

Upholding Rights in the State-Business Nexus: C19 and beyond

Internet Governance Forum 2020 - Session Concept Note

This session will focus on strategies and practices to advance international human rights standards when governments procure, license or form partnership to make use of new digital technologies. Part One will spotlight urgent human rights concerns as well as positive practices related to public-private responses around the world to COVID-19. Part Two will chart a course for how to more strongly embed – for times of crisis and beyond – human rights protections into the “State-Business Nexus” consistent with the *UN Guiding Principles on Business and Human Rights*. The session will also inform the next steps and deliverables of a key work-stream of the UN Human Rights B-Tech Project.

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The sudden and devastating onset of the COVID-19 global pandemic has galvanized governments, citizens and the private sector to develop responses and solutions to protect the health of every member of society. The important role of technology in these efforts – whether to, allow vulnerable and isolated individuals to stay connected to their families, sustain delivery of essential items, to advance medical research or to enable home working – has been a central part of public discourse. In many ways, the crisis has reinforced the positive role that technology can play in our lives. And closer working between governments and tech firms is being supported by emergency legal measures and also, to some degree, by a social license for such collaboration

However, companies developing new technology products and solutions to fight the spread of the virus, coupled with the rapid and extraordinary government requests for access to user data raises major human rights concerns and questions. How do we protect privacy rights when they are threatened by legitimate public health and safety issues? What happens if/when governments use data about their citizens for nefarious purposes? How do we manage the risk of discriminatory access to information and public health outcomes, or social stigmatization? What is needed to ensure that special measures sunset at the appropriate time so as not overly prolong human rights risks? How will user data be firewalled to avoid future uses that serve State or commercial interests at the expense of privacy or other rights abuses?

All of this requires vigilance grounded in international human rights standards not simply short-term utilitarianism. We have seen welcome calls from Civil Society and beyond for States to follow the principles of necessity, proportionality, transparency, oversight and accountability when derogating from certain rights. And many have reiterated that technology companies need to act with human rights due diligence when engaging with or contracting with governments around the world.

This session will – with reference to the *UN Guiding Principles on Business and Human Rights* - explore what these welcome calls for action should translate to in practical terms in the context of contracting and project implementation between a State agency and a company. What policies, processes and accountability mechanisms will ensure States meet their human rights obligations and companies meet their *Corporate Responsibility to Respect Human Rights* in the course of government requests, solution design, procurement/sales, contract negotiations and solution implementation?

The session will also look beyond COVID-19 in recognition that – well before the current crisis – stakeholders across government, civil society and the private sector have raised alarms about the risk of government / tech company transactions and partnerships not being governed by a meaningful commitment to upholding human rights. Whether in the context of smart cities; use of AI in the criminal justice system; biometric tools used by security, law enforcement and immigration services; automated decision-making impacting access to public services and benefits, or defence contracts, we need to operationalize dignity and respect for all in the State-Business Nexus.