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

DRAFT 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 on 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 <u>resolution 44/15</u>, 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, invited 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 <u>https://indico.un.org/event/34938/</u>. 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 refer 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

A panel discussion will explore the extent to which courts (or "judicial mechanisms" in the language of the UNGPs) have been used to remedy human rights harms arising from or connected to activities of technology companies. The purpose is to clarify who are the key stakeholders initiating legal action in courts, the kind of human rights breaches referred to domestic courts, the legal causes of action relied on, the nature of the cases, the kinds of remedies sought (in

relation to different kinds of harms), the individual or collective submissions of complaints, and overall trends and patterns.

Additionally, the session will analyse how to improve the effectiveness of courts in responding to "digital harms" and emerging human rights risks and challenges. Using the learnings from the ARP process (and ARP I in particular) and applying them to the tech sector, the discussion will touch upon cross border issues and challenges, the interface between different types of mechanisms, the concept of "remedy ecosystem" (including the role of the State in strengthening "background regimes"), the meaning of "effective remedy," and the challenge to address large numbers of potentially affected people, who may be geographically widely dispersed.

- **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 play an essential role in complementing and supplementing judicial mechanisms. Such mechanisms may take many different forms; common examples include regulators, ombudspersons, inspectorates, public complaints handling bodies, National Contacts Points (NCPs) under the OECD Guidelines for Multinational Enterprises and national human rights institutions (NHRIs). This session will focus on two in particular: NHRIs and NCPs.

A first part of the session will focus on the role and contributions of NHRIs regarding access to remedy in the technology sector. Selected NHRIs from different regions will present their experiences and portray the different ways in which they contribute to access to remedy in cases of tech-related human rights abuses. During the second part of the session, the discussion will cover key challenges and opportunities for NCPs in facilitating access to remedy in such cases.

- **Session 3: Understanding the perspectives and needs of affected stakeholders**
Friday, 24 September @ 10-12h

The session will provide an opportunity to hear from affected stakeholders about their experiences seeking remedies for human rights harms resulting from the use of technologies. Panelists will identify the types of human rights harms that are occurring, the impacts of these harms on individuals and communities, the different remedial options that have been tried, and the challenges and successes of seeking remedy in this space. Civil society participants will also reflect upon their role in supporting others seek remedies and their experiences engaging with judicial and non-judicial mechanisms.

- **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 human rights harms that are connected to their products and services. The purpose is to clarify the normative expectations of the UNGPs, the different forms that remedy can take and the different types of human rights harms that are emerging due to the design, development and use of digital technologies. Practitioners from within and outside of tech companies will reflect upon the state of practice, challenges and ideas for paths forward, such that companies deliver or are enabled to deliver outcomes that are satisfactory to victims and consistent with international standards.

The first part of the session will unpack and reflect upon the UNGPs' expectations regarding tech companies' roles in remedy and set out a draft "typology" of human rights harms associated with the design, development and use of digital technology products and services. A selection of hypotheticals will be used during the second part of the session to enable a more granular discussion about the role of tech companies in remedy, and offer reflections on some key questions.

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DRAFT AGENDA

DAY 1: **Thursday, 23 September 2021**	
10:00 – 12:00	**Session 1: Remedying adverse human rights impacts of technology companies through the courts**
12:00 – 15:00	*Break*
15:00 – 18:00	**Session 2: State-based non-judicial mechanisms and their contribution to access to remedy in cases of tech-related human rights abuses** Part I: The role and contributions of national human rights institutions. Part II: Challenges and opportunities for OECD National Contact Points.

DAY 2: **Friday, 24 September 2021**	
10:00 – 12:00	**Session 3: Understanding the perspectives and needs of affected stakeholders**
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**