

Summary Report

*UN Human Rights B-Tech Project First Multi-Stakeholder Expert Consultation
13th June 2019, RightsCon, Tunis, Tunisia*

Introduction

On 13th June 2019 in Tunis, UN Human Rights hosted the first multi-stakeholder expert consultation on the B-Tech Project, focused on applying the *UN Guiding Principles on Business and Human Rights* to prevent and address human rights harms related to the development and use of digital technologies. The meeting brought together **civil society organizations, a national human rights institution, technology companies, academics, multi-stakeholder initiatives, and State representatives**. A list of participants can be found at the end of this note.

The purpose of the consultation was for UN Human Rights to receive feedback on the proposed scope and focus areas of the B-Tech Project as set out in a paper shared in advance of the consultation. The contributions from the Tunis consultation have informed an updated version of draft scoping paper for the Project which are being posted for public consultation in Summer 2019¹.

At the start of the consultation, UN Human Rights outlined the background, context and aim of the Project, and highlighted UN Human Rights' authoritative role as **convener of multi-stakeholder processes to drive better business and State practice built on international standards**. Participants offered inputs regarding the following four focus areas of the B-Tech Project:

- Focus Area 1: Addressing Human Rights in **Business Models**
- Focus Area 2: **Human Rights 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.

This note **provides an overview of the key discussion points and inputs**. It is not an exhaustive list of comments made. **Many participants referred to relevant examples and resources and offered to support the Project as co-conveners of future consultations**. These inputs have been duly logged and will inform the B-Tech project team moving forward. The meeting was held under the Chatham House Rule.

For further information about the project, please contact B-techproject@ohchr.org

¹ <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>

Overarching Messages

Participants voiced strong **support for the proposed Project, including its comprehensive approach to include all three pillars** of the UN Guiding Principles on Business and Human Rights (UNGPs). This was felt to be especially critical given the central role that State interests play in creating the context for technological innovation – whether as regulators or end-users of technologies. The project team noted that the intention is to have Focus Area 4 – exploring regulatory and policy responses – as a cross-cutting angle across the remaining three thematic focus areas.

Building on the enthusiasm for taking a three-pillar approach to every aspect of the work, there was encouragement for UN Human Rights to consider **what market and institutional mechanisms might incentivize responsible development and use of digital technologies**. This strategic viewpoint might help illustrate a path to achieve scale beyond willing business actors.

In order to ensure the project is focused and delivers value, participants noted that it will be important to be clear about the distinct audiences and desired outcomes of the work. There was agreement that **for each individual focus area, the project team should strategically narrow down priority target audiences and craft deliverables with that audience in mind**. It was noted that different stakeholders may have different levels of interest in each focus area. The Project – with its different components and deliverables - should “not try and be all things to all people”.

In welcoming the B-Tech Project, many participants noted that **UN Human Rights is in a unique position to offer an authoritative voice and convene a robust process to support all actors reach alignment** about what meaningful application of the UNGPs in the context of digital technologies looks like in practice. A related advantage was the opportunity for the Project to draw together the expertise and insight from across the UN System, including relevant **Special Rapporteurs and the UN Working Group on Business and Human Rights**.

Focus Area 1: Addressing Human Rights in Business Models

Participants **welcomed the focus on how business models and growth strategies** in the technology sector can carry with them inherent human rights risks. By way of example, a few individuals shared their work on spotlighting the ways in which targeted advertising revenue “bake-in” privacy and other human rights risks.

There was support for **focusing on the unique angle that a UNGPs lens brings to the issue of business model related risks**, i.e that the UNGPs focus us on effective prevention and mitigation strategies versus the blanket black-listing of certain business models. A few participants welcomed that the draft scoping paper pointed out the importance of navigating situations where a particular business model might benefit a certain section of the population even while putting others at risk (for example, where targeted advertising on social media platforms enables civil society, activists and poorer segments of the population to connect and organize with no financial cost).

A common thread in the discussion was that the biggest value-add of this focus area may lie in UN Human Rights **elevating the conversation about the responsible development and use of technology to board rooms, founders, and the investor community**. A number of contributions reinforced this point by noting that in the majority of technology companies, discussions about operating with respect for human rights takes place only at the operational level.

A short discussion highlighted a number of nuances that should not be overlooked by UN Human Rights as the project progresses, including that:

- In some instances, the **technology innovation comes prior to a business model** being developed.
- Value creation is often measured in non-traditional ways so business models might be more about **capturing market share rather than on current or even mid-term earnings**.
- Many large technology companies are operating **more than one business model in parallel**.

Re-iterating that the Project should focus on all three pillars of the UNGPs, it was noted that this focus area might be of **particular interest to regulators** seeking to craft principled and pragmatic proposals in the tech space.

Focus Area 2: Human Rights Due Diligence and End-Use

Participants **welcomed the proposal to focus on the human rights due diligence end-use challenges** which are particularly salient to the technology sector. It was noted that a number of resources already exist which can guide companies in embedding respect for human rights into their operations. As such, the project team's view that a "How to" guide would not add most value was supported. At the same time, there was widespread recognition that for most technology companies, awareness of the UNGPs and taking rights-based approaches to their own responsibilities is very low. The Project should therefore also **sign-post to other relevant and credible resources**.

The discussion flagged a number of considerations that UN Human Rights should confront as it further scopes and designs the project including that:

- In some situations, it is hard to discern an individual actor that has played a dominant role in the use of technology leading to human rights harms. One participant referred to this as **a "perfect storm" scenario where scores of small decisions** by researchers, data scientists, engineers, designers, and sales staff across 50 or more small, medium and large organizations all play a small part in contributing to harms.
- In many cases it is **end-users beyond the technology sector** that are (in the language of the UNGPs) causing adverse human rights impacts. Participants referenced as examples financial institutions, pharmaceutical companies, and retailers.
- 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 the organization. In other words, **the project should be cautious about writing off consideration of SMEs**.

A number of **company participants called for the Project to offer a space to table and explore specific dilemmas with peers and other stakeholders in a constructive manner**, such as real-life operational dilemmas (such as "we have this issue in this geography and do not know how best to proceed"). Others expressed a desire for clarity about the operational implications of certain UNGPs concepts (such as cause, contribution and linkage). The project team reflected that it will work with companies to integrate their challenges into the project research, consultations and work plan.

Participants noted that an area where **the Project might be able to add unique value is in relation to stakeholder engagement, communication and transparency in relation to end-use**. It was noted that in some cases, building public awareness of the human rights risks of certain technologies and constructively informing societal and public policy discourse may amount to a powerful exercise of leverage.

Finally, the issue of **States as end-users of technology** was highlighted as raising particular challenges which should be considered as part of the Project .

Focus Area 3: Accountability and Remedy

The project team started the discussion on this focus area by highlighting that **the B-Tech Project would inform and then build on OHCHR's ongoing Accountability and Remedy project (ARP)**². In practical terms, this means that an early B-Tech Project deliverable will be a consultation and foundational paper focused on accountability and remedy in relation to digital technologies. Then, following the final recommendations and reports from the ARP to the UN Human Rights Council in June 2020, the B-Tech Project will follow up with a specific output focused on accountability and remedy in relation to digital technologies, using the ARP recommendations as the basis for the discussions.

Participants highlighted a number of important considerations particular to digital technologies in relation to Focus Area 3, including:

- That some technology **companies may need to prioritise 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.
- One proposal that, within a given geography, the different actors that make up the technology sector (e.g. ISPs, Telcos, social media platforms) may need to establish some form of **joint grievance mechanism, and collaboration on remedy**.
- The potential for new **digital technologies to impact – positively and negatively - the realization of access to remedy**, accountability and the wider justice system.
- The proposition that technology companies participating in remediation processes – even when they are directly linked to a human rights abuse – may be especially important. One participant raised the importance of **technology companies participating in State investigations, and truth and reconciliation processes**, as they may have access to critical information about real events.

Focus Area 4: "A Smart Mix of Measures"- Exploring regulatory and policy responses to human rights challenges linked to digital technologies

The discussion reinforced support for the Project including a focus on the State Duty to Protect in the context of digital technologies. A key thread was the tension between **on the one hand that many States may have existing or new rules and regulations that will be suitable to protect populations from harm involving new technologies** – such as the EU's GDPR, or laws related to non-discrimination in employment recruitment, while on the other hand States may **also have laws in place (for example in relation to network shutdown requests or direct access requirements) that can strongly pressure companies to become contributors to serious human rights harms**. It was felt that the project will need to keep in mind both sides of this tension.

Participants raised the challenge that – just as in other areas of business and human rights – there may be a lack of policy coherence in many **States between economic growth and domestic innovation priorities, and States' human rights obligations**. UN Human Rights noted that, with this in mind, the Project will focus on the aspects of the UNGPs that focus on public policy coherence within and among States. In relation to State motivations to address governance gaps that permit human rights harms from the use of digital technologies, some participants raised that **the relationship between responsible use of technology and realizing the SDGs** may provide a valuable entry point.

²<https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>

An additional angle to the role of States was for UN Human Rights to **play a pro-active role in promoting the UNGPs and States' duties to protect in other multi-lateral settings**. Participants mentioned the OECD, ILO, and International Finance Institutions, as well as reporting in the context of the Universal Periodic Review.

Next Steps

UN Human Rights closed the meeting by expressing thanks to participants for their constructive inputs and comments on the Project and proposed focus areas, and to RightsCon organizers for hosting the meeting. **The project team will revise the draft scoping paper with due regard to the key discussion points and recommendations from the consultation. A revised draft scoping paper will be published for written comments between late July and early September 2019.** The project team will follow-up bi-laterally on the numerous suggestions for joint research and collaboration.

List of participants

Ms. Anna Karelfelt, Program Officer ICT for Human Rights, Sida,
Ms. Jasmin Aherdan, Swedish Ministry for Foreign Affairs
Mr. Mikael Ekman, Deputy to Denmark's Tech Ambassador in the Silicon Valley
Ms. Barbara Fontana, Counselor, Head of Human Rights Section at Permanent Mission of Switzerland to the United Nations in Geneva
Ms. Aaryn Zhou, Policy Analyst, Global Affairs, Canada
Ms. Cynthia Wong, legal director for human rights, Twitter
Mr. Steve Crown, vice-president and deputy general counsel, Microsoft
Mr. Michael Karimian, Senior Manager, Human Rights, Microsoft
Ms. Alissa Starkzak, VP communications, Cloudflare
Ms. Sarah Altschuller, Business and Human Rights, Verizon (Oath)
Ms. Laura Okkonen, Head of human rights, Vodafone
Ms. Moira Oliver, Head of policy and chief counsel, human rights & digital rights, BT
Mr. Sherif Elsayed-Ali, Director of Partnerships, Element AI
Ms. Alexandria Walden, Global Human Rights & Free Expression Policy Counsel, Google
Mr. Theo Jaekel, Corporate Responsibility Expert, Ericsson
Mr. Toru Niimi, Global Project Lead / Legal Counsel, Privacy and Information Security, LINE Corp
Ms. Isedua Oribhabor, legal and policy fellow for Latin America focusing on BHR, Access Now
Ms. Anna Baciarelli, researcher/advisor, technology and human rights, Amnesty International
Mr. Charles Bradley, Director, Global Partners Digital
Mr. Richard Wingfield, head of legal, Global Partners Digital
Ms. Rebecca MacKinnon, Founder, Director, Ranking Digital Rights
Ms. Namita Aavriti, Women's Rights Programme Co-Manager, Association for Progressive Communications
Ms. Dinah PoKempner, General Counsel, Human Rights Watch
Ms. Chloe Poynton, Principle, Article one
Mr. Jason Pielemeier, Policy Director, Global Network Initiative (GNI)
Mr. David Sullivan, Policy and Communication Director, GNI
Mr. Mark Stephens, Board Chair, GNI
Mr. Dunstan Allison-Hope, Managing Director, BSR
Ms. Lorna McGregor, Professor of International Human Rights Law at Essex Law School and Director of the Human Rights Centre at the University of Essex
Ms. Sabrina Rau, Senior Research Officer, Human Rights Centre, University of Essex
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Ms. Eva Grambye, Head of international division and deputy director, Danish Institute for Human Rights
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Ms. Kristizina Husztio, Research Fellow and special advisor to the Special Rapporteur on Counter-terrorism and human rights, University of Minnesota