



Bridging Governance Gaps in the Age of Technology – Key Characteristics of the State Duty to Protect

18 February 2021

Agenda

By video conference

The aim of this consultation is to provide comments on the draft foundational paper. In your remarks, please focus on the contents of the paper.

This foundational paper serves as a conversation starter on the State Duty to Protect Human Rights in the technology space, and policy and legislative incentives to require business to respect human rights.

4.00pm – 6.00pm CET (10.00am – 12.00am ET)

3.45-4.00 Dial in

4.00-4.10 Opening remarks, welcome and introductions

Lene Wendland, Chief, Business & Human Rights, UN Human Rights

Felix Kirchmeier, Executive Director, Geneva Human Rights Platform,
Geneva Academy of International Humanitarian Law and Human Rights

4.10-4.15 UN Human Rights B-Tech Project: overview and update

Lene Wendland, Chief, Business and Human Rights, UN Human Rights

4.15-4.45 The Smart Mix of Measures and elements of regulatory approaches (30min)

The normative clarity embodied in the “smart-mix” vision (UNGP 3) is ideally suited to the particular challenges of addressing the wide variety of companies comprising the technology sector. Through a balanced selection of tools to encourage companies to carry out their responsibility to respect, a smart mix of measures allows the state to incentivize and drive behavioural change across the complex and diverse technology sector.

- *States should enforce laws that are aimed at, or have the effect of, requiring technology companies to respect human rights, and periodically to assess the adequacy of such laws and address any gaps*
- *States should provide effective guidance to business enterprises on how to respect human rights throughout their operations and in their business relationships*
- *States should encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts*

As States look to apply a “smart-mix” of regulatory measures and policy incentives to protect against human rights harms related to the activities of technology companies, they should be guided by deliberations involving civil society, affected groups, technology companies and other relevant stakeholders.

Guiding questions (paper headlines 1-3)

1. What would you add, or adjust, to the list of factors that States should consider when developing regulatory responses?
2. What promising examples of national or regional efforts (regulatory or policy) from around the world, or international efforts, to address human rights risks in the sector might be named?

4.50-5.20 The state-business nexus (30min)

A key innovation within the UNGPS is the attention given to the role of a State’s economic activities beyond legal and policy measures in shaping the business environment and the conduct of companies. Specifically, the UNGPS note that where there is a close connection between the state and business actors, states should take additional steps to ensure that human rights are protected. Known as the “State-Business nexus” (UNGPs 4-6), this aspect of the UNGPs covers a range of policy areas, including the management of State-owned enterprises,

financial and other support provided by States to companies, the privatization of services that may impact human rights enjoyment, and public procurement. When it comes to the technology industry, there are many manifestations of the “State-business nexus” that may provide opportunities to enhance human rights protections and require responsible conduct by tech companies.

Guiding questions (paper headline 4)

1. Are there other ways that the State supports or serves the tech industry that should be called out?
2. Do you know of good examples of State oversight or collaboration between companies and States that we should highlight here or in our future work?

5.20-5.50 Policy coherence (30min)

A key objective of operationalizing the State duty to protect is ensuring coherent policy and action across all state agencies that shape the business practices of, or interface with, technology companies. Where policy coherence is lacking, states will fail to provide technology companies with clear and predictable expectations and undermine both the effectiveness of their own measures, and the ability of technology companies to adjust their practices in a stringent and comprehensive manner. This is not a straightforward exercise, regardless of the industry sector and range of human rights issues concerned. In the context of technology, challenges for States to overcome will include:

- Establishing a coherent policy framework, reinforced by political leadership
- Mapping which agencies are, or can, influence different parts of the technology industry
- Building internal competence and capability of lawmakers, civil servants, and political leaders

Guiding questions (paper headline 5)

1. Do you know of good examples of how to ensure internal policy coherence and build the necessary capacity for implementation?
2. Are there other, or better, arguments for multi-lateral and multi-stakeholder approaches that we should mention?

5.50-6.00 Wrap up and concluding remarks

Lene Wendland, Chief, Business & Human Rights, UN Human Rights

Felix Kirchmeier, Executive Director, Geneva Human Rights Platform,
Geneva Academy of International Humanitarian Law and Human Rights