

## The Strategic Aspects of Business Respect for Human Rights Part Two: Themes for Further Attention

### A B-Tech company Community of Practice note<sup>1</sup>

July 2021

## Introduction

In April and May 2021, the B-Tech company Community of Practice (COP) met for three two-hour sessions focused on the topic of *The Strategic Aspects of Business Respect for Human Rights*. This note offers the B-Tech Project's reflections from sessions which focused on three cross-cutting themes that merit further industry and multi-stakeholder discussion.

- **Theme One:** Business decisions about products/services that are important for the realization of human rights.
- **Theme Two:** Integrating HRDD and risk to people into enterprise-level risk management.
- **Theme Three:** Innovating to improve the quality of stakeholder engagement as part of HRDD.

An [additional note](#) covered tech company progress, practices and shared challenges or areas for improvement in relation to the theme of the *Strategic Aspects of Business Respect for Human Rights*.

This note should not be read as taking a position – positively or negatively – on the policies or practices of individual technology companies. Readers should keep in mind that participating companies each face their own distinct human rights risks and have distinct internal organizational dynamics and implementation challenges which are not possible to reflect in full in this summary note. 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. As such, the materials do not reflect the challenges that can be faced by smaller or younger enterprises seeking to operate, and grow, responsibly.

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<sup>1</sup> 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](#).

The B-Tech Project would like to thank the COP companies for their participation in the session.

**Theme One: Business decisions about products/services that are important for the realization of human rights.**

- In COP sessions, B-Tech team members raised the question of how the “do no harm” focus of the UNGPs should inform company decision-making when the deployment and use of a technology that might cause harm can also deliver considerable societal benefits. There are no shortages of such “dilemmas” for different parts of the technology industry, so delivering clarity on this (ideally substantiated with examples) could helpfully influence company practice and right-size stakeholder expectations of companies.
- As a starting point for companies seeking to address such realities, the B-Tech Project offers the following steps. Companies may ultimately make decisions based on balancing risks to people with the potential upsides to society of product/service design, deployment, sale. What companies should not do is attempt to formulate a cost-benefit analysis of the technology at a theoretical level, absent concerted effort to identify and mitigate the harms. In all cases, companies need to consider the following steps:

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| <p><b>1.</b> Have a full and regularly updated picture of the human rights risks related to use of products/services, even where other societal and human rights benefits from use exist or may be possible.</p> | <p><b>2.</b> Have in place mitigations to address those risks and track the effectiveness of those actions; and be clear where the company cannot or has not yet taken action to mitigate the risks.</p> | <p><b>3.</b> Prepare for—exercise foresight about—how remedy will be delivered in situations where the company has identified potential human rights impacts that it is not confident it can mitigate.</p> | <p><b>4.</b> Be prepared to communicate about the decision they have made, and consider formal reporting where the human rights risks or impacts are severe.</p> |
|--|--|--|--|



Within this frame of reference, the COP discussion surfaced areas for future work and exploration by companies, civil society, and other stakeholders (including, where feasible, via B-Tech activities). These included:

- On point 2, it can be difficult to know and demonstrate that risks have been effectively mitigated, especially in situations where States (for example by changing laws or threatening employees) try to combat mitigations that a company puts in place. What should a company do when a mitigation seemed reasonable and effective at a given moment in time but the use context rapidly changes to make the mitigation ineffective?
- Also on point 2, where mitigations involve denying a user access to a service or not selling a product to a particular type of customer, decision-making can be especially challenging. This may be for simple commercial reasons, such as when competitors are not implementing mitigations and do not face consequences. It can also be due to ethical or even human rights reasons such as where denial of service has human rights implications.

- On point 3, participants reflected that more clarity about what good forms of remedy would look like and how companies should play a role in ensuring that access to remedy is delivered would help.
- On point 4, the importance of not putting impacted stakeholders, human rights defenders, company staff, or NGO partners at risk was emphasized. Participants acknowledged that this is likely to be a bigger concern precisely when the related risks are most severe. The group agreed that the UNGPs recognize this scenario but that examples of what good communication looks like in similar situations would help.

Overall, the group agreed that process outlined above is clear, and consistent with the UNGPs. At the same time, ensuring that a company follows the logic set out can be challenging due to both internal and external stakeholders' expectations about what responsible conduct looks like. Stakeholders inside a company may find the "do no harm" lens at odds with a company's intent to build technologies that realize rights and may lead to benefits in the long-term. On this point, it may help to emphasise that prevention and mitigation (for example via product design, terms of service, using leverage) can increase the positive impact of technologies. Furthermore, robust efforts to mitigate harm or openness about where mitigations are not possible can bolster a company's reputation and social license: among civil society, as well as customers and employees.

With regards to external stakeholders, participants reflected that there are situations in which a company meeting the standard of conduct set out by the UNGPs may not satisfy certain groups. The B-Tech team reflects that this reinforces the importance of ensuring that relevant stakeholders – especially affected stakeholders – are engaged in a company's human rights due diligence. For more on this, see theme 3 below: *Innovating to improve the quality of stakeholder engagement as part of tech companies' HRDD*.

## **Theme Two: Integrating HRDD and risk to people into enterprise-level risk management.**

In COP discussions, participants also raised the question of how appropriate and feasible it is to integrate a company's Human Rights Due Diligence efforts into enterprise-level risk management or compliance processes. The UNGPs make the point that "Human rights due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders".

Some COP practitioners shared that they are actively pursuing this approach while others reflected that they are not currently thinking along these lines. Regardless, participants said that they see value in more guidance and discussion about how to expand this in practice, noting that in principle, such integration has the potential to ensure that: the same rigor is applied to risks to people as risks to business, human rights risks are not after-thoughts; or that the discipline of HRDD becomes embedded in organizations versus remains isolated to where human rights teams may happen to have internal traction.

The group raised the concern that seeing the company's commitment to respect human rights purely through a legal compliance lens might quickly reduce business respect for human rights in favor of meeting clearly defined rules of local law. Participants noted that this would miss the point of the UNGPs and possibly lead to companies not focusing on risks to people, on all human rights, or on impacts related to the design, development and use of the company's products and services.

The point was made that companies might miss the importance of building a culture of identifying risks, encouraging problems to be raised including by putting in place adequate protection for whistleblowers, and finding solutions and paths of action when faced by dilemmas. Practitioners also vocalized the challenges of embedding “risks to people” thinking into processes and controls designed to avoid the erosion of enterprise’s capital and earnings.

With regards to the opportunities and practicalities of integrating human rights concerns into Enterprise Risk Management, the group reflected that this should start with an understanding of leading practice and the latest evolution of the discipline of enterprise risk. One participant suggested that integration of human rights into enterprise risk management does not mean that a company simply adds the words such as “human rights”, or a specific human rights risk to a company’s risk register, without mature discussions about the issues. Including key words in risks registers may increase short-term attention to some important issues, but does not guarantee action to address risks to people.

There seems to be an opportunity for human rights teams may be to integrate respect for human rights or taking risks to people seriously across the different features of a company’s risks management system. The diagram below—developed by the B-Tech Project in collaboration with COP companies—illustrates this at a high-level with a focus on *some* of the key features of enterprise risk.

| Feature of Enterprise Risk    | Human Rights Opportunity  |   |
|-------------------------------|---|---|
| <b>Governance and Culture</b> | To ensure that the board and senior leaders routinely engage with a company’s impacts on people and reinforce a culture of respect for human rights, consistent with the company’s policy commitment.   | Supported by education, training, tools, and processes esp. with key functions. |
| <b>Risk Identification</b>    | To use and where necessary supplement bottom-up and top-down risk processes and channels to identify human rights risks that a company is, or may be, involved in due to the design, development, sales and use of its products and services. |   |
| <b>Risk Controls</b>          | To identify if existing risk controls related to product/service design, development, promotion/sales, deployment, and use can be used or updated to effectively mitigate risks to people.  |   |

An additional feature of enterprise risk management that participants discussed was how to delegate risks to an appropriate level of an organization. For example, it is likely that where risks to human rights are severe and likely to occur (for example, due to the nature of the product, the customer, contexts in which use will occur, or lack of effective mitigations in place) then human rights issues will need to be raised up the organizational chain. A key question is how tech companies might put in place formal processes to facilitate this happening.

Finally, some participants posited that the appropriateness, effectiveness, and benefit of using existing risk and compliance systems may be reduced for companies that are less mature in their comprehension about what respect for human rights means in practice. For example, if a company has only recently formally committed to operate consistently with the UNGPs, might embedding human rights risk mitigation into existing controls lead to uneven or weak human rights due diligence, or will relevant teams have the capacity and skills to engage stakeholders in their risk mitigation? Others noted that some technology companies have relatively nascent systems to track and manage traditional business risks. Where this is the case, human rights leads will simply not have the same integration opportunities available to them as in companies with more mature compliance and risk programs.

In conclusion, the COP group voiced interest in B-Tech or other initiatives helping practitioners: a) think about maturity levels in human rights programs in companies, including when to integrate into existing systems, and when to retain strong central ownership and control of human rights due diligence; b) consider how to drive integration into organizational decision-making when a company's risk and governance systems are not well-established. For example, when a company is a start-up or relatively young; c) learn from peers in tech and beyond about tools, models, and processes for triaging human rights risks to ensure that risks are owned and addressed at the appropriate company level.

### **Theme Three: Innovating to improve the quality of stakeholder engagement as part of HRDD.**

Throughout the COP sessions in early 2021, a consistent issue highlighted by company practitioners was the challenge of implementing effective stakeholder engagement as part of human rights due diligence and remediation. The COP companies noted that the UNGPs expectations regarding stakeholder engagement are clear and helpful i.e., that as part of HRDD companies should engage affected stakeholders or their representative organizations, as well as civil society, academic and other experts that can credibly advise on a company's human rights systems and risks.

Some participants raised that they have been exploring how to leverage existing user research efforts for human rights stakeholder engagement. For example, at Twitter, the human rights team has partnered with user research teams to apply a vulnerable group lens to research methodologies. Additionally, where the company has conducted fully public consultations into major policy changes to ensure broad, global input from experts, the user research team is often involved in analyzing stakeholder inputs.

COP companies shared challenges that they are both perceiving and facing in conducting stakeholder engagement effectively for all parties involved, such that it does not become an empty, almost tick-box, exercise. These included:

- **High demands on a small number of organizations:** The tech industry tends to approach the same, relatively small set of expert digital rights NGOs and other relevant experts to seek input into their human rights policies, assessments, and responses to specific human rights incidents. This may be due to the fact that companies have been largely focused on assessing human rights impacts on a global level, and so likely reaching out to organizations who are seen as offering

insights from around the world. Whatever the reason, COP companies sense that their outreach requests are leading to fatigue and reduced willingness to engage.

- **Civil society resources:** Closely related to engagement fatigue is the reality that civil society organizations can lack the funding and internal bandwidth needed to respond to requests or inputs for companies. This is the case for even the larger NGOs, and an even more acute problem for civil society actors in the Global South.
- **Access to affected stakeholders especially in the Global South.** Many technology companies do not have direct relationships with groups that may be most at-risk due to how their technologies are used. Overall, all tech companies tend to struggle to engage with minority communities in the Global South who do not speak English. In addition, in some instances a company may not be able to pinpoint who the impacted population is. For example, when responding to a government data request, a telecommunications company might not even know whose data is being handed over, and wouldn't be allowed to notify the subjects of such request. Additionally, in contrast to the presence of worker organizations in a labor rights context, there is a lack of formally recognized entities that represent people impacted by the use of digital and emerging technologies.
- **Technical knowledge gaps:** Stakeholders who can offer insight about human rights realities for users and impacted groups around the world, tend not to have a detailed understanding of technologies i.e., their design, functionality, capability, and limits. The reverse is true of organizations and individuals that may be steeped in the details of how technologies work.
- **Disparity in access to data about impacts:** COP companies recognized that they tend to have good visibility of how technologies are being used and misused, in contrast to external stakeholders who are not party to this information but rely on news stories, academic research, NGO reports or company disclosures.
- **Challenges that confidentiality bring to co-design/collaboration around mitigations:** Participants reflected that situations in which product development or significant business decisions are occurring under strict confidentiality requirements, coupled with a (understandable) reluctance from stakeholders to sign non-disclosure agreements can block collaboration around mitigations.

The COP discussion on this topic presented an opportunity for B-Tech to pursue multi-stakeholder discussions that allow for stakeholder to share their experiences of tech company, HRDD-related stakeholder engagement and possibly reset the "rules and modalities of engagement" to work for both tech companies and external stakeholders. The table below was developed by the B-Tech Project with input from COP companies as an initial brainstorm around which frank and full multi-stakeholder dialogue and collaboration might be convened.

| Innovating To Improve Company-Stakeholder Engagement  |  |
|---|--|
| What companies should do  | Ideas for collaborative action   |
| <p><b>Make engagement about more than risk identification:</b> Instead, recognize that stakeholders will likely be far more energized when they are asked to engage in collaborative problem solving.</p> <p><b>Focus on relationships not transactions:</b> Find formal or informal ways to involve stakeholders on an ongoing basis such that: stakeholders build their familiarity with the company's technology and challenges, companies build a deeper appreciation of stakeholder concerns, and that relationships that are grounded in trust and openness have more chance of being established.</p> <p><b>Seek feedback on the quality of relationships.</b> Develop ways to learn about how stakeholders perceive the nature of their relationship.</p> <p><b>Connect stakeholders to senior leaders:</b> Find opportunities for senior leaders and stakeholders to discuss the company's salient human rights issues. This will probably happen most effectively when supported by a company's human rights team.</p> <p><b>Close the loop:</b> Regardless of the mode and focus of engagement, circle back with stakeholders about how their input has either impacted business decisions and practices, has not done so and for what reason, is still being considered and through what means.</p> | <p><b>Demystify technologies:</b> Finding ways for civil society organizations to learn about technologies or have access to individuals with that expertise.</p> <p><b>Building alignment around what the UNGPs expect:</b> Using real or hypothetical cases to clarify what appropriate action under the UNGPs means, so as to build multi-stakeholder consensus about what good business conduct looks like in practice.</p> <p><b>Representative organizations:</b> Starting to consider what equivalents to community or worker organizations might look like in the arena of digital rights.</p> <p><b>Leveraging technology:</b> Understand when and how technology can be used to reach scale for effective stakeholder engagement.</p> <p><b>Resourcing:</b> Explore the potential for some form of independent funding mechanism to resource civil society engagement in technology company human rights due diligence and remedy efforts. There may be an important role for foundations and donors in this regard.</p> |

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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.



