



## UN Human Rights B-Tech Project Consultation

Investor Alliance for Human Rights Feedback Submission on Draft Scoping Paper

The Investor Alliance for Human Rights (Investor Alliance)<sup>1</sup> welcomes the opportunity to review and provide feedback on UN Human Rights Business and Human Rights in Technology Project (B-Tech) Draft Scoping Paper.<sup>2</sup>

This effort comes at a crucial time. While technology can contribute to society in many positive ways, for example by amplifying the voices of vulnerable communities, facilitating the coordination of democratic movements and enabling mobile banking and remote learning, too often the opposite is the case. Over the past year, members of the Investor Alliance heard from human rights defenders and civil society organizations in Africa, Asia, Europe, Latin America, the Middle East and Northern Africa and the United States about the human rights impacts of the Information and Communication Technologies (ICT) sector in particular. An almost universal theme of these consultations has been the use and abuse of technology to surveil, detain, censor and polarize individuals and groups.

In 2018, members of the Investor Alliance identified the ICT sector as a priority for investor engagement on the implementation of the UN Guiding Principles on Business and Human Rights (hereafter, Guiding Principles or UNGPs). Innovative approaches and tools to engage companies on their human rights responsibilities are currently being piloted with the goal of supporting investor engagements aimed at:

- Increasing the number of companies with human rights policies;
- Increasing the number of companies that integrate respect for human rights into corporate governance;
- Increasing the number of companies undertaking human rights due diligence (HRDD), including human rights impact assessments and publicly reporting on their human rights performance; and
- Increasing the number of companies with effective grievance mechanisms.

The purpose of this submission, therefore, is to express our support for the B-Tech Project and to provide feedback on the Scoping Paper based on our experiences in promoting the implementation of the UNGPs

---

<sup>1</sup> The Investor Alliance for Human Rights is a collective action platform for responsible investment that is grounded in respect for people's fundamental rights. Our members represent US\$3.5 trillion assets under management and 16 countries. Membership includes asset management firms, trade unions funds, public pension funds, foundations, endowments, faith-based organizations, and family funds. Along with civil society allies, we equip the investment community with expertise and opportunities to put the investor responsibility to respect human rights into practice.

<sup>2</sup> OHCHR Be-Tech Project Scoping Paper: <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>

among technology companies as investors. The feedback provided is framed around the questions outlined in the B-Tech Scoping Paper.

***Question 1: Do you agree with the proposed focus areas set out in section V of this paper? Are these the areas around which the application of the UNGPs require more clarity and urgent attention? Are there challenges or issues not addressed in the paper that should be included?***

We agree with the selection of proposed focus areas,<sup>3</sup> which cover the primary areas where Investor Alliance members have engaged portfolio companies. However, we encourage greater attention to the roles and responsibilities of institutional investors across the various focus areas.

In line with their own human rights responsibilities,<sup>4</sup> a number of investors have exercised their leverage to promote respect for human rights among the technology companies in their portfolios. They have done so through investor letters directed at companies<sup>5</sup> and governments,<sup>6</sup> dialogues with corporate executives, multi-stakeholder initiatives such as the Global Network Initiative (GNI) and filing shareholder resolutions for a vote at a company's annual meeting when there is a need to bring an existing risk or lapse in governance before other investors and the Board of Directors for consideration. These efforts have touched on complex human rights issues facing technology companies, from digital rights and artificial intelligence to discrimination, forced labor and conflict minerals.

Through these engagements, we have found human rights performance and disclosure amongst most companies to be poor, particularly in relation to the:

1. Adoption of human rights policies that are in line with the expectations laid out by the UNGPs;
2. Integration of human rights and business expertise into corporate governance and embedding this across all business functions;
3. Meaningful assessment of real and potential human rights impacts, particularly beyond those associated with privacy and freedom of expression;
4. Disclosure of how companies address salient human rights risks as opposed to material risks; and
5. Effectiveness of grievance mechanisms for affected rights-holders.

To address some of these gaps, investors files shareholder resolutions in 2019.<sup>7</sup> While such efforts are positive examples of investors acting in line with their own human rights responsibilities, the percentage of shareholders who voted for these proposals indicate that greater investor engagement with technology

---

<sup>3</sup> Human Rights Risks in Business Models; Human Rights Due Diligence and End-Use; Accountability and Remedy; and "A Smart Mix of Measures" exploring regulatory and policy responses to human rights challenges linked to digital technologies.

<sup>4</sup> In line with the UNGPs and the OECD's guidance on responsible business conduct for institutional investors.

<sup>5</sup> Investor Statement on Corporate Accountability for Digital Rights: <https://cutt.ly/XwzyYz4>

<sup>6</sup> Conflict Minerals: Section 1502 of Dodd-Frank: <https://cutt.ly/1wzyYOA>

<sup>7</sup> For example, with Northrop Grumman on the company's implementation of its human rights policy which received support from 33% of investors; with Amazon requesting a moratorium on sales of facial recognition surveillance technology until risks were properly assessed which received support from 2.5% of investors; and with Amazon on risk assessment of facial recognition surveillance technology which received support from 27% of investors. Shareholder dialogues have also been held and resolutions filed with additional companies in the ICT sector by members of the Investor Alliance and ICCR on these issues.

companies on their human rights performance is necessary to reduce the human rights threats of technology.

We therefore firmly believe that the B-Tech project is timely and necessary for establishing clear, authoritative guidance for companies and institutional investors alike on the meaningful implementation of the Guiding Principles among technology companies. This will help inform investment decision-making, engagement priority-setting, and proxy voting.

### ***Recommendations***

- Explicitly refer to institutional investors as human rights duty-bears and a target audience for the Project's outputs; and
- Provide tailored recommendations for institutional investors aimed at supporting their efforts to fulfill their own human rights responsibilities as shareholders of technology companies. These recommendations should recognize the unique realities of investors when promoting responsible business conduct among portfolio companies.

***Question 2: For each of the four focus areas set out in section V: What feedback, questions or concerns do you have about the initial framing and sub-issues?***

### **Focus Area 1: Human Rights Risks in Business Models**

While the UNGPs clarify that the responsibility to respect human rights should “be embedded from the top of the business enterprise through all its functions,”<sup>8</sup> we have found many of the prevalent business models in the ICT sector, including their value proposition and revenue models, are often in conflict with the business responsibility to respect human rights due to the nature of the products and services offered—such as two-day delivery services, advertising business models, or surveillance technology. The assessment of risks to people should be central to determining whether certain business activities, products or services should be developed and brought to market. This assessment should evaluate the severity and likelihood of the potential adverse impacts, as well as the existence of effective measures to prevent and mitigate such impacts from occurring. We therefore agree that this is an appropriate starting point for the Project.

### ***Recommendations***

- Provide clear guidance on how technology companies with high-risk business models should distinguish between salient human rights risks and material risks.
- Provide case studies of technology companies that have carried out appropriate due diligence based on saliency assessments.
- Expand upon the framing of HRDD as a beneficial risk management tool, which is essential particularly for investors who assess portfolio companies on human rights.

### **Focus Area 2: Human Rights Due Diligence and End-Use**

---

<sup>8</sup> UNGP 16

Although the UNGPs clearly extend companies' HRDD responsibilities to the use of their products and services in business relationships, HRDD and end-use is an area where technology companies are lagging and thus substantive, additional guidance is needed. For companies, the end-use of products or services may result in the most severe actual and potential adverse human rights impacts. Companies may enter into contracts with government clients or other customers to provide technologies that have clear human rights implications, or they may provide platforms that enable end-users to cause harm. Coupled with the rapidly evolving nature of technological development and the limitations of existing regulations, the use of high-risk products or services by business relationships expose technology companies to significant human rights risks.

In practice, we have found that some companies do not consider that they have contributed or are directly linked to human rights harm through the use of their products and services by business relationships. Instead they view their own responsibility to address the adverse human rights impacts caused by end-users to be limited or non-existent. For example, we have seen that where companies are directly linked to specific human rights harms, they fail to use their leverage to stop the harm from occurring. Where companies have arguably contributed to the harm, we have seen that they do not take meaningful or effective steps to prevent it, for example, by making necessary adjustments to their products at the development stage; conducting ongoing assessments of high-risk end-users; using appropriate commercial leverage; or providing effective grievance mechanisms for people adversely impacted by end-users.

Relatedly, we recognize that there is a continuum between whether a company is directly linked or is contributing to a human rights abuse. As former UN Secretary-General's Special Representative for Business and Human Rights, John Ruggie, has noted, a number of factors determine where on the continuum an action lies: "the extent to which a business enabled, encouraged, or motivated human rights harm by another; the extent to which it could or should have known about such harm; and the quality of any mitigating steps it has taken to address it."<sup>9</sup> This determination is key for identifying and taking appropriate action to ensure end-users respect human rights, and determining the responsibility of technology companies for providing remedy (Focus Area 3).

### ***Recommendations***

- The Project should specifically consider the need for enhanced due diligence concerning digital technologies in conflict-affected areas, per Principle 7 and especially as it concerns violations of international humanitarian law (in addition to human rights law).
- Provide case study examples of technology companies that cause, contribute to or are directly linked to human rights abuses. This should include an analysis of the factors that determine where on the continuum of direct linkage and contribution a company's actions may fall and the implications for providing remedy.
- Highlight the human rights due diligence responsibilities of companies in other sectors that use technology products and services in ways that negatively impact human rights, e.g., financial services (fin-tech), the use of AI in autonomous vehicles and risks of discrimination, and automation of job functions in manufacturing and just transition.

---

<sup>9</sup> Comments on Thun Group of Banks Discussion Paper on the Implications of UN Guiding Principles 13 & 17 In a Corporate and Investment Banking Context: <https://www.business-humanrights.org/sites/default/files/documents/Thun%20Final.pdf>

### **Focus Area 3: Accountability and Remedy**

It will be critical for this guidance to provide practical steps that technology companies can take to ensure rights-holders have meaningful access to remedy in a way that accounts for the unique challenges these companies face.

#### ***Recommendations***

- Provide guidance and models for how companies with an extensive network of end-users should provide for effective operational-grievance mechanisms and remedy, particularly in contexts with weak regulatory frameworks.
- Provide guidance on how remedy should be allocated among the various companies that may be contributing to the human rights abuse (e.g., in an instance where a harm was caused on a platform due to the role of AI, consider the responsibility of the platform versus the responsibility of an algorithm provider).
- Provide case study examples of technology companies that cause, contribute to or are directly linked to human rights abuses. This should include an analysis of the factors that determine where on the continuum of direct linkage and contribution a company's actions may fall and the implications for providing remedy.

### **Focus Area 4: “A Smart Mix of Measures” exploring regulatory and policy responses to human rights challenges linked to digital technologies**

Robust regulation is essential to protect at-risk individuals and groups from the human rights risks the sector presents. Yet, the current regulatory landscape in many countries is weak. A unique challenge with this focus area is also acknowledging that while governments play an important regulatory role, they may be using the products and services of technology companies in ways that violate human rights. We also note that companies may have varying interpretations of the applicability of legal requirements around privacy, use of new technologies, or other relevant rights as applied to their operations. Companies also tend to distinguish between contracts with governments in oppressive regimes versus democratic governments, which although appropriate for identifying heightened risks, is not a replacement for conducting human rights due diligence of all government clients to ensure appropriate end-use of products and services.

#### ***Recommendation***

- Place a strong emphasis on mandatory measures, including a discussion on mandatory human rights due diligence legislation and potential implications for companies and benefits for investors.
- Refer to the duty of governments to use technology responsibly as well as regulating its use, and make clear that all governments are expected to use technology in line with international human rights and humanitarian law.

***Question 2: For each of the four focus areas set out in section V: What existing research, resources and good practices should we build on?***

- [ICT Sector-Wide Risk Assessment](#): Salient Issue briefings, Investor Alliance for Human Rights.

- Human Rights and Business Company Profiles, Investor Alliance for Human Rights, 2019 (ICT company profiles available upon request).
- [The Tallinn Manual](#), CCDCOE, 2018 and/or [The Tallinn Manual 2.0: Highlights and Insights](#), *Georgetown Journal of International Law*, 2018.
- [Legitimate and Meaningful: Stakeholder Engagement in Human Rights, Due Diligence: Challenges and Solutions for ICT Companies](#), BSR, 2014.
- [ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#), Shift and IHRB, 2013.

***Question 2: For each of the four focus areas set out in section V: What specific tech applications which have or might lead to negative impacts or ongoing dilemmas should we consider?***

- Facial recognition technology/face surveillance
- Biometric identity management systems
- Cloud computing platforms
- Defense technologies, such as lethal autonomous weapons, augmented reality technologies
- AI and automation, looking at the impacts on the future of work
- Cybersecurity and data privacy
- Social media and content monitoring
- Censored search products
- Video hosting platforms - livestreams
- Website hosting platforms - monitoring hate speech

***Question 2: For each of the four focus areas set out in section V: Do you or does your organization have interest in offering inputs as the work progresses?***

Yes, please contact:

- Paloma Muñoz Quick, Investor Alliance for Human Rights, [pmunozquick@iccr.org](mailto:pmunozquick@iccr.org).
- Sam Jones, Heartland Initiative, [sam@heartland-initiative.org](mailto:sam@heartland-initiative.org) - human rights-related risks concerning digital technologies in conflict-affected areas (international armed conflict, internal armed conflict, military occupations)
- Mary Beth Gallagher, Tri-State Coalition for Responsible Investment, [mbgallagher@tricri.org](mailto:mbgallagher@tricri.org) - related to human rights due diligence, end-use, and remedy.

***Question 3: With regards to project consultations, research, deliverables and overall impact:***

<i>Recommendations</i>	<i>Pitfalls to avoid</i>
Develop due diligence criteria for companies to use when vetting potential state or non-state partners (including state-owned or affiliated companies), and for assessing the degree of their	Be cautious of companies suggesting that they are too far removed from, or have too little leverage over, end-users to prevent or mitigate the adverse human rights impacts that may cause.

responsibility for human rights harms associated with existing business relationships.	
Develop case studies examining the rise in internet shutdowns as a measure for states to suppress dissent (e.g., Myanmar, South Sudan, India) and targeted recommendations for addressing this.	Neglecting the potential international humanitarian and human rights law violations that accompany the construction of ICT infrastructure on land from which protected populations have been forcibly displaced or relocated without adequate compensation.
Ensure adequate consultation with civil society and rights-holders globally. The feedback from civil society groups and policy makers is critical. Take and disclose measures to ensure that consultations with companies do not have a disproportionate influence on the outcomes of the final guidance.	Overlooking the potential for seemingly innocuous applications (e.g., online travel sites) to contribute or be directly linked to violations of international humanitarian law and human rights abuses.
Include best practice examples for companies to learn from each other. However, it is also important to acknowledge that even leading ICT companies have room for improvement when it comes to meaningful human rights due diligence. It is equally important to include case studies where companies failed to prevent adverse human rights impacts and discuss how those impacts were remedied so companies can learn from these examples as well as the best practices.	Companies have a tendency to refer to alignment with the Sustainable Development Goals (SDGs) as a communications tool in sustainability reporting as opposed to ensuring their business activities are making a positive contribution to sustainable development through the reduction of human rights harms. Consider this when making recommendations to companies on SDG alignment.
Focus on efforts to effectively measure and improve outcomes for people rather than on processes and policies.	Focusing on positive use cases of a technology as if it compensates or balances the human rights impacts it may have.

**Question 4: In relation to the landscape to which the project seeks to contribute to:**

- *Which organizations promoting a rights-based approach to development, use and governance of digital technology should we seek to work with?*
- *Which practitioner organisations and industry bodies are likely to be of particular importance to the project from the perspective of partnering and/or mobilising stakeholders and/or stakeholder consultation?*
- [Access Now](#)
- [Asociación por los Derechos Civiles \(ADC\) - Association for Civil Rights](#)
- [Georgetown Law's Center on Privacy and Technology](#)
- [Business and Human Rights Resource Center](#)
- [Internet Sans Frontieres](#)

- [CIPESA](#)
- [Hiperderecho](#)
- [Human Rights Watch](#)
- [Open Culture Foundation](#)
- [Stockholm International Peace Research Institute](#) (on dual-use goods & technologies)
- [Tech Workers Coalition](#)
- [The Centre for Intellectual Property and Information Technology \(CIPIT\)](#)
- [The Institute of Technology and Society of Rio studies \(ITS-Rio\)](#)
- [Paradigm Initiative](#)
- [Stanford Cyber Policy Center](#)
- [TEDIC](#)
- [MENA Rights Group](#)
- [NATO Cooperative Cyber Defence Centre of Excellence](#) (CCDCE)
- For contacts working on technology and human rights in China, please contact Paloma Muñoz Quick, [pmunozquick@iccr.org](mailto:pmunozquick@iccr.org).

We welcome the opportunity to provide further feedback and support to the Office of the High Commissioner for Human Rights throughout the duration of the B-Tech Project.

Sincerely,

**Paloma Muñoz Quick**

Director,  
Investor Alliance for Human  
Rights

**Mary Beth Gallagher**

Executive Director,  
Tri-State Coalition for  
Responsible Investment  
& Investor Alliance Steering  
Committee member

**Sam Jones**

President & Co-founder,  
Heartland Initiative  
& Investor Alliance member