# OHCHR MULTI-STAKEHOLDER CONSULTATION ON ACCESS TO REMEDY IN THE TECH SECTOR

23-24 September 2021
Palais des Nations, Room XVIII and online through Zoom (hybrid format)
Interpretation available in English, Spanish and French

***CONCEPT NOTE***

## I. Background

The right to remedy is a core tenet of the international human rights system, and the need for victims to have access to an effective remedy is recognized in the UN Guiding Principles on Business and Human Rights (UNGPs).

The Accountability and Remedy Project (ARP) aims to strengthen implementation of the Access to Remedy pillar of the UNGPs. Since its official launch in 2014, three substantive phases have been completed, with each phase producing recommendations for enhancing the effectiveness of one of the three different categories of grievance mechanisms referred to in that pillar (background on ARP).

Through the B-Tech project, OHCHR seeks to ensure respect for human rights in the development, deployment and use of digital technologies through the uptake and implementation of the UNGPs by digital technology companies. The project's vision is to have the UNGPs promoted and applied – by companies, States, investors, and civil society – so that respect for human rights and dignity for all are at the heart of the 21st Century digital economy (background on B-Tech).

The UNGPs offer States, technology companies, investors and advocacy organizations a robust and credible framework for prevent and remedying human rights harms resulting from the use of technologies. In the context of OHCHR's work on accountably and remedy and tech, four foundational papers have been released on access to remedy in the technology sector:

- Access to remedy and the technology sector: basic concepts and principles;
- Access to remedy and the technology sector: a "remedy ecosystem" approach;
- Designing and implementing effective company-based grievance mechanisms; and
- Access to remedy and the technology sector: understanding the perspectives and needs of affected people and groups.

In resolution 44/15, the Human Rights Council requested OHCHR to convene a consultation to discuss challenges, good practices and lessons learned in enhancing access to remedy for victims of business-related human rights abuse. In the context of that resolution, as well as the work undertaken on remedy through ARP and the B-Tech Project, OHCHR will organize a two-day consultation to provide an opportunity for States, experts, civil society and other stakeholders to discuss the challenges involved in seeking and delivering remedies for harms connected to the technology sector, and practical ways to address them.

## II. Modalities of participation

The consultation will take place in Palais des Nations, Room XVIII and also online through the use of the Zoom platform. Interpretation will be available in English, Spanish and French.

Registration through Indico is mandatory for all participants (both in-person participants and participants joining remotely) at https://indico.un.org/event/34938/. Please indicate the session(s) you would like to attend, and a Zoom link will be shared ahead of the session(s).

## III. Sessions during the consultation

The consultation will be a two-day event made up of four thematic sessions. These sessions will be a mix of multi-stakeholder panels and more interactive formats.

The Access to Remedy Pillar of the UNGPs refers to three categories of grievance mechanisms for accountability and remedy in cases of business-related human rights abuse:

- Judicial mechanisms;
- State-based non-judicial mechanisms; and
- Non-State-based grievance mechanisms.

Sessions will focus on each type of mechanism, with a view to how each fits within the broader remedy ecosystem. Additionally, one session will be dedicated to the perspectives and experiences of affected stakeholders when seeking remedy in this space.

### Session 1: Remedying adverse human rights impacts of technology companies through the courts

*Thursday, 23 September @ 10-12h*

This session will explore the extent to which courts, are used as a way of obtaining remedies for human rights harms arising from or connected with the activities of technology companies. Beginning with a discussion of how courts are used at present, what recent data tells us about current trends and barriers to accessing justice (Part I), we will then hear directly from legal practitioners about their practical experiences in litigating human rights-related cases in different jurisdictions (Part II). The insights gathered from these discussions will then be used as the platform for a more forward-looking discussion focussing on the challenges that domestic courts may face in keeping pace with and responding to technological developments with potentially global impacts, and areas where further legal development and cooperation may be needed to ensure that courts can play their part as a source of *effective* remedies in cases where people's human rights are adversely affected by the development and application of these new technologies (Part III).

*Part I: Remedying adverse human rights impacts arising from digital technologies: What roles do courts currently play?*

How do people presently make use of domestic and regional courts to defend their rights in cases where their human rights have been adversely impacted by the activities of technology companies? Who is bringing these cases? And where? What rights are they seeking to protect? And what kinds of remedies are they seeking? What does this data tell us about the role and effectiveness of courts when it comes to responding to cross-border and global human rights challenges arising from the development and

deployment of digital communications and surveillance technologies? In this Part we will consider what recent research into litigation practice can tell us about how courts are presently discharging their role as being "at the core of ensuring access to remedy" (UNGP 26, commentary) and where there may be gaps in legal coverage and protection.

*Part II: Defending human rights in the courts: Two case studies*

What challenges are complainants and their legal representatives facing in practice when they seek to use the courts to defend their rights and obtain a remedy for human rights harms arising from the development and deployment of digital communications and surveillance technologies? In this Part we will hear directly from litigators who have worked on legal cases arising from alleged human rights harms, focussing on rights of privacy and freedom of expression in particular. We will reflect on legal, jurisdictional, structural and other factors that have a bearing on the effectiveness of courts and judicial remedies in cases such as these, the importance of the "regulatory ecosystem" in which these legal actions take place, and the role of the State in strengthening relevant "background regimes". This part of the session is organized in collaboration with the Geneva Academy of International Humanitarian Law and Human Rights.

*Part III: Courts and tech*

When complaints involving tech companies come before the courts, do lawyers and judges have the necessary knowledge and skills to engage with the issues raised, so as to arrive at a remedy that is *effective* in the circumstances? Are they able to keep pace with technological developments? If not, what kinds of problems are often encountered, and how can they be addressed? More fundamentally, can domestic courts deliver effective remedies for human rights harms arising from the activities of technology companies without significant changes to the international regulatory architecture? What kinds of changes are needed – at the international level – to ensure that domestic courts can play their part as enforcers of human rights-related standards and as a source of *effective* remedies?

In this final Part of session 1, we will look beyond the content of specific legal regimes to reflect upon emerging challenges for domestic courts (and the legal professionals who work in them) posed by the speed of new technological developments, their technical complexity and potential global reach. This part is organized in collaboration with the International Bar Association.

**Session 2: State-based non-judicial mechanisms and their contribution to access to remedy in cases of tech-related human rights abuses**

*Thursday, 23 September @ 15-18h*

State-Based non-Judicial mechanisms, such as regulators, ombudspersons, inspectorates, public complaints handling bodies, National Contacts Points (NCPs) under the OECD Guidelines for Multinational Enterprises and national human rights institutions (NHRIs), can play an essential role in complementing and supplementing judicial mechanisms.

*Part I: The role and contribution of NHRIs to access to remedy*

This session will focus on the role and contribution of NHRIs to access to remedy. Selected NHRIs in different regions will present the different ways in which they contribute to access to remedy in cases of

tech-related human rights abuses, and how such contribution fits within the broader remedy ecosystem and helps fill gaps in judicial mechanisms. Part I is organized in collaboration with the Human Rights Working Group of GANHRI.

*Part II: The challenges and opportunities OECD NCPs face in facilitating access to remedy*

This session will focus on the challenges and opportunities OECD National Contact Points face in facilitating access to remedy for technology-related grievances. Representatives from NCPs, as well as from a civil society organization, will share their experiences regarding technology-related grievances and will discuss how the flexibility of NCP procedures can help alleviate these challenges, notably by cutting across jurisdictions and capturing impacts across industries and supply chains. Additionally, the panelists will elaborate on the potential of taking advantage of digital tools themselves in these procedures to enable remedy, especially during mediation. This part of the session is organized in cooperation with the OECD Centre for Responsible Business Conduct, OECD Working Party on Responsible Business Conduct, and the University of Zurich.

**Session 3: Understanding the perspectives and needs of affected stakeholders when attempting to seek remedies**

*Friday, 24 September @ 10-12h*

This session will provide an opportunity to hear from affected people and groups about their experience when trying to access remedies for human rights harms arising from technology products and services.

*Part I: Global and regional perspectives, trends and patterns*

Panelists from different regions of the world will share concrete cases and research, exemplifying different types of human right harms experienced, the impact of such harms on individuals and communities, the difficulties faced in identifying, navigating and accessing the mechanism(s) best placed to remedy such harms, and the outcomes of such cases. Panelists will also offer some reflections around specific issues, such as the complexity of the tech sector (both in terms of the technical issues as well as the business relationships involved) and the potential scale of adversely affected rights-holders, and offer their views as to what could an effective remedy look like for victims. Panelists will also share some lessons learnt and reflect on their role in both supporting people to seek remedies, but also in advocating for better access to remedy, including with technology companies. Other panelists will share views and perspectives on a more global level sharing trends and patterns linked to access to remedy in the tech sector and offer some high level reflections and concrete ideas on the way forward. A gender dimension to these issues will also be brought in the discussion, in particular in relation to cases of online and ICT-facilitated violence against women and girls.

*Part II: Case studies*

On the basis of hypotheticals, discussants and participants will share their views regarding the difficulties associated with accessing remedies in case of human rights harms associated with the use of technology products and services. This part of the session is organized in cooperation with Global Partners Digital.

**Session 4: The role of technology companies in remedying human rights harms connected to their products and services**

*Friday, 24 September @ 15-17h*

This session will focus on the role that technology companies should and can play in remedying harm to human rights that are connected to their products and services. With reference to the expectations of the UNGPs, and an illustration of the diverse types of human rights harms that can be associated with digital technologies, speakers and participants will be invited to share their insights and recommendations. This session is organized in cooperation with the Big Data and Technology Project at the University of Essex.

**Session Objectives**

- To advance multi-stakeholder understanding of (a) the normative expectations of the UNGPs, including with relation to the different forms that remedy can take *(e.g., apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions);* and (b) the different types of human rights harms that are emerging due to the design, development and use of digital tech.
- Hear from practitioners from within and outside of companies about the state of practice, challenges and ideas for paths forward such that tech companies deliver or enable outcomes that are satisfactory to victims and consistent with international standards.

**Background**

The UNGPs offer guidance to companies about when and how they should take steps to remedy harms with which they may be involved. For technology companies, this can include situations in which online and offline harms are in some way connected to the use of their products or services—whether by customers, governments, or individuals. The UNGPs draw a distinction between situations where a company has caused or contributed to adverse human rights impacts and where there is a situation of "direct linkage" to harm through a business relationship.

- The UNGPs state that "where business enterprises identify that they have caused or contributed to adverse [human rights] impacts, they should provide for or cooperate in their remediation through legitimate processes."
- However, where there is a situation of linkage to harm the responsibility to respect human rights does not require that the enterprise itself provided remediation though it may take a role in doing so.

Establishing or participating in company-based grievance mechanisms is an important way in which technology companies can play their part in delivering remedies to people and communities adversely affected by technology products and services. This follows the principle that companies should be accountable when their business activities lead to harms. In some cases, proactive efforts by companies to recognize and directly respond to human rights-related grievances will be the quickest and most efficient route to an effective remedy. Such mechanisms should meet the effectiveness criteria set out by the UNGPs; guidance on doing so can be found in the 2020 report of OHCHR's Accountability and Remedy Project.[1]

[1] A/HRC/44/32, pp. 11 – 18.

At the same time, meaningful outcomes for victims of harm and accountability for those harms, can sometimes be more meaningfully achieved through remedy processes that that are not company-based. In other words, it may be more expedient and impactful for companies to play a constructive role in and cooperate with other legitimate remediation processes (both judicial and non-judicial). There can be various reasons for this including that: victims may have greater trust for processes led by other actors, and harms may have occurred due to the actions of more than one company (such as multiple actors from within tech, outside of tech and beyond the private sector).

**Discussion Questions**

- What is currently known about the nature and mandate of tech-company-based grievance mechanisms and how individuals can access them? What types of harms are these mechanisms intending to remedy? Who is the intended audience/user of company-based grievance mechanisms? Is it feasible to increase transparency on how decisions are made?
- What are the barriers that companies can face in focusing on delivering remedy to individual victims that have been harmed, and doing more than using grievance mechanisms for the important work of preventing future, similar harms? How might challenges be overcome in practice?
- How can companies use leverage with private and public sector customers such that those actors establish mechanisms capable of delivering remedy?
- What can tech companies do – individually or collaboratively such as via multi-stakeholder initiatives – to enable a well-functioning "remedy eco-system" for harms related to the use, misuse and abuse of their products and services?
- What lessons can we draw from work on remedy in other industry sectors?

**OHCHR MULTI-STAKEHOLDER CONSULTATION ON ACCESS TO REMEDY IN THE TECH SECTOR**

23-24 September 2021
Palais des Nations, Room XVIII and online through Zoom (hybrid format)
Interpretation available in English, Spanish and French

***AGENDA***

| **DAY 1:**<br>**Thursday, 23 September 2021** | |
|---|---|
| **10:00 – 12:00** | **Session 1: Remedying adverse human rights impacts of technology companies through the courts**<br><br>**Opening remarks**<br>• **Peggy Hicks,** Director, TESPRDD, OHCHR<br><br>**Welcome and introduction to the session**<br>• **Lene Wendland**, Chief, Business and Human Rights Unit, OHCHR<br><br>**Introduction to the Accountability and Remedy Project**<br>• **Ben Shea,** Associate Human Rights Officer, Business and Human Rights Unit, OHCHR<br><br>**Introduction to the B-Tech Project**<br>• **Nathalie Stadelmann**, Human Rights Officer, Business and Human Rights Unit, OHCHR<br><br>**Part I: Remedying adverse human rights impacts arising from digital technologies: What roles do courts currently play?**<br>• **Moderator: Dr. Jennifer Zerk**, Legal consultant, OHCHR Accountability and Remedy Project<br>• **Dr. Kebene Wodajo**, University of St Gallen<br>• **Susie Alegre**, Interception of Communications Commissioner for the Isle of Man<br><br>**Part II: Defending human rights in the courts: Two case studies**<br>• **Moderator: Dr. Ana Beduschi**, University of Exeter and Geneva Academy of International Humanitarian Law and Human Rights<br>• **Ravi Naik**, Legal Director, AWO Agency and **Cassie Roddy-Mullineaux**, Solicitor, AWO Agency<br>• **Solomon Okedara**, Barrister and Solicitor of the Supreme Court of Nigeria and founder of Expression Now<br><br>**Part III: Courts and tech**<br>• **Moderator: Dr. Jennifer Zerk**, Legal consultant, OHCHR Accountability and Remedy Project |

| | |
|---|---|
| | • **Ms. Derya Durlu Gürzumar**, Chair, Alternative and New Law Business Structures Committee, International Bar Association<br>• **Dr Michael Veale**, Faculty of Law, UCL<br><br>**Wrap up and close**<br>• **Lene Wendland,** Chief, Business and Human Rights Unit, OHCHR |
| **12:00 – 15:00** | *Break* |
| **15:00 – 18:00** | **<u>Session 2: State-based non-judicial mechanisms and their contribution to access to remedy in cases of tech-related human rights abuses</u>** |
| **15:00 – 16:15** | **Part I: The role and contributions of national human rights institutions**<br>• **Moderator: Deniz Utlu**, Chair, Business & Human Rights working group of GANHRI<br>• **Surya Deva**, Chair, Working Group on BHR<br>• **Dr. Sebastian Smart**, National Human Rights Institute of Chile<br>• **Line Gamrath Rasmussen**, Danish Institute for Human Rights<br>• **Zoe Paleologos**, Australian Human Rights Commission<br>• **Khalid Ramli**, National Human Rights Institute of Morocco<br>• **Dr. Maximilian Spohr**, Berlin Data Protection Authority<br><br>Guiding questions<br>1. *What are NHRIs experiences addressing human rights issues in the technology space?*<br>2. *How can NHRIs build up internal capacity to address technology-related business conduct and adverse human rights impacts stemming from it?* |
| **16:30 – 17:45** | **Part II: Challenges and opportunities for OECD National Contact Points**<br>• **Moderator: Nicolas Hachez**, OECD, Manager for NCP coordination<br>• **Rosie Sharpe**, Campaigner, Global Witness<br>• **John Southalan**, Independent Examiner for the Australian National Contact Point for Responsible Business Conduct<br>• **Joris Oldenziel**, Member of the Dutch National Contact Point for Responsible Business Conduct<br><br>**Key takeaways: Serge Biggoer**, Researcher and PhD Candidate, University of Zurich |
| **17:45 – 18:00** | **Conclusion: Dr. Jennifer Zerk**, Legal consultant, OHCHR Accountability and Remedy Project |

| **DAY 2:**<br>**Friday, 24 September 2021** | |
|---|---|
| **10:00 – 12:00**<br><br>**10:00 – 11:15**<br><br><br><br><br><br><br><br><br><br>**11:15 – 12:00** | **Session 3: Understanding the perspectives and needs of affected stakeholders when attempting to seek remedies**<br><br>**Part I: Global and regional perspectives, trends and patterns**<br>• **Moderator: Isabel Ebert**, Advisor to the B-Tech Project, OHCHR and **Nathalie Stadelmann**, Human Rights Officer, OHCHR<br>• **Marianela Milanes**, Asociación por los derechos civiles<br>• **Bárbara Simão**, Internet Lab<br>• **Wahyudi Djafar**, ELSAM<br>• **Ioannis Kouvakas**, Privacy International<br>• **Bochra Belhaj Hmida**, Association tunisienne des femmes démocrates (ATFD)<br>• **Henry Peck**, Business & Human Rights Resource Centre<br>• **Natalia Krapiva**, Access Now<br>• **Janine Moussa**, The Due Diligence Project<br><br>**Part II: case studies**<br>• **Moderator: Richard Wingfield**, Global Partners Digital |
| **12:00 – 15:00** | *Break* |
| **15:00 – 17:00** | **Session 4: The role of technology companies in remedying human rights harm connected to their products and services**<br><br>**Part I: Welcome, Framing and Objectives**<br>• **Moderators:**<br>  ○ **Mark Hodge**, Senior Advisor, B-Tech Project<br>  ○ **Sabrina Rau**, Human Rights, Big Data and Technology Project, University of Essex<br><br>**Part II: The Role of Tech Companies in Remedy: Practices and Challenges**<br>• **Lorna McGregor**, Director, Human Rights, Big Data and Technology Project, University of Essex<br>• **Sarah Altschuller**, Business and Human Rights Counsel, Verizon<br>• **Pamela Wood**, Human Rights and Social Responsibility, HPE<br>• **Jason Pielemeier**, Policy & Strategy Director, Global Network Initiative<br>• **Isedua Oribhabor**, Business and Human Rights Lead, Access Now<br>• **David Kovick**, Senior Advisor, Shift |