**UN Human Rights Business and Human Rights in Technology Project**

**(“B-Tech Projet”)**

Applying the *UN Guiding Principles on Business and Human Rights* to digital technologies

*Concept note and agenda*

South Africa Regional Consultation

***Context***

The past decade has seen many examples of the positive social, economic and political impact of the internet, social media, mobile technologies, automation, artificial intelligence and other new digital technologies. These positive impacts include empowering civil and human rights activism, healthcare breakthroughs, making transport and logistics more environmentally sustainable, to name but a few. But more recently, the shadow sides of these very same innovations have come sharply into focus, including infringements on privacy, contributing to exacerbating ethnic conflict and dissemination of hate speech, undermining democratic processes, enhancing state surveillance, putting children at risk, facilitating live-streaming of abhorrent acts like the Christchurch terrorist attack, online violence against women and LGBTI persons and others, and “algorithmic discrimination” (whether in the job market, the criminal justice system or in access to public services).

These challenges are increasingly seen through the lens of human rights risks, not just ethical dilemmas. The lens has widened to bring into view issues related to corporate responsibility and accountability and associated questions of governance and public policy.

Understandable public concern has led to calls on both policy makers and tech companies to take effective action to prevent and address harm, resulting in a broad range of regulatory and policy initiatives. However, as such demands for regulation and other interventions in the digital space grow, public and private responses risk being ad hoc, fragmented and not aligned with international standards.

It is in this context that UN Human Rights has initiated the Business and Human Rights in Technology Project (hereinafter “the B-Tech Project”). **The B-Tech Project will contribute to addressing the urgent need voiced by companies, civil society and policy makers to find principled and pragmatic ways to prevent and address human rights harms connected with the development of digital technologies and their use by corporate, government and non-governmental actors, including individual users.**

***Project Focus***

The ***UN Guiding Principles on Business and Human Rights* (UNGPs)** provide a comprehensive and authoritative framework that can inform efforts by a range of actors, including governments and companies, to identify, prevent, mitigate and remedy human rights harm related to digital technologies.

The premise of the B-Tech Project is that using the lens of all three pillars – Protect, Respect, Remedy - of the UNGPs can help clarify the respective roles and responsibilities of States and the private sector in relation to specific issues, as well as offering road maps to:

* Guide what responsible business conduct looks like in practice regarding the development, application, sale and use of digital technologies;
* Guide policy makers in applying a smart mix of regulation, incentives and public policy tools - providing human rights safeguards and accountability without hampering the potential of digital technologies to address social, ecological and other challenges; and
* Develop workable models for remedy and accountability when harm has occurred.

The project will focus on **four areas spanning all three pillars of the UNGPs**. This is critical given the central role that State interests play in creating the context for the development of digital technologies – whether as end-users of technologies, as regulators, or when incentivizing investment and commercial innovation.

* ***Focus Area 1: Addressing Human Rights Risks in Business Models***
* ***Focus Area 2: Human Rigths Due Diligence and End-Use***
* ***Focus Area 3: Accountability and Remedy***
* ***Focus Area 4: “A Smart Mix of Measures”: Exploring regulatory and policy responses to human rights challenges linked to digital technologies***

For a detailed explanation of each of the focus areas of the project, please see the [draft scoping paper for the B-Tech project](https://www.ohchr.org/Documents/Issues/Business/B-Tech/B-Tech_Scoping_paper.pdf) (page 4-9).

***Aim of the consultation***

At the very early phase of implementation of the B-tech project, the consultation will provide an opportunity to present and familiarize participants with the scope and overall purpose of the project. The project’s methodology very much emphasizes the need to understand and reflect differentiated impact from new technologies in diverse geographies. As such, the consultation will also provide the opportunity to have an initial dialogue around key questions for each focus areas of the project and gather initial input on how/which of these questions are the most interesting to explore/most challenging in the Southern African context.

Therefore, the key questions listed below for each focus area are meant to trigger and guide the debate but are in no way meant to be answered at this stage. Inputs gather at the consultation will inform further research and discussions.

Key questions to help guide the discussion under Focus Area 1 include:

* *To what extent are the business models’ underlying technological development and sales generating human rights risks? What are some examples of this phenomenon?*
* *What should human rights due diligence in relation to business models and competitive strategies look like in practice?*
* *What are the implication for thinking about what good practice looks like when business models are designed around a technological innovation, not vice-versa?*
* *How do we navigate situations where some sections of the population gain from business models that provide them access to technological benefit, while others are put at risk by those same business models?*

Key questions to help guide the discussion under Focus Area 2 include:

* *How can companies understand the potential and actual impacts of their products early and on an ongoing basis?*
* *How can companies engage external experts and affected stakeholders?*
* *How can companies developing and selling technologies establish and exercise leverage to prevent and mitigate harm associated with the use of their products?*
* *How can technology companies reflect – in their own human rights due diligence – the critical importance of responsible use of their products and services to their contribution to sustainable development?*
* *To what extent can insights from other sectors (such as pharmaceuticals/drug safety, mobile medical equipment, agricultural products, finance and logistics/shipping) about the corporate responsibility to respect vis-a-vis the impacts of products and services be applied to the tech sector?*
* *How can companies individually or collectively exercise leverage to seek to prevent and mitigate the harms that may arise through States using technologies in ways that violate human rights?*
* *What are the implications for the human rights due diligence process of the particular structure of digital technology value chains, taking into account that: a) It can often be end-users beyond the technology sector that are (in the language of the UNGPs) causing adverse human rights impacts; and b) Small and Medium technology companies might bring to market a specific technological application, piece of code or number of users that have impacts on people that are disproportional to the number of employees in their organization?*
* *What does responsible transparency and effective communication about potential and actual harms related to end-use look like in practice?*
* *What can we learn from the existing models – such as the Global Network Initiative – about good practice when it comes to multi-stakeholder and multi-lateral standard setting to address challenges arising from risk to human rights arising from State use of technologies?*

Key questions to help guide the discussion under Focus Area 3 include:

* *To what extent are technology companies presently making use of company-based grievance mechanisms to resolve instances in which they are alleged to have caused or contributed to human rights abuses of individuals, or where adverse impacts are alleged to be directly linked to their operations, products or services by a business relationships? What challenges have been encountered thus far and how have they been addressed in practice? How may technology companies play a role in enabling access to remedy in situations where they are only directly linked to a harm? If so, what might enabling remedy look like in practice?*
* *What is the interplay between mechanisms created to enable users to flag harmful content or practices through technologies (for example discriminatory content targeted at identified groups), and mechanisms created to provide remedy for individual victims who have suffered harm as a result of such content or practices?*
* *If necessary, how can companies prioritize among hundreds of thousands, or even multiple millions, of potentially impacted individuals and human rights issues if they are to establish genuinely effective remedy mechanisms? In a given geography, might different actors that make up the technology sector (e.g. ISPs, Telcos, social media platforms, researchers) need to establish some form of joint grievance mechanism, and collaboration on remedy?*
* *Do conflicting regulatory requirements in different jurisdiction pose problems for accountability and remedy pursued through company-level grievance mechanisms? If so, how can these be resolved?*
* *What are the responsibilities of corporate providers of digital technologies regarding the provision of effective remedies in cases of misuse of their products or services by individual users – versus public or private entities? What bearing does the guidance in the UNGPs have on the analysis by companies of their responsibilities for remediation? What is the role of State regulation in supporting remedial efforts by technology companies? What can we learn from recent developments such as the EU General Data Protection Regulation’s “right to explanation” for machine-based decision-making?*

Key questions to help guide the discussion under Focus Area 4 include:

* *To what extent do regulatory regimes presently address the risk of human rights harms associated with the design or use of digital technologies?*
* *What issues do legislators need to be aware of when designing regulatory regimes? How might these regimes interconnect with other regimes relevant to business respect for human rights (e.g. privacy, data protection, freedom of expression etc.)? What tensions exist between different human rights (and how are these resolved in practice)?*
* *How can States incentivize greater respect for human rights by digital companies (e.g. export credit, investment guarantees, public procurement, and trade facilitation)?*
* *What is the relevance of human rights due diligence in regulatory regimes relating to digital companies? How might human rights due diligence (as defined in the UNGPs) be better promoted and incentivized within the context of regulatory regimes?*
* *What cross-border and multi-lateral arrangements are needed to make law enforcement (including through private law actions) more effective? Is there potential for new multi-lateral initiatives for effective prevention and remediation of human rights abuses connected with the design, provision and use of digital technologies? If so, what models should be looked to for inspiration (e.g. OECD’s Going Digital Project)?*

The last part of the consultation will be devoted to the next phases of the project’s implementation and opportunities for engagement and collaboration will be presented.

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| MORNING: Friday, 6 September 2019 |
| 09:00 – 09:30 | *Coffee and registration* |
| 09:30 – 10:00 | **Welcome and introduction to the B-Tech project** * Why the B-tech project
* Why UN Human Rights
* How will the project work
* What is the process
* Aim of the meeting
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| 10:00 – 11:00 | **Focus areas 1 and 2 : Addressing Human Rights Risks in Business Models / Human Rights Due Diligence and End-Use*** Introduction to Focus areas 1 and 2
* Discussion on local and regional perspectives
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| 11:00 – 11:15 | *Coffee Break*  |
| 11:15 – 12:15 | **Focus areas 3 and 4 : Accountability and Remedy / “A Smart Mix of Measures” : exploring regulatory and policy responses to human rights challenges linked to digital technologies*** Introduction to Focus areas 3 and 4
* Discussion on local and regional perspectives
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| 12:00 – 12:30 | **Closing session** * What’s next
* Opportunities for engagement and collaboration
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| 12:30 – 14:00 | *Lunch Break and end of the meeting*  |