Business and human rights: access to remedy and the technology sector

5 October 2020

Expert consultation agenda

By video conference

4.00pm – 6.00pm GMT (5.00am – 7.00pm CET)

3.45-4.00   **Dial in**

4.00-4.10   **Opening remarks, welcome and introductions**

Harriet Moynihan, Senior Research Fellow, International Law Programme, Chatham House

4.10-4.15   **UN Human Rights B-Tech Project: overview and update**

Lene Wendland, Chief, Business and Human Rights, UN Human Rights

4.15-4.40   **Applying access to remedy "fundamentals" to the technology sector**

The UN Guiding Principles ("UNGPs") provide a principled, rights-based and globally relevant framework for understanding the respective roles of governments and companies with respect to the delivery of effective remedies for business-related human rights harms, and how these different duties and responsibilities interact. However, questions of whether, when and why technology companies may have caused or contributed to human rights abuses can be particularly difficult for technology companies to navigate in practice, especially for providers of products and services that are then licensed or made available to very disparate groups of end users, or which are integrated into other systems.

- Is any consensus beginning to emerge as to the factors that will be relevant to determining issues of "causation" and "contribution" to human rights harms where technologies are involved? (See UNGP 22)
- How can technology companies "cooperate in" remediation by third parties – including State agencies, or other companies – in practice? (See UNGP 22). What kinds of relationships are important here and how should they be managed?

4.40-5.00 Understanding the "remedy ecosystem" for the technology sector

The B-Tech project is using the term "remedy ecosystem" to refer to the many and diverse actors that are potentially relevant to the seeking and delivery of remedies in cases of business-related human rights harms, and the legal, policy, structural, cultural, and economic context in which they operate. Not all of these will necessarily be framed in human rights terms. Yet they all can have a profound bearing on the effectiveness of courts, the work of regulatory bodies and company-based grievance mechanisms in practice. The remedy ecosystem for the technology sector is particularly complex. Fragmentation is already a problem, and this is likely to worsen, not least because the regulatory imperatives and implications of new technological innovations can take time to identify and properly address.

- Is there too much "compartmentalisation" or "siloing" in the way that governments approach the regulation of human rights issues connected with the technology sector? Are opportunities for a more efficient, effective, "joined up" approach being missed? If so, what can be done about this?
- Many observers point to a mismatch between the "borderless" on-line world, and territorially-based systems of domestic regulation. Is greater convergence of regulatory approaches the answer? If so, what opportunities exist at present (e.g. international platforms or forums) to achieve this?

5.00-5.30 Designing and operating effective company-based grievance mechanisms

Having processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute is a key part of meeting the corporate responsibility to respect human rights under the UNGPs (UNGP 15). The UNGPs draw attention to the potential benefits of "private" grievance mechanisms (UNGP 28) and go on to recommend that business enterprises establish or participate in effective operational-level grievance mechanisms (UNGP 28) to enable early and direct resolution of human rights-related

grievances. While many technology companies already have such mechanisms in place, their performance and effectiveness remains very difficult to assess.

> - For companies working in the technology sector, what kinds of factors will determine whether a company-based grievance mechanism will be established, its scope of activities and the form it should take? How often are these reviewed?
> - Is there a case for greater transparency from technology companies about the performance and impacts of company-based grievance mechanisms? If so, how could this be achieved?

5.30-5.50   Navigating the remedy landscape: the user perspective

UN Human Rights has called on governments and corporate actors to do more to ensure that people and communities whose human rights have been adversely affected by business activities have "realistic and readily identifiable pathways" to effective remedies. In some cases, a speedy and effective remedy might be achievable through a single mechanism (e.g. a well-functioning company-based grievance mechanism). In other cases, especially where the issues are complex or where the affected people are large in number and geographically widespread, a combination of approaches may be necessary. Well-functioning remedy ecosystems (and the mechanisms that exist within them) should be empowering for people and communities seeking remedy for harm. Yet too often they are overly complex, demoralising and impossible to navigate.

> - What practical steps can technology companies take to better understand and take account of stakeholder needs and perspectives in the way they design and operate their in-house grievance mechanisms? Where prospective users of mechanisms are geographically widely spread, difficult to identify or locate, or otherwise difficult to reach, what alternative strategies to direct consultation could be considered?
> - Adverse human rights impacts arising from the activities of technology companies may not always be obvious or perceptible to individuals; however they may have significant cumulative or combined impacts on communities and societies. Are there ways that technology companies can better respond to this specific challenge (e.g. through company-based grievance mechanisms)? If so, how?

5.50-6.00   Wrap up and concluding remarks

Harriet Moynihan and Lene Wendland.