



**The Office of the High Commissioner for Human  
Rights (UN Human Rights)**

**Expert consultation on the practical application of  
the United Nations Guiding Principles on Business  
and Human Rights to the activities of technology  
companies**

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**Written submission of the Kingdom of Denmark**

## **Introductory remarks**

The rapid technological development has had a massive impact on our societies, our economies, and our political and security systems. While this development in some areas puts human rights under immense pressure, at the same time, the prospects for human progress and development in the digital age are tremendous.

The role of States as primary duty-bearers to implement the United Nations Guiding Principles of Business and Human Rights and foster respect for human rights remains as important as ever - online and offline.

Denmark recognizes the need to address the implications and indirect effects of digital technologies in relation to human rights, and fully supports the Human Rights Council resolution 47/23 titled “New and emerging digital technologies and human rights”.

Denmark welcomes this opportunity to share our experiences from the Government’s efforts to foster respect for human rights in the digital era.

## **The role of States and technology companies in relation to the protection and promotion of human rights**

States have an essential role in protecting and promoting respect for human rights and human rights due diligence by technology companies. As primary duty-bearers we have a responsibility to implement the Guiding Principles and foster respect for human rights online. States must ensure a responsible global technology governance with human rights at the centre of regulatory frameworks and legislation of digital technologies.

To that end, Denmark has taken several steps to engage with technology companies, civil society organisations, multilateral organisations and academic communities to ensure a responsible, democratic and secure technological development. Amongst other initiatives, Denmark launched the TechPlomacy initiative in 2017 and was the first country to appoint a Tech Ambassador with a global remedy, and formally establish the Office of the Tech Ambassador. Last year, the Strategy for the Danish Technological Diplomacy was launched to ensure that everyone – not least the tech industry – takes part in this development.

Furthermore, the Danish government has published the White Paper ‘Towards a better social contract with Big Tech’ to open a dialogue in particular with the tech industry, illustrating the

gravity afforded to this issue by the Danish government – and its willingness to discuss the difficult questions where there are no easy answers. Most recently, Denmark in 2021 launched the Tech for Democracy initiative, which specifically seeks to make technology work for democracy and human rights, not against them. Under this initiative, Denmark gathers stakeholders from all sectors to identify concrete, demand-driven, innovative and sustainable solutions that reap the tremendous benefits of technology for democracy and human rights, while also addressing the serious challenges.

### ***TechPlomacy – The Danish Technological Diplomacy initiative***

TechPlomacy is the Danish response to a reality in which technology has taken centre stage in international relations and affects almost every aspect of our lives. The initiative also reflects the fact that a small number of people in a small number of private companies hold immense power over the direction of our societies. These powerful tech companies should promote a responsible and democratic technology development in a way that is proportionate with their size and influence, which in numbers exceeds the GDP of many countries. While we need to nourish and encourage innovation and harness the immense opportunities new technology present, we also need to act on the challenges and make sure States come back in the driver's seat to steer a responsible, democratic and secure technological development.

### ***Establishing diplomatic relations with tech companies***

In the 21<sup>st</sup> century, new players have stepped onto the global stage. The power of these private actors in the international promotion of human rights should not be underestimated. Tech companies have an unprecedented influence on the daily lives of people, and operate large parts of our critical infrastructure. They hold an enormous expertise, and lead an increasing share of research in new technologies. Often, they play a role of de facto foreign policy actors. Denmark recognizes that technology is an inevitable part of foreign, security and development policy and the conduct of diplomacy. For centuries, States have developed diplomatic relations with countries and later on with international organizations. However, non-state actors – as large tech companies – have an increasing influence on our societies. Therefore, States can no longer rely solely on traditional diplomatic relations to increase knowledge, promote its interests and safeguard its values abroad.

It is crucial that we as governments understand that our societies are being shaped in new ways, which require a different language and style of diplomacy. States must engage in diplomatic

relations with tech companies, and engage with the tech sector on more equal terms than has been done in the past. This is why Denmark has appointed a Tech Ambassador supported by teams in Silicon Valley, Copenhagen and Beijing. Denmark has as much at stake as any other nation, and therefore proactively engages with the tech industry to address opportunities and risks of new technology, and to ensure that human rights are at the centre of global technology governance.

As primary duty-bearers for fostering respect for human rights in line with the United Nations Guiding Principles on Business and Human Rights, States must engage with the tech-industry on equal terms. Governments must create a space that enables collaboration with the industry to hold them accountable when democratic principles and human rights are disrespected through their business conduct, but also to learn from their expertise in enhancing human progress in the digital age.

### ***The Tech for Democracy initiative – a multi-stakeholder commitment***

The Danish-led Tech for Democracy initiative is kick-starting a multi-stakeholder push for protecting and promoting human rights in an era of rapid technological development. Recognizing the need for all stakeholders to collaborate in a concerted way with regard to promotion and protection of human rights as reaffirmed in the Human Rights Council resolution 47/23 on new and emerging digital technologies and human rights.

The Tech for Democracy initiative is Denmark's commitment to stand up for democracy and human rights in the digital era, and to strengthen efforts to make sure technology works for democracy and human rights, not against them. Central to the initiative is the recognition of the need for increased *multi-stakeholderism*. Tech for Democracy aims to work towards a more just digital transition and be a platform for civil society organisations, technology companies, governments, international organisations, academia, journalists and activists to join forces and work together on the application of human rights to the design, use, development and deployment of digital technologies.

### ***Multi-stakeholder approach in action coalitions between technology companies, civil society and governments***

Through the establishment of new partnerships – so-called Action Coalitions – the Tech for Democracy initiative brings States, multilateral organisations, the tech industry and civil society together to focus on finding concrete solutions to make digital technologies support democracy and human rights.

Digitization should be accompanied by regulation. Many questions however remain open in relation to the best way to regulate an area in constant development.

In Denmark's view it is essential to regulate with a human rights based approach. Moreover, the adoption of regulations should involve all relevant actors in order to leverage the knowledge, expertise and insights from the tech sector, civil society and academia. A meaningful inclusion as well as a frank and honest dialogue with the tech sector is essential. Furthermore, governments, multilateral organisations, tech companies and civil society must come together to renew our shared commitment to a responsible, democratic and safe technological development.

A meaningful inclusion of civil society and developing countries is pertinent to ensure a broad representation and to leave no one behind in the technological development, especially in countries with weak democratic practices. Civil society has an important role in forging the partnerships necessary to deliver concrete solutions that promote and protect human rights in the digital age.

This multi-stakeholder approach is formalised in the Copenhagen Pledge on Tech for Democracy, which is signed by governments, multilateral organisations, tech industry and civil society. The Pledge puts forward a vision for a digital future based on democratic values and human rights. In the formulation of this vision, Denmark has included stakeholders from civil society, the tech sector and governments to truly achieve a common vision for our digital future. The Pledge underlines the joint responsibility to develop, promote, use and regulate technology to the benefit of democracy and reaffirm the vision of an open, accessible, interoperable, secure and reliable internet. Access to the internet is both a pathway to and in many cases a prerequisite for the full exercise of freedom of expression, assembly and association.

## **Challenges related to accountability and remedy in case of human rights abuses relating to technology companies**

### ***Content moderation***

States are faced with opposing considerations when establishing regulations for technology companies as such regulations must promote human rights, but in a way that does not hinder the exercise of human rights.

A relevant example is the case of content moderation. The right to freedom of expression must be protected whilst illegal content like displays of violence, child pornography or hate speech must be removed as quickly as possible. If regulations on the removal of such illegal content does not have

a human rights law approach, the platforms will potentially remove excessive amounts of content, limiting the freedom of expression.

In this regard, there is a general challenge in defining the human rights obligations for tech-companies, a challenge that is underlined by the fact that tech companies themselves seek guidance on when the line is crossed and human rights are violated. This is where governments must step up, and help clarify and identify lines and rules of the road for tech companies.

The Danish Government intends to present a new act in the spring of 2022, which obliges social media to remove illegal content. Denmark has tried to strike the right balance between the obligation to remove illegal content and freedom of expression by obliging social media to, upon request, review their decision to remove content, as well as relocate content that as a result of the review is deemed legal.

### ***Redress for victims***

Victims often face practical, procedural, and legal challenges to obtain remedy where business enterprises are involved in human rights abuses.

The burden of proof seems to constitute a significant barrier to claimants seeking redress for infringement of their rights and that providing such proof is often almost impossible, especially when the supporting document is in the possession of a (tech) company accused of the alleged infringement.

Another problem is the lack of collective redress prevents one petition from being submitted on behalf of a number of claimants, which increases financial risk, for both claimants and for the justice system.

Victims are also faced by financial obstacles such as high legal costs, and length of proceedings. Similarly, the complexity of disputes involving corporations, including multinational entities with complex structures and networks of subsidiaries and supply chains are an obstacle for justice for victims.

### **Lessons learnt and good practices to advance implementation of the Guiding Principles in the technology sector**

During the past several years, technology has gone from a sectorial issue in Danish policymaking to cut across all sectors including Danish foreign policy. Increased national debate about tech led

the Danish Government to launch a White Paper in June 2021 called ‘Towards a better social contract with Big Tech’. The paper was to contribute to a more responsible, fair and secure social contract with big tech. It aims to discuss the difficult questions where there are no easy answers and shows how seriously the Danish government takes the tremendous impact, including both opportunities and challenges, which the technological development has on our societies. Stemming from this, the Danish government has established closer cooperation among line ministries on matters of technology in order to increase valuable contribution to the national tech policy development.

### ***The Data Ethics Council***

In 2019, the Danish Government formed the Data Ethics Council whose responsibility it is to monitor developments within data ethical issues. The council was formed due to the ethical implications of data usage in terms of fundamental rights, legal certainty, and fundamental societal values. Through recommendations on best-practice principles for taking new technologies into use along with reports, statements, tools and debate-stimulating activities, the Data Ethics Council ensures a continuous attention and debate on data ethical dilemmas, including risks of using data from a human rights perspective. The Data Ethics Council also works with authorities in an advisory capacity around select digital policy initiatives, helping ensure that digital tools developed by the government such as apps related to the COVID-19 pandemic are built with data ethical principles in mind.

The Data Ethics Council has since its establishment experienced how the debate and attention to data usage and fundamental rights has advanced within the general public and in institutions and organisations. There is an increasing demand for the council’s members to participate as expert advisors in various forums and activities related to responsible use of data. The council puts emphasis on creating dialogue on these issues and will continue to work together with organisations, national authorities, and private companies in the years to come. The council was recently renewed with substantially increased funding until at least 2025, indicating the importance of an institution like the Data Ethics Council in Denmark.

## ***The Mediation and Complaints-Handling Institution for Responsible Business Conduct***

The Mediation and Complaints-Handling Institution for Responsible Business Conduct (NCP Denmark) has since its establishment in 2012 played an important role in advancing the implementation of the UNGPs. NCP Denmark is the national contact point to the OECD Guidelines for Multinational Enterprises and functions as an independent non-judicial grievance mechanism with the competence to mediate and/or issue critical statements and recommendations in complaints regarding non-observance of the UN and OECD principles.

NCP Denmark has yet to handle cases concerning enterprises in the technology sector. However, the institution is aware of the human rights issues in the sector and has encouraged the OECD in a public consultation response to extend the scope of the guidelines by i.e. including a chapter on digitalisation as well as providing more clarity on cross-cutting issues such as technology and human rights, in the potential revision of the OECD Guidelines.

Experience from the NCP-system shows that a large number of companies still does not have knowledge of the OECD Guidelines or the UNGPs, let alone how these principles should be implemented. Guidance is thus highly important, especially sectoral guidance to equip tech-companies to spot human rights implications in their products and services. The need for guidance is only heightened with the forthcoming EU legislative initiative on mandatory due diligence, which is expected to be based on the UNGPs and the OECD Guidelines.