20 YEARS OF
Business & Human Rights
Resource Centre

APRIL 2024

A FACT SHEET FOR TECH INVESTORS

Investing in stakeholder engagement for improved digital technologies

Why carry out stakeholder engagement?

Following our analysis on the experience of civil society engaging with investors, the need for improved stakeholder engagement is clear. Investors, including early-stage private capital investors, help steer the direction of technological innovation, shape company priorities and practices, and ultimately facilitate technology's impact on society, for better or worse. Countless tech-related harms could have been avoided—the Business & Human Rights Resource Centre (the Resource Centre) has approached companies to respond to such allegations of abuse 701 times—if companies had stronger incentives to integrate human rights considerations into their product designs, business models and sales strategies. Some investors are making important and promising commitments to responsible investment in artificial intelligence and ethical technologies,[1] but translating these words into tangible action requires **human rights due diligence**.

Investors' responsibility to carry out human rights due diligence is outlined in the UN Guiding Principles on Business and Human Rights. In practice, human rights due diligence efforts will vary for different types of investors (from venture capital firms to public capital investors); yet, across its many forms, due diligence must be grounded in, and cannot be effective without, **meaningful stakeholder engagement**.

When done properly, stakeholder engagement can be **mutually beneficial** for all parties involved. In the fight for digital rights, a strong network of allies within the investment community could have a significant impact on corporate behaviour within the tech sector. Civil society can also help investors to identify, assess, prevent and mitigate legal, operational and financial risks within their portfolios.

1 There is a growing recognition that the long-term success of investments is tied to the socio-economic stability and well-being of the societies in which they operate. As explained by McKinsey and Witold Henisz, a professor at the Wharton School of the University of Pennsylvania, *"Businesses need to play the long game. That means they need to satisfy the needs of their customers, employees, and communities—these days, often a global community—in order to maximize value creation."* BlackRock's human rights statement for example, states: *"Unmanaged potential or actual adverse human rights issues can expose companies to significant legal, regulatory, operational, and reputational risks. These risks can materialize in a variety of ways that may damage a company's standing with business partners, customers, and communities... This is why, in our view, long-term investors can benefit when companies implement processes to identify, manage, and prevent adverse human rights impacts that could expose them to material business risks, and provide robust disclosures on these processes."*

It is not always easy for investors to **access credible information** about the impact their portfolio companies are having on people on a global scale. As explained in a report by several financial actors, the rise of illiberal governments, shrinking civic space, censorship and restrictions to online services *"creates an 'information black box' for companies and investors alike, reducing transparency and, with it, the ability to assess risks that may be disruptive to business."* Examples of this include instances where venture capital firms and startups moved their money out of Israel in 2022-2023 when the Israeli government sought to restrict the power of the Supreme Court. Banks allegedly 'scrambled' to comply with US, UK and European Union (EU) sanctions and export controls after Russia's invasion of Ukraine. Foreign investors are increasingly 'wary' of investing in Hong Kong after the vaguely-worded national security law put free speech and the right to protest at greater risk in 2020. Engagement with civil society can help to shine light into these 'black boxes', to better understand their risk exposure, and receive recommendations on how to engage with portfolio companies to address ongoing harms or mitigate risk of future harm.

Stakeholder engagement can help tech investors:

- Ensure investments are directed away from companies with detrimental business models that fail to enhance broad-based, long-term value creation, encompassing both financial gains and the stability of socio-political environments;
- Receive credible information about harmful products and services offered by companies within their portfolios from contextualised, expert sources to more effectively mitigate human rights risks linked to operational, compliance and reputational concerns in various jurisdictions;
- Ensure tech companies within their portfolios are adequately preparing for existing and impending human rights due diligence legislation by verifying that companies are conducting robust risk assessments with the involvement of affected stakeholders;
- Identify companies which are not operating responsibly in conflict-affected areas (i.e. continuing operations despite having announced they are exiting sanctioned markets or without carrying out heightened human rights due diligence); and
- Understand how to responsibly divest when companies are causing or contributing to severe human rights impacts and are not taking action to mitigate those impacts, despite previous investor efforts to address the issue.

Who are 'affected stakeholders' for the tech sector?

Engaging with affected stakeholders means building relationships with rightsholders and their legitimate representatives, which include civil society organisations, community groups and labour unions. Digital rights organisations are a key stakeholder group regarding the impacts of technology on society. It is critical to involve a diverse range of digital rights groups—with ample representation across geographies and demographics, including organisations focused on tech and gender, the environment, racial justice and persons with disabilities.

Is stakeholder engagement a compliance concern?

While the EU Corporate Sustainability Due Diligence Directive may currently exclude the financial sector, legal liability and due diligence responsibilities for investors were critical issues in the negotiations. This is likely to be resurfaced by EU legislators in the years to come, against the backdrop of the global movement in support of mandatory human rights and environmental due diligence by companies and other environmental, social and governance (ESG) reporting initiatives in Brazil, Mexico, South Korea, Japan, and most recently, China.

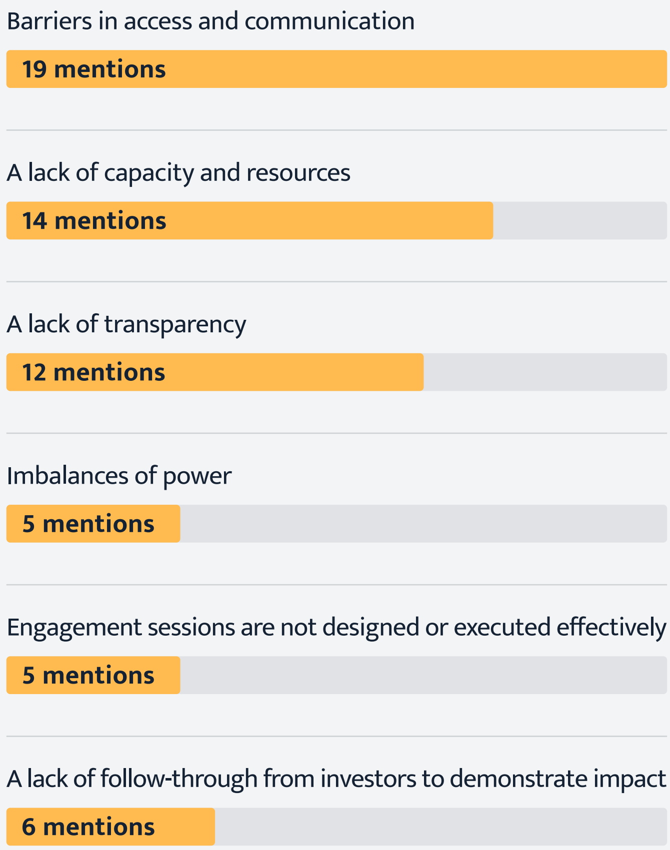
The tech sector is not immune to evolving mandatory human rights and environmental due diligence legislation. The EU's Corporate Sustainability Reporting Directive (CSRD), for example, introduced the Double Materiality Assessment (DMA), which requires large tech companies to identify their impact on environmental and social factors in consideration of affected stakeholders. The EU Digital Services Act and the EU Artificial Intelligence Act both require companies to conduct fundamental rights impact assessments, and the EU General Data Protection Regulation mandates data protection impact assessments. For impact assessments to be of use, affected stakeholders must be effectively consulted.

Are investors already engaging with digital rights groups?

To better understand the current state of engagement between investors and digital rights activists, and to develop recommendations for stronger collaboration between the two, the Resource Centre analysed survey results from 32 civil society organisations that work on digital rights issues and conducted interviews with activists from the Global South.

While the majority of survey respondents have been involved in research or advocacy concerning tech investors in the past, **less than half (15 out of 32) of the organisations have been consulted by investors for the purpose of human rights due diligence**. Only four organisations reported meeting with investors on a regular basis; all four are based in the Global North. Respondents based in the Global South who have met with investors for the purposes of human rights due diligence report their experiences are typically 'one-off consultation' sessions rather than part of a sustained strategy by investors.

Challenges digital rights groups have faced in engaging with investors include:



What does meaningful engagement with affected stakeholders look like?

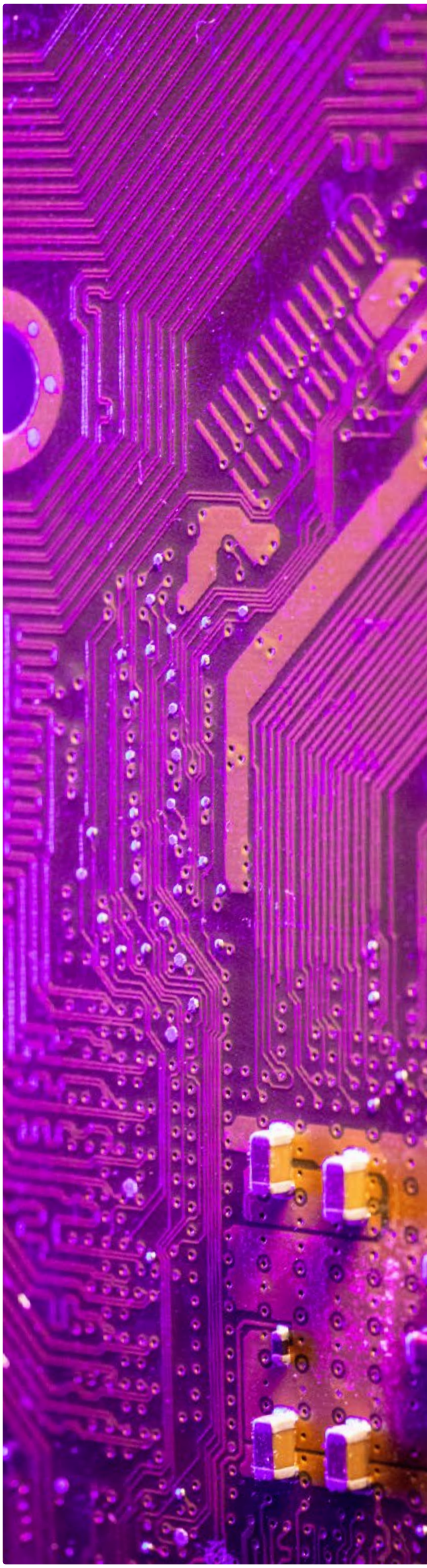
- Investors have pre-established and publicly available communications channels for digital rights groups to contact them;
- Investors recognise the disparities in resources and access to funds for human rights groups, and are willing to meet them where they are (geographically and otherwise);
- A diversity of civil society representatives are included in multi-stakeholder discussions, and digital rights groups are encouraged to extend invitations to underrepresented groups;
- Meetings are held in a way that demonstrates investors' willingness to sustain longer-term relationships (i.e. sessions are held semi-regularly to update each other on latest developments, challenges and progress);
- Investors share with digital rights groups' how their contributions have been used (i.e. in discussions with portfolio companies/startups, in the elaboration of policies, or in investment decisions).

Investors can use information from stakeholder engagement sessions for (among other things):

- Convening dialogues with their investee companies to raise civil society's concerns and request additional information/action from the company.
- Where regulations permit, filing a shareholder resolution (for publicly listed companies) that addresses the human rights concern, to be voted on during Annual General Meetings.
- Participating in peer-to-peer coordination efforts to build a stronger, more unified investor approach to respecting digital rights in a given market, sector or product type.
- Carrying out research or participating in disclosure initiatives that send questionnaires to the entities within their portfolios to ensure that human rights due diligence is taking place.
- Signing public pledges with groups of likeminded investors committed to addressing digital rights concerns.
- Signing public statements in support of rights-respecting legislation.
- Raising awareness about their concerns through the media.
- Voting against board members, taking legal action or divesting, if other tactics for improving corporate behaviour are unsuccessful.
- Refusing to invest in assets linked to governments that have problematic human rights records.
- Publicly announcing when they have decided to divest in a company due to its failure to mitigate human rights harms, as an effort to encourage other investors to follow suit. (See also: Microsoft case and Amazon case)

What else could investors do to ensure they are funding more rights-respecting technologies?

- Publishing a human rights policy committing to respect human rights and human rights defenders within the firm and across their value chains, including in their investment relationships, and ensuring there is human rights expertise within the firm.
- Developing rights-related blacklists for repeat-offender companies and exclusionary screens for technologies that are fundamentally non-compliant with international human rights law.
- Developing human rights due diligence procedures (concerning business models, geographies and sub-sectors within tech) and publicly disclosing how human rights due diligence is integrated into decision-making.
- Including commitments in limited partner agreements and term sheets offered to portfolio companies stating they must respect human rights and carry out human rights due diligence.
- Advocating for portfolio companies to build up their human rights due diligence procedures and share best practices from other investee companies.
- Developing and publishing a responsible divestment strategy (based on existing best practices identified by civil society) and process for exiting relationships where leverage no longer realistically exists.
- Decreasing the cost of capital for tech companies that have strong environmental, social and good governance performance (when verified by human rights groups).
- Establishing a human rights grievance channel in line with the UNGPs to learn from, and respond to, affected stakeholders about the harmful impacts of their investments.
- Ensuring meaningful engagement with affected stakeholders by effectively building and maintaining relationships with civil society.



Where to begin?

Investors' responsibility to respect human rights means looking beyond ESG risk ratings, especially from data providers which lack transparent methodologies. There are a number of openly available, free resources that provide company human rights performance data and stakeholder engagement best practices. The Resource Centre's tech company dashboards provide more nuanced insights into how companies are responding to allegations of human rights concerns and how they are performing on relevant civil society benchmarks (i.e. the World Benchmarking Alliance, KnowTheChain). There are also a number of opportunities for engagement, including through participation in human rights-centred alliances and coalitions (such as the Investor Alliance for Human Rights or the Collective Impact Coalition (CIC) for Ethical AI) and regular support to key digital rights conferences (such as the Digital Rights and Inclusion Forum, the Data Privacy Global Conference and RightsCon, among others).

A number of investors, of various asset class types, have already demonstrated their commitment to better ensuring their capital is not used to harm or undermine human rights. When done right, stakeholder engagement between civil society and investors can be transformative for the prevalence of more rights-respecting tech companies and digital technologies. When done together, mutually beneficial outcomes are within closer reach.

For investors interested in learning more about the Resource Centre's work, subscribe to our Weekly Update, or contact: techaccountability@business-humanrights.org