



**Addressing the Ugly Duckling of Human Rights for Businesses:  
An Examination of UN Task Forces' Neglect of the Right to Freedom of Expression**

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**Introduction**

Since the founding of the United Nation's (UN's) Guiding Principles on Business and Human Rights over ten years ago, ascribing nations and companies have made commendable strides towards establishing protective norms for human rights of various kinds.<sup>1</sup> International coalitions and business executives have boldly responded to climate change, gender inequalities, poor labor conditions, and COVID-19 by promulgating policies that safeguard the right to a healthy environment, the right to just and favorable conditions of work, and the right to bodily health, among others.<sup>2</sup> However, notwithstanding the progress for these rights, other crucial rights remain largely neglected still.<sup>3</sup> In particular, freedom of expression found in Article 19 of the Universal Declaration of Human Rights<sup>4</sup> has garnered little attention from the task forces that promulgate the Guiding Principles and the businesses that purportedly ascribe to them.<sup>5</sup> Consequently, the UN High Commissioner for

Human Rights’ mission, “to work for the protection of *all* human rights for *all* people,”<sup>6</sup> demands greater international energy aimed towards respecting this right. Part 1 of this report will explain the background of the UN’s solution for human rights abuses in business—the Guiding Principles on Business and Human Rights; Part 2 will demonstrate the urgent need for international protection of the freedom of expression specifically; Part 3 will examine the impact of corporate action—especially that of social media companies—on the development and exercise of Article 19 rights; and lastly, Part 4 will suggest courses of action that the Guiding Principles’ Working Group and businesses may take to emphasize greater respect for the right to freedom of expression.<sup>7</sup>

## **1. Background of the UN Guiding Principles and Working Group on Business and Human Rights**

In 2011, the UN Human Rights Council unanimously approved the UN Guiding Principles on Business and Human Rights.<sup>8</sup> These voluntary principles provide a set of guidelines to help both States and companies prevent, address, and remedy human rights abuses that occur as a consequence of business operations.<sup>9</sup> Specifically, the principles encourage corporate actors to respect human rights, while aiming to provide victims with access to a remedy for business-related abuses.<sup>10</sup> Under the UN’s Guiding Principles, the “human rights” that corporations must respect are “understood, at a minimum, as those set out in the International Bill of Human Rights . . . and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.”<sup>11</sup> For businesses, the UN’s Guiding Principles impose not only a duty to avoid *directly* violating the human rights of communities and individuals, but also to avoid operating in such a way as to cause abuses through their own activities, or even to indirectly contribute to a third party’s (such as the government’s, or another business’) abuses.<sup>12</sup> Ten years after the approval of UN’s Guiding Principles of Business and Human Rights, the initiative is still kept alive by the UN Working Group on the Issue of Human Rights.<sup>13</sup> The Working Group has a mandate to “promote, disseminate and implement” the Guiding Principles, “to exchange and promote good practices and lessons learned on the[ir] implementation,” and lastly, “to assess and make recommendations” accordingly.<sup>14</sup>

## **2. The Urgency and Neglect of Article 19 Rights Purportedly Protected by the UN Guiding Principles**

Among the rights that the Working Group and Guiding Principles have sought to protect in the last ten years, environmental, labor, gender, and health rights have gained a relatively large portion of the UN's efforts to influence corporate policy.<sup>15</sup> In contrast, reports from the Working Group have included virtually no spotlight on Article 19,<sup>16</sup> i.e., “the right to freedom of opinion and expression [including the] freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>17</sup> Moreover, none of the seventeen UN Sustainable Development Goals—another UN resource marketed to businesses—bring Article 19 rights to the attention of companies that look to the UN for guidance on how to best protect “all human rights for all people.”<sup>18</sup>

Yet, the neglect of these rights is not justified by a lack of abuses.<sup>19</sup> Today, countries and transnational companies directly exercise powerful and discriminate censorship.<sup>20</sup> Whether or not the Working Group and businesses realize it, the failure to protect Article 19 rights is a failure to protect the mainspring of all other human rights.<sup>21</sup> Freedom of opinion and expression is the keystone of democracy and an indispensable requirement for holding authorities accountable. Not only is the realization of these rights valuable, in and of itself, but there are profound consequences for the realization of other rights enshrined in the Universal Declaration, especially the right to freedom of conscience, religion, thought, information, participation in public life, association, and peaceful assembly.<sup>22</sup> Luckily, the importance of Article 19 rights is not lost on other bodies of the UN. To protect freedom of information (which the UN has recognized as an integral component of the freedom of expression)<sup>23</sup> the UN has gone so far as to recognize a “human right to the internet.”<sup>24</sup> As the Secretary-General of the United Nations Kofi Annan has said –

The Internet is the result of, and indeed functions as, a unique and grand collaboration . . . The information society's very life blood is freedom. It is freedom that enables citizens everywhere to benefit from knowledge, journalists to do their essential work, and citizens to hold government accountable . . . [W]ithout the right to seek, receive and impart information and ideas through any media and regardless of frontiers, the . . . society we hope to build will be stillborn.<sup>25</sup>

Even still, UN initiatives that support the UN's Guiding Principles for Business and Human Rights have mustered considerably little effort when it has come to holding private international businesses accountable for threats and abuses of rights under Article 19, especially when it comes to the internet.<sup>26</sup>

### **3. Examining the Impact of Corporate Action on the Development and Exercise of Article 19 Rights**

There is no doubt that many transnational companies have enormous sway over the development of human rights throughout the world generally; at times, their business practices can easily be more internationally significant than the policy initiatives of smaller nation-states.<sup>27</sup> Thus, their policies and practices which concern freedom of expression, and the rights which bifurcate therefrom, deserve a much more watchful eye than the UN currently lends to them.

One sector of international business that—absent any protective initiative on the part of the Working Group—holds particularly foreboding prospects for the fate of Article 19 rights is that of social media companies.<sup>28</sup> These companies have more control over societies' modern communication, collaborate ideological conversations, and information-sharing than any private entities in world history. With this amount of power over the abilities of global citizens to express themselves and access information comes equivalent ramifications for the realization of human rights.<sup>29</sup> And yet, social media companies which purportedly ascribe to the Guiding Principles<sup>30</sup> routinely and discriminately restrict certain viewpoints and voices from their platforms.<sup>31</sup> Some have recognized the power that these companies privately possess, and the frightening potential for the abuse of vital rights, and are calling for reform.<sup>32</sup> In a U.S. Supreme Court concurring opinion issued earlier this year, Justice Thomas wrote, “We will soon have no choice but to address how our legal doctrines apply to highly concentrated, privately owned information infrastructure.”<sup>33</sup> He went on to analogize social media platforms with “common carriers” such as telegraphs and phone companies, “utilities,” and “places of public accommodation” that should—and do—offer their services indiscriminately.<sup>34</sup> Despite the crucial need for companies worldwide *and* social media companies in particular to comply with stronger protections over freedom of expression, the UN Working group and other UN actors who target businesses have showed little initiative regarding this right.<sup>35</sup>

#### **4. What Can Be Done to Strengthen the Lackluster Protections for Article 19? How Ought Businesses to Respect Freedoms?**

As businesses everywhere are increasingly, eagerly, and publicly committing to respecting human rights,<sup>36</sup> they ought to focus in on what those principles mean specifically for freedom of expression. Likewise, as companies commendably adjust their practices to accommodate environmental rights, health rights, labor rights,

and gender equality, they should also acknowledge that freedom of expression is not a second-class right that can be disposed of without consequences to other rights.<sup>37</sup>

What global citizens deserve is not necessarily free reign to express any and every message on any platform and to any audience.<sup>38</sup> However, at a minimum, they deserve a reliably impartial application of censorship policies—absent of preferential treatment or biased discrimination regarding the expression of particular political, religious, or ideological messages.<sup>39</sup> Before certain voices are suppressed, companies ought to consider if their censorship is motivated by an intolerance to the occurrence of a particular conversation, or, to the specific viewpoint.<sup>40</sup> They ought to consider whether the actions that they take to censor or suppress certain viewpoints is balanced in regards to their response to the corresponding viewpoints. In consideration of the problem which is social media companies' dynamically amorphous anti-hate speech regulations,<sup>41</sup> these companies should commit to transparency in regards to the voices and messages that they choose to restrict.<sup>42</sup> Moreover, when social media companies receive requests from foreign governments to censor their citizens,<sup>43</sup> these companies ought to consider the ramifications for the right to free expression,<sup>44</sup> which is withheld from no nationality. As for the UN Working Group on Business and Human Rights, this task force ought to urge businesses and social media companies in particular to focus more intently on reporting, remedying, and remodeling after free expression violations.<sup>45</sup> Furthermore, the group could explore new partnership initiatives, such as working with the UN Global Compact, to declare a new sustainable development goal focused on liberated engagement in civic and political rights.<sup>46</sup> Ultimately, the world is waiting for action, and the right to express freely is too sacred a right to pay homage to by mouth, yet neglect in deed.

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<sup>1</sup> See Working Grp. on Bus. & Hum. Rts., Report on the Guiding Principles on Business and Human Rights at 10: Taking Stock of the First Decade, ¶¶ 11–17, U.N. Doc. A/HRC/47/39 (Apr. 2021), <https://undocs.org/A/HRC/47/39> [hereinafter Working Grp. on Bus. & Hum. Rts.]; Michelle Langlois, *Reporting Trends & Insights: Are Companies Making the Commitment to Respect Human Rights?*, SHIFT PROJECT LTD. <https://www.ungpreporting.org/reporting-insights-trends-are-companies-making-the-commitment-to-respect-human-rights/#trends> [https://perma.cc/XXL6-XAQ5] (last visited Oct. 2, 2021) [hereinafter SHIFT PROJECT LTD.]. See generally Sara Blackwell, *The Human Rights Opportunity*, SHIFT PROJECT LTD. (Aug. 2018), [https://shiftproject.org/wp-content/uploads/2018/08/TheHumanRightsOpportunity\\_Shift.pdf](https://shiftproject.org/wp-content/uploads/2018/08/TheHumanRightsOpportunity_Shift.pdf) [https://perma.cc/X7RE-ZXZV] (detailing participation of companies' participation in human rights efforts).

<sup>2</sup> See generally SHIFT PROJECT LTD., *supra* note 1.

<sup>3</sup> See *Milestone Moment for UN Principles on Business and Human Rights, But Abuses Persist*, UN NEWS (Jun. 16, 2021), <https://news.un.org/en/story/2021/06/1094172> [https://perma.cc/4NHA-HSWQ].

<sup>4</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/217\(III\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)) [hereinafter Article 19] (Article 19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”).

<sup>5</sup> This particular claim is difficult to support directly via citation, since few institutional or academic voices are drawing attention to the UN Working Group's lack of action and effectiveness in preventing Article 19 rights violations. Notwithstanding that is the case, this report bases its claim on the fact that recent reports by the Working Group, UN resources for businesses on the Strategic Development Goals, and UN news sources are virtually bare of references to freedom of expression as it is affected by businesses and business practices. See generally Working Grp. on Bus. & Hum. Rts., *supra* note 1; *Reports and Other Documents of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx> [https://perma.cc/2P4U-RMFN] (last visited Oct. 2, 2021) [hereinafter U.N. HIGH COMM'R]; *How Your Company Can Advance Each of the SDGs*, UN GLOB. COMPACT, <https://www.unglobalcompact.org/sdgs/17-global-goals> [https://perma.cc/CQ4U-AAKP] (last visited Oct 3, 2021) [hereinafter UN GLOB. COMPACT] (exhibiting the UN's 17 Sustainable Development Goals, for businesses); *Activities*, OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/EN/Issues/Business/Pages/Activities.aspx> [https://perma.cc/R8RW-BVFC] [hereinafter *Activities*] (a non-exhaustive list of events organized, statements made, articles published, interviews given, and participation in events by the UN Working Group on the UN Guiding Principles for Business and Human Rights); This is true despite the persistent and disconcerting abuses of this right that businesses, internationally, perpetuate and effect. This runs in contrast to the

consistent attention given to matters such as the environment, climate change, labor laws, COVID-19, and gender equality. *See infra* note xv. *But see Moderating Online Content: Fighting Harm or Silencing Dissent?*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R (Jul. 23, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/Online-content-regulation.aspx> [https://perma.cc/D4SH-FW7D] [hereinafter *Moderating Online*]; *Twentieth Anniversary Joint Declaration: Challenges to Freedom of Expression in the Next Decade*, (Jul. 10, 2019),

[https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Opinion/JointDeclaration10July2019\\_English.doc&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Opinion/JointDeclaration10July2019_English.doc&action=default&DefaultItemOpen=1). *See also* UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression [hereinafter U.N. Spec. Rapp. on Freedom of Expression], Report on Disinformation, ¶ 31, U.N. Doc. A/HRC/47/25 (Apr. 13, 2021), <https://undocs.org/A/HRC/47/25> (“The State has a duty to refrain from interfering with [freedom of expression] and also an obligation to ensure that others, including businesses, do not interfere with it.”).

<sup>6</sup> *Mission Statement*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R,

<https://www.ohchr.org/EN/ABOUTUS/Pages/MissionStatement.aspx#:~:text=The%20mission%20of%20the%20Office,ensuring%20that%20they%20are%20implemented> [https://perma.cc/TED9-39Y5] (last visited Oct. 2, 2021).

<sup>7</sup> This report, rather than advocating for the imposition of international law standards and treaties on nation states and businesses, is more of a speculative exercise, examining the effectiveness and thoroughness of the UN Working Group on Business and Human Rights’ professed undertaking, while offering a critical eye to the practices of certain businesses—particularly social media companies—who purportedly ascribe to the UN Guiding Principles.

<sup>8</sup> *See The UN Guiding Principles on Business and Human Rights – An Introduction*, UN WORKING GRP. ON BUS. & HUM. RTS. [https://www.ohchr.org/Documents/Issues/Business/Intro\\_Guiding\\_PrinciplesBusinessHR.pdf](https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf) (last visited Oct. 2, 2021).

<sup>9</sup> *See UN Guiding Principles*, BUS. & HUM. RTS. RES. CTR. <https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/> [https://perma.cc/5AH6-J3AK] (last visited Oct. 2, 2021).

<sup>10</sup> *See id.*

<sup>11</sup> *Guiding Principles on Business and Human Rights*, U.N. at ¶ 12 (2011),

[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>12</sup> *See* Working Group’s G.A. Rep. A/73/163, annex, *Companion Note I to the Working Group’s 2018 Report to the General Assembly – Corporate Human Rights Due Diligence – Background Note Elaborating on Key Aspects*, at 1 (Oct. 16, 2018)

<https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote1DiligenceReport.pdf>.

<sup>13</sup> *See generally Working Group on Business and Human Rights*, OFF. OF THE U.N. HUM. RTS. OFF. OF THE HIGH COMM’R,

<https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx> [https://perma.cc/4N5B-3V7M] (last visited Oct. 2, 2021) (displaying the home page of this organization).

<sup>14</sup> *See id.*

<sup>15</sup> *See* Working Grp. on Bus. & Human Rts, *supra* note 1, at ¶¶ 2–3, 52, 82, 91, 94, 115; Working Grp. on Bus. & Hum. Rts., Rep. on Gender Dimensions of the Guiding Principles on Business and Human Rights, U.N. Doc. A/HRC/41/43 (May 23, 2019),

<https://undocs.org/A/HRC/41/43>; *See e.g., Human Rights, Climate Change, and Business: Key Messages*, OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/Documents/Issues/ClimateChange/materials/KMBusiness.pdf> (last visited Oct. 2, 2021);

*Supporting the 2030 Agenda and “The Future We Want”*, UN ENV’T PROGRAMME, <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/supporting-2030-agenda-and-future-we> [https://perma.cc/PGD7-CSC2] (last visited Oct 2, 2021);

*OHCHR and Climate Change*, OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS.,

<https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx> [https://perma.cc/M8UP-F24G] (last visited Oct. 2, 2021);

Mary Robinson & Phil Bloomer, *Shaping a New Social Contract Through the Pandemic*, BUS. & HUM. RTS. RES. CTR. (Apr. 8, 2020) <https://www.business-humanrights.org/en/blog/shaping-a-new-social-contract-through-the-pandemic/>

[https://perma.cc/5EZR-KRTA]; *Human Rights Guidance & Tools for Companies During COVID-19*, BUS. & HUM. RTS. RES. CTR. (Apr. 24, 2020)

<https://www.business-humanrights.org/en/latest-news/human-rights-guidance-tools-for-companies-during-covid-19/>

[https://perma.cc/Y53D-LKNL]; *Business and Human Rights in Times of COVID-19*, OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS. (Oct. 2020),

<https://www.ohchr.org/Documents/Issues/Business/BusinessAndHR-COVID19.pdf>; *Briefing Note – The Linkages*

*Between International Labour Standards, the United Nations Guiding Principles on Business and Human Rights, and National Action*

*Plans on Business and Human Rights*, INT’L LABOUR ORG. (Jun. 2021), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/documents/briefingnote/wcms\\_800261.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/briefingnote/wcms_800261.pdf);

*Rules of the Game – An Introduction to the Standards-Related Work of the*

*International Labour Organization – Centenary Edition*, INT’L LABOUR ORG. (2019) [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_672549.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_672549.pdf);

*Realization of Decent Work for All*, UN Glob. Compact,

<https://www.unglobalcompact.org/what-is-gc/our-work/social/labour>

[https://perma.cc/PX8V-UP4Z] (last visited Oct 2, 2021).

<sup>16</sup> *See generally* U.N. HIGH COMM’R, *infra* note v.

<sup>17</sup> *See* Article 19, *supra* note 4; *Background and Interpretation of the Declaration of Principles*, INTER-AM. COMM’N H.R., ¶¶ 7–8, <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=132> [https://perma.cc/K79B-RU64] (last visited Oct. 3, 2021)

[hereinafter INTER-AM. COMM’N H.R.] (“Freedom of expression, therefore, is not just the right of individuals, but of society as a whole. It also should be emphasized that the declaration refers to freedom of expression ‘in all its forms and manifestations.’ The right to freedom of expression is not limited to the media or to individuals who exercise this right through the media. The right to freedom of expression includes artistic, cultural, social, religious and political expressions, as well as any other type of expression.”).

<sup>18</sup> *See generally* UN GLOB. COMPACT, *infra* note v.

<sup>19</sup> See generally *Explore CPJ's Database of Attacks on the Press – Journalists Killed*, COMM. TO PROTECT JOURNALISTS, [https://cpj.org/data/?status=Killed&start\\_year=2005&end\\_year=2021&group\\_by=year&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist](https://cpj.org/data/?status=Killed&start_year=2005&end_year=2021&group_by=year&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist) [https://perma.cc/PT6W-UFHK] (last visited Oct. 3, 2021) (examining international statistics of journalists murdered since 2005); *Protecting Human Rights on the Internet*, AMNESTY INT'L, <https://www.amnesty.org/en/latest/news/2017/03/fighting-back-against-cyber-censorship/> [https://perma.cc/WV4B-ZK4L] (last visited Oct. 3, 2021) (examining cyber-censorship, surveillance, and freedom of expression online).

<sup>20</sup> See Susan Benesch, *But Facebook's Not a Country: How to Interpret Human Rights Law for Social Media Companies*, 38 YALE REGUL. J. 86, 86–88 (2020), <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1004&context=jregonline>. See generally Paul Bischoff, *Internet Censorship 2021: A Global Map of Internet Restrictions*, COMPARITECH (Aug. 3, 2021), <https://www.comparitech.com/blog/vpn-privacy/internet-censorship-map/> [https://perma.cc/X2K9-ZVQY] (examining countries' attempts to block and restrict internet access to information); Courtney Glenn Vinopal, *Censorship in the Digital Age*, COLUM. JOURNALISM SCH., <https://journalism.columbia.edu/censorship-digital-age> [https://perma.cc/C53Y-V5S5] (last visited Oct. 3, 2021) (examining threats to independent journalists around the world); Ryan Mac, *Amid Israeli-Palestinian Violence, Facebook Employees Are Accusing Their Company of Bias Against Arabs and Muslims*, BUZZFEED NEWS (May 27, 2021), <https://www.buzzfeednews.com/article/ryanmac/facebook-employees-bias-arabs-muslims-palestine> [https://perma.cc/HF9D-WZZC] (reporting on Facebook's alleged discrimination of Arab users); *Bad Tweets: Censoring Religious Speech Online is the New Burning Books*, FIRST LIBERTY (Apr. 12, 2019), <https://firstliberty.org/news/bad-tweets/> [https://perma.cc/V25B-ZDHT] (“The rush to censor hate speech leads private companies to censor unpopular political ideas, especially conservative ideas. Conservative Prager University sued YouTube twice because the site had a pattern of repeatedly restricting its videos. Funding sites like Patreon have faced criticism for removing controversial voices. Twitter and Facebook have repeatedly restricted pro-life content. The Apple App Store removed a religious pro-life app that encouraged users to pray for the unborn. Amazon Smile won't let users donate to the Alliance Defending Freedom, a religious freedom organization with multiple U.S. Supreme Court victories under its belt.”); Salvatore J. Cordileone & Jim Daly, *Social Media's Threat to Religious Freedom*, W.S.J. (Aug. 12, 2021), <https://www.wsj.com/articles/social-media-religious-freedom-youtube-first-amendment-section-230-carl-trueman-sacramento-gospel-conference-11628802706> [https://perma.cc/CUP7-R8F5].

<sup>21</sup> See Irene Khan (U.N. Spec. Rapp. on Freedom of Expression, *Rep. on Disinformation and Freedom of Opinion and Expression*, ¶ 42, U.N. Doc A/HRC/47/25, (Apr. 13, 2021), <https://undocs.org/A/HRC/47/25> [hereinafter Khan]. (“Given the fundamental importance of freedom of expression to democracy and the enjoyment of all other human rights and freedoms, international human rights law affords particularly strong protection to expressions on matters of public interest, including criticism of Governments and political leaders and speech by politicians and other public figures, and to media freedom.”).

<sup>22</sup> See INTER-AM. COMM'N H.R., *supra* note 17, at ¶¶ 6–7 (Freedom of expression . . . is an indispensable requirement for the very existence of a democratic society. Respect for and protection of freedom of expression plays a fundamental role without which other elements for strengthening democracy and human rights cannot develop. The right to and respect for freedom of expression serves as an instrument for the free exchange of ideas, strengthens democratic processes and offers citizens an indispensable tool for informed participation. Moreover, through the mass media, citizens are empowered to participate in and/or exercise control over the conduct of public officials . . . Freedom of expression is a cornerstone upon which the very existence of a democratic society rests . . . It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.”); See *Freedom of Expression – Overview*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/freedom-of-expression/> [https://perma.cc/9695-3SXA] (last visited Oct 3, 2021) (“Defending freedom of expression . . . is vital in holding the powerful to account. Freedom of expression also underpins other human rights such as the right to freedom of thought, conscience and religion – and allows them to flourish. It is also closely linked to freedom of association – the right to form and join clubs, societies, trade unions or political parties with anyone you choose; and freedom of peaceful assembly – the right to take part in a peaceful demonstration or public meeting. However, these very freedoms come under regular attack by governments that want to stifle criticism.”).

<sup>23</sup> See *Freedom of Information*, UN AND THE RULE OF L., <https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/> [https://perma.cc/EZ6C-UUAJ] (last visited Oct 3, 2021) (“Freedom of information is an integral part of the fundamental right of freedom of expression”).

<sup>24</sup> See Catherine Howell & Darrell M. West, *The Internet as a Human Right*, BROOKINGS INST. (Nov. 7, 2016), <https://www.brookings.edu/blog/techtank/2016/11/07/the-internet-as-a-human-right/> [https://perma.cc/33UM-9EZ4]. See generally U.N., Human Rights Council, *The Promotion, Protection and Enjoyment of Human Rights on the Internet*, U.N. Doc. A/HRC/32/L.20 (Jun. 27, 2016), <https://undocs.org/A/HRC/32/L.20> (revising Article 19 of the Universal Declaration of Human Rights to include a right to the internet).

<sup>25</sup> U.N. Secretary-General, *Statement dated Nov. 16, 2005 from the Secretary-General as delivered at the Second Phase of the World Summit on the Information Society (2005)* <https://www.itu.int/net/wsis/tunis/statements/docs/io-un-opening/1.html> [https://perma.cc/4UBN-VG9D].

<sup>26</sup> See generally *Activities*, *supra* note 5; U.N. HIGH COMM'R, *supra* note 5; UN GLOB. COMPACT, *supra* note 5 (displaying no mention of Article 19 rights); Working Grp. on Bus. & Hum. Rts, *supra* note 1 (displaying no mention of Article 19 rights). *But see Human Rights Translated – A Business Guide*, CASTAN CTR. FOR HUM. RTS. L., INT'L BUS. LEADERS F., AND OFF. OF THE UN HIGH COMM'R FOR HUM. RTS. at 53–56 (2008), [https://www2.ohchr.org/english/issues/globalization/business/docs/Human\\_Rights\\_Translated\\_web.pdf](https://www2.ohchr.org/english/issues/globalization/business/docs/Human_Rights_Translated_web.pdf) (extrapolating a plethora of rights for businesses).



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<sup>27</sup> See generally Vincent Trivett, *25 US Mega Corporations: Where They Rank If They Were Countries*, INSIDER (Jun. 27, 2011), <https://www.businessinsider.com/25-corporations-bigger-than-countries-2011-6> [https://perma.cc/KZD6-6UAZ] (comparing the size and influence of US Mega Corporations to that of countries).

<sup>28</sup> See *UN HRC Maintains Consensus on Internet Resolution*, ARTICLE 19 (Jul. 9, 2018), <https://www.article19.org/resources/un-hrc-maintains-consensus-on-internet-resolution/> [https://perma.cc/XT6M-7AN2] (“[H]uman rights issues . . . include[e] . . . the role of businesses like social media companies . . . At a time when an increasing number of governments are seeking to control and censor the Internet, the international community’s reaffirmation that the same rights we enjoy offline must be protected online is crucial . . . social media companies have become ‘enigmatic regulators, establishing a kind of “platform law” in which clarity, consistency, accountability and remedy are elusive’” (referring to concerns made by the U.N. Spec. Rapp. on Freedom of Expression to the HRC)).

<sup>29</sup> See Bill Baer & Caitlin Chin, *Addressing Big Tech’s Power Over Speech*, BROOKINGS INST. (Jun. 1, 2021), <https://www.brookings.edu/blog/techtank/2021/06/01/addressing-big-techs-power-over-speech/> [https://perma.cc/WC8M-DCX3]; Aadil Razack & Maanasa Reddy, *The Power of Social Media Companies*, Ampheros Media (Mar. 22, 2021), <https://ampheros.com/the-power-of-social-media-companies/> [https://perma.cc/7AKB-A5FW]; *Moderating Online*, *supra* note 5; *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 593 U.S. \_\_\_, 2 (2021) (Thomas, J., concurring) (“Today’s digital platforms provide avenues for historically unprecedented amounts of speech, including speech by government actors. Also unprecedented, however, is the concentrated control of so much speech in the hands of a few private parties. We will soon have no choice but to address how our legal doctrines apply to highly concentrated, privately owned information infrastructure such as digital platforms.”); *Twentieth Anniversary of the Joint Declaration: Challenges to Freedom of Expression in the Next Decade*, INTER-AM. COMM’N H.R. (2019), <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1146&IID=1> [https://perma.cc/DT43-G27K] [hereinafter INTER-AM. COMM’N H.R.].

<sup>30</sup> See, e.g., *Corporate Human Rights Policy*, FACEBOOK at 1 (2021), <https://about.fb.com/wp-content/uploads/2021/03/Facebooks-Corporate-Human-Rights-Policy.pdf> (detailing Facebook’s commitment to the UN Guiding Principles for Business and Human Rights).

<sup>31</sup> See *supra* note 20.

<sup>32</sup> See, e.g., INTER-AM. COMM’N H.R., *supra* note 17.

<sup>33</sup> *Biden v. Knight First Amendment Inst. at Columbia Univ.* 593 U.S. at 2.

<sup>34</sup> *Id.* at 7–9.

<sup>35</sup> See generally *Activities*, *supra* note 5; U.N. HIGH COMM’R, *supra* note 5; Working Grp. on Bus. & Hum. Rts., *supra* note 1; UN GLOB. COMPACT, *supra* note 5.

<sup>36</sup> See SHIFT PROJECT LTD., *supra* note 1.

<sup>37</sup> See UN Meeting Coverage, Third Comm. GA/SHC/4053, ‘There Are No First-Class or Second-Class Rights,’ as All Human Rights, Freedoms Interdependent, Indivisible, Third Committee Told (Nov. 8, 2012), <https://www.un.org/press/en/2012/gashc4053.doc.htm> [https://perma.cc/C9SH-G2N9] (“‘There are no first-class or second-class rights,’ said the representative of Chile, one of many delegates who argued for the universality and interdependence of all rights, and said that economic, social and cultural rights were of equal value with civil and political rights. Similarly, Pakistan’s delegate told the Committee that the strong link among those rights must be preserved, and that without ensuring human rights, there could be no real peace — a prerequisite for development.”).

<sup>38</sup> See Khan, *supra* note 21, at ¶ 42 (“This does not mean that disinformation in the context of political speech can never be restricted, but that any such restriction requires a high threshold of legality, legitimacy, necessity and proportionality.”).

<sup>39</sup> “[A]dopt transparency and due process measures . . . [R]egulatory proposals, which focus on transparency and due process obligations, rather than viewpoint- or content-based regulations, can make a positive contribution to the protection of human rights and greater public accountability of platforms. However, for the regulatory measures to work properly, the independence of the oversight body or regulator must be assured and scrupulously respected.” Khan, *supra* note 21, at ¶ 59; see also U.N. HIGH COMM’R, *supra* note 5 ([C]ompanies need to be transparent about how they curate and moderate content and how they share information, and States need to be transparent about their requests to restrict content or access users’ data.”).

<sup>40</sup> See *Moderating Online*, *supra* note 5 (“UN Human Rights urges that the focus of regulation should be on improving content moderation processes, rather than adding content-specific restrictions . . . [R]estrictions should be clear, and they should be necessary, proportionate and non-discriminatory.”).

<sup>41</sup> See Rep. of the U.N. Spec. Rapp. on Freedom of Expression, U.N. Doc A/74/48050 (Oct. 9, 2019), [https://www.ohchr.org/Documents/Issues/Expression/A\\_74\\_48050\\_AdvanceUneditedVersion.docx](https://www.ohchr.org/Documents/Issues/Expression/A_74_48050_AdvanceUneditedVersion.docx) (“‘Hate speech’, a short-hand phrase that conventional international law does not define, has a double-edged ambiguity. Its vagueness, and the lack of consensus around its meaning, can be abused to enable infringements on a wide range of lawful expression.”); Evelyn Douek, *New U.N. Report on Online Hate Speech*, LAWFARE (Oct. 25, 2019), <https://www.lawfareblog.com/new-un-report-online-hate-speech> [https://perma.cc/2X59-WHUP] [hereinafter LAWFARE] (“Hate speech is one of the most controversial areas of content moderation, given the difficulty of defining the category and the importance of context. It is also the area in which international human rights law is perceived as being furthest from U.S. First Amendment law . . . ‘‘Hate speech’’ [is] a short-hand phrase that conventional international law does not define[.] Its vagueness, and the lack of consensus around its meaning, can be abused to enable infringements on a wide range of lawful expression’ (quoting U.N. Spec. Rapp. on Freedom of Expression)).

<sup>42</sup> See Khan, *supra* note 21, at ¶ 59 (“[A]dopt transparency and due process measures . . . [R]egulatory proposals, which focus on transparency and due process obligations, rather than viewpoint- or content-based regulations, can make a positive contribution to the

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protection of human rights and greater public accountability of platforms. However, for the regulatory measures to work properly, the independence of the oversight body or regulator must be assured and scrupulously respected.”).

<sup>43</sup> See Sheikh Saaliq & Krutika Pathi, *India Internet Law Adds to Fears Over Online Speech*, AP NEWS (Jul. 15, 2021),

<https://apnews.com/article/technology-entertainment-business-music-india-2458a729cff255c8a8f83d84101372d8>

[<https://perma.cc/X54X-TS36>]; Lauren Frayer & Shannon Bond, *Twitter In Standoff With India’s Government Over Free Speech and Local Law*, NPR NEWS (Feb. 18, 2020), <https://www.npr.org/2021/02/17/968641246/twitter-in-standoff-with-indias-government-over-free-speech-and-local-law> [<https://perma.cc/Y7L9-TJXB>].

<sup>44</sup> See Khan, *supra* note 21, at ¶ 47 (“Where States systematically and simultaneously suppress other sources while promoting their own false narratives, they are denying individuals the right to seek and receive information under article 19 (2) of the International Covenant on Civil and Political Rights.”).

<sup>45</sup> See *Moderating Online*, *supra* note 5 (“[U]sers should have effective opportunities to appeal against decisions they consider to be unfair . . . [and] civil society and experts should be involved in the design and evaluation of regulations.”); LAWFARE, *supra* note 41 (“[The U.N. Spec. Rapp. on Freedom of Expression] makes concrete recommendations to companies seeking to implement human rights standards in their content moderation, including the following: [1] Conducting periodic human rights due diligence assessments and review—there is still very little public information about platforms’ actual effects on human rights, and any assessments that are undertaken are currently far too little too late. [2] Aligning hate speech policies to meet the requirement of legality, which means a lot more definitional clarity than most companies currently provide . . . [3] Improving processes for remediation in cases where people’s rights are infringed, especially creating a transparent and accessible mechanism for appealing platform decisions. Kaye also urges companies to consider more graduated responses according to the severity of the violations of their hate speech policy, including remedial policies of education, counter-speech, reporting and training those involved to be aware of the relevant standards.”).

<sup>46</sup> The lack of focused protections for Article 19 rights not justified by a socioeconomic benefit censorship. In fact, marketplace progress and innovation has been proven to suffer from suppression of free speech. See Steve Forbes, *Why Suppressing Free Speech Will Hurt the Economy*, FORBES (Feb. 5, 2021), <https://www.forbes.com/sites/steveforbes/2021/02/05/why-suppressing-free-speech-will-hurt-the-economy/?sh=64e4483a6c6b> [<https://perma.cc/7YEB-J87K>] (Freedom of speech is under increasing attack from various quarters, including, shockingly, much of the media. The consequences of nonconformity are ugly, such as potential loss of one’s job and public shaming. This is poison for democracy. Moreover, what isn’t so well appreciated is that freedom of expression goes hand-in-hand with economic progress . . . Free speech is essential to our well-being and for a more prosperous future.”); *Business for Peace*, INDONESIA UN GLOB. COMPACT NETWORK at 4 (2014), [https://religiousfreedomandbusiness.org/uploads/3/2/9/7/3297448/business\\_a\\_powerful\\_force\\_for\\_interfaith\\_understanding\\_and\\_peac\\_e.pdf](https://religiousfreedomandbusiness.org/uploads/3/2/9/7/3297448/business_a_powerful_force_for_interfaith_understanding_and_peac_e.pdf) (“Given its role in building economies, mobilizing people around a shared purpose and pioneering cross-cultural management styles, business has an important stake in promoting intercultural and interreligious understanding. Successfully managing diversity and fostering tolerance and understanding – among employees, consumers and other stakeholder – is increasingly essential for long-term business success” (quoting George Kell, Executive Director of the UN Global Compact)).