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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Summary of consultation on the practical application of the Guiding Principles on Business and Human Rights to the activities of technology companies

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report was prepared pursuant to the request of the Human Rights Council in its resolution 47/23. In that resolution, the Council requested the High Commissioner to convene a multi-stakeholder consultation to discuss the practical application of the Guiding Principles on Business and Human Rights to the activities of technology companies. The report contains a summary of the discussions held during that consultation.

Contents

I.   Introduction

1.   In its resolution 47/23 on new and emerging digital technologies and human rights, the Human Rights Council reaffirmed the importance of a holistic, inclusive and comprehensive approach and the need for all stakeholders to collaborate in a more concerted way in addressing the possible impacts, opportunities and challenges of new and emerging digital technologies with regard to the promotion and protection of human rights. It requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to convene an expert consultation to discuss the practical application of the United Nations Guiding Principles on Business and Human Rights (the Guiding Principles) to the activities of technology companies and to submit a report to the Council at its fiftieth session. The Council further requested OHCHR to seek input from and to take into account the relevant work already done by stakeholders from diverse geographic regions.

2.   In accordance with the latter request, a call for submissions[1] was sent out on 22 December 2021 to all states and other stakeholders mentioned in resolution 47/23, and elicited 38 submissions.[2] These submissions fed into the two-day expert consultation on 7 and 8 March 2022.[3] The consultation explored the normative content, as well as the practical experiences, opportunities and challenges faced, in applying the Guiding Principles to the technology (tech) sector. The present addendum provides an overview of the expert consultation and the key content of the discussions that took place. The document complements a report on the subject matter (A/HCR/50/56).

II.   Consultation on the practical application of the Guiding Principles on Business and Human Rights to the activities of technology companies

3.   In response to the mandate in Human Rights Council resolution 47/23, OHCHR organized a consultation on 7-8 March 2022 to provide an opportunity for states, experts, civil society and other stakeholders to discuss and explore the normative content, as well as the practical experiences, opportunities and challenges faced, in applying the Guiding Principles to the technology sector. 30 panellists and 175 registered participants shared their insights to understand how the UNGPs apply to the tech sector, and the advantages of this framework. Four sessions[4] were organized on:

(a)   The State's duty to protect: Bridging governance gaps in the age of technology – Key characteristics of the State duty to protect;[5]

(b)   The role of the UNGPs in informing policy makers and tech regulation;[6]

(c)   The corporate responsibility of technology companies;[7]

(d)   Accountability and remedy for the human rights harms resulting from the use of technologies.[8]

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[1] See https://www.ohchr.org/en/events/consultations/2022/ohchr-consultation-and-call-submission-practical-application-united.

[2] See https://www.ohchr.org/en/calls-for-input/calls-input/call-input-high-commissioner-report-practical-application-ungps-tech.

[3] See the concept note for the consultation, available at https://www.ohchr.org/sites/default/files/2022-03/UNGPs-tech-consultation-CN-7_8_March_2022.pdf.

[4] Recordings of the session are available at https://vimeo.com/showcase/9540992.

[5] A recording of this session is available at https://vimeo.com/showcase/9540992; https://vimeo.com/showcase/9540992/video/712082471.

[6] A recording of this session is available at https://vimeo.com/showcase/9540992/video/712084021.

[7] A recording of this session is available at https://vimeo.com/showcase/9540992/video/712084400.

[8] A recording of this session is available at https://vimeo.com/showcase/9540992/video/712084596.

4.   The present addendum provides an overview of these discussions. Further details are available through the videos as well as audio recordings of the sessions.[9]

5.   The consultation was opened by Peggy Hicks, Director, Thematic Engagement, Special Procedures and Right to Development Division. Her contribution stressed the importance of starting and deepening conversations about the impacts of digital technologies on human rights with the business community, referring to the universal framework that the international human rights provides. Despite ever more complex technologies being developed and deployed, along with associated risks and challenges, she highlighted how the UNGPs had proven to be a powerful tool for public, private, and civil society actors to ensure that innovation is anchored in responsible business conduct and with respect for human rights. Often, discussion about tech and human rights do not sufficiently address the business and human rights dimensions. The consultation, and subsequent report will help bridge the gap in bringing a business and human rights lens into such discussions. Her contribution further drew attention to the B-Tech project[10] which aims to bridge that gap, and underpins the work OHCHR was mandated to conduct under resolution 47/23. Turning to the question of business respect for human rights as currently implemented by technology companies, Ms. Hicks referred to a set of emerging good practices on human rights due diligence in the technology sector, as well as gaps in corporate conduct. She also highlighted that a growing number of technology companies have publicly committed to human rights and the UNGPs.

6.   Ambassador Taeho Lee, the Permanent Representative of the Republic of Korea to the United Nations Office at Geneva recalled the adoption of resolution 47/23 at the 47th session of the Human Rights Council in 2021. He shared the view that more companies are committed to human rights due diligence, but that that there is a lack of guidelines for how digital technologies companies should respect human rights. He referred to the B-Tech project, which can help to fil this gap, and which already plays a leading role in responding to the human rights challenges in the technology sector, providing guidance for companies on how to use the UNGPs in the development, deployment and use of digital technologies. Ambassador Lee noted how multistakeholder cooperation is crucial in addressing such challenges and optimizing the opportunities arising from new technologies. In preparation for today's expert consultation, he informed that the Republic of Korea had convened a multistakeholder forum on new and emerging digital technologies and human rights, gathering insights from government ministries, industries, academia and civil society representatives on companies' respect for human rights and best practices.

A.   The State duty to protect: Bridging governance gaps in the age of technology – Key characteristics of the State duty to protect[11]

7.   This session discussed how the UNGPs conceptualize the state duty to protect human rights and how this duty applies in the technology sector. Particular attention was paid to how such duty places human rights at the heart of states' action to protect against the individual and societal risks posed by technology companies, while allowing the enormous potential for positive impact from digital products and services to be realized. Two overarching themes were at the core of the session, namely the role of states in promoting respect for human rights by technology companies and the role of states in relation to human rights due diligence on the use by states of technology companies' products or services.

8.   Lene Wendland, Chief of the Business and Human Rights Unit at OHCHR moderated the panel composed of Ambassador Ulrike Butschek (Director for Human Rights, Federal Ministry for Europe and International Affairs, Austria), Philippe-André Rodriguez (Global Affairs Canada, and in the capacity of Canada as the Chair of the Freedom Online Coalition), Josianne Galea Baron (Children's Rights and Business Specialist, UNICEF), Gayatri

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[9] See notes 4-7 above and https://conf.unog.ch/digitalrecordings/index.html?embed=-h&mrid=C8102FA5-7368-4269-AEDC-FEEE6B4F1E44.

[10] https://www.ohchr.org/en/business-and-human-rights-b-tech-project.

[11] A recording of this session is available at https://vimeo.com/showcase/9540992/video/712082471.

Khandhadai (Head of Technology and Human Rights, Business & Human Rights Resource Centre), and Buhm-Suk Baek (Member of the Human Rights Council Advisory Committee).

9.   Among the key issues participants discussed was the need to have a human rights-based approach to new and emerging technologies, which can enhance rights and promote economic development at the same time. In that context, the interlinkages between the concept of a human rights-based approach and the UN Guiding Principles approach were underlined. Discussants stressed the need for such human rights-based approach to apply to the whole life-cycle of digital technologies – i.e. the design, development, deployment and use of digital technologies. Putting human rights at the centre of all considerations and all actions related to existing and emerging challenges is fundamental. A particular focus needs to be placed on addressing the implications of new and emerging digital technologies on persons in vulnerable situations, on gender equality, non-discrimination, inequalities within communities and the digital divide. A human rights-based approach means to especially protect those who are most vulnerable, who are already left behind, who may not have the same access and opportunities and ensure that they, too, will profit from the economic and social development new technologies can bring. Accessibility to technological development for everyone is another key element as key public services and democratic life will depend on digital technologies. Regulatory frameworks are thus needed, but these need to be clear but flexible. For example, Austria introduced a so-called regulatory sandbox that allows firms to test innovative business models in their development stage under the supervision of the Austrian Financial Market Authority.

10.   The representative of the UN Advisory Committee drew the discussion towards the need for more policy coherence in a context of current highly fragmented regulation of the activities of tech companies. Various ministries, agencies and bodies specializing in specific domains are engaged in these regulations to comply with the state duty to protect. But in practice, the level of knowledge and awareness of human rights varies across all branches of government structures, contributing to potential inconsistencies in how technology companies are regulated. Therefore, states should maintain a robust policy coherence regarding these technologies and consolidate them in national action plans for business and human rights (NAPs), including with regard to digital technologies' impact on human rights and tech companies respect for human rights. While having multi-stakeholder initiatives for communication and consultation is essential, it is important to use and interpret current human rights standards. Rather than spending time creating new ones and risking to dilute the core expectations with such new standards, the existing human rights standards are fit for purpose. Attention was drawn to an online database of digital rights laws from around the world that allows access to legislation, cases, and analyses concerning human rights in digitally-networked spaces[12].

11.   The key role played by multi-stakeholder initiatives was also discussed. Governments, such as the Danish government, place an emphasis on a multi-stakeholder approach. The Danish Tech for Democracy initiative[13] and the Copenhagen Pledge on Tech for Democracy[14], which put forward a mission for a digital future based on democracy and human rights, are examples of such approach. Another example is the Freedom Online Coalition (FOC), which, beyond its 34 governments members, has an advisory network which includes 30 leading tech companies and civil society organizations. The FOC offers strategic advice to its members and promotes the application of the Guiding Principles to the technology sector in two main ways, through norms development and diplomatic coordination. Through its work on norms development, the FOC has established an extensive set of positions articulating how human rights online can be upheld and expanded by states and the private sector in a range of areas, including countering disinformation, enhancing cybersecurity, developing trustworthy artificial intelligence (AI) and expanding digital inclusion – all in the context of the Guiding Principles. The FOC also communicates its positions through "joint statements", which frequently include calls for action addressed

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[12] https://cyrilla.org/.
[13] https://techfordemocracy.dk/.
[14] https://techfordemocracy.dk/join-the-initiative/.

directly to technology companies but also to States[15]. Through its diplomatic coordination, the FOC has a long track record for swift coordination and advocacy, owing to its established network of contact points across capitals and international entities. Among others, to fight disinformation, the FOC issued a statement[16] in which it called upon governments not to unduly restrict, moderate or manipulate online content or disrupt networks to deny users access to information, contrary to their international obligations. The FOC has also established several guidelines for platforms that states should adopt to foster the platforms' compliance with international human rights law, including the UNGPs, when countering disinformation.

12. Speaking from the perspectives of civil society, a representative of the Business and Human Rights Resource Centre (BHRRC) shared a set of key reflections. Accountability and transparency of digital tech companies is a key priority. At the core of BHRRC's work is increasing transparency of human rights policies and practices within the tech sector, tracking allegations where tech firms did not respect human rights and inviting them and occasionally their investors to publicly respond. While the private sector is at the heart of discussion, there is a need to address the critical role of states, not only in terms of their responsibility to protect users and hold companies accountable but also from the perspective of states being one of the largest users of technologies. In the face of reports of abuse of surveillance, contact tracing and facial recognition technologies by states, this makes it urgent issue that needs attention. The role of the judiciary was also pointed out. In the last few years, important jurisprudence has emerged from different regions that have interpreted and applied regulatory framework, in particular on intermediary liability and the responsibility of companies. More needs to be done to engage the judiciary on understanding and applying the UNGPs in remedying adverse human rights of technology companies. Civil society actors should be included in the development of regulatory frameworks, as they often have a better understanding of the challenges posed by the application of the UNGPS.

13. UNICEF spoke about the impact of technology on children's rights and engaging technologies companies. Children constitute a significant share of internet users, and the internet has become a vital tool for many aspects of their lives (education, healthcare, connecting with peers etc.). Children being a group at heightened risks of vulnerability, they can be deeply affected by corporate activities, products and services. Thus, children's rights considerations should be taken into account not only by companies that directly target children as their primary users, but also those that have children users. In that respect, states should require companies to conduct child's rights due diligence. Such regulation should ensure non-discrimination, be sensitive to different situations and geographic locations of children, including taking into account children in specific disadvantaged or vulnerable situations and children who are not direct users of technology. It should also consider children's rights to express their views and children's evolving capacity.

14. Participants also discussed the issue of the human rights terminology, which can be a barrier to applying the UNGPs, some preferring to use concepts companies are more frequently using, such as sustainability, ethics and responsible use of digital technologies. To overcome such barriers, the need for further dissemination of the human rights framework[17] and its relevance was highlighted, as well as the need for some "translation" work to ensure all parties understand context and terminology. For example, it is important to engage and speak with chief engineers and other teams involved in the design of algorithms to help them place human rights at the centre of technological developments.

15. Generally, participants concurred that there was a need for an integrated approach as proposed by the "smart mix of measures" emphasized by the UNGPs that include voluntary and binding means by the State to require technology companies to respect human rights, including strengthening the regulatory environment in line with the UNGPs for corporate requirements to carry out human rights due diligence.

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[15] https://freedomonlinecoalition.com/statement-on-behalf-of-canada-chair-of-the-freedom-online-coalition-a-call-to-action-on-state-sponsored-disinformation-in-ukraine/.

[16] https://freedomonlinecoalition.com/foc-issues-joint-statement-on-spread-of-disinformation-online/.

[17] See for example Global Partners Digital resources: https://www.gp-digital.org/bhr-and-the-tech-sector-resource-hub/.

B.   The role of the UNGPs in informing policy makers and tech regulation[18]

16.   An increasing number of states are elaborating policy frameworks at the national and multilateral level regarding the development and use of digital technologies such as those based on Big Data, Machine Learning and Artificial Intelligence. Other regulatory developments, such as those related to mandatory human rights due diligence requirements for companies, may also have implications for how technology companies design, develop, and sell products and services, for example by mandating greater transparency over the decisions they make, and putting in place safeguards and oversight. Policy responses to human rights risks related to digital technologies are furthermore beginning to be considered and reflected in some NAPs on Business and Human Rights.

17.   In this context, participants addressed the strong need for collaboration and alignment at the regional and global level to avoid fragmented regulatory and policy approaches to digital technologies. The session focused on how the UNGPs can serve as tool for policy makers to better design tech policy and regulation. It was highlighted that in order to provide enhanced clarity on regulatory proposals regarding business conduct in the technology sector, the B-Tech project is developing a guidance tool that would allow policy makers and other stakeholders to assess whether regulatory or incentive-based initiatives directed at tech align with the UNGPs.

18.   Isabel Ebert, Advisor to the B-Tech project, moderated the panel composed of Anita Ramasastry (Member, UN Working Group on Business and Human Rights), Ana Beduschi (Senior Research Fellow, Geneva Academy), Imane Bello (Lawyer, Paris Bar), Alyson Finley (Foreign Affairs Officer, US State Department), Sebastián Smart Larraín (Regional Director, National Human Rights Institution of Chile, and Chair of the Business and Human Rights working group of GANHRI), and Patrik Hiselius (Senior Advisor, Human/ Digital Rights, Telia).

19.   As an introduction, participants discussed areas related to the use of digital technologies where governments have taken action not necessarily in line to the UNGPs, such as privacy and data protection. The EU General Data Protection Regulation and privacy laws in the US and elsewhere speak to the specific need to address data use and collection in the digital world. As part of a recent development in relation to the state duty to protect human rights, participants discussed a draft directive focused on mandatory human rights due diligence under consideration in the EU.

20.   Participants noted also the growing misuse of surveillance technology by governments including under false claims of security. Such misuse not only results in arbitrary or unlawful interference with one's privacy and undermines public trust in their governments but stifles freedoms of expression, peaceful assembly and association. As concrete example of the operationalization of the state' duty to respect human rights, a state participant shared the approach the US government has taken to promote respect for human rights by technology companies, its efforts to encourage effective human rights due diligence on the use of technology companies' products or services, and best practices identified for human rights due diligence and reporting. In the export control area, steps were taken to evaluate how the government could better monitor and, when appropriate, restrict the sale and export of surveillance technologies and other technologies to those who would misuse them.

21.   Reference was also made to the provision of guidance to US businesses contained in the State Departments' guidance for companies that export surveillance technology[19] to ensure that tools or products from cyber-surveillance companies in the US are not misused abroad by end-users to undermine human rights. The US State Department's Surveillance Due Diligence Guidance issued in 2020 sets out criteria for technology companies to evaluate whether to proceed with a transaction, as well as safeguards to implement if a company

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[18]   A recording of this session is available at https://vimeo.com/showcase/9540992/video/712084021.

[19]   https://www.state.gov/key-topics-bureau-of-democracy-human-rights-and-labor/due-diligence-guidance/#:~:text=This%20guidance%20is%20a%20first,to%20commit%20human%20rights%20abuses.

decides to proceed with such transaction. The guidance provides focused and tailored guidance for companies and sets an expectation and good practice, which, in the future, could be tied to government procurement of such technology. Other such specific types of human rights concerns were mentioned in relation to data localization and storage and facial recognition.

22. Reflecting on the US example of guidance materials, participants deepened the exchange about which tools that can be used by states to incentivize company due diligence, such as government's use of procurement requirements to demand focused human rights due diligence in the technology sector as a condition of selling products and services to the government. Other government support programs such as export credits can also be used to incentivize company due diligence, while governments can also consider conducting human rights impact assessments of risks that may arise from State deployment of digital technologies or services.

23. Access to remedy was also mentioned, and the critical need for states to put in place robust remedy mechanisms. In doing so, one suggestion was that States could consider utilizing the network of privacy and information commissioners within the EU and elsewhere that have a more focused supervisory remit as well as dispute resolution powers.

24. With regard to specific risks, such as risks of use of technology to human rights defenders, or the impact of technology in conflict, it was recommended that states adopt a focused approach to using regulation or using their incentive structures under Pillar I of the Guiding Principles to forge solutions to address heightened risk of severe human rights impacts linked to the use of technology.

25. The role of investors and their leverage was also touched upon. Technology companies often emerge from initially small companies, such as start-ups, and require private funding to begin operations. Thus, the role of investors, private financing including venture capital, and alignment of financing activities with the UNGPs is critical to ensure rights-respecting business models and practices. Investors have crucial influence in the early growth stages of a company and its decision-making about the value proposition and corporate strategy that might adversely impact human rights later on.

26. The central role that NHRIs can play in highlighting the potential issues and systemic risks that businesses should consider in their due diligence processes as well as in ensuring policy coherence in the regulation of the digital system was also discussed. Participants agreed that without policy coherence, including when states act as an economic actor, government expectations towards technology companies may lack consistency and this may cause confusion among companies and stakeholders, and dilute human rights due diligence standards. The importance to strengthen the ability of national human rights institutions (NHRIs) with regards to human rights and digital technologies through NAPs was highlighted.

27. From the perspective of the private sector, the need to establish a level playing field through regulation was highlighted, and recent initiatives such as the EU proposed Corporate Sustainability Due Diligence Directive were welcomed as part of the responsibility of lawmakers and authorities to provide legal certainty to business. Such legislation will also provide better opportunities for a level playing field. Participants noted that any governments' request for data need to be based on a clear legislation, and respect the principles of necessity and proportionality. However, and in particular during the COVID-19 pandemic, telecommunications companies were asked by governments to collect geolocation data at times without these requirements in place, nor any national data protection authority oversight. This placed these companies in challenging situations having to comply with conflicting frameworks of national requirements and international human rights standards.

28. A participant raised the issue of the growing ecosystem of public-private surveillance of migrants and immigrants by some governments. In that context, governments and business partnerships were said to unlawfully monitor migrants and immigrants through data-driven technologies collecting data without informed consent. They are oftentimes roll-out without the explicit purpose of surveillance, but in the context of "smart city" initiatives where corporations provide essential technological tools and infrastructure to urban governments.

However, such initiatives are frequently used as tools for policing. Additionally, such public-private partnerships are deployed with little to no efforts to provide oversight or remedy, and transparency is lacking with regard to data collected by a government agency for a specific purpose, which is then further consolidated and shared between different government agencies for different purposes.

C. The corporate responsibility of technology companies[20]

29.   This session discussed how tech companies operationalize their commitment to respect human rights as articulated in the UNGPs. In that regard, businesses need to "know and show" that they respect human rights in the context of their own operations, activities, and business relationships. To do this companies should put in place relevant policy commitments, conduct human rights due diligence, and engage in remediating harm to victims. Meeting the global standard of conduct of business respect for human rights outlined in the UNGPs is increasingly important for technology companies and entrepreneurs for several reasons including - sustaining user trust and the company's social license to operate; avoiding reputational and legal risks; and being an attractive place to work for current and future generations of talented researchers, data scientists and engineers. Operating with respect for human rights is not just a compliance exercise and requires actions to integrate human rights considerations into relevant processes and practices. It involves cross-functional collaboration and a governance and culture of learning, problem-solving and openness, as well as a willingness to interrogate business models and incentives. Robust and meaningful engagement with affected stakeholders must be at the core of any human rights due diligence processes, and beyond.

30.   Mark Hodge, Senior Advisor to the B-Tech project, moderated the panel composed of Alexandria Walden (Global policy lead for human rights and free expression, Google), Dae Seop Song (Director for Agenda Research, NAVER Corp.), Bettina Reinboth (Director of Human Rights and Social Issues, Principles for Responsible Investment), Veszna Wessenauer (Program Manager, Ranking Digital Rights), Judith Lichtenberg (Executive Director, Global Network Initiative), Edrine Wanyama (Legal Officer, CIPESA) and Guy Berger (Director of Division Freedom of Expression and Media Development, UNESCO).

31.   In a context of various tech-focused legislative proposals, such as the EU Digital Services Act, the EU draft Proposal for a Corporate Sustainability Due Diligence Directive, participants discussed how tech companies can advance the implementation of human rights due diligence. One key area for progress identified is the positive trend of governments proposing regulations that are relevant to human rights in the tech industry. Participants noted that these regulations should be consistent and interoperable with the UNGPs.

32.   It was highlighted how the Global Network Initiative (GNI) Principles[21] provides a framework for multi-stakeholder dialogue, direction and guidance to the Information and Technology Industry (ICT) and its stakeholders globally. Through their participation in GNI, companies commit to developing risk mitigation measures and are assessed on that basis. While overall, tech companies which are GNI members are integrating human rights assessments into company due diligence more widely, there is a need for more system-wide approaches to address the interrelated impacts across the ICT sector. There is also a need for more guidance on ICT specific human rights due diligence and impact assessments.

33.   Participants spoke about the issue of communication and transparency, the need for tech companies to be accountable to their immediate users and consumers, but also to those who may be affected by their behavior as well as wider society. In that regard, the UNESCO Transparency Principles[22], which cover human rights due diligence and redress, apply to companies, policymakers and regulators. Endorsed by UNESCO's 193 Member States at its 2021 General Conference, the Transparency Principles have normative influence and identify greater transparency of the technology companies as a key pillar for ensuring information as

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[20] A recording of this session is available at https://vimeo.com/showcase/9540992/video/712084400.
[21] https://globalnetworkinitiative.org/gni-principles/.
[22] https://unesdoc.unesco.org/ark:/48223/pf0000377231.

a public good. In particular, principle 10 foresees that companies should be transparent as to whether they have processes to enable people to raise concerns about content and they should be transparent about the implementation of such processes in terms of numbers, types of complaints and actions taken to redress issues.

34.   Company representatives explained how they integrate human rights into their business practices, being guided by international standards, including the UNGPs and GNI principles, which were found to be a very useful orientation, especially when national laws are in conflict with international standards, and companies have to position themselves in a situation of conflicting frameworks. Companies' human rights commitments are integrated into their due diligence programmes, governance structures and operational strategy, and they have internal governance structure in place to oversee the implementation of the UNGPs. It was stressed that it is not just tech companies which need to commit to the UNGPS, but also governments. A company representative called upon rights-respecting governments to show leadership in that context.

35.   Bringing civil society voice to the discussion, a participant highlighted that access to information empowers people to demand for accountability and transparency, to promote a better environment for technology and human rights, notably improving livelihoods. While stressing the value of the UNGPs for the work of her organization, she noted some important challenges, such as getting tech companies in regions where they operate to define human rights policies, as well as the lack of transparency and communication from companies, including uninformed data collection with poor confidentiality measures.

36.   A representative from Ranking Digital Rights (RDR) brought the perspective of a non-profit research and advocacy program aimed to advance corporate accountability through researching and analyzing the commitments, policies and practices of major global digital platforms and telecommunications companies. RDR advocates for laws and public policies that safeguard the rights of online users and communities. It has translated the UNGPs into very detailed transparency standards and indicators so at to obtain data points on 65 companies across 26 sectors using the Protect, Respect and Remedy framework provided for by the UNGPs as well as other international human rights framework (ICCPR, GNI Principles). The use of multiple global frameworks enables RDR's index to cover different cultures and geographies. The work carried out by RDR can support the development of tech regulation. Governments need to be clear about what they require from companies and need to invite companies to conduct human rights due diligence and disclose risks. Transparency can enhance public understanding of how technology companies operate, and this is a first step towards accountability. Participants also pointed out that investors should also use RDR's findings and indicators to engage with companies they invest in, leveraging their powerful incentives for companies to improve.

37.   Bringing the perspective from the investor community, and bearing in mind that the majority of the world's capital is managed by investors who subscribe to Environmental, Social and Governance criteria for the evaluation of social responsibility of a company, investors have the capability to address human rights issues in their dialogue with companies, incentivizing them to elaborate human rights policies and shaping expectations around their policy commitments and how human rights are integrated into strategies, policies and planning, with independent risk management and heightened expectations concerning disclosure and reporting. Policies should be adapted to the fast-changing landscape to address emergent human rights risks in the tech sector. States should take a more active role in addressing and preventing preexisting human rights risks in the sector. Investors have the potential of leveraging and using their influence through capital markets and through their shareholding to move the conversation further. While investors have started to embrace the UNGPs, more progress needs to be made and more regulation is necessary.

38.   Participants agreed that the scope of the technology and human rights discussions should be broadened from just companies that develop and sell technology to also include the companies deploying technology (retailers, banks, healthcare companies etc.) as well as government agencies that are deploying technologies and making decisions about how the technology is used.

39.   The session concluded by acknowledging the need to move from the recognition of the value of the UNGPs onto the need for their application by technology companies.

D.   Accountability and remedy for the human rights harms resulting from the use of technologies[23]

40.   The session discussed the three categories of grievance mechanisms for accountability and remedy in cases of business-related human rights abuse: Judicial mechanisms; state-based non-judicial mechanisms; and non-state-based grievance mechanisms, and how each fit within the broader remedy ecosystem in the technology space. Particular attention was paid to the role of company-based grievance mechanisms in this complex, fast-moving and dynamic sector, as well as the challenges that may be encountered in responding to specific types of technology-related harm (e.g. adverse impacts resulting from algorithm-based decisions). The various ways that states can drive and support the development of a well-functioning system of remedies for technology-related harms that properly responds to the needs of rights-holders was also explored.

41.   Jennifer Zerk (Legal consultant, OHCHR Accountability and Remedy Project) moderated the panel composed of Mauricio Lazala Leibovich (Director, Digital Freedom Fund), Cathrine Bloch Veiberg (Senior Adviser, Danish Institute for Human Rights), Rashad Abelson (Legal Expert, OECD Centre for Responsible Business Conduct), Pamela Wood (Human Rights and Social Responsibility, HPE), Afia Asantewaa Asare-Kyei (Board Member, Meta Oversight Board) and Lorna McGregor (Director, Human Rights, Big Data and Technology Project, University of Essex).

42.   Speaking from the perspective of an organization whose aim is to advance digital rights through strategic litigation, a participant shared experiences with such litigation in Europe. With the Covid-19 pandemic, the need had emerged to set up a specific litigation fund for Covid-19 related cases to offer support for challenges to address digital rights threats resulting from the pandemic, such as COVID tracking apps, website blocking, thermal scanning, remote proctoring software, health data security, and criminal databases. The participant shared few successful cases which have had the impact, beyond the parties directly involved in a case, of bringing about legislative, policy or social change. One of them involved a risk profiling method used by a government to pre-emptively identify individuals who might commit welfare and tax fraud, which was ruled to violate the right to privacy as protected under the European Convention on Human Rights. The case was brought forward by a coalition of NGOs, unions and individuals who argued that this risk profiling method unfairly targeted people based on their place of living or social or economic background. The ruling set an important precedent that can be used to ensure states properly assess the human rights impact of new technologies used to facilitate access to public services.

43.   Another legal case, still pending at the time of the consultation, was one taken up by a digital rights organization against a social platform which had taken down an organization's webpage without any explanation or possibility to contest the removal. Another case initiated by several NGOs was linked to the online advertising industry (adtech) - built on the trade of personal data, including intimate and sensitive details about individuals. Information about individuals had been shared and sold across thousands of online advertising companies without users' informed consent or knowledge about who had access to their data or how it was being used. Taking coordinated litigation, advocacy, and campaigning activities, the aim of the case is to put pressure on data protection authorities across Europe to investigate and take enforcement action against the online advertising industry. To date, complaints had been made to 21 data protection authorities across the EU. The added value of strategic litigation does not only come from winning the case, but also from all the work and collaboration throughout the litigation process. With tougher regulation coming in the European Union in the shape of the EU Digital Services Act and EU Digital Markets Act, companies will have to start aligning their business models and practices with the UNGPs, international human rights and society's expectations.

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[23]   A recording of this session is available at https://vimeo.com/showcase/9540992/video/712084596.

44.   Speaking to the role of National Human Rights Institutions (NHRIs) in facilitating access to remedy, a participant laid out the foundational pathways for doing so, such as raising awareness, developing research and knowledge, capacity building, recommending legal reforms. For example, the NHRI of Germany has done a mapping and study on business and human rights in the data economy, and the NHRI of Australia initiated a project on new and emerging technologies, including AI. NHRIs also provide help in strategic litigation. For example, the French national consultative commission on human rights published opinion on online speech. NHRIs can also, if they have such mandate, order compensation.

45.   Bringing the perspective from the OECD and its Guidelines for Multinational Enterprises, which are aligned with UNGPs, a participant discussed the role of National Contact Points (NCPs) as state-based non-judicial grievance mechanism. All 50 governments adhering to the OECD Guidelines have the legal obligation to set up a NCP. Since 2000, 600 cases have been heard by NCPs. In terms of the process, interested parties first submit the complaint to the NCP, where research and limited investigation is done by the NCP on whether to proceed with the case. The NCP then offers good offices to facilitate a constructive dialogue between the two parties to reach an acceptable agreement on remedy. The NCP then releases its final report on the process and make recommendations and follow up on the remediation as appropriate. As NCPs are not judicial mechanisms, participation in the process is voluntary and the NCP does not have the authority to order any judicial remedy measure. Yet some governments use hard law incentives for companies to participate in NCP processes, such as barring public procurement contracts for companies that refuse to participate in good faith.

46.   The participant mentioned, out of a list of recent NCP cases in the technology sector[24], some of them, such as cases involving online platforms and the use of algorithms that push potentially harmful content[25]; cases on investor due diligence on harmful technology manufacturing in their investment portfolios[26]; marketplaces listing dangerous products for sale[27]; and telecommunications providers that were alleged to be linked to censorship of political dissidents of their government clients[28]. Moving forward, the participant indicated that the objective of the OECD Secretariat was to work with partners to develop a clearer understanding of responsible business conduct issues in the tech sector to better support NCPs in how they handle cases and better inform corporate decision making around how to handle these issues. Four key areas of interest are especially prominent: development, sale, and use of digital products and services involving artificial intelligence, governing of online platforms, the use of blockchain, and the gig economy.

47.   Bringing the perspective of a tech company on access to remedy in the tech sector, a participant from a technology infrastructure and solution company operating around the world explained that a critical part of her company's operations and mission are human rights. The basis of the company's human rights policy is its commitment to the UNGPs, which are particularly valuable as they offer an internationally agreed approach to demonstrating respect for human rights, providing an actionable framework for approaching human rights due diligence, developing and checking systems and processes for establishing strong policy, identifying and responding to potential and actual impacts and providing access to remedy, and finally offering sufficient flexibility through a principled approach. The company conducted a company-wide human rights impact assessment with an external evaluator to identify the company's most salient risks, all of which are common throughout the technology industry and include rights to dignity, non-discrimination, privacy and freedom of expression: responsible use, responsible product development, modern slavery and decent work, responsible minerals, inclusion & diversity, and water use. In terms of the key components of the company's approach to remedy, it supports remedy of any actual adverse impacts that may occur, whether wholly or in part due to the company's actions or inactions. It also seeks to apply leverage and encourage responsible parties to assess conditions and

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[24] https://www.oecdwatch.org/complaints-database/?fwp_oecd_complaint_sector=technology-telecoms.
[25] https://www.oecdwatch.org/complaint/rohingya-refugees-vs-facebook/.
[26] https://www.oecdwatch.org/complaint/society-for-threatened-peoples-switzerland-vs-ubs-group/.
[27] https://www.oecdwatch.org/complaint/frank-bold-vs-grupa-olx-sp-z-o-o/.
[28] https://www.oecdwatch.org/complaint/fidh-jfi-and-redress-vs-italtel/.

implement corrective actions and take action to influence any adverse impacts that may be linked to it and engage with peers and other partners on collective remedy.

48.   In terms of the biggest challenges for remedy in the tech sector, the participant shed light on six in particular: 1. How to define when restitution is required? 2. The tech supply web being complex, how to define accountability for remedy? what role should each actor play in remedy? 3. How to best collaborate to provide remedy, use collective leverage to influence change? 4. How to find impacted individuals, and should companies be more proactive than operating a grievance mechanism? They can be users on a platform, end-users of tech, but also citizens or residents who may not even realize they were impacted by technology. 5. How to leverage existing, external grievance channels? Are there grievance channels that should be established for the whole tech industry specific to irresponsible use? Should they be specific to tech use cases, or tech use in health care, in finance, etc? What would that look like? 6. To what extent can we prepare now, or is each case so unique that they would need to be assessed and dealt with according to their unique context, unique set of actors and unique subjects? In terms of opportunities, the challenged laid out point to the need for the tech industry to come together and collectively define good practice and prepare for remedy. Working together, and with key stakeholders, companies can advocate for stronger rule of law, align existing grievance mechanisms with UNGP Principle 31 and map internal and external grievance channels to offer better choice and to triage concerns, and to better support and protect those harmed, and collaborate where it will have a bigger impact.

49.   Another participant highlighted the specificities of an independent company grievance mechanism funded by an irrevocable trust, the Oversight Board. The Board was set to both issue binding decisions on content, but also make recommendations to improve the company's social platform content moderation policies. Through this new model, experts from across the world who are lawyers, former politicians, academics and journalists are given seats at the decision-making table. She explained that the board had been conceptualized in line with the effectiveness criteria of operational grievance mechanisms and access to remedy under the UNGPS. She further underlined how human rights impact assessments are conducted on all the cases selected by the Board, how the scope of the rights holders, risks and mitigating actions are outlined, while noting that these do not replace the company's own corporate responsibility to conduct human rights due diligence. While the Board's decisions are structured around the three-part test of legality, legitimacy, and necessity and proportionality enshrined in Article 19 of the International Covenant on Civil and Political Rights, they go further and identify other human rights implicated in a case.

50.   The participant indicated how several of the UNGPs principles (18, 20, 21 and 31) are applied to the body's work as it seeks to create legitimate, accessible, predictable, equitable, transparent and rights-compatible pathways, while also showing a commitment to continuous learning, with the effectiveness criteria running through all its work. The Board selects the cases, including by looking at criteria like the severity of the harms Meta's decision in a case may have contributed to and the scale of the adverse human rights impacts. Meta has acted upon many of the Board's recommendations such as including a satire exception to the public-facing language of the Hate Speech policy or clarifying health misinformation policies when Covid-19 was at its peak. Since 2020, the Board has decided 22 cases and issued over 100 recommendations to change the company's policies that would apply to all users across the world. The Board has built engagement and transparency into its processes, by routinely seeking out organisations and individuals to submit public comments on selected cases and hosting regular open engagement calls to encourage dialogue with stakeholders. Such feedback shapes the Board's decisions, while the Board's charter ensures transparency. The Board also encourages Meta to publicise responses to its recommendations, thereby improving compliance with Principles 20 and 21 of the UNGPs, which focus on tracking and externally communicating due diligence efforts. By testing content policies against real situations, the Board can understand the challenges as they play out in different contexts and identify and refine best practices that reflect human rights standards.

51.   From a broader remedy ecosystem perspective, it was noted that while individuals seeking remedy might have different goals, a common feature is the power imbalance between the company and the victim. There is not much jurisprudence regarding the adverse impacts of digital technologies and services related to companies, hence the need to get more

claims off the ground. A participant noted that competition law could be used to make companies accountable, and that this has started to be used. The EU due diligence proposal will result in court cases and the creation of a body of jurisprudence. Another avenue for redress is through business-to-business relationships as businesses can also experience abuses.

52.   The current remedy ecosystem is very incomplete, and oftentimes individuals and groups do not know where to seek remedy. More efforts need to be made to assist them navigate this complex ecosystem. NHRIs have a key role in triaging and helping them to navigate the complex remedy ecosystem. Another obstacle to access to remedy is transparency: to exercise your right to remedy, you first need to know that your rights have been affected, and which technology company has been involved. There are arguments for public registers and audits to show where there are private-public partnerships on the use of technology, on how these have been used, why and who can assess to the data. More information should also be published about cases, whilst ensure anonymization and respect to privacy. Having all these issues and findings published would help coherence and creating of a discourse about remedy. Industry level cooperation in creating common ideas on what sectorial grievance mechanisms should look like emerged around the sourcing of conflict minerals and supply chains in the garment industries. While the key characteristics of the technology sector differ, participants agreed there would be good arguments for an industry-level coherence in grievance mechanisms. At the same time, stakeholders flagged that many companies operate across sectors and hence having sector-based mechanisms might fracture the remedy ecosystem and create gaps.

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