

Statement Read by Michael K Addo

Vice-Chair of the Working Group on Business and Human Rights

Open Consultation on the strategic elements of National Action Plans in the implementation of the UN Guiding Principles on Business and Human Rights

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1. Introduction

Excellencies, distinguished delegates, colleagues, ladies and gentlemen. I too wish to join the Chair of our Working Group in welcoming you to this Open Consultation on National Action Plans and to affirm the importance of your contribution to the development of our strategy to promote the implementation of the UN Guiding Principles on Business and Human Rights.

You will recall that at its sixth session in November 2013, the Working Group resolved to devote its 2014 report to the General Assembly to the subject of National Action Plans. The purpose of this Open Consultation is to solicit and explore the views of all stakeholders on the strategic elements of National Action Plans, with particular attention to:

- The role of different stakeholders in the development of National Action Plans;

- Key substantive content for National Action Plans, such as policy guidance on reporting, procurement, capacity building and potential regulatory reform aimed at addressing the legal and practical barriers of access to remedy;
- The implementation and periodicity of review of National Action Plans;
- The importance of National Action Plans in the Global South and the challenges facing their development across this wide region.

The outcomes from this Open Consultation will feed into the Working Group's general work and, specifically, its 2014 report to the UN General Assembly.

Beyond the General Assembly Report the Working Group expects to continue its learning and sharing of knowledge on National Action Plans through a dedicated portal on its website and through further discussions with stakeholders. In this regard, the Working Group, in collaboration with its partners, proposes to develop an Implementation Guide for National Action Plans - the preliminary version of which is expected to be published later this year. The aim of this will be to provide support through the sharing of common understandings between stakeholders. The Implementation Guide will provide an opportunity for the Working Group to express its thoughts on emerging evidence of good practice in the implementation of the Guiding Principles.

In seeking to inform our deliberations today, I will speak about the strategic value of National Action Plans, as well as the processes by which they may be formulated and the actual content that they touch upon.

The Value of National Action Plans

National Action Plans have always been part of the Working Group strategy adopted in 2012 for the implementation of the Guiding Principles. Two years down the line, further reflection and available evidence suggest a stronger and dedicated focus on National Action Plans because of the qualitative characteristics they bring to the implementation of the Guiding Principles. It is important to note in this regard that:

- a. National Action Plans can accommodate all three pillars as required by the holistic and integrated implementation of the Guiding Principles;
- b. They are a sufficiently flexible instrument to respond to the diversity of business and human rights problems that a country might face as well as the diversity of regulatory environments;
- c. In a related sense, therefore, National Action Plans support the organic implementation of the Guiding Principles based on the identified needs of the individual community rather than on the experience of another community;
- d. Nevertheless, National Action Plans allow for shared learning between communities of stakeholders.

With the attraction of National Action Plans as an instrument for the implementation of the Guiding Principles one can easily overlook some basic and yet searching questions such as:

- a. How to initiate a National Action Plan;
- b. What processes make a National Action Plan effective?
- c. Whether there is a minimum content for a National Action Plan?
- d. What international process can encourage State commitment?
- e. How often should the content of a National Action Plan be revisited and reviewed?

It is to these and similarly important questions that we are hoping you would turn your attention during this Open Consultation and for which I propose the following general reflections:

In general, the Working Group expects that, within government, steps should be taken to ensure policy coherence based on clear leadership. In addition, we all agree that consultation, especially multistakeholder consultation, is an important part of the National Action Plans process. It will be useful to hear your thoughts on what form these processes should take and what challenges these process elements throw up? Is there evidence of good practice for responding to these challenges?

In some jurisdictions, the objective may be to develop a standalone National Action Plan on implementation of the Guiding Principles, whilst others may elect to develop their plan as a component of a broader human rights or CSR strategy. Is there any value in one or the other approach? Other issues upon which you may wish to reflect include:

- Whether there is an optimal model for a National Action Plan? How can implementation goals best be achieved without duplicating existing efforts, creating potential redundancies and using resources inefficiently?
- How might the State maximise internal resources and draw upon external expertise?

Evidence gathering and consultation

The development of a National Action Plan is likely to involve a form of baseline assessment and an alignment of existing law and policy against the Guiding Principles. This is always a good starting point for the development of National Action Plans for the implementation of the Guiding Principles because the outcomes and lessons from this exercise will inform the development of strategy and planning. Nevertheless, it is also true that the essential components of the State's planning and implementation are likely to develop and evolve over time before the emergence of distinct areas of prioritisation. Staging and staggering of the policy strategy of the National Action Plan may in certain circumstances, be an effective way forward. In all cases, transparent

consultations with stakeholders will ensure that the vision of the government on its strategy is communicated to all those who have to work with the National Action Plan or to assess the extent to which their input was taken into account in the draft or final National Action Plan.

Excellencies, distinguished delegates, ladies and gentlemen, you may wish, in your contributions to this Open Consultation to reflect on:

- The sequence and interaction between evidence-gathering and the development/publication of a National Action Plan?
- Whether it is generally expedient and preferable that a National Action Plan be developed ahead of a full evidence-gathering exercise, and, if so, how should priorities be established?
- What are the benefits and disadvantages of reliance on internal resource or external expertise, particularly when assessing policy effectiveness and the practicalities of implementation within a State's legal, regulatory and adjudicative frameworks?
- What role stakeholders including NHRIs, civil society and the business community may play in identifying national issues and priorities; in conducting baseline studies?

Substantive content

All three Pillars of the Guiding Principles should be addressed in a National Action Plan. Content must be State-specific but certain policy areas may be identified as commonly relevant to all States in the implementation of the Guiding Principles. Leading by example, the State's own business activities through State-owned enterprises, its procurement policies, its public-private initiatives and its export credit guarantee schemes should be fully aligned with the Guiding Principles and affirmed in the National Action Plan.

The focus of government involvement with business should be complemented by similar guidelines or indeed legislation for ensuring that business enterprises respect human rights in all their activities. The circumstances of the individual country may suggest that the leadership for business alignment be recognized within the business community itself, and where necessary within specific industries. The management of supply chains is an excellent example for which sector leadership may be more expedient.

The phrase 'to know and show' has relevance in a National Action Plan also. It suggests the expectation for companies to be able to communicate how they respect human rights or redress adverse human rights impacts in their activities.¹ In the context of a National Action Plan for the implementation of the Guiding Principles, it is appropriate for States to reinforce the message about the importance of communication or indeed require it as part of the

¹ Guiding Principle 21

reporting expectations of their incorporation. This initiative need not be a totally new and unrehearsed requirement. In fact, it could be an additional line in current corporate reporting undertakings. For some corporations that already report and communicate on their activities using the fourth generation Global Reporting Initiative (GRI) standard, human rights and the Guiding Principles form a distinct line for assessment.

Ensuring that there are effective remedies in the event of adverse human rights impacts is another of the key subjects to which a National Action Plan should devote space and attention. This issue requires a holistic and complementary response in the National Action Plan in which the adequacy of judicial and non-judicial mechanisms alongside corporate grievance mechanisms are assessed. Indeed, a National Action Plan should reflect on the value of existing mechanisms in responding to the adverse corporate human rights impact. In this regard, States should take steps to address legal and structural barriers to effective judicial remedy alongside the enhancement of non-judicial mechanisms such as the National Contact Points under the OECD Guidelines for Multinational Corporations or the redress mechanisms offered by NHRIs should be further secured. A fully integrated and comprehensive regime for the effective redress of adverse corporate human rights impacts may emerge after a period of time but in the short term, sufficient policy adjustments should be put in place right away to address impunity.

In view of the extra-territorial impact of corporate activities, calls for governments to have clear policies on the extra-territorial application of corporate policies is a legitimate one. The Guiding Principles acknowledge that whilst there is no requirement in international law for States to apply policy standards or assume jurisdiction for extra-territorial activities of their corporations, there is no prohibition either. National authorities are free to develop such standards and a National Action Plan is a good place to initiate mechanisms on this complex subject.

Reporting and review

In the end, National Action Plans should be regarded as an evolutionary process that require monitoring and review over time. To this end, National Action Plans should indicate objectives which may be measured by reference to particular actions and timeframes. It may be desirable to nominate a specific department, unit or entity to follow up and report on progress. The review process should be sufficiently transparent to enable stakeholders to evaluate the status of implementation on an ongoing basis.

Excellencies, distinguished delegates, ladies and gentlemen, we have an opportunity through our deliberations here today to contribute to positive change. This is the least that world out there expects of us. Let us take that responsibility seriously.

I thank you for your kind attention and I look forward to your contributions during this Open Consultation.