How to Apply the UN Guiding Principles on Business and Human Rights to Operational Challenges

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How do we understand and address human rights challenges and dilemmas in our organizations?

Recognizing that some organizations and issues are unique.

• Consult applicable laws, policies, standards
• Carry out a reasonable inquiry and analysis
  • Before decision making or in relation to full products/services life-cycle
    • Human rights due diligence
    • Organization-wide systematic process of inquiry - human rights impact assessment
• Consult sector- or issue-specific due diligence guidance
• Consult case studies on how organizations address dilemmas
• Apply risk assessment frameworks for decision making
• Engage with policy makers and stakeholders
• Socialize the challenges and dilemmas
ICT Sector Guide for the European Commission: A joint project between IHRB and Shift

Key Due Diligence Steps:

- Develop a **human rights policy**
- **Assess** its actual and potential human rights impacts
- Integrate the findings and act to **prevent or mitigate negative impacts**
- **Track** how effectively risks are addressed
- **Communicate** how risks are addressed
- Work to **remedy** negative impacts it has caused or contributed to
techUK Guide on Cyber Security Exports and Human Rights

- First tech sector guidance of its kind
- Helps cyber security companies:
  - Look at the capabilities of the product/service for export
  - Examine the places where they are exporting to:
    - their political and legal frameworks
    - the state's human rights track record
    - potentially vulnerable people
  - Assess end purchaser and its intended use of product/service
  - Evaluate potential business partners and re-sellers
  - Include risk management clauses into the contract
- Reduces the likelihood of technology being used to help perpetrate human rights abuses
- Reduces the likelihood of reputational damage to British companies
Cyber security as a double edged sword

How to avoid abuses?

Figure 3: Example filter companies can apply to a deal

- Are there relevant trade sanctions or embargoes in place against the country in which the end user is based?
  - Yes
  - No

- Is the capability subject to export controls?
  - Yes
  - No

- Is the end user based in an EU member state, the US, Canada, Switzerland, Norway, Japan, Australia or New Zealand?
  - Yes
  - No

- Proceed with export subject to checks on the buyer
- Carry out a full risk assessment as outlined in this guidance

Figure 4: Assessing the risk of products and services

**Assessment questions**

- Could it be used to censor legitimate web content?
- Could it be used to modify/change content, such as an email en route?
- Could it be used for monitoring citizens? If so how many?
- Can it be used to locate and/or identify people? And to what level of granularity?
- Can it be used to carry out in-depth surveillance on individuals and/or organisations?

**Level of risk**

- Low-risk technology with peripheral cyber security capabilities

**Example capabilities**

- General commercial network devices such as routers and switches
- Enterprise Network Management
- Dual-use technology, core capabilities that could be used for cyber security purposes
- Penetration testing toolkits or software
- Technologies specifically designed for offensive cyber security purposes or surveillance and network monitoring
- Lawful Interdict equipment

Source: techUK guide
Digital Dangers Case Studies

Human Rights Challenges for Telecommunications Vendors: Addressing the Possible Misuse of Telecommunications System

Case Study: Ericsson (Nov 2014)
Risk assessment framework when financing exports of telecommunications systems: the 4 “Ps”

- **Purpose:** Assessment of the use of technology as intended by the exporter
- **Place:** What is the human rights situation in a country assessed against the “Freedom Online” framework?
- **Product:** Has the exporter carried out the relevant legal reviews in relation to the technology proposed for export, and are all relevant export licenses in place?
- **Purchaser:** Is it state-owned? What is the purchaser/operator policy to respect human rights online and offline? What is its practice? How does it respond to state orders to monitor/surveil, block or filter content, or to implement network shutdowns?

*When issues with some of the Ps: engagement with senior management*

**When all 4 Ps are problematic & cannot be mitigated: no go scenario**

Source: Various IHRB work products
**Engagement with ICANN: Two Streams of Human Rights Inquiry, as part of IANA Transition**

<table>
<thead>
<tr>
<th>Approach</th>
<th>Main Focus</th>
<th>Methodology</th>
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<tr>
<td>Normative/Legalistic</td>
<td>• To enhance ICANN accountability, new ICANN bylaw provisions include a human rights statement: <em>Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law.</em>&lt;br&gt;• This change becomes effective with a framework of interpretation</td>
<td><strong>Bylaws interpretation:</strong>&lt;br&gt;• Which human rights apply?&lt;br&gt;• Identification of key rights (see next slide)&lt;br&gt;• Do UNGPs apply to ICANN?</td>
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<tr>
<td>Empirical: Impacts analysis</td>
<td>• Systematic analysis of ICANN operational function against a human rights framework to understand adverse human rights impacts&lt;br&gt;• This may lead to ICANN's human rights reporting, as well as human rights policy statement</td>
<td><strong>Human Rights Impact Assessment</strong> to identify the relevant human rights impacts and to manage future adverse impacts / produce reporting:&lt;br&gt;• Domain of ICANN physical and operational footprint&lt;br&gt;• Domain of ICANN policies</td>
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ICANN POLICIES AND HUMAN RIGHTS

ICANN The Internet Corporation for Assigned Names and Numbers coordinates the policy-making and distribution process for the分配 of domain names,扼要 defined as the "telephone book of the Internet." The process is managed through a system of independent entities, determined by the community, as described in its Bylaws.

This illustration has been produced by the Group Community Working Party in ICANN's Corporate and Social Responsibility to Respect Human Rights

ICANN GLOSSARY
ICANN's Corporate and Social Responsibility to Respect Human Rights
Source: https://community.icann.org/display/gnsononcomstake/CCWP+on+ICANN’s+Corporate+and+Social+Responsibility+to+Respect+Human+Rights

This page contains the following diagram:

- **ICANN POLICIES AND HUMAN RIGHTS**

- **ICANN GLOSSARY**

- **ICANN'S CORPORATE AND SOCIAL RESPONSIBILITY TO RESPECT HUMAN RIGHTS**

- **Chart**
  - **HUMAN RIGHTS PRINCIPLES**
    - **INDEPENDENCE:** Human rights derive from the humanity of each person.
    - **UNIVERSALITY:** All human beings have the same human rights.
    - **INTERDEPENDENCE AND INTERRELATIONSHIP:** The enjoyment and fulfillment of any right depends on the enjoyment and fulfillment of other rights.
    - **EQUALITY AND NON-DISCRIMINATION:** All individuals are equal as human beings and the value of the inherent dignity of each human person.
    - **PARTICIPATION AND INCLUSION:** All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being.
    - **ACCOUNTABILITY AND RULE OF LAW:** Governments and other duty-bearers are accountable for the observance of human rights. In this regard, they have to comply with the legal norms and standards established in the international human rights instruments.

- **RIGHTS INVOLVED**
  - **RIGHT TO PRIVACY**
  - **RIGHT TO FREEDOM OF ASSOCIATION**
  - **ECONOMIC, SOCIAL AND CULTURAL RIGHTS**
  - **RIGHT TO FREEDOM OF EXPRESSION**
  - **RIGHT TO SECURITY**
  - **PARTICIPATION, INCLUSION, EQUALITY AND NON-DISCRIMINATION**
  - **DUE PROCESS**

- **THEME**
  - **ICANN POLICY OR PROCESS**
    - **Defined conditions of non-disclosure**
    - **Data escrow provider financial support**
    - **WHOIS accuracy specification requirement**
    - **Thin WHOIS implementation review team**
    - **Next generation gTLD registration directory service**
    - **ROAP changes and privacy**
    - **Applicant guidebook**
    - **Community based TLD**
    - **Application fees**
    - **Registrar accreditation process & support requirements**
    - **GNSO new gTLD auctions proceeds drafting team**
    - **Coordination and distribution of IP addresses**
    - **The right to use all words and names in domain names**
    - **Content-based gTLD String Evaluations**
    - **Applicant guidebook**
    - **Sensible strings**
    - **Community based TLD**
    - **Implementation of Internationalized Domain Names**
    - **Review of protection IDN/GND names in all gTLDs**
    - **Review of cultural rights protections in IDN/GNDs in gTLDs**
    - **New gTLDs subsequent round WII**
    - **PDP to review RPPs in all gTLDs**
    - **Implementation of DNSSEC**
    - **Implementation of DANE**

- **ICANN POLICY OR PROCESS**
  - **Documentary Information Disclosure Policy**
  - **2014 Register Accreditation Agreement**
  - **2015 Register Accreditation Agreement**
  - **WHOIS**
  - **New gTLD subsequent procedures WII**
  - **New gTLD subsequent procedures WIII**
  - **Internationalized Domain Names**
  - **Rights Protection Mechanism**
  - **UNSEC**
  - **Protection of rights to her and equal treatment**
  - **GNSO PDP improvements discussion group**
  - **Effect of failure and the use of the Ombudsman**
  - **Need to ensure that parties know about the Ombudsman for similar processes**
  - **Documentary Information Disclosure Policy**

- **Source:** https://community.icann.org/display/gnsononcomstake/CCWP+on+ICANN's+Corporate+and+Social+Responsibility+to+Respect+Human+Rights
Engagement and Advice to Myanmar / UK Governments on Surveillance Laws and Human Rights

• “Lawful Interception and Government Access to User Data: Designing a Rights-Respecting Model” – based on a detailed sector-wide impact assessment of the ICT sector in Myanmar

• Rights-respecting model with seven components:
  1. Prerequisites
  2. Authorisation Processes
  3. Oversight
  4. Notification of Individuals
  5. Remedy
  6. Transparency
  7. Provision for Framework Review
Guidance on Respecting LGBTI Rights

IHRB is working on a set of guidance for companies on LGBTI issues with the UN Human Rights Office – key principles under consideration include:

• **Respect human rights, through**
  0 Making policy commitment
  0 Undertaking due diligence
  0 Establishing remedies

• **Eliminate discrimination, through**
  0 Effective recruitment policies
  0 Eliminating harassment
  0 Ensuring access to all customers

• **Provide support, by**
  0 Backing and establishing LGBTI staff groups
  0 Extending benefits without discrimination
  0 Guaranteeing privacy

• **Act in public sphere, through:**
  0 Public advocacy
  0 Collective action
  0 Non-compliance with abusive orders

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To go or not to go?
How companies might operate in different legal and cultural environments

- Variations among companies’ approaches to ensuring equality among employees
- Three approaches are not mutually exclusive

<table>
<thead>
<tr>
<th>Approaches</th>
<th>How it works</th>
<th>What it does</th>
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<tbody>
<tr>
<td>“When in Rome”</td>
<td>Adapt to local conditions; allow workers to “opt out” of postings in hostile jurisdictions</td>
<td>A compromise approach; recommend transitioning to the “Embassy” mode</td>
</tr>
<tr>
<td>“Embassy”</td>
<td>Corporate policy enforced even in hostile jurisdictions and create safe space</td>
<td>Could help to promote tolerance among local staff</td>
</tr>
<tr>
<td>“Advocate”</td>
<td>Influence local regulations</td>
<td>Could help others beyond local staff</td>
</tr>
</tbody>
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Adapted from the work of Kenji Yoshino, NYU Law School
To go or not to go? Human Rights-based Considerations for Meeting Venues

- General human rights track record of the country?
  - Via externally available database

- A visible pattern of abuse of human rights that central to the organization’s mission and values?

- Views of local peers and NGO stakeholders?

- Mere presence legitimatizing the government or expressing solidarity with the local stakeholders?

- Hospitality / use of facilities / subsidy by the government offered?

- Specific safety threats or restrictions to some/all members?
Thank you!

Questions?

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