What does accountability and remedy look like in the case of adverse human rights impacts from digital technologies

Tuesday, 26 November 2019: 16.40 - 18.00
Room XXII

Organizer

OHCHR

Session description

The United Nations Guiding Principles on Business and Human Rights (UNGPs) stipulate the duties and responsibilities of states and business respectively to provide access to effective remedy for human rights harm by business (UNGPs Pillar III).

States not only have obligations to ensure accountability and remedy for human rights violations committed by state actors, they must also take appropriate steps to ensure that victims of business-related human rights abuse have access to effective remedy. Depending on the nature of a particular case or situation, victims of adverse human rights impacts from digital technologies should be able to achieve remedy through effective judicial or non-judicial state-based grievance mechanisms.

As far as companies are concerned, the UNGPs recognize that when business enterprises are involved in human rights abuses, those harmed must have access to effective remedy. Ensuring access to effective remedy – regardless of the mechanism – can be challenging no matter the industry or operating context. When it comes to the development and use of digital technologies, certain seemingly unique issues arise, for instance in relation to adverse impacts resulting from decisions made by machines and algorithms rather than humans; the need for mechanisms to potentially address the grievances of millions of adversely affected rights-holders; and safeguarding challenges due to the fact that dozens of companies are linked to abuse via the interaction of different technology products and services.

This session will explore issues related to the technology sector and access to effective remedy through the use of both State-based (judicial or non-judicial) and non-State-based grievance mechanisms. In particular, panelists and participants will be invited to share the challenges associated with the use and administration of such mechanisms, ways for overcoming these challenges as well as ideas and lessons learned for enhancing the effectiveness of these mechanisms.

Session objectives
- Discuss the existing State-based remedial avenues in case of adverse human rights impact from digital technologies;
- Explore the different ways that technology companies can and should establish or participate in private grievance mechanisms in order to meet their responsibilities under the UNGPs; Discuss the challenges and opportunities involved in this field;
- Discuss the practical steps that technology companies can take to ensure rights-holders have meaningful access to remedy in a way that accounts for the unique challenges these companies face; and
- Explore the role States can play to facilitate access to non-State-based grievance mechanisms dealing with human rights harms relating to digital technologies.

Key discussion questions

- To what extent do technology companies administer or participate in private grievance mechanisms?
- How well are technology companies responding to the challenges set out in the UN Guiding Principles as regards access to remedy for human rights-related harms? What has been done so far? What still needs to be done?
- What models of grievance mechanisms are technology companies using? What innovations have been tried or are in the pipeline?
- What kinds of human rights issues are people raising with technology companies through private grievance mechanisms? And how are companies responding?
- Have there been sectoral or geographical variations in the way technology companies are responding? If so, what is driving these variations?
- What collaborative initiatives are in place to provide remedies to affected people, to help companies identify systemic or industry-wide problems, or to formulate joint responses to broader challenges? How well are these working? What still needs to be done?
- What is the role of States in supporting remedial efforts by technology companies? In what ways and circumstance can State regulation provide drivers for change?

Format of the session

First part of the session: a moderated discussion with panelists speaking to the issue of State-based and non-State-based grievance mechanisms in the tech sector from the perspective of a Government's representative, a tech company, a multi-stakeholder initiative, a rights-holder and an academic institution. Following the presentations, the floor will be open to a short Q&A from the audience.

Second part of the session: a fictional case study will be screened (consisting of a small fact pattern and some questions). Each of the panelists will share some preliminary thoughts to kick off the discussion and the audience will be invited to speak to the case study from the floor.

Panel composition

Moderator: Lene Wendland, Chief, Business and Human Rights, OHCHR
Speakers :
- Sarah Joseph, Director, Castan Centre for Human Rights, Monash University
- Nikolaj Christian Borreschmidt, Head of Section and tech advisor to Denmark's Tech Ambassador, Ministry of Foreign Affairs of Denmark
- Rebecca MacKinnon, Director, Ranking Digital Rights
- Laura Okkonen, Senior Human Rights Manager, Vodafone
- Théo Jaekel, Corporate Responsibility Expert, Ericsson
- Laura O'Brien, Policy and Advocacy Fellow, Access Now

Background

OHCHR has recently launched the B-Tech Project, which seeks to provide authoritative guidance and resources to enhance the quality of implementation of the UNGPs with respect to the technology space. The B-Tech project will be looking at four *inter-related* focus areas: Addressing Human Rights Risks in Business Models (Focus Area 1); Human Rights Due

Diligence and End-Use (Focus Area 2); Accountability and Remedy (Focus Area 3 and the Forum session's specific focus); and "A Smart Mix of Measures:" Exploring regulatory and policy responses to human rights challenges linked to digital technologies (Focus Area 4).

The session's output will also feed into [phase III of OHCHR's Accountability and Remedy Project on non-State-based grievances mechanisms](#).