

**Session 4: Role of States and businesses in human rights accountability and remedy**

**Session 5: Enhancing the effectiveness of non-State-based grievance mechanisms for business-related human rights abuse**

**Session 6: Access to remedy through non-State-based grievance mechanisms in the technology sector**

**Background for session 4, 5 and 6 :**

The **United Nations Guiding Principles on Business and Human Rights (UNGPs)** recognize that when business enterprises are involved in human rights abuses, those harmed must have access to effective remedy.

However, extensive research has shown that in cases where business enterprises are involved in human rights abuses, victims often struggle to access remedy. The challenges that victims face are both practical and legal in nature. To begin to address these challenges, OHCHR launched the [Accountability and Remedy Project](https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx) (ARP), a multi-year initiative of three phases focusing on enhancing the effectiveness of judicial mechanisms, State-based non-judicial grievance mechanisms, and non-State-based grievance mechanisms. The overall aim of this project has been to identify practical measures that can be taken to improve corporate accountability and access to remedy for victims of business-related human rights abuses.

**The first phase** of the project (ARP I) focused on [enhancing the effectiveness of **judicial mechanisms** in cases of business-related human rights abuse](https://www.ohchr.org/EN/Issues/Business/Pages/ARP_I.aspx) and was completed in June 2016 when OHCHR submitted its **ARP I report to the Human Rights Council**.[[1]](#footnote-1) The report recognized the **urgent need for action by States** to ensure that victims of human rights harms connected to business activities have **access to effective remedy**.

The **second phase** of the project (ARP II) focused on enhancing [the effectiveness of **State-based non-judicial mechanisms** in cases of business-related human rights abuse](https://www.ohchr.org/EN/Issues/Business/Pages/ARP_II.aspx) and was completed in June 2018 when OHCHR submitted its **ARP II report to the Human Rights Council.[[2]](#footnote-2)**

In July 2018, the Human Rights Council requested UN Human Rights to identify and analyse challenges, opportunities, best practices and lessons learned with regard to **non-state-based grievance mechanisms**, and, consequently, UN Human Rights started work on **the third phase of its Accountability and Remedy Project (ARP III)**.[[3]](#footnote-3) The third phase of the project is based on the premise that while State-based (judicial and non-judicial) grievance mechanisms form the foundation of a wider system of remedy, within such a system, **non-State-based (or private) grievance mechanisms** can play an important role. In November 2018, UN Human Rights released a paper detailing the main issues to be prioritized for ARP III and explaining the types of mechanisms to be focused on:

* **Company-based** grievance mechanisms (such as operational-level grievance mechanisms);
* Grievance mechanisms developed by **industry, multi-stakeholder or other collaborative initiatives**; and
* Grievance mechanisms associated with development finance institutions (such as **independent accountability mechanisms**).

In a context of increased demands from companies for authoritative guidance on the application of the United Nations Guiding Principles on Business and Human Rights in the tech sector, OHCHR has launched the [**B-Tech projec**t](https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx) which will seek to provide **authoritative guidance and resources to enhance the quality of implementation of the United National Guiding Principles on Business and Human rights with respect to a selected number of strategic focus areas in the technology space** .

The B-Tech project seeks to address the growing urgency from companies, civil society and policy makers to find principled and pragmatic ways to address the socio-political harms that might, or do, occur during the application of digital technologies, including AI, by the private and public sectors. The project’s premise is that **using the lens of all three pillars – Protect, Respect, Remedy - of the UNGPs can help clarify the respective roles and responsibilities of States and the private sector** in relation to specific issues, as well as offering road maps to:

* Guide what responsible business conduct looks like in practice regarding the development, application, sale and use of digital technologies;
* Guide policy makers in applying a smart mix of regulation, incentives and public policy tools - providing human rights safeguards and accountability without hampering the potential of digital technologies to address social, ecological and other challenges; and
* Develop workable models for remedy and accountability when harm has occurred.

Through convening an inclusive process of consultations and research involving key actors (public and private), the project will ultimately provide a **roadmap to the application of the UNGPs to the development and use of digital technologies, comprising policy guidance and public policy recommendation to realize a rights-based approach to the application and governance of digital technologies**.

**Session 4: Role of States and businesses in human rights accountability and remedy**

The session will discuss **the current state of play of access to remedy through State-based and non-State-based grievances mechanisms for business related human rights abuse.**  As such, it will explore the extent to which these mechanisms are fulfilling their role of providing remedy in business and human rights cases in East and Southeast Asia. The session will primarily focus on how States and other relevant stakeholders can help enhance the **effectiveness of State-based mechanisms** in practice, including through **boosting the linkages between judicial and non-judicial mechanisms**. It will also touch upon **how non-State-based grievance mechanisms can play an important role** (operational-level grievances mechanisms will be the focus of session 5). For instance, operational-level grievance mechanisms of companies can make it possible for grievances to be addressed and for adverse impacts to be remediated early and directly by the companies, thereby preventing harms from compounding and grievances from escalating.

**Session 5: Enhancing the effectiveness of non-State-based grievance mechanisms for business related human rights abuse**

To make it possible for grievances to be addressed early and remediated directly, the Guiding Principles call on companies to “establish or participate in” effective operational-level grievance mechanisms. The Guiding Principles also consider the use of other non-State-based grievance mechanisms, such as multi-stakeholder or other collaborative initiatives, as important means through which companies can meet their responsibility to respect human rights.

The session will be focusing on the **availability and use of non-State-based grievance mechanisms** (such as operational-level grievance mechanisms or independent accountability mechanisms) in East and Southeast Asia. More specifically, the session will be exploring the **challenges associated with the use and administration of such mechanisms**, and **ways of enhancing the effectiveness of such mechanisms** going forward. Both panelists and participants will be invited to share lessons learned and ideas for enhancing the effectiveness of non-State-based grievance mechanisms in order to improve victims’ options for obtaining effective remedy.

**Session 6: Access to remedy through non-State-based grievance mechanisms in the technology sector (organized by the Human Rights, Big Data and Technology Project at the University of Essex and OHCHR)**

This session will focus on Focus Area 3 of the project, i.e “accountability and remedy”, and will look at issues related to the **technology sector and access to effective remedy through the use of non-State-based grievance mechanisms.** Delivering on access to 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 will need to be addressed such as guaranteeing remedy when abuses result from decisions made by machines and algorithms, rather than humans; providing effective operational-level grievance mechanisms when there may be hundreds or millions of adversely affected rights-holders; and safeguarding access to remedy when dozens of companies, rather than a single corporate actor, are linked to a human rights abuse via the interaction of different technology products and services.

The aim of this meeting will be to explore (1) **the different ways that technology companies can and should make use of and participate in private grievance mechanisms in order to meet their responsibilities under the UNGPs**, and (2) the **challenges and opportunities involved in this field**.

In addition to the B-Tech project, the discussions will also feed into phase III of OHCHR’s Accountability and Remedy Project on non-State-based grievances mechanisms as they related to the tech sector.

**Key questions discussed during the session will include:**

* To what extent are technology companies making use of company-based grievance mechanisms
* What challenges have been encountered thus far and how have they been addressed in practice?
* How may technology companies play a role in enabling access to remedy in situations where they are only directly linked to a harm? If so, what might enabling remedy look like in practice?
* If necessary, how can companies prioritize among hundreds of thousands, or even multiple millions, of potentially impacted individuals and human rights issues if they are to establish genuinely effective remedy mechanisms?
* Do conflicting regulatory requirements in different jurisdiction pose problems for accountability and remedy pursued through company-level grievance mechanisms? If so, how can these be resolved?
* What are the responsibilities of corporate providers of digital technologies regarding the provision of effective remedies in cases of misuse of their products or services by individual users – versus public or private entities?
* What is the role of State regulation in supporting remedial efforts by technology companies?
1. A/HRC/32/19 and A/HRC/32/19/Add.1. [↑](#footnote-ref-1)
2. A/HRC/38/20 and A/HRC/38/20/Add.1 [↑](#footnote-ref-2)
3. https://www.ohchr.org/EN/Issues/Business/Pages/ARP\_III.aspx [↑](#footnote-ref-3)