

Implementing the National Action Plan on Business and Human Rights- The pathway to business respect for human rights

The approval in February 2021 by Kenyan Cabinet of the National Action Plan on Business and Human Rights (BHR-NAP), culminates an extensive process that began in 2015 following a recommendation made during Kenya's Universal Period Review by the United Nations Human Rights Council and thus becoming the first African country to initiate and complete the development of a BHR-NAP. Since then, her western neighbour, Uganda, has also followed suit with both countries joining a short list of countries that have developed BHR-NAPs which are national commitments to implement the United Nations Guiding Principles on Business and Human Rights (UNGPs).

The Kenyan NAP includes an implementation matrix that sets the stage for the next step, embedding the responsibility of business respect for human rights. In so doing, effort should be made to leave no-one behind in the protection against human rights abuses by businesses and to offer remedy where human rights abuses are so occasioned. To ensure this, all stakeholders, government, business, communities, and civil society, must prepare to play their respective roles for the successful implementation of NAP. The question is how can this be achieved?

First and foremost, those stakeholders who are playing the role of disseminating and creating awareness must first of all develop a common understanding of the policy so that they do not disseminate conflicting information on NAP and its contents. This means that they must develop a common interpretation and language of the policy, akin to having the same curriculum for the trainings/awareness programmes they intend to roll out.

Second, dissemination should aim to create ownership of the policy. While efforts were made to include every stakeholder through an inclusive and wide consultative process, the implementation committee should aim to expand stakeholder outreach during dissemination. Since most members of the National Steering Committee (the oversight organ established to guide the development of NAP) were representative organisations, they need to promote the policy among their membership with a view to build ownership.

The other critical component would be development of a summary of key messages and action points of the NAP for all actors to engage. This includes translation of the same into Kiswahili for a wider reach - especially the general public and the informal sector which dominates the business landscape in Kenya. However, the United Nations Guiding Principles on Business and Human Rights apply to all businesses irrespective of size, ownership, operational context or structure.

In order for NAP to get acceptance by all businesses, there is need to invest time and resources in dispelling the fear that NAP is meant to introduce new legal requirements for businesses and hence is unfavourable to them. This perception is contrary to the content and intent of UNGPs and by extension NAP. In their preamble, the UNGPs are categorical that they do not “*create any new international law obligations, or limiting or undermining any legal obligations that a State may have undertaken or is subject to under international law with regard to human rights*”. The NAP offers a policy framework to assist businesses to understand their existing legal responsibilities vis a vis human rights which can support them in achieving legal compliance as well as with their general responsibility to respect human rights and hence avoid the pitfalls that come with human rights abuses.

Consequently, the NAP implementation process should foster dialogue amongst stakeholders to enhance the relationship between human rights and business. The National Action Plan on

business and human rights aims at fulfilling this. In any case it is not a fixed policy but rather an evolving one, with an inbuilt review mechanism through which stakeholders are able to apply international and regional human rights instruments, principles and standards within the national context.