

Call for input to the High Commissioner report on the practical application of the UN Principles on Business and Human Rights to the activities of technology companies

In resolution [47/23](#) entitled ‘New and emerging digital technologies and human rights’, the Human Rights Council requested the Office of the High Commissioner to convene an expert consultation to discuss the practical application of the UN Guiding Principles on Business and Human Rights (UNGPs) to the activities of technology companies, and to submit a report to the Human Rights Council. The resolution requests the Office of the High Commissioner to [seek input](#) from stakeholders.

In this brief input we address two of the areas of focus of the consultation sessions: i) addressing human rights risks in business models; and ii) the State’s duty to protect, or regulatory and policy responses.

[1. Addressing human rights risks in business models](#)

The rise of Artificial Intelligence (AI) based on machine learning, data driven technology and the ability to collect, analyse and apply large amounts of data, has become the basis of new business and economic models. Largescale investment into research and development means that AI and data-related technologies will develop in ways not yet imagined. This new economy will have profound effects on the universal access to human rights.

The emerging data-driven business model harvests our behaviour online without our consent or understanding and uses it to predict, influence and manipulate our decisions. This capture of surplus behaviour – unintentionally shared information - creates a lucrative market in which to sell advertising space online. Every one of our actions is now used to compile profiles of our wants, needs, desires, emotions, and dreams to create unprecedented personal and group profiles. Most people freely disclose this information via their smartphones and computers without understanding the potential consequences. The power of machine learning means that this data is used not just to predict our behaviour but increasingly to manipulate it for profit and political gain, with clear human rights implications. It can both persuade us to buy products and to change our personal opinions. Increasingly companies are relying on algorithmic processing of big data and social media to assess the mindset and filter potential customers and employees with little understanding of what this may mean for their rights. And app-based management systems use psychological tools to influence the thoughts and behaviours of employees and consumers altering their mental topography with no clear oversight.

Yet regulations so far neglect that fundamental problem with this business model, focusing instead primarily on content, and possibly privacy.

[4. The State’s duty to protect, or regulatory and policy responses](#)

States in general fail to recognise regulating the internet as a business and human rights issue despite their commitments to the UNGPs, and do not address the issue in their National Action Plans, or domestic policy, including emerging mandatory human rights due diligence regulation. The UNGPs explain how the state’s duty to protect human rights overlaps with the business responsibility to respect those rights in a global world where tech giant

companies have been left unregulated. Its general principles emphasise that international human rights law creates positive obligations for states to protect against human rights abuses by third parties, including businesses. But in their practical implementation through domestic policy and regulation, states have focussed on encouraging business to respect human rights recognised in national law (especially in their operations abroad) without considering whether the national law reflects agreed international standards. The result is that the baseline for implementing the UNGPs becomes the national legal standards, rather than the relevant international human rights law.

Regulation in the area of mandatory corporate human rights due diligence, such as the new [European Commission's Directive on Corporate Sustainability Due Diligence](#) take a traditional approach to preventing and addressing human rights impact that overlooks the business model of big tech companies. The state's duty to protect human rights from such business model should prompt a review of legal and regulatory frameworks so that they guarantee our rights according to the relevant international human rights standards. It is clear that a serious effort to protect our rights would require a confrontation with some of most powerful companies in the world. Failure of states to do so leaves a huge gap in the regulatory framework. Instead, most states prefer an approach couched in business-friendly terms, with human rights issues constantly balanced against promoting a thriving digital economy and tech company investment. It is clearly easier for states to regulate the negative activities of a few businesses online rather than confront the systemic threat to people's freedoms and rights. That means existing and proposed regulation focusses incorrectly on the UNGPs business duty to respect some rights and corporate human rights due diligence without fulfilling the state's duty to protect all human rights. A failure to regulate this business and human rights issue poses a fundamental risk to our personal autonomy and the future of democratic societies. It also undermines the central premise upon which the UNGPs are based – the state duty to protect rights.

States must regulate data-harvesting internet companies to fulfil their duty to protect human rights. In addressing the human rights risks of tech business models, the focus is on the identification, assessment, response, tracking and communication of risks to people, within relevant business processes and functions such as human resources, procurement, marketing, operations, and community engagement.

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