

THE ROLE OF ICT COMPANIES IN CONFLICT ZONES: ONLINE CONSULTATIONS SUMMARY

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On March 26 and 27, 2020, the Business and Human Rights Research Group of the Zicklin Center for Business Ethics Research at The Wharton School of the University of Pennsylvania, convened three online consultations to further a conversation about how Information and Communication (ICT) companies' operations affect human rights in conflict zones and high-risk areas. This document presents a summary of this meeting for the Project on Business in Conflict and Post-Conflict Contexts of the United Nations Working Group on Business and Human Rights (UNWGBHR).

Affected Rights. The discussion of the role of technology companies for human rights has almost exclusively focused on the right to privacy and freedom of expression, but not the full spectrum rights. Participants acknowledged that the risk of serious human rights impacts is exacerbated in conflict situations where on-line conduct can turn into off-line harm, including atrocity crimes.

General Challenges for Standard Setting. *First*, respecting human rights through core business processes requires ICT companies to design and implement new processes that are adaptive to their respective business model. The challenge is to integrate conflict sensitivity at all levels of business processes, including at the policy, operations, and product level. Technology companies have heterogeneous business models, and not all companies are equally affected or have the same leverage. Tech companies also debate the causal relationship between companies' business conduct and real-life consequences, and are not always convinced that their intervention can have a profound positive impact in conflict situations.

Second, conflict zones and high-risk areas present unforeseen challenges for implementing the United Nations Guiding Principles (UNGPs). The standard instruments proposed by the UNGPs like Human Rights Due Diligence (HRDD) and Human Rights Impact Assessments (HRIA) seem ill-equipped to support technology companies in the handling of such situations. These instruments are: (i) too static for dynamically evolving and uncertain environments, and (ii) not adequate enough for the sensitivity needed in these types of areas (*e.g.*, meetings with right-holders are difficult). Further, designing standardized grievance mechanisms is apparently particularly complex for technology companies because they need to be effective across multiple products, sites, and country-level issues.

Obstacles for the Implementation of Possible Standards from the Perspective of ICT Companies. *First*, ICT companies face particular time pressure for decision-making and considerable uncertainty over outcomes in conflict and high-risk settings. Defining trigger points for escalating conflict situations and defining respective organizational protocols is apparently difficult if decisions need to be made within hours. Establishing standardized processes for market entry is also considered difficult because often ICT companies do not have formal market

entries in specific countries. Either market entries happened years ago and retrofitting due diligence processes is no longer possible, or the reach of products transcends borders and users have access even without a formal market entry.

Second, the technology sector has a gap in understanding local context because they have fewer workers on the ground in comparison to other industries. Also not every country has civil society networks that can be readily activated for consultation in cases it is needed. Moreover, when time is of essence formal consultation processes are often considered too time-consuming and cumbersome.

Third, incentives within ICT companies can be conflicting and it is not transparent how companies identify their priorities and which criteria apply for decision-making. How ICT companies, for example, decide over withdrawal from conflict areas depends on a range of business factors, including their level of market penetration of a specific technology, their leverage and resources in country, and the expectations from local government. For example, there might only be a relatively small market penetration for a service in a respective country, and yet the negative human rights impact could still be significant and heightened in a conflict context. A standardized principled approach would render business factors less relevant in corporate decision-making concerning operations and service offerings in conflict and high-risk settings.

Fourth, the demand for content moderation in conflict situations may have unintended consequences, such as losing e-evidence or access to critical information for domestic and international courts as well as humanitarian organizations closely monitoring developments on the ground. The takedown of individual content needs intensive human oversight, coupled with engineering solutions to support evidence preservation for criminal investigations and humanitarian work.

Proposed Approaches from the Perspective of Civil Society and Academia. *First*, improve BHR approach from a corporate governance, ethics and compliance perspective. This includes strengthening companies' capacity to both anticipate and adequately act during conflicts by: (i) establishing protocols that define expectations in all different phases of the product cycle and trigger conflict-sensitive product interventions at all levels (including development, design, use); (ii) develop a blueprint catalogue of questions that would trigger certain actions/protocols, such as targeted stakeholder engagement; (iii) deploying greater investment in language expertise for effective content moderation; and (iv) building upon the Human Rights organizational embeddedness including policies related to training, hiring, and promotion.

Second, reinforce companies' relationships with stakeholders, during the whole lifecycle of a product by integrating civil society perspectives into underlying processes. This could include the creation of trusted focal points, in order to develop early warning mechanisms and to better understand how users are using their products.