

DECEMBER 2019

Kenya National Commission on Human rights - Business and Human Rights Work

This document details the role of the Kenya National Commission on Human rights in developing Kenya's National Action Plan and the National Baseline Assessment, highlighting lessons learned from these experiences.

NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

In 2015, a Universal Periodic Review (UPR) recommendation by Norway asked Kenya to develop National Action Plans on Business and Human Rights (NAP) to promote local implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs). Kenya accepted this recommendation and is now developing a NAP, having commenced the process in April 2016.

The NAP will not only guide the implementation of the UNGPs but also that of Article 20 of the Constitution of Kenya (2010) which states that the Bill of Rights binds all persons, including corporate entities.

The NAP development process is led by the State Law Office & Department of Justice. The Kenya National Commission on Human Rights

(KNCHR) is the implementing partner and hosts the secretariat (The Department of Justice and the KNCHR).¹

Through a multi-stakeholder forum, 13 members were identified to form a National Steering Committee (NSC). Through this forum, mapping of regional and countrywide stakeholders was also done. The NSC includes representatives from Government agencies, business associations, labour and trade unions, civil society organisations and the Office of the United Nations High Commissioner for Human Rights. The diversity of members selected for the NSC was important to reflect the needed policy coherence. Such a move helped build strong relationships among the agencies that are likely to spearhead implementation of the NAP.

¹ Kenya National Commission on Human Rights (n.d.), Business and Human Rights. <http://www.knchr.org/Our-Work/Business-and-Human-Rights>

NATIONAL BASELINE ASSESSMENT

As part of the development process, a National Baseline Assessment was conducted for the purpose of evaluating current state of play on business and human rights and potential impacts. This was followed by several regional consultations. In each region, consultations included government officials, businesses, local civil society and members of the public, particularly those impacted by business conduct.

At the National level, separate forums were held targeting indigenous communities, key officials in government and top business executives. The NBA and countrywide dialogues culminated into the identification of priority areas for the NAP under 5 themes: Land, Environment, Labour, Revenue transparency and Management and Access to remedy. Additional Consultations were held with subject matter experts including integration of the Kenya Vision 2030 and the Sustainable Development Goals (SDGs). The experts consolidated and refined the identified issues into Thematic Background papers. These documents can be accessed on the NAP website².

CHALLENGES AND LESSONS LEARNED

The NAP process has not been without challenges. The business landscape in Kenya is characterized by mostly informal enterprises that account for a large share of all Small and Medium Enterprises (SMEs). During the consultation process, it was difficult for SMEs to identify their due diligence processes, as many of them highlighted that they were very

busy just running their businesses. SMEs felt that perhaps due diligence is a preserve of large companies with resources and infrastructure suited for the conduct of due diligence.

Secondly, the sector is also rather large and diverse. And the reality is that a lot more that divides them than unites them. The fact that most of them operate informally means that data and statistics remain a challenge. The sector continues to remain invisible in different national agendas, and therefore quite difficult to link their activities to a human rights impact.

Developing a NAP is expensive and the content of a NAP very technical in nature. The secretariat has had to explore partnerships with different actors to not only secure funding but also providing technical support to the Steering committee through provision of experts.

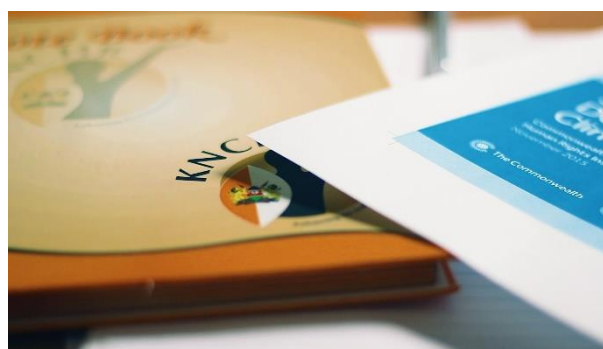


Photo: Commonwealth Forum of National Human Rights Institutions. 2016.

Another lesson learnt is that it is essential that government ministries, departments and agencies involved in procurement, licensing and regulating various aspects of business activities are consistently at the NAP

² National Action Plans on Business and Human Rights (n.d.), Kenya. <https://globalnaps.org/country/kenya/>

discussion table as this will encourage greater ownership of the NAP as well as better formulation of issues relating to business and human rights. Civil society engagement at national and community levels has been important in creating and strengthening platforms where business and human rights issues can be discussed. Additionally, CSOs have been well placed to continue building the capacity of stakeholders at the regional level on the UNGPs.

The NAP process is already triggering actions, as observed in the Turkana County of Kenya, where communities are voicing their concerns around the oil exploration projects and engaging with the government and concerned companies on business and human rights issues, such as land use, environmental protection, employment, procurement, and corporate social responsibility.

FOR MORE INFORMATION, CONTACT:

Stella Wangechi, Senior Human Rights Officer, Kenya National Commission on Human Rights.

swangechi@knchr.org

+254-020-3969000

www.knchr.org