

Towards an Inclusive National Action Plan on Business and Human Rights in Nigeria



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1. Introduction

Since 2011, the United Nations Human Rights Council encouraged its member states to produce a National Action Plan on Business and Human Rights (NAP) to promote the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs categorize the duties and responsibilities of the State and businesses against adverse human rights impacts into three pillars: (1) the duty of the state to protect the human rights of the public, (2) the duty of businesses to respect human rights, and (3) access to remedy^[1].

In 2012, the Nigerian National Human Rights institution (NHRC) led the process of developing the draft of the National Action Plan. This involved consultations with relevant stakeholders, focus group discussions, interviews and a strategic multi-

stakeholders forum; all of these resulted in the production of the draft^[2]. However, a crucial aspect was left out during the consultations and development of this draft - **conversations relating to the tech sector.**

Human rights violations cut across all business activities including tech businesses; therefore, limiting the scope of the Nigeria National Action Plan to exclude the tech sector would be detrimental and counterproductive to the implementation of the UNGPs. With the current global digital transformation and an unprecedented pandemic, guaranteeing human rights for everyone is of great importance now and in the future.

[1] United Nations Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights, December 2014, ii.
[2] Nigeria | National Action Plans on Business and Human Rights. <https://globalnaps.org/country/nigeria/>

2. Nigeria ICT Sector and Human Rights

The advent of the General System for Mobile (GSM) in Nigeria in 2001 has resulted in significant transformation in the telecommunications sector; this singular decision morphed into a fast-growing sector in the country. The Information and Communication Technology (ICT) sector has shown considerable evidence as a driver of Nigeria's economic growth; the sector has shown a positive upward trend from contributing 0.6% of Gross Domestic Product in 2001 to over 14% in 2020.

As stated by Statista in May 2021, Nigeria has the highest number of internet users, with more than 154 million people online, as of December 2020, making it the largest Telecommunications market in Africa. The country has a dynamic and growing tech sector with firms delivering services in telecommunications, finance, healthcare, transportation, agriculture and e-commerce. This growth offers possibilities for an increasing workforce in the country.

With the growth of the ICT sector in Nigeria also comes the risk of human rights violation by tech businesses' products and services, and the government. Daily, tech products and services depend heavily on personal data while government agencies roll out

directives to collect personal data and invest in surveillance equipment under the guise of national security.

In October 2015, the National Communication Commission, in collaboration with telecommunication operators, monitored a citizen's calls, data/activities and forwarded the same to security agencies^[3]. According to a report by Oladeinde Olawoyin in 2018, data of customers flying Arik Air (a Nigerian airline) may have been leaked in exposed and vulnerable Amazon S3 buckets^[4].

Also, with instructions from the Nigerian Communications Commission (NCC), telecommunication operators in Nigeria suspended access to Twitter (June 2021)^[5]. These acts threaten both the right to privacy and freedom of expression; such illegal requests from states pose a challenge to tech companies' responsibility to respect human rights.

Human rights are basic standards that all human beings have, and aim to secure dignity and equality for all. Nigeria's constitution and international human rights law guarantees these rights without discrimination.

The right to freedom of expression: section 39(1) of the Nigerian Constitution guarantees freedom that "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference^[6]". This mirrors the language of Article 19 of the Universal Declaration of Human Rights (UDHR).

The right to privacy: Section 37 guarantees and protects the right of Nigerians to privacy with respect to their homes, correspondence, telephone conversations and telegraphic communications. Also, Article 12 of the UDHR emphasised that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks^[7]".

[3] #DataPrivacy: PIN sends Freedom of Information Request to NCC, Techcabal. <https://techcabal.com/2015/10/27/dataprivacy-pin-sends-freedom-of-information-request-to-ncc/>

[4] Oladeinde Olawoyin, Massive Data Leak Affecting Arik Air Customers; Company Slow to Respond: Paine, Data Breaches, 31 Oct 2018, <https://www.databreaches.net/massive-data-leak-affecting-arik-air-customers-company-slow-to-respond-paine/>

[5] #TwitterBan: All you need to know about Nigerian gov't's Twitter ban. <https://www.premiumtimesng.com/news/top-news/465943-twitterban-all-you-need-to-know-about-nigerian-govts-twitter-ban.html>

[6] Constitution of the Federal Republic of Nigeria, 1999

[7] Universal Declaration of Human Rights

3. Considering the tech sector in the National Action Plan.

In agreement with UNGPs, tech companies are responsible for respecting human rights (Pillar 2). States are responsible for protecting human rights (Pillar 1); therefore, they should monitor the extent to which tech companies are discharging this responsibility - **executing human rights in their services, procedures and policies.**

The development of a NAP is fundamental for improving the policy and regulatory framework and to implement the UNGPs successfully. The Nigerian NAP provides an opportunity to establish and define the measures to ensure that human rights are respected by businesses including tech companies.

Tech companies can play an essential role in respecting human rights, such as providing remote access to Education during the COVID 19 pandemic (Right to Education). However, they can also pose risks to them by blocking access to information. For example, in November 2017, MTN (AS29465) network restricted access to Najj,

a popular news outlet, and other websites[8]. Hence, the need to provide insight into tech sector-related human rights impacts when considering the tech sector in the National Action Plan and highlighting the responsibility of the tech sector to respect human rights.

To implement these efforts, tech companies in Nigeria should prioritise three significant elements to put their responsibility to respect into practice:

1. Have a public policy commitment to respect human rights. This commitment must be embedded throughout the organisation's culture
2. Have human rights due diligence processes to measure a human rights impact assessment and communicate how they respect and address human rights
3. Have procedures to provide or enable remedy to those it has caused harm.



[3] #DataPrivacy: PIN sends Freedom of Information Request to NCC, Techcabal. <https://techcabal.com/2015/10/27/dataprivacy-pin-sends-freedom-of-information-request-to-ncc/>

[6] Oladeinde Olawoyin, Massive Data Leak Affecting Arik Air Customers; Company Slow to Respond: Paine, Data Breaches, 31 Oct 2018, <https://www.databreaches.net/massive-data-leak-affecting-arik-air-customers-company-slow-to-respond-paine/>

[5] #TwitterBan: All you need to know about Nigerian govt's Twitter ban. <https://www.premiumtimesng.com/news/top-news/465943-twitterban-all-you-need-to-know-about-nigerian-govts-twitter-ban.html>

[6] Constitution of the Federal Republic of Nigeria, 1999

[7] Universal Declaration of Human Rights

[8] Nigeria: Measuring Internet Censorship. <https://ooni.org/post/nigeria-internet-censorship/>



4. Recommendations

Upon this premise, to develop a realistic NAP that takes the tech sector in Nigeria into consideration, the government should work towards the following recommendations:

I. Commitment to Inclusion

The NAP must address and protect the human rights of all members of society, particularly vulnerable groups (including women, children, persons with disabilities etc.).

II. Communication and Transparency

The development process of the plan must be transparent, with detailed and periodic information being provided to the public about the NAP's development or contents.

III. Governance and Stakeholder Participation

The NAP draft process took five years before completion, yet it involved inadequate consultation, failing to include the tech sector. Future NAP processes must involve relevant government agencies and institutions with commissions pertinent to the tech sector. Also, non-state actors such as the private sector, civil society organization, technical communities, and academia with a keen interest in the tech sector must be considered for consultation.

IV. Relevant Content Inclusion

The NAP must reflect a multi-stakeholder consultation and engagement process with relevant clauses and input provided by the non-state actors and stakeholders, thereby ensuring that all information is considered

5. Conclusion

With about 12 countries having National Action Plans (NAP) that reference Information and Communications Technology (ICT) worldwide, the NAP presents Nigeria with an opportunity to reference the tech sector while implementing the UNGPs. The Nigerian government must understand the value of the plan as it offers the opportunity for the state to work in partnership with non-state actors and stakeholders in promoting protection and respect for human rights.



