

Updated IBA Guidance Note on Business and Human Rights: The role of lawyers in the changing landscape

High-level summary



Why did the IBA release updated guidance for lawyers on business and human rights?

The UN Guiding Principles on Business and Human Rights (**UNGPs**) were unanimously endorsed by the UN Human Rights Council in 2011. In 2016 the IBA issued a **Practical Guide for Business Lawyers on Business and Human Rights** to assess the implications of the UNGPs and related standards for the legal profession. It noted the widespread uptake of the UNGPs, their growing importance to states, businesses and civil society, and their incorporation into law, and discussed the impact of the UNGPs on legal practice.

In recognition of significant developments in hard law and public policy that have advanced uptake of the UNGPs since release of its initial guidance, in November 2023, the IBA published the **Updated IBA Guidance Note on Business and Human Rights (Updated Lawyers Guidance)** to help lawyers across the world and from all practice areas to understand the increasing relevance of business human rights to legal practice.

This high-level summary summarises highlights from the Updated Lawyers Guidance.¹

What do the UNGPs mean for lawyers?

Providing advice and services to help clients to meet their sustainable business interest in identifying, preventing, mitigating – and where appropriate, remedying their involvement in – human rights abuses, presents a major business opportunity for lawyers and law firms.

As companies increasingly see the identification and management of human rights risk as a key strategic goal, they expect their lawyers to act not only as technical legal experts, but also as wise counselors in identifying and advising on human rights impacts, based on the hard and soft law of human rights. This means that lawyers across all practice areas (from regulatory compliance, corporate governance and criminal law to environmental law, M&A, finance, contracts, antitrust and beyond), must be prepared to advise their clients on business human rights risks beyond technical compliance with existing law.²

‘Advice grounded solely on technical compliance with existing law, without regard to the impact on human rights, may unfortunately obscure for clients the larger picture of business risks of involvement in human rights abuse. These may include such factors as reputational harm; lost opportunities; reduced access to capital markets; delay costs; high interest or more expensive debt; top management distraction; and reduced ability to hire and retain talent.’
– para 26 of the Updated Lawyers Guidance

How do lawyers’ BHR obligations interact with their ethical and professional obligations?

The UNGPs do not impair the right to legal representation, or abridge lawyers’ professional responsibilities. Therefore, lawyers must advise clients on business human rights risks to themselves and society in a way that is consistent with these responsibilities, including the duty to act, within the limits of the law and professional standards, in their client’s best interests; and the duty to provide unbiased advice.³

¹ This document is an unofficial summary of the Updated Lawyers Guidance, developed by the IBA Legal Policy & Research Unit.

² Read section 4 of the Updated Lawyers Guidance for examples of how human rights issues arise in different practice areas.

³ Read more in section 5 of the Updated Lawyers Guidance.

What do the UNGPs mean for law firms?

The UNGPs are relevant for firms in multiple respects, for example:

<p>Capacity building</p>	<p>Advising clients on business human rights issues offers a major business opportunity for law firms.</p> <p>To capitalise on this opportunity, firms need to ensure they build capacity to advise on these issues, and this requires both developing specialist human rights expertise; and also ensuring that lawyers in all practice areas have access to resources to help them understand human rights issues that are relevant to their practice.</p>
<p>Value chain considerations</p>	<p>Firms form part of their clients’ value chains, and increasingly are being asked to demonstrate that they respect human rights and can identify and address the human rights risks that may be linked to their legal services, in order to comply with clients’ human rights due diligence policies and processes.</p>
<p>Law firms have responsibility to respect human rights under the UNGPs</p>	<p>Law firms as businesses have their own responsibility to respect human rights under the UNGPs, and this has important implications for firms’ operations and approaches to client engagement.</p> <p>Firms risk enabling human rights abuses by their clients in various ways, for example, through facilitating SLAPPs (Strategic Lawsuits Against Public Participation) or establishment of shell corporations that enable beneficial owners to hide their involvement in human rights abuses. While such conduct may be lawful in some jurisdictions, the UNGPs require firms to seek ways to honour human rights where there are conflicts between national laws and international human rights standards, and to treat risks of contributing to human rights abuses as a legal compliance issue.</p> <p>As a result, law firms should assess their relationships with clients (both at the beginning of and throughout each client relationship) to determine whether their legal services could contribute to human rights abuses, and respond accordingly. This might mean choosing not to enter into, or ending, relationships with some clients.</p> <p>Helpful questions for firms to ask include:</p> <ul style="list-style-type: none"> • Will the services and advice it renders likely cause or contribute to human rights abuse by the client in its operations or in its value chain? • Who are the stakeholders who will be affected? What is the severity of the harm from the perspective of the stakeholder? • What is the likelihood of potential impacts based on the context of the client’s operations, value chain, management system and business model? • What is the connection between the nature of the lawyer’s advice and services and the likely harm, and what is the connection between the client’s conduct and the likely harm? • What steps can the firm reasonably take to prevent or mitigate such harm? • Is the likely harm so egregious and persistent that the firm should consider not undertaking the representation?

Interested in learning more?

Scan the QR Code (or visit www.ibanet.org/Updated-business-and-human-rights-changing-role-of-lawyers) to access the official English version of the **Updated Lawyers Guidance**, and translations into languages including Chinese, French, German, Japanese, Hindi, Portuguese and Spanish.

For more information, contact the IBA Legal Policy & Research Unit at lp ru@int-bar.org

