility for respecting human rights and remedying abuses in line with international standards.

These aspects may range from general issues on human rights due diligence all the way to the specific inclusion of human rights risks when identifying the legal risks that exist in connection with a particular commercial operation. Specifically, the support provided by Law Societies in this sense could focus on:

- Highlighting the need to offer clients wide-ranging advice that goes beyond the legal and economic risks and specifically includes human rights risks and how this advice represents added value for the client.



- Offering information about the experiences of colleagues with their clients, without providing information that might allow identification of the case or the client, so as to illustrate the negative impacts that have ensued from not having managed human rights risks diligently.
- Developing introductory material to be furnished by solicitors to their clients and highlighting the basic and specific human rights risks (by sector).
- How to offer their clients both general and specific qualifications in Business and Human Rights.
- Routes for co-ordination of different lawyers / law firms in the provision of advice and services on Business and Human Rights to their clients within their various *pro bono* formats.
- Fostering the organization of events and forums that lawyers can recommend their clients to attend in order to understand the basic aspects of due diligence and the risks that are present in the sphere of human rights.

There are various ways for the Law Societies to deliver this information to their members, such as, for example, through:

- The production of practical guidelines with specialized chapters by legal practice area to explain which criteria need to be taken into account when applying suitable human rights leverage vis-à-vis their clients.
- Issuance of institutional positions and clarifications (“concept notes”) about the work of lawyers when advising and recommending that their clients respect human rights.
- Support with general ethical dilemmas through the Ethical Committee of the Law Society and in connection with problems and occasional practical issues through the Business and Human Rights Advisory Team.

DILEMMA 4. Criminal liability of bodies corporate.

A trend has been seen in legal circles to transfer the criminal liability of an individual working for a company to the body corporate represented. An example of this is the Council of Europe Recommendation³¹ urging Member States to apply suitable measures, whether legislative or otherwise, to ensure that companies can be held civilly and criminally liable for the violation of human rights that they commit.

At the same time, it requests Member States to adopt measures to ensure the representatives of companies can be held liable for criminal liability in cases of crimes and serious violations of human rights recognized in Treaties and other international standards.

In the same line, advances have been identified in the civil and criminal liability of companies at national level, too, such as, for instance, the Circular issued by the Office of the Public Prosecutor in Spain³², instructing public prosecutors to evaluate the effectiveness of criminal liability of the body corporate in connection with the compliance plans in place at companies as part of the fight to combat corporate crime. The legal instruments developed to combat corruption, for instance,

³¹ Please refer to Note 13.

³² Office of the General State Prosecutor, *Circular 1/2016 on criminal liability of bodies corporate pursuant to the amendment of the Criminal Code effected by Fundamental Law 1/2015*, dated January 22nd, 2016. https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/CIRCULAR%201-2016%20-%20PERSONAS%20JUR%C3%8DDICAS.pdf?idFile=cc42d8fd-09e1-4f5b-b38a-447f4f63a041



have included the need for criminal liability applicable to companies, in addition to the liability pertaining to the persons responsible for the circumstance or crime.

In this sense, Law Societies can propose initiatives aimed at informing their members of the progress made in these areas and offering resources for them to take into account in their activities when advising and representing their clients.

DILEMMA 5. Extra-territorial liability.

The globalization of social and economic relationships has brought to light the need for accountability in the international arena. Hence the search for an international judicial system suitable for the prosecution of bodies corporate. Nonetheless, the prosecution of crimes in the international sphere entails a special difficulty that mainly has to do with the personal identification of the perpetrators and their related bodies corporate, as the latter's offences arise in a jurisdiction different from that of the original crime.

In this sense, in addition to the prosecution by domestic courts of crimes committed by foreign companies, the proliferation of judicial measures has led to multiple debates, including one about the creation of an international judicial body to hear these crimes.

On occasions, the determination of liability is hindered by the differences in regulatory standards found by companies in the countries where they are operating in comparison with those of the countries where they have their central headquarters. In this sense, the role of Law Societies in the dissemination of international human rights standards is of fundamental importance to ensure access to remedy consistent with the vision of extra-territoriality recognized in the Guiding Principles.

b. “Reasonable assumptions” when clients do not allow a wide-ranging analysis of their human rights risks.

Although legal professionals are bound by the client's best interest, this must not be understood as meaning they have no responsibility to respect human rights in the exercise of their legal assistance to clients. For this reason, the provision of services by legal professionals must ensure, as part of their due diligence, the compatibility of both principles: the client's best interest and respect for human rights.

As part of the normal relationship of trust between clients and their legal advisers, clients have to furnish their lawyers with the necessary information for them to be able to analyse and evaluate the same, and offer clients advice on the best ways to respect human rights in their activities and decisions, avoiding the associated risks if not properly carried out.

There is the possibility that, at the express will of the client and for a variety of reasons, lawyers may not have first-hand access to information. This decision may imply that counsel is unable to perform tasks adequately taking into account all the risks and impacts associated with due diligence regarding human rights. This situation may arise either because the clients do not convey all the relevant information regarding the risks to their lawyers, or else because



they do not give the lawyers time enough to complete their work, which may mean the impossibility of dealing with all the documentation provided or not being able to interview the stakeholders or inspect the terrain, where such actions are necessary for a proper understanding of the risks and, therefore, the provision of accurate advice.

For those specific cases where clients do not allow lawyers to carry out their legal advisory tasks with a wide-ranging approach, it is appropriate for the Law Societies to help their members understand that there are other routes available to take the UNGP into account and still meet the demands of their clients at the same time.

In such cases, the Law Societies themselves can offer basic indications or documentary resources so that their members can use these as a basis to inform their consultancy decisions. Since these decisions, in line with the exercise of professional due diligence, must be based on a prior analysis of the risks and impacts affecting the purpose of the consultancy, whenever lawyers have no access to key information, they should effect “reasonable assumptions”³³ regarding the human rights risks and impacts affecting the clients’ activity. To this end, they can make use of pre-existing information published by institutions or organizations that are familiar with the client’s reality, on the one hand, and work with a human rights perspective, on the other.

Law Societies could therefore provide access to both information and experts in the field. For instance, they could compile information of this type and make it available to the lawyers in this situation, by taking advantage, for example, of documents from external sources, whether official or from the civil society, and both domestic and international.

At the same time, the Law Society can provide the contact details of experts in the client’s business sector so that lawyers needing to research the risks and impacts can obtain relevant information through meetings with these experts or other stakeholders.

c. The role of the Law Societies vis-à-vis the public authorities – influence on the legislative and executive realms of the UNGP.

1. Influence on domestic and international regulations

International.

Law Societies can exert an influence through the institutional paths they consider most suitable for including relevant aspects in international agreements through pre-existing platforms, such as the “associations” of Law Societies.

The legal profession could play an active role in the development of regulations regarding the Guiding Principles for Business and Human Rights within the United Nations itself or at other

³³ The concept of “reasonable assumptions” is discussed by the International Bar Association in *Business and Human Rights Guidance For Bar Associations - 2014 Working Draft Version – For Consultation and Piloting*, https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewicw8D2u6rMAhUKIR4KHcdtDAQFgggMAA&url=http%3A%2F%2Fbusiness-humanrights.org%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2FBUSINESS%2520AND%2520HUMAN%2520RIGHTS%2520GUIDANCE%2520FOR%2520BAR%2520ASSOCIATIONS.docx&usg=AFQjCNEV4Lsz9Hqv3rf15M1P44I00cKJsQ&sig2=hP_NNPI-NaTzbUyfpBbVgg&cad=rja



fora organized by international bodies. Specifically, it could play a role by supporting the development and drafting of documents interpreting the said Principles from a legal perspective.

Both the Law Societies and their associations in Europe could take on a relevant role in the production of tools for the implementation of the UNGP. Specifically, they could take part in the drafting and boost the roll-out of all Resolutions or Recommendations on Business and Human Rights stemming from the European Union and the Council of Europe³⁴. Section 3 of these Guidelines cites the most relevant initiatives regarding Business and Human Rights currently under way at European level (EU and Council of Europe) as of the date of writing.

In the international legal arena, Law Societies in Europe could also monitor the Business and Human Rights cases pursued at the European Courts and, specifically, at the European Court of Human Rights. Similarly, they can carry out the role of observers in the enforcement of European judgments on Business and Human Rights.

Domestic.

As part of the States' task to implement their duty to protect and their responsibility to respect and, above all, to guarantee access to effective remedy, Law Societies could play an active role as a social player, and provide technical support whenever appropriate.

Law Societies should have a significant part to play in encouraging the approval of a National Action Plan for Business and Human Rights reflecting the basic contents of the UNGP.

Through appropriate mechanisms, Law Societies could offer the State institutions their own annual analysis about how the State is implementing the contents of the UN Guiding Principles and, specifically, with regard to the National Action Plan for Business and Human Rights in those countries where this already exists.

As part of the fruits of the work carried out by their members, Law Societies should provide relevant information and take part in the preparation of the national reports regarding human rights (and include a special mention of the situation observed vis-à-vis Business and Human Rights).

Law Societies can exert an influence through the institutional routes they consider most suitable for the inclusion of relevant aspects into current legislation. For example:

- Participation in the public consultation phases of legislation relating to Business and Human Rights and, in particular, that relating to the approval and implementation of the National Action Plan for Business and Human Rights.
- Production of public documents reflecting on the risks facing the legal profession in connection with the general and specific issues of Business and Human Rights.
- Declare the need for the State to take into consideration the recommendations of the competent international bodies on the monitoring of the implementation of the UNGP in the country.

³⁴ Specifically, it would be necessary to pay special attention to the implementation of the Recommendation of the Committee of Ministers of the Council of Europe (CM/Rec (2016)3), which is to be applied over the next 5 years. Please refer to Note 13.



- Bilateral meetings with the relevant local, regional and national public institutions for the implementation of national legislation affecting Business and Human Rights.
- Explore the establishment of associations or working alliances with other stakeholders for the promotion of best practices in the area of Business and Human Rights.
- Participation in multi-play for a debating novel trends in the application of the UNGP.

Law Societies can play a relevant role when offering the State technical support for the implementation of certain measures. Some ideas are listed below by way of example:

- Support for the reform of legal systems:
 - Inclusion and implementation of international standards for Business and Human Rights (mainly the UNGP and National Action Plans).
 - Analysis of the consistency of the State's policies regarding Business and Human Rights, especially regulatory coherence (UNGP nº 9).
 - Highlight the need to ensure the existence of lawsuits, class actions and collective remedies, but maintaining both the existence of *Opt-outclassactions* and aggregation mechanisms.
 - Collaboration in the design and roll-out of mechanisms for the prevention of political and judicial corruption.
 - Introduction of improvements in the processes for collecting evidence, especially in the sphere of extra-territorial jurisdiction.
- Modification of the rules of civil procedure, for example:
 - better accessibility for the claimant.
 - Adaptation of economic penalties imposed for human rights violations to amounts with a truly deterrent effect.
 - penalties imposed for human rights violations should include a fine for any legal failure to comply plus an amount as compensation for the persons affected.
- Support for training and guarantee of technical capacity at the Courts and Offices of the Public Prosecutor in the area of Business and Human Rights.
- Boosting of the guarantees relating to judicial and non-judicial remedies for those whose human rights have been violated as a result of business activities. Examples:
 - Strengthening of the free Legal Aid and revision of the criteria entitling people to access it to facilitate extensive eligibility for those affected.³⁵
 - Strengthening of the guarantees in proceedings for the enforcement of judgments, both for the effective payment of fines and compensation, as well as the implementation of other non-economic provisions contained in judgments. All of the above is particularly relevant when multiple jurisdictions are involved.
- Technical support for the State in domestic and international judicial co-operation pertaining to the guarantee of access to remedy, especially in the field of Business and Human Rights.

³⁵ In this sense, it is necessary to recall the possibility of offering Legal Defence Insurance, an option pondered in the United Kingdom. In this sense, please refer to Taylor, Thompson and Ramasastry (please refer to Note 25). Also considered in Zerk, J, *Corporate liability for gross human rights abuses - Towards a fairer and more effective system of domestic law remedies*, <http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticLawRemedies.pdf>



- Support the State in its function of conveying to all the companies domiciled within its jurisdiction the expectation of fulfilment of the UNGP in all the countries where they operate.
- Support the State in fostering the fulfilment of the UNGP by third-party States, especially those with which it maintains economic relations because the operations carried out by the companies domiciled within its jurisdictional so extend to those third-party States.

2. Definition of due diligence processes

Law Societies are recommended to promote the performance by State institutions of their own human rights due diligence processes and the promotion, in their turn, of their adoption by the companies domiciled in their countries.

From their practical experience, Law Societies can offer general indications to the State institutions about how to carry out the due diligence in the area of Business and Human Rights, pursuant to the provisions contained in UNGP nº 17-21.

In the legal area, Law Societies could offer specific Guidelines for each area of legal practice, so as to provide their perspective about which aspects are fundamental when performing a proper Due Diligence. Law Societies can provide these documents to the Administrations so that the State has the elements it needs to perform its corresponding duty to protect human rights, and also to help companies in their responsibility to respect human rights in their business activities.

Law Societies can play a relevant role when furnishing documents and guidance for State institutions, without any aspiration to them becoming obligatory (non-compulsory), as they can focus their efforts on the assumption and implementation at national level of international standards for Business and Human Rights.

They could also support the State in collating the information needed for the State to carry out evaluation and monitoring tasks in the implementation of the UNGP and, where appropriate, the National Action Plan.

Furthermore, they can promote or conduct the compilation and interpretation of court judgments related to the actions of companies with due diligence in the area of human rights.

3. Mechanisms for judicial and non-judicial remedies.

As for the general scope of the duty to protect and the responsibility to respect, Law Societies should adopt a relevant role in the promotion of citizens' access to remedies. According to UNGP nº 25, this task can be carried out in the judicial and also in the non-judicial area. Some examples are:

- Judicial remedies: In accordance with the provisions contained in UNGP nº 26, Law Societies could exert an influence on the institutions of the legislative and judicial powers to improve the mechanisms for remediation provided by the Justice system for human rights violations in the course of business activities, in line with the information



given above in the section entitled “Influence on domestic and international regulations.”

- Non-judicial remedies: in line with the contents of UNGP nº 28
 - Law Societies should promote the use of mediation and arbitration within the scope of Business and Human Rights, taking advantage of the structures already established for this purpose in each Law Society.
 - They can weigh up the design, alone or together with other institutions or Law Societies, of an Arbitration Mechanism for human rights in commercial contracts.

DILEMMA 6. Is Mediation a solution?

Within the realm of human rights violations, some people may be surprised by the promotion of the use of non-judicial conflict resolution mechanisms. It must be understood that the UNGP positions the use of non-judicial mechanisms as a supplement to complete judicial ones. Therefore, people affected must always have the possibility of resorting to the courts if their human rights have been violated.

On the one hand, mediation processes can imply, if the correct conditions are in place, the building of a relationship between the players who are going to continue working together in future and it may therefore be beneficial for the prevention of future negative impacts. There are reasons for believing that the Law Societies could consider performing this function as the General Statute of Spanish Solicitors can include this function as inherent to national Law Societies³⁶.

But we must never consider non-judicial remediation mechanisms as turning into mere negotiations for monetary compensation but rather they must have a restorative effect according to the principles of access to reparation from a Human Rights perspective.

On the other hand, it begs the question: to what extent are the parties accessing these mechanisms on an equal footing? What guarantees of compliance is given to the parties in the agreements reached? Do they not imply another obstacle for access to justice if, in the course of the process, the parties have waived the right to a judicial settlement or the process goes on excessively without any satisfactory agreement for the parties?

4. Inclusion of B&HR in the national education systems.

Law Societies could take on the task of awareness-raising in order to ensure the inclusion of Business and Human Rights contents in the national public and private education system, in both secondary and higher education, with the corresponding depth.

³⁶ This is so reflected in art. 67 m) of the General Statute of Spanish Solicitors, which defines the functions of Spanish Law Societies by including: “The exercise of arbitration functions on matters submitted to them, as well as the promotion of or participation in arbitration or mediation institutions”. General Statute of Spanish Solicitors dated June 12th, 2013, <http://www.abogacia.es/wp-content/uploads/2012/06/Estatuto-General-de-la-Abogacia-Espanola4.pdf>



Depending on the educational structure in each State, Law Societies should exert their influence on the corresponding authorities so that the educational programmes take into account the importance of the UN General Principles in the various stages of legal education, including:

- Secondary education;
- law schools and universities;
- programmes for newly qualified lawyers
- continuous professional development; and
- programmes for high-ranking professionals.

Specifically, with regard to university-level training, Law Societies could:

- Urge law schools and/or universities to include the contents of the UNGP as an overarching subject matter.
- Urge law schools and/or universities to incorporate programmes about Business and Human Rights in their syllabuses.
- Organize their own seminars for Law students or promote such courses jointly with educational institutions.
- Furthermore, apart from Law Schools, Law Societies should also approach other faculties such as Humanities, Business Administration, Accounting and Engineering, as the professionals being trained there will also be able to take up careers where the subject of Business and Human Rights will be relevant.

d. Services of Law Societies for the Citizenry

In addition to the services Law Societies can provide for their members and the influence they might exert vis-à-vis public authorities, Law Societies can also promote the implementation of the UNGP in their relations with the citizenry, especially among people whose human rights have been affected by business activities.

In this sense, they could offer technical support to citizens whose human rights have been violated by providing them with information and resources for their defence, whether in a court of law or elsewhere.

They could also promote the orientation of their members' *pro bono* activities towards the Business and Human Rights area. To this end, it is proposed:

- To issue criteria seeking the strategic co-ordination of *pro bono* work carried out by the legal community in their geographic territory.
- These criteria will respond to those established in the Implementation Plan drawn up by each Law Society and will be provided to both the law offices and also individual lawyers so that they can be taken into account in their private *pro bono* programmes.
- Each Law Society will be able to provide its own legal professionals for the implementation of this litigation strategy.
- Consideration could be given to the possibility of agreements with the State for the financial support of the Law Society's contributions to the defence of human rights on an equal footing, thus guaranteeing the right of access to Justice.