



SECTOR-WIDE RISK ASSESSMENT: Information and Communications Technology (ICT)

SALIENT ISSUE BRIEFING: Discrimination

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**INVESTOR ALLIANCE
FOR HUMAN RIGHTS**
AN INITIATIVE OF ICCR

SECTOR-WIDE RISK ASSESSMENT: Information, Communications and Technology (ICT)

SALIENT ISSUE BRIEFING: Discrimination

The right to equal treatment and non-discrimination is a salient human rights issue in the Information and Communication Technologies (ICT) sector. The concept of ‘salience’ focuses on risk to people, not to the company, while recognizing that where risks to human rights are greatest, there is significant convergence with business risk.

The ICT sector can promote human rights and contribute to the realization of the United Nations’ Sustainable Development Goals (SDGs) by advancing gender equality and women’s empowerment, enabling people to organize online, and amplifying the voices of marginalized or underrepresented communities. However, new communication technologies can also exacerbate inequality and discrimination. Historically biased and discriminatory contexts currently built into emerging technologies can contribute to the global digital divide, reinforcing discrimination, inciting violence against marginalized groups, and enabling surveillance and censorship.



INTERNATIONAL STANDARDS

Definitions, instruments, and authorities to consider when engaging companies on the right to equal treatment and non-discrimination.

Article 2 of the Universal Declaration of Human Rights (UDHR) states, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 7 states, “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” Moreover, “Everyone, without any discrimination, has the right to equal pay for equal work.” (Article 23(2) UDHR).

These rights are also fundamental rights under Articles 2, 20(2), 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 24 of the ICCPR also protects children’s rights to all measures of protection as required by their status as a minor, and

prohibits discrimination based on race, color, sex, language, religion, national or social origin, property or birth.

Additional instruments to consider include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which protects against discrimination based on race, color, descent, or national or ethnic origin. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits discrimination on the basis of sex. The Convention on the Rights of Persons with Disabilities (CRPD) protects the rights of people who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

The International Labour Organization’s (ILO) Discrimination (Employment and Occupation) Convention prohibits discrimination in the workplace, and the ILO Violence and

Harassment Convention aims to eliminate violence and harassment in the world of work.

The right to non-discrimination is cross-cutting, as it can intersect with all other human rights. Non-discrimination is importantly connected to those rights that enable

communities at risk of discrimination to organize collectively to protect their rights, including the rights to peaceful assembly and freedom of association, freedom of opinion and expression and key labor rights set forth in the ILO's core conventions.



HOW DO ICT COMPANIES CAUSE OR CONTRIBUTE TO DISCRIMINATION THROUGH THEIR ACTIVITIES, PRODUCTS OR SERVICES?

ICT companies can negatively impact the right to equal treatment and non-discrimination in multiple ways, including by:

- Enabling online harassment such as “doxing”, the spread of hate speech and incitement to violence, especially against people of color (e.g., social media platforms were used to facilitate the white nationalist protest in Charlottesville), women (including online stalking and sexual harassment), LGBTI+ people, and religious minorities (e.g., Facebook was used to facilitate violence against Rohingya Muslims in Myanmar) and other vulnerable users and groups;
- Spreading misinformation, disinformation (e.g., “fake news” used to influence young Kenyans’ vote) and election interference (e.g., Twitter and Facebook were accused of interfering in Indian elections). While everyone is impacted, marginalized groups are disproportionately harmed;
- Using personally identifiable information (“PII”) for discrimination;
- Censoring users at the request of third parties, including governments (e.g., LinkedIn censored the profile of a critic of the Chinese government), disproportionately impacting marginalized groups;
- Enabling government surveillance of private digital networks and monitoring/tracking minority groups and other vulnerable communities (e.g., China’s surveillance system is used to suppress the country’s Uyghur Muslims and other ethnic minorities);

RESOURCES

- Investor Guidance on Integrating Children’s Rights into Investment Decision Making by UNICEF and Sustainalytics provides guidance on child rights and the ICT sector.
- The UN ‘Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People’ Standards of Conduct for Business provide practical guidance to companies on how to eliminate discrimination in the workplace and provide support to stakeholders who identify as LGBTI+.
- Organizations such as Open Technology Institute (USA), Digital Empowerment Foundation (India), CIPEA (East and Southern Africa), or Paradigm Initiative work to ensure that every community has equitable access to digital technology and its benefits.
- Upturn promotes equity and justice in the design, governance, and use of digital technology through research and advocacy, with an emphasis on patterns of inequity, especially those rooted in race and poverty.

- Exacerbating racial, gender, and other discrimination in the workplace through discrimination in hiring, promotion, pay, and through hostile workplace environments (e.g., Facebook was accused of discriminating against African American employees; Tesla was accused of unequal pay based on gender), including through the use of automated tools that may lead to discriminatory decisions in housing, credit and health; and
- Enabling sexual harassment in the workplace (e.g., Uber was sued for sexual harassment of an employee and failure of human resources to investigate).

- Media Justice is a national racial justice hub for media and technology rights, access and representation.
- The Toronto Declaration, prepared by Amnesty International and Access Now, and endorsed by a coalition of CSOs, promotes the rights to equality and non-discrimination in machine learning systems.



HOW DOES ARTIFICIAL INTELLIGENCE (AI) IMPACT EQUAL TREATMENT AND NON-DISCRIMINATION?

Companies' design, use and deployment of AI may reinforce discrimination.

- Algorithmic decision-making tools may perpetuate the discriminatory assumptions of their programmers, including in pretrial detention (e.g., COMPAS risk assessment tool was accused of bias against people of color); housing (e.g., violating fair housing laws by enabling discrimination in advertising); employment (e.g., Amazon's automated hiring tool reportedly discriminated against women) and credit (e.g., algorithms that lower minorities' credit scores because of their social connections);
- Collecting data through emotion detection, personal assistants, and biometric identification in the absence of regulations that determine how such data may be used may result in adverse impacts on minorities and affected communities;
- Predictive policing tools, which rely on biased data to "predict" where crime will occur, has led to disproportionate surveillance in communities of color; and
- Enabling mass surveillance through technology that helps governments to track specific groups, such as human rights defenders and migrants (e.g., Palantir technology plays a critical role in enabling ICE surveillance, detention, and deportation operations in the United States).



THE 'BUSINESS CASE' FOR NON-DISCRIMINATION

Beyond their human rights responsibilities, ICT companies that do not proactively identify, assess, and address discrimination risks face potential legal, reputational, operational, and financial risks.

ICT companies that do not take the appropriate steps to ensure equal treatment at all levels of the company face a number of risks, such as class-action lawsuits over gender pay gaps, charges over discriminatory advertising practices

and legal action for negligence to protect against sexual assault and abuse. Companies also risk reputational harm, with a growing number of customers and civil society organizations publicly campaigning against technology

companies over the human rights impacts of their products, services and business relationships. Employee action in the ICT sector has also become stronger and more structured in recent years, disrupting operations and business relationships, including worker walk outs to protest the handling of sexual misconduct cases. Companies that contribute to or are linked to discriminatory outcomes such as inciting violence against or enabling surveillance and repression of minorities face similar material risks.

On the other hand, there is evidence that tech companies stand to benefit from diversity and inclusion in their

operations and business relationships. Research shows that diverse groups enable more innovation, adaptability, and better representation of the consumer base. According to the Harvard Business Review, companies with diversity are 45% likelier to report a growth in market share over the previous year and 70% likelier to report that the firm captured a new market. In addition, companies that are inclusive of LGBTI+ individuals enjoy stronger financial performance due to their ability to attract and retain talent, to innovate, and to build customer loyalty and brand strength.



HUMAN RIGHTS GUIDANCE FOR NON-DISCRIMINATION

Drawing from the UN Guiding Principles on Business and Human Rights, Business for Social Responsibility report, and UN ‘Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People’ Standards of Conduct for Business, the following human rights due diligence guidance for businesses to prevent, mitigate, and address discrimination helps inform investor engagements with ICT companies.

<p>Companies recognize that the authoritative global standard for ensuring equal treatment and non-discrimination is international human rights law.</p>	<p>Companies, at the highest levels of leadership, adopt and publicly disclose specific policies that direct all business functions, including local subsidiaries, to uphold international human rights standards even where local laws regarding the prohibition of discrimination fall short.</p>
<p>Companies take measures to prevent discrimination and harassment in the workplace, while increasing diversity, inclusion, equity, and accessibility.</p>	<p>Along with ensuring equal opportunity of hiring and promotion, including by prioritizing diversity and inclusion in terms of race, gender, ethnicity, and other markers of marginalization, companies should:</p> <ul style="list-style-type: none"> → Conduct equal pay assessments to close the gender pay gap; → Conduct unconscious bias trainings, diversify the “workforce pipeline”; → Increase performance transparency; → Make accommodations for differently-abled employees; → Avoid discrimination in benefits (such as health care coverage for trans employees and spousal benefits for employees in same-sex partnerships where equal marriage is not legally recognized); → Create a culture of inclusion; and → Be alert to other types of context-specific discrimination, such as political opinion.

<p>Companies assess real and potential adverse human rights of their operations, products, and/or services to identify, assess, and address discriminatory outcomes.</p>	<p>This includes assessing risks associated with the curation of user feeds and other forms of content delivery leading to discrimination, harassment, bullying and violence, especially of at-risk communities. Companies should:</p> <ul style="list-style-type: none"> → Take a “human rights by design” approach when building their products, to minimize adverse impacts; and → Ensure board level oversight of the company’s salient human rights issues, and how the company’s business operations, products, and services affect discrimination and inequality.
<p>Companies have in place clear and detailed content moderation policies and processes to prevent viral spreading of content that intends to harass users based on characteristics including gender, race, ethnicity, religion, and sexual orientation.</p>	<p>Such content includes hate speech, disinformation and misinformation which can incite or exacerbate discrimination and lead to offline violence, particularly affecting at-risk communities. Companies should:</p> <ul style="list-style-type: none"> → Minimize their automated content moderation tools’ differential impact on users and disclose key information about their use and functionality; → Take measures to prevent, detect, and remedy algorithmic bias, “technological redlining,” and manipulation. → Strengthen professionalization of their human evaluation of flagged content; → Provide all users with accessible and meaningful opportunities to opt out of platform-driven content curation; and → Ensure users are informed about how their data is used in machine learning and other algorithmic-driven processes.
<p>Companies commit to pushing back against excessively broad or extra-legal third party requests, including requests from governments, that may lead to discrimination against at-risk users, affecting their dignity, integrity, and security.</p>	<p>In such situation, companies should:</p> <ul style="list-style-type: none"> → Have processes to determine at-risk users and contexts and, when faced with requests that pose risks to people, they should seek clarification or modification; → Request the assistance of civil society, peer companies, relevant government authorities, international and regional bodies, and other stakeholders; and → Explore all legal options for challenge, to protect the identity and security of the user.
<p>Companies create or participate in effective grievance mechanisms and enable victims of discrimination to easily access remedy for abuses.</p>	<p>Companies should end mandatory arbitration for sexual harassment and assault cases. Companies should also ensure protection for whistleblowers who expose and/or report abuses.</p>



INVESTOR GUIDANCE FOR ENGAGING ICT COMPANIES ON NON-DISCRIMINATION

The following questions are intended as a starting point for investors engaging with ICT companies to help them evaluate if companies are making adequate efforts to implement their responsibility to prevent discrimination and promote diversity and inclusion in their operations and business relationships.

Human rights policy commitment

- Has the company adopted at the highest levels of management a public facing policy commitment to respect human rights in line with international standards? Does the policy prohibit all forms of harassment, misconduct, and discrimination based on grounds of race, color, sex, gender identity, sexual orientation, language, religion, political or other opinion, national or social origin, birth or other status?
- Has the company shared the policy commitment with local subsidiaries, suppliers, and other business partners and communicated its expectation that human rights responsibilities guide all business relationships?

Human rights governance and embedding

- Does the Board of Directors have expertise on human rights, including equal treatment and non-discrimination? Is the Board of Directors tasked with reviewing the company's efforts to manage its salient human rights risks, including risks to equal treatment and non-discrimination? Is there a clear assignment of roles, responsibilities, and resources for implementing those human rights commitments?
- Does the company provide workers at all levels of seniority with training on unconscious bias, risk of discrimination, and prohibition of sexual harassment?
- Does the company have staff dedicated to promoting diversity, inclusion, equity, and accessibility within the workplace?

Assessing real and potential impacts

- Does the company assess its real and potential human rights impacts? Does the company conduct human rights impact assessments (including assessing equal pay) on a regular basis? If yes, do these assessments include meaningful consultation with affected stakeholders, including LGBTI+ communities, women, persons with disabilities, and other at risk groups?

- Does the company disclose the results of its human rights impact assessments, including an assessment of its salient issues accompanied by action plans for preventing and mitigating impacts and tracking the effectiveness of responses?

Addressing human rights risks and impacts

- Does the company have clear internal processes guaranteeing workers all fundamental labor rights, including equal remuneration, non-discrimination in employment and occupation, freedom of association and collective bargaining, and protections for whistleblowers?
- How does the company exercise and increase its leverage, such as through contractual requirements, commercial incentives, and capacity building to help enforce its commitments to equality and non-discrimination with regards to business relationships?
- How does the company engage with industry peers to drive shared requirements of business relationships, including governments?
- Does the company have a policy on developing and deploying AI-powered tools in a manner that respects human rights? How does it ensure and monitor that these tools do not lead to discrimination against at-risk groups, in both the product design, deployment, and implementation phases? Does the company publicly share information about its efforts to assess and address discriminatory effects and other unintended human rights impacts of AI-powered tools at input and output levels?

Ensuring access to remedy

- Does the company provide or participate in effective grievance mechanisms that are accessible to individuals and communities at risk of discrimination by the company's own operations and within its value chain?
- Does the company periodically assess and disclose information about the effectiveness of the mechanisms?

- Does the company have a whistleblower policy to protect employees that report instances of discrimination or unequal treatment?

There are a number of tools that can help businesses identify and assess their real and potential impacts on human rights, including non-discrimination. These include the “[Human Rights Impact Assessment Guidance and Toolbox](#)” by the Danish Institute for Human Rights, and “[Doing Business with Respect for Human Rights: Assessing Impacts](#)” by the Global Compact Network Netherlands, Oxfam and Shift.



INVESTOR EFFORTS

Investors are taking steps to prevent and mitigate adverse impacts on equal treatment and non-discrimination by holding ICT companies accountable. Here are some examples:

- In 2019, a [shareholder proposal filed by Arjuna Capital](#) and co-filer Proxy Impact asked Google to publicly disclose its global median gender and racial pay gaps, citing concerns over gender pay equity, especially in the case of African American and Latin women.
- In 2019, Amazon shareholder, Harrington Investments, Inc. filed a [resolution](#) asking the company to evaluate the civil and human rights risks of the company's facial recognition technology, called Rekognition, and received 28% of the shareholder vote and support from 37% of independent shareholders. The same year, a coalition of shareholders led by the Tri-State Coalition for Responsible Investment filed a separate [resolution](#) asking Amazon to ban sales of Rekognition to governments, citing civil and human rights risks.

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The **Investor Alliance for Human Rights** is a collective action platform for responsible investment that is grounded in respect for people's fundamental rights. 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. We do this by: (1) providing tools and resources for investor action on human rights, (2) supporting direct engagement with portfolio companies on their own human rights practices, and (3) coordinating advocacy that asks policy-makers and standard-setting bodies to create level-playing fields for responsible business. Our members are based across four continents and represent \$3.5 trillion assets under management. Our diverse membership includes asset managers, public and private pension funds, trade union funds, faith-based organizations, foundations, and family funds. The Alliance is an initiative of ICCR. Visit our website at: <https://investorsforhumanrights.org> and follow us on Twitter: [@InvestForRights](#)