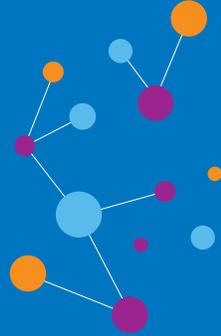


# Access to remedy and the technology sector: understanding the perspectives and needs of affected people and groups

## A B-Tech Foundational Paper



## OVERVIEW

The *UN Guiding Principles on Business and Human Rights* (UNGPs) offer a **roadmap for delivering remedy to victims of business-related human rights harms**, including the harms that may arise from the way we develop, implement and make use of technology products and services. The UNGPs carry the legitimacy and strength of being **the global framework for corporate responsibility and accountability for business-related human harms**.

New digital technologies such as cloud computing, Internet of Things devices and artificial intelligence tools can significantly contribute to positive social, economic and development objectives. But these same technologies can also lead to negative impacts on people—infringing privacy rights, disseminating hate speech, undermining democratic processes and “algorithmic discrimination” (whether in the job market, the criminal justice system or in access to public services).

**People seeking to raise grievances about human rights related issues arising from technology products and services continue to report significant difficulties in identifying, navigating and accessing the mechanisms best placed to deal with the substance of their complaints.** The complexity of the sector, in terms of the technical issues as well as the business relationships involved (which can make it difficult to identify which companies may have a role in providing remedies and why) provides at least a partial explanation for these difficulties. Even so, these problems continue to be exacerbated in many cases by **a lack of appreciation among developers and operators of grievance mechanisms of the importance of “human centered design”<sup>1</sup> and, moreover, a lack of transparency about how many processes work in practice**, including key decision-making points and methodologies.

Inattention to the perspectives and needs of actual and potential users of remediation mechanisms for business-related human rights harms—both in the design and operation of these mechanisms—is a widespread problem, and certainly not confined to the technology sector. However, technology companies, and the institutions responsible for regulating them, can face some particular challenges when it comes to identifying, analysing and responding well to stakeholder needs and perspectives.

<sup>1</sup> See further B-Tech foundational paper ‘[Designing and implementing effective company-based grievance mechanisms](#)’ (esp. “FOUR”).

The aim of this paper is to provide decision-makers of various kinds (and especially those working within companies and relevant State agencies) with a **user’s perspective** of the different possible routes to remedy that may be available in cases of human rights harms associated with technology products and services, as a way of encouraging the development of more effective mechanisms and processes.

## ABOUT THIS PAPER

The paper is part of the UN Human Rights [B-Tech Project](#) foundational paper series. The B-Tech Project foundational papers have been developed to launch and frame subsequent B-Tech Project activities involving diverse stakeholders as part of a global process to produce guidance, tools and practical recommendations to advance implementation of the [UN Guiding Principles on business and Human Rights](#) in the technology sector.

This paper focuses on the third pillar of the UNGPs: **the need for there to be effective remedies for business-related human rights harms**. It is designed to provide an introduction to the role, scope and design of company-based grievance mechanisms in ensuring effective remedy for victims.

This paper should be read in conjunction with the other foundational papers in this B-Tech series, in particular [The UN Guiding Principles in the Age of Technology](#), and the following three additional papers focused on “access to remedy”:

- [Access to remedy and the technology sector: basic concepts and principles](#);
- [Access to remedy and the technology sector: a “remedy ecosystem” approach](#); and
- [Designing and implementing effective company-based grievance mechanisms](#).

*The aim of this series of foundational papers on access to remedy is not to provide a detailed “how to” guide for all situations; rather to provide an overview of the broad legal, structural and policy background—and the key concepts and frameworks relevant to access to remedy in the technology sector—as a solid foundation for future, more context-specific discussions and work.*



## HEADLINES

1. The process of seeking a remedy should be an empowering experience.
2. Remediation mechanisms that respond well to the needs of affected people and groups are more likely to be trusted and used.
3. The remedy ecosystem for harms associated with technology products and services is a particularly challenging one for affected people and groups to navigate.
4. Affected people and groups typically encounter many and varied barriers to accessing remedies for human rights harms associated with technology products and services.

5. Affected people and communities may not be able (and should not be expected) to explain their grievance in legal terms, or to articulate the harm they have suffered in human rights terms.
6. Concerns about personal safety and well-being can be a significant barrier to seeking remedies for human rights harms.
7. Transparency and clarity about the way that decisions are taken, and the circumstances in which decisions may be challenged and reviewed, are of vital importance to gaining and retaining the trust of actual and potential users of mechanisms.
8. Providing for some form of independent review of decision-making can considerably enhance the credibility of mechanisms with affected people and groups.

## ONE

### The process of seeking a remedy should be an empowering experience.

Empowering affected people and communities is a vital, though too often overlooked, aspect of remedying harm. This has **process-related elements** (e.g. providing opportunities for people to challenge decisions, see “EIGHT” below) as well as **outcome-related elements** (e.g. giving affected people a role in monitoring implementation of agreed corrective actions).

To empower people, technology companies should be sure to avoid any processes or modes of communication that are patronizing, culturally insensitive, or otherwise not sufficiently respectful of the needs of affected people or groups.<sup>2</sup> Similarly, poorly designed remedies that do not take account of the needs of affected people or groups (for instance, a remedy that relies on high levels of digital literacy for people to take advantage of and enjoy) can end up being disempowering for some groups (and hence discriminatory) as well as ineffective.<sup>3</sup>

## TWO

### Remediation mechanisms that respond well to the needs of affected people and groups are more likely to be trusted and used.

Whatever the (public or private) remediation mechanism or process involved, its ability to **respond to the practical needs** of the people for whom it is intended is **fundamental to its effectiveness**. Whereas bad experiences will quickly discourage others, a positive, empowering experience (see “ONE” above) will help remediation mechanisms to gain and retain public and stakeholder trust.

Meaningful consultation with affected people and groups is necessary for a proper appreciation of the **informational, legal, practical and procedural barriers** that people may face in seeking remedies for human rights harms (see “THREE”, “FOUR”, “SEVEN” and “EIGHT” below) and the **risks that**

<sup>2</sup> ARP III report, explanatory addendum, A/HRC/44/32/Add.1, para. 65.

<sup>3</sup> ARP III report, explanatory addendum, A/HRC/44/32/Add.1, para. 65.

**people may face** in initiating a remedial process (see “SIX” below). Such consultation will help ensure these problems can be properly addressed and potential barriers reduced as far as possible.

Meaningful consultation with affected people is also necessary to ensure that

- **the proposed outcomes of remediation processes will have the desired effects** (e.g. by checking the assumptions on which a remediation plan has been based),
- **the human rights implications of different options and interventions are properly understood and addressed**, and
- there is an **appropriate balance between competing rights and interests**, in order to share and ensure a fair distribution of benefits.<sup>4</sup>

The degree of consultation that will be appropriate and feasible will depend on the type of mechanism and its proposed mandate. However, there are many contexts in which seeking out people with lived experience of the relevant human rights harms will be invaluable (or necessary) in order to understand the social, economic, political and cultural contexts of some abuses more fully.<sup>5</sup> The stakeholder engagement challenges that may be encountered by technology companies, and particularly those with global reach, are considered further in other papers in this series.<sup>6</sup>

## THREE

### The remedy ecosystem for harms associated with technology products and services is a particularly challenging one for affected people and groups to navigate.

The concept of the “remedy ecosystem” for the technology sector, and its main features, are explored in another foundational paper in this series.<sup>7</sup> Put simply, the “remedy ecosystem” for these purposes encompasses key remediation mechanisms (judicial and non-judicial), the contributions of key actors, background legal regimes and a range of other factors (legal, informational, structural, economic, cultural, and resource-related) that may have a bearing on the extent to which different remediation mechanisms are available and accessible in practice, and how they are used.

There are several reasons why affected people and groups face challenges navigating the remedy ecosystem for harms associated with digital technologies. The first reason is a combination of **technical complexity** and lack of transparency. People may not necessarily understand how they are affected by different technologies, let alone what different human rights may have been engaged (see further “FIVE” below). For instance, it may not be obvious that they have suffered discrimination in a recruitment process due to automated decision-making processes based on algorithms, or that they have been mistreated by law enforcement authorities because of flaws in facial recognition software.

<sup>4</sup> ARP III report, A/HRC/44/32, Annex, 12.2.

<sup>5</sup> ARP III report, explanatory addendum A/HRC/44/32/Add.1, para. 34.

<sup>6</sup> See especially B-Tech foundational paper ‘[Designing and implementing effective company-based grievance mechanisms](#)’ (esp. “FOUR”).

<sup>7</sup> See B-Tech foundational paper ‘[Access to remedy and the technology sector: a “remedy ecosystem” approach](#)’

A second reason is the **complexity of business relationships** involved in innovation and roll-out of new technologies. For example, in the case of a technological innovation that is developed in a joint venture, then integrated into a device of a third company, it will not necessarily be clear to affected people which company should be approached for the purposes of obtaining a remedy, or the basis on which such an approach should be made. Affected people or groups may be several contractual steps removed from a company which might be said to have “caused” or “contributed to” the harm,<sup>8</sup> and may never have heard of (and have no means of readily identifying) the company in question. These factors, combined with the analytical difficulties highlighted above and imbalances in access to information (see further “FOUR” below), can make it particularly difficult for affected people or groups to formulate a workable strategy for obtaining remedies for human rights related harms associated with technology products and services.

A third source of challenges for affected people is **regulatory complexity**. Depending on the kinds of business activities undertaken, the company (or companies) involved may be subject to licensing regimes (e.g. in the case of telecommunications companies), as well as regulation on specific topics (e.g. data protection). More general purpose regimes—on competition, trade practices, privacy law, defamation and libel, media and broadcasting standards, etc.—may also be relevant. Regulatory bodies are likely to have been established to oversee at least some of these areas, and some of these bodies may have grievance mechanisms accessible by affected people. In some jurisdictions, regulatory decision-making may be referable to ombuds institutions. National human rights institutions may have been mandated to receive complaints of either a general or specific nature, e.g. in relation to discriminatory effects or uses of technologies. Some behaviours (e.g. dissemination of “hate speech”, or complicity in this type of behaviour) may be subject to either criminal sanctions, or may be actionable by private individuals (e.g. under tort law) and thus potentially referable to the domestic courts. Unravelling this complexity against the background of a specific harm will almost always require legal expertise, putting affected people and groups to considerable expense.

A fourth source of complexity comes from the disconnect that exists between the largely domestic focus of many regulatory regimes and the **global reach of technologies**, particularly those making use of the internet (such as social media platforms). Not only does this contribute to **fragmentation and potential inconsistencies** in the way technology companies are regulated,<sup>9</sup> it also means that people often have different degrees of legal protection from human rights harms depending on where they live. Without awareness of the various judicial or regulatory institutions that may be able to offer assistance (including in other jurisdictions), people will not be able to make use of these potential routes to remedy even if they had the legal, financial and other resources to do so (see further “FOUR” below).

While there may be company-based mechanisms that can potentially be called upon (and may indeed be in a position to respond very quickly), the narrow focus of many of these means they may not be able, on their own, to comprehensively address the human rights harms that have occurred.<sup>10</sup>

---

<sup>8</sup> See B-Tech foundational papers ‘[Taking action to address human rights risks related to end-use](#)’ (esp. “FIVE”) and ‘[Access to remedy and the technology sector: basic concepts and principles](#)’ (esp. “FIVE”).

<sup>9</sup> This problem is discussed in more detail in B-Tech foundational paper ‘[Access to remedy and the technology sector: a “remedy ecosystem” approach](#)’.

<sup>10</sup> See further B-Tech foundational papers ‘[Access to remedy and the technology sector: basic concepts and principles](#)’ and ‘[Designing and implementing effective company-based grievance mechanisms](#)’.

## FOUR

**Affected people and groups typically encounter many and varied barriers to accessing remedies for human rights harms associated with technology products and services.**

Beyond the challenges involved in identifying a relevant and realistic pathway to remedying human rights harms,<sup>11</sup> affected people can face **many additional barriers to remedy**. These barriers can be divided into three categories: **“legal”, “practical” and “procedural.”** Their relevance and influence will vary from case to case, and there are often interrelationships between the categories. Some examples are nevertheless provided below by way of illustration.

**“Legal” barriers** can arise as a result of the kinds of legal complexity described above. For instance, it could be difficult to find a legal route to remedying the harm that has occurred where there is no actionable case under local law or it is not possible to raise the matter with a regulatory body or court in another State (see “THREE” above).

**“Practical” barriers** can include being unable to marshal the financial resources needed to hire legal counsel or expert witnesses, or being unable to access the information needed to identify the relevant companies and analyse their role in a complex situation (see “THREE” above). As discussed in another paper in this series, the **language barriers** for accessing company-based grievance mechanisms (e.g. content moderation processes of social media companies) can be considerable.<sup>12</sup> Practical barriers may also include **low levels of literacy and digital literacy**, which may impede the ability of some individuals and groups to engage confidently with company-based grievance mechanisms, for example. **Power imbalances** also exist between people and companies (especially where there is a relationship of dependence, such as an employment relationship, or where a person is dependent upon a company for essential services), which can pose significant **psychological barriers** to initiating remediation processes for human rights-related harms (see further “SIX” below).

**“Procedural” barriers** can include difficulties persuading law enforcement agencies to take action, a lack of opportunities for reviews or appeals (see further “EIGHT” below), and procedural rules that prevent people from being able to bring claims or complaints as a group, rather than individually.<sup>13</sup>

## FIVE

**Affected people and communities may not be able (and should not be expected) to explain their grievance in legal terms, or to articulate the harm they have suffered in human rights terms.**

**Human rights harms arising from the development and use of technologies are not always easy to articulate.** There are sometimes cases where recognising the harm, and then explaining it in human rights terms, is relatively straightforward (e.g. cases where services have been denied to certain

<sup>11</sup> See further “THREE” above and “FIVE” below.

<sup>12</sup> See B-Tech foundational paper ‘[Designing and implementing effective company-based grievance mechanisms](#)’ (“FOUR”).

<sup>13</sup> ARP III report, A/HRC/44/32, Annex. 8.5; explanatory addendum, A/HRC/44/32/Add.1, para. 46.

groups based on discriminatory criteria, or where personal data has been unlawfully disclosed). However, grievance mechanisms that may be relevant in such cases may be unable to address further, related impacts (e.g. risks to livelihoods in the case of a denial of services, or risks to personal safety in the case of a breach of data security).<sup>14</sup>

Furthermore, there are many contexts in which the harms may not be apparent to affected individuals and groups at all. For instance, a group of people may be unaware that they have been subjected to surveillance (for example, as a result of workplace monitoring systems), or of the discriminatory effects of automated risk assessment software that result in differential treatment by authorities or companies.

The difficulties in identifying and analysing the adverse human rights impacts of business activities are even more pronounced in cases of **“cumulative” or “collective” harms**. **Cumulative harms** refer to the situation where one instance of abuse may not have significant human rights impacts; however, when repeated many times over (e.g. by repetition of harmful or offensive content via a social media platform) this can have serious human rights impacts on individuals or groups. **Collective (or “community level”) harms** refer to impacts that are felt by communities or societies rather than individuals (e.g. a case where repeated online threats and harassment or circulation of misinformation targets minorities or vulnerable groups and might incite violence against such groups).

These challenges need to be borne in mind in the context of exercises to raise awareness among affected people and groups about the various remediation options that may be available to them and how to initiate them. In the context of any form of outreach it is particularly important to use **relatable and readily understandable language**. Efforts should be made to frame and **describe harms in a manner that will be readily recognisable** by the people and groups in question, in light of their own social structures and experiences, rather than relying on legalistic terminology.

## SIX

### Concerns about personal safety and well-being can be a significant barrier to seeking remedies for human rights harm.

People who draw attention to business-related human rights harms can put themselves and people associated with them at risk of harassment, intimidation, harm to their reputations and mental health and, in some cases, threats to their physical safety.

While **threatening behaviours can take a range of forms**, those particularly relevant to the technology sector include online trolling, hacking, withdrawal of services, leaking of personal information, or targeted misinformation campaigns. In some cases, **company-based grievance mechanisms can themselves be misused by people seeking to violate the rights of others** (e.g. by making false reports in order to have accounts deactivated). Risks of retaliation can be particularly serious for affected **people and groups living under repressive regimes**, in the context where State agencies make use of technologies for the purposes of surveillance.

<sup>14</sup> See further B-Tech foundational paper [‘Designing and implementing effective company-based grievance mechanisms’](#) (esp. “TWO”).

While affected people and groups may be reassured to some extent by processes that offer some degree of **confidentiality** (e.g. through promises of “anonymity”), this **may not be sufficient to keep people safe**. This is especially so in contexts where there are problems with corruption, insufficient legal protections of civic space or where human rights defenders are under threat.

Designers and operators of remediation processes need to be aware that the **primary source of risk to people may include a range of interested third party individuals and entities**, such as other companies or State agencies. For digital and internet companies it is also important to take account of the fact that **levels of abuse can very quickly escalate**, and that online abuse, if left unchecked, can lead to real world violence.

It is also important to keep in mind that those potentially at risk of retaliation may go beyond people seeking remedies directly and include their family members, friends, colleagues, trade union representatives and human rights defenders. **People who contribute to the effective functioning of grievance mechanisms may also be at risk, such as personnel, mediators, case workers, and interpreters, and others who may be called upon for assistance or information (e.g., expert witnesses).**

Designers and operators of remediation mechanisms of all kinds (whether State-based or company-based) are urged to undertake **detailed risk assessment processes** to properly identify and thoroughly evaluate these risks and to make the adjustments needed to safeguard individuals and to foster trust among affected people and groups.<sup>15</sup> Close consultation with affected people and groups is important for a full understanding of the kinds of risks that people may face, which may have social, cultural or linguistic underpinnings that may not be obvious to outside observers. For further information about the steps needed to respond to these risks in the context of private grievance mechanisms established by technology companies, please consult B-Tech foundational paper ‘Designing and implementing effective company-based grievance mechanisms’.

## SEVEN

**Transparency and clarity about the way that decisions are taken, and the circumstances in which decisions may be challenged and reviewed, are of vital importance to gaining and retaining the trust of actual and potential users of mechanisms.**

Being open with prospective users of grievance mechanisms about what the mechanism can and cannot do, and what to expect at each stage of the process, is more than just a courtesy to users of grievance mechanisms, it is **fundamental to gaining and retaining stakeholder trust**. To form a realistic assessment of what might be achievable through different “remedy pathways,” (and thus to make the best use of the often very limited resources they have to navigate extremely complex remediation systems (see “THREE” above), people need **accurate information, in readily understandable formats**, about

<sup>15</sup> ARP III report, A/HRC/44/32, Annex, 8.9; explanatory addendum A/HRC/44/32/Add.1, para. 49.

- milestones and timetables,
- decision-making methodologies (including the extent to which these are automated),<sup>16</sup> and
- what steps to take if they are unhappy with the outcomes of decisions.<sup>17</sup>

Technology companies may need to convey information about the **regulatory, law enforcement, alternative dispute resolution (e.g. mediation or ombudsman services) or court-based processes** that may be available to assist in the event the person raising the grievance is dissatisfied with the process, or that an effective remedy could not be achieved in the first instance.

In more **complex cases**, users of grievance mechanisms will also want to be appraised of the **reasoning used by decision-makers**, such as the way that potentially conflicting human rights-related issues have been balanced (e.g. the right of freedom of expression versus risks to the physical safety of people who may be at risk of vulnerability or marginalization; or the way in which privacy considerations have been balanced against the protection of children’s rights). Access to this kind of information can be critical to the ability of people to make use of appeal or review processes that may be available (see “EIGHT” below). It is also important that users receive **a proper record of the process, outcomes, and reasons for any decisions made.**<sup>18</sup>

## EIGHT

### **Providing for some form of independent review of decision-making can considerably enhance the credibility of mechanisms with affected people and groups.**

People who have suffered human rights harms associated with business activities express legitimate concerns about the ability of different kinds of remediation mechanisms to handle their grievances fairly, impartially and objectively, particularly in the case of company-based grievance mechanisms. The UNGPs highlight the legitimacy and due process difficulties of company-based grievance mechanisms being “both the subject of complaints and unilaterally determining their outcome”.<sup>19</sup>

**Providing opportunities for independent review of decision-making and outcomes can considerably enhance the credibility of remediation mechanisms with affected people and groups.** As well as helping to build trust, appeal mechanisms create accountability for decision-making, helping to enhance the performance of the grievance mechanism overall.

Court processes will typically have in-built systems of appeal to higher or more specialised courts, although the grounds for appeal may be limited.<sup>20</sup> Depending on the context, the decision-making of State-based non-judicial mechanisms (such as regulatory bodies) may be challengeable through

<sup>16</sup> See further B-Tech foundational paper ‘[Designing and implementing effective company-based grievance mechanisms](#)’ (esp. “FOUR”).

<sup>17</sup> ARP III report, A/HRC/44/32, Annex, 8 and 9; explanatory addendum A/HRC/44/32/Add.1, paras. 50-58.

<sup>18</sup> ARP III report, A/HRC/44/32, Annex, 10.4; explanatory addendum A/HRC/44/32/Add.1, para. 55.

<sup>19</sup> Guiding Principle 31(h), Commentary.

<sup>20</sup> Grounds for appeal may be limited, for instance, to cases where there have been erroneous findings of fact, or misapplication of legal standards or tests.

judicial proceedings or through other non-judicial mechanisms such as ombudsman services. In some contexts, there may be explicit provision for adjudication by regulatory bodies of complaints that cannot be resolved through company-based processes (e.g. regulated sectors with a strong consumer protection emphasis, such as telecommunications).

However, **the various systems for appeal or review may not be immediately obvious to affected people and groups** (see “THREE” above). As noted in other papers in this series, a range of actors—including State bodies (such as courts and regulators), national human rights institutions and technology companies themselves—each have important roles to play in helping affected people to navigate these complexities.<sup>21</sup> For company-based grievance mechanisms, there are various ways of establishing and enhancing independent oversight of decision-making, including through the creation of independent review panels with separate hiring processes, reporting lines, and budgetary arrangements.<sup>22</sup> However, there may be trade-offs in the design of arrangements for appeal and review (such as between the need for a speedy remedial response versus due process checks and controls) that will need careful consideration in consultation with stakeholders.<sup>23</sup>

 [b-techproject@ohchr.org](mailto:b-techproject@ohchr.org)

**UN Human Rights invites engagement from all stakeholders across all focus areas of the B-Tech Project.** For more information please see the project [Scoping Paper](#). Please contact us if you would like to engage with our work, including if you have recommendations for practical tools, case studies and guidance that will advance company, investor and State implementation of the *UN Guiding Principles on Business and Human Rights* in the business of technology.



January 2021

<sup>21</sup> See further B-Tech foundational papers '[Access to remedy and the technology sector: basic concepts and principles](#)' and '[Access to remedy and the technology sector: a remedy ecosystem](#)' approach'.

<sup>22</sup> ARP III report, A/HRC/44/32, Annex, 7.5 and 7.6; explanatory addendum A/HRC/44/32/Add.1, para. 37.

<sup>23</sup> See further B-Tech foundational paper '[Designing and implementing effective company-based grievance mechanisms](#)'.