

Input by the Government of the Republic of Korea¹
on the Themes of an Expert Consultation on the Practical Application
of the United Nations Guiding Principles on Business and Human Rights
to the Activities of Technology Companies
March 7-8, 2022

Theme 1. The role of States in promoting respect for human rights by technology companies.

In a situation in which new and emerging digital technologies (hereinafter “new technologies”) impact an increasingly wide range of industries, states can and should play a more active role to promote respect for human rights by technology companies. Unfortunately, there is no widely accepted technical standard established thus far. Nonetheless, states can still play their part by exercising their convening authority to provide platforms for in-depth conversations among various stakeholders related to the effects of new and emerging technologies on human rights. In this process, it is important for states to maintain impartiality, especially between representatives from tech industries and human rights experts in order to facilitate a meaningful and substantive conversation, while also examine ways to develop technical standards, for example by requesting research based on various stakeholders’ views and opinions. When such impartiality is secured, such platforms can act as the means to gather on-site information needed to set technical standards.

Once established, states should play a role in overseeing and encouraging technology companies’ observance of set technical standards. For example, in the early stage for setting technical standards, states may consider providing training and information sharing opportunities to provide guidelines for working-level staffs. Then, after a certain amount of grace period, states may consider introducing punitive measures to ensure the implementation of the technical standards.

States should take into account of the reality that the majority of companies in the field of new technologies lack the resources to fully internalize a human rights-based approach to their

¹ The content of the following input consists of suggestions put forward by multi-stakeholders – relevant government ministries, industries, academia, and civil society representatives – per suggested by OHCHR as presented at a forum on “New and Emerging Digital Technologies and Human Rights” on January 27, 2022, organized by the Ministry of Foreign Affairs, Republic of Korea. (https://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=321986&page=1)

businesses. States should create an environment where companies can realistically implement technical standards, through the provision of incentives as well as punitive measures. For example, states may consider requiring companies wishing to do business in the public sector to adhere to certain technical standards in order to qualify for consideration. Also, by investing in assistive technologies such as wearable robots, which would increase convenience in life for persons with disabilities, states can positively incentivize companies to utilize new technologies that promote human rights.

The ministry in charge of fostering new technologies and industries suggested designating large and thus resource-rich enterprises as *anchor companies* as one of the ways to bring small enterprises to better implement technical standards. States could encourage such large companies that already run human rights-based business systems to anchor emerging companies and produce similar spin-offs throughout the industry. Establishing anchor companies is expected to lower the entry barrier for small enterprises and move them along the line from standing afar from human rights to the epicentre of human rights.

Currently, the relevant ministries of the Korean government are reviewing the specifics of technical standards. For example, Korea's Ministry of Science and ICT (MSIT), in cooperation with other relevant organizations, released a document titled "Artificial Intelligence Ethical Standards" on December 23, 2020, providing key principles and core requirements that all members of society should observe to realize an ethical approach to artificial intelligence. The MSIT also released the draft "Ethical Artificial Intelligence Self-Assessment Tool" through a seminar in November 2021 and is now collecting feedbacks from relevant industries, civil societies, and other stakeholders. Nearly 10% of this tool kit is composed of human rights-related requirements.

Korea's Personal Information Protection Commission (PIPC) circulated the "Artificial Intelligence Personal Information Protection Self-Checklist" in May 2021 which includes basic principles and protection measures that should be observed in all respective stages, from planning to the utilization of AI technology. For example, the principle of "privacy by design" could be applied to avoid the invasion of privacy in services that utilize AI technology. Moreover, the PIPC released the "Smart City Personal Information Protection Guideline" in December 2021 to protect privacy in smart cities.

The Korea Association of Robot Industry (KAR) is compiling the "Robot Ethical Guideline" aimed at providing respective stakeholders with matters of attention in every single stage, from planning to producing, supplying, utilizing, and managing robotics technology, with protection of human dignity as one of the fundamental underlying guidelines. Furthermore, the National Human

Rights Commission of Korea is drafting a "Human Rights Guideline for AI Development and Utilization," under the principle that AI should be developed and utilized in a way that maximizes human dignity and value.

Theme 2. The role of States in relation to human rights due diligence on the use of technology companies' products or services.

Experts from academia singled out "unavoidability" as one of the distinctive characteristic of new technologies compared to pre-existing technologies. In other words, whereas it is possible to imagine a person opting not to utilize many pre-existing technologies, the case of new technologies such as AI or big data is often unavoidable since they are unknowingly entangled in our lives, regardless of our preference. Therefore, such unavoidability of new technologies leads to the necessity of human rights due diligence.²

Under such circumstances, states should presuppose the necessity of human rights due diligence and focus on possible ways to raise the effectiveness of due diligence. One way of doing so is to secure the transparency of the due diligence process. Due to its openness where companies make their own processes and the results are disseminated to the public, it is likely that voluntary checks and balances in the private sector might occur. Still, states can proactively require human rights due diligence reports of companies and form a database for the public's browsing ease, request a research cluster of experts for a review opinion, and carry out specific measures as a response to receive feedback from the public regarding companies' due diligence reports, thereby encouraging the private sector's check and balance mechanism. When states recognize any problems of reports like fraud, states can take specific measures such as issuing fines or filing correction orders.

Before introducing new regulatory measures, states should assess current measures such as forbidding the sale of products to public institutions, rejecting the granting of public certifications, and opening communication channels through which stakeholders can share non-binding suggestions. Since it would be challenging to impose responsibility for human rights due diligence all at once, states could impose the responsibility, step-by-step, starting from large

² UN Working Group on Business and Human Rights, on November 29, 2021, released the UNGPs 10+ Roadmap for the next decade of business and human rights. And Goal 2.2 of the Roadmap calls for stakeholders to "seize the mandatory wave and develop a full 'smart mix'"

companies which bear a high risk for human rights or public institutions where governments have certain control over.

To enhance the effectiveness of due diligence, experts from academia and civil society in Korea suggested that states should actively provide guidance and advices to companies. Experts recognize that the current impact assessment on new technologies take human rights into account. However, it exists in a very scattered way, confined to only specific rights or technologies. Ideal human rights due diligence should take a holistic approach, encompassing all human rights and technologies. And as Theme 2 implies, experts suggest not only “companies which invent technology,” but also “companies which use technology” should be held responsible for human rights due diligence. As the Office of the United Nations High Commissioner for Human Rights (OHCHR) B-tech project suggests, experts took note of the necessity to set norms and expectations of behaviours for users and the possible role of states to mediate this norm-setting process.

Experts from academia also pointed out that human rights due diligence should be holistic and thorough. Therefore, when judging the human rights influence of new technologies, states can encourage companies to go through all single steps, from invention to commercialization or aftermath to eliminate the potential human rights risks. Moreover, academia and civil society experts advised that states should adapt their governance to the international discussion on new technologies and human rights. One example could be establishing a government-wide coordination authority to control the relevant discussion.

Regarding the step-by-step responsibility to conduct human rights due diligence, the National Human Rights Commission of Korea (NHRCK) has been conducting research and investigations, including the research on the actual condition of human rights impact assessment (2020). Based on such results, the NHRCK provides policy consulting services to government ministries, such as introducing management assessment to public institutions. The Ministry of Justice published the “Guideline on Business and Human Rights” in December 2021 which includes human rights due diligence in the ICT industry. Admittedly, the Korean society is yet to introduce regulatory measures in a holistic approach, still concentrating on regulatory measures for specific technology or human rights issues.

Theme 3. Challenges related to the ability of State-based judicial and non-judicial grievance mechanisms to provide for accountability and remedy in case of human rights

abuses relating to technology companies and potential solutions to address and/or overcome such challenges.³

Currently, one of the most challenging tasks for judicial grievance mechanisms is the prevalence of information asymmetry. Most information on new technologies is under the control of tech companies. To the necessary extent, victims can barely prove damages, violations of law by the companies, and the causal relationships between these. To complement this, states can consider reducing or shifting the burden of proof for the plaintiff (victim). For example, if the plaintiff proves the probability of damage from new technology, the burden of proof for other items goes to the defendant (company). When damage results from due diligence being carried out insufficiently, it might be possible for states to presume the negligence of the defendant. Also, states can run special investigation divisions for criminal cases regarding new technology and human rights and enhance the expertise of authorities in the field.

Since challenges to the state-based non-judicial grievance mechanism are non-binding measures, it should largely depend on the will of the authority in charge to actively and thoroughly implement the mechanism. States can deal with this challenge by involving various government ministries, regularizing the process, and burdening ministries to prove their accomplishments publicly.

A representative example of a non-state-based grievance mechanism could be a human rights organization, e.g., ombudsman, established inside a company. The challenge here is that there is no evident role the state can play for the company's independent remedy, but still, states can educate the personnel in charge to boost independence and expertise and encourage them to benchmark government institutions' remedial process. And states can advise on companies' own remedy processes or come up with other possible roles.

For Korea, especially regarding state-based non-judicial remedies, the following could be a reference case. Several government ministries are participating as National Contact Points (NCP), which were established according to the OECD Guidelines for Multinational Enterprises. A chapter on "Business and Human Rights" has been included in the National Action Plan for the Promotion and Protection of Human Rights (NAP) starting from 2018. And the status of implementation and opinion of the advisory group is shared every year with the public, thereby encouraging ministries

³ The UNGPs highlighted the need for victims to have access to an effective remedy. For remedy, there are judicial and non-judicial grievance mechanisms. The latter can be divided again into state and non-state based ones.

to yield substantial accomplishments of non-judicial remedies. Unfortunately, there is no separate chapter for "New Technology and Human Rights" in the NAP. However, this could still be dealt with in "Business and Human Rights" to some extent. Later, it could form a separate chapter or be combined to create a new chapter.

Theme 4. Lessons learnt and good practices to advance implementation of the Guiding Principles in the technology sector.

"Business and Human Rights" and "New Technology and Human Rights" resemble each other. Still, it is important to consider the unique characteristic of new technology when implementing the UN Guiding Principles (UNGPs) – namely, the unpredictability of direction of development it will take as well as the full scope of impact. Also, there is a need for the engagement of multi-stakeholders aside from tech companies. In this regard, it is important to consider the significance of communication and cooperation among the full range of multi-stakeholders.

So far, the human rights friendly or neutral usage of new technology has been carried out mainly by utilizing morals but not norms. States must now introduce relevant policies to make new technology and human rights a universal human right and not ruled by selective justice. The Korean civil society worries about the possibility of new technology, influencing democracy by providing partial information to users and taking away the control power of personal information, such as biodata, from individuals, and alleged states should play a more proactive foreseeing role in the area of high risk, as stated by OHCHR.

The development of new technology cannot justify human rights infringement, but still, states should not only focus on the negative impact of new technology on human rights. Highlighting the regulations by states may have the side effect of overly restricting the development of new technology. Thus, states should also come up with incentives to lead new technology development to promote human rights.

Regarding privacy infringements and the loss of control over personal information, the Korea Internet & Security Agency (KISA) and other blockchain specialized agencies pointed out that it is technically possible to raise the credibility of the Internet by blockchain technology. Blockchain can help network participants with the information power monopolized by a few platform companies. Under the objective that no one should be left behind in the development of new technology and a better life, the MSIT is in the process of enacting a bill on digital inclusion.

And policy-wise, the MSIT has been endeavoring to utilize new technology positively by operating a Digital Learning Center, providing education programs tailored to socially disadvantaged groups and incentivizing private companies to establish internet networks in remote areas.

Further, states should find exemplary cases of human rights due diligence, give positive feedback toward the efforts of those companies, and let others refer to those cases. Yet, the custom in its development. Higher standards are expected in the future.

Korea is highly interested in regulatory measures, as legal adaptation is already in progress. For Korea, a leading country that preemptively introduces regulatory measures, the challenge would be identifying the doubling and accumulative effect of different regulations by institutions and streamlining them. For example, Korea has amended three main data privacy laws in 2020, and the "Guidelines for M&A Review" in 2019 and has been further examining the enactment of the basic data law. Korea has also amended the *Telecommunications Business Act* and the *Law regarding the promotion of information and communication network use and protection of information* (the so-called "N-th Room Prevention Law") to prevent abusive content from being distributed. There have been many policy efforts, such as the MSIT putting human-centered AI and humanity at the center when drafting the "AI Ethical Standards (2020)" and government ministries releasing the "Strategy to Realize Trustworthy AI (2021)."

It is encouraging that Korea's large enterprises, which have leading capacities in the field of new technology, are contemplating ways to promote human rights. A few specific examples would be Naver and Kakao, Korea's premier internet platform companies.

Naver released "Ethics Principles in Developing and Using AI"⁴ in February 2021. This principle declares that "[we] recognize that while AI can make our lives convenient, it is also not infallible like all other technologies used today. We will continuously follow and improve our AI so that it can be used as a daily tool by humanity." From the start of developing this principle in 2018, Naver cooperated with Seoul National University and consulted within and outside of its company for a better implementation of the principle. Naver published "The A.I. Report" in late 2021, which describes how the principle was developed, aiming to share that the principle can be an asset to society, not only to Naver itself.

Kakao has been implementing various measures on the human rights impact of content and technology. For example, Kakao published the Kakao Algorithm Ethics Charter, the first in the industry in 2018, and is renewing it annually. To break the disjunctive nature of the charter and

⁴ <https://www.navercorp.com/en/value/aiCodeEthics>

have a real impact, Kakao is educating its staff about the charter. Furthermore, Kakao realized that the tech company could not deal thoroughly with hate speech and comments on the internet. Therefore, from January 2020, it collaborated with the NHRCK and others to draft a guideline for dealing with hate speech on the internet. Kakao pointed out that cooperating with human rights experts helped them understand the international discussion on new technology and human rights.

In conclusion, Korea is looking forward to the OHCHR B-tech project's role in preparing a roadmap for implementing the UNGPs in the field of new technology. Korea will also continue to share good practices and current challenges to help the B-tech team draft a holistic, inclusive, and comprehensive roadmap. /END/