Discussing the practical application of the United Nations Guiding Principles on Business and Human Rights to the activities of technology companies

Multi-Stakeholder Consultation
Concept Note and Agenda

7-8 March 2022, 10h-12h and 15h-17h CET
Interpretation available in English, French, and Spanish
Registration Link

Background

Over the past years there has been an increasing focus on the interrelationship between human rights and technology. The Human Rights Council, OHCHR and UN human rights mechanisms have highlighted that the promise of digital technologies for transformational change to the benefit of humanity can only be realised when effectively guarding against the risk of harm to people. Government responses to the challenges have been – or risk being – reactive and *ad hoc*, overlooking at times the existing frameworks and standards that provide principled and rights-based responses. For their part, technology companies have called for more clarity and guidance on how to meet expectations for responsible business conduct.

The authoritative global standard for preventing and addressing human rights harms connected to business activity, including in the tech sector, is the **UN Guiding Principles on Business and Human Rights (UNGPs)**, endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011.

Since 2019, the UN Human Rights B-Tech Project has sought to respond to the human rights challenges relating to the technology sector. Using the lens of the UNGPs, the B-Tech Project provides further clarity and guidance on the respective roles and responsibilities of States and technology companies to ensure respect for human rights in the development, deployment, and use of digital technologies.

In 2020, the Secretary-General's High Level Panel Report on Digital Cooperation pointed out that "the roles of government and business are described in the 2011 UN Guiding Principles on Business and Human Rights… They affirm that while states have the duty to protect rights and provide remedies, businesses also have a responsibility to respect human rights, evaluate risk and assess the human rights impact of their actions." The Report also identified "a critical need for clearer guidance about what should be expected on human rights from private companies as they develop and deploy digital technologies."

In his Call to Action for Human Rights on New Frontiers, the Secretary-General called the international community to "work with business to apply the 2011 UN Guiding Principles on Business and Human Rights, and specifically with social media companies to understand and respond to concerns about existing or potential human rights violations, including by working with civil society and human rights defenders to prevent or quickly redress such violations."

The Working Group on Business and Human Rights, taking stock of the first decade of implementation of the UNGPs, stressed that "the UNGPs provide a compelling starting point for companies and States seeking to address the potential harms of digital technologies by effectively managing associated risks to people, as they precisely seek to manage the gap between rapid change (in this case technological change) and the capacity of society to manage its consequences."

Aims

Mandated by resolution 47/23 on "New and emerging digital technologies and human rights", and underpinned by the work of the B-Tech Project, OHCHR will convene a two-day expert consultation to discuss the practical application of the UNGPs to the activities of technology companies. The consultation's sessions will provide an introductory overview of the expectations of the UNGPs and focus on increasing States applying these expectations in their own policy and legal initiatives. The consultation aims to hear from diverse stakeholders on how States and technology companies can apply the UNGPs to enhance the protection and respect for human rights in the context of digital technologies. These discussions will feed into a report on the subject matter to be presented at the 50th session of the Human Rights Council in June 2022.

Format

Due to the COVID-19 restrictions in place at the time of organizing the consultation, the meeting will take place in a virtual format using the Zoom platform. Written inputs to the consultation can be sent until 28 February 2022.

The consultation will take place from 10-12h and 15-17h CET on 7 and 8 March 2022. Simultaneous interpretation in English, French, and Spanish will be provided.

For each session, there will be an opening panel of pre-identified speakers to help introduce the key issues and different stakeholder perspectives, followed by a period for open discussion.

Overview of Consultation Sessions

- **Session 1: Key Characteristics of the State Duty to Protect in the age of technology**

The framework for State action is set out in the UNGPs' Pillar I under the heading *The State Duty to Protect Human Rights* which affirms that States should adopt appropriate measures to prevent and address human rights abuses involving business, including technology companies. This duty is anchored in States' existing human rights obligations and elaborates on the legal, policy, and other measures States should adopt to protect people from harm.

The session will outline how the UNGPs conceptualize the State duty to protect human rights and how this duty applies in the technology sector so that that human rights are at the heart of State action to protect against the individual and societal risks posed by technology companies, while allowing the enormous potential for positive impact from digital products and services to be realized.

The two overarching themes for the session will be the role of States in promoting respect for human rights by technology companies and the role of States in relation to human rights due diligence on the use of technology companies' products or services.

The session will address the following key aspects of the State's duty to protect:
1. The foundations of the State duty to Protect as part of the UNGPs, including the concept of smart mix of policy and regulatory measures
2. The State-Business Nexus and the challenges created for conceptualizing State obligations and business responsibilities in situations where States contract with, partner with, license from, or support technology companies ("State-Business Nexus")
3. Implications for State capacity and internal policy coherence to address the complexity, scale, and fast evolving nature of the technology industry
4. Current trends towards mandatory human rights due diligence overall and opportunities created by such trends which would apply to a large number of technology companies

Guiding questions:

1. How does the State duty to protect human rights apply in the technology sector?
2. What is the meaning of a "smart-mix" of measures in the context of tech business models, including through laws and regulations which guards against business models with potential negative human rights impacts?
3. Which are the State obligations and business responsibilities in situations where States contract with, partner with, license from, or support technology companies ("State-Business Nexus")?
4. How can State capacity and internal policy coherence to address the complexity, scale, and fast evolving nature of the technology industry be increased?

Background document: "Bridging Governance Gaps in the Age of Technology – Key Characteristics of the State Duty to Protect", A B-Tech Foundational Paper

- **Session 2: Applying the UNGPs in tech policy and regulation**

An increasing number of States are elaborating policy frameworks at the national and multilateral level regarding the development and use of digital technologies such as those based on Big Data, Machine Learning and Artificial Intelligence. Other regulatory developments, such as those related to Mandatory Human Rights Due Diligence requirements for companies, may also have implications for how technology companies design, develop, and sell products and services, for example by mandating greater transparency over the decisions they make, and putting in place safeguards and oversight. Policy responses to human rights risks related to digital technologies are furthermore beginning to be considered and reflected in some National Action Plans (NAPs) on Business and Human Rights.

The session will address the strong need for collaboration and alignment at the regional and global level to avoid fragmented regulatory and policy approaches. In order to provide enhanced clarity for policymakers and other key stakeholders working on regulatory proposals regarding business conduct in the technology sector, the B-Tech Project will develop a guidance tool. B-Tech is conceptualizing a "UNGPs check" tool that would allow policy

makers and other stakeholders to assess whether regulatory or incentive-based initiatives directed at tech align with the UNGPs.

The purpose of the "UNGPs check" will be to inform the choice of design and policy options/instruments for draft legislation and incentive-based initiatives aiming at rights-respecting conduct of tech companies. The aim will be to offer a set of core elements that can serve as the analytical grid for rights-respecting tech regulation and political incentives.

The "UNGPs check" will provide States with a roadmap to check that their efforts across different policy domains relevant to tech/tech companies' operations, products and services are aligned with the UNGPs. The key messages and features of the "UNGPs check" will aim to foster a Business & Human Rights angle in tech and advocate for it.

Guiding questions:

1. How can the "UNGPs check" construct a strong orientation on tech companies' responsibilities in regulatory efforts? What should be regulatory elements that the State will require for companies to comply with?
2. How can legislation provide for effective remedies for human rights harm to affected people and communities stemming from, or being linked to tech company conduct?
3. What are methods to uphold policy coherence with respect to the particular piece of regulation being contemplated?
4. How can a State holistically ensure policy coherence regarding oversight functions of the State, e.g. in situations where States contract with/partner with/support technology companies, in relation to other tech or responsible business regulation
5. What is an effective way to set up a legislative process based on engagement with stakeholders on progress, effectiveness, and impact of regulation?

- **Session 3: The corporate responsibility of technology companies**

The responsibility to respect human rights (Pillar II) requires business enterprises to have in place policies and processes appropriate to their size and circumstances, including:
- Making a publicly available policy commitment at the most senior level and embedding responsibility to respect human rights throughout operational policies and procedures;
- Carrying out human rights due diligence processes, which entails:
  - Conducting human rights impact assessments to identify and assess any actual or potentially adverse human rights impacts; such human rights impact assessment need to be part of a wider human rights due diligence approach which is a requirement of companies to meeting their responsibility to respect human rights as set out in the UNPGs;
  - Integrating those assessments and taking appropriate action to prevent and mitigate adverse human rights impacts that have been identified;
  - Tracking the effectiveness of their efforts;
  - Reporting formally on how they have addressed their human rights impacts.
- Providing remediation or cooperating in remediation of abuse where the company identifies adverse impacts that it has caused or to which it has contributed.

The requirement for companies to undertake human rights due diligence across their activities and business relationships to identify, prevent, mitigate and account for how they address the

actual and potential human rights harms stemming from or being linked to their business activities is a central element to their corporate responsibility. The corporate responsibility to respect human applies to all business enterprises, regardless of their size, sector, location, ownership, or structure.

The human rights due diligence requirement extends to a company's products and services, beyond its sites, factories, supply chains, or corporate offices. This is highly relevant when considering the impacts of digital technologies, as it is mostly in their use that human rights harms will manifest. Customers might misuse a product to commit human rights abuses (e.g. an employer using social networking tools for workplace surveillance and intimidation of employees, or a State using technology for extra-judicial surveillance).

The session will provide an overview of how technology companies, civil society and investors have begun to apply the key expectations of the Corporate Responsibility to Respect in their work, and to discuss what States could do to advance uptake and deepening of UNGPs application in the tech industry.

Guiding questions:

1. Why are technology companies, civil society and investors increasingly using human rights, and the UNGPs as the lens to advance their work on responsible tech?
2. What progress and challenges exist with regards to companies implementing the following key features of corporate respect for human rights?
    a. Policy commitment, and Governance
    b. Building internal competence and skills to address human rights risks
    c. Identifying and acting on the most significant risks to people associated with the design, development and use of technology products and services
    d. Engaging users and non-user rights holders in human rights due diligence
    e. Delivering or enabling remedy for human rights harms
3. What is the status of corporate reporting and transparency about how technology companies identify and address potential and actual human rights impacts?
4. What are investors, civil society, academia and collective action initiatives doing to advance respect for human rights by technology companies?
5. What can States do to advance respect for human rights by technology companies?

- **Session 4: Accountability and remedy for the human rights harms resulting from the use of technologies**

Beside the positive effects brought by digital technology, their use by companies, State agencies, consumers and the wider public can also change people's lives for the worse, sometimes in severe and irreparable ways. Examples of harms connected to tech companies include disclosure of personal information, therewith negatively impacting the right to privacy, or algorithmic bias negatively impacting the right of freedom from discrimination.

Through Pillar III, the UNGPs offer States, technology companies, investors, and advocacy organizations a robust and credible framework for remedying human rights harms resulting from the use of technologies. They are grounded in the right to an effective remedy, which is enshrined in international human rights law.

Depending on the nature of a particular case or situation, victims of adverse human rights impacts from digital technologies should be able to achieve remedy through effective judicial or non-judicial State-based grievance mechanisms. Indeed, the UNGPs divide mechanisms for seeking and delivering remedies for business-related human rights harms into three main types:

- judicial mechanisms,
- State-based non-judicial mechanisms, such as mechanisms connected with the State which may have the potential to deliver remedies in some shape or form, such as regulators, ombudspersons, inspectorates, public complaints handling bodies, National Contact Points under the OECD Guidelines for Multinational Enterprises and national human rights institutions; and
- non-State-based grievance mechanisms (i.e. remediation mechanisms that are developed and administered by private entities such as companies or, in some cases, industry associations or multi-stakeholder groups).

The session will refer to the three categories of grievance mechanisms for accountability and remedy in cases of business-related human rights abuse: Judicial mechanisms; State-based non-judicial mechanisms; and non-State-based grievance mechanisms, with a view to discuss how each fits within the broader remedy ecosystem. Drawing from the findings of the recently concluded phase III of the OHCHR Accountability and Remedy Project, the role of company-based grievance mechanisms in this complex, fast-moving and dynamic sector, as well as the challenges that may be encountered in responding to specific types of technology-related harm (e.g. adverse impacts resulting from decisions based on algorithms) will be discussed. The various ways that States can drive and support the development of a well-functioning system of remedies for technology-related harms that properly responds to the needs of rights-holders will also be explored.

Guiding questions:

1. What are the challenges related to the ability of State-based judicial and non-judicial grievance mechanisms to provide for accountability and remedy in case of human rights abuses relating to technology companies? And what are potential solutions to address and/or overcome such challenges?
2. Which types of company-based grievance mechanisms are technology companies providing and what kinds of adverse human rights impacts are most commonly addressed by them?
3. How technology companies can make a more positive and proactive contribution to remedy, within the "remedy ecosystem" for addressing technology-related harms.
4. What are good practices for remedial responses?
5. What constitutes a well-functioning remedy ecosystem for the technology sector and which role need technology companies play in developing and maintaining it?

Background documents:

Four B-Tech foundational papers have been released on access to remedy in the technology sector:

- Access to remedy and the technology sector: basic concepts and principles;
- Access to remedy and the technology sector: a "remedy ecosystem" approach;
- Designing and implementing effective company-based grievance mechanisms; and
- Access to remedy and the technology sector: understanding the perspectives and needs of affected people and groups

The Accountability and Remedy Project (ARP) aimed at strengthening the implementation of the Access to Remedy pillar of the UNGPs, has produced recommendations for enhancing the effectiveness of the three different categories of grievance mechanisms referred to in Pillar III (background on ARP).

AGENDA

7 March 2022	
10:00 – 10:15 CET	**Opening of the consultation** • **Peggy Hicks,** Director, TESPRDD, OHCHR • **H.E. Mr. Taeho LEE,** Ambassador, Permanent Mission of the Republic of Korea
10:00 – 12:00 CET	**Session 1: The State's duty to protect: Bridging Governance Gaps in the Age of Technology – Key Characteristics of the State Duty to Protect** • **Lene Wendland (Chair)**, Chief, Business and Human Rights Unit, OHCHR • **Ambassador Ulrike Butschek,** Director for Human Rights, Federal Ministry for Europe and International Affairs, Austria • **Philippe-André Rodriguez**, Global Affairs Canada, Chair of the Freedom Online Coalition • **Josianne Galea Baron**, Children's Rights and Business Specialist, UNICEF • **Gayatri Khandhadai,** Head of Technology and Human Rights, Business & Human Rights Resource Centre • **Buhm-Suk Baek**, Member of the HRC Advisory Committee
12:00 – 15:00 CET	*Break for Lunch*
15:00 – 17:00 CET	**Session 2: The role of the UNGPs in informing policy makers and tech regulation** • **Isabel Ebert (Chair)**, Advisor, OHCHR B-Tech project • **Anita Ramasastry**, Member, UN Working Group on Business and Human Rights • **Ana Beduschi**, Senior Research Fellow, Geneva Academy • **Imane Bello**, Lawyer, Paris Bar • **Alyson Finley**, Foreign Affairs Officer, US State Department

	• **Sebastián Smart Larraín,** Regional Director, National Human Rights Institution of Chile, and Chair of the BHR working group of GANHRI • **Patrik Hiselius,** Senior Advisor, Human/ Digital Rights, Telia

8 March 2022	
10:00 – 12:00 CET	**Session 3: The corporate responsibility of technology companies** • **Mark Hodge (Chair)**, Senior Advisor, OHCHR B-Tech project • **Alexandria Walden,** Global policy lead for human rights and free expression, Google • **Dae Seop Song,** Director for Agenda Research, NAVER Corp. • **Bettina Reinboth**, Director of Human Rights and Social Issues, Principles for Responsible Investment (PRI) • **Veszna Wessenauer, Program Manager,** Ranking Digital Rights (RDR) • **Judith Lichtenberg**, Executive Director, Global Network Initiative (GNI) • **Edrine Wanyama,** Legal Officer, CIPESA (Promoting Effective and Inclusive ICT Policy in Africa) • **Guy Berger,** Director of Division Freedom of Expression and Media Development, UNESCO
12:00 – 15:00 CET	*Break for Lunch*
15:00 – 16:45 CET	**Session 4: Accountability and remedy for the human rights harms resulting from the use of technologies** • **Jennifer Zerk (Chair)**, Legal consultant, OHCHR Accountability and Remedy Project • **Mauricio Lazala Leibovich**, Director of the Digital Freedom Fund Digital Freedom Fund Digital Freedom • **Cathrine Bloch Veiberg,** Senior Adviser, Danish Institute for Human Rights (TBC) • **Rashad Abelson,** Legal Expert, OECD Centre for Responsible Business Conduct • **Pamela Wood**, Human Rights and Social Responsibility, HPE • **Afia Asantewaa Asare-Kyei**, Board Member, Meta oversight board • **Lorna McGregor**, Director, Human Rights, Big Data and Technology Project, University of Essex

16:50 – 17:00 CET	**Next steps and closing**