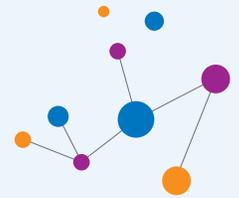




The blog is a product of the [UN Human Rights B-Tech Project](#) and is part of a blog series focused on the intersection between human rights and the responsibilities of technology companies.



## Public policy and digital technologies: The role of National Human Rights Institutions in achieving policy coherence.

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Since the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011, governments in different regions have taken steps to align the efforts they undertake to shape business practices with their duty to protect human rights. Despite some progress, it seems that none have fully grappled with what achieving policy coherence as set out by the UNGPs entails or how achieving coherence should change the daily activities of government. Closing this gap in government practice must be a priority, particularly with regard to safeguarding human rights in the data economy and from the use of digital technologies, and national human rights institutions ([NHRIs](#)) have a central role to play in this regard.

Digital technology is ubiquitous in society and relevant for almost any governmental activity: technology is used for communicating with the population for instance, through tracking and tracing apps that monitor and manage the spread of Covid-19 by using data analytics. However, digital technologies also come with human rights risks, for instance through discrimination in algorithm-based decision-making or the misuse of technology for workplace surveillance.

The UNGPs call on States to “act in a manner compatible with (...) human rights obligations” and stress that supporting and equipping departments and agencies that shape business practices, at both the national and subnational levels, is needed to ensure they are informed of and act in a manner compatible with these obligations (UNGP 8, commentary). Yet in practice, institutional siloes, lack of business and human rights mandates and expertise as it relates to technology, and limited key performance indicators on human rights across institutions make policy coherence a complex challenge for States. For instance, the German procurement law seeks to align the governments procurement practices with its human rights

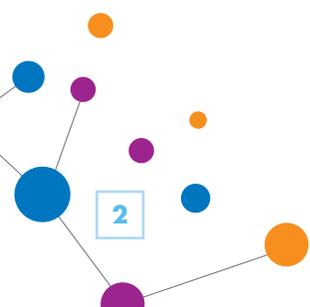
duties and the UNGPs when buying goods and services from the private sector, including technology companies. However, often the primary mandate of public officers when procuring is to reduce costs rather than avoiding human rights risks. This will as well be true for procuring digital technologies.

Without policy coherence, including when the State acts as an economic actor, government expectations towards technology companies may lack consistency and cause confusion among companies and stakeholders. For example, the government may seek to attract foreign investments from technology companies without distinguishing between companies that have and do not have robust human rights policies and due diligence processes in place, while the very same companies may ignore regulatory requirements or guidance of another state agency to promote respect for human rights. To be effective, efforts to ensure policy coherence require that policies of different State entities are [conceptualized as an integrated approach](#), meaning that activities of different state agencies all together sum up to a government action headed towards safeguarding human rights.

A shift from merely avoiding negative human rights impacts while pursuing other goals to action in order to protect human rights will lead to more effective protection of the rights of individuals and groups. Whatever government agencies do, whichever policy area it may involve, they should not only try to avoid harm to human rights, protecting those rights must also be a goal of any governmental action.

If NHRIs receive enough resources, they can help their respective governments achieve policy coherence. The UNGPs recognize the pivotal role of NHRIs when it comes to achieving policy coherence. For instance, the commentary to GP3 states that NHRIs should help states identify whether relevant laws are aligned with their human rights obligations and if they are effectively enforced. For instance, NHRI can establish a human rights-based framework for the technology sector. They can also assess whether state agencies use a human rights-based approach in their activities related to technologies, including when they procure from or cooperating with digital technologies companies, as well as when they regulate their activities. NHRIs can undertake human rights impact assessments, including assessing human rights risks stemming from the design and deployment of artificial intelligence (AI). They may also play a role in facilitating multi-stakeholder engagement and collective action that enables the exchange of knowledge. This is especially key in the area of data economy and AI, as technical expertise may be limited within governmental and human rights bodies. Meaningful involvement of civil society and affected groups in public policy making is also needed to reinforce accountability for State action.

There are promising examples of NHRIs taking action to support government efforts on human rights and digital technologies, including:



- A [research study of the German Institute for Human Rights](#), identifies novel challenges for human rights protection emerging from data-driven business conduct and offers an overview of the current policy debate and emerging best practices for business to mitigate the impacts of data-driven business on human rights.
- The Danish Institute for Human Rights and Global Partner Digital-(GPD) have published [guidance](#) for States on developing national action plans on business and human rights (NAPs) that address digital technologies.
- The Australian Human Rights Commission's [Human Rights and Technology](#) project published a [Discussion Paper](#) in 2019, which recommended the establishment of an AI Safety Commissioner as an independent statutory officer within in the NHRI, whose mandate is to protect and promote human rights as well as to build public trust in the safe use of AI. The Commissioner will have the power to build capacity for safe AI among companies and government agencies as well as to develop policy and monitor the governments' use of AI. In parallel, the Australian government has an independent eSafety-Commissioner, which is a cross-sectional governmental agency, who may cooperate with the NHRI, where necessary.

While these examples are encouraging, addressing the adverse human rights impacts of digital technologies, including AI, is a new area for NHRIs. Most NHRIs need additional resources and capacity in order to fulfil their mandate in this area. Therefore, strengthening the ability of NHRIs with regard to human rights and digital technologies should be part of the adoption and revision of NAPs as well as other State efforts to strengthen the work of NHRIs and advance responsible business conduct.

This is especially important at a time that State action to drive rights-respecting conduct among technology companies is increasingly pressing. As the Council of Europe's Ad Hoc Committee on Artificial Intelligence (CAHAI) works on potential elements for a [legal framework](#) for regulating artificial intelligence and safeguarding human rights, the EU [debates its approach to tech regulation](#), a range of States are developing NAPs, and some are considering [action on exports of surveillance technology](#), ensuring coherence between these initiatives and alignment with the State duty to protect must be a priority. For example, the standards a State uses in the CAHAI should not contradict the language it uses in its NAP or in a multilateral negotiation setting.

No matter in which policy field States take action, it should be in alignment across different portfolios and NHRIs should assist in advising and reviewing alignment.

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*\* The Guiding Principles were unanimously endorsed by UN member states in 2011. They have also been affirmed by global and national business organisations, trade unions, civil society organisations and National Human Rights Institutions. This global support, including from business, makes the Guiding Principles the authoritative global framework for preventing and addressing human rights risks involving business, including in the technology sector.*

