

SUMMARY REPORT

VIRTUAL DIALOGUE ON NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS IN EAST & HORN OF AFRICA REGION

7 DECEMBER 2021



CONTENTS

1. Introduction	3
1.1. Aims and Objectives	3
2. Introductory Remarks	4
3. Keynote: Challenges and Opportunities for Developing BHR on the African Continent	6
4. Panel Discussion: Understanding BHR Policy and Normative Frameworks	8
5. Session 1: Expert Perspectives on NAPs	10
6. Session 2: Lessons Learned From Countries' Experiences	13
6.1. The Ugandan Experience	13
6.2. The Kenyan Experience	14
7. Conclusion	16
Endnotes	17

Acknowledgements: This report was compiled by Mathilde Dicalou, Danish Institute for Human Rights. The Virtual Dialogue on National Action Plans on Business and Human Rights in East & Horn of Africa Region was co-convened by the African Union, the African Commission on Human and Peoples' Rights, the Office of the UN High Commissioner for Human Rights, the UN Development Programme, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, the Network of African National Human Rights Institutions, the Danish Institute for Human Rights and the Africa Trade Policy Centre; in collaboration with the Kenya Department of Justice, the Kenya National Commission on Human Rights, the Uganda Human Rights Commission and the Commission for Human Rights and Good Governance Tanzania. The co-organisers would like to thank all the participants for sharing their insights and expertise. The co-organisers do not necessarily adhere to any of the views expressed by participants.

Layout: Hedda Bank

1.

INTRODUCTION

On 7 December 2021, the African Union (AU), the African Commission on Human and Peoples' Rights (ACHPR), the Office of the UN High Commissioner for Human Rights (OHCHR), the UN Development Programme (UNDP), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, the Network of African National Human Rights Institutions (NANHRI), the Danish Institute for Human Rights (DIHR) and the Africa Trade Policy Centre organised a four-hour virtual dialogue on National Action Plans (NAPs) on Business and Human Rights (BHR) in the East and Horn of Africa Region. This event was organised in collaboration with the Kenya Department of Justice, the Kenya National Commission on Human Rights (KNCHR), the Uganda Human Rights Commission (UHRC) and the Commission for Human Rights and Good Governance (CHRAGG) Tanzania.

The purpose was to learn about NAPs as a tool for furthering the protection and promotion of human rights in the context of business activities in the region and to provide a space for learning and exchange, with a view to stimulate and provide support to the development and adoption of NAPs by AU Member States as a first step towards enhanced implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Africa. It was also an occasion to foster regional networks of stakeholders on BHR and offer technical support from OHCHR, UNDP, the DIHR and implementing partners towards developing NAPs.

The virtual dialogue gathered practitioners and experts from the East and Horn of Africa region as well as globally, representing civil society organisations (CSOs), national human rights institutions (NHRIs), public institutions, business actors and international organisations. This summary report captures the highlights of the discussion with a view to contribute to further dialogue and action on NAPs in the region.

1.1 AIMS AND OBJECTIVES

The aims and objectives of the dialogue were to:

- Familiarise participants with the UNGPs normative framework and good practice guidance on NAPs as one tool of operationalising the UNGPs at the national level;
- Share experience and lessons learned in the NAP development process between countries with a NAP and those that are interested in embarking on the process for developing a NAP; and
- Stimulate NAP development processes and identify required support to countries in the East and Horn of Africa region interested in finalising or starting their NAP process.

2.

INTRODUCTORY REMARKS

The introductory remarks provided by Mercy Obonyo, Marcel Akpovo, Roselyn Akombe and Ambassador Salah Hammad, provided participants with background information on the UNGPs, NAPs and the context for responsible business conduct in the region.

The UNGPs, endorsed by the United Nations Human Rights Council (UNHRC) in June 2011,¹ are a significant milestone in the evolution of normative standards on the responsibility and accountability of business actors in relation to human rights. Three years after the adoption of the UNGPs, the UNHRC called on all Member States to develop NAPs to support the implementation of the UNGPs.² This call came in the wake of similar developments at the European level.³ In the East and Horn of Africa, Kenya and Uganda have concluded and published a NAP, while the Tanzanian government has committed to the development of a NAP. Kenya was the first African country to develop a NAP and Kenya's process has given a good case study that other countries in Africa could learn from.⁴ Recognising this state of play, the speakers noted that it is timely to learn from the experience of ongoing and advanced NAP processes in the sub-region so as to inform and support upcoming similar efforts in AU countries.

It was recalled that the UN Working Group on Business and Human Rights (UNWG), established in 2011, strongly encourages all states to develop, enact and update NAPs.⁵ The G20 leaders have also articulated their support for NAPs.⁶ In its November 2015 Guidance on NAPs, the UNWG defines a NAP as an 'evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights.'⁷ The adoption of the 2030 Agenda for Sustainable Development in September 2015 recognises the role of business as a major driver for economic growth and infrastructure, necessary components for achieving the Sustainable Development Goals (SDGs), while at the same time explicitly calling for businesses to act in accordance with the UNGPs. Likewise, the AU's Agenda 2063 recognises in its goal 16 that businesses are paramount in achieving all the 2063 goals. On 29 November 2021, the UNWG shared its roadmap for the next decade.⁸

Since the adoption of the UNGPs in 2011, only ten African countries out of 55 have taken steps towards NAP development, either through a government-led process, or initiatives towards NAP development led by civil society, the NHRI and/or academia.⁹ Africa has lagged behind other regions in progress, yet, over the past two decades and with the recent launch of the African Continental Free Trade Area (AfCFTA), the continent has and continues to attract heightened economic activity, including investment in diverse business sectors.

Roselyn Akombe presented the UNDP's recent continental baseline survey, which revealed that Africa was a continent with a high potential but which still faced an important number of issues. In conflict areas, businesses have continued their operations without considering the adverse human rights impacts that they may cause to the communities. It was observed that respect for human rights by businesses would have an important role to play in terms of respecting social, economic and cultural rights, development and conflict prevention. Similarly, issues related to illicit financial flows remain an important issue. To address these challenges, UNDP and the Business and Human Rights Resource Centre have developed a comprehensive programme at both the global and regional level to support counterparts in ensuring that NAPs are established and implemented. In the context of the adoption of the AfCFTA, this support has become fundamental. At the national level, UNDP has committed to continuing its work with partners, including CSOs, governments, ministries and NANHRI, and to support NAPs processes in 2022.

Potential synergies with the Draft AU Policy on Business and Human Rights (Draft AU BHR Policy) were also identified. Ambassador Salah Hammad, intervening on behalf of H.E. Ambassador Bankole Aduye, representative from the AU, presented the work of the AU Commission's Department of Political Affairs, Peace and Security, which has been leading the efforts to develop the AU BHR Policy. The aim of this policy document is to complement the UNGPs while directly referring to the African Charter on Human and Peoples' Rights and the jurisprudence of the AU Commission and the African Court on Human and Peoples' Rights, which have already been addressing BHR-related issues. Once adopted, the AU BHR Policy will rely on diverse actors, including NHRIs, to apply the policy at national level and to foster a collective effort in the implementation process.

3.

KEYNOTE: CHALLENGES AND OPPORTUNITIES FOR DEVELOPING BHR ON THE AFRICAN CONTINENT

The keynote speech was delivered by Honourable Commissioner Solomon Ayele Dersso, former Chairperson of the ACHPR (2019-2021), current Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa at the ACHPR (Extractives WG) and focal point for BHR.

The Commissioner presented the role of the Extractives WG as a special mechanism that focuses on engaging with CSOs on the role of businesses in the sector. In the last years, the ACHPR has received reports of human rights issues related to the conduct of businesses and more specifically corporations on the continent. The ACHPR was instrumental in adjudicating on specific cases, such as the landmark example of the Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria case that was related to the environmental and human rights disaster suffered by the Ogoni people due to the operations of oil companies. Underlining Africa's history linked to the so-called 'resource curse', Honourable Commissioner Dersso recalled that, while a lot of capital is being generated by extracting Africa's resources, the continent is not the primary beneficiary as the market is dominated and controlled by entities located outside the continent.

The Extractives WG has conducted an in-depth exploration of the implications of the existence and operations of the extractive industry, paying particular attention to the role of multinational corporations (MNCs). This research has highlighted several key points. First, operations in the sector have mainly been regulated by laws relating to investment under bilateral treaties, investment law, the issuance of licences, etc. Often, these frameworks have not been informed by the human rights, needs and requests of the people who potentially bear the adverse impacts of these operations. These business actors have been operating in a 'human rights protection vacuum'. A second key point is that, in addition to weak or inexistent regulatory frameworks that would require MNCs to comply and fulfil human rights obligations, there has not been a development of institutions and infrastructure that could effectively enforce acceptable standards of conduct. The dramatic human rights violations linked to the extractive industry have also contributed to eroding the already fragile rights of particularly marginalised communities living in the concerned areas.

In this context, the ACHPR has developed state reporting guidelines and principles that are based on Articles 21 and 24 of the African Charter on Human and Peoples' Rights.¹⁰ On the basis of state reporting, the ACHPR has come to realise that some of the corporate actors operating in this industry have not only failed to comply with human rights standards, but have also been operating in very lax regulatory environments, enjoying duty-free benefits and extremely low tax obligations. It was underlined that, even in this lax context, corporate actors have still been engaging in financial fraud. The UN reported that, in 2020, Africa lost nearly USD90 billion because of such fraud, the majority being accounted for in the extractives sector.

Honourable Commissioner Dersso further referred to the UN High-Level Panel on Illicit Financial Flows' use of the phrase 'race to the bottom' in terms of requirements in all areas to attract foreign investment. The perverse effect of this race to the bottom has been the further weakening of already weak frameworks, exposing the continent to even more abuses by MNCs' operations. He further stressed that human rights frameworks only give obligations to states because they are considered as best placed to advance the interests of the political community while having the power to enforce regulations and advance the good of the society they represent. However, the emergence of economically, socially and politically prominent businesses, and specifically MNCs in the last decade, has been paralleled with a general reduction in the authority of the state to exercise its regulatory responsibility, in particular in relation to the enjoyment of socio-economic and cultural rights. The result has been a generally weak environment to protect the rights and welfare of communities. The past ten years have demonstrated a continuation and worsening of adverse human rights impacts despite the implementation of voluntary standards for responsible business conduct. Against this background, the ACHPR and the Extractives WG have expressed that there exists a need to create binding obligations on businesses. They are supporting ongoing discussions at UN level to create avenues for corporate accountability, especially in areas where the state is not in a position to effectively hold businesses accountable.

In this regard, it was observed that NAPs play an important role in raising awareness and creating dialogue between stakeholders, while being a good basis to address regulatory gaps in legislation and institutions. Finally, Honourable Commissioner Dersso stressed that NAPs are neither the starting nor end the point of the process; instead, they are dynamic documents to foster engagement, hold businesses accountable and protect human rights.

4.

PANEL DISCUSSION: UNDERSTANDING BHR POLICY AND NORMATIVE FRAMEWORKS

During the panel discussion, three BHR experts gave presentations to define and understand the rationale behind NAPs.

The first speaker was Adrienne Gardaz Cuendet, adviser on BHR at OHCHR. While the UNGPs do not mention NAPs explicitly, they were defined in 2014 by the UNWG as an evolving policy strategy, underlining that the key aspect of NAPs is the process. This process is an opportunity to identify gaps and opportunities and create measures that are tailored to the context.

It was elaborated that NAPs must have basic but essential criteria:

- They should be founded on the UNGPs by reflecting the three pillars of the state's duty to protect, the corporate responsibility to respect and access to effective remedy.
- They should be context-specific so that there will never be two identical NAPs. The speaker stressed the importance of undertaking a National Baseline Assessment (NBA) to identify the specific challenges a country is facing.
- A NAP must be inclusive and transparent: once again, Gardaz Cuendet stated that the process leading to the publication of the NAP is fundamental. The process should involve relevant stakeholders who must be allowed to contribute their views and information must be shared at all stages, thereby building the legitimacy of the process and the effectiveness of the NAP.
- The NAP must be an ongoing process, not a one-off event. It represents a continuous effort and the first published NAP may not be exhaustive – in this regard, prioritising certain issues may be necessary. What matters here is an approach of cumulative progress.

NAP processes create a space for policy dialogue and design. They tend to involve several parts of the government, which often work in silos: NAPs represent an unprecedented opportunity for coordination and policy coherence. Secondly, by identifying national priorities and concrete measures, NAPs allow stakeholders to go beyond declarations of interest and, instead, take action by clarifying the way to go forward in the country. Thirdly, they are tools for transparency and predictability for both domestic and international stakeholders, thereby creating an environment that is more conducive to responsible business conduct. NAPs should also be perceived as roadmaps that allow stakeholders to take stock of progress while creating a space for dialogue among them.

The speaker also explained that while there is no prescriptive guidance as to what a NAP should look like, a lot of them tend to have common elements, allowing for international cooperation, coordination and learning exchanges.

The importance of process was echoed by the second speaker, Victoria de Mello, BHR specialist at UNDP. UNDP assessed that there was momentum building in Africa in the area of BHR. Countries have picked up on NAPs through Universal Periodic Review (UPR) recommendations and other reviews. Pockets of engagement have emerged, including in Eastern and Southern Africa, with neighbouring countries having the tendency to learn from each other's experience. The speaker noted that there were many opportunities for driving the movement forward, taking the examples of Kenya and Uganda, and the potential for a regional race to the top. The mobilised civil society bodies operating on the continent, the active NHRIs and the support provided by NANHRI in this regard were praised.

De Mello also took the opportunity to remind the participants that the AU, UNDP and OHCHR will be convening a Regional Forum on BHR in Africa in 2022.

Seraphine Kando then intervened on behalf of John Ikubaje from the AU Department of Political Affairs, Peace and Security. She introduced the Draft AU BHR Policy as a guiding framework for developing NAPs at the national level. To develop the policy document, several consultations were conducted with stakeholders, including AU Member States, OHCHR and regional communities. In March 2017, consultations were held to ensure the representation of NHRIs, CSOs, businesses, academia and regional economic communities. The ACHPR further held three technical consultations with Member States and various actors to ensure that all aspirations and specificities of the African context were considered.

The policy was drafted following a discussion between the UN and the AU in 2018. The UN remains one of the key stakeholders in the process as it is guided by the UNGPs. The policy document is based on the 18th ordinary session of the AU's Assembly of States to establish the AfCFTA and the African Charter on Human and Peoples' Rights. This document will contribute to pushing a specific BHR policy at the regional level, developing Africa's social and economic transformation with a view to realising Agenda 2063. The draft policy was submitted to all Member States for input; and subsequently submitted to the Specialised Technical Committee on Justice and Legal Affairs for finalisation.

5.

SESSION 1: EXPERT PERSPECTIVES ON NAPS

This session comprised a Q&A moderated by Mercy Obonyo. Professor Githu Muigai, Member of the UNWG, and Elin Wrzoncki, Human Rights and Business Department Director at the DIHR, contributed their expertise and insights.

Professor Muigai was asked to share his thoughts on how NAPs fit into the UNGPs10+ roadmap and the UNWG's perspective on the necessity of NAPs in the region. In his opinion, NAPs highlight strategic concrete activities to address specific policy issues and are therefore key tools for states to protect against adverse human rights impacts. He recalled that NAPs must be based on the UNGPs and provide an opportunity to examine states' legal frameworks, including for states to review their political environment and providing an inclusive space for dialogue.

Ms Wrzoncki presented the NAPs Toolkit developed by the DIHR and the International Corporate Accountability Roundtable (ICAR),¹¹ which aligns with the UNWG guidance. The most fundamental element remains the political commitment to implementing the UNGPs and developing a NAP. This commitment can take different forms: some processes began as a result of a recommendation during the UPR, as was the case for Kenya and Uganda, while others have been the result of advocacy by CSOs and NHRIs, or even the government's own initiative.

Five key steps for developing a NAP were elaborated:

1. A governance framework must specify which agency will lead the process, the ministries that will be involved, ways to involve stakeholders and how to ensure transparency. The governance framework should provide a set timeframe that is realistic but that imposes a time limit to drive the process forward. Appropriate resources must also be made available to have an inclusive process that dives deep into the potential issues at stake. Some donors have committed to supporting the development of NAPs.
2. An NBA should be conducted since it will identify the legal and policy gaps, as well as the salient human rights issues in the country's context. The NBA could be conducted by an independent entity, such as the NHRI or academia.
3. The third step is to elaborate the NAP to address the most serious human rights issues by designing the most appropriate measures. For example, if gaps in the legal framework have been identified, it can be a good opportunity to begin a process for legal reform. The NAP should provide for clear objectives and actions that are time-bound, specific and to which a budget has been allocated.
4. Implementing, monitoring and reviewing the NAP constitute the next step. The very same stakeholders who were involved in consultations and dialogues could play an important role in helping to implement the NAP. Businesses, for example, can take responsibility at this stage especially if they participated in designing the plan.

5. The final step is to update the NAP: as a living document, its publication should not be the end of the process. It is a constant work in progress and new generations of NAPs should be generated.

Professor Muigai then underlined that confidence among all actors must be created to foster good faith in the process. Businesses and governments are still suspicious towards human rights regulations, as they may think that the end goal is to interfere with foreign direct investments and to restrict business operations. CSOs, on the other end, fear that the promotion of soft law instruments like NAPs are being used by governments to show good faith while undermining hard law instruments. Once again, Professor Muigai insisted that all stakeholders must remember that they share a common goal in this process. In this regard, he stressed that the NAP needed a 'champion' to coordinate the process by housing the process in a ministry that can lead with high standards. Echoing Ms Wrzoncki's point, a set timeline and a strong political commitment were underlined as fundamental. Advocacy with the government to have it lead the process is therefore important. Building on that last point, Ms Wrzoncki suggested that a competition among states could foster productivity and drive other countries to adopt NAPs as well.

This involvement and advocacy with stakeholders is fundamental. For example, Ms Wrzoncki presented the challenge of engaging with business communities that do not already have a commitment to responsible business conduct policies and with small and medium-sized enterprises (SMEs) that may feel that the BHR agenda is not relevant to them. On the question of SMEs, Professor Muigai remarked that they make up the majority of business enterprises on the African continent and that these are rightfully worried about increasing costs to ensure that they comply with human rights. NAPs therefore need to address businesses that can afford to take on that cost and become models, as well as include strategies to bring SMEs on board. 'Natural alliances' tend to be formed among businesses with the same values in their declared policies. Kenya has seen some progressive voices rise in the agricultural sector with business enterprises beginning to monitor their own supply chains to observe the best practices regarding labour, health and environmental rights possible. Chambers of commerce also represent an interesting avenue for advocacy: Professor Muigai explained that if the Chambers are sold on the idea, their membership will more easily follow as well.

Ms Wrzoncki further stressed the importance of NHRIs in advocating for NAPs and conducting NBAs as they play a bridging role between the state and the rest of society as experts with credibility to monitor respect for human rights.

Another essential point that was brought up concerned the importance of maintaining focus on BHR after the adoption of the NAP and when there are changes in government. In that regard, there is a need to ensure that NAPs are not vulnerable to political changes. To address those challenges, it could be interesting to connect the NAP on BHR to the wider national action plan to implement the SDGs or embed accountability measures (such as reporting cycles, reporting during the UPR or to Parliament) to create ongoing accountability through reporting cycles.

The criticisms against NAPs as policy documents not creating real change were then addressed. It was noted that in the countries that have adopted NAPs in the last decade, these processes have helped start the conversation on BHR and build capacity on the topic for CSOs, NHRIs and business organisations. Looking at the European context, there has been a wave of initiatives to create legislative obligations to monitor and mandate human rights due diligence for companies across their value chains. The latest example has been that of Germany, where the NAP helped the government adopt a law requiring companies to conduct human rights due diligence in their supply chains. There therefore exists a link between NAPs and stronger measures, but this depends on what the stakeholders make of it.

Echoing their previous remarks on the need for a strong political commitment, Professor Muigai recalled that when the debate on whether or not to adopt a NAP emerged in Kenya, the right context was there in the country as it was undergoing a review of the entire corpus of law that related to business operations. In many contexts, traction for the NAP is likely to happen if the country is undertaking an overhaul of its legal system to simplify business operations. This is the direction that Uganda, Tanzania and Rwanda have taken.

Lastly, the speakers addressed the question of protecting human rights defenders who are working at the grassroots level. Professor Muigai reflected on the role of local leadership and community-based advocacy. Ms Wrzoncki also mentioned that some multinational companies have policies supporting human rights defenders' work. In fact, if companies want to comply with the UNGPs, they will have to turn to those local human rights defenders who hold the context-specific knowledge required to respect human rights in a meaningful and effective way.

6.

SESSION 2: LESSONS LEARNED FROM COUNTRIES' EXPERIENCES

6.1 THE UGANDAN EXPERIENCE

During this session, the panellists shared their experiences with the Ugandan and Kenya NAP processes.

Priscilla Nyarugoye intervened on behalf of Ruth Ssekindi, Director of the Monitoring and Inspections Department at the Uganda Human Rights Commission (UHRC), to share the NHRI's experience on the development of the NAP in Uganda. While at first BHR issues were included in Uganda's general plan on human rights, UHRC recommended the adoption of a separate BHR NAP, which was accepted. The process in Uganda was very inclusive, with the government having established an inter-ministerial committee which held a meeting supported by OHCHR during which the Ministry of Gender, Labour and Social Development was identified to take the lead in the process. The ministry received support from different organisations and approved the NAP, which was then cleared by the Cabinet. An important feature of the process has been the use of a human rights-based approach to ensure respect of principles such as active and meaningful participation. To execute this principle, the Ugandan government conducted consultations at the regional level in different sectors and focusing on marginalised groups. UHRC's role was to ensure that the NAP process and document itself complied with the UNGPs.

Adding to Nyarugoye's presentation, Joseph Byomuhangyi from the Uganda Consortium on Corporate Accountability (UCCA) intervened to present UCCA's experience of participating in this process. CSOs were the ones to identify gaps in terms of regulation as Uganda was promoting a private sector-led economy: while the government was calling for more investments, civil society was arguing that the human rights protection framework was too weak. During Uganda's 2016 UPR, UCCA made a proposal to create a NAP, which the government accepted. OHCHR helped the Ministry of Foreign Affairs identify the Ministry of Gender, Labour and Social Development as leader for this process. UCCA and the Initiative for Social and Economic Rights organised the inception meeting to identify the relevant stakeholders and design a roadmap. Echoing Nyarugoye's presentation, Byomuhangyi saluted the ability for all stakeholders to share their views and inform the NAP.

While Uganda did not draft an NBA, the Initiative for Social and Economic Rights was able to develop a research piece assessing the context in which business activities took place and the protection of economic, social and cultural rights in the country. This research was used as a basis for drafting the NAP. During the consultative process, UCCA helped bring community voices to the forefront. The thematic issues that are at the centre of the NAP, such as issues related to land rights, transparency, consumer protection or access to remedy, all

came from these consultations with communities. Civil society made sure that the 99 districts were engaged in the process and that their voices were heard.

UCCA and other CSOs also supported the government to conduct a regulatory impact assessment to evaluate whether adding a NAP on top of the existing regulatory framework would be of any use. From this assessment, it was determined that there needed to be more collaboration between ministries and other institutions, which the NAP could achieve.

In this context of participation and consultations, Byomuhangyi stated that the implementation journey should be successful. The take-away from the Ugandan experience should be for all stakeholders to work jointly, which facilitates the dissemination of the NAP to diverse actors.

6.2 THE KENYAN EXPERIENCE

Wangechi Mwathi, from the Kenyan Department of Justice, explained that the NAP process began in 2015, when the Kenyan government accepted a recommendation from states during the UPR process. Kenya was voted best business destination and therefore attracted businesses, which led to a rise in communities voicing concerns about adverse human rights impacts by companies. The government followed the UNWG's guidance, with a National Steering Committee composed of members from other ministries and other relevant stakeholders leading the drafting of an NBA. The NBA and reports on the regional consultations informed the priorities and thematic areas to be the focus of the NAP. The NAP was validated in 2019 and is currently awaiting adoption in Parliament.

Kenya's experience underlines that strong leadership and confidence from stakeholders are fundamental. Paralleling what the Ugandan speakers had expressed, Mwathi stressed that cohesiveness in stakeholder participation is the key to a successful implementation since these actors would also be involved in enacting the NAP. International funding and technical support were also highlighted as important issues. Regarding implementation, the National Steering Committee is expected to develop an implementation plan, contribute to capacity building and raising awareness about the NAP.

James Mwenda, senior human rights officer at KNCHR, contributed the NHRI's point of view. KNCHR added to the NAPs process by providing its expertise and using its interactions with business actors to call on them to participate in the process. During the regional consultations, KNCHR received complaints and realised that most of them were related to BHR considerations. This role informed the process by identifying the salient issues that needed to be addressed in the NAP.

The Kenyan NHRI also has the important mandate of educating the public and building the capacity of businesses and government agencies on human rights issues, which has helped it to build good relations with these stakeholders. Lastly, Mwenda underlined that KNCHR had learned from the past experiences of those that had gone through that process before and the local BHR experts that helped in mapping out the areas to prioritise.

Lastly, Judy Njino from UN Global Compact Kenya presented the private sector's perspective and experience with the NAP process. In Kenya, the UN Global Compact worked closely with the companies that had already made some commitments to respecting human rights through policies, partnerships and philanthropy. From the country's experience, Njino shared elements to make

business participation more meaningful and to generate interest for companies looking to start incorporating BHR into their policies. A clear roadmap for businesses to be meaningfully involved and that will show them how to invest time and money into the process must be established. Awareness creation and capacity building are therefore crucial to demystify and mainstream the human rights agenda. Focusing on human rights due diligence and building the business case can help create an agenda that will deliver in terms of outcomes and opportunities. Structuring the approach by sector was also recommended. It was suggested that safe spaces for dialogue among businesses be created for them to learn from one another. The speaker underlined that engaging with SMEs and the informal sector must not be overlooked because this sector generates significant adverse human rights impacts. Lastly, emphasis was placed on representation and inclusivity in the NAP process, as well as the importance of finding ways to disseminate the NAP beyond the capital.

7.

CONCLUSION

The purpose of this virtual dialogue was to present the UNGPs' normative framework and share lessons learned from stakeholders' experiences with the NAP development process in order to stimulate NAP processes in the East and Horn of Africa region. From the discussion, it is clear that there exist many challenges that call for the development of NAPs, as well as many opportunities for collaboration and exchanges to ensure that this process is as inclusive and effective as possible. This dialogue also marked the beginning of regional BHR initiatives that will be conducive to sharing good practices and to creating the right environment for implementing NAPs.

ENDNOTES

- 1 Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011).
- 2 Human Rights Council, 'Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/RES/26/22 (15 July 2014) 2.
- 3 See, e.g., European Commission, 'A renewed EU strategy 2011–2014 for Corporate Social Responsibility', COM (2011) 681 final (25 October 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF> (accessed 7 December 2021); European Parliament, 'Resolution on the Review of the EU's Human Rights Strategy', 2012/2062(INI) (13 December 2012), [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2012/2062\(INI\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2012/2062(INI)) (accessed 7 December 2021); Council of Europe, 'Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights' (16 April 2014), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c6ee3 (accessed 7 December 2021).
- 4 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 Forwards', <https://www.humanrights.dk/publications/kenya-national-action-plan-business-human-rights-case-study-process-lessons-learned> (accessed 7 December 2021).
- 5 OHCHR, 'National Action Plans on Business and Human Rights', <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> (accessed 7 December 2021).
- 6 G20, 'G20 Leaders' Declaration: Shaping an Interconnected World' (July 2017), https://www.consilium.europa.eu/media/23955/g20-hamburg-leaders_-_communiqu%C3%A9.pdf (accessed 7 December 2021).
- 7 UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights (OHCHR: Geneva, 2016), i.
- 8 UN Working Group on Business and Human Rights, Raising the Ambition – Increasing the Peace: UNGPs 10+ A Roadmap for the Next Decade of Business and Human Rights (OHCHR: Geneva, 2021).
- 9 These are: Kenya, Morocco, Liberia, Uganda, Ghana, Nigeria, Tanzania, Zambia, Mozambique and South Africa.
- 10 African Commission on Human and Peoples' Rights, 'State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment' (2021), <https://www.achpr.org/public/Document/file/English/Articles%2021%20&%2024%20State%20Reporting%20Guidelines.pdf> (accessed 7 December 2021).
- 11 The Danish Institute for Human Rights, 'Toolkit on National Action Plans for Business and Human Rights' (2019), <https://www.humanrights.dk/tools/toolkit-national-action-plans-business-human-rights> (accessed 8 December 2021).