



# access

*FORGOTTEN PILLAR:*  
THE TELCO REMEDY PLAN

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BY PETER MICEK AND JEFF LANDALE

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## EXECUTIVE SUMMARY

The telecommunications industry has enabled individuals to exercise their human rights on an unprecedented scale, especially the freedoms of expression, assembly, and association and the rights to privacy and access to information. Despite these benefits, telcos can infringe the human rights of users by enabling surveillance, censorship, or politically motivated network shutdowns and interference. In recognition of their human rights obligations, many telcos have publicly committed to uphold the UN Guiding Principles on Business and Human Rights.

The third pillar of the Guiding Principles establishes the right to access effective remedy for human rights abuses. The goal of remedy is to counteract and make good any human rights harms that have occurred. Companies and the state have shared responsibility to provide access to remedy, which can take a variety of procedural and substantive forms.

To help telcos address these human rights concerns, Access (AccessNow.org) has developed the *Telco Remedy Plan*, a companion to the *Access Telco Action Plan*. It assists companies to implement both the procedural aspects of remedy, such as safe and accessible grievance mechanisms, and the substantive aspects, which may be as simple as an explanation and commitment to non-repetition. By approaching the question of remedy holistically, throughout the entire human rights due diligence process, telcos will be prepared to address those affected in a more timely and cost-effective way.

As set out in section 3, the Telco Remedy Plan's ten clear steps include three procedural aspects:

1. Incorporate the question of remedy into due diligence.
2. Implement accessible and secure grievance mechanisms.
3. Respond quickly and effectively to complaints.

In addition, seven options for substantive remedy are outlined. Every step is not applicable to every claim, but these offer a path to escalate the telco's response depending on the context:

4. Investigate and make policy changes to cease the rights-infringing activity.
5. Interview staff and review relevant policies, retraining and revising as needed.
6. With an eye toward assisting those affected, preserve evidence.
7. After external consultations, acknowledge and apologize where appropriate.
8. Repeated, systemic infringement should lead to independent or ongoing oversight.
9. Participate in regional or sector-wide entities to increase the telco's leverage.
10. Those affected should be compensated where necessary to make good any human rights harms.

Engagement with civil society and other stakeholders is key to further exploration and development of the right to remedy. Access looks forward to working with telcos to implement the Telco Remedy Plan's Ten Steps and to maximize their positive contributions to society.

## INTRODUCTION

*The Telco Remedy Plan*, a companion to the *Access Telco Action Plan*,<sup>1</sup> offers pragmatic guidance on how to incorporate the question of remedy, as outlined in the UN Guiding Principles on Business and Human Rights,<sup>2</sup> into all aspects of a telco's human rights policies. It reflects the sector-specific human rights considerations that telcos encounter in their operations. For those shaping the discourse on corporate social responsibility and sustainability, this paper contributes to the dialogue on the 'right to remedy' as defined by the UN "Protect, Respect and Remedy" Framework.<sup>3</sup> While directed toward telcos, this guidance can inform human rights considerations across the entire information and communication technology (ICT) industry.

Access (AccessNow.org) is committed to engaging with telcos to help protect users' rights no matter where those users reside. While we often study moments of crisis or limitations on the enjoyment of rights, Access also recognizes the extraordinary role that the telecommunications sector has played in enhancing the communications capabilities of billions of people. We believe that adherence to this plan would further enable telcos to maximize the positive role they play in society, while limiting exposure to risk.

With this paper, Access continues the dialogue with telcos who seek cost-effective ways to better mitigate and remedy their impacts on the human rights of access to information, privacy, and the freedoms of expression, assembly, and association.

The first section outlines adverse impacts of telco operations, and sets forth points of consensus on business and human rights. The second section explores the role of telcos in facilitating the right to remedy, procedurally and substantively, through efficient and risk-reducing solutions, and highlights the costs of unaddressed human rights impacts. The Telco Remedy Plan shows how the question of remedy can and should be integrated holistically into a telco's human rights considerations. A case study offers a point of reference and makes the guidance more concrete.

## 1. TELCOS AND HUMAN RIGHTS

Telco operations affect the majority of individuals on our planet, whether through mobile-cellular subscriptions, landlines, or broadband.<sup>4</sup> People increasingly entrust their private information to their devices and mobile services,<sup>5</sup> expanding the depth of telcos' reach as their breadth grows wider to encompass more users.

As a result, despite "the best policies and practices,"<sup>6</sup> telco operations can adversely impact their end-users' human rights to **access to information and privacy**, and the **freedoms of expression, assembly, and association**. For example, telcos have been shown in some cases to give state security agencies access to user communications, as well as location data,<sup>7</sup> without demanding they follow legal procedures.<sup>8</sup> The secondary human rights impacts of such unfettered access include the arbitrary arrest,<sup>9</sup> torture, and murder<sup>10</sup> of users at risk, such as journalists and political activists. It also sends the message to all users that their privacy rights are expendable and their communications vulnerable, with chilling effects.

During some crucial political periods like elections or public demonstrations, authorities have requested that telcos shut down or throttle network traffic to unusable levels.<sup>11</sup> Targeting those who exercise their human rights to free expression and assembly, telco compliance with these requests causes harmful secondary effects such as obstructing access to emergency services.

Telcos and internet service providers (ISPs) have in some cases agreed to block and disconnect users from the internet, and remove access to content, at the request of those claiming to be copyright holders.<sup>12</sup> Without following legal processes or demanding the rightsholder adjudicate their claim in court, these "privatized enforcement" actions block a user's access to the internet, the enabler of a range of human rights.<sup>13</sup>

## THE 'RUGGIE FRAMEWORK' AND GUIDING PRINCIPLES

Recognizing the interconnected human rights responsibilities of states and businesses, the UN Human Rights Council unanimously approved the Guiding Principles on Business and Human Rights in 2011. The 31 high-level, cross-industry Guiding Principles, each with a corresponding “Commentary,” help stakeholders to implement policies which fulfill their human rights obligations under the Protect, Respect and Remedy Framework. The Framework is often referred to as the Ruggie Framework, after its author, John Ruggie, professor of human rights and international affairs at Harvard, whose years of multistakeholder consultations informed the final document.

The Framework rests on the interconnection of the three pillars of “protect,” “respect,” and “remedy.” The first pillar of the Framework lays out the state’s **duty to protect** against human rights abuse. The second pillar clarifies businesses’ **responsibility to respect** and prevent infringement of human rights in their operations. The third pillar emphasizes the shared responsibility of both parties to provide those affected by adverse human rights impacts with **access to judicial and non-judicial remedies**.

Corporations in many industries have endorsed the Ruggie Framework and Guiding Principles.<sup>14</sup> Stakeholders have sought to guide their actual implementation by producing secondary literature and projects exploring the Framework and Principles.<sup>15</sup> However, the discourse on the Ruggie Framework in the ICT sector has yet to deeply explore the third pillar.<sup>16</sup>

Civil society organizations and government officials are increasingly calling for the implementation of the third pillar in the ICT industry and telecommunications sector. For example, IHRB and Shift are developing the EU Commission’s Guidance for the ICT Sector on Implementing the UN Guiding Principles on Business and Human Rights,<sup>17</sup> which offers guidance on remedy and grievance mechanisms.<sup>18</sup>

Some telcos are also working to incorporate the third pillar into their operations. The Telecommunications Industry Dialogue’s Guiding Principles on Freedom of Expression and Privacy<sup>19</sup> state that telcos should, “Examine, as a group, options for implementing relevant grievance mechanisms, as outlined in Principle 31 of the UN Guiding Principles for Business and Human Rights.” The document also recommends that stakeholders strive “to raise individuals’ awareness of their rights and available mechanisms to seek remedy.”

## 2. THE ROLE OF TELCOS IN THE RIGHT TO REMEDY

Under the Guiding Principles, the burden of the remedy pillar falls most heavily on states.<sup>20</sup> Yet Access has repeatedly noted the presence of active state involvement in, or instigation of, human rights abuses involving telcos.<sup>21</sup> This complicates the general guidance offered by the Guiding Principles, which expects and often depends on state support for remedies.

Telcos should not attempt to supplant the role of judicial or other state-based grievance mechanisms. Nonetheless, the third pillar covers both states and businesses, and when judicial systems are unable to provide adequate remedy, telcos must still meet their obligations outlined in the Guiding Principles.<sup>22</sup>

### GRIEVANCE MECHANISMS

Where companies cause or contribute to adverse human rights impacts, they should provide access to effective remedy.<sup>23</sup> This can be achieved through “effective operational-level grievance mechanisms.”<sup>24</sup>

Operational-level grievance mechanisms may take various forms, including employee complaint processes and externally-managed hotlines, and can be administered by the company or in collaboration with third parties. They allow companies to interact directly with complainants and stakeholders, to identify adverse human rights impacts of business operations, whether isolated or systemic, and to cease activities and remediate harms before they escalate.<sup>25</sup>

As such, these mechanisms are the primary tools which companies use to determine and deliver effective remedy to those adversely affected by their operations. Most fundamentally, a grievance mechanism “can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it.”<sup>26</sup>

The final Guiding Principle, 31, offers seven “effectiveness criteria” for non-judicial grievance mechanisms,<sup>27</sup> whose development should be “based on engagement and dialogue” and consultations with those “for whose use they are intended.”

## REMEDY IN SUBSTANCE AND PROCEDURE

In designing non-judicial mechanisms to institute remedy, it is important to understand what constitutes remedy:

The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.<sup>28</sup>

The right to access to effective remedy thus contains both “substantive” and “procedural” aspects. Yet, there are a number of difficulties for determining what the appropriate procedural and substantive aspects of remedy should be in a given case.

Procedurally, difficulties arise when the rights-infringing activities of telcos occur at the behest of states lacking rule of law. Judicial and other state-based mechanisms may not be viable forums in these cases, especially if they lack the ability to guarantee impartiality, freedom from political influence, or the security of the complainants.

Importantly, the “substance” of remedy does not begin or end at monetary compensation. In fact, aggrieved users have at times simply called for explanations and guarantees of non-repetition. It is when these calls are ignored, or never registered in the first place, that the costs rise for telcos.

Substantively, it can be difficult to quantify the harms caused by infringement of the rights to access to information, privacy, and the freedoms of expression, assembly, and association. The harms are not as visible as oil spills, and the costs are not as clear as lost wages. There is currently little jurisprudence available to determine the share of responsibility carried by telcos for activities that lead to harassment, arbitrary arrest, or torture, and how to remedy the harms caused by their share of fault.<sup>29</sup>

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## WHY REMEDY? THE COSTS OF INACTION

The costs for telcos who fail to address human rights grievances are significant, though often underappreciated. Risks include reputational damage, lowered stock prices, disruptions to operations, disproportionate drains on executive management attention, consumer boycotts, lawsuits, and sanctions.

Telcos can suffer reputational costs among customers, business partners,<sup>31</sup> and investors<sup>32</sup> after they are perceived as contributing to human rights abuses. Corporations accused of human rights infringement, in the ICT and other sectors, are often publicly named and shamed by government officials,<sup>33</sup> media,<sup>34</sup> and civil society groups.<sup>35</sup>

Corporate stock prices drop upon announcements of involvement in human rights abuses,<sup>36</sup> the filing of litigation,<sup>37</sup> and the possible imposition of financial sanctions.<sup>38</sup> Risk management concerns can linger for years after human rights infringement takes place<sup>39</sup> and lead to calls for new leadership at the highest levels of the company, disrupting the management of day-to-day operations.<sup>40</sup>

While the costs of inaction have not been studied or quantified in the telecommunications sector, reports from other sectors indicate that grievance mechanisms, which address problems before they blossom into human rights abuses, ultimately lower costs for companies.

Responding to incidents and allegations, publicly and privately, requires attention from executives and can become a major, unexpected draw on their time. One study, which examined the cost carried by companies in the extractive industry with regard to conflict with local communities, found that “the most frequently overlooked cost cited by a significant number of interviewees was staff time devoted to managing conflict, especially at senior management level.”<sup>41</sup>

Users have called for boycotts of telcos in response to network discrimination and shutdowns,<sup>42</sup> information sharing with law enforcement,<sup>43</sup> and perceived corruption.<sup>44</sup> Civil society groups have called for sanctions against telcos for ties to abusive regimes.<sup>45</sup> Government regulators have imposed long-term oversight regimes on major internet service providers for user privacy violations.<sup>46</sup>

While the costs of inaction have not been studied or quantified in the telecommunications sector, reports from other sectors indicate that grievance mechanisms, which address problems before they blossom into human rights abuses, ultimately lower costs for companies.<sup>47</sup>

### 3. THE REMEDY PLAN FOR TELCOS

The question of remedy should not be raised only when a complainant comes with grievances, but rather should be integrated into due diligence and operations as part of the company’s holistic commitment to the Guiding Principles.

Telcos can facilitate access to remedy, and efficiently reduce costs related to human rights allegations, by incorporating the question of remedy into the policies governing each stage of their operations. The question of remedy should not be raised only when a complainant comes with grievances, but rather should be integrated into due diligence and operations as part of the company’s holistic commitment to the Guiding Principles.

The following guidance offers an action plan for remedy with both procedural and substantive aspects. The procedural guidance adheres to a chronological order of events a telco may encounter in their human rights considerations, while the substantive aspects are possible remedies that telcos may choose to implement, organized by increasing order of gravity. These steps cannot all be taken immediately, but can be progressively realized through dialogue with other stakeholders.

#### PROCEDURAL ASPECTS OF REMEDY

The following guidance is designed to fulfill the “effectiveness criteria”<sup>48</sup> for grievance mechanisms to be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue. Rather than occurring in a vacuum, the following optional actions will strengthen each other measure the telco undertakes, while gaining the trust of users and other stakeholders, and empowering them to voice grievances in a timely, cost-effective manner.

Given these considerations, telcos should:

1. **Incorporate the question of remedy into due diligence** with the help of all stakeholders before entering new markets or offering new services in existing markets.
  - a. **Review the record and existing business environment.** Assess the country's judicial system, the telco's prospective business partners, and the terms of relevant laws, regulations, and operator license agreements for restrictions on access to remedy.<sup>49</sup>
  - b. **Work with civil society at all points of due diligence.** International civil society organizations have the necessary human rights expertise to identify potential human rights risks, and local organizations can alert telcos to risks particular to each operating environment.
  - c. **Participate in sector-wide partnerships** such as the Telecommunications Industry Dialogue on Freedom of Expression and Privacy to learn and share best practices regarding remedy. Multistakeholder entities can collectively influence the terms of licensing agreements and local laws and regulations, by establishing "redlines" and norms, to raise legal protections for users.<sup>50</sup>
  - d. **Reconsider the nature and extent of proposed operations in a country** if due diligence assessments reveal the market environment is inhospitable to grievance or remedial mechanisms, and leverage is not effective.
2. Seek to **implement grievance mechanisms** that are **accessible and secure** for complainants, and which may be **strengthened through these measures:**
  - a. **Advertise the grievance mechanism through various channels.** This might include announcements in the media and outreach through existing community networks, mobile and internet-based reporting tools, 'whistleblower' hotlines, or even just posts on telco's and its subsidiary's Facebook pages.
  - b. **Proactively measure the impact, and raise awareness of, possible rights infringement,**<sup>51</sup> such as in the case of network shutdowns, data breach, or mass network surveillance, by surveying media and civil society reports, and auditing subscriber and operations data in all regions and/or networks. Specialized human rights training could aid staff to assess these risks.
  - c. **Release regular transparency reports.** These detail the extent and form of cooperation with law enforcement requests for user information and surveillance, and help identify risks to privacy. Aggregated and anonymized statistics, publicized through regular reporting, may help bypass legal restrictions on disclosure.<sup>52</sup>
  - d. **Seek to prevent reprisals against complainants and staff.** For example, consulting independent experts and civil society may be helpful to determine the best practices in data protection and privacy, investigation of adverse incidents, and security training for staff.
  - e. **Seek to ensure the confidentiality of processes and outcomes,** especially financial compensation and identity data, while maximizing transparency afforded to individual complainants.<sup>53</sup>
  - f. **Consider locating the mechanism in different countries or regional entities** with stronger civil and political protections. Balance the benefits of legitimacy and security with accessibility, and locate the mechanism in the nearest appropriate venue.

3. **Respond quickly and effectively to complaints brought to company grievance mechanisms.**
  - a. **Acknowledge complaints quickly** and provide an expeditious response, as well as ongoing disclosure regarding the status of the complaint.
  - b. **Escalate complaints** which raise significant human rights concerns quickly to senior-level management's attention.
  - c. **Provide an appeals provision** in grievance mechanisms so that complainants may appeal the procedural and substantive outcomes of a complaint.<sup>54</sup>
  - d. **Provide immediate and ongoing disclosure** to affected users and communities as to the specific causes of service disruptions or restrictions, and the legal, technical, and policy bases for corporate responses.
  - e. **Monitor and evaluate outcomes** for effectiveness, and to ensure the agreed upon follow-up activities are undertaken.

#### THE SUBSTANCE OF REMEDY

The appropriate remedy will “counteract or make good any human rights harms that have occurred.”<sup>55</sup> The following forms of remedy are only a few examples from the broad set of remedy options, and not all steps are appropriate in every case. They are listed by order of increasing gravity, meaning step 4 may impose less of a burden on the telco than step 10. The appropriate remedy in a given situation depends on the specific claims of those affected, the severity of the infringement, and other factors to be determined by the context.

In many cases, the necessary remedy may be no more costly than an explanation of the telco's role and steps to ensure non-repetition.

Given these considerations, telcos should:

4. **Investigate** and find ways to **cease or alter activities that contribute** to adverse human rights impacts in an effective, timely manner.
5. **Interview executives and staff** overseeing and conducting those rights-infringing activities, and **review relevant policies**. Clarify whether staff deviated from policy or the policy itself failed. To minimize risks of repetition, revise policies, retrain staff, and communicate policy changes to personnel, business partners, and the public.
6. **Preserve evidence** wherever possible and publish when appropriate, particularly when obstacles make providing access to effective remedy impossible in the near-term. In cases where the state instigated the telco's rights-infringing activities, evidence can inform a victim's search for effective remedy, especially where states deny their role in unlawful surveillance, censorship, or network interference.
7. After consulting those affected, **acknowledge and apologize** as appropriate for any contributions to human rights abuse. In many cases, apologies and assurances of non-repetition can go a long way towards remedying the telco's contribution to the harm the victims suffered.

8. Submit to **independent investigation or ongoing oversight** conducted independent of the telco, and with full access to corporate officials and records. Inquiries should proceed transparently, on a public deadline, and in coordination with multiple stakeholders, including civil society, legal and regulatory experts, and government officials. Ongoing oversight is required when the same form of infringement has occurred repeatedly, or when the infringement is determined to be the result of systemic problems within the company.
9. **Organize and participate in regional or sector-wide entities**, with structured multistakeholder participation, to clarify and mitigate any role telcos play in systemic human rights violations.<sup>56</sup> These bodies should adhere to best practices in transparency and accountability, to be determined and updated in consort with other stakeholders on regular, public timetables. Policy changes and other outcomes should likewise be coordinated and evaluated on established benchmarks.
10. **Compensate victims and affected communities.** Compensation as a remedy for human rights abuses has become more realistic and comprehensible in light of the International Criminal Court's "Trust Fund for Victims."<sup>57</sup> If the telco sector established such a fund, it could benefit from sector-wide backing, both financial and moral, and draw on the vast expertise of the world's largest telcos, foundations, governments, investors, and civil society stakeholders.

Above all, a willingness to engage with the remedy pillar in policy and practice is necessary to develop expertise on adequate remedy for victims of the abuses to which telcos contribute. Taking into account the intertwined nature of the Guiding Principles, with obligations on government and the private sector, a multistakeholder approach to defining the substance of remedy may offer the best guidance to grievance mechanisms, whether state-based or otherwise.

## WITHDRAWAL OF OPERATIONS

Telcos have become an essential utility for the public's enjoyment of their rights. However, where telcos recognize that their operations directly contribute to systemic, ongoing abuses, they must consider withdrawal as one option in their effort to respect human rights and mitigate harms

Given its disruptive effects on users, withdrawal should only be considered by telcos as a last resort.

There is a calculus to determine whether withdrawing operations would infringe human rights more than continuing operations. Telcos have become an essential utility for the public's enjoyment of their rights. However, where telcos recognize that their operations directly contribute to systemic, ongoing abuses, they must consider withdrawal as one option in their effort to respect human rights and mitigate harms.<sup>58</sup>

The security and wellbeing of staff is a major factor in the decision to withdraw operations. While continued operations may be dangerous to staff, moves towards withdrawal may also put staff and users at risk. Access encourages all stakeholders to research more factors relevant to this decision, which could include:

- the nature of the human rights abuse and the extent of the telco's contribution to it;
- whether users have access to effective remedy, or the environment is characterized by weak rule of law;
- whether the telco can temporarily suspend operations without harming user rights in the long-term;
- the threat of sanctions and other external pressures on the telco;
- and whether a credible threat of withdrawal will help the telco to counterbalance pressures to infringe rights, and to prevent these situations from arising.

#### 'DISPOSAL' OF OPERATIONS

In a move referred to as “disposals,” some telcos spin off controversial arms of the company, rather than ceasing their rights-infringing activity, after public criticism of the mother company's human rights practices. Disposals fail to address a company's human rights impact as they do not facilitate access to remedy for those previously harmed, or respect the human rights of those who continue to be victimized by the disposed arm's activities.<sup>59</sup> Instead, they increase the difficulty for victims to identify the parties responsible, limit corporate accountability, and enable further transgressions, particularly as spin-off companies tend to be privately held and thereby removed from public oversight.

Disposals may have reputational costs, as well. In their study of the Second Pillar of the Ruggie Framework and business relationships, The Institute for Business and Human Rights notes, “companies may find that disposal does not always end their association with an asset they have sold.”<sup>60</sup>

## 4. CASE STUDY: TELIASONERA'S PERVASIVE NETWORK SURVEILLANCE

TeliaSonera is an international telco with headquarters in Sweden and 170 million subscribers<sup>61</sup> across Nordic and Baltic states, the Commonwealth of Independent States (CIS) region, Spain and elsewhere. A 2012 news investigation publicized how TeliaSonera cooperated with oppressive governments in the CIS region<sup>62</sup> by allowing security forces in several countries to regularly access their entire telecommunications network and subscriber data, to read the content of communications, and to geolocate mobile phone users.

Reports noted that the “direct access to subscribers' telephone calls, data, and text messages” provided to security agencies resulted in the arrests of members of political opposition groups, infringing on their rights to privacy, free expression, and association.<sup>63</sup> Some victims were clearly identified by Swedish investigative news program Uppdrag Granskning.<sup>64</sup>

The company suffered adverse costs from these allegations. TeliaSonera's reputation faltered as criticisms mounted from the media and civil society, leading Mozilla to consider excluding Teliasonera's new root certificate from the Firefox browser's list of trusted Certificate Authorities.<sup>65</sup>

TeliaSonera's executive management has had to focus a disproportionate amount of attention on these human rights allegations since they surfaced. CEO Lars Nyberg stepped down after an independent investigation by law firm Mannheimer & Swartling faulted the company for failing to conduct due diligence before entering Uzbekistan (although the investigation found that no laws were broken).<sup>66</sup>

Human rights organizations have continued to criticize the company, including through protests held outside of their annual shareholder meeting.<sup>67</sup>

Based on the telco's press releases, annual report, and other statements, it appears that TeliaSonera responded with several appropriate internal steps and remedial measures with external stakeholders. In line with step 1 of the Remedy Plan for Telcos,

TeliaSonera said it reviewed the requirements for lawful interception affecting mobile operators in the region. It requested that Turkcell, the co-owner of the subsidiaries involved in the rights infringement, do the same.<sup>68</sup>

Pursuant to step 3 of Remedy Plan, the company pledged to publicize network shutdowns and content blockages when they occur, “wherever possible within the limitations of confidentiality regulations.”<sup>69</sup>

Several policy and personnel changes fall under steps 4 and 5. Overall, the company committed to “[i]mprove understanding across the Group of our Human Rights impact, based on the UN Guiding Principles on Business and Human Rights,” including Human Rights Impact Assessments. Authority to make major decisions, such as on government requests for partial or complete network disruptions, was moved from local management to a higher level within the corporation.<sup>70</sup> As a long term goal, the telco promised in its 2012 Sustainability Report to “provide remedy and pro-actively work to reduce any negative impacts along the value chain.”<sup>71</sup>

As recommended in step 8, the company submitted to independent third party reviews. The first was conducted by Mannheimer & Swartling, investigating corruption charges. The second was by the Danish Institute of Human Rights (DIHR), which reviewed TeliaSonera’s human rights impact assessment and consequential mitigation plan, benchmarking its activities to the UN Guiding Principles on Business and Human Rights.<sup>72</sup>

Working in a multistakeholder fashion, DIHR and TeliaSonera have jointly developed a tool tailored to TeliaSonera’s human rights risk profile, to aid its human rights impact assessment. The tool “may be made available for other companies in the ICT sector to apply.”

## RECOMMENDATIONS

Many of the above steps align with the remedial goal of “prevention of harm through... guarantees of non-repetition.”<sup>73</sup> However, the measures TeliaSonera has taken focus on improving internal human rights policies, and it remains unclear whether the efforts reach those affected or provide them access to effective, substantive remedies.

TeliaSonera has based its new human rights risk assessment tool on the Guiding Principles and lists “provide remedy” as a long term goal.<sup>74</sup> The company should continue to improve its human rights policies, ensure they are implemented in ways which prevent future human rights infringement, and actively work to mitigate the human rights abuses the company has contributed to.

To comply with steps 1 and 2 of the Telco Remedy Plan, and commitments to transparency, the company should release DIHR’s assessment of the company’s impacts and consequential mitigation plan; the tool created to aid TeliaSonera’s human rights impact assessment; and the results of the study of requirements for lawful interception affecting mobile operators.

Internal human rights policies and procedures can be reviewed and fine-tuned perpetually, but without concrete remedy for those affected, the third pillar will be in effect forgotten.

In accord with procedural steps 2 and 3, accessible grievance mechanisms should be designed and deployed so that users and staff can safely and anonymously inform the company of potential adverse human rights impacts before they escalate. If affected users cannot access grievance and remedial measures in their home jurisdictions, the company should ensure that they have access to forums in Sweden or regionally.

Through substantive measures, TeliaSonera must address the human rights complaints they have been alerted to through the scandals and news reports of the past year. Under steps 4 and 5, the company should align its practices on cooperation with law enforcement agencies with the human rights standards the company publicly recognizes.

Internal human rights policies and procedures can be reviewed and fine-tuned perpetually, but without concrete remedy for those affected, the third pillar will be in effect forgotten. To this end, considering step 7, the telco should contact those who have self-identified as being affected by the unlawful access provided to state security forces, in order to determine an appropriate remedy and steps toward non-repetition.

Continuing its progress on step 8, TeliaSonera should build on its current engagement with civil society organizations like the DIHR by working with local civil society organizations to review operations.

In line with step 9, TeliaSonera has taken a lead role in the Telecommunications Industry Dialogue. Through this forum, the company should encourage all telcos to institute operational-level grievance mechanisms and, with other stakeholders, establish public benchmarks to measure the progress of remedial measures. Also, coordination with other operators in the CIS region may strengthen efforts to reach those affected and to push back against restrictive requests.

Finally, after consulting those affected, and in accord with step 10, compensation and other restitution should be offered as necessary to “counteract or make good any human rights harms that have occurred.”<sup>75</sup>

## CONCLUSION

This guidance is meant to offer principled and pragmatic steps telcos can take to incorporate remedy into all aspects of their human rights policies and operations. Access welcomes input and feedback from all sectors, and calls on civil society in particular to pursue the Third Pillar in scholarship and guidance on human rights in the ICT sector.

To comply with the obligation to provide effective access to remedy, telcos would need to institute grievance mechanisms in diverse environments, including those characterized by little regard for the rule of law, weak civil society, or a lack of support from government and state security officials. To this, add in the difficulty around identifying and safely contacting those affected, and effective grievance mechanisms can appear costly and difficult to implement.

Therefore, we recommend that telcos take a holistic view and account for the question of remedy during the entire business cycle, from due diligence before securing licenses to reporting, auditing and grievance mechanisms during operations. Working with civil society organizations, submitting to third party audits, and participating in industry-wide multistakeholder organizations will allow telcos to craft the best human rights policies and practices, fulfill the obligations most major telcos acknowledge under the UN Guiding Principles on Business and Human Rights, and reduce the long-term costs associated with unaddressed human rights complaints.

We encourage stakeholders from civil society, government and the private sector to devote greater attention to the Third Pillar of the Ruggie Framework in order to help telcos maximize the positive role they play in modern society.

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*Access defends and extends the digital rights of users at risk around the world. By combining innovative policy, user engagement, and direct technical support, we fight for open and secure communications for all.*

For more information or assistance on implementing this guidance, contact authors Peter Micek <[peter@accessnow.org](mailto:peter@accessnow.org)> or Jeff Landale <[jeff@accessnow.org](mailto:jeff@accessnow.org)> and visit [www.accessnow.org](http://www.accessnow.org).

## ENDNOTES

1. <https://www.accessnow.org/policy/the-telco-hall-of-shame>
2. [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
3. <http://198.170.85.29/Ruggie-protect-respect-remedy-framework.pdf>
4. [http://www.itu.int/net/pressoffice/press\\_releases/2013/05.aspx#.UV3Cpqt35k8](http://www.itu.int/net/pressoffice/press_releases/2013/05.aspx#.UV3Cpqt35k8); <http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2013.pdf>
5. After its April 2013 visit to the U.S., the UN Working Group on Business and Human Rights noted, “the scale of data and information being held by businesses has disrupted traditional models of societal knowledge, individual and collective identity, and security as presumed to be in the domain of the state.” <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13284&LangID=E>
6. UN Guiding Principles on Business & Human Rights, Guiding Principle [hereinafter GP] 22, Commentary. “Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.” [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
7. European politician Malte Spitz combined six months of his phone data with information freely available online about his life to create a frighteningly detailed portrait of his movements: <http://www.zeit.de/datenschutz/malte-spitz-data-retention>. This illustrates the amount of information which telcos hold about their users.
8. <http://www.nytimes.com/2008/07/10/washington/10fisa.html>
9. <http://www.guardian.co.uk/sustainable-business/blog/phone-tapping-eastern-europe-ict-standards>
10. <http://www.freedomhouse.org/report/freedom-net/2012/syria>
11. See for example, Internet again disrupted in Iran ahead of election, Reuters, <http://www.reuters.com/article/2012/02/20/us-iran-internet-idUSTRE81J0ML20120220>; Syria Disrupts Text Messaging of Protesters With Made-in-Dublin Equipment, Bloomberg, <http://www.bloomberg.com/news/2012-02-15/syria-blocks-texts-with-dublin-made-gear.html>; Rioting leads to Cameron call for social media clampdown, The Guardian, <http://www.guardian.co.uk/uk/2011/aug/11/cameron-call-social-media-clampdown>
12. The Copyright Alert System has initiated a ‘six strikes’ program. See <http://arstechnica.com/tech-policy/2013/02/heres-what-an-actual-six-strikes-copyright-alert-looks-like>
13. La Rue, Frank. “Report of the Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression.” Human Rights Council, 17th Session. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)
14. See for example Coca-Cola <http://www.coca-colacompany.com/our-company/human-workplace-rights>; GE <http://www.gecitizenship.com/focus-areas/economy/public-policy>; & Vodafone [http://www.vodafone.com/content/index/about/about\\_us/privacy/human\\_rights.html](http://www.vodafone.com/content/index/about/about_us/privacy/human_rights.html)
15. See for example: Caroline Rees, Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned, [http://shiftproject.org/sites/default/files/report\\_46\\_GM\\_pilots.pdf](http://shiftproject.org/sites/default/files/report_46_GM_pilots.pdf); Caroline Rees & David Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, [http://shiftproject.org/sites/default/files/Report\\_28\\_Mapping.pdf](http://shiftproject.org/sites/default/files/Report_28_Mapping.pdf); BASESwiki, [http://baseswiki.org/en/Main\\_Page](http://baseswiki.org/en/Main_Page); FIDH, Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms. <http://www.fidh.org/Updated-version-Corporate-8258>; Ludwig Boltzmann Institute of Human Rights, The Right to Remedy, [http://bim.lbg.ac.at/files/sites/bim/Right%20to%20Remedy\\_Extrajudicial%20Complaint%20Mechanisms\\_2013\\_1.pdf](http://bim.lbg.ac.at/files/sites/bim/Right%20to%20Remedy_Extrajudicial%20Complaint%20Mechanisms_2013_1.pdf); SOMO, Human Rights and Grievance Mechanisms, [http://somo.nl/publications-en/Publication\\_3823?set\\_language=en](http://somo.nl/publications-en/Publication_3823?set_language=en); & Tineke Lambooy, et al, The Corporate Responsibility to Remedy, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1953190](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953190)
16. See for example: IHRB, State of Play (“More attention will be given in coming years to the third pillar”) <http://www.ihrb.org/pdf/state-of-play/State-of-Play-Full-Report.pdf>; BSR, Applying the UN Guiding Principles on Business and Human Rights to the ICT Industry, [http://www.bsr.org/reports/BSR\\_UN\\_Guiding\\_Principles\\_and ICT.final.pdf](http://www.bsr.org/reports/BSR_UN_Guiding_Principles_and ICT.final.pdf) (no mention of remedy); & GNI, Implementation Guidelines, <http://globalnetworkinitiative.org/implementationguidelines/index.php> (Recommends “[e]stablishing a means of remediation when business practices that are inconsistent with the Principles are identified, including meaningful steps to ensure that such inconsistencies do not recur”).
17. <http://www.ihrb.org/pdf/eu-sector-guidance/2012-12-14-ICT-Sector-Guidance-DRAFT-for-Public-Consultation.pdf>
18. Access has submitted comments to the development of this draft guidance: <http://www.ihrb.org/pdf/eu-sector-guidance/Access.pdf> & <http://www.ihrb.org/pdf/eu-sector-guidance/ICT/Access.pdf>
19. <http://www.teliasonera.com/en/about-us/public-policies/#Telecommunications-Industry-Dialogue-1>. The Industry Dialogue recently began a two-year collaboration with the Global Network Initiative (<http://globalnetworkinitiative.org/news/key-telecommunications-players-collaborate-global-network-initiative-freedom-expression-and>).
20. “Effective judicial mechanisms are at the core of ensuring access to remedy.” GP 26, Commentary <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>
21. Access, MTN must stand up for its users, meet international obligations, Nov. 2012. [https://s3.amazonaws.com/access.3cdn.net/12021872b2725c4e70\\_aym6b90xi.pdf](https://s3.amazonaws.com/access.3cdn.net/12021872b2725c4e70_aym6b90xi.pdf) The Guardian, Vodafone under fire for bowing to Egyptian pressure, 26 July 2011, <http://www.guardian.co.uk/business/2011/jul/26/vodafone-access-egypt-shutdown>
22. <http://www.ihrb.org/pdf/eu-sector-guidance/2012-12-14-ICT-Sector-Guidance-DRAFT-for-Public-Consultation.pdf>
23. GP 22, Commentary. <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>
24. <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

25. [http://shiftproject.org/sites/default/files/report\\_46\\_GM\\_pilots.pdf](http://shiftproject.org/sites/default/files/report_46_GM_pilots.pdf)
26. GP 31, Commentary. <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>
27. See Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned ([http://shiftproject.org/sites/default/files/report\\_46\\_GM\\_pilots.pdf](http://shiftproject.org/sites/default/files/report_46_GM_pilots.pdf)) for practical guidance on implementing these criteria.
28. GP 25, Commentary. <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>
29. Governments have historically shielded telcos and other 'common carriers' from legal liability through legislation and in return for regulatory concessions. See for example <http://www.fas.org/sgp/crs/intel/RL34600.pdf>; [http://www.cybertelecom.org/notes/cc\\_liability.htm](http://www.cybertelecom.org/notes/cc_liability.htm); & <http://www.columbia.edu/dlc/wp/citi/citinoam11.html>. Nevertheless, well-established jurisprudence on negligence and fault-based contribution could likely be applied to these types of cases.
30. <http://www.avesta.tj/eng/society/2831-tajik-facebook-users-offer-to-boycott-mobile-operators.html>
31. Based on concerns about TeliaSonera's human rights record, the security policy development group of Mozilla, maker of the Firefox web browser, considered rejecting the telco's request to include its new root certificate in Firefox's list of trusted Certificate Authorities (CAs). [http://www.theregister.co.uk/2013/04/16/mozilla\\_threatens\\_teliasonera](http://www.theregister.co.uk/2013/04/16/mozilla_threatens_teliasonera)
32. <http://www.telegraph.co.uk/finance/8687459/Egyptian-riots-put-dent-in-Vodafones-growth.html>
33. For Yahoo's role in the jailing of a Chinese journalist, U.S. Representative Tom Lantos told Yahoo chiefs, "While technologically and financially you are giants, morally you are pygmies." <http://www.nytimes.com/2007/11/07/technology/07yahoo.html>
34. <http://www.reuters.com/article/2012/03/22/us-iran-telecoms-idUSBRE82L0B820120322> ; <http://www.nytimes.com/2006/04/13/us/nationalspecial3/13nsa.html>
35. <http://www.hrw.org/news/2013/02/13/should-companies-take-responsibility-repression>
36. <http://feemdeveloper.net/attach/Peter%20Schmidt.pdf>
37. "[Turkcell's allegations] have led to a 6 percent fall in MTN's share price since the suit was filed." <http://blogs.reuters.com/africanews/2012/04/03/turkcells-dubious-case-against-mtn>
38. <http://mg.co.za/article/2012-04-26-obama-order-puts-screws-on-mtn>
39. <http://www.bloomberg.com/news/2012-03-26/vodafone-remains-exposed-to-egypt-risks-a-year-after-uprisings.html>
40. Examples can be found in the telecoms sector. In February 2013, the CEO of the Sweden-based carrier TeliaSonera resigned over a corruption investigation related to their operations in Uzbekistan. <http://www.teliasonera.com/en/newsroom/press-releases/2013/2/lars-nyberg-leaves-teliasonera>
41. [http://shiftproject.org/sites/default/files/Davis%20&%20Franks\\_Costs%20of%20Conflict\\_SRM.pdf](http://shiftproject.org/sites/default/files/Davis%20&%20Franks_Costs%20of%20Conflict_SRM.pdf)
42. <http://www.avesta.tj/eng/society/2831-tajik-facebook-users-offer-to-boycott-mobile-operators.html>
43. <http://www.dailykos.com/story/2008/06/20/538884/-UPDATED-Telecom-Amnesty-AND-Expanded-Eavesdropping-Powers-Great-Work-Congress>
44. <http://www.movements.org/case-study/entry/syrian-boycott-of-mobile-telecoms>; [http://www.observer.ug/index.php/index.php?option=com\\_content&view=article&id=12729%3Afdc-calls-for-mtn-boycott-&Itemid=96](http://www.observer.ug/index.php/index.php?option=com_content&view=article&id=12729%3Afdc-calls-for-mtn-boycott-&Itemid=96)
45. <http://www.businesswire.com/news/home/20120808006474/en/UANI-Issues-Statement-MTN%E2%80%99s-Talks-U.S.-Government>
46. <http://ftc.gov/opa/2011/03/google.shtm>
47. See for example: The World Bank's Approach to Grievance Redress in Projects ("The costs of ignoring such disputes—or responding too late—are high") [https://www.forestcarbonpartnership.org/sites/fcp/files/WB%20Approach%20to%20Grievance%20Redress%20in%20Projects\\_0.pdf](https://www.forestcarbonpartnership.org/sites/fcp/files/WB%20Approach%20to%20Grievance%20Redress%20in%20Projects_0.pdf) at pg. 2; Compliance Advisor/Ombudsman, A Guide to Designing and Implementing Grievance Mechanisms for Development Projects ("A well-functioning grievance mechanism: [o]ffers an early, efficient, and less costly way to address concerns") <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf> at pg. 10. See also GP 29, Commentary ("...[T]hese mechanisms make it possible for grievances ... to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.").
48. GP 31 [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
49. The Principles for Responsible Contracts recommend ways to ensure access to remedy is integrated into contract negotiations with states. <http://www.business-humanrights.org/media/documents/ruggie/report-principles-for-responsible-contracts-25-may-2011.pdf> Measures to increase leverage over the state and business partners, and push back against restrictions, are listed in Telco Action Plan. [https://www.accessnow.org/page/-/docs/Telco\\_Action\\_Plan.pdf](https://www.accessnow.org/page/-/docs/Telco_Action_Plan.pdf)
50. Without such coordination, telco competition could become a race to the bottom, with less and less protection for human rights in order to secure lucrative contracts from states. Through multistakeholder engagement, the sector can isolate those bad actors and pressure them and their state regulators. Moreover, during moments of crisis, multistakeholder, cross-sector bodies provide strength and safety when pushing backing against rights-abusing demands of governments.
51. Telco Action Plan, Implementation Objectives, B.1.a.
52. In some cases, it is illegal for the telcos to notify affected users of the requests, and some secret orders, such as the U.S. government's National Security Letters, may be difficult to challenge in courts (<https://www.eff.org/cases/re-matter-2011-national-security-letter>). However, Microsoft and Google have released aggregate statistics on the secret letters and other law enforcement requests in their "transparency reports." See <http://www.microsoft.com/about/corporatecitizenship/en-us/reporting/transparency>; & <https://www.google.com/transparencyreport>
53. [http://shiftproject.org/sites/default/files/report\\_46\\_GM\\_pilots.pdf](http://shiftproject.org/sites/default/files/report_46_GM_pilots.pdf) (pg. 22)

54. Telco Action Plan, Implementation Objectives, B.2.a.
55. GP 25, Commentary.
56. After its recent visit to the U.S., the UN Working Group on Business and Human Rights noted, "In some cases multi-stakeholder initiatives have emerged to address the specific challenge of remedy, for example in the ICT sector upholding international standards in the face of government actions that do not protect, and sometimes even abuse, rights to individual freedom of expression and privacy. Such initiatives that can plug gaps in governance where legislation is weak or non-existent are important, though they do not replace the State duty to protect." <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13284&LangID=E>
57. <http://www.trustfundforvictims.org>. The Trust Fund for Victims implements court ordered-compensation to victims, and provides broad support and rehabilitation to those affected. It is funded through fines, forfeitures, and voluntary contributions from multiple stakeholders.
58. TeliaSonera has indicated it "could withdraw from countries with poor human rights records." Reuters, TeliaSonera CEO stakes job on outcome of Uzbek probe, 20 Sept. 2012. <http://www.reuters.com/article/2012/09/20/teliasonera-uzbekistan-idUSL5E8KK49220120920> Companies in other sectors have made the decision to withdraw after egregious human rights abuses, a move which served to increase pressure on peer companies. Bloomberg, Disney Bangladesh Exit Pressure on Clothesmakers Who Stay, 3 May 2013 <http://www.bloomberg.com/news/2013-05-03/disney-bangladesh-exit-puts-pressure-on-those-who-may-stay-1-.html>
59. IHRB, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relations (at Ch. 6) <http://www.ihrb.org/pdf/state-of-play/State-of-Play-Full-Report.pdf>
60. Id.
61. <http://www.teliasonera.com/en/sustainability>
62. <http://www.svt.se/ug/teliasonera-cooperates-with-oppressive-regimes>
63. <http://www.thelocal.se/40334/20120418/#.USfelB2zeul>
64. <http://archive.org/details/theBlackBoxes-HowTeliasoneraSellsToDictatorshipsupdragGranskning>
65. [http://www.theregister.co.uk/2013/04/16/mozilla\\_threatens\\_teliasonera](http://www.theregister.co.uk/2013/04/16/mozilla_threatens_teliasonera)
66. <http://www.teliasonera.com/en/newsroom/press-releases/2013/2/lars-nyberg-leaves-teliasonera>
67. <http://nn.by/?c=ar&i=107577>
68. <http://www.teliasonera.com/en/newsroom/news/2012/an-update-to-our-action-programme-related-to-human-rights>
69. <http://annualreports.teliasonera.com/en/2012/sustainability-report/strategy-and-priority-action-plan/stakeholder-engagement>
70. <http://www.teliasonera.com/Documents/Public%20policy%20documents/Freedom-of-expression-and-privacy-international-frameworks.pdf>
71. [http://annualreports.teliasonera.com/global/download%20center/2012/cr/teliasonera\\_sustainabilityreport\\_2012.pdf?epslanguage=en](http://annualreports.teliasonera.com/global/download%20center/2012/cr/teliasonera_sustainabilityreport_2012.pdf?epslanguage=en) (pg. 5)
72. <http://www.teliasonera.com/en/newsroom/news/2012/teliasonera-partners-with-danish-institute-for-human-rights>
73. [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (GP 25 commentary)
74. [http://annualreports.teliasonera.com/global/download%20center/2012/cr/teliasonera\\_sustainabilityreport\\_2012.pdf?epslanguage=en](http://annualreports.teliasonera.com/global/download%20center/2012/cr/teliasonera_sustainabilityreport_2012.pdf?epslanguage=en) (pg. 5)
75. GP 25, Commentary.