

Lucerne, May 30, 2023

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## Submission for a forthcoming report on the role of business in realising the right to development by the Special Rapporteur on the right to development

Dear Mr Special Rapporteur on the right to development Deva,

I wish to thank you very much for the opportunity to send you some input on the role of business in realising the right to development. I'm very grateful for your interest.

UNGA report (October 2023) – “Role of businesses in realizing the right to development”

### **Ad question 1: What laws, policies and incentives are in place (or should be introduced) to encourage businesses to contribute to the effective realization of the right to development?**

Digital transformation and so-called “artificial intelligence (AI)” – which can more adequately be called “data-based systems (DS)” – comprise ethical opportunities and ethical risks. DS can be powerful for fostering human rights – in front of all, the right to development – but also for violating human rights - especially the right to development. Elon Musk warns: “AI is far more dangerous than nukes [nuclear warheads]. Far. So why do we have no regulatory oversight? This is insane.”<sup>1</sup> Stephen Hawking points out: “Unless we learn how to prepare for, and avoid, the potential risks, AI could be the worst event in the history of our civilization. It brings dangers, like powerful autonomous weapons, or new ways for the few to oppress the many. It could bring great disruption to our economy.”<sup>2</sup> Therefore, it is necessary to identify ethical opportunities and ethical risks as well as opportunities for promoting human rights and human rights risks precisely and at an early stage in order to be able to benefit sustainably from the opportunities and to master or avoid the risks. In the avoidance and mastering of risks, technology-based innovation can in turn play an essential role.

Allowing *all* humans and the planet to flourish sustainably and guaranteeing globally that human rights are respected not only *offline* but also *online* and in the digital sphere and the domain of DS, laws should be introduced embracing two concrete measures:

1. **human rights-based data-based systems (HRBDS)**<sup>3</sup>: Human rights-based data-based systems (HRBDS) means that human rights serve as the basis of digital transformation and DS, e.g., the human rights to privacy and data-protection must be respected. HRBDS exclude the possibility that humans

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<sup>1</sup> Clifford, Catherine (2018) Elon Musk: “Mark my words – A.I. is far more dangerous than nukes”. In: CNBC, March 13. Online: <https://www.cnbc.com/2018/03/13/elon-musk-at-sxsw-a-i-is-more-dangerous-than-nuclear-weapons.html> [30.5.2023].

<sup>2</sup> Kharpal, Arjun (2017): “Stephen Hawking says A.I. could be ‘worst event in the history of our civilization’”. In: CNBC, November 6. Online: <https://www.cnbc.com/2017/11/06/stephen-hawking-ai-could-be-worst-event-in-civilization.html> [30.5.2023].

<sup>3</sup> See Peter G. Kirchsclaeger, “Digital Transformation and Ethics: Ethical Considerations on the Robotization and Automation of Society and the Economy and the Use of Artificial Intelligence” (Nomos: Baden-Baden 2021).

should be able to sell themselves and their data as well as their privacy as products. One possible solution to foster innovation and to make data use legitimate in accordance with the right to privacy and data protection would be the “purpose-driven data use” approach. The “purpose-driven data use” approach starts from the right to privacy and data-protection as a prerequisite and respects this right. In automated driving, for example, people must identify themselves with their data and enter their location and destination in order to enjoy automated driving at all. But this data is only provided to enable the driving process. It may neither be used for other purposes nor sold on to third parties. The users also do not have the option of selling this data themselves (e.g. to obtain a discount). Beyond that, fully anonymized data may only be kept for the optimization of the collective automated mobility with the informed consent of the users.

To illustrate this approach in its feasibility, the following analogy serves: when one goes to the doctor, one also shares personal data so that the doctor knows who she has in front of her and tells her about one’s illness in order to hopefully experience relief from suffering as well as healing, without either the doctor being allowed to resell this data or the patient being offered to sell this data in order to receive better medical treatment. The doctor may also keep the patient’s file with the medical history strictly confidential – exclusively for the purpose of better treatment of the patient. It is also possible to share completely anonymized data for research purposes if the patient gives informed consent to this sharing.

2. an **International Data-Based Systems Agency (IDA)**<sup>4</sup>: An International Data-Based Systems Agency (IDA) needs to be established at the UN as a platform for technical cooperation in the field of digital transformation and DS fostering human rights, safety, security, and peaceful uses of DS as well as a global supervisory and monitoring institution and regulatory authority in the area of digital transformation and DS.

The establishment of the IDA is realistic because humanity has already shown in its past that we are able to not always “blindly” pursue and implement the technical possible, but also to limit ourselves to what is technically feasible when the welfare of humanity and the planet are at stake. For example, humans researched the field of nuclear technology, developed the atomic bomb, it was dropped several times, but then humans substantially and massively limited research and development in the field of nuclear technology, in order to prevent even worse, despite massive resistance. This suppression was successful to the greatest possible extent, thanks to an international regime, concrete enforcement mechanisms, and thanks to the International Atomic Energy Agency (IAEA) at the UN.

**Ad question 5: What are the good practices about businesses trying to bridge the digital divide and/or ensure the safe use of technologies by vulnerable population such as children, elderly and minorities?**

The digital divide is and – if severe counteractions are not taken – remains an unjust reality. Its global solution must be approached and considered as a priority today and tomorrow. Access to the digital sphere represents a necessary condition for benefitting economically from the digital transformation and the use of so-called “Artificial Intelligence” – which can more adequately be called “Data-Based Systems (DS)”. The digital divide must be tackled through inclusive global governance with urgency because this digital inequality reinforces the already existing economic inequality.

Data-based systems and digital transformation urge humans to act rapidly insofar as they further fuel a problem that already existed before. Slavery-like working conditions or modern slavery used for the extraction of raw materials and the production of technology products as well as huge differences in political participation for shaping digital transformation and the use of data-based systems DS, as well as with regard to enjoying the sunny side (inter alia equal opportunities, profit-sharing) or suffering from the negative sides of this technology-based transformation (inter alia exclusion, exploitation that is degrading and violates human rights), cry for fundamental change and ethical progress. This is not a new challenge, but one which is still topical and which is growing rapidly as a result of technology-based progress. An increase in the demand for these natural resources in digital transformation and data-based systems DS worsens these human rights violations. The increased demand for technology products underlines the urgency to establish humane working conditions in all phases of value creation, including production. The increased demand for natural resources fueling digital transformation

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<sup>4</sup> See Peter G. Kirchsclaeger, “Digital Transformation and Ethics: Ethical Considerations on the Robotization and Automation of Society and the Economy and the Use of Artificial Intelligence” (Nomos: Baden-Baden 2021).

and data-based systems DS and for technology products **calls for optimizing the implementation of already existing human rights-obligations of states and the private sector in this area.**

Please let me know if I can support your important work.

I thank you very much for your efforts.

Yours sincerely,

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