

Input from the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights to the expert consultation to discuss the practical application of the United Nations Guiding Principles on Business and Human Rights to the activities of technology companies

(This input addresses themes 1, 2 and 3 of the consultation)

The enjoyment of many human rights is made possible today by technology companies that (1) build or manage infrastructure for transmitting information, (2) provide platforms for engaging in communication, (3) act as suppliers of content, (4) operate on-line platforms for e-commerce, and (5) produce hardware and software used in communication networks and in the operation of equipment used for supplying vital services such as electricity and water. One consequence of unilateral coercive measures, including sanctions against states, economic sectors, individuals and entities (the latter two known as “targeted sanctions”), is to inhibit the enjoyment of these rights by intended as well as unintended targets that range from individuals to entire populations. Widespread over-compliance with sanctions by technology companies, typically a result of business models that seek to minimize legal, regulatory and financial risks, increases the companies’ human rights risk by expanding the negative human rights impact of the sanctions to many additional unintended targets. Indeed, the number of people whose human rights are harmed by over-compliance with sanctions can exceed the number of intended targets.

While technology companies may be compelled by national laws to comply with unilateral sanctions, over-compliance with sanctions is a voluntary decision. Its proliferation in business models can be attributed to a focus on de-risking as it pertains to risks that relate to a company’s operations and financial situations. The complexity of many unilateral sanctions regimes and frequent changes in targeted sanctions lists generate the risk of inadvertent breaches of sanctions, which in turn creates the risk of heavy financial and business penalties against the company due to vigorous and sometimes extraterritorial enforcement of sanctions by some countries, most prominently the United States. Specific risks include secondary sanctions (sanctions imposed against a company that is accused of violating sanctions), high monetary fines and restrictions on the ability to do business in key markets. Many companies lack the internal resources or legal expertise to comply with the myriad of unilateral sanctions regimes around the world and to keep track of evolving lists of sanctioned parties, and must rely on outside legal advice to achieve compliance. For newer and smaller technology companies in particular, the costs of this advice can be out of reach. The penalties for violating sanctions can be so overwhelming for a company that over-complying with them is considered a reasonable business response by many companies.

Over-compliance with unilateral sanctions by technology companies takes various forms. Some halt all business with sanctioned countries, including business that remains legal under the sanctions through “humanitarian exemptions” that are meant to protect the human rights of the countries’ populations.¹ In other cases, technology companies may stop doing business with anyone who is a national of a sanctioned country, including refugees who have fled it and other citizens who live abroad and who have no active connection to the country.

¹ UN General Assembly, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, “Targets of unilateral coercive measures: Notion, categories and vulnerable groups,” [date, document name](#)

Over-compliance with sanctions occurs among companies in all sectors. Among the human rights whose enjoyment is negatively impacted by compliance and over-compliance among technology companies are the right to freedom of expression when communications are restricted, which can occur, for example, when individuals are denied access to social media accounts. This right, as elaborated in the International Covenant on Civil and Political Rights (ICCPR), includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of (an individual’s) choice.”² Similar language is used to describe this right in the Universal Declaration of Human Rights (UDHR).³

The enjoyment of the right to education, enshrined in the UDHR⁴ and the International Covenant on Economic, Social and Cultural Rights,⁵ is also harmed when technology companies block access to on-line courses, archives, research databases and other information resources, and prevent individuals from participating in on-line meetings and conferences. The harm to the right to education can extend far beyond a sanctioned country, as over-compliance inhibits the publishing of academic research that is achieved in sanctioned countries, depriving people everywhere in the world of knowledge that can be essential to the enjoyment of human rights. One international publisher, Wiley, cautions editors of its scholarly journals to “treat with caution any submission from a sanctioned country with regard to the subject matter and seek legal advice if necessary.”⁶

A wide range of other rights are also affected. During the COVID-19 pandemic, for example, entire populations in sanctioned countries were denied the full enjoyment of the right to health, and by extension the right to life, because of compliance and over-compliance with sanctions by technology companies. Cuban doctors and researchers could not participate in virtual meetings about the pandemic, and Cuban representatives could not attend on-line meetings about COVID-19 that were organized by the United Nations, as they were blocked under the terms of service of providers such as Zoom and Microsoft Teams;⁷ while doctors and researchers in Iran could not access comprehensive medical databases such as PubMed.⁸ In Venezuela, the inability to obtain relevant software updates has been a factor in eroding the protection of the right to health.⁹ Preventing lawyers in a sanctioned country from accessing international databases of legal cases and law journals can harm an individual’s right to a fair trial and other due process rights that are enshrined in the ICCPR,¹⁰ including the right to “facilities for the preparation of his defence.”¹¹

² Art. 19, para. 2.

³ Art. 19.

⁴ Art. 26.

⁵ Art. 13.

⁶ Wiley, “Best Practice Guidelines on Research Integrity and Publishing Ethics,” <https://authorservices.wiley.com/ethics-guidelines/index.html#20>.

⁷ “Zoom Terms of Service,” effective 10 November 2021, <https://explore.zoom.us/en/terms/>; Vera Bergengruen, “‘Give Us a Break!’ Cuban Activists Say U.S. Sanctions Are Blocking Them from Online Activities,” *Time*, 19 November 2021, <https://time.com/6121348/cuban-activists-sanctions-blocked-platforms/>

⁸ Submission from Iran in response to the Special Rapporteur’s questionnaire on the Impact of Unilateral Sanctions on Human Rights during the state of emergency amid the COVID-19 pandemic, 2020.

⁹ UN Human Rights Council, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Visit to the Bolivarian Republic of Venezuela,” **date, document name**

¹⁰ Art. 14.

¹¹ Art. 14, para. 3(b).

For the last decade, the notion that access to the Internet is a human right has solidified, as affirmed in UN Human Rights Council resolutions since 2012,¹² but compliance and over-compliance with unilateral sanctions by technology companies have prevented this right from being fully exercised, which is also detrimental to other rights, including the right to development. In this regard, Cuba has noted that U.S. sanctions against it make Internet connectivity “difficult and expensive,” and that “imposing conditions on access to platforms and technologies, and using cyberspace to try to subvert the Cuban political and legal system (...) adversely affects development of communications in Cuba.”¹³ Here again, the impact is not only in sanctioned countries but worldwide; it is reported, for example, that computer programmers in Belarus are being blocked from making their software available through the Apple App Store.¹⁴

While human rights existed long before the advent of technology companies, their role in developing new technologies and making them widely available has become critical in facilitating the enjoyment of these rights today among people around the world. Consequently, compliance (compulsory) and over-compliance (voluntary) with unilateral sanctions by technology companies has negative consequences for the enjoyment of these rights, and in this respect the companies can be deemed to breach their responsibilities to respect and protect human rights as mandated by the UN Guiding Principles on Business and Human Rights (Guiding Principles)¹⁵ when their sanctions policies and practices entail over-compliance.

Most companies operating internationally have policies regarding human rights. In general, these policies address labor-related rights pertaining to employment and the workplace environment, and on freedom from slavery, forced labor, child labor and human trafficking. Because of the nature of their products, technology companies often address the human rights of customers, sometimes on a global basis; however, this aspect of their human rights compliance tends to focus on issues such as the right to privacy and the right to property as it relates to customers’ data.¹⁶ An informal review of several multinational technology companies’ publicly available human rights policies and sanctions compliance policies showed that the human rights impact of their sanctions compliance is not taken into account.

While the companies made no public reference to their own policies regarding over-compliance with sanctions, scattered reports provide anecdotal evidence that over-compliance does occur in the technology sector. In 2017, during a period when U.S. sanctions against Iran had been eased, it was reported that Google had made several of its products available in the country while not offering others, and that its policy appeared to involve blocking services unless they

¹² See, *inter alia*, UN Human Rights Council resolution 20/8, 16 July 2012, doc. A/HRC/RES/20/8, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/153/25/PDF/G1215325.pdf?OpenElement>

¹³ UN General Assembly, Report of the Secretary-General, “Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba,” 21 September 2020, doc. A/75/81, <https://undocs.org/pdf?symbol=en/A/75/81>

¹⁴ Euroradio, “Белорусские программисты сообщают о проблемах из-за санкций,” 5 February 2022, https://yandex.eu/turbo/euroradio.fm/s/ru/beloruskie-programmisty-soobshchayut-o-problemah-iz-za-sankciy?promo=navbar&publisher_logo_url=https%3A%2F%2Favatars.mds.yandex.net%2Fget-turbo%2F758461%2F2a00000166303907396b16e50a9ece55a60e%2Forig&utm_referrer=https%3A%2F%2Fzen.yandex.com

¹⁵ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁶ As an example, see Microsoft, “Human Rights Annual Report,” Fiscal Year 2020, <file:///C:/Users/asus/Downloads/Microsoft%20Human%20Rights%20Annual%20Report%20-%20FY20.pdf>

were specifically whitelisted rather than leaving all services unblocked unless they were specifically blacklisted.¹⁷

Under the Guiding Principles, companies are called upon to avoid infringing on the human rights of others and to address adverse human rights impacts in which they are involved (Guiding Principle 11). They should each have in place a “human rights due diligence policy to identify, prevent, mitigate and account for how they address their impacts on human rights” (Guiding Principle 15). Business enterprises also have the responsibility to “(a)void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur” (Guiding Principle 13a), and to “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13b).

Moreover, companies are expected to use their leverage to “effect change in the wrongful practices of an entity that causes a harm” (Commentary to Guiding Principle 19). In view of the negative impact of unilateral sanctions on the enjoyment of human rights, companies in the technology sector that have become influential through their products and size are invited to seize upon this responsibility to seek to mitigate the sanctions for which their compliance is a legal obligation. Meanwhile, it would appear that the human rights due diligence done by technology companies does not necessarily extend to issue of over-compliance or the negative impact on human rights that arises from it.

¹⁷ Kyle Bowen, “What we can learn from Google’s approach to sanctions on Iran,” ASL 19, 7 February 2017, <https://asl19.org/en/blog/2017-02-07-googles-approach-to-sanctions-on-iran.html>