

*Foster responsible business conduct in the African tech ecosystem:
Human Rights Due Diligence and Meaningful stakeholder engagement*

26th October 2023, Golden Tulip Hotel, Nairobi, 12.30- 5.00pm

1. Context

Kenya has recognised the UN Guiding Principles on Business and Human Rights (UNGPs) and is in the process of enacting a National Action Plan (NAP). The NAP, which has been transmitted to Parliament has five thematic areas of focus- land and natural resources; revenue transparency; environmental protection; labour; and access to remedy. Actors in the technology sector have been strategising on how to include tech related issues in the NAP. The Nairobi B-Tech meeting provided an opportunity to explore the issues of tech and human rights in Kenya, hear from small and medium enterprises (SMEs) on the challenges in implementing human rights in business and collectively discuss opportunities for fostering responsible business conduct in Kenyan tech businesses.

2. Overview of the session

This was a meeting of local actors drawn from digital rights civil society organisations in conversation with small and medium sized technology businesses. The event was organised by the Office of the High Commissioner for Human Rights (OHCHR) B-Tech Team, supported by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). It aimed to bring together key stakeholders to discuss use cases and best practices for fostering responsible business conduct in the Kenyan Tech Ecosystem. Objectives of the meeting included: to highlight the importance of implementing the UNGPs for tech companies in the region; discuss use cases where the UNGPs have helped to inform right-respecting practice; and identify best practices by tech companies regarding human rights due diligence and stakeholder engagement.

3. Participation

Participants were drawn from local digital rights and youth civil society organisations, industry representative bodies and research institutions. These participants had good knowledge on the impact of technology on human rights and had participated in policy processes. Many however acknowledged that they had not followed developments on the NAP due to competing work, and lack of dedicated resources within their organisations.

The meeting benefitted from participation of the Kenya National Commission on Human Rights (KNCHR), the national human rights institution. KNCHR has been coordinating Kenya's NAP and was therefore instrumental in explaining to participants the progress of the NAP, existing and foreseeable challenges in implementing the NAP, and opportunities through which participants could engage in the process of implementing the NAP.

The session began with a brief overview of the UNGPs and the [B-Tech Africa Project](#), setting a framework for the issues to be discussed. This was followed by presentations from panelists. Bloggers Association of Kenya (BAKE) shared their experiences with development of Kenya's NAP, where they pointed out the challenges with conceptualisation of human rights abuses in tech

businesses. KNCHR gave an update on the progress of the NAP, including challenges and opportunities in the ongoing process. Haki na Sheria and Nubian Rights Forum (NRF) shared case studies on human rights abuses by technology business. Care Pay, an SME in digital healthcare, explained the challenges in implementing human rights for SMEs. They also shared their experiences in complying with the Data Protection Act, a key law through which they ensure data protection and privacy rights. These experiences and case studies elicited discussion among participants particularly on the appropriate regulatory and policy responses to human rights challenges arising from the tech industry in Kenya.

4. Key Takeaways

a) Case Studies – Cautionary tales on technology and human rights

Participants heard of cases where as a result of adoption of technology, people from marginalised communities were completely excluded from important public and private services. Panelists from Nubian Rights Forum and Haki na Sheria, two grassroots organisations working with marginalised groups, explained how private companies offering digital identity infrastructure do not consider human rights risks such as the potential for exclusion and discrimination of people from marginalised groups. Haki na Sheria shared a [report](#) they had co-developed on human rights impact assessments in digital technology projects while Nubian Rights Forum shared a [case](#) they were litigating with others under the French Due Diligence Law.

Both these cases demonstrated the guiding role that UNGP processes and mechanisms such as human rights due diligence, meaningful consultation with potentially affected groups and other relevant stakeholders and remedies for business-related human rights abuses in promoting responsible business conduct.

b) Challenges faced by technology SMEs

SMEs present in the discussion shared the challenges they faced in implementing responsible business conduct frameworks such as the UNGPs. These include pressure to make profit, or in the case of start-ups, to demonstrate the viability of new business ideas and attract further funding. Such pressure meant that these businesses had small teams, and could not afford specialists such as lawyers for compliance, let alone human rights policy experts. Many therefore feared that any new regulation would up the cost of doing business. Another concern raised was that regulation would stifle innovation, especially if they had to carry out additional due diligence for human rights risks. CSOs present appreciated the concerns and offered to work more closely with SMEs to advocate for regulation that enhances human rights without being punitive to SMEs. SMEs were also challenged to innovate around rights respecting business models.

c) Kenya's NAP- a challenge and opportunity for responsible business conduct

Participants were very keen to know the progress of Kenya's NAP. The Chairman of the Bloggers Association of Kenya (BAKE) shared on their involvement in advocating for the NAP. They hoped that discussion of the NAP in Parliament would be prioritised, and the NAP incorporated in upcoming laws. Another point of discussion was that technology had not been identified as a focus area in the NAP. Participants agreed that there was opportunity to mainstream tech once the NAP was published by Parliament for public input.

They therefore resolved to keep contact with each other, and revive previous networks for collaboration.

However, SMEs raised concern that further regulation would be expensive for them. They requested policy advocacy folks from civil society to propose ways in which existing regulation could be strengthened.

5. Way Forward

Participants found the meeting useful and a starting point for possible collaboration between SMEs and digital rights CSOs. While acknowledging that the two groups may not always have the same interests, they found that they had some common grounds such as: a desire for responsible business conduct, regulation that was meaningful for all and an environment that supported tech innovations that were beneficial for all. They therefore agreed to revive old connections such as Whatsapp groups with both groups. Such spaces could be used to escalate business and human rights issues to relevant networks and also discuss and collaborate on upcoming regulation such as the NAP.

6. Conclusion

Kenya is a country with many established technology companies as well as start-ups. These businesses are undertaking innovative projects, some in collaboration with public agencies. In tandem with these developments, there have been many human rights concerns, from issues such as the role of technology companies in electoral projects, financial inclusion for public service delivery and access to the internet. Recent cases involving former content moderators have brought to fore issues of labour rights in the digital economy. Since all these are emerging issues that are not clearly provided for under current laws, discussion on how best to regulate technology business are ongoing. The UNGPs are of interest to stakeholders in these discussions as they provide a guiding framework for businesses on the one hand, as well as remedies for those afflicted by harmful business practices. The Nairobi B-Tech meeting was therefore a starting point for further discourse and collaboration between digital rights CSOs and tech SMEs. There is need to support further engagement among these stakeholders, and include other key actors such as larger technology businesses, academics and policy makers. Such engagement will result in collaboration among the actors and provide lessons for other countries on meaningfully implementing UNGPs in emerging digital economies such as Kenya.

Participants

Priya Shah- Carepay Ltd
Kennedy Kachwanya- Bloggers Association of Kenya
Cyrus Maweu- Kenya National Commission on Human Rights
Mariam Jamal- Haki na Sheria Initiative
Yasah Musa- Nubian Rights Forum
Angela Minayo- Kenya ICT Action Network
Grace Githaiga- Kenya ICT Action Network
Cynthia Chepkemoi- Kenya Womens Finance Trust
Lucy Mwaura- LWM Consultancy
Winnie Ngige- Barizi Data Privacy Services
Victor Ndede – Amnesty International
Margaret Ndungu- Dimension Data
David Tuitoek- Presidential Fellow, NCCG
Arnold Gekonge- Champions for SDGs Youth
Tabitha Wangechi- Digital Rural Foundation
Paul Magacha- Third Eye Cyber
Dr. Melissa Omino- Centre for IP and IT law, Strathmore University
Evanca Ochieng- DPGSA UoN Chapter
Georgina Gitahi- Bryan Moturi and Associates
Mercy King'ori- Future of Privacy Forum
Waceera Kabando- Oxygene Marketing and Communications
Wambui Karori- Data Privacy and Governance Society of Kenya
Ephraim Kenyanito- GIZ
James Mwangera- Kenya National Commission on Human Rights
Grace Mutung'u- B-Tech Africa
Dr. Tomiwa Ilori- B-Tech Africa