

UN Human Rights B-Tech Project Peer Learning Platform: Session #4

*Regulation and the “Smart-Mix” Concept, UNGPs Compass
12 July 2023*



Welcome to the B-Tech Project

The Team

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- **Dr Isabel Ebert, Advisor (Zurich, Switzerland) - *UNGPs Compass, “Smart Mix” of Regulation & Policy***
- **Stephanie Seale, Advisor (San Francisco, US) - *CoP and PLP, Partnerships***
- **Abdul Abdulrahim, Advisor (Lagos, Nigeria) - *B-Tech Africa, SMEs, Tech Investment***
- **Ben Pitler, Advisor (Oslo, Norway) - *Investor Track***

Welcome to the Fourth B-Tech Peer Learning Platform Session

Peer Learning Platform (PLP) Objectives:

- We aim to engage with a **broad group of companies from the tech sector**, or with a particular interest in tech.
- Our focus is on expanding knowledge and learning about how to apply the **UN Guiding Principles on Business and Human Rights (UNGPs)** to prevent and mitigate human rights risks.

Welcome to the Fourth B-Tech Peer Learning Platform Session

Peer Learning Platform (PLP) Ground Rules:

- The sessions are conducted under the **Chatham House rule**, meaning that what is discussed can be conveyed outside the meeting, but **without attribution**.
- The PLP sessions will not be recorded, though B-Tech will **extract learning and aggregate statistics** on participants, but without attribution. Participation in the PLP sessions will not be made public.
- The focus of COP and PLP sessions is the **advancement of implementation of respect for human rights** by companies that are part of the community. Various **issues relevant to this overall theme are in scope** and permitted for conversation. Additionally, **issues out of scope for discussion** are those that are purely related to commercial interests and motivation.
- Participation in the PLP is open to companies self-identifying as with interests in the digital tech space, and B-Tech does not vet participants in each session. **Participation and/or presentation of any information in the PLP by a company does not constitute an endorsement** of the company or its activities by the UN Office of the High Commissioner for Human Rights, the B-Tech Project or any related programmes. The materials and information provided through the PLP is for general information purposes only and should not be treated as a consultation or used for compliance purposes.

Part One: Regulation and the “Smart-Mix” Concept

Part Two: UNGPs Compass

Part Three: Q&A, HR75, Upcoming Peer Learning Platform Sessions

Focus Areas of B-Tech

ONE

BUSINESS MODELS

Identify avenues to address human rights risks related to tech company business models.



MAIN OUTPUTS TO DATE:

Foundational paper on addressing human rights risks in business models

TWO

PRODUCT/SERVICE HRDD

Promote robust product and service human rights due diligence, while deepening stakeholder insight as to progress and challenges in implementing the harder aspects of the UNGPs.



MAIN OUTPUTS TO DATE:

4 Foundational papers on HRDD and end-use

THREE

REMEDY

Identify the challenges of ensuring access to remedy for harms related to the use of technologies, and spot pathways for action to address these.



MAIN OUTPUTS TO DATE:

4 Foundational papers on access to remedy

FOUR

THE "SMART-MIX"

Host multi-stakeholder dialogue to inform State action about: a) What a smart-mix of legal and policy measures means in practice (at times focusing-in on specific technologies, applications); and b) how HRDD and remedy fits into that.



MAIN OUTPUTS TO DATE:

Foundational paper on the State duty to protect

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Focus Area FOUR:

“A Smart Mix of Measures”: Exploring regulatory and policy responses to human rights challenges linked to digital technologies

THE GUIDING PRINCIPLES THREE PILLARS



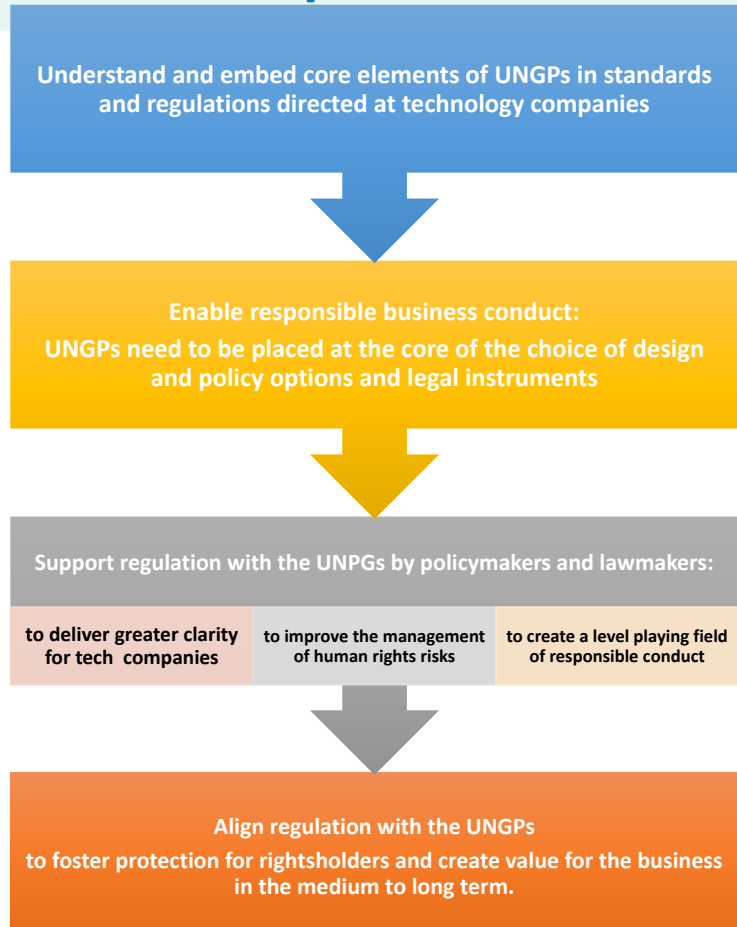
- States implementing a “smart-mix” of policy and regulatory measures, both nationally and where relevant, via international approaches
- Potential opportunities created by trends towards mandatory human rights due diligence which would apply to a large number of technology companies
- Situations where States contract with, partner with, license from or support technology companies (“State-Business Nexus”)
- How to increase State capacity and internal policy coherence to address the complexity, scale and fast evolving nature of the technology industry.

Part One: Regulation and the “Smart-Mix” Concept

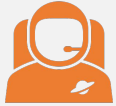
Part Two: UNGPs Compass

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Aim of the UNGPs Compass



UNGPs Compass: Timeline



Series of consultations on the State Duty to Protect Human Rights and regulatory approaches in line with the UNGPs targeting technology company conduct (February 2021-November 2023)

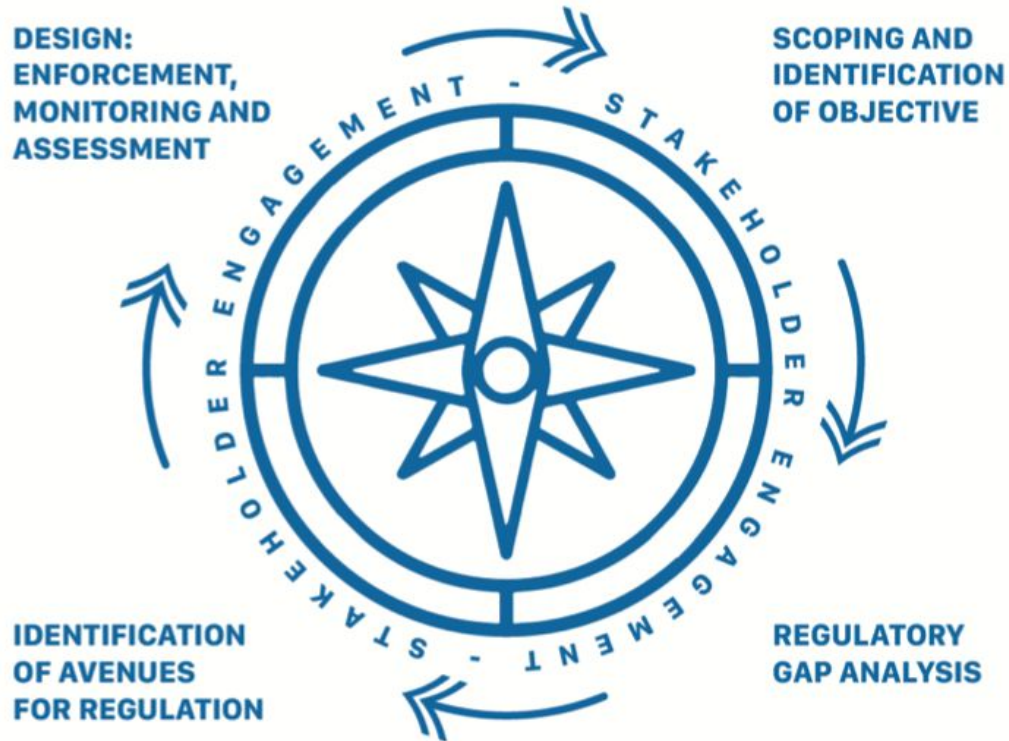


Launch of draft guidance tool for policy makers at United Nations Business & Human Rights Forum 2022, Geneva: “UNGPs Compass”(November 2022)



Current stage: finalizing pilot UNGPs Compass with launch in fall 2023.

Structure of the UNGPs Compass



UNGPs Compass Step #1: Scoping and Identification of Objective

Guiding questions:

- What is the problem a regulatory effort is trying to address?
- Is there a human rights dimension to the problem?
- What do civil society/stakeholders have to say about the problem?
- What would be the objectives of state intervention? (e.g. correction of unregulated behaviour, limitation of power, protection of access, transparency of activities, redress for harm and accountability to users?)



UNGPs Compass Step #2: Regulatory Gap Analysis

Guiding questions:

- What government policies are already in place and how are they enforced/extent of monitoring?
- Are there specific aspects of a technology business model that are not covered by existing laws but impact human rights greatly?
- Does the problem relate a specific type of technology that present risks to human rights?
- What does the regulatory gap consist of, and which regulatory architecture has the potential to close it?
- Are there specific human rights risks that are currently not adequately addressed through existing regulation?



UNGPs Compass Step #3: Process - *Identification of avenues for regulation*



» **What should be the nature of the legal obligations?**

(e.g. whether the companies covered by the regulation will be judged by standards of conduct, standards of outcome, or both; whether liability will be automatic, or based on proof of fault)



» **What should be the scope of these obligations?**

(e.g. the entities, activities, and parts of the value chain to which the obligations extend, as well as the jurisdictional reach for cross-border matters)



» **Which human rights themes and risks should be targeted?**

(i.e. some may focus on a narrower range of issues and impacts, such as privacy)



» **What is the reach of business activities** in relation to both supply and procurement, and end use and **what are the implications for human rights of this value chain structure?**



» **What should be the standard of responsibility and what constitutes a breach and defense against liability?**

To what extent have companies put in place policies/processes to prevent/mitigate human rights risks?

A photograph showing architectural blueprints spread out on a surface. A white rolled-up tube, likely for a pen or pencil, lies diagonally across the blueprints. The blueprints contain various technical drawings, lines, and text, including labels like 'S.01', 'S.02', and 'RZP DL 1550 mm'.

UNGPs Compass Step #4: *Design - enforcement, monitoring, and assessment*

Guiding questions:

- What should be the way in which, and the mechanisms through which, compliance with legal obligations are to be scrutinized, monitored and enforced?
- What is a suitable supporting regulatory architecture and services that may be needed (e.g. guidance, consultations, regulatory effectiveness reviews, education, etc.)?
- What should be the types of liability that will result from non-compliance (e.g. civil and/or criminal liability)?
- Which sanctions that may be imposed, and/or remedial steps that may be required in the event of non-compliance?
- What specific requirements do companies in scope of the law need to comply with in terms of human rights due diligence

Important design features from a UNGPs perspective include:



» A broad view on human rights



» Consistent application of the HRDD terminology: expectations towards HRDD to be conducted across all business and relationships, risks assessment methodologies and mitigation measures



» Value chain focus across the full business sphere



» Accompanying measures, such as incentive-based policy instruments, and enforcement provisions



» Process-oriented character of the legislation relating to the expectations of businesses



» Genuine stakeholder engagement



» Clear provisions for Access to Remedy

A network diagram consisting of several brass pins standing upright on a dark, textured surface. The pins are interconnected by thin, translucent green lines, forming a web-like structure. The word "Discussion" is overlaid in white text in the center of the image.

Discussion

UNGPs Compass: Regulatory Structure

Overarching reflections on the characteristics of tech regulation

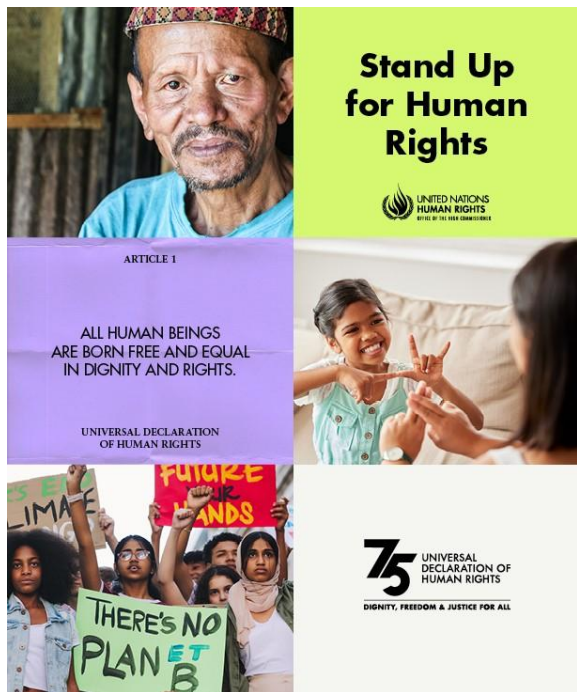
- e.g. using the example of the CS3D and/or DSA
- Which overarching reflections would you share with regard to how the CS3D and/or DSA relate to the internal processes in your company on human rights? What has been your experience implementing measures to ensure compliance with the respective frameworks?

Part One: Addressing Human Rights Risks in Business Models

Part Two: UNGPs Compass

Part Three: Q&A, HR75, Upcoming Peer Learning Platform Sessions

HR75 (Human Rights 75)



THROUGHOUT THE YEAR:

Monthly thematic spotlights

Each month in 2023 will shine a spotlight on one critical theme spanning a range of economic, social, cultural, civil and political rights as a concrete way to implement different aspects of the Declaration. We call for concrete action by States and others. In January, the High Commissioner launched a call for the release of persons arbitrarily detained, and in February he called for the transformation of care and support systems. Actions resulting from these spotlights can inform pledges to feed the high-level December event. The BHR Spotlight is in *October*.

Pledges for Human Rights

A key outcome of the Human Rights 75 initiative is to ensure pledges for human rights - or commitments for concrete change – from governments and other actors. The pledges received will be made public during the December 2023 high-level event. Guidance on developing pledges is now [available](#) online, as is the [submission form](#).

HR75 (Human Rights 75)

PHASE 2: HIGH-LEVEL EVENT - 11-12 December 2023

This event will mark the culmination of the year of impact-driven work around the 75th anniversary of the Universal Declaration of Human Rights.

Objective: Contribute to change and concrete progress on the ground on the promise of freedom, equality and justice and accountability for those commitments.

The Human Rights 75 – High Level event will:

- (1) lead to concrete change and progress through a **pledging event**;
- (2) lead to a **vision for Human Rights** for the next 25 years;
- (3) reinvigorate commitment to human rights by highlighting the 75 years of achievements, as well as the work done this year; and
- (4) feed into the 2024 **Summit of the Future**.



Tech company

PEER LEARNING PLATFORM (PLP)

Starting in 2023, the B-Tech Project is expanding the framework of the CoP.

- **Objectives**

- The PLP will offer introductions and insights into the UNGPs to companies at various stages of engagement with the Principles. Many may not yet have developed formal human rights policies, or may benefit from the opportunity to engage with peer tech companies facing similar challenges in operationalizing the Guiding Principles.
- The PLP will broaden the accessibility of these resources beyond tech companies in North America and Europe, to include companies focusing on users in Africa, Asia, and Latin America as well.

- **Ground Rules**

- B-Tech will post brief summary notes of the issues covered in each sessions, with no attribution as per Chatham House Rule.
- Anti-trust rules require that scope of conversation is limited to issues related to the UNGPs and unrelated to sales or competitive activity.
- Participants may join in any or all of the sessions of the PLP, which do not constitute a linear course.

Tech company

PEER LEARNING PLATFORM (PLP)

- **Upcoming Sessions (subject to change and to participant input and demand):**
 - September 13: Access to Remedy
 - November 8: Stakeholder Engagement Vulnerable Groups, Governance Gaps
- **Registration:**
 - Visit <https://www.ohchr.org/en/business-and-human-rights/b-tech-project> for updated signup info

Thank you

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WEBSITE:

<https://www.ohchr.org/en/business-and-human-rights/b-tech-project>



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