Reflections On the Status of Business Respect For Human Rights in the Technology Sector

A B-Tech company Community of Practice note[1]

June 2021

This note offers reflections on recent progress with regards to tech companies' human rights efforts, and points to challenges or areas for improvement that participants will now pursue via the COP. It is the first output of the COP, since its launch in early 2021, though the content has also been informed by B-Tech engagements with technology companies in 2019 and 2020. This note should not be read as taking a position – positively or negatively – on the policies or practices of individual technology companies. Finally, the COP comprises a limited number of technologies companies, all based in the Global North, so themes in this note should not be taken as necessarily representative of the sector globally. The group is also comprised of companies that, while of varying sizes, are not SMEs or start-up tech firms. A such, the materials do not reflect the challenges that can be faced by smaller or younger enterprises seeking to operate, and grow, responsibly.

1. A growing number of technology companies, but not all, are publishing human rights policy commitments, with explicit reference to the UN Guiding Principles on Business and Human Rights (UNGPs):

Whereas many telecommunications companies and a handful of other technology companies have had stand-alone human rights policy commitments in place for many years. The recent adoption of human rights policies by Apple, Facebook and Google, among others, might signal a change in the uptake of policy commitments on human rights in the tech landscape. It is B-Tech's understanding that others in the industry including those that offer internet infrastructure and B2B services are also drafting human rights policy commitments. Overall, it appears that companies are taking time to consult with NGOs, academics, and other human rights and digital tech experts as they develop these policies. One of the significant aspects of this overall trend is that companies in more parts of the industry, such as web

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[1] In early 2021, the B-Tech Project launched a company Community of Practice (COP) to:

  – Inform B-Tech project guidance and recommendations on the implementation of the UN Guiding Principles on Business and Human Rights.

  – Advance practical understanding and capacity among technology companies to implement business respect for human rights, and

  – Publicly share insights on emerging practices related to human rights due diligence and remedy in the tech sector.

  More information about the COP, including a list of participating companies can be accessed on the B-Tech Portal.

hosting, cyber security, cloud services, and social media companies appear to be embracing their responsibility to respect human rights as set out by the UNGPs: which includes a focus on all human rights rights (alongside Freedom of Expression and Privacy, which are already publicly enshrined by most mainstream technology companies today) and addressing actual and potential adverse impacts related to the use of their products and services. Of course, there are a large volume of companies not yet on this path.

2. Human rights leads in tech companies all tend to be tasked with embedding human rights considerations across processes and functions (see item 4 below), stewarding ongoing engagement with civil society and other stakeholders, and informing senior leadership's decision-making in relation to specific human rights dilemmas (see item 5 below).

While not true of every tech company with which B-Tech has engaged, human rights leads are predominantly situated in legal, policy or government affairs functions. But regardless of their position in the organizational chart, these individuals are being tasked with connecting the company's commitments to relevant functions including, for example, product counsels, engineering, responsible innovation, product trust and safety, ethical use, export control, public policy and investor relations. In many companies that B-Tech has engaged with, human rights leads interact with executive leadership and Boards of Directors: whether on a regular basis such as via quarterly calls, when executive sign-off is needed or when executives seek input on dilemmas from human rights leads.

Many human rights play a central role in coordinating cross-functional human rights work internally through virtual teams, working groups, or advisory councils, with some using established committees on relevant topics to raise human rights risks and dilemmas. Across the board, one of the common integration challenges for these human rights leads is to build internal understanding of where the scope of responsibility and expectations for action set out by the UNGPs can strengthen existing risk analysis, decision-making, and action.

Finally, it is quite common for companies to have different individuals or teams focused on workplace human rights issues (such as diversity and inclusion) or supply chain human rights risks (such as modern slavery or conflict minerals).

3. Some technology companies are conducting human rights assessments related to specific aspects of their product and service portfolio, and to significant business transactions and decisions.

Some of these assessments – in full or in summary form – have been made public, for example: Ericsson's 5G Human Rights Assessment (link, 2021), Google's Celebrity Recognition API Human Rights Assessment (link to summary, 2019), Facebook's Asian country-focused Assessments (link, 2019/20), and Microsoft's Human Rights Assessment of Artificial Intelligence (link, 2018). Some companies have disclosed their approach to conducting human rights due diligence and human rights impact assessments across any number of topics, such as Verizon (link).

B-Tech is also aware of other assessments such as those covering corporate acquisitions, market entry or geo-expansion prospects, and significant product/service changes (for example, related to end-to-end encryption). There is a strong sense among the tech companies that B-Tech has engaged with that stand-alone human rights assessments or reviews can inform a company's overall human rights due diligence efforts, though the learning and findings need to be acted on for this to happen. For a description of the relationship between targeted human rights assessments and Human Rights Due Diligence, see page 8 of *Key Characteristics of Business Respect for Human Rights*, a B-Tech Foundational Paper.

4. Embedding human rights considerations into existing product and service processes is a priority focus for human rights leads in technology companies.

B-Tech has sought to understand how companies are working to embed human rights risk identification, mitigation and tracking into the conceptualization, design, development/testing, marketing and sales of products, services, and solutions. Various COP sessions are dedicated to this topic and the B-Tech team is producing an output about the state of play of company practices. Examples of what we have heard from companies at the time of publishing this note include:

– Integrating human rights considerations at key decision-points in the conceptualization, design and approval of products, services, and solutions. This can be done by integrating human rights considerations into existing review processes for these offerings. An example of this integration is the discipline of "privacy by design".

– Working with "product counsels" or equivalent leaders embedded in product teams to support those teams to identify human rights risks and propose mitigations.

– Training and tools for engineers and research teams to aid a company's efforts to embed human rights considerations into the product conceptualization and design process.

– Adapting sales, including export, processes to include human rights reviews at different levels of depths depending on levels of risk to people – due to the nature of the product/service, the proposed use-case and who the customer is. These processes can then lead to the inclusion of contractual provisions to specifcy types of use, which is one way to build leverage with customers and users that can be applied when necessary. We heard similar examples when products and services are offered for free, but more work is needed to identify what meaningful leverage can look like in these situations.

5. Many technology companies have clear, well-rehearsed processes that are triggered when changes to government policy or law pose a risk to freedom of expression or privacy. Such situations demand that companies conduct human rights due diligence. Within many companies, human rights teams provide input into these processes, including by articulating what international human rights instruments and the UNGPs expect of these companies in the face of such developments.

A good number of corporations that B-Tech has engaged with are committed to respond to government requests and laws that threaten freedom of expression and privacy in a rights-respecting manner.

Processes that are initiated in response to changes in government law are always cross-functional and convened as soon as a potential issue is identified until the issue is resolved (which can span from days to weeks to many months). In general, relevant function areas are asked to prepare their analysis of the situation and recommendations for action, which can often be informed by similar situations that have occurred in the past. Human rights leads are one key function area in these processes and may also engage with civil society, and external human rights experts to inform their own analysis and recommendations. Ultimately, decisions about strategy and tactics are made at the executive level. Given that these cross-functional processes are routine for some companies, it would be valuable to explore if they are, or might be, triggered in response to human rights impacts beyond freedom of expression and privacy including offline harms.

Looking Ahead: B-Tech COP Focus

The following themes have been identified by B-Tech as issues for attention via the B-Tech COP and by extension, the project's engagement with different stakeholders. The B-Tech Project will produce public outputs for each of them.

– **Theme One: The strategic aspects of business respect for human rights.** How is human rights due diligence by tech companies supported and acted on by Boards and executives, being applied to business strategy decisions and integrated into enterprise-level risk management? How can engagement with experts and affected stakeholders be improved to more effectively identify and address human rights risks?

– **Theme Two: Addressing risk to people expectations across the product and service lifecycle, and the "tech stack".** How are (or should) the UNGPs be applied in day-to-day decision-making and actions of companies, especially where a product or service can deliver human rights benefits? How can the UNGPs help provide clarity about the different but complementary actions that companies at different levels of the so-called "tech stack" should take? What opportunities exist for coordinated and collaborative due diligence across the tech value chain?

– **Theme Three: Delivering Remedy.** What form does remedy take in order to be responsive to adverse impacts related to digital technologies? What are the opportunities and limits of company-led complaints or feedback mechanisms? How can an effective remedy "ecosystem" be established for harms related to the design, development, and use of digital technologies?

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UN Human Rights invites engagement from all stakeholders across all focus areas of the B-Tech Project. For more information please see the project Scoping Paper. Please contact us if you would like to engage with our work, including if you have recommendations for practical tools, case studies and guidance that will advance company, investor and State implementation of the *UN Guiding Principles on Business and Human Rights* in the business of technology.

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