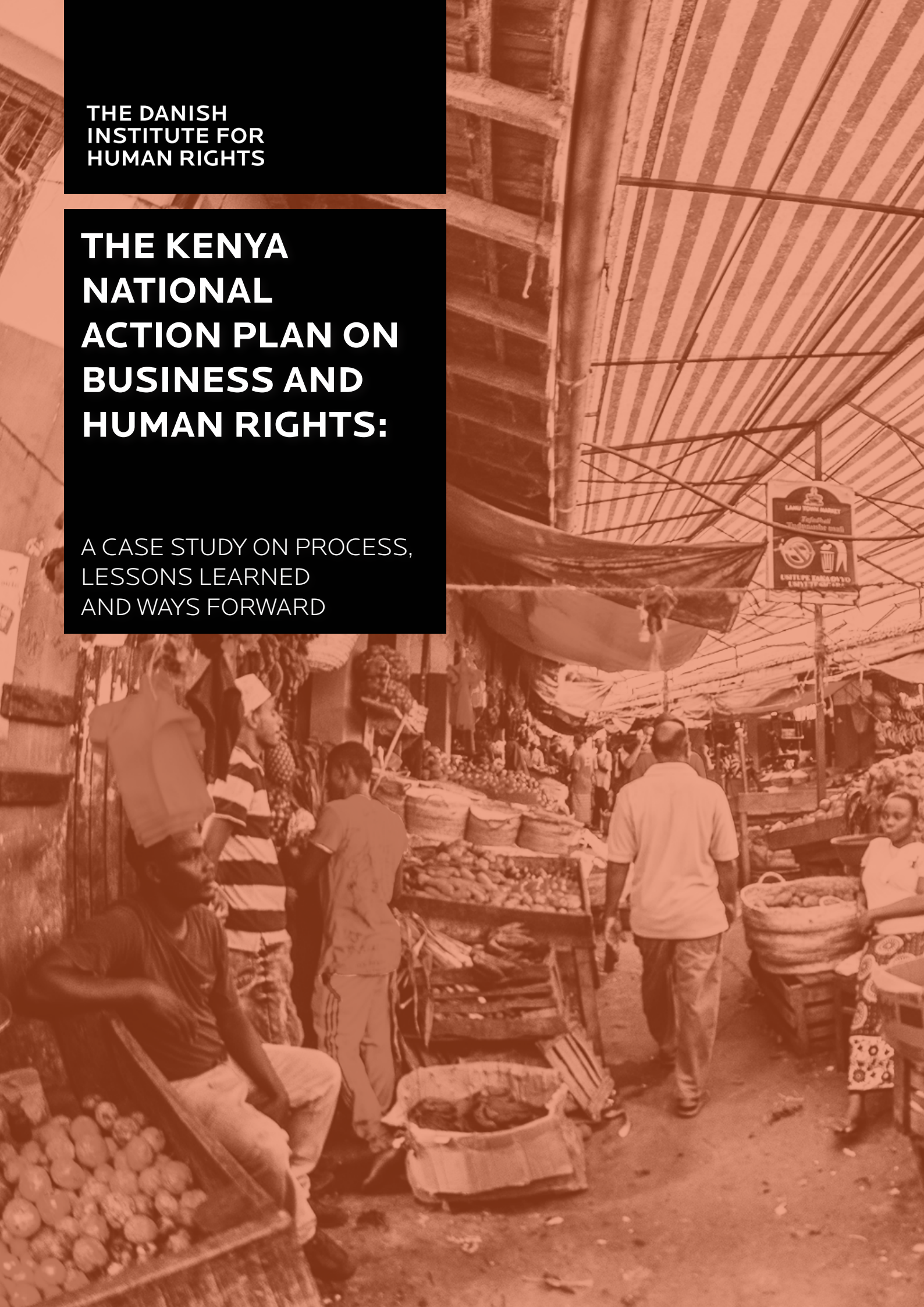


THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

THE KENYA NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS:

A CASE STUDY ON PROCESS,
LESSONS LEARNED
AND WAYS FORWARD



OCTOBER 2020



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The Danish Institute for Human Rights
Wilders Plads 8K
DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

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AUTHOR:

Andrew Charles Odete, Adviser, Human Rights and Business Department, Danish Institute for Human Rights

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LIST OF ABBREVIATIONS

BHR – Business and Human Rights

COTU – Central Organization of Trade Unions

CSO – Civil Society Organisation

DIHR - Danish Institute for Human Rights

DoJ - Department of Justice

KHRC - Kenya Human Rights Commission

KNCHR - Kenya National Commission on Human Rights

NBA - National Baseline Assessment

NAP - National Action Plan

NGO – Non-Governmental Organisation

NHRI - National Human Rights Institution

NSC - National Steering Committee

OHCHR - The Office of the United Nations High Commissioner for Human Rights

SDGs - Sustainable Development Goals

UNGPs - United Nations Guiding Principles on Business and Human Rights

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EXECUTIVE SUMMARY

Kenya was the first African state to develop a National Action Plan on Business and Human Rights (NAP).¹ By reflecting on the NAP process, this case study seeks to provide insights and lessons for: other countries intent on developing a NAP; national human rights institutions (NHRIs) and their regional and international networks; civil society organisations (CSOs); businesses and private sector organisations; trade unions; and rights-holder groups, all of whom are key stakeholders in business and human rights (BHR). To identify successes and lessons learned, this case study has drawn upon interviews with key actors in the Kenya NAP development process.

The development of the Kenya NAP signifies a crucial step by the Government of Kenya in providing a sound regulatory framework for BHR, in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs). The draft Kenya NAP stipulates national policy priorities on BHR, with a focus on five substantive themes: (1) Land and Natural Resources; (2) Revenue Transparency; (3) Environmental Protection; (4) Labour; and (5) Access to Remedy. It also contains policy actions for each of the three pillars of the UNGPs; as well as a chapter on implementation and monitoring.

The main steps in the development of the Kenya NAP were: Kenya's acceptance of the Universal Periodic Review (UPR) recommendation by Norway that Kenya develops a NAP on Business and Human Rights; the development of a concept paper on the UNGPs to inform government policy intervention and as an advocacy paper; an official statement by the Attorney General committing government to develop a NAP; a briefing meeting with businesses on the NAP; establishment of the National Steering Committee (NSC) on the NAP; convening of the Stakeholder Forum on the Development of a NAP; conducting a national baseline assessment (NBA); development of the Human Rights Country Guide for Kenya; convening of policy dialogue meetings with state actors, non-state actors and administration of justice actors; convening of nine regional consultations; convening of four national consultations; convening thematic working groups; validation meetings in the eight regions; and drafting of the NAP.

In the Kenya NAP development process, the Department of Justice (DoJ) and the Kenya National Commission on Human Rights (KNCHR) took the lead in the overall coordination of the process, with the multi-stakeholder NSC serving as the decision-making organ. The process benefitted from technical support from a cross-section of actors – including the KNCHR, the Danish Institute for Human Rights (DIHR), the Kenya Human Rights Commission (KHRC) and the Office of the UN High Commissioner for Human Rights (OHCHR) – and from five thematic experts, each leading a thematic working group. The KNCHR demonstrated the crucial role that NHRIs can potentially play in the development of a NAP. The KNCHR developed the process' foundational document – the NBA – provided technical support to the process, co-facilitated meetings of the NSC and hosted the NAP Secretariat, alongside the DoJ.

Government commitment and leadership of the process not only assured the diverse stakeholders and rights-holders of the credibility of the process, but it also facilitated the

processes using government infrastructure, information and personnel. The reliance upon a multi-stakeholder NSC as the decision-making organ contributed to all-around goodwill by rights-holders and other stakeholders participating in the process and a coordinated approach to developing the NAP. Lastly, the acceptability of the dual capacity of the KNCHR as a state institution with an official human rights mandate as well as its position as a watchdog institution – independent of government – ensured its success in mobilising participation and advancing the process.

On the other hand, the consultations were not deep enough to generate the nuanced and differentiated positions and interests of rights-holders and stakeholders within the various broad cluster groups represented. This may have been, in part, because of the limited resources available for the consultation processes. It broadly points to the need for adequate resources for developing a NAP. While the insistence on technical rigour led to a NAP that is well grounded on the UNGPs, national and international laws, arguably not enough attention was paid to involving political actors across the different stakeholder groups. It has been suggested that this may have bereft the process of the political capital required to develop strong national movements and consciousness for advancing human rights in the context of business activities, emphasising the need for strong consultation in NAPs processes.

The Kenya NAP development process is a timely reference point for other countries and actors seeking to contribute to the development of a NAP and respond to the policy requirements of the UNGPs.

1

INTRODUCTION



1.1 BACKGROUND

This case study outlines and reflects upon the process of developing the Kenyan National Action Plan (NAP) on Business and Human Rights (BHR), the first NAP to be developed in Africa.² The case study charts the journey from the initial stages when the Government of Kenya officially committed to developing a NAP, to the current state of play with the NAP having been finalised, awaiting adoption by the National Cabinet and further action by the relevant actors, for implementation. This case study documents lessons learned – including good practices and challenges – from the Kenya NAP institutional framework and consultation process, with a view to:

- o providing concrete examples of successes and challenges and how they have been addressed;
- o informing the implementation phase of the NAP in Kenya;
- o informing similar processes in other countries; and
- o producing a learning tool for national human rights institutions (NHRIs) and their networks on the potential role of NHRIs in NAP processes.

The target audience for this case study includes: NHRIs and their regional and international networks; relevant government departments and agencies; civil society organisations (CSOs); businesses and private sector organisations; trade unions; and rights-holder groups in Kenya and in other countries intent on developing NAPs.

The Danish Institute for Human Rights (DIHR) has collaborated with the Kenya National Commission on Human Rights (KNCHR) – a lead actor in the Kenya NAP development process – with a view to providing technical advice and support to the National Steering Committee (NSC) on BHR. The DIHR's input to the process has included: capacity development for institutions on BHR and on the NAP process, as well as substantive contributions to developing the NBA, the Kenya Business and Human Rights Country Guide and the draft NAP. The DIHR and the KNCHR are both A-status accredited NHRIs and have a Memorandum of Understanding (MOU) guiding ongoing collaboration on BHR and sustainable development. It is within this collaboration that this case study has been developed.

The case study has been developed based on interviews with key stakeholders involved in the NAP process and a desktop review of NAP process documents and outputs (see further Annex 1).

Box 1: Case Study Overview

- o Chapter 1 is the introduction, providing the context for the development of the NAP.
- o Chapter 2 discusses coordination among key institutions and agencies in the NAP process. It describes the specific roles of the key actors in coordinating the process.
- o Chapter 3 provides an appraisal of the consultation processes, with emphasis on the quality, level and depth of participation and inclusion of different stakeholders and rights-holders.
- o Chapter 4 examines the role of the KNCHR in the NAP process. It describes the NHRI's concrete contribution to the process in light of the Commission's independent NHRI mandate, as per the Paris Principles and Kenyan law.
- o Annex 1 provides a summary of the methodology used in developing the case study.

1.2 OVERVIEW OF THE KENYA NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS (NAP) PROCESS

The Kenya NAP process drew from the National Action Plans on Business and Human Rights Toolkit, developed by the International Corporate Accountability Roundtable and the DIHR.³ The toolkit provided insights on: conceptualisation of a NAP; the NAP life cycle; minimum content; and on the mechanisms for enabling participation of rights-holders and other stakeholders. Kenya adopted the guidance of the UN Working Group on Business and Human Rights, which provides a five-phase approach to developing a NAP: (1) initiation; (2) assessment and consultation; (3) drafting; (4) implementation; and (5) update.

The milestones in the development of the NAP are illustrated in Figure 1, below.

FIGURE 1: MILESTONES IN THE DEVELOPMENT OF THE KENYA NAP



1.3 CONTENTS OF THE KENYA NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

Box 2: National Action Plans on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights (UNGPs) were unanimously endorsed by the UN Human Rights Council in June 2011.⁴ This was a crucial development, being the first widely accepted international framework on BHR. The UNGPs take a three-pillar approach, stipulating: the state duty to protect; the business responsibility to respect; and the roles of both states and businesses in ensuring access to effective remedy for business-related human rights abuses. The UN Working Group on Business and Human Rights has recommended that states promulgate NAPs for implementing the UNGPs.⁵ Whereas NAPs may not necessarily create new legal obligations, they provide a coherent framework for anchoring the national regulation of BHR within the local context. They also have the potential to inspire more effective legal and policy frameworks for responsible business conduct.

The draft Kenya NAP identifies national policy priorities on BHR, regulating the conduct of businesses and spelling out concrete commitments by government for addressing adverse business-related impacts. It consolidates government efforts aimed at the protection and fulfilment of human rights by state and non-state actors, in line with the UNGPs. As such, it provides a framework for domesticating the UNGPs, with specific focus on five thematic areas (see Box 3). Crucially, it establishes a coherent framework for addressing BHR, with a view to establishing consistency in approach and efficiency in understanding, tracking and promoting human rights in the context of business activities.

Box 3: Priority Thematic Areas for the Kenya NAP⁶

- o **Land:** Access to land, titling, management, legal framework, community land and ownership, voluntary and involuntary displacement, compensation.
- o **Environment:** Environmental impact assessment, environmental safeguards, participation and access to information, licensing.
- o **Labour:** Vulnerable groups in employment, occupational health and safety, terms and conditions of work, freedom of association and collective bargaining, equality of opportunity and treatment, forced labour and child labour, casualisation of labour.

Box 3: Priority Thematic Areas for the Kenya NAP

- o **Revenue Transparency and Management:** Public Procurement, public licensing, taxation and human rights, ease of doing business (incentives), beneficial ownership.
- o **Access to Remedy:** Case management, legal aid, Alternative Dispute Resolution (ADR), judicial and non-judicial mechanisms.

The draft Kenya NAP comprises four substantive chapters. The first of these briefly charts the process of developing the NAP. The second chapter analyses the five thematic areas and unpacks the policy concerns thereunder. The third chapter spells out the policy actions using the three-pillar framework, as under the UNGPs. The last chapter is a matrix which projects the implementation and monitoring of the draft NAP.

Whereas the draft Kenya NAP comprehensively addresses core BHR concerns, the language adopted in the draft NAP has been faulted for being passive, with the government's role in the enforcement of the law often worded as discretionary.⁷ Indeed, the drafters of the NAP deliberately adopted the softer wording revealing the need to balance between enhancing the regulatory duty of government and the pragmatism of negotiating a roundly acceptable policy, which takes into account the unique policy context of the country.

Beyond the human-rights-based approach, the draft Kenya NAP invokes the commitments of the Government of Kenya to meeting the Sustainable Development Goals (SDGs),⁸ providing a reinforcing intersectionality to addressing the state's human rights and developmental commitments.

2

COORDINATION AMONG KEY AGENCIES INVOLVED IN THE NAP PROCESS AND FUNCTIONS OF THE STEERING COMMITTEE



WHAT HAPPENS IN THIS CHAPTER?

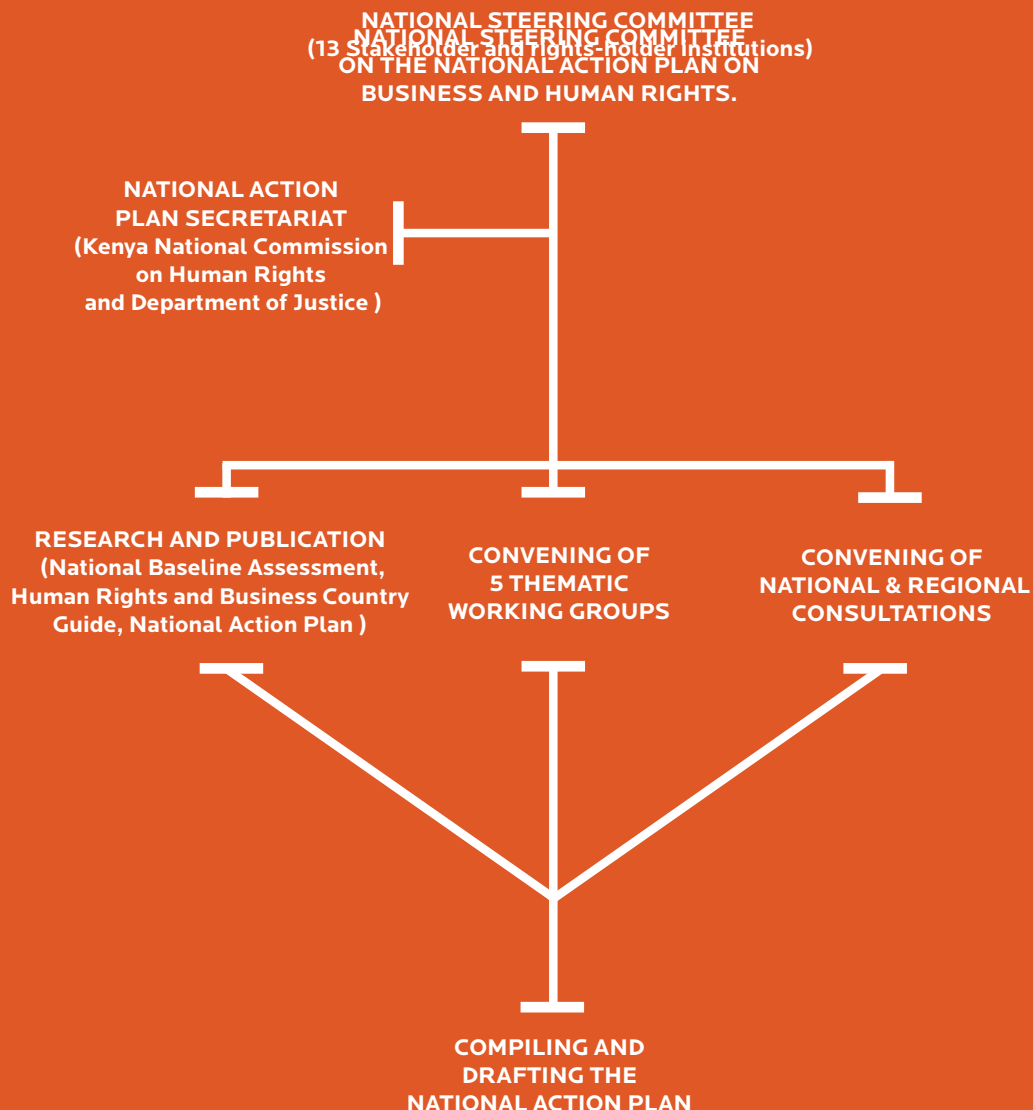
This chapter appraises the internal coordination among lead organisations, and coordination with external stakeholders in the Kenya NAP process. It addresses the following questions:

- o Who were the main actors in coordinating the development of the Kenya NAP?
- o What were the mechanisms for coordinating the development of the NAP?
- o What role did each actor play?
- o What were the successes, challenges and lessons drawn from the experience?

2.1 MECHANISMS FOR COORDINATING THE NAP PROCESS

The Kenya NAP development process relied upon a framework for coordinating the participation and contribution of the various institutions and stakeholders. The main organs for coordination included: The National Steering Committee (NSC) on the NAP; the Kenya NAP Secretariat; and thematic working groups (see Figure 2).

FIGURE 2: ORGANOGRAM OF THE COORDINATION MECHANISMS FOR THE NATIONAL ACTION PLAN



The main organs involved in coordinating the NAP process and their respective roles are discussed below.

A) THE NATIONAL STEERING COMMITTEE ON THE NATIONAL ACTION PLAN ON BHR

The NSC was set-up through a multi-stakeholder forum held in Nairobi in 2016.⁹ Its functions include: providing strategic guidance to the process; participating in the NAP process; promoting outreach and mobilisation for the process; and reviewing NAP documents. It is co-chaired by the Department of Justice (DoJ) and the KNCHR. The NSC, as the main coordinating organ, brought together institutions with diverse perspectives and objectives and with varying operational approaches. To enhance coordination and harmony, the following steps were undertaken:

- o The NSC developed its own terms of reference and work plan which guided its mandate in aggregating the respective objectives of its members towards a common course.
- o To execute the decisions and support the coordination among NSC members, the NAP Secretariat was established, within the KNCHR.
- o Decision-making on the NAP process and the assignment of tasks to institutional actors or consultants was taken through consensus, among the NSC member institutions.
- o Technical input into the content of the NAP was left in the hands of independent experts working through thematic working groups as special consultants commissioned to develop reports or to compile content.

Box 4: A List of the 13 Organisations on the National Steering Committee (NSC):

- o State Law Office and the Department of Justice
- o Kenya National Commission on Human Rights
- o National Gender and Equality Commission
- o Ministry of Labour and Social Protection
- o Ministry of Energy and Petroleum
- o Central Organization of Trade Unions
- o Kenya Human Rights Commission¹¹
- o Federation of Kenya Employers
- o Kenya Private Sector Alliance
- o Global Compact Network Kenya
- o Council of Governors
- o Office of the UN High Commissioner for Human Rights
- o Institute for Human Rights and Business

B) THE KENYA NAP SECRETARIAT AT THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

The Kenya NAP Secretariat is housed at the national office of the KNCHR. The Secretariat coordinates the day-to-day operations relating to the development of the NAP. This coordination function and support includes the provision of logistical support in mobilising, convening and facilitating meetings, maintaining records of the various processes and disseminating information.

C) THEMATIC WORKING GROUPS

The five thematic working groups on Land, Environment, Labour, Revenue Transparency and Management, and Access to Remedy, each led by a thematic expert, spearheaded development of thematic background papers which informed the contents of the NAP. The thematic experts coordinated the technical input into the Kenya NAP, through consultation meetings with diverse actors.

2.2 MAIN INSTITUTIONS INVOLVED IN COORDINATING THE NAP DEVELOPMENT PROCESS

The Kenya NAP development process enlisted the participation of several key institutions in various coordination capacities, as described below:

STATE LAW OFFICE AND THE DEPARTMENT OF JUSTICE

The DoJ, as the government department in charge of policies on human rights, developed the conceptual framework for the NAP process. This concept was shared for consensus with key stakeholders. Thereafter, working with the KNCHR, the DoJ convened the initial conversations which resulted in the constitution of the NSC as a multi-sectoral organ for decision-making. The DoJ also sits on the NSC as co-chair, alongside the KNCHR. The DoJ's role in the process includes representing overall government positions – in coordination with other government departments. As the lead government department in the process, it acts as the link with government. The DoJ provides support to the Kenya NAP Secretariat which is housed at the KNCHR, including through mobilisation of participation in the process, especially where government departments and agencies are concerned. It also maintains official records of the NAP processes, a role which is shared with the KNCHR.

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

As Kenya's NHRI, the KNCHR hosts the NAP Secretariat whose role is to convene consultations, convene the NSC and host the funding and implementation of various NAP-related projects. As the host of the NAP Secretariat, the KNCHR provides both technical and logistical support to other actors in the NAP process, through a NAP Desk, which sits under the institution's BHR Programme. Secretariat support includes convening and hosting meetings of the NSC, maintaining official records of the meetings, as well as coordinating the work of the various members of the NSC for execution of allocated tasks. It also maintains a database of the outputs of the NAP process and the website: nap.knchr.org.

GLOBAL COMPACT NETWORK KENYA

The Global Compact Network Kenya's position on the NSC was instrumental as a rallying point for the participation of private sector actors. The network mobilised and coordinated the input and participation of private sector actors by convening consultations and dissemination meetings for private sector organisations and by consolidating their positions and representing the same at the NSC. It often worked in collaboration with the Federation of Kenya Employers and the Kenya Private Sector Alliance, both of whom sat on the NSC, broadly representing private sector organisations. The Global Compact Network Kenya, convened the initial briefing for businesses on the NAP, alongside the DoJ and the KNCHR, on April 6, 2016. It also organised consultations between businesses and the UN Working Group on Business and Human Rights, as well as training sessions for businesses, in preparation for participation in the NAP development process.

KENYA HUMAN RIGHTS COMMISSION (KHRC)

The Kenya Human Rights Commission (KHRC), a national non-governmental organisation (NGO), is among the earliest originators of the proposal to developing the Kenya NAP. The KHRC, through its standing Trade Justice and Labour Rights programmes, coordinated CSO participation in the process. As a member institution of the NSC, it consolidated and represented the views of rights-holders. It also coordinated the development of the Kenya Business and Human Rights Country Guide and the NBA. The KHRC also co-convened, alongside the DoJ and the KNCHR, a consultative meeting with representatives of indigenous peoples.

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

The OHCHR was invited to sit on the NSC as a strategic member organisation, mainly owing to its comparative global mandate and expertise in human rights and its strategic networks. The OHCHR was an integral link in coordinating communications and exchanges between the NSC and the UN Working Group on Business and Human Rights and other relevant international actors. In turn, the UNWG not only provided technical expertise but also disseminated resource materials on BHR to the NSC. The OHCHR also provided links and placement support to various actors within the NSC to international platforms for engagement on BHR. It was also instrumental in financing the NAP website¹⁰ which has been a publicly available reservoir of information on the Kenya NAP, including critical documents and developments.

FEDERATION OF KENYA EMPLOYERS

The Federation of Kenya Employers coordinated the participation of employers in the process. It consolidated and represented their views and aspirations on the NSC. The Federation of Kenya Employers was instrumental in mobilising the participation of its members at the regional consultations.

CENTRAL ORGANIZATION OF TRADE UNIONS

Being the main umbrella body of trade unions in Kenya, COTU represented Kenyan workers' interests on the NSC. COTU relied upon its countrywide branches to provide outreach on the NAP development process to its wide membership. COTU also consolidated the views of constituent trade unions and mobilised their participation at the regional consultations. The Labour Rights Thematic Working Group benefited from the participation of COTU and its affiliate trade unions.

H) DANISH INSTITUTE FOR HUMAN RIGHTS (DIHR)

The DIHR provided project-based technical and financial support to the KHRC and the KNCHR for the development of the NBA and the Kenya Country Guide for Business and Human Rights, which served as among the foundational situational analysis on BHR in Kenya. In addition, the DIHR provided specific expertise in aligning the NAP with the SDGs framework.

2.3 SUCCESSES IN COORDINATION

STATE OWNERSHIP OF THE NAP PROCESS: The complementary coordination and leadership roles by the DoJ and the KNCHR ensured that the process proceeded upon the assurance of official government support, thereby inspiring sustained stakeholder participation. The official capacities of both the DoJ and the KNCHR as state institutions meant that the initiative would have access to crucial information and data held by government and to the supportive infrastructure of government in implementing the NAP process activities. While the Government of Kenya did not provide direct funding for the NAP, it provided logistical and technical support to the process, including by convening meetings of the NSC, providing relevant information in government custody and security for NAP related activities. The lead role played by the government potentially augurs well for the ultimate adoption and implementation of the NAP.

THE ESTABLISHMENT OF THE NSC: The role of the NSC in determining key process milestones and in assessing the respective process deliverables by member institutions and other actors provided a sense of focus and consistency towards achieving the overall NAP process outcomes. The sense of mutual accountability contributed to a results-based process. Furthermore, the layered approach to coordinating activities also instilled a sense of ownership by implementing organisations. The multi-stakeholder make-up of the NSC brought a sense of ownership of the process by the crucial NAP process stakeholders and rights-holders as reflected on the NSC. The NSC adopted a model of arriving at decisions mainly through consensus, thereby pre-empting a sense of alienation or fallouts with valuable constituencies. The all-around goodwill ensured working harmony and long-term commitment to the process by the NSC member institutions and their respective constituents. A seat on the highest decision-making organ meant that member institutions would raise any niggling concerns directly with the NSC and that resolution of such concerns would be reached speedily, thereby helping to mitigate disgruntlement. The cross-departmental collaboration among participating government ministries created a format for engagement with non-government stakeholders; developing and implementing a work plan and allocating resources for the work plan's implementation.

RELIANCE ON EXPERT GUIDANCE AND INPUT: The reliance on expert input and guidance in coordinating the generation, analysis and compilation of the substantive content of the NAP, provided quality assurance of the content and process. Objective expert input diminished any sense of vested interests among stakeholders, thereby enhancing the credibility of the process outputs. The NSC was particularly effective as the lead coordinating organ of the NAP process because it was well grounded in the content of the UNGPs, having benefitted from capacity development by the UN Working Group on Business and Human Rights.

POOLING OF FUNDS, TECHNICAL AND LOGISTICAL CAPACITIES BY MEMBERS OF THE NSC: Member institutions of the NSC and donor organisations contributed institutional financial resources to advance specifically identified NAP process interventions, thereby plugging financial resource gaps. The different institutions readily collaborated in sharing technical knowledge available among them, thus leveraging on readily available expertise. Logistical support by the KNCHR and the DoJ in secretariat infrastructure and support enabled the operations of the NSC. The Royal Norwegian Government provided financial support, through the KHRC and the KNCHR in terms of both core and project funding support. KHRC was additionally supported by project grants from Diakonia. With financial support from the Danish International Development Agency (Danida) and the Swedish International Development Agency (Sida), the DIHR provided project-based grants to the KHRC and the KNCHR for the development of the NBA and the Kenya Country Guide for Business and Human Rights and support towards the convening of the national consultation with indigenous peoples' groups and in the compilation of the final NAP document. The Royal Norwegian Government provided technical assistance by securing the input of the National Contact Point of Norway to induct steering committee members on key BHR concepts and issues. The Embassy also convened a peer exchange meeting between Norwegian and Kenyan businesses in Kenya on the NAP.

RELIANCE ON CLEARLY LAID OUT PROCESSES: The NAP process benefitted from the development of a clearly defined roadmap, drawn from the guidance of the UN Working Group on Business and Human Rights. The roadmap, listing the five main steps in developing the NAP, provided direction and focus for the process, guiding activities to ensure that key milestones were realised.

2.4 CHALLENGES AND LESSONS LEARNED IN COORDINATION

MULTI-STAKEHOLDER OWNERSHIP: It has been contended that the NAP development process should have had a deeper involvement of workers and workers' organisations, and businesses, to secure ownership of the NAP. Deeper involvement in coordination and consultations by COTU, Kenya Private Sector Alliance and Kenya Association of Manufacturers would augur well for the future implementation of the NAP.

THE COMPOSITION OF AND PLACE OF THE NSC AS THE CENTRAL COORDINATING BODY: has the potential of failing to adequately represent the competing aspirations of the diverse constituencies represented by the respective NSC member institutions. For instance, the dominant private sector voices on the NSC heavily resonated with the interests of big business, vis-à-vis Small and Medium-sized Enterprises. Positions mainly favoured those mirrored by formal businesses, as opposed to the views of the informal business sector.

INCONSISTENCY IN STAKEHOLDER PARTICIPATION AND BUY-IN: There were instances of consistent absenteeism and disinterest by some member institutions of the 13-member NSC. Some of the institutions represented did not institutionalise the NAP process within their organisations' programmes, so that two instances of departure of a staff member designated

to the NSC by two institutions meant that the organisation lost memory and bearing on the process.

DELAYED PROCESSES: On a few occasions, the delivery of process outputs was delayed due to ineffective coordination and supervision of tasks by implementing organisations. These instances include the development of the Kenya Human Rights Country Guide and the NBA, both of which took long to complete. It is likely that these delays were occasioned by, among other reasons, capacity gaps and limited institutional scope to engage with the then new dynamics of specialised BHR frameworks. The delays meant lost opportunities to engage actors in a timely, hence, cost-effective manner.

TAKE-HOME POINTS

- o The NAP development process should invest in capacity development for coordinating organisations at the preliminary stage, to enable them to conceptualise and coordinate the processes in a sound manner, as was the case with the Kenyan experience.
- o An ideal NAP process should be well-resourced, with significant government funding, augmented where necessary with funding from other sources. However, as in the case of the Kenya NAP, a funding collaboration by different actors rallying around a common work plan and outcomes is desirable, where government funding is limited.
- o The strong coordination role by state entities in the NAP process can be important to ensure government buy-in, crucial for the advancement of the process to promulgation. It can also assure the process of access to key documents and information in the custody of different state actors as well as to the logistical and infrastructural capacities of government. There is also a need to ensure that crucial stakeholders, namely, businesses and representatives of workers and other rights-holders, are given a prominent role in the process, to ensure their ownership of the process, the NAP and the resultant implementation framework.

3

THE CONSULTATION PROCESS – INVOLVEMENT OF RIGHTS-HOLDERS AND OTHER STAKEHOLDERS

WHAT HAPPENS IN THIS CHAPTER?

This chapter discusses the consultation process, with a specific focus on rights-holders and other stakeholders, addressing the following questions:

- o How were rights-holders and other stakeholders identified and enlisted into the NAP development process?
- o What format did consultations with rights-holders and other stakeholders take?
- o How did the rights-holders and other stakeholders contribute to the process?
- o What were the successes, challenges and lessons drawn from the consultation experience?

3.1 THE CONSULTATION PROCESS

The NAP development process enlisted the participation and contribution of rights-holders and other stakeholders, at various levels and stages. The consultation process was guided by the NAPs Toolkit, which emphasises the following: participation and inclusion of rights-holders; transparency; accountability; and equality and non-discrimination. Consultations were conducted at national and community – or regional – levels.

The objectives of the consultations were:

- o to ensure that rights-holders and other stakeholders participate in the process by providing input to the content and format of the NAP;
- o to foster ownership of the NAP by rights-holders and other stakeholders;
- o to gain insights on human rights impacts which are specific to the various categories of rights-holders and viable solutions to human rights impacts affecting right-holders;
- o to involve right-holders and other stakeholders in validating the findings of process outputs including: the NBA, the Kenya Country Guide on Business and Human Rights, and the draft NAP; and
- o to develop the capacities of rights-holders and other stakeholders on BHR to enable their effective participation in the NAP process.

The initial mapping of rights-holders and other stakeholders to participate in the NAP process was based on the Human Rights and Business Country Guide for Kenya.¹² Based on an analysis of human rights impacts of businesses in Kenya, it identifies the following groups as being vulnerable to human rights impacts of business:

- o Women
- o Persons Living with Disabilities
- o Persons Living with HIV/AIDS
- o Persons Living with Albinism
- o Sexual minorities
- o Religious minorities
- o Migrant workers
- o Indigenous peoples

The Stakeholder Forum on the Development of a NAP, held in late 2016, further identified interest groups and the manner of their inclusion in consultations. This meeting was organised by the DoJ and the KNCHR.

The basis for the selection of these special interest groups was their:

- o special vulnerabilities relating to BHR;
- o specific expertise, insights or experience on BHR;
- o capacity to represent special interests in consultative platforms; and
- o need for localised perspectives on BHR across the country.

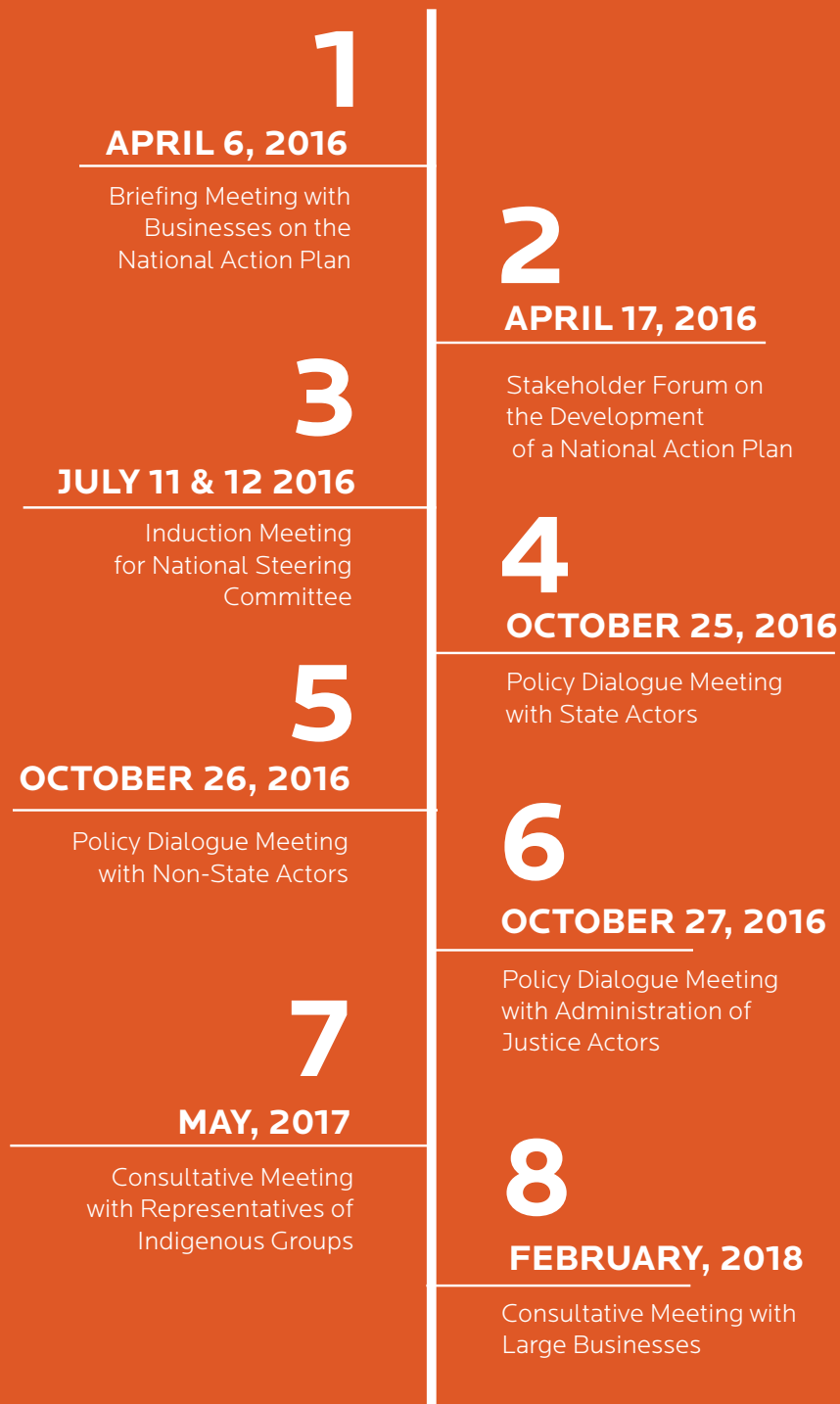
Of the above mentioned groups, indigenous communities' representatives were provided with a special consultative platform of their own, while some of the others were invited to clustered consultative meetings aggregating many interest groups under one consultation. In some cases, institutions representing special interests were accorded prominent roles in the NAP process, most notably, the National Gender and Equality Commission which sat on the NSC as an independent state watchdog commission addressing gender, equality and non-discrimination. Migrant workers were represented in part, by COTU on national platforms. Indigenous groups' representatives were, in 2017, invited to propose two representatives to the NSC. Similarly, the Federation of Kenya Employers represented employers, while the Kenya Private Sector Alliance and the Global Compact Network Kenya represented the private sector. Some rights-holders groups were invited and afforded an opportunity to participate alongside other interest groups, in the nine regional consultations.

The following paragraphs provide an overview of the different levels of consultations and the frequency.

A) NATIONAL CONSULTATIONS

Eight national consultations were conducted, these are outlined in Figure 3, below.

FIGURE 3: NATIONAL LEVEL CONSULTATIONS



The various consultation forums for the NAP development process included:

BRIEFING MEETING WITH BUSINESSES ON THE NAP:

On April 6, 2016, the Global Compact Network Kenya, the DoJ and the KNCHR held a meeting with businesses. The meeting aimed to sensitise businesses on the UNGPs and NAPs and to enlist their goodwill and participation in the NAP development process. The meeting deliberated upon the following issues:

- o The structure for the participation of businesses in the NAP process;
- o Mapping of industry associations and stakeholders;
- o Capacity needs of businesses for effective participation in the process; and
- o Priority issues for businesses to be addressed through the NAP.

This meeting was instrumental in assuaging the initial reservations of businesses on the UNGPs and the NAP and in mobilising a strong business front for participation on the NSC.

STAKEHOLDER FORUM ON THE DEVELOPMENT OF A NAP: In April 2016, the DoJ, KNCHR and KHRC convened a National Stakeholder Forum on the development of a NAP. The meeting was attended by government officials, state institutions, national CSOs, trade unions, employers' associations and private sector organisations. The meeting achieved the following objectives:

- o Sensitisation of participants on the UNGPs;
- o Identification of strategies for engaging business actors in the NAP process;
- o Setting up of a NSC to guide interaction with rights-holders and other stakeholders as well as to steer the NAP development process; and,
- o Setting up thematic working groups based on the five identified themes.

POLICY DIALOGUE FORUM WITH STATE ACTORS, NON-STATE ACTORS AND ADMINISTRATION OF JUSTICE PLAYERS:

In October 2016, the NSC convened a series of three policy dialogue meetings with state actors, non-state actors and administration of justice actors, including: judges; magistrates; court officials; lawyers; Office of the Director of Public Prosecutions ; Office of the Attorney General; government departments; CSOs; trade unions; private sector organisations and business executives. The meetings achieved the objective of raising awareness on the UNGPs and the NAP. The stakeholders also contributed to the identification of human rights impacts of businesses and related policy gaps. Lastly, the meetings mapped out regional stakeholders and rights-holders ahead of the regional consultations.

CONSULTATIVE MEETING WITH REPRESENTATIVES OF INDIGENOUS GROUPS:

In May 2017, the KHRC, working in collaboration with the DIHR, convened a national level consultation meeting with representatives of indigenous groups. The two-day event brought together representatives from different indigenous groups in Kenya, namely, the Maasai, Ogiek, Endorois, Yaaku, Samburu and Turkana. The meeting achieved the following objectives:

- o The articulation and documentation of the BHR impacts on indigenous communities;

- o The identification of policy actions required to address BHR impacts on indigenous communities;
- o Sensitisation of participants on the UNGPs and BHR for effective participation in the NAP process; and
- o Nomination of two representatives of indigenous communities to the NSC on the NAP and representatives to each of the five thematic working groups.

B) REGIONAL CONSULTATIONS:

By September 2017, nine consultations with crucial BHR rights-holders and other stakeholders had been held in Nairobi, Mombasa, Kisumu, Nakuru, Thika, Kiambu, Turkana, Kakamega and Kitui. The mapping of regional level participants was mostly in the hands of representatives from government, private sector organisations, CSOs and trade unions. Typical participants at regional consultations included:

- o Members of the public – including women and youth groups and community and religious leaders and some special interest groups;
- o Government officials;
- o Local CSOs; and
- o Local businesses.

Figure 4 below, illustrates the spread of regional consultations across the country.

**FIGURE 4 :
LOCATION OF REGIONAL
CONSULTATIONS ACROSS THE
COUNTRY**



Box 5: Structure of Regional Consultations

- o Each session included an initial awareness-raising session on the UNGPs and other human rights frameworks
- o Each consultation took three days, different participants attending on different days
- o The five selected thematic subjects of the NAP provided the basis for the discussions
- o Specific BHR issues raised by participants were recorded
- o The stakeholder group to which each issue is applicable was noted
- o Participants cited cases of local good practices in promoting human rights in the context of business
- o Participants made recommendations for addressing gaps in law and policy
- o The specific stakeholder group who proposed the said recommendation was noted
- o The party who is responsible for acting upon the recommendation was identified and noted down.

C) THEMATIC CONSULTATIONS SEPTEMBER 2017

Five thematic experts were commissioned to lead work of thematic working groups in developing background papers with policy recommendations, based on the five themes: access to land; labour rights; environmental protection; revenue transparency and management; and access to remedy. Each theme was further divided into several sub-topics, as relevant. These working groups comprised a cross-section of rights-holders and other stakeholders, with a generic core comprising representatives of: trade unions; government ministries; CSOs; and representatives of the business community. Thematic working groups were conducted using pre-developed guiding questions and a reporting tool.

The role of the thematic working groups was to provide a platform for deliberating the BHR issues, frameworks and proposed policy solutions, relating to the five NAP thematic subject areas. Each thematic working group developed a thematic background paper as its final output. These working groups relied on the input of rights-holders, some of whom participated as part of the working groups, or during consultative sessions by the working groups. Among the special interest groups that were most actively represented in the discussions of thematic working groups were: indigenous communities; workers; businesses; and women.

D) VALIDATION MEETINGS

The first draft of the NAP was disseminated to various stakeholders, rights-holders and experts for their input as part of the validation process. In addition, the KNCHR and the DoJ conducted a series of validation meetings in the eight regions, with mixed groups of stakeholders, including rights-holders. Stakeholders were guided through the draft and their views relating to the content of the draft NAP noted down, analysed and incorporated into the revised draft, as appropriate. The revised draft was then shared with the NSC for the views of the respective member institutions. Upon conclusion of these validation meetings, a team of consultants was commissioned to compile the final NAP.

3.2. SUCCESSES IN THE CONSULTATION PROCESS

RIGHTS-HOLDER CAPACITY BUILDING: The insistence on sensitisation and capacity building before the substantive conversations during the consultative process helped enhance the capacities of rights-holder groups and other stakeholders on BHR and the NAP.

DIVERSITY AMONG PARTICIPATING STAKEHOLDERS: The inclusive process of identifying rights-holders through the multi-stakeholder NSC on the NAP, ensured that diverse rights-holder groups were enlisted into the process.

TRANSPARENCY OF THE CONSULTATION PROCESS: The openness and transparency of the consultation process promoted a culture of mutual trust among the actors in the NAP development process. It also enhanced their participation and investment in the process.

INVOLVEMENT OF REPRESENTATIVE INSTITUTIONS: The inclusion of apex and representative bodies and institutions in the different levels of the consultative framework ensured efficiency in mobilising participation of their respective constituents in the consultations.

REGIONAL AND COMMUNITY LEVEL ENGAGEMENT: Spreading consultations across the country through the nine regional consultative forums enabled the process to gain crucial information on local perspectives and priorities on BHR.

EVIDENCE AND EMPIRICAL BASIS FOR THE NAP: The evidence base upon which the consultation process was framed – as informed by the NBA and the Kenya Human Rights and Business Country Guide – provided focus, direction and a strong conceptual basis for the consultations.

3.3. CHALLENGES AND LESSONS LEARNED FROM THE CONSULTATION PROCESS

- o **CONSISTENCY OF INCLUSION OF DIFFERENT OF RIGHTS-HOLDERS AND STAKEHOLDERS IN REGIONALCONSULTATIONS:** The extent to which all relevant groups of rights-holders were included in the regional consultations was not always consistent and varied from consultation to consultation.
- o **REPRESENTATION OF NUANCED INTERESTS WITHIN CLUSTER GROUPS:** While the major rights-holder and other stakeholder groups were provided with a platform to contribute to the process, the consultative process did not always go far enough to ensure that the diverse groups within the respective apex bodies and

umbrella organisations representing a set of rights-holders or stakeholders were heard. As a result, the positions taken by dominant categories of rights-holders and other stakeholders within the various cluster groups were often adopted with little nuance regarding the interests of the less dominant cluster members.

- o **INSUFFICIENT TIME FOR EFFECTIVE CONSULTATION:** The participation of many special interest groups – including persons living with HIV and AIDS, persons with albinism, workers in the informal sector, Small and Medium-sized Enterprises and Persons with Disabilities – was peripheral, mainly because they were not accorded sufficient time or a special platform to understand the issues at stake and deliberate upon their respective BHR issues and priorities.
- o **INADEQUATE INVOLVEMENT OF POLITICAL ACTORS AND BUSINESS CHAMPIONS:** National and community level political actors and business champions were not adequately involved in the consultation process. Instead, the process took an almost wholly technical approach. As a result, little progress was made towards developing sustainable constituencies and movements for advancing BHR.

TAKE-HOME POINTS

- It is important that there is capacity building on BHR for the different stakeholders, including rights-holders, ahead of the consultative process to enable them to participate effectively in the consultation process. In addition, relevant stakeholders, including rights-holders, should be provided with sufficient notice of consultation meetings to allow them adequate time for preparation and effective participation at the meetings.
- The consultation process should include a sufficiently wide range of core rights-holders and other stakeholders across the country, while at the same time, addressing the specific special interests within the broader cluster groups. Consultations should afford participants sufficient time for in-depth deliberations.
- Tools to support identification of all relevant rights-holders and other stakeholders and their effective and meaningful participation in a given consultation should be applied across an entire consultation process to ensure consistency and adequate representation of these groups throughout.
- For effective participation of the different rights-holders and stakeholders, the consultative processes should adopt the most viable channels of mobilisation, communication and engagement, as suitable for the various local contexts.
- To enhance the participation of special interest groups – especially most-at-risk persons – in the consultation process, these rights-holder groups should be accorded adequate space for deliberation and contribution while at the same time being enabled to engage in dialogue with other stakeholders. Additionally, emphasis should be placed on building the technical and organisational capacities of these interest groups and their associations to ensure that they participate effectively at different levels.
- The consultation process should strike a balance between the engagement of technical process facilitation, on the one hand, and platforms for political actors and sector champions, on the other hand. Strong participation by the latter can contribute to goodwill, learning and commitment necessary for sustaining a movement for advancing BHR.

4

THE ROLE OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

WHAT HAPPENS IN THIS CHAPTER?

This chapter focuses on the role of Kenya's NHRI in the NAP process, addressing the following questions:

- o What was the role of the KNCHR in the NAP process?
- o What critical characteristics of the KNCHR as an NHRI enabled it to contribute effectively or affected its participation in the NAP process?
- o What were the successes, challenges and lessons drawn from the experience of the KNCHR?

4.1 THE CONTRIBUTION OF THE KNCHR IN THE NAP DEVELOPMENT PROCESS

The KNCHR was established by statute as Kenya's NHRI, in 2002¹³ and further entrenched in the Constitution of Kenya 2010.¹⁴ The KNCHR's mandate in the development of the Kenya NAP relates to its broader role of protecting and promoting human rights in Kenya and its more specific function of advising government on human rights.

The KNCHR played a central role across the various stages in the development of the Kenya NAP. Its most prominent contributions to the process include:

- o It led the process of developing the NBA, with crucial technical support from the DIHR. The NBA aimed to provide an appraisal of the state of play on BHR and the potential impacts of business, thereby providing background information for the NAP process.
- o The KNCHR, working in collaboration with the DoJ, convened nine regional consultations, five national consultations and a validation meeting with a spectrum of rights-holders and other stakeholders.
- o Owing to its constitutional mandate as an independent state institution and its expertise on human rights, the KNCHR provided technical advice to government and other actors in the NAP development process, through the NAP Desk.
- o The KNCHR provided secretariat support to the process – both technical and infrastructural support to other actors in the NAP development process – through a NAP Desk, which sat under the institution's BHR Programme. Secretariat support included convening and hosting meetings of the NSC, maintaining official records of the meetings, as well as coordinating the work of the various members of the NSC for execution of allocated tasks. It also maintains a database of the outputs of the NAP process and the website: nap.knchr.org.

4.2 REFLECTIONS ON THE ROLE OF KNCHR AS AN NHRI IN THE NAP PROCESS

Reflections on the suitability of the KNCHR - as an NHRI - in driving the Kenya NAP process are discussed below, with reference to selected critical considerations per the Paris Principles (see Box 6).

Box 6: The NHRI Paris Principles

The United Nations Principles Relating to the Status of National Institutions (The Paris Principles), adopted by the United Nations General Assembly (UNGA) in 1993, provide international minimum benchmarks against which NHRIs can be accredited by the Global Alliance of National Human Rights Institutions (GANHRI).

The Paris Principles set out six main criteria that NHRIs are required to meet:

- o Mandate and competence: a broad mandate, based on universal human rights norms and standards;
- o Autonomy from government;
- o Independence guaranteed by statute or Constitution;
- o Pluralism;
- o Adequate resources; and
- o Adequate powers of investigation.

A) MANDATE AND COMPETENCE

The broad mandate of the KNCHR is to protect and promote human rights in Kenya. Crucially, the Constitution spells out this mandate to cover human rights contexts in, both, the public and private spheres.¹⁵ Its mandate therefore covers human rights impacts of state as well as natural persons and businesses, thereby establishing it as an integral actor in both advancing the development of the Kenya NAP and in the implementation of the NAP.¹⁶ The role played by the KNCHR as process facilitator and lead technical adviser on human rights, ensured that the process was readily embraced by all stakeholders involved. The Commission's place as an independent state institution with a constitutional mandate over human rights, imbued it with legitimacy as the lead human rights organisation in the NAP process.

B) AUTONOMY FROM GOVERNMENT AND INDEPENDENCE

The Constitution of Kenya proclaims the independence of "commissions and independent offices," including the KNCHR.¹⁷ Commissions and independent offices are independent and are not subject to direction or control by any person or authority.¹⁸ Thus, the KNCHR's co-existence vis-à-vis the National Executive is defined by a relationship of interdependence, cooperation and collaboration.

C) PLURALISM

Due to its strategic position, straddling both state and quasi-state-oriented existence and operations, the KNCHR brings to the NAP development process a dual functionality and acceptability among diverse stakeholders and actors within and outside government, in the context of BHR. Its existence as, both, a constitutionally sanctioned authority for informing government actions as relevant to human rights and a public watchdog, was integral in securing acceptability as a lead coordinator of the process. This dual character enabled it to gain access to crucial policy influencers, policy influencing platforms and processes, requisition public information, mobilise state and non-state actors, and facilitate dialogue among actors and convene consultative meetings with stakeholders.

D) ADEQUATE RESOURCES

With few resources to meet the requirements of the process, the financial resources contributed to the process by the KNCHR – as received from donor organisations – were integral in advancing the major processes of developing the NAP. Its contribution was particularly crucial in ensuring that the national and regional consultations and the development of background papers – specifically, the NBA – and the draft NAP, were completed. The KNCHR's capacity to execute project-type activity grants played a role in its success in leading NAP-related project interventions. Moreover, the infrastructural support provided by the KNCHR played a significant role in facilitating the NAP development process. It allowed for effective logistical support to the different organs, mechanisms and organisations in the process.

E) ADEQUATE POWERS OF INVESTIGATION

The Constitution of Kenya expressly provides the KNCHR with the function of monitoring, investigating and reporting on the observance of human rights.¹⁹ The KNCHR had previously interacted with the BHR agenda especially through its complaints and investigations mandate which extends to complaints resulting from the impacts of businesses; the Commission had developed several reports on BHR across different sectors. These reports have contributed to advocacy initiatives for accountability for BHR, thereby laying the ground for the development of a NAP.

4.3 SUCCESSFUL CONTRIBUTIONS BY THE KNCHR

SECRETARIAT SUPPORT TO THE NAP PROCESS: As the NAP Secretariat, the KNCHR provided important logistical support to advance the process. The Commission's offices provided physical space and a venue for several planning and substantive meetings. Designated staff at the Commission, working hand-in-hand with staff from the DoJ and other partners, coordinated the various processes as well as contributing to technical insights.

INDEPENDENCE FROM GOVERNMENT: The Commission's independence from government attracted credibility with practitioners from NGOs, CSOs and other non-government institutions, whose buy in into the NAP development process was crucial.

COMPLEMENTARY PARTNERSHIP WITH THE DOJ: The convening partnership between the KNCHR and the DoJ proved to be effective with divided mobilisation roles relating to non-state actors and government actors, respectively. The KNCHR would leverage its networks and standing with CSOs and human rights practitioners and experts, while the DoJ, as the lead government department could easily mobilise participation from government and the private sector.

INSTITUTIONAL EXPERTISE ON BHR: The KNCHR's expertise on BHR was integral in guiding the process of developing the NAP as well as in contributing to the content of the NAP. The Commission was a standing reference point, providing technical leadership on BHR throughout the NAP development process²⁰

FINANCIAL HOSTING FOR THE NSC: The Commission proved integral in ensuring donor funding for the process. Rather than provide project funding to a multiplicity of organisations for facilitating the NAP development process, the Commission was preferred by some donors, because of both the need to centralise funding in as few entities as possible as well as its capacity and for the Commission's track record of executing project-based interventions, in a manner that the structure of government agencies would not always readily permit.

4.4 CHALLENGES AND LESSONS LEARNED

LEGAL LIMITATIONS OF THE KNCHR'S HUMAN RIGHTS MANDATE: The Commission's jurisdiction over human rights may be interpreted as limited under certain circumstances. The Constitution of Kenya,²¹ as read with the Kenya National Commission on Human Rights Act,²² the National Gender Commission Act²³ and the Commission on Administrative Justice Act,²⁴ limit the scope of the KNCHR in addressing questions related to gender equality and freedom from discrimination and administrative malpractices and abuse of office. Though this creates synergistic technical cooperation among specialised agencies, it may in certain instances, compartmentalise the treatment of different themes and aspects of human rights in a manner that may compromise consistency in approach and intensity, as applied by the different institutions.

LIMITED INSTITUTIONAL FUNDING FOR THE NAP PROCESS: The Government of Kenya did not allocate specific funding to support the Commission's work in the NAP development process, except for funds that paid for standing salary costs to some KNCHR staff and staff of participating government departments. Financial resources available to the NSC for developing the NAP were inadequate in catering for all projected processes and outputs. The KNCHR had to rely on external donor funding to augment funding from other organisations to the NAP process. Because of the shortfall in funding, the ambition of the NSC was markedly scaled down to align it with funds that were availed by the different entities on the NSC. As such, the NSC prioritised support to core processes, including: regional and national consultations, funding for thematic leads and the compilation of the NAP. The shortfall in funding also meant that consultative processes would not be as extensive in geographic or thematic reach as initially projected, or as in-depth in substantive coverage. It was also observed that certain processes by the KNCHR aimed at generating crucial process outputs suffered some delays. Examples of such instances are the Kenya NBA and the Kenya NAP which took a significantly longer duration than initially planned. This has been attributed to a combination of factors, including lack of sufficient resources for contracting competent technical experts in the first instance, limited internal capacity and knowledge of specific aspects of BHR, and institutionalisation and buy-in of the NAP development process.

TAKE-HOME POINTS

- o For an NHRI to effectively claim a central role in the development of a NAP on Business and Human Rights, a strong legal mandate is essential. An entrenched and unequivocal legal mandate imbues the Commission with the requisite legal legitimacy, hence, acceptability as a central actor in the NAP development process.
- o The autonomy and independence of an NHRI plays a major role in assuring its effectiveness as a rallying point for stakeholder participation in such a process. Autonomy in terms of governance and operations inspires confidence, especially, in non-state stakeholders. Conversely, its position as a state institution provides it with the official stamp to implement national and regional processes, that are recognised by stakeholders across the spectrum.
- o As part of supporting states in developing and implementing NAPs, NHRIs should play a central role in curating content and process facilitation. NHRIs should, however, ensure that BHR stakeholders and rights-holders – including, employers, private sector actors and workers' representatives and community groups – are effectively involved in the process and content development, to ensure that there is sufficient internalisation and investment in the BHR agenda, for the longer term sustainability of the NAP.

ANNEX: METHODOLOGY

The case study relied upon an analysis of both documentary material and key informant perspectives on the NAP development process. The study design took two distinct forms, the aim being to facilitate a descriptive format of informant participation as well as a process which draws upon reasoned positions of informants.

To collect primary data 5 versions of Key Informant Interview (KII) guides were developed, targeting the following categories of informants:

- o Government departments;
- o Independent State institutions;
- o Private sector;
- o Civil Society Organisations; and
- o Thematic experts.

The questionnaires were administered through semi-structured interviews. 11 out of the 12 interviews conducted were led by 2 interviewers through video conferencing, while 1 interview was concluded through a filled-in questionnaire. Follow-up conversations were conducted through email and over the phone. Of the projected 20 informants, the study managed to reach 12 respondents, upon the following breakdown:

	RESPONDENT CATEGORY	TARGETTED NUMBER	ACTUAL RESPONDENTS	RESPONSE RATE
1	Government Ministries and Agencies	2	1	50%
2	KNCHR	1	1	100%
3	DIHR NAP Process technical team	2	2	100%
4	Civil Society Organisations (National and International)	4	4	100%
5	Thematic Experts	5	2	40%
6	Stakeholders group or rights-holders	2	0	0%
7	OHCHR	1	0	0%
8	Private Sector	3	2	66.6%
	TOTAL	20	12	60%

The study was undertaken under unique circumstances, occasioned by the outbreak of the Covid-19 pandemic and the resultant government sanctioned containment measures. It was, therefore, not possible to convene face-to-face interviews. Moreover, communication channels with a handful of respondents were either lost or took inordinately long to establish. It was not possible to secure interviews with representatives of indigenous peoples, workers, and the OHCHR Kenya office, among other crucial actors.

ENDNOTES:

- 1 The draft Kenyan NAP has not been adopted into official policy by the Kenyan Cabinet as at August 2020.
- 2 Kenya Commits to Develop a National Action Plan on Business & Human Rights, Business and Human Rights Resource Centre: <https://www.business-humanrights.org/en/latest-news/kenya-commits-to-develop-a-national-action-plan-on-business-human-rights/>
- 3 National Action Plans on Business and Human Rights Toolkit, 2017, ICAR and DIHR: <https://globalnaps.org/wp-content/uploads/2018/01/national-action-plans-on-business-and-human-rights-toolkit-2017-edition.pdf>
- 4 United Nations Guiding Principles on Business and Human Rights, United Nations, New York and Geneva, Office of the High Commissioner for Human Rights (OHCHR), 2011: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf
- 5 Guidance on National Action Plans on Business and Human Rights – UN Working Group on Business and Human Rights, Version 1.01, December 2014: https://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf
- 6 Republic of Kenya, National Action Plan on Business and Human Rights (Draft), June 2019 at Page 12: <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2019/07/kenya-bhr-nap-june-2019-finalised-still-to-be-approved.pdf>
- 7 Ibid. Republic of Kenya, National Action Plan on Business and Human Rights (Draft), June 2019. Chapter 3 on Policy Actions and Chapter 4 on Implementation and Monitoring
- 8 Sustainable Development Goals (SDGs), United Nations: <https://sdgs.un.org/goals>
- 9 Report of Policy Dialogue Meetings with State Actors, Non-State Actors and Administration of Justice Players, held in Nairobi, October 2016
- 10 The Kenya Human Rights Commission (KHRC) is an NGO.
- 11 <http://nap.knchr.org/>
- 12 Human Rights and Business Country Guide- Kenya, Danish Institute for Human Rights and the Kenya Human Rights Commission, 2016: <https://globalnaps.org/wp-content/uploads/2017/11/kenya.pdf>
- 13 Kenya National Commission on Human Rights Act, Act Number 9 of 2002.
- 14 The Constitution of Kenya, 2010, Article 59(1) and (2)
- 15 Ibid. Article 59(2) (a) and (c)
- 16 Ibid. Article 59(2)
- 17 The Constitution of Kenya, 2010, Article 248(2)(a)
- 18 Ibid. Article 249(2)(b)
- 19 The Constitution of Kenya 2010, Article 59(2)(d)
- 20 In certain instances, this technical expertise was complemented by special technical support by other organizations, including: the Institute for Human Rights and Business (IHRB); the Kenya Human Rights Commission (KHRC); the OHCHR and the Danish Institute for Human Rights (DIHR), among others.
- 21 The Constitution of Kenya, 2020, Article 59
- 22 The Kenya National Commission on Human Rights Act, Number 14 of 2011, Section 8
- 23 The Gender and Equality Commission Act, Number 15 of 2011, Section 8(a)
- 24 The Commission on Administrative Justice Act, Number 23 of 2011, Section 8

