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To the International Bar Association:

We write to offer our comments to the International Bar Association (IBA)'s working draft, "[Business and Human Rights Guidance for Bar Associations](#)." We wholeheartedly welcome the International Bar Association's very timely attention to these issues and recognize the important role lawyers and bar associations play in advancing respect for human rights in business.

However, we are concerned that the IBA's draft guidance devotes too much attention to a due diligence exercise focused of internal company processes and insufficient attention to substantive industry standards that are essential to measuring human rights outcomes. In our view, this is insufficient. On a range of issues that are essential to businesses, lawyers have played an essential role in establishing appropriate standards, from compliance with anti-corruption laws, to environmental safeguards to financial regulatory and reporting. In much the same way, lawyers affiliated with the IBA are ideally suited to counsel the companies they represent on how to develop and apply industry-specific substantive standards and metrics relating to human rights. This is the key contemporary challenge with respect to business and human rights, and the IBA needs to play a leadership role in addressing this challenge.

By way of background, the [NYU Stern Center for Business and Human Rights](#) at New York University is the first human rights center at a business school. We co-founded the Center in 2013 with a mission to challenge and empower companies and future business leaders to make practical progress on human rights. We advocate for the adoption and implementation of human rights standards across business sectors as the most effective way to advance respect for human rights in business operations and the essential next step in the evolution of this field.

The importance that businesses attach to these issues was underscored by the Economist Intelligence Unit's recent survey of leading global businesses, "[The road from principles to practice: Today's challenges for business in respecting human rights](#)." The survey finds that

“companies overwhelmingly perceive a responsibility to respect human rights,” with 83% of respondents saying that business, as distinct from governments, is an important player in respecting human rights.

The survey echoes the working draft’s assertion that “a strong business case exists for respecting human rights and that the management of legal risks increasingly means that business lawyers need to take human rights into account in their advice and services.”

Reflecting the priority that business leaders now place on human rights, the IBA’s working draft contains a number of valuable elements, including:

- encouraging individual bar associations to establish and support appropriate structures for developing human rights and business capacities within each association;
- highlighting the need for more training and education for lawyers on business and human rights; and
- stressing the role lawyers can play in helping companies understand what is required of them and what are the best practices among companies in each industry.

Yet the central focus of the Working Draft is the UN Guiding Principles for Business and Human Rights. It proposes the Guiding Principles as the primary substantive tool for lawyers to advise their clients on how best to address human rights challenges in their business operations. We support the Guiding Principles which offer a broad and useful starting place for consideration of these issues. They have helpfully juxtaposed the respective role of governments and of private companies, and rightly assert that states have the primary duty to respect human rights.

But as Professor John Ruggie, the author of the Guiding Principles, has made clear, the adoption of these principles is “the end of the beginning” of the effort to develop the field of business and human rights. The next phase of the effort is companies’ adoption and implementation of industry-specific human rights standards and metrics. The working draft fails to contemplate, much less advance, this essential next step. It does not offer the tools lawyers and bar associations need to advise clients on the practical measures they should be taking to address the substantive human rights challenges facing each industry.

Consider the following examples of specific business and human rights challenges that affect companies across different business sectors:

- Faced with serious factory safety and other workplace issues, global brands and retailers need counsel on the appropriate standards they need to apply with respect the rights of workers throughout their manufacturing supply chains. In the event of a deadly factory fire, it will not suffice for a company to say that it was exercising due

diligence pursuant to the Guiding Principles. Consumers and the media will focus on the outcome – that workers died in the production of the product bearing the company’s brand name. Companies need guidance as they work with their suppliers and their competitors to develop and implement industry-wide standards that make the manufacturing sector safer and more transparent.

- Customers of Internet service providers and telecommunications companies are demanding greater insight into these companies’ relationships with governments and other companies that buy and sell private consumer data. They are seeking assurances from the entire industry that there are no backdoors open to the NSA in the United States, or to government security services in places like China or Russia, and that their personal information will be protected in accordance with harmonized industry standards.
- In the food and beverage industry, consumers increasingly are seeking to compare companies on the basis of their human rights and environmental performance. Consumers want a comprehensive measuring stick for issues such as child and forced labor on family farms, the rights of migrant workers, or property rights for agricultural land.
- Mining companies operating in conflict zones in Africa, Latin America or Asia often face violent confrontations in some places where their mining operations are taking place. Issues of security, indigenous rights, and land use pose serious challenges to companies operating in these difficult environments. Essential to a lawyers’ role in advising clients in the mining sector is that there are common industry standards and key performance indicators relating to these human rights challenges.
- Along parallel lines, lawyers for a large number of global companies are being asked to devote increased attention to a range of environmental risks, particularly when local governments are failing to develop and apply essential standards. Lawyers have helped to shape international environmental standards, such as the Equator Principles and similar standards that have been established by export credit agencies. Using these substantive standards, a number of companies have drawn up environmental and social risk management plans. Absent these substantive standards and key indicators and metrics, they would have no clear way to measure their company’s performance.

In each of these cases, individual assurances from some companies that they are applying internal due diligence processes simply don’t go far enough. The test for companies today is whether they are abiding by concrete standards for the specific human rights or environmental issues in their respective industries. Companies also need to measure their performance against their competitors through metrics or key performance indicators so that consumers, investors, and other key constituencies can assess meaningful differences among

companies and reward those that demonstrate the greatest respect for human rights or the environment. Business leaders often make reference to the “race to the top”. This is what a race to the top will look like in the human rights and environmental fields.

The development of these types of substantive standards and corresponding benchmarks is what lawyers do and do well. For lawyers involved in regulatory work, this is the bread and butter of a successful practice. Whether addressing challenges relating to foreign corrupt practices, compliance with clean air or clean water environmental standards, or adherence to reporting requirements to securities regulators, lawyers are experts in developing and interpreting compliance mechanisms linked to standards. For companies that seek to make compliance with human rights a comparable operational priority, a similar standards-based approach is essential.

In a growing number of industries, important initiatives are now emerging that aim to set, implement, and measure industry-specific human rights standards. The IBA should encourage local bar associations to be part of these evolving efforts. Examples include:

- Fair Labor Association – addresses working conditions in the manufacturing supply chain for apparel, footwear, and now electronics and agriculture;
- Global Network Initiative – addresses privacy and free expression in the information and communication technology sector;
- Voluntary Principles on Security and Human Rights – addresses human security in the extractive industries; and
- the recently established International Code of Conduct Association – addresses human security in the private security industry.
- Using a country specific model and focused on the issue of factory safety, two separate initiatives – the Accord on Fire and Building Safety and the Alliance on Bangladesh Worker Safety – have set common standards for fire and building safety in Bangladesh that have been adopted by more than 200 global companies.

People can and will debate the strengths and weaknesses of each of these initiatives. But what is important about them is that companies in specific industries are participating in collective efforts to develop and implement substantive human rights standards tailored to their own industries. As they work to implement these substantive standards, companies and external stakeholders also are developing common metrics – benchmarks or key performance indicators – to help evaluate adherence to the standards.


We strongly urge the IBA to revisit the substantive portions of your working draft to explore how the IBA can help advance this standards-based approach to human rights as an essential element of your guidance for bar associations and lawyers. To be sure, development of these

standards and metrics is difficult. But in the major industries that have already undertaken such efforts, companies that are commercial competitors, along with their external stakeholders, are building models based on clear standards that hold real promise in successfully tackling business and human rights challenges.

Reporting against common standards in each industry is beginning to give consumers, investors, and regulators the information they need to evaluate and compare the human rights performance of companies operating in the same sector. More importantly, it gives companies in each industry a common benchmark and encourages them to pursue and achieve concrete progress in addressing the most important human rights challenges they face. As these standards are developed and implemented, there will be significant opportunities to help develop reporting procedures. The IBAs involvement in these efforts would be extremely beneficial.

We are eager to work with those involved in developing the working paper to incorporate a standards-based component into the final version of the guidance. We welcome the IBA's engagement in this important area and stand ready to work with you.

Sincerely,



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Co-director and Professor



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CC: David Rivkin