



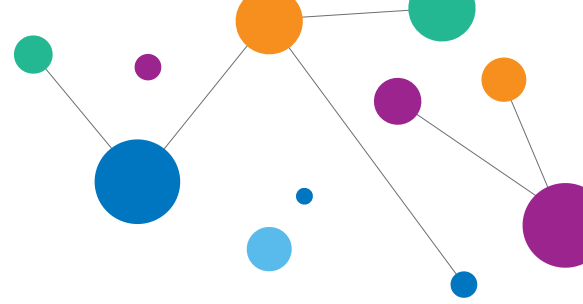
# UNGPS COMPASS FOR TECH REGULATION

A Policymaker's Guide on how to apply  
the UNGPs to require rights-respecting  
corporate responsibility

A large, white line-art graphic of a compass rose is centered in the lower half of the page. It has eight points and is surrounded by concentric circles. The background of the entire page is a solid blue color with various shades of blue circles and lines scattered throughout, creating a network-like pattern.

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# ONE What is the UNGPs Compass?



The UN Guiding Principles on Business and Human Rights (UNGPs) are the authoritative global standard on how to ensure that human rights are protected and respected in a business context. They apply to all business sectors, including the tech sector.

Anchored in international human rights law, the UNGPs call on States to adopt a “smart mix of measures” – both regulatory and voluntary – to ensure that business operates with respect for human rights. Digital technologies, and the companies that develop and/or deploy them, are the subject of an ever-increasing number of regulatory initiatives and processes at national, regional and international levels.

Under international human rights law, States must take a variety of legal, institutional and practical measures to effectively protect human rights. The general human rights law obligation on States to ensure the rights of individuals within their jurisdiction includes the *duty to protect* individuals from harm caused by third parties, including by the private sector. Policymakers and lawmakers also need to take effective measures to protect against the human rights risks associated with digital technologies. Regulating in a human rights compliant way requires engaging relevant stakeholders in the process, including proactively reaching out to communities most affected. When key prerequisites are not in place, regulatory initiatives - even if well intended - may create incoherence, misalignment or violate human rights standards.

To mitigate this risk, the UNGPs Compass provides policy makers and lawmakers with a framework for how to align regulatory initiatives and processes directed at technology companies with human rights standards. The Compass is based on the UNGPs and the normative human rights law and standards that underpin them.

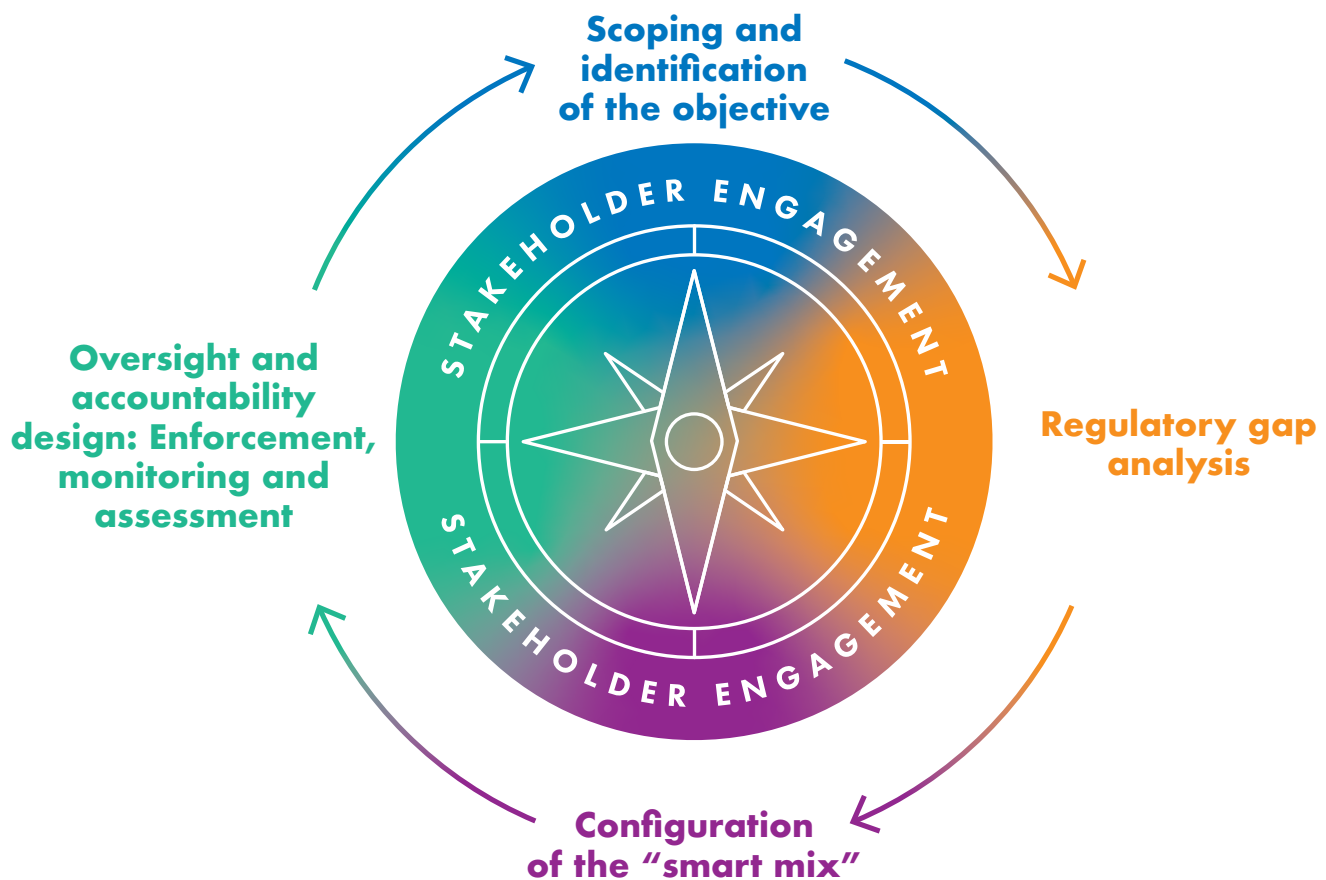
The following step-by-step guidance can accompany the drafting cycle for policies, regulations or legislation and equip policy makers with advice about how to consider core elements of the UNGPs in this work directed at or involving technology companies.

## **Background:**

The *UN Guiding Principles on Business and Human Rights (UNGPs)* have been endorsed by the UN Human Rights Council in 2011, with strong support by global business and civil society alike, and have emerged as the authoritative global normative framework for responsible business conduct. The UNGPs are structured into three pillars that provide a framework for governments to protect and businesses to respect human rights: 1. the State duty to protect human rights, 2. the corporate responsibility to respect human rights, and 3. access to remedy. The UN Human Rights B-Tech Project was launched in 2019 with the goal of promoting the uptake of the UNGPs in the technology sector. Tech companies increasingly use the UNGPs to identify, assess and mitigate downstream human rights impacts, also with regard to digital technologies including a range of maturity stages of AI.

## TWO The “UNGPs Compass” tool

The UNGP Compass is structured along four **iterative steps for policymakers and lawmakers**, all of which are informed by engagement with relevant stakeholders:



### STEP 1: Scoping and identification of the objective

This step requires a clear identification of the ‘problem’ concerning digital technologies, business conduct and human rights that the regulatory measure is trying to address, and the intended objective of the regulatory solution. **What are the tech-related business and human rights issues a policy or legislation is going to address?** The analysis of the perceived problem should be evidenced-based, informed by meaningful engagement with stakeholders, including experts, affected communities and civil society, including those impacted by business activities. Enabling relevant stakeholders to contribute may require specific outreach, facilitation and support measures.

Having identified the issues, consideration needs to be given to which types of technology companies are in scope of the regulatory effort, what is the nature and model of their business operations, what will be the nature of the regulatory responses

(policy measures and/or legal obligations) and their scope, along with the supporting regulatory and enforcement architecture. An empirical assessment about how the technology is used in practice and how this type of usage can be brought in line with human rights standards, including the UNGPs, is also needed to help ensure proportionate and appropriate regulation of technology developers and deployers.

### Guiding questions:

- What is the issue (problem) a regulatory effort is trying to address?
- What is the distinct role that business has in this regard?
- What is the evidence of business involvement with regard to human rights harm emerging from reporting (including by civil society and experts) about the issue?
- Which approach or approaches are best able to protect rights in practice, based on the evidence? 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/affected persons?)
- How have other States regulated the matter, and what is the evidence on the effectiveness of the respective regulatory approach in addressing the human rights harm?
- Are there international/regional good practices and lessons learned that could be taken into account?



## STEP 2: Regulatory gap analysis

Having identified the objective and the human rights dimensions with regard to business conduct, it is important to identify whether there is an actual **regulatory gap on business responsibility with regard to the identified objective** before considering further development of regulatory measures. In addition to consideration of new regulatory measures existing laws may need to be modified or revoked to align with the UNGPs, which state that “It is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights” (UNGP3).

This includes making sure that “laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights”. A **review of existing regulation** on issues closely related to digital technologies, such as content governance regulation, data protection or cybercrime should inform this step, along with further legal domains, such as, corporate law, commercial law, trade law, and labour law.

The business models deployed in the technology industry in the past few decades have supported remarkable innovation yet there is growing evidence that features of these same business models can also influence corporate conduct in ways that contribute to human rights harms. Accordingly, business models should also be reviewed. Adding to this, it is important to assess the **landscape of voluntary measures** that also have an impact on companies, and which may supplement existing regulation. These may include existing policies on corporate responsibility, content governance regulation, data protection or cybercrime as well as industry standards and multi-stakeholder initiatives.

This analysis of the regulatory landscape should also include an evaluation of the effectiveness of oversight measures, such as whether robust scrutiny, monitoring and enforcement measures (with a particular view to affected stakeholder perspectives with regard to the current status quo), are in place. This requires meaningfully engaging with stakeholders, including factoring their inputs in decisions.

### Guiding questions:

- What government policies are already in place and how are they enforced/extent of monitoring with regard to the identified objective (step 1) and is the oversight effective?
- Which voluntary and/or industry standards seek to address the identified human rights issues relating to business conduct and how effective are they in doing so?
- Are there specific aspects of business models relating to digital technologies that are not covered by existing laws but have substantial human rights impacts?
- Are rights such as non-discrimination which are already embedded in national law actionable in practice given the nature of how digital technologies operate?
- Are there specific human rights risks that existing regulation are not adequately addressing?
- What does the regulatory gap consist of, and which regulatory architecture has the potential to close it?



### STEP 3: Configuration of the “smart mix”

Once both the objectives of regulation are defined (Step 1) and the regulatory gap is clear (Step 2), the next step requires configuring appropriate and proportionate actions to meet the identified need. Policymakers and lawmakers should consider a range of regulatory and voluntary measures to identify the most appropriate configuration of actions best suited to the objectives and gaps identified, incorporating as appropriate proportionality and cost-benefit analyses.

This approach is based upon the UNGPs, which call on States to adopt a “smart mix of measures” – both regulatory and voluntary – to ensure that businesses operate with respect for human rights. The UNGPs stipulate that policymakers should ensure policy coherence both horizontally – between different measures – and vertically – between regulatory measures and international human rights standards. The smart mix also provides policymakers and lawmakers flexibility to balance the costs of compliance and the benefits of protection in identifying regulatory solutions, including by applying a risk-based approach that applies stricter oversight to higher-risk activities.

Generally, the UNGPs’ corporate responsibility to respect centers on human rights due diligence processes employed by companies to address risks, including how adverse impacts on human rights are to be prevented, identified and mitigated by companies and the need for meaningful stakeholder engagement as part of it. When regulating in this area to require companies to act in a rights-respecting manner, lawmakers must look for measures that are necessary and proportionate in setting expectations for companies to meet linked to their business activities, digital products and services. In so doing, they may wish to conduct impact analyses regarding the potential effects of regulation. Regulatory approaches may include not only mandated approaches and prohibitions, but “nudges” and amendments to existing laws and regulations.

A technology company can cause, contribute or be directly linked to human rights harms. This has implications for the action it should take to address those harms, including the extent to which a company is expected to provide for or cooperate in remediation. When businesses identify that they have caused or contributed to such impacts, they should provide or cooperate in remediation processes. In cases of mere linkage to harm, while the responsibility to respect human rights does not require the company itself to provide remediation, it may nonetheless take part in doing so. In line with the UNGPs, companies need to act on the most salient identified human rights risks first (scale/scope/remediability) based on their specific industry, geography, and operations. The risk should be assessed in terms of impact on people.

Legal obligations should be proportionate to a companies' causal link with the human rights harm. Given the vast operations of many large companies this could mean that one regulation could create legal obligations that are differentiated based on company size and human rights risk exposure (UNGP 13).

## Standard of Responsibility

Regulators will need to consider the standard of responsibility to be imposed on companies which can include both a standard of conduct (human rights due diligence) as well as a standard of outcome (avoiding causation or contribution to human rights harm UNGP 13). When an *obligation of conduct* is imposed, companies can be held liable based on whether they have adopted and implemented appropriate policies and procedures to identify, prevent, and mitigate human rights risks. This is about what companies do rather than what ultimately happens. Regulation can impose a duty to act with due diligence which requires companies to take reasonable steps to prevent human rights abuses. Human rights due diligence should be conducted across all businesses and business relationships to meet UNGPs' expectations towards risks assessment methodologies and mitigation measures. The exact standard can vary depending on the company's size, industry, and the severity of potential impacts. Regulation can also involve an *obligation of result under which* companies can be held liable for the actual outcomes of their actions, i.e., whether human rights abuses occurred as a result of their business activities.

Addressing standards of responsibility within legislation or regulation also involves determine how the concept of breach is defined. A breach could be defined as the failure to exercise this due diligence, resulting in human rights harm. The breach could be tied to both conduct (e.g., failing to implement a policy) and/or outcome (e.g., an actual human rights violation).

## Defenses and Standards of Liability

Regulators will also need to consider what will constitute a defense from liability. Regulators should ensure that liability defenses are designed in a way that incentivise businesses to implement HDRD and further prevention. Companies, for example, could be shielded from liability by proving they took all reasonable steps to prevent the harm, even if the harm occurred. This could include showing robust due diligence processes and efforts to remediate any issues that arise. A key question in legislating will involve the standard of liability to be imposed. Liability could either be automatic (strict liability) when specific outcomes occur (e.g., human rights abuses in the value chain) or **based on proof of fault** (negligence, recklessness, or intentional misconduct).

## Scope of the obligations

The scope of legislation or regulation also needs to be clearly defined with regard to which entities and activities are covered. Mandatory human rights due diligence obligations should apply to all entities within a corporate group, including subsidiaries, affiliates, and potentially even joint ventures, relative to the degree of control. In addition, laws and regulations should provide clear definitions that allow impacted entities to understand what their obligations are and ensure enforcement will be conducted in a fair and consistent manner.

The key is a consistent application of the human rights due diligence concept with the expectation that human rights due diligence be conducted across all businesses and business relationships. Given the nature of a specific technology product or context, the exact standard could vary depending on the company's size, industry, and the severity of potential impacts. This includes both a standard of conduct (human rights due diligence) as well as a standard of outcome (avoiding causation or contribution to human rights harm UNGP 13). Accounting for the global nature of value chains, the obligations may have effects/or apply to activities and impacts beyond the company's home jurisdiction, including both the upstream value chain and the downstream end-use. Companies should also assess the potential human rights impacts of how their products or services are used, including potential misuse by users. A specific emphasis might be placed on a set of human rights because of a distinct area of concern with regard to rightsholder protection.

## Industry standards, policy instruments and practice

Regulation can also consider whether companies have clear policies, regular risk assessments, effective grievance mechanisms, and transparent reporting in order to create industry-wide good practices. The legal framework could also require companies to continuously improve their practices in response to new risks stemming from new products and services, and evolving standards through ongoing human rights due diligence. Finally, independent audits or certifications of human rights due diligence measures could be required to verify the maturity and effectiveness of these policies and practices.

### Guiding questions:

- What should be the nature of the legal obligations?
- Should a mix of legal obligations be considered when more than one public policy challenge is addressed in a piece of legislation?
- What standard of responsibility should be imposed regarding conduct and/or outcomes?
- How will breach be defined?
- What should be the types of liability that will result from non-compliance (e.g. civil and/or criminal liability)?
- Will a strict liability regime be imposed and what can be the consequences of that?
- How can companies defend an accusation that they incurred liability by proving they took all reasonable steps to prevent the harm? Which entities and activities will be in scope?
- What requirements will be imposed on company practices and how will they be verified?
- Which specific requirements do companies need to comply with in terms of human rights due diligence?
- How will the regulation cover the full value chain?
- How can the prioritization of risk by severity of risks to rightsholder (scale/scope/remediability) be guaranteed?
- Which voluntary measures may be suitable to foster corporate respect for human rights?
- How would a regulatory focus on specific rights increase the impact for rightsholder protection?



## STEP 4: Oversight and accountability design: Enforcement, monitoring and assessment

After regulators have clarified the objectives, regulatory gaps and configuration of the regulatory design, the final step involves the means necessary for the regulation to be effectively enforced. A key consideration should be independent regulatory oversight and enforcement, meaning that supervisory authorities have the human, technical and financial resources and infrastructures for the effective exercise of their power, and have secure public annual budgets. A number of steps may be helpful in designing the enforcement approach. Regulators should consider the effectiveness of pre-existing laws and voluntary measures and their oversight mechanisms to learn from previous experiences and possible bottlenecks of enforcement, and built-in trials are necessary and important aspects of building responsive regulatory oversight. This entails assessing the envisaged regulatory option and its various effects on human rights.

Engagement with affected stakeholders and communities about the effectiveness of the oversight is important, and may raise issues concerning objectives, regulatory gaps, or regulatory design (Steps 1, 2,3). This may involve reconsidering which types

of technology companies are in the scope of the regulatory effort, what is the nature and model of their business operations, and what will be the nature of the legal obligations and their scope.

### Guiding questions:

- How can independent regulatory oversight and enforcement be guaranteed?
- What measures can ensure that non-judicial grievance mechanisms, such as complaint mechanisms, are easily and directly accessible to those potentially adversely impacted and correspond with the full range of the UNGPs effectiveness criteria (UNGP 31)?
- How and through which mechanisms should compliance with legal obligations be scrutinized, monitored and enforced?
- Which sanctions may be imposed, and/or remedial steps would be required in the event of non-compliance?
- What types of support will be needed for effective implementation of the regulation (e.g. guidance, consultations, regulatory effectiveness reviews, education, etc.)
- What are the barriers to remedy for affected people and what measures can be taken to address them?

It is important to highlight that the UNGPs compass proposes an on-going process, meaning that existing laws and policies are assessed in a regular manner to ensure they are capturing the potential adverse impacts stemming from or being linked to technology company conduct in light of the current state of technological innovation. Certain advances in technological innovation might require an adaptation of the regulatory and incentive-based measures to ensure technology companies are upholding their corporate responsibility to respect.



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UN Human Rights invites engagement from all stakeholders across all focus areas of the [B-Tech Project](#). For more information please visit our [website](#).

Please contact us if you would like to engage with our work, including if you have recommendations for practical tools, case studies and guidance that will advance company, investor and State implementation of the United Nations Guiding Principles on Business and Human Rights in the technology sector.



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