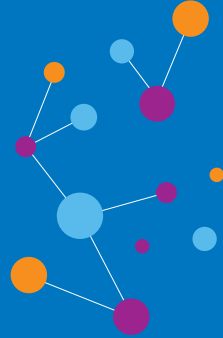


Identifying and Assessing Human Rights Risks related to End-Use

A B-Tech Foundational Paper



OVERVIEW

The *UN Guiding Principles on Business and Human Rights* (UNGPs) **provide technology companies with a robust approach to focus attention as they seek to address risks to people related to the products and services they provide.** This is especially valuable for those companies that will have to regularly review and make decisions about products and services that can be used at scale, almost anywhere and by a large number of different private, public or individual users.

When it comes to identifying and assessing human rights risks—the first step of human rights due diligence—the UNGPs expect companies to:

- **Maintain a wide view of possible impacts:** This means identifying the risks to all human rights related to the full range of a company's business activities and relationships. This includes whether and how the design, development, promotion, sales/licensing, contracting and use of its products and services could lead to adverse human rights impacts.
- **Focus on the most serious harms:** This means that any prioritization of focus should be based on where their business activities have—or could have—the most serious, widespread or lasting harms on people.
- **Engage and communicate meaningfully with stakeholders:** This means that a company should engage with relevant external stakeholders to first inform, and latterly explain, its human rights risks assessment and prioritization.

ABOUT THIS PAPER

This paper is written primarily for leaders within technology companies seeking to **understand the basic expectations of the UNGPs when it comes to identifying and assessing human rights risks related to products and services.** It is part of the UN Human Rights *B-Tech Project* foundational paper series that re-state, explain and clarify the implications of the UNGPs for technology companies and States.

This paper does not provide details about every aspects of human rights due diligence, nor does it seek to replace or replicate existing cross-industry guidance such as the [UN Guiding Principles Interpretive Guide](#) or the [OECD Due Diligence Guidance for Responsible Business Conduct](#).

The series of papers aims to provide a shared starting point for all stakeholders working to embed respect for human rights in the business of technology, including policy makers/regulators, civil society, investors and business. The papers will also set **a common framework of understanding to underpin B-Tech Project activities, guidance and recommendations** across the project's focus areas. They are the starting point, not the end, of the project's work.

Link to the foundational paper series

- Link to [B-Tech Project Portal](#)
- Link to the [UN Guiding Principles on Business and Human Rights](#)

THE HUMAN RIGHTS DUE DILIGENCE PROCESS



1. **Identifying and Assessing Impacts** to gauge the nature and extent of human rights risks
2. **Acting to prevent and mitigate risks to people**, including via integration within internal functions and processes
3. **Tracking of effectiveness of risk mitigation** responses over time; and
4. **Appropriate communication** of performance with respect to addressing human rights impacts

HEADLINES

1. The scope of analysis to identify and assess human rights risks **includes a company identifying whether and how the design, development, promotion, deployment, sales/licensing and use of its products and services** could lead to adverse human rights impacts.
2. Where a technology company has a large number of products, services and users, it will likely need to undertake **an initial assessment to inform which products, services, solutions, business relationships or use contexts are higher risk from a human rights perspective** and so should be prioritized for more detailed human rights due diligence.
3. Once a company has prioritized a specific product/service, type of user, or use context for deeper human rights due diligence, the company should conduct an analysis of the potential and actual adverse human rights impacts associated with these.
4. Whenever a company needs to prioritize where to focus, **it should use a principled approach that focuses on “severity” of risks to people**. Under the UNGPs severity of impacts will be judged by their scale, scope and irremediable character where:
 - **Scale** is concerned with how grave or serious the impact is.
 - **Scope** is concerned with how widespread the impact is, or the numbers of people impacted.
 - **Remediability** means that ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the impact.

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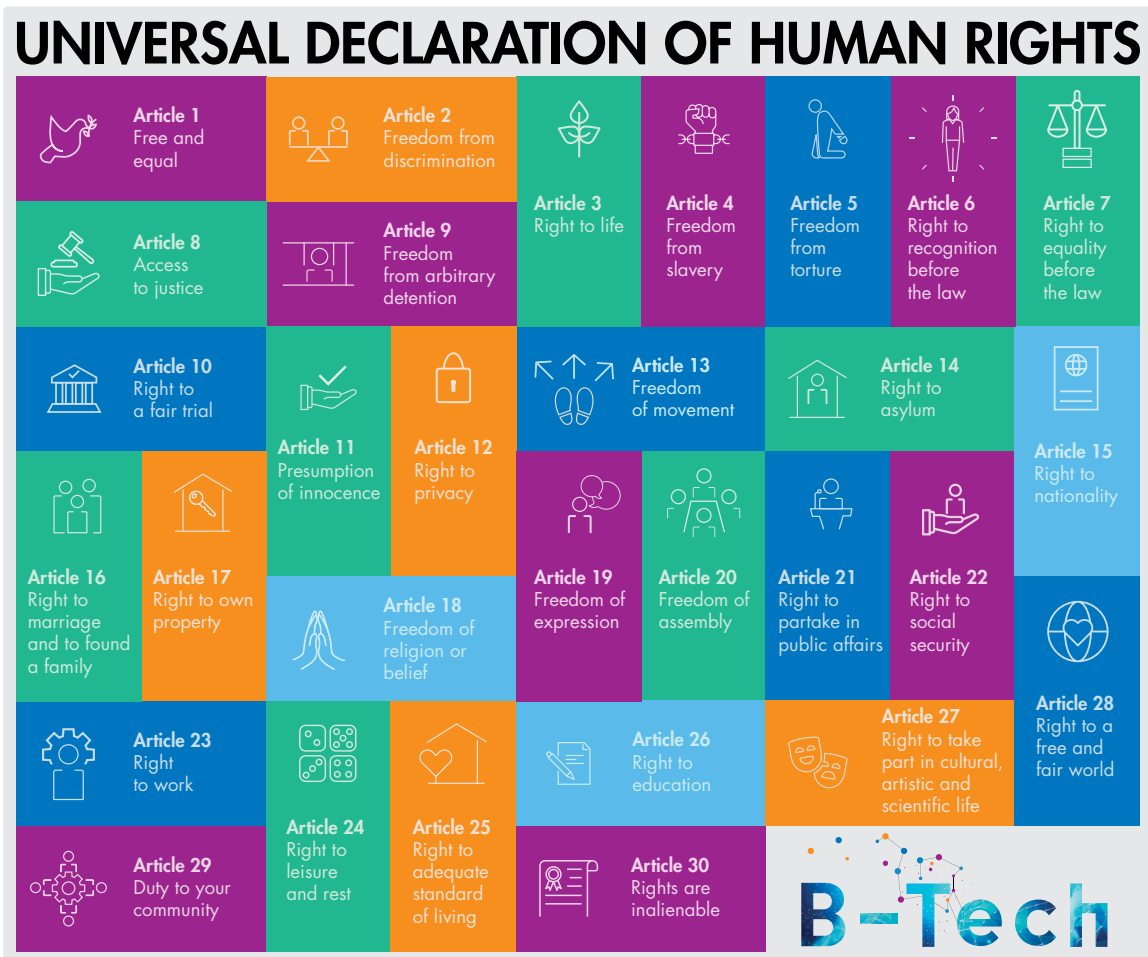
The scope of analysis to identify and assess Human Rights Risks includes a company identifying whether and how the design, development, promotion, deployment and use of its products and services could lead to adverse human rights impacts.

Identifying and assessing human rights risks is the first step in the Human Rights Due Diligence process. As per the UNGPs “In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships” (UNGP 18).

The assessment of actual or potential human rights impacts should cover any impacts a technology company may cause, those that it may contribute to through its own activities, and those that may be directly linked to its operations, products or services by their business relationships even if they have not contributed to those impacts. **A technology company’s “own activities” in this context includes the design, development, marketing, sale/licensing and deployment of products, services and solutions.**

The assessment should be done **with reference to all internationally recognized human rights**— “Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review.” (Commentary UNGP 12).

For many in the technology sector, questions will arise about the company’s impacts on privacy and freedom of expression. However, **there is already evidence that the use and misuse of technologies can have online and offline impacts on a wide range of other human rights**. For example: the use of AI tools by law enforcement and the criminal justice system could impact an individual’s freedom for arbitrary arrest or their right to equality before the law; surveillance technologies could impact on the right to peaceful assembly; the use of social media platforms may impact the right to mental health; and property rental platforms could alter housing markets, possibly impacting the right to an adequate standard of living.



Further, as the commentary to UNGP 18 notes, **“business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization”**. These would include children, ethnic minorities, members of the LGBTI community, and human rights defenders. The UNGPs - as elaborated on by the UN Working Group on Business and Human Rights in their [Gender Dimension](#) report—emphasize the need to bear in mind gender-based risks and impacts.

Establishment of **external advisory groups or other forms of engagement with external stakeholders and intended users can also be helpful** and allow for continuous accumulative engagement when it comes to identifying and understanding actual or potential risks from a company’s products or services.

Where a technology company has a large number of products, services and users, it will likely need to undertake an initial assessment to inform which products, services, solutions, business relationships or use contexts are higher risk from a human rights perspective and so should be prioritized for more detailed human rights due diligence.

The number and variety of a technology company's product, end users, use cases and use contexts (i.e. region, country or local area) will all influence the complexity of a technology company's risk picture and the severity of the potential human rights risks associated with its activities and relationships. **The more complex a company's portfolio of products, services and solutions and end-use scenarios, the more extensive and sophisticated its systems will need to be to make sure that it identifies and addresses all relevant risks.** The corollary to this is that some small enterprise or start-up with one product or solution and a small number of target customers or end-uses may find it fairly straightforward to identify and assess related human rights risks.

By way of illustration:

- **For technology companies that have a large and/or complex portfolio of products, services, and solutions and types of end-users (existing and prospective),** the company's human rights policies and systems should be developed with an aim to identify general areas where the human rights risks might be most significant and prioritise these for human rights due diligence. This will likely require a minimum level of human rights risk identification for all products and services, and their related end users and end-use scenarios, with more detailed analysis prioritized for scenarios of high human rights risk. This may require a senior and cross-functional governance entity with visibility of the company's strategy and product/service development activities being tasked with conducting this review. However, where employees are empowered to pursue their own research and product ideas, and to innovate with limited oversight, this preliminary process of identifying general human rights risks will have to be supported by some form of bottom-up process (for example, rapid human rights sense-check tools, or regular departmental workshops).
- **For technology companies that have a small number and/or relatively simple portfolio of products, services and solutions that are used in diverse operating contexts and at scale,** that company's human rights policies and systems should also be developed with an aim to identify general areas of risks for the use of the company's technologies in all relevant local contexts. This may require a senior and cross-functional governance entity with visibility of the company's strategy, expansion into new markets and business development activities being tasked with conducting this review.
- **For some technology companies, they will need to navigate both** i.e. a large and/or complex portfolio of products/services/solutions and types of end-users, as well as uses in diverse operating contexts at scale.

In some cases, however, especially where severe risks are clearly present, it may be necessary and sensible to start with obvious high-risk areas without first conducting an overall analysis. **Either way, a company should ensure that any minimum-level assessment is ongoing and dynamic, and this will likely result in the company altering and broadening its due diligence focus over time.**

Once a company has prioritized a specific product/service, type of user, or use context for deeper human rights due diligence, the company should conduct an analysis of the potential and actual adverse human rights impacts associated with these.

In most cases, identifying actual and potential human rights impacts at a more granular level will require a few layers of analysis, and will probably vary depending on the starting point of analysis. At a high-level:

- **If the starting point of analysis is a specific product or service**, then a company will likely need to have a systematic way to consider the universe of likely users, the multiple use cases for that user (including unintended or intended misuse), and the actual or potential human rights impacts connected to that use case.
- **If the starting point of analysis is a specific user or category of user** (e.g. a prospective private sector customer, a target industry, a State agency in a given country or a peer in the technology sector) then a company will likely need to follow the same logic of mapping out the possible use cases for that user (including unintended or intended misuse) and the actual or potential human rights impacts connected to that use case. This may also involve building on existing processes such as Know Your Customer due diligence. Where such existing processes are used, companies should take care to focus on customer characteristics that are relevant from the perspective of risks to people such as the customer’s track record in addressing human rights risks, or whether the customer’s business model might carry inherent risks to human rights. It may also be feasible for human rights due diligence to be conducted jointly between a technology company and customer such that collaborative efforts to prevent and mitigate adverse human rights impacts will be more likely.
- **If the starting point of analysis is the geographic region, country or local context** in which use may lead to adverse impacts, then a company will most likely want to deepen any existing understanding of the user universe, potential use cases and associated impacts. But the company will likely also need to focus on understanding how the local socio-economic, political and human rights realities either exacerbate or protect against human rights harms.

Two key features of this type of analysis are worth specific attention. First, that there is no single “correct” way to conduct the analysis. Companies will have to make choices about how they approach the task and who within the company is leading or involved in the analysis. And companies should be prepared to explain their process to their stakeholders.

Second, the UNGPs do not expect that a company’s analysis will ever be 100% complete and absolute. There is uncertainty and therefore subjective judgment in any such analysis. Engaging with relevant internal and external stakeholders should minimize misjudgement and blind spots. **The expectation is that a company takes all reasonable steps to achieve an analysis based on the available facts, intelligent foresight and sound judgement.**

Whenever a company needs to prioritize where to focus, it should use a principled approach that focuses on “severity” of risks to people.

Even when a technology company is focused on a specific technology, user or use context, its assessment of human rights risks will sometimes result in identifying a larger number of users, use cases and human rights risks. This might require a company to prioritize where to focus its attention. If so, the company should first seek to prioritize based on the severity of human rights risks, with attention also paid to the likelihood of the adverse impact occurring. It should then go on to address other areas.

As the UNGPs note “Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.” (UNGP 24). The commentary to UNGP 24 states that “severity of impacts will be judged by their scale, scope and irremediable character” where:

- **Scale** is concerned with how grave or serious the impact is;
- **Scope** is concerned with how widespread the impact is, or the numbers of people impacted; And
- **Remediability** means that ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the impact.

It is also important for companies to consider how scale, scope and remediability may differ for different individuals or groups at heightened risks of becoming vulnerable or marginalized, and that there may be different risks faced by different groups, such as men and women.

As explained in the UN Human Rights interpretative guidance for the UNGPs “Depending on the operational context, the most severe human rights impact may be faced by persons belonging to groups that are at higher risk of vulnerability or marginalization, such as children, women, indigenous peoples, or people belonging to ethnic or other minorities. If the enterprise decides it needs to prioritize its responses to human rights impacts, it should take into account the vulnerability of such groups and the risk that a delayed response to certain impacts could affect them disproportionately.” This extra consideration of whether the use of technology products and services can have differential impacts on certain groups may have special utility where the “scope” of impacts is particularly broad (for example, in the hundreds of thousands, millions or even billions).

Even once a company has considered the severity of human rights impacts across all possible users and use cases, this may still leave a large universe of issues that require attention. **If** a company needs to prioritize further, it should use the lens of *likelihood*. Here, the company will likely want to consider such things as:

- **User interests, motivations and incentives:** Is it in the interests of users to use or misuse the product, service or solution in ways that may pose risks?

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- **User's technological know-how and capability:** Does the user's know-how (or lack of it) alter the likelihood that the use-case and adverse impacts identified will occur? Are there any existing technical barriers (e.g. access to computing power) that will make the use-case unlikely in practice?
- **Local policy and laws:** Are there government policies and laws that will make the use-case more of less likely to occur in practice?

Publicly communicating the rationale behind how prioritisation decisions are made and why are important for establishing trust in a company's due diligence approach.

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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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