

SUMMARY

The Role of Legal Practitioners in Implementing the UNGPs

On 25 May 2023, the Global Business Initiative on Human Rights (GBI) organised a session on the role of legal practitioners in implementing the UN Guiding Principles on Business and Human Rights (UNGPs) in Rio de Janeiro, Brazil. The session included a panel discussion moderated by Sophia Areias, Director of GBI, with Andrea Shemberg, Chair of GBI, Anita Ramasastry, Senior Advisor to GBI, and Clara Serva, Advisor to GBI on Brazil.

The corporate respect for human rights outlined under the UNGPs extends to law firms as business entities to respect human rights through their own operations and business relationships. Hardening legal regulations around the corporate respect for human rights are creating momentum for legal practitioners to respect human rights in their operations and activities, including engagement with their clients.



In response to hardened legal expectations, legal practitioners should be prepared to undergo a mindset shift about their roles.

“The human rights challenges in the Amazon region, for instance, are quite different from the south part of Brazil, requiring companies to understand the reality of each place in which they maintain activities.”

Clara Pacce Pinto Serva
GBI Latin America Advisor - Brazil

For many legal practitioners, implementing the UNGPs will require a mindset shift to advise clients based on a human rights framework that calls for business to focus on the risks to people as a result of their operations or activities. The UNGPs can challenge the way lawyers work by calling into question how lawyers can defend clients well. Many lawyers are not trained to consider soft law and the UNGPs are a set of value-based principles that companies choose to adhere to voluntarily. It is important for lawyers to understand the UNGPs and translate them into local practice in the jurisdictions

where they operate. For example, in Brazil, many lawyers understand the concepts of fundamental human rights. In practical terms this mindset shift can encourage lawyers to rethink how they draft procurement contracts to consider the people involved in supply chains.

While many law firms have started environmental, social and governance (ESG) practices, there is still room to implement areas focused on Business and Human Rights in many countries and it is also important for law firms to embed the respect for human rights across all practices areas. For example, implementing the corporate respect for human rights in tax practices or in mergers and acquisitions. Legal practitioners should also understand that ESG is different from human rights and that human rights are not just focussed on risk. Like all business, the tone from the top when it comes to implementing human rights is important for legal practitioners, particularly in-house counsel. The Board of Directors and senior company leaders can encourage in-house counsel to go beyond compliance to also addressing risks to people.

When it comes to implementing the UNGPs legal practitioners should look beyond compliance to focus on risks to people.

As legal expectations for business to conduct human rights due diligence harden around the world, legal practitioners will express concerns about increased transparency creating legal risks for their clients. Legal practitioners must be prepared to consider both compliance under the law, as well as the impacts of decisions on people. External counsel should be prepared to advise clients on risks to people due to their business activities, and on processes for identifying, assessing, and responding to these risks.

More than solving problems, lawyers become strategic partners of their clients, helping them identify opportunities of improvement. In this vein, legal practitioners should be prepared to build into the advice they offer clients on legal risks, the human rights risks of decisions related to their business.

In terms of developing processes, legal practitioners should be prepared to advise clients to engage with stakeholders to develop human rights processes and to identify their human rights risks. Human rights risks are not just identified based on what companies think their risks might be, but through consultation with stakeholders. In terms of the tension between increased disclosure and legal risks, failure to disclose information can also be a legal risk. Increased transparency can help prepare a company for when information later brought to the company for a response.

“While it is clear that the UNGPs challenge legal practitioners to think and do differently – that is to apply an integrated vision of legal and non-legal standards to guide the company’s actions – they will fail this challenge, and will fail their companies, unless they are empowered to think and do differently by company leadership.”

Andrea Shemberg
GBI Chair

Looking Ahead



As the UNGPs shift from soft to hard law, legal practitioners will increasingly be expected to respect human rights, including in their representation of clients. In-house counsel will also have to consider their role and shift their mindset away from strict compliance to focusing on the impacts to people.

**For more information about this session or GBI's regional workshops
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