

THE MARKET VERSUS HUMAN RIGHTS

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INTRODUCTION

- ▶ Market versus human rights
- ▶ Relationship between the market and the rule of law.
- ▶ Conditions for a sustainable legal system
- ▶ Our role as lawyers

THE MARKET & THE RULE OF LAW

- ▶ Respect for the rule of law and its principles is of the utmost importance to our role as lawyers. It is vital also for the functioning of the market, which like all human activities need rules.
- ▶ Society must safeguard the independence of the judiciary and the legal profession. This is a fundamental requirement for establishing a reliable and credible judicial system with the necessary legitimacy for its effective operation .
- ▶ What is it that makes our societies safe, secure and stable? Alongside the rule of law are there other components which ensure justice, respect for every human being and the protection of human rights?

PRESENTATION IN TWO PARTS

- ▶ Part One will be an exposition of the fundamental need for stability to create the necessary conditions for the **protection of human rights in a market economy.**
- ▶ Part Two will discuss our role as lawyers in finding a sustainable legal system and in particular implementing the guiding principles of the United Nations in relation to business and human rights.

Part One: The Market versus human rights.

- ▶ How do we create the necessary conditions for the protection of human rights in a market economy?
- ▶ In order to protect human rights our basic building block must be the rule of law.
- ▶ Do we have a common definition of the rule of law?
- ▶ A good point is to look at the definition of the rule of law as described by the United Nations.

UNITED NATIONS DEFINITION OF THE RULE OF LAW

“A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”

(UN, [S/2004/616](#), para. 6).

MARKETS & REGULATION, RULES & THE COURTS

- ▶ Infringement of statute, breach of contracts, acts of negligence, damage or injury to individuals or property justiciable in the courts.
- ▶ Legal & judicial systems must be independent, fair and above corruption
- ▶ Lawyers are well placed to assist in the building of stable economies, by providing their services for corporations and for individuals.
- ▶ Lawyers' roles in the drafting and negotiation of contracts, of ensuring that legal title to property is transferred according to the law, and in the legal relations between family members are all important components of the social relations enjoyed in 21st Century democracies.

RESPECT FOR LEGAL AND JUDICIAL SYSTEMS

- ▶ An effective legal & judicial system is at heart of a country governed by the rule of law.
- ▶ In order to uphold the rule of law the legal & judicial professions must be respected and their independence must be guaranteed both by the political system and by the citizens.
- ▶ When there is a breakdown in the rule of law it is usually found where the framework of government is outdated, and the legal and judicial system is ineffective.
- ▶ Often government institutions are not held to account, and there are increasing attacks upon the judiciary, the legal profession and human rights defenders.

UN ECONOMIC & SOCIAL COUNCIL

- ▶ The Economic and Social Council (ECOSOC) established by UN Charter in 1946 as the principal organ, under the authority of the General Assembly, to promote:
- ▶ Higher standards of living, full employment, and conditions of economic and social progress and development;
- ▶ Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- ▶ Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
- ▶ The key element of ECOSOC is the development of stable economies, which bring benefits to all members of society and from which no member is excluded.

LAWYERS AT RISK WHILE UPHOLDING HUMAN RIGHTS

- ▶ Lawyers are the bridge between their clients and the justice system. Lawyers are the link that makes democratic society function.
- ▶ Access to justice for all citizens to hold governments and other actors to account depends on the independence of the legal profession.
- ▶ Where lawyers are unable to carry out their legitimate professional duties for fear of arrest, detention or intimidation, they cannot effectively represent people facing politically motivated criminal proceedings or help them pursue domestic and international remedies for the violation of their human rights.
- ▶ Some lawyers and judges carry out their professional duties at the expense of their personal safety, following death threats, attacks and the risk of assassination.

PART TWO:

Business & Human Rights UN Guiding Principles.

- ▶ June 2011, UN Human Rights Council endorsed Guiding Principles on Business and Human Rights: implementing the United Nations “protect, respect and remedy” framework (UNGP), by John Ruggie, the UN Secretary General’s Special Representative for Business and Human Rights.
- ▶ National Action Plans on the UNGPs, and the legal profession has participated in the implementation of National Action Plans in their own jurisdictions. The Law Society of England & Wales have been working on the UNGPs for the legal profession for the last 3 years, and developing specific guidance for different sectors of the legal profession.

COUNCIL OF EUROPE

- ▶ In 2015 the Council of Europe's recommendation on business and human rights Recommendation CM/Rec(2016)3
- ▶ "Member states should effectively implement the UN Guiding Principles on Business and Human Rights as the current globally agreed baseline in the field of business and human rights"
- ▶ Other international guidelines which give advice to businesses on the same topic:
 - ▶ United Nations Global Compact ;
 - ▶ Organisation for Economic Cooperation & Development (OECD) Guidelines for Multinational Enterprises (including OECD sector-specific guidelines);
 - ▶ International Organisation for Standardisation (ISO) 26000 Guidance on Social Responsibility;
 - ▶ Other sectoral guideline: Thun Group for banks, the Equator Principles for financial institutions, & the International Finance Corporation's Performance Standards.

RESPONSE OF THE LEGAL PROFESSION

- ▶ The Law Society of England & Wales: raising awareness of UNGPs & ethical business practices lead to improving the respect & protection of human rights by business enterprises,
- ▶ Also ensures that lawyers advise their corporate clients to act according to international human rights standards. As a result, the rule of law would be strengthened, & human rights better protected, both domestically & internationally.
- ▶ The Federation of European Bars (FBE) has adopted a set of guidelines on the UNGPs with the help of Sustentia, the Madrid Bar, and the Human Rights & Freedom Commission of the FBE.
- ▶ The guidelines are flexible & aim to assist local bar associations & law societies in training their members for implementation of the guidelines.

The United Nations Sustainable Development Goals and the rule of law

Goal 16: Peace, Justice & Strong Institutions - *“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.*

- ▶ **Target 16.3:** Promote the rule of law at the national & international levels & ensure equal access to justice for all
- ▶ **Target 16.5:** Substantially reduce corruption and bribery in all their forms
- ▶ **Target 16.6:** Develop effective, accountable and transparent institutions at all levels
- ▶ **Target 16.10:** Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
- ▶ **Target 16.a:** Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime
- ▶ **Target 16.b:** Promote and enforce non-discriminatory laws and policies for sustainable development

CONCLUDE

- ▶ Market v human rights
- ▶ Lawyers are the key to protecting the rule of law, access to justice and protection of human rights
- ▶ Just and fair market protects human rights
- ▶ Sustainable legal system, respect for the independence of lawyers and judges
- ▶ UN Economic and social charter
- ▶ UN Guiding Principles on Business & Human Rights
- ▶ Sustentia and the FBE