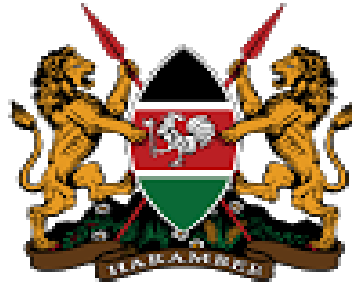


REPUBLIC OF KENYA



NATIONAL ACTION PLAN

ON

BUSINESS AND HUMAN RIGHTS

**For the Implementation of the United Nations Guiding Principles
on Business and Human Rights**

2020-2025

FOREWORD

In recent years, Kenya has seen significant increase in foreign investment and remarkable growth in the domestic private sector. While these trends may support sustainable development, they may also adversely affect workers rights, communities and the environment. Adverse effects from business activities range from community displacements, child labour, environmental degradation and detestable working conditions. Without deliberate state stewardship, Kenya's expanding investments may lead to unmitigated violations of Human Rights.

The Government of Kenya through the Office of the Attorney General and Department of Justice has developed a National Action Plan on Business and Human Rights, a comprehensive strategy for protecting against human rights abuses by businesses, whether private or owned by government.

The National Action Plan (NAP) has domesticated the UN Guiding Principles on Business and Human Rights and has focused on five thematic issues identified by stakeholders namely; Land and Natural Resources, labour rights, revenue transparency, environmental protection and access to remedy. It outlines concrete commitments by the Government for addressing adverse business-related human rights impacts under these themes. It does not create new obligations but restates those already recognized under the Constitution. It is oriented towards addressing actual and potential business and human rights challenges by both the Government and businesses.

The development of this National Action Plan involved an extensive stakeholder consultative process. The development process was led by the Office of the Attorney General and Department of Justice and the Kenya National Commission on Human Rights and coordinated by an inter-agency National Steering Committee. As an initial step, the Government commissioned a survey of human rights impacts linked to business activities in Kenya. This included the full range of internationally and regionally recognized human rights, including labour conditions, environmental management and the collection, distribution and accountability for revenue. The Government also commissioned a National Baseline Assessment, which was carried out by the Kenya Human Rights Commission (KHRC) and the Institute of Human Rights and Business to assess some of the country's key laws and regulations that guide the conduct of business in order to identify the extent to which they address human rights, their enforcement, institutional arrangements, gaps and recommendations. The baseline also assessed the extent to which the Government has implemented its obligations in promoting the respect for human rights and the protection against human rights violations by business enterprises through policies, laws and regulations, their enforcement as well as provision of appropriate and effective remedies for any breach.

This Action Plan details policy priority areas that the Government will focus on in the next five years in a bid to ensure that all businesses including state owned enterprises respect human rights. The Action Plan consolidates the existing efforts in the protection and fulfilment of human rights by the state and other non state actors. I call upon both levels of Government and businesses to put in place the necessary mechanisms to facilitate the implementation of this National Action Plan.

P. KIHARA KARIUKI
ATTORNEY GENERAL

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|---------------------------------|--|
| COTU | Central Organization of Trade Unions |
| DOJ | Department of Justice |
| EACC | Ethics and Anti-Corruption Commission |
| EMCA | Environmental Management and Coordination Act |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic Social and Cultural Rights |
| IFFs | Illicit Financial Flows |
| JTI | Judiciary Training Institute |
| KAM | Kenya Association of Manufacturers |
| KBS | Kenya Baseline Study on Business and Human Rights |
| KHRC | Kenya Human Rights Commission |
| KLRC | Kenya Law Reform Commission |
| KNCHR | Kenya National Commission on Human Rights |
| KSG | Kenya School of Government |
| NBA | National Baseline Assessment |
| NAP | National Action Plan |
| NEMA | National Environment Management Authority |
| NHRI | National Human Rights Institution |
| NLC | National Land Commission |
| NSC | National Steering Committee |
| PPOA | Public Procurement Oversight Authority |
| SDGs | Sustainable Development Goals |
| UNGPs | United Nations Guiding Principles on Business and Human Rights |
| UPR | Universal Periodic Review |
| KSG, OAG&DOJ, KNCHR, KEPSA, KAM | |

EXECUTIVE SUMMARY

The Bill of Rights in the Constitution of Kenya, 2010 binds all natural and legal persons, including businesses. At the international level, the United Nations Guiding Principles on Business and Human Rights (UNGPs) offer a global reference that reaffirms States' duty to protect those under their jurisdiction from business-related human rights abuses, business responsibility to respect human rights, and the requirement for both States and businesses to ensure that victims of such abuses have access to effective remedy.

Kenya is committed to ensuring that businesses operating in the country respect human rights. In this regard, this National Action Plan on Business and Human Rights (NAP) has been developed to guide implementation of the UNGPs. The Office of the Attorney General and Department of Justice and the Kenya National Commission on Human Rights (KNCHR) coordinated the NAP development process. This NAP focuses on five critical thematic issues identified by stakeholders: labour, revenue transparency, environment, land and natural resources and access to justice.

Chapter One gives an overview of the NAP development process, including the objectives of this action plan. Chapter Two gives a situational analysis, contextualises each of the five thematic areas and highlights the policy concerns under each thematic area. Chapter Three identifies the policy actions using the three-pillar framework of the UNGPs. Chapter Four spells out how the policy actions shall be implemented and monitored.

This NAP is a statement of government policy actions to ensure the respect of human rights by businesses. It applies to all businesses regardless of their size, sector, operational context, ownership and structure. It will be reviewed periodically under the guidance of the NAP Implementation Committee. This committee will ensure accountability of the various stakeholders charged with implementation. It will also guarantee that the NAP implementation process remains aligned to contemporary practices and developments in the field of business and human rights with due regard the Kenyan context.

CHAPTER ONE

INTRODUCTION

1.1 Overview

Kenya is working towards achieving middle-income country status by the year 2030 through implementation of Vision 2030, Kenya's blueprint for national development 2008 to 2030. Vision 2030 aims to transform Kenya into a middle-income country through three pillars - economic, social and political – and is being implemented in successive 5-year Medium Term Plans (MTPs). A key objective of the third medium term plan is to implement policies, programmes and projects that will facilitate the attainment of the 17 Sustainable Development Goals (SDGs) to ensure that the global development framework and its implementation is directly linked to achieving both Vision 2030 and the SDGs. All Ministries, Counties, Departments and Agencies (MCDAs) are expected to report on the relevant monitoring indicators identified by the Kenya National Bureau of Statistics (KNBS) out of the 230 Global indicators. Most importantly, the agenda is not just a call for action, but also includes specific guidance for implementation that provides flexibility for taking into account national circumstances and associated challenges. Achievement of the SDGs requires business support through innovation, resource mobilisation, inclusion and non-discrimination, collaboration and adoption of sustainable practices. Human rights treaties and standards underpin the entire 2030 Agenda and over 90% of SDGs targets can be linked to human rights standards. Thus, business respect for human rights will be a key means of ensuring progress towards achievement of the SDGs in a manner that contributes to equal outcomes for all, and the realisation of human rights.

The Constitution of Kenya, 2010, provides the normative framework for the respect of human rights by businesses in Kenya. Article 20 provides that the Bill of Rights binds all state organs and all persons, who are defined in Article 260 to include a “company, association or other body of persons whether incorporated or unincorporated.” The courts have interpreted this as imposing human rights obligations on businesses, which approach has potentially given victims of business related human rights abuses an extensive range of options for remedy. This constitutional imperative for businesses supports the state's commitment to protect human rights and is consistent with the state's obligations under regional and international human rights instruments. In this respect, Articles 2(5) and (6) of the 2010 Constitution provide that the general rules of international law, and any treaty or convention ratified by Kenya, form part of the laws of Kenya. Therefore, treaties and international agreements that Kenya has signed and international normative frameworks such as the United Nations Guiding Principles on Business and Human Rights (UNGPs), are a part of the domestic legal framework.

At the international level, the 2011 endorsement of the UNGPs by the United Nations Human Rights Council was a pivotal point in building consensus about the required standard of business conduct that ensures respect for human rights. The UNGPs are based on three pillars namely; State Duty to Protect Human Rights, Corporate Responsibility to Respect Human Rights and Access to Remedy.

Pillar 1; State Duty to Protect Human Rights: Describes the duty of the State to protect those under its jurisdiction from human rights violations whether committed by public or private sectors. This can be achieved through legislative and administrative measures.

Pillar 2; Corporate Responsibility to Respect Human Rights: Spells out the responsibility of businesses to respect human rights by ensuring that due diligence is exercised in their operations to avoid causing harm to individuals or communities. It further calls on businesses to take positive measures to enhance the enjoyment of human rights.

Pillar 3; Access to Remedy: Emphasizes the responsibility of States and the corporate sector to ensure that victims of human rights violations have access to effective remedies. This can be achieved through judicial and non-judicial grievance handling mechanisms.

The three pillars are elaborated in 31 guiding principles on how to operationalize each of them. The working group on the issue of human rights and transnational corporations and other business enterprises (the Working Group on business and human rights) which is the body mandated by the UN Human Rights Council to promote the implementation of the UNGPs, has recommended that states adopt NAPs on business and human rights to guide on the implementation of the UNGPs.

The Government is committed to protecting individuals and communities against the adverse impacts of business-related operations and expects businesses to respect human rights in the course of their operations. This NAP presents the Government's commitment to address adverse business-related human rights impacts. The NAP brings more clarity to the relevance of human rights for business, emphasizing practical solutions and proposes the development of useful tools and guidance materials. It will facilitate the identification of approaches that have been recognized by a number of businesses and stakeholders as being good both for business and for human rights. Embracing the action plan is in keeping with the goal of showing that advancing human rights is not just about managing risks and meeting standards and expectations but also about realizing new opportunities for sustainable growth and development.

1.2. The National Action Plan Formulation Process

In January 2015 during her second review under the Universal Periodic Review Process before the Human Rights Council, Kenya accepted recommendations to develop a national action plan on business and human rights to implement the UNGPs.

Kenya adopted the five Phases of developing a NAP given as a guidance by the UN Working Group on Business and Human Rights, that is, Initiation, Assessment and Consultation, Drafting, Implementation and Update. The first preparatory phase involved communicating and advocating for the development of the NAP and holding stakeholder consultations in order to come up with a well thought out and balanced National Consultative Steering Committee to guide the process.

In October 2015, the Office of the Attorney General and Department of Justice developed a concept paper whose objectives were to briefly highlight business and human rights challenges in the country and to seek requisite approvals to commence the development of a National Action Plan on Business and Human Rights. In April 2016 through a public statement issued by the Attorney General, Kenya officially committed to developing a national action plan that reflects issues of priority to business and human rights in Kenya. The development process has been spearheaded by the Office of the Attorney General and Department of Justice and the Kenya National Commission on Human Rights. A National Steering Committee (NSC) consisting of representatives from 13 institutions¹ was formed to coordinate and offer strategic guidance to the development process.

Stakeholders' Consultations

As a first step, the National Steering Committee commissioned a national baseline assessment (NBA) that served to evaluate the current implementation of the UNGPs and relevant business and human rights frameworks. This was augmented by the Kenya Human Rights and Business Country Guide. The NBA was followed by policy dialogue forums held in Nairobi in October 2016 with stakeholders from Government, Businesses and Civil Society Organizations. Between November 2016 and February 2018 regional stakeholder consultations were held in different parts of the country. In each region, those consulted included officials in the National and County Government, business representatives, local civil society organizations and community members impacted by business operations in their respective localities. Additional consultations encompassed a national forum with indigenous people groups. There was due regard for the gendered impacts of businesses during the consultations, examination of each theme and in policy action formulation. The NBA coupled with the regional consultations were vital in the identification of thematic areas for the NAP.

¹ Office of the Attorney General and Department of Justice, Kenya National Commission on Human Rights (KNCHR), National Gender and Equality Commission (NGEC), Ministry of Labour and Social Protection, Ministry of Energy and Petroleum, Central Organization of Trade Unions (COTU), Kenya Human Rights Commission (KHRC), Federation of Kenya Employers (FKE), Kenya Private Sector Alliance (KEPSA), Global Compact Network Kenya (GCNK), Council of Governors, Office of the High Commissioner for Human Rights (OHCHR) and Institute for Human Rights and Business (IHRB).

Given the wide range of business-related human rights concerns, the NSC identified five themes, prioritised by stakeholders, as the focus of this NAP. These are: land and natural resources, revenue transparency, environmental protection, labour rights and access to remedy. Additionally, there was recognition that certain groups are disproportionately impacted by businesses. In this regard issues of gender, the situation of vulnerable, marginalised and minority groups such as persons with disabilities (PWDs), indigenous groups, were identified as cross cutting issues to be addressed under each of the themes. Subsequently, the National Steering Committee commissioned five thematic working groups drawn alongside the five thematic areas. The working groups were useful in refining the policy concerns and recommendations for the NAP. This NAP is a crystallisation of the National Baseline Assessment findings, the stakeholder consultations and the recommendations from the thematic working groups.

Objectives of the NAP

The objectives of this NAP are:

- 1) To guide the State in fulfilling its duty to protect individuals and communities from business-related human rights abuses consistent with its domestic and international obligations.
- 2) To guide businesses on the measures they should undertake to meet their responsibility to respect human rights in their operations.
- 3) To promote human rights due diligence by businesses as a concrete measure of preventing adverse impacts on people.
- 4) To offer a roadmap of strengthening access to State-based judicial and non-judicial remedies for victims of business-related harm.

CHAPTER TWO

SITUATIONAL ANALYSIS AND THEMATIC AREAS OF FOCUS

2.1 Introduction

Businesses in Kenya, just as businesses worldwide contribute both positively and negatively to human rights. The positive contribution includes employment creation, contribution to public revenue through payment of taxes and life quality-enhancing innovations. Negative impacts include violations of labour rights, displacement of communities to pave way for operations often without adequate consultation or compensation, environmental pollution, objectionable financial practices such as illicit financial flows and transfer pricing that often deprive the host government of much-needed revenue to ensure the development of social services such as education and healthcare, among others. The stakeholders' consultations revealed that human rights abuses are prevalent across various sectors in Kenya including but not limited to manufacturing, tourism, mining, telecommunications, banking and finance, business services, and agribusiness.

This chapter presents a situational analysis, contextualises each of the themes and gives an overview of the nature of the business and human rights concerns identified throughout the consultation process, the legal and regulatory framework and sets out areas or matters for policy actions in this NAP.

The NAP is aligned to Kenya's Vision 2030 and the Sustainable Development Goals (SDGs) for both vertical and horizontal policy coherence and integration. It links each of the identified themes and the cross cutting issues to the corresponding SDGs. The NAP does not create any new obligations but is an overarching coherent tool to guide all actors in respecting human rights as they play their expected role in the development of the country, including attainment of the SDGs.

2.2 Kenya's Experience with Business and Human Rights

Key business and human rights concerns in Kenya revolve around workplace rights, local communities and business relations, human rights and sustainable land use, human rights and sustainable environment and human rights and small- and medium-sized enterprises. There have been allegations of human rights abuse across many business sectors including in the agricultural sector where sexual harassment, poor housing, low

remuneration and poor working conditions are common particularly in commercial farms growing tea, coffee and flowers.

Under the social pillar of the Vision 2030, Kenya aims to build a just and cohesive society with social equity in a clean and secure environment. The Key sectors under the social pillar namely: education and training, the Health System, Water and Sanitation, the environment, housing and urbanization, gender, youth and vulnerable Groups, equity and poverty elimination revolve around the economic, social, cultural and environmental rights guaranteed under the Constitution of Kenya, 2010. Economic, social and cultural rights are those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education. These dovetail with the accepted position that the responsibility of business enterprises to respect human rights refers to internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

Pollution is a key environmental challenge in Kenya. It gravely affects the quality of air, land and water. Air pollution from industrial and domestic sources is a leading cause of respiratory diseases such as chronic obstructive pulmonary disease, lung cancer, pulmonary heart disease, and bronchitis thereby adversely impacting the health of citizens. Increased industrial activity witnessed in the recent past, particularly in the extractive, agricultural and manufacturing sectors, have exacerbated the problem of pollution. Toxic and hazardous substances are widely used in Kenya particularly in the agricultural and industrial sectors. Most of these substances end up contaminating soils and water bodies, causing eutrophication and destroying aquatic life (such as fisheries) and biodiversity, including traditional agricultural crops and vegetation. In addition, exposure to these substances is likely to produce chronic and acute effects. Like many other countries in Africa, Kenya is vulnerable to illegal dumping of obsolete and banned toxic and hazardous substances.

Discoveries of oil and other natural resources present opportunities but also potential grounds for challenges to human rights such as those relating to sustainable land use, relations with local communities, and ensuring transparency and accountability in revenue streams, violation of local laws by foreign companies operating in the country. For example, the relationship between local communities and oil companies has raised a number of grievances on the part of the local communities revolving around community engagement, land use, environmental protection, employment, procurement and corporate social responsibility. To develop a sustainable and equitable extractive

sector, these challenges must be addressed especially since they have a far reaching impact on human rights. There is need to embed international human rights standards early into the exploration and drilling contracts, impact assessments, due diligence mechanisms and business reporting. This National Action Plan clarifies the Government's expectation from concerned businesses in this regard.

2.3 Land and Natural Resources

Land is a prerequisite for the enjoyment of economic, social and cultural rights relating to an adequate standard of living, housing, food and natural resource benefits sharing. The Constitution states that “*all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals*”. However it is often a source of conflict due to population pressure, rapid urbanisation, environmental degradation, land-intense large-scale projects such as mining, oil and gas and commercial agriculture, all of which result in competition for available productive land.

International human rights law guarantees against arbitrary deprivation of property and provides a standard of conduct to be followed in case of evictions. Furthermore, there are additional protections for indigenous people in recognising the unique importance, cultural and spiritual values that they attach to their lands, territories and natural resources.² These guarantee land rights for indigenous people and provide protections against displacement from their lands. They also provide for consultation and consent to development projects. Several SDGs targets relate to land and natural resources³.

Kenya has a relatively progressive constitutional and statutory framework for the ownership, management and access to land and natural resources found within her boundaries. The Constitution provides that land, whether public, private or communal, shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable. The Constitution also guarantees the right to property, and the protection from arbitrary deprivation of one's property including land. In addition to the Constitution, the Land Act, 2012 deals with public land under Article 62 of the Constitution, private land under Article 64 of the Constitution, and community land

² United Nations Declaration on the Rights of Indigenous Peoples [2007] and the ILO's Indigenous and Tribal Peoples Convention [1989].

³ These include 1.4 (access by all, in particular the poor and the vulnerable...to economic resources), 2.1 (protection of the poor and vulnerable groups from situations that may deprive them of access to food), 2.3 (double agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land...), 5.a (reforms to ensure women have equal rights to economic resources), 6.1 (access to safe and affordable drinking water), 11.1 (provision of adequate, safe and affordable housing and basic services), 11.4 (strengthening protection and safeguard of world's cultural and natural heritage), 12.2 (sustainable management and efficient use of natural resources) and 15.2 (promotion of the implementation of sustainable management of forests, including halting deforestation).

under Article 63 of the Constitution. Further, the Community Land Act, 2016 deals more substantively with community land which is vested in and held by communities identified on the basis of ethnicity, culture or similar community interest. All matters relating to compulsory land acquisition, including access to land for business purposes, are governed by the Land Act, 2012.

The country has made strides in the legal and policy protection of women's property rights as relates to ownership, inheritance, management and disposal. The 2009 National Land Policy amongst other provisions cites the need to protect women's right to inherit land and the land rights of widows and divorced women. It also distinguishes the inheritance rights between married and unmarried women directing the Government to secure the rights of unmarried daughters. The Matrimonial Property Act, 2013 provides that a married woman has equal rights as a married man to acquire, administer, hold, control or dispose of property whether movable or immovable. The Act further provides that ownership of matrimonial property vests in the spouses according to their contribution, either monetary or non monetary, in its acquisition and upon divorce should be divided between the spouses. The Marriage Act, 2014 provides that parties to a marriage have equal rights and obligations at the time of the marriage, during and at the dissolution of the marriage. However despite these laws, there are still obstacles including cultural traditions, historical injustices and lack of awareness that inhibit women from accessing and owning their fair share of property and attendant rights.

Furthermore, the Constitution guarantees access to information, community empowerment and inclusion in decision-making and benefit sharing from exploitation of natural resources. Additionally, Kenya has various laws and policies to ensure that communities hosting extractives projects benefit through revenues, employment of local people and utilisation of local goods and services.

The NAP consultations identified the following concerns related to land, natural resource development and business:

1. Lack of knowledge of existing compensation and resettlement framework for the voluntary and compulsory acquisition of land;
2. Lack of guidance on community consultations in the context of natural resources governance resulting in inadequate participation of local communities in decision making;
3. Land adjudication has not been undertaken in some areas where businesses are operating or propose to operate, complicating decisions on who the rightful parties to be consulted and compensated are;

4. The Mining Act has not been fully operationalised with regards to the sharing of revenues, effectively denying local communities impacted by the operations of mining companies the rights and protections under the law;
5. Cultural and historical barriers to access to land by women, minorities and marginalised groups such as indigenous persons. These barriers limit these groups' participation in and decision-making power over land-related issues; and
6. Lack of sustainable benefits for host communities from the exploitation of natural resources despite the constitutional imperative for equitable sharing of benefits.

2.4. Revenue Transparency

Tax revenue is the most important, reliable and sustainable means of resourcing initiatives that contribute to the realisation of human rights such as health and education. Businesses are significant contributors to tax revenue. The Kenya Revenue Authority Act, 1995 provides that domestic revenue is derived from several sources including taxes, duties, fees, levies, charges, penalties, fines or other monies and are collected from individuals, private and public businesses by different entities at national and county level.

Tax justice and the regulation of financial behaviour of companies can no longer be treated in isolation from the corporate responsibility to respect human rights, outlined in the UNGPs and business commitments to support the SDGs. Indeed, the SDGs include specific targets on reducing illicit financial flows (IFFs), returning stolen assets, reduction of corruption, and strengthening domestic resource mobilisation. In this respect, Goal 16 on the promotion of peaceful and inclusive societies includes specific targets on reducing illicit financial flows (target 16.4), corruption (target 16.5), Goal 17 on strengthening implementation and partnerships, target 17.1, provides for the strengthening of domestic resource mobilisation, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.

Like in many jurisdictions, Kenya faces challenges concerning revenue mobilisation and the link to business activities, among them IFFs, tax avoidance and tax evasion by businesses. These practices result in reduction of the resources available for investment in essential social services fostering inequalities, undermining economic and social institutions and discouraging transparency in matters of public finances. The Kenya Government has enacted legislation to address these practices, including the Anti-Corruption and Economic Crimes Act, the Bribery Act, 2016, and amendments in 2017 to the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA).

The 2017 amendments to the Proceeds of Crime and Anti-Money Laundering Act, 2009 establish the Financial Reporting Centre (FRC), an independent financial

intelligence agency charged with combating money laundering and identifying proceeds of crime including tax evasion. The Ethics and Anti-Corruption Commission Act, 2012 creates the Ethics and Anti-Corruption Commission (EACC) whose mandate is to combat and prevent corruption and economic crimes set out in the Anti-Corruption and Economic Crimes Act. The Bribery Act, 2016 seeks to address the supply side of corruption by placing a duty on businesses to put in place appropriate measures relative to their size, scale and nature of operations towards the prevention of bribery and corruption, and also requires any person holding a position of authority in a business to report any knowledge or suspicion of bribery within twenty-four hours. Kenya is also party to international and regional initiatives on combating bribery and corruption.

Despite the above efforts, the NAP consultations identified several challenges that affect revenue transparency:

- i. Corruption in the process of revenue collection and the management of public revenue. Stakeholders identified corruption in the business licensing process, the process of tax collection and public procurement attributed to both public and private sector actors.
- ii. Lack of disclosure of contracts particularly those that have significant economic and social consequences.
- iii. Lack of transparency in administration and management of revenues from the exploitation of natural resources including from mining and oil and gas activities.
- iv. The absence of legal beneficial ownership disclosure aids the veil of secrecy in determining who owns and controls business entities inhibiting law enforcement's ability to 'follow the money'.

2.5. Environmental Protection

There is growing global consciousness on the impact of business on the environment. The operations of businesses such as extractives, manufacturing and infrastructure could have adverse impacts on the environment leading to morbidities or mortalities unless effectively regulated. At the international level, the right to a clean environment is enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the African Charter on Human and Peoples Rights, all of which Kenya is a party to, among others. Various SDGs targets relate to the environment and are underpinned by human rights⁴.

⁴ They include 1.5 (building the resilience of the poor and the vulnerable to reduce their exposure to climate change impacts); 6.3 (improving water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals); 7.2 (increasing

At the domestic level, Article 42 of the Constitution codifies the right to a clean and healthy environment. Article 69 requires the State to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, including by eliminating processes and activities that are likely to endanger the environment. It also obligates every person, the definition of which includes businesses, to cooperate with state organs and other persons in the protection and conservation of the environment. Article 70 of the Constitution gives any person the right to seek redress in court if the right to a clean and healthy environment has been or is likely to be violated.

The Environmental Management and Coordination Act, 1999 (EMCA) revised in 2015 and the Climate Change Act, 2016 are among the key legal frameworks concerning the protection of the environment. Under the EMCA, Kenya has also adopted the use of the Environmental Impact Assessments (EIA) as a decision making tool to help improve the environmental outcomes of the management decisions. It is mandatory that certain activities that are likely to have significant impacts on the environment are evaluated and measures spelt out to mitigate identified negative impacts prior to their being approved to commence operations. The National Environment Management Authority (NEMA) is the institution responsible for the review and approval of EIAs and Environmental Management Plan (EMP) as well as for regular auditing and monitoring of the same.

The Climate Change Act, 2016 establishes the National Climate Change Council, which is mandated to provide guidelines to private entities on their climate change obligations, including their reporting requirements.

Stakeholders' consultations during the development of this NAP identified the following concerns related to the impacts of businesses on the environment:

- Environmental pollution by business operations, including through discharge of effluent into waterways, air and noise pollution and poor disposal of solid waste, toxic and hazardous substances. These negative impacts compromise the rights to; a clean and healthy environment, health, reasonable standards of sanitation, clean and safe water.
- Loss of biodiversity due to destruction and encroachment on the natural environment for commercial purposes negatively impacts livelihoods, health and access to clean and safe water for present and future generations.

use of renewable energy); 9.4 (adoption of clean and environmentally sound technologies and industrial processes); 11.6 (reducing adverse environmental impact of cities, including by paying attention to air quality and municipal and other waste management); and 12.4 (adoption of environmentally sound management of chemicals and waste). Others include 12.6 (encourage companies 'to adopt sustainable practices and to integrate sustainability information in their reporting cycle'), 12.7 (promotion of public procurement practices that are sustainable), 13.1 (strengthening resilience to climate change) and 15.2 (promotion of the implementation of sustainable management of forests, including halting deforestation).

2.6. Labour

The Kenyan labour market is highly informal. As at 30th June 2019, 83% of the working population was in the informal sector⁵. In 2019, male employees accounted for 64.5 per cent of the total wage employment in the modern sector. Majority of female employees were working in Education, Agriculture, forestry and fishing, Public administration and defence. Overall, casual employment registered a growth of 6.0 per cent and accounted for 23.4 per cent of the total wage employment (KNBS, 2020). Casual workers have less protections under the labour laws such as the right to collective bargaining or paid leave. The ILO refers to this as casualization of labour and has expressed concerns in the increasing use of casual labour in formal employment. While the current NAP has no specific actions on the informal sector, it is important to formulate policies for the proper oversight of this sector.

It is imperative that the labour market is regulated to ensure compliance with constitutional, legal and international standards. Several SDGs and ILO core conventions cover various aspects of working conditions including decent work and economic growth, reduction of inequality, quality education and gender equality. The SDG targets include: 1.3 (improve nationally appropriate social protection systems for all, particularly the poor and vulnerable); 2.3 (double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers); 4.5 (eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations); 5.2 (eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation); and 8.5 (achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value). Others are 8.8 (protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment), and 16.2 (end abuse, exploitation, trafficking and all forms of violence against and torture of children).

Article 41 of the Constitution of Kenya guarantees every person the right to fair labour practices, and confers specific rights on workers, employers and trade unions and employers' organisations. Every worker is entitled to fair remuneration, reasonable working conditions, the right to join and participate in the activities of a trade union and go on strike as a means of advocating for their labour-related rights. Employers are

⁵ Kenya National Bureau of Statistics (KNBS), 2020.

entitled to form and join employers' organisations and participate in such organisations' programs. Trade unions and employers' organisations are entitled to organise and form new or join existing federations. Other constitutional rights related to labour include Article 30 which prohibits slavery, servitude and forced labour and Article 27 which guarantees equality and freedom from discrimination, specifically including the equal rights of women and men to opportunities in the economic sphere and the dictate that no person shall discriminate against another person directly or indirectly on grounds including sex, health status, religion, ethnic origin, disability and social origin.

Several statutes give effect to these labour-related constitutional guarantees, including those dealing with labour disputes, working conditions and protection against discrimination. Some of the critical statutes are the Occupational Safety and Health Act, 2007, the Employment Act, 2007, the Labour Relations Act, 2007, Childrens Act, 2001, HIV& AIDS Prevention and Control Act, 2006 and the Sexual Offences Act, 2006.

During the stakeholders' consultation the following concerns were identified:

- 1) Sexual harassment is widespread and underreported with women being the majority of victims- fear of job loss being a major factor in the reluctance to report. Furthermore there is low enforcement of the Sexual Offences Act, 2006;
- 2) Lack of access to maternity and paternity leave. While the law provides and protects both maternity and paternity leave, not all workers in the private sector are able to access this benefit for fear of job loss. Once again, enforcement of the law in this respect remains weak;
- 3) Low level of awareness on labour rights among workers (mostly women in low income or low skilled jobs) and employers;
- 4) Lack of effective regulation of recruitment agencies for migrant workers;
- 5) Lack of publicly available statistics disaggregated by sex and other vulnerabilities that could be useful in addressing sex and other forms of discrimination in the workplace; and,
- 6) Lack of effective remedies for victims of labour-related grievances resulting in high prevalence of unresolved labour-related grievances. A weak enforcement mechanism, in particular inadequate number of state labour inspectors and the lack of effective operational level grievance mechanisms were also cited as contributing factors.

2.7. Access to Remedy

The Constitution of Kenya, 2010 adopts international law as part of the domestic law. In international human rights law, Kenya is obligated to protect those under its jurisdiction against human rights violations, including by third parties such as businesses.

SDG 16.3 urges states to ‘*promote the rule of law at the national and international levels and ensure equal access to justice for all*’. Additionally, SDG 16.6 calls for the development of ‘*effective, accountable and transparent institutions at all levels*’.

Article 20(1) of the Constitution provides that the Bill of Rights binds all persons, including businesses. Indeed, since the promulgation of the Constitution in 2010, courts have adjudged several businesses to be in violation of human rights and awarded victims varying remedies. Furthermore, there are a number of legislative provisions regulating business conduct to protect those within Kenya’s jurisdiction from business-related human rights violations. Protection against discrimination on the ground of HIV/AIDS status, for example, covers those in employment. The same applies to the protection of discrimination against persons with disabilities, women and marginalised groups.

The breach of these and other relevant laws may result in administrative and judicial sanctions. Judicial avenues include the Human Rights Division of the High Court, the Environment and Land Court and the Employment and Labour Relations Court. Those dissatisfied with the decisions of these courts may appeal to the Court of Appeal with a limited right of further appeal to the Supreme Court. Administrative avenues include tribunals such as, National Environment Tribunal (adjudicates environmental cases including grievances against businesses) and the Rent Restriction Tribunal (adjudicates disputes between tenants and landlords). One may appeal the decisions of these tribunals to the High Court.

One example of an avenue to access remedy is Section 3 of the Environmental Management and Co-ordination Act which provides that a person may apply to the Environment and Land Court for redress for any denial, violation, infringement of or threat to the person’s right to a clean and healthy environment on the person’s own behalf or on behalf of a group of persons or in the public interest. If the Court finds such a denial, violation, infringement or threat to have occurred, it may make any order it considers appropriate to prevent or stop any act or omission that is deleterious to the environment, compel any public officer to take measures to prevent or discontinue any act or omission deleterious to the environment, require that any on-going activity be subject to an environment audit, compel the persons responsible for environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage, or provide compensation for any victim of pollution.

Despite these legal protections, the community consultations conducted as part of the NAP process revealed structural and procedural barriers to access to remedy, including:

- i. Limited physical access to courts for people living in rural and remote areas that do not have specialized courts in nearby towns. This limitation increases the cost of accessing justice for local communities;
- ii. Despite the possibility of criminal sanctions against directors and managers of companies that may be involved in specific human rights violations that also invite penal sanctions, it was felt that there is a low rate of prosecution and hence the justice system fails to act as a deterrent to such violations;
- iii. The cost of litigation is still high for significant sections of individuals and communities. In some lawsuits, for example, it may be necessary to summon experts such as environmental experts to testify on specific issues. Such expertise may be unavailable for the community or where available, may be very expensive for the community to secure;
- iv. There have been instances where human rights defenders who have lodged cases against businesses, especially land and environment grievances, have reportedly faced death threats and other forms of intimidation which they hardly report to authorities. Such hostility may instil fear in others who may wish to lodge complaints, robbing communities and individuals of the protection that the law could have offered against business-related abuses; and
- v. The capacity of the administrative tribunals to offer non-judicial remedies is often limited by lack of personnel to conduct proper outreach outside of urban centres and the technical capacity to understand emerging and complex issues.

Most businesses have a relatively low understanding of their human rights responsibilities resulting in lack of engagement with employees, local communities and other stakeholders on how to ensure that they respect human rights and provide a remedy for violations. Business associations stated that they lack proper guidance on establishing credible operational-level grievance handling mechanisms.

CHAPTER THREE

POLICY ACTIONS

This chapter provides policy statements and actions in response to the concerns raised in respect of the articulated themes and cross cutting issues that should guide and be implemented to operationalise the UNGPs.

The first part relates to Pillar 1 of the UNGPs and spells out the actions required to ensure the government effectively plays its role in protecting those under its jurisdiction from human rights violations by businesses. The second part is related to Pillar 2 of the UNGPs and spells out the measures that businesses should take to ensure that they respect human rights, independent of government action. Finally, the third part relates to Pillar 3 of the UNGPs and contains policy actions to strengthen access to state-based judicial and non-judicial remedies on the one part and thenon-state-based grievance handling mechanisms on the other.

3.1. Pillar 1: The State Duty to Protect

Under international law, States have the primary obligation to protect against human rights abuses within their jurisdiction and territory. Pillar 1 of the UNGPs clarifies that this obligation includes protecting against human rights abuses by third parties such as businesses. In this regard, states should take appropriate steps to prevent, investigate, punish and redress such abuses by having in place effective policy, legal, regulatory and adjudicative measures. States are therefore expected to explicitly set out expectations that all businesses in their jurisdictions, including state-owned businesses and those businesses with which they engage in commercial transactions, respect human rights through policies, laws and guidance. Additionally, States are expected to guarantee policy coherence across different government agencies, thereby ensuring that different state institutions are aware of and observe the State's human rights obligations. The State's duty in this regard includes providing these institutions with the requisite information through training and support (horizontal coherence) while ensuring that the policies and regulatory frameworks are consistent with the state's international human rights obligations (vertical coherence). This coherence should extend to the State's investment treaties with other States or with business enterprises. This State duty is also consistent

with the spirit of the SDGs including 5.1 (non-discrimination on gender grounds), 10 (reduction of inequalities), 12 (responsible production and consumption) and 16 (accountable and inclusive institutions).

Policy Actions

The Government will:

- i. Introduce a requirement for conducting Human Rights due diligence including the particular impacts on gender before approval of licences/permits to businesses;
- ii. Ensure continuous training for government agencies' workers involved in the promotion and regulation of businesses on the State's human rights obligations and the nexus to their various mandates and functions;
- iii. Strengthen the labour inspectorate department to enable it effectively carry out its mandate;
- iv. Develop guidelines for non-financial reporting under the Companies Act 2015;
- v. Expedite land adjudication and registration with a view to securing the protection of land owners/users and communities especially in areas ear-marked for major projects;
- vi. Strengthen oversight mechanisms for recruitment agencies involved in the recruitment of Kenyans for employment in businesses abroad. In this regard, the Government will work with host governments to take appropriate measures to promote safe and fair labour migration including agreements on free exchange of information, and more stringent regulation of employment agencies. The Government will also explore measures of providing legal and psychosocial support services to victims of labour abuse;
- vii. Sensitise relevant sections of the public especially women and other marginalised and minority groups on –
 - a. Land laws, including resettlement and compensation frameworks;
 - b. Labour laws and the rights of migrant workers; and
 - c. Environmental laws and standards;
- viii. Develop procedural guidelines for use by businesses, individuals and communities in their negotiations for land access and acquisition. These guidelines will ensure and safeguard the participation of women, persons living with disabilities, youth, children and other marginalised groups;
- ix. Work with stakeholders to develop a natural resource revenue management policy and regulatory framework for administering and managing natural resource revenue paid to host communities. This framework should seek to promote equity, inclusivity and community decision-making and will include training to

enhance the capacity of communities to manage their affairs. It will also serve to guide the operationalisation of mining revenue as envisaged by the Mining Act, 2016;

- x. Finalise the development of regulations to the Access to Information Act to facilitate disclosure of contracts, including those that have a significant economic and social impact in the country and join the Extractives Industries Transparency Initiative (EITI) for the facilitation of revenue transparency;
- xi. Strengthen leverage in using public procurement to promote human rights. This will involve the review of existing public procurement policies, laws and standards and their impacts with due regard to the state's human rights obligations including women's rights as part of the criteria; and,
- xii. Review current trade and investment promotion agreements and bring them into compliance with the Constitution and international human rights standards to ensure that they are not used to facilitate illicit financial flows and tax evasion by businesses.

3.2. Pillar 2: Corporate Responsibility to Respect Human Rights

Pillar 2 of the UNGPs states that businesses should respect human rights wherever they are operating. This is achieved by ensuring that they avoid abusing others' rights and where harm has already occurred, taking steps to remedy the harm. This expectation is independent of whether the government is honouring its obligation to protect human rights or not. Human rights due diligence is the primary tool that ensures that businesses identify the human rights risks of their activities, take measures to avoid or mitigate them, and where the harm has already occurred, ensure that the victims have access to an effective remedy. This responsibility extends beyond their activities to their business relationships including suppliers and contractors.

The current voluntary initiatives established and adopted by business associations on different human rights issues do not have strict compliance and reporting mechanisms. They therefore fail to offer businesses that have ascribed to them the required guidance and supervision to ensure that their operations respect human rights. There is no mandatory requirement for human rights due diligence. Businesses, including state-owned enterprises, have not embraced the practice of engaging those whose rights are most likely to be impacted by their operations in any human rights due diligence.

Policy Actions

- a) **Training:** Develop and disseminate guidance for businesses on their duty to respect human rights and the operationalisation of this duty in the Kenyan context,

including the implications of their operations on the environment, gender, human rights defenders, minorities, persons living with disabilities, marginalised and other vulnerable groups to promote responsible labour practices and inclusivity.

b) Human Rights Policy commitments

- i. Require businesses to adopt human rights policies, including taking measures to ensure their operations respect human rights, including by providing access to a remedy for human rights violations;
- ii. Encourage recruitment agencies to provide any required repatriation, legal and psychological support to migrant workers who have suffered or been subjected to abuse abroad;
- iii. Enforce compliance with human rights standards by State owned enterprises and other businesses that receive export credit and state support, including by providing access to remedy for human rights violations; and,
- iv. Promote the use of human rights and sustainability as criteria for industry awards by businesses and business associations.

c) Human rights due diligence: Require businesses to identify their human rights impacts including through conducting comprehensive and credible human rights impact assessments before they commence their operations and continuously review the assessment to ensure that they prevent, address and redress human rights violations. Such impact assessment should involve meaningful consultation with potentially affected groups and other relevant stakeholders and include particular gendered impacts.

d) Reporting: Enforce the requirement for businesses to prepare non-financial reports in line with the Companies Act, 2015, and encourage proactive disclosure of their impacts on human rights and the mitigation measures they are taking in this regard.

e) Cooperation on access to remedies: Require businesses to cooperate with government agencies and other stakeholders in facilitating remedies for business-related human rights violations. This includes actively participating in policy discussions on access to remedy and adopting policies that enhance access to remedy.

3.3. Pillar 3: Access to Remedy

Access to an effective remedy guarantees victims of business-related human rights abuse with predictable avenues for complaints, adjudication of their grievances, an

opportunity for the other party to present its case and a fair remedy based on the merits of the case. Additionally, it ensures that remedies are relevant and proportionate to the abuses, including orders to cease ongoing abuses.

According to the UNGPs, State-based judicial and non-judicial mechanisms should be the primary avenue for accessing remedies by victims of corporate abuses. However, victims should also have access to operational-level grievance handling mechanisms established by businesses, where workers, local communities and civil society advocates acting on behalf of individuals and communities negatively impacted by businesses may lodge their complaints and receive a just outcome such as compensation, guarantee of non-repetition by the offender, apology, restitution and rehabilitation.

Policy Actions

A) State-based judicial and non-judicial remedies

The Government will:

- i. Enforce all applicable laws as well as respect internationally recognised human rights laws and standards as they relate to land access and acquisition and natural resources, environment and revenue management;
- ii. In line with Article 159 of the Constitution, promote the use of Alternative Dispute Resolution mechanisms in dealing with disputes between businesses and those allegedly harmed by their operations;
- iii. Provide training and support to the judicial, administrative and oversight organs on business obligations in respect of human rights. Priority will be given to the following institutions:
 - The Judiciary Training Institute;
 - Relevant parliamentary oversight committees;
 - Relevant regulatory bodies;
 - Relevant State Owned Enterprises;
 - Constitutional bodies including the KNCHR
 - Nairobi Center for International Arbitration; and
 - The Law Society of Kenya.
- iv. Improving access to information on available judicial and non-judicial mechanisms involved in the resolution of business-related abuses as a measure of promoting access to justice. Such information should be made available in all counties and provided in a manner accessible to vulnerable groups;
- v. Prioritise access to legal aid for victims of business-related human rights abuses, consistent with the Legal Aid Act, 2016 and the National Action Plan on Legal Aid;
- vi. Improve access to the Human Rights Division of the High Court, Employment and Labour Relations Court and the Environment and Land Court to ensure that they

are accessible avenues for remedying business-related human rights abuses. The review shall include an assessment on whether the courts are expeditious and affordable;

- vii. Increase the capacity of the labour inspection department to handle labour-related grievances, including through:
 - Increasing the number of labour inspectors to monitor and enforce compliance with labour standards by businesses, with particular attention to the implementation of mandatory policies to prevent and address sexual harassment and violence, payment of minimum wages, equal pay for work of equal value, prohibition of child labour and non-discrimination against women, marginalised groups and minority groups; and,
 - Taking measures to guarantee the independence of labour inspectors and to ensure that their duties are undertaken with integrity and in a transparent and accountable manner.

B) Non-State-Based Grievance Mechanisms

Independent of the State's obligation to ensure access to remedy, businesses should administer grievance handling mechanisms either alone as operational-level grievance mechanisms, or in conjunction with stakeholders or industry associations as part of any industry-wide grievance mechanisms. This is meant to ensure speedy, physically and financially accessible remediation of human rights complaints.

Policy Actions

The Government will:

1. Develop and disseminate guidance for businesses on the establishment of credible operational-level grievance mechanisms that are consistent with international standards. Such grievance mechanisms should be responsive to the needs and rights of vulnerable groups such as women, persons with disabilities, children and indigenous persons;
2. Sensitise businesses and those impacted by their activities on the benefits of establishing and utilising credible operational-level grievance mechanisms;
3. Assist community-based organisations working on human rights issues to build their technical capacity to effectively monitor human rights impacts of businesses and advocate for individuals and communities to enforce their right to a remedy for human rights violations.

CHAPTER FOUR: IMPLEMENTATION AND MONITORING

To ensure that the measures proposed in this NAP are implemented, there shall be a NAP Steering Committee overseen by the Department of Justice and the Kenya National Commission on Human Rights. The Implementing Committee will consist of representatives from the following institutions:

1. Office of the Attorney General and Department of Justice
2. Ministry of Foreign Affairs
3. Ministry of Labour and Social Protection
4. Ministry of Public Service and Gender (State Department of Gender)
5. Ministry of Trade and Industrialisation
6. Kenya National Commission on Human Rights
7. Three (3) Civil Society Organizations Representatives of persons with disabilities, women and indigenous persons
8. Kenya Association of Manufacturers
9. Global Compact Network Kenya
10. Kenya National Chamber of Commerce
11. Kenya Private Sector Alliance
12. Law Society of Kenya
13. National Council on Administration of Justice
14. National Council for Children Services
15. National Gender and Equality Commission
16. Federation of Kenyan Employers
17. National Environment Management Authority
18. Central Organization of Trade Unions (COTU)

The Committee may co-opt additional members on a need basis. The NAP Implementing Committee shall, within six months of adoption of this NAP, come up with a detailed work plan on how to implement and monitor the policy actions under this NAP. The work plan shall include a timeline, measurable indicators and targets and clear designation of the agencies responsible for the implementation of each of the actions.

Review of the National Action Plan

This National Action Plan shall be reviewed after five years.

ANNEX 1: SUMMARY OF POLICY ACTIONS

| STRATEGIC OBJECTIVE | POLICY ACTIONS | KEY ACTORS |
|---|--|---|
| Strategic Objective 1: Enhance existing policy, legal, regulatory and administrative framework for ensuring respect of human rights by business through legal review and development of specific guidance for business | Introduce a requirement for conducting Human Rights due diligence including the particular impacts on gender before approval of licences/permits to businesses. | OAG&DOJ; State Department of Gender; Ministry of Trade and Industrialization, Ministry of Mining |
| | Ensure continuous training for government agencies' workers involved in the promotion and regulation of businesses on the State's human rights obligations and the nexus to their various mandates and functions. | KSG, OAG&DOJ, KNCHR, KEPSA, KAM |
| | Strengthen the labour inspectorate department to enable it effectively carry out its mandate. | Ministry of Labour and Social Protection |
| | Develop guidelines for non-financial reporting under the Companies Act 2015. | OAG&DOJ, Parliament, KLRC |
| | Expedite land adjudication and registration with a view to securing the protection of land owners/users and communities especially in areas ear-marked for major projects. | Ministry of Lands and Physical Planning, NLC, |
| | Strengthen oversight mechanisms of recruitment agencies involved in the recruitment of Kenyans for employment in businesses abroad. Take appropriate measures to promote safe and fair labour migration including agreements on free exchange of information, and more stringent regulation of employment agencies and explore measures for providing legal and psychosocial support services to victims of labour abuse. | Ministry of Foreign Affairs, Ministry of Labour and Social Protection; National Employment Authority, COTU, FKE |
| | Sensitise relevant sections of the public on: <ul style="list-style-type: none"> • Land laws, including resettlement and compensation frameworks; | Ministry of Lands & Physical Planning, Ministry of Labour and Social Protection, |

| | | |
|---|--|---|
| | <ul style="list-style-type: none"> • Labour laws and the rights of migrant workers; and • Environmental laws and standards. | Ministry of Environment and Forestry, NEMA, NLC |
| | Develop procedural guidelines for use by businesses, individuals and communities in their negotiations for land access and acquisition. | Ministry of Lands and Physical Planning, NLC, OAG&DOJ |
| | Work with stakeholders to develop a natural resource revenue management policy and regulatory framework for administering and managing natural resources revenue paid to host communities. It will also serve as a guide in the operationalisation of mining revenue as envisaged by the Mining Act, 2016. | Ministry of Mining, Ministry of Environment and Forestry |
| | Finalise the development of regulations on Access to Information Act so as to facilitate disclosure of contracts, including those that have a significant economic and social impact in the country and join the Extractives Industries Transparency Initiative (EITI) for the facilitation of revenue transparency. | CAJ, Ministry of ICT, Ministry of Mining |
| | Strengthen leverage in using public procurement to promote human rights. | PPOA, KNCHR, OAG&DOJ |
| | Review current trade and investment promotion agreements and bring them into compliance with the Constitution and international human rights standards and to also ensure that they are not used to facilitate illicit financial flows and tax evasion by businesses. | Ministry of Trade and Industry, KRA, Financial Reporting Centre (FRC) |
| Strategic objective 2: Enhance understanding of the obligation of business to respect human rights | Develop and disseminate guidance for businesses on their duty to respect human rights and the operationalisation of this duty in the Kenyan context, including the implications of their operations. | OAG&DOJ, KNCHR, KAM, KEPSA, Global Compact |

| | | |
|---|---|--|
| | Businesses to adopt human rights policies, including taking measures to ensure their operations respect human rights, including by providing access to a remedy for human rights violations. | All businesses operating in Kenya |
| | Encourage recruitment agencies to provide any required repatriation, legal and psychological support to migrant workers who have suffered or been subjected to abuse abroad. | Ministry of Foreign Affairs, OAG&DOJ |
| | Enforce compliance with human rights standards by State owned enterprises and other businesses that receive export credit and state support, including by providing access to a remedy for human rights violations. | State Corporations Advisory Committee, KNCHR |
| | Promote the use of human rights and sustainability as criteria for industry awards by businesses and business associations. | KAM, KEPISA and other professional business associations |
| | Businesses to identify their human rights impacts including through conducting comprehensive and credible human rights impact assessments before they commence their operations. | All businesses in Kenya |
| | Businesses to prepare non-financial reports in line with the Companies Act, 2015, and encourage proactive disclosure of their impacts on human rights and the mitigation measures they are taking in the reports. | OAG&DOJ, All businesses in Kenya |
| | Businesses to cooperate with government agencies and other stakeholders in facilitating remedies for business-related human rights violations. | All businesses in Kenya, |
| Strategic Objective 3: Enhance access to justice | Enforce all applicable laws as well as respect internationally recognised human rights laws and standards as they relate to land access and | Judiciary, OAG&DOJ, Administrative Tribunals |

| | | |
|--|--|--|
| for victims of business-related human rights abuses | acquisition and natural resource management. | |
| | Promote the use of Alternative Dispute Resolution mechanisms in dealing with disputes between businesses and those harmed by their operations. | Judiciary, NCAJ, NCIA, Administrative Tribunals |
| | Provide training and support to the judicial, administrative and oversight organs on business obligations in respect of human rights. | Judiciary, JTI, KNCHR |
| | Improving access to information on available judicial and non-judicial mechanisms involved in the resolution of business-related abuses as a measure to promote access to justice. | Judiciary, CAJ, KNCHR, KAM, KEPSA, Kenya Chamber of Commerce |
| | Prioritise access to legal aid for victims of business-related human rights abuses, consistent with the Legal Aid Act, 2016 and the National Action Plan on Legal Aid. | National Legal Aid Service |
| | Improve access to the Human Rights Division of the High Court, Employment and Labour Relations Court and the Environment and Land Court to ensure that they are accessible avenues for remedying business-related human rights abuses. | Judiciary |
| | Increase the capacity of the labour inspection department to handle labour-related grievances. | Ministry of Labour and Social Protection |
| | Develop and disseminate guidelines for businesses on the establishment of credible operational-level grievance mechanisms that are consistent with international standards. | KAM, KEPSA, Global Compact, KNCHR, OAG& DOJ, KLRC |
| | Sensitise businesses and those impacted by their activities on the benefits of establishing and utilising credible operational grievance mechanisms. | KAM, KEPSA, Global Compact, KNCHR, OAG& DOJ, |

| | | |
|---|--|------------------------------|
| | Assist community based organisations working on human rights issues to build their technical capacity to effectively monitor human rights impacts by business. | KNCHR, NGEC, |
| Strategic Objective 4: Establish a NAP implementation and monitoring mechanism that will also act as a platform on dialogue on business and human rights issues in the country | Develop a mechanism to monitor compliance and implementation of the NAP. | NAP Implementation Committee |
| | Develop annual NAP implementation work-plans. | NAP Implementation Committee |
| | Disseminate the NAP. | NAP Implementation Committee |

ANNEX 2: LEGISLATION PROPOSED FOR ENACTMENT OR AMENDMENT

| S/No. | LEGISLATION/ ISSUE | PROPOSALS |
|-------|---|--|
| 1. | Companies Act, 2015 | <ul style="list-style-type: none"> a. Development of guidelines for non financial reporting b. Introduce a requirement for conducting Human Rights due diligence including the particular impacts on gender before approval of licences/permits to businesses. |
| 2. | Access to Information Act, 2016 | Finalise the development of regulations to facilitate disclosure of contracts, including those that have a significant economic and social impact in the country and join the Extractives Industries Transparency Initiative (EITI) for the facilitation of revenue transparency. |
| 3. | Credible operational-level grievance mechanisms | Develop and disseminate guidance for businesses on the establishment of credible operational-level grievance mechanisms that are consistent with international standards |

ANNEX 3: LIST OF CONSULTED PARTICIPANTS

LIST OF STAKEHOLDERS CONSULTED DURING THE DEVELOPMENT OF THE NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS (2016-2019)

| NATIONAL STEERING COMMITTEE ON BUSINESS AND HUMAN RIGHTS | |
|--|--|
| Office of the Attorney General and Department of Justice | Kenya National Commission on Human Rights |
| Ministry of Energy and Petroleum | Kenya Private Sector Alliance - KEPSA |
| Ministry of Labor and Social Protection | Kenya Human Rights Commission |
| Council of Governors | Office of the High Commissioner for Human Rights |
| Central Organization of Trade Unions (COTU) | Federation of Kenya Employers (FKE) |
| National Gender and Equality Commission | Global Compact Network Kenya |

| THEMATIC WORKING GROUPS | |
|---|--|
| Kenya Revenue Authority | National Land Commission |
| Kenya Power and Lighting Company | Center for Minority Rights and Development |
| Ndula Resource Center | Kenya Land Alliance |
| Indigenous group leaders | Kituembe initiative |
| The Institute for Law and Environmental Governance (ILEG) | Safaricom |
| National Gender and Equality commission | Federation of Kenya Employers |
| Transparency International | Office of the Attorney General and Department of Justice |
| KNCHR | Ministry of lands and physical planning |
| Agricultural Finance Corporation | State Department of Trade |
| Danish Institute for Human Rights | Law Society of Kenya |
| KENGEN | National Land Commission |
| KEPSA | Pamoja Trust |
| Judiciary | LAPPSET Authority |
| Katiba Institute | NEMA |
| National Centre for International Arbitration | Ministry of Devolution and Planning |
| Ministry of Mining | HIVOs Foundation |

| | |
|----------------------|--|
| Kenya Flower Council | |
|----------------------|--|

| KITUI COUNTY | |
|--|--|
| Agha Khan University | CARITAS International |
| National Government Affirmative action fund | NTSA |
| KWAL | Chamber of Commerce |
| National Land Commission | Center for Human Rights and Civic Education |
| NEMA | ADS Livelihoods |
| SASOL foundation | Kitui Development Center |
| Areas Chiefs | Ethics and Anti-Corruption Commission |
| MEDIA officials | |
| KCYNP | KCA Univeristy |
| Kenya Plant Production | Kenya Tea Development Authority |
| National irrigation Board | KENIVEST |
| Global Water Patnership | Kenya bureau of standards |
| Kituo Cha Sheria | Kephys Supermarket |
| Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) | Law Society of Kenya |
| NIS | JSC |
| Girl Watch | KEMRI |
| Children officer | Brookside Milk |
| Catholic Justice and Peace Center | Kenyatta University |
| Kenya Prison | Kenya Medical Supplies Authority |
| BIDCO | Kenya National Examination Council |
| AMREF | Kenya Institute of Education |
| Plan International | Consumer Federation of Kenya |
| KARI | REDCROSS |
| Action Aid | World Vision |
| National Gender and Equality Commission | Commission on Administrative Justice (Office of the Ombudsman) |
| ELOG | Small and Micro Enterprise program |
| ASK | Kenya National Chamber of Commerce and Industry |
| Police service | AGORA |
| IPS | Kenya Union of Commercial Food and Allied Workers |

| KAKAMEGA and KISUMU COUNTY PARTICIPANTS | |
|--|------------------------------|
| LARII | KEMRI |
| Kenya Urban Roads Authority | KENATCO |
| JKUAT | Consumer Federation of Kenya |
| Center for Peace and Democracy | IMPACT Kenya |

| | |
|--|--|
| Amaco Insurance | CPI Kimilili |
| IFMIS Officer | Kenya Agricultural and Livestock Organization |
| Cotton Development Authority | Kenya Private Sector Alliance |
| CIENTA | Kenya Pyrethrum Growers Association |
| Vivo Wear Ltd | Kenya Broadcasting Corporation |
| Kenya Prison Service | MVO |
| CIT | IEBC |
| Kenya National Union of Teachers | National Gender and Equality commission |
| Teachers Service Commission | Communications Authority of Kenya |
| UNESCO | Agha Khan Hospital |
| Kenya Power and Lighting Corporation | HURINET |
| Children's Department | COTU Kenya – Kisumu |
| Kakamega County General Hospital | NOFAK |
| CSAD Kisumu | National Transport and safety authority |
| Public Service Commission | Kenya Revenue Authority |
| OXFAM International | National Securities Exchange |
| IMPACT – RADO | National Police Service Commission |
| SAFARILINK Kisumu | FLY 540 |
| Agricultural Society of Kenya | Federation of Kenya Employers |
| Office for the Director of Public Prosecutions | Kenya National Union of Teachers |
| DIGITEK LTD | Kenya Tea Development Authority |
| National Hospital Insurance Fund | KUSSCO |
| University of Nairobi | Independent Police Oversight Authority |
| Independent Medico Legal Unit | Western Bodaboda SACCO |
| Maendeleo ya Wanawake | Small and medium sized enterprises |
| Youth representatives | Kenya Persons with Disability association |
| KHRT | Kakamega grassroot voices |
| PLWHAS | One acre Fund |
| KEMRI | Community health volunteers association |
| Fisheries association of Kisumu | Kenya National Farmers Federation |
| Maendeleo ya Wanaume Organisation | CAPI |
| KCWEP | CDG |
| Kakamega Hurinet | SDA Church |
| CJPC | Tunza Vijana network |
| Tunajivunia | EDAC |
| Towa Jasho | PM Forum |
| CJC | Women network group |
| Existing Vision youth group | EDDO |
| Kisumu fisheries association | Vision Ladies group |
| County Government Kakamega | Mayoni Farmers |
| Mwangaza CBO | Lubao FM |
| County Assembly of Kisumu | Matatu Welfare association |
| OCS kakamega | OCS Kisumu and Office of the County Commissioner |
| MPSYG | Kisumu Taxis Association |
| GHCP | Kenya Cereals Board |

| KIAMBU (THIKA) & GARISSA COUNTIES | |
|--|--------------------------------------|
| Kenya Chemical Workers Union | Matosi Community based organization |
| Manda CDS | Ngoliba Residents |
| Kenya Plantation and Allied Workers Union | The Supreme Council of Kenya Muslims |
| Kilimambogo Youth | Chui youth |
| Ndula Human Rights and Resource Center | Youth rapids |
| Branan Flowers LTD | Gititi Human rights |
| Gorgeous College management | Mbuthia Coffee estate |
| FRESHA LTD | MARUTI SACCO |
| International Global Investment | Tumaini kwa Watoto CBO |
| Workers Rights Watch | Security workers union |
| Muguga Tea factory | |
| Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) | HRIF |
| Thika Private Security Agency | Kenya National Union of Teachers |
| Kangangi victim group | Inooro FM |
| RiverDale Blooms LTD | NAMPAK LTD |
| KAKUZI PLC | Makuyu Sisal LTD |
| NRC LTD | Uraia Kiambu |
| Ihururu Farm Ltd | Kitito Ranch Ltd |
| Medisel International Ltd | State Department of Labor |
| Human Rights Watch | Thika Growers SACCO |
| Yoken Sacco Mbeere | Shalom Youth Network |
| Matosi CBD | Kilito Community |
| National Land Commission | Department of Justice |
| AIAD | Namuncha community |
| YMCA | Community Policing Group |
| Kenya Farmers cooperation | NAPAC |
| Department of Social Development | Kenya Scouts Association |
| Lockspeed International | Redcross |
| Pich Tamu Theatre | Hellsgate Youth Association |
| National Youth Service | Mipera Women empowerment programme |
| KWSTI | National Youth Program |
| National Youth Service | Hiddig Hotel |
| SLK | PGI |
| World Vision | Tolkaful Association |

| TURKANA COUNTY | |
|--|------------------------------------|
| Community members and SMEs in total – 160 | |
| Below is a list of Civil society groups, Community based organistions, Labor unions, associations and Media | |
| Maendeleo ya Wanawake | Maendeleo ya Wanaume |
| Ministry of Interior | NBT |
| Media Association of Kenya | Catholic Justice and Peace Mission |
| Muslims youths | World Vision |

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|--|--------------------------------|
| Pokot Council of Elders | Youth development program |
| Persons living with Disability network | Lodwar Human Rights |
| DHG | Christian group association |
| CYLT | FPFK |
| KCCN | OOP |
| Translink Film group | Akicha FM |
| Maacha FM | Pastoralists network |
| TDN Hub | Teachers association of Lodwar |
| LPF | MMF |
| Office of the County Commissioner | |

| NAKURU COUNTY | |
|---|--|
| Gaplink International | Kenya Muslim Youth Development organization |
| Springs Creation Ltd | Media |
| Safer Community Organisation | Victorious Teens Bridge International |
| The Economic Projects Transformational Facility | Centre For Enhancing Democracy And Good Governance |
| Persons living with Disability network | FOI Network |
| NEMA | MidRift HURINET |
| Reproductive Health Youth Friendly and Environmental Conservation | NAHURINET |
| SUPKEM | Association For The Physically Disabled of Kenya |
| Kenya Police Service | Nakuru Hawkers Association |
| Repacted Nakuru Players | Running Water International |
| Young People Congress | Molo Youth Forum |
| Office of the Governor | Initiatives for Change |
| The Kenya National Chamber of Commerce and Industry | Timsales LTD |
| Kenya Association of Manufacturers | Rehema NGO |
| Kenya Prisons service | Child Fund |
| Peace Committee | County Government of Nakuru |
| Ombudsman Office | Focus International |
| Bodaboda Sacco | Hero FM |
| GraceAct international | NACOLEPSY |
| Egerton University | Catholic Women Association |
| Women in Development | SmartLady network |
| Center for Transformational Leadership | Genesis United Sisters |
| Nakuru Youth Development network | |
| HOHO Farm Ltd | Neema Women Group |
| Siafu Group | Nakuru TV |
| Child Protection Center | NCWC |
| Five Star Ltd | Mother care association |
| Rift valley cancer awareness program | Redcross |
| Africa United NGO | Wamama Maendelo |
| Catholic Justice Peace Mission | Office of the County Commissioner |

| NAIVASHA | |
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| Indigenous groups (80pax) Rapland community, Lakeview community, olomayiana community, Narasha community, Lekericho community, Olomunya community, Oltepesi community, Olkaria community | IMPACT NGO for indigenous rights |
| Naivasha women group | Narasha Community Development Group |
| SUPKEM | Nakaka Self Help Group |
| Kajiado Lapsett office | Samburu women self help group |
| EWC Baringo | Narasha Women group |
| Give back association | Samburu Trust |
| Pastoralist development network of Kenya | Indigenous women Group |

| MOMBASA and KWALE COUNTIES | |
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| Coast Hoteliers network | Msambweni watch |
| Seaside pharmacy | Kaya Elders group |
| County government of Mombasa | Diani Education CBO |
| Mombasa residents association | Maua beach Lodge |
| Diani CSO Network | Kwale County Government |
| Citizen TV, Baraka FM, Radio Rahma, IQRA FM, Pwani FM | Catholic Justice and Peace Commission |
| Beach Boy Tour Operation Network | Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) |
| Kenya Human Rights Network | United Disability Action Center (UDAC) |
| Kwale Peace Committee | BB Ladies group |
| Youthful Group network | Makomando Business Association |
| Performers Rights Society | Teenswatch |
| Vumbu Village elders | Women of faith |
| Swaibalink | HUDA |
| Miembeni community | Kwale HURINET |
| South Coast Residents Association | Hekima Diani School |
| Coast Calcium LTD | Kenya Muslims National Advisory Council |
| Kwale Youth and Governance Consortium | Diani Catholic Church |
| South Coast Beach Operators Network | Haki Yetu CBO |
| CADCO East Africa Ltd | Maendeleo ya Wanawake |
| Maendeleo ya Wanaume | Moyo Mtakatifu group |
| Samrat Supermarket | |
| KWATEC ltd | DPC Matuga |
| Muslims for Human Rights (MUHURI) | Humpeg CBO |
| Nyumba ya Watoto | Ardarox General works LTD |
| First Capital Bank | Chikuku Company Ltd |
| Office of the Ombudman | Juhudi Center |
| KNCHR Mombasa office | Transparency International |

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|---|---|
| High Voice of Africa | Stima Sacco Ltd |
| Kenya Coast Tourist Association | Inspire life in children and youths in distress Kenya |
| Mombasa County Community Based Organization | Mwananchi Credit |
| Agha Khan University | URAIA |
| Befoward Ltd | Cassioepeia Vessel company |
| Lambado Logistics | Kenya Private Sector Alliance |
| ONUG – Pwani | Security Guard Association |
| Sheikh Khalifa Group | Kenyatta University |
| National Council of Churches of Kenya | Taita Taveta Human Rights Watch |
| Ethics and Anti-Corruption Commission | Tunaweza Persons with Disability Group |
| Center for Democracy and Peace | Reach Out Center |
| County Assembly of Mombasa | Sparki Paradise |
| Malindi Rights Forum | Haki Africa |
| Kenya Association of Manufacturers | Big Ships Ltd |
| Coast Education Center | Coffey Durt |
| Tudor Sports Association | Bora Brass Ltd |
| Ufundi Sons and Co Ltd | Salama Resort |
| Haki Jamuu | Catholic Women Association |
| Stella Maris – Apostle of the sea | Makupa Asians Association |
| Community health volunteers | Coast Women in Development |
| KAM Salt Subsectors | Kenya Petroleum Oil Workers Union |
| Chamber of commerce | Krystalline Salt LTD |
| Global compact Kenya | Malindi Salt works Ltd |
| Kensalt Ltd | Yumaco Enterprises |
| Plaza Beach Hotel | Nyali International Beach hotel |
| Watrue Enterprises Ltd | Severin Lodge |
| Pride Inn Group of Hotels | Technical University of Mombasa |
| Pwani Women in Business network | KSCWW Union Mombasa |
| AUKMW Union pwani | Mombasa Beach Hoteliers Association |
| Diani Reef Hotel | |

NAIROBI PARTICIPANTS

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| Kenya Airways | Business And Human Rights Resource Center |
| Danish Institute For Human Rights | OAG&DOJ |
| National Hospital Insurance Fund | Kahuti Water And Sanitation Co. Ltd |
| Krystalline Salt | Kenya Flower Council |
| Malindi Rights Forum | Kenya Private Sector Alliance |
| Kenya Bankers Association | Kenya Young Men Christian Association |
| Wildlife Clubs Of Kenya | Center For Justice |
| Kenya Railways Coporation | Kenya Tea Development Authority |
| Kenya Association Of Manufacturers | Kiambere Water And Sanitation Company |
| Orbit Chemicals | Wrigleys Co Ltd |
| Kenpoly Manufacturers Ltd | Manu Chandaria And Sons Ltd |
| Overseas Placements Ltd | Kenya National Chamber Of Commerce And Industry |

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| National Land Commission | Oaklands & Kofinaf Co. Ltd |
| Agricultural Finance Corporation | North Star Alliance |
| Sony Sugar | Kenya Wildlife Service |
| I&M Bank Ltd | State Department of Trade |
| Save Lamu | The National Environment Management Authority (NEMA) |
| Federation Of Kenya Employers | Global Compact |
| Office Of The High Commissioner For Human Rights | Norwegian Embassy |
| USA Embassy | Greenbelt Movement |
| Kenya Commercial Bank | Govern Women's Committee |
| National Oil Corporation | Kenya Human Rights Commission |
| East Africa Portland Cement | Kenya Power And Lighting Corporation |
| Parliamentary Caucus On Human Rights | Parliamentary Caucus On Sustainable Development Goals |
| Safaricom | Jamaa Resource Initiative |
| Mediation Accreditation Committee Of The Judiciary | Kenya Investment Authority |
| Kenya National Assembly | Crystal Valuers Ltd |
| Hass Consult Ltd | Tyson's Ltd |
| Export Processing Zones Authority | Central Organization Of Trade Union Kenya |
| Tufani Hides | LAPSET Corridor Development Authority |
| Unilever Company Ltd | Kenya Electricity Generating Company Plc |
| Executive Leadership Network | National Construction Authority |
| Transparency International | Ministry Of Lands And Physical Planning |
| Kenya Revenue Authority | UN Working Group on Transnational Corporation and Business and Human Rights |
| Institute for Human rights and Business | Ministry of Energy |
| Department of Children Services | Public Procurement Authority |
| Strathmore University – Extractives Baraza | University of Nairobi |
| Ministry of Mining | UNHCR |
| Ministry of Devolution and Planning | Institute for Law and Environmental Governance |
| Impact RDO | Pamoja Trust |
| Katiba Institute | Dedan Kimathi Foundation |
| Nairobi Centre for International Arbitration | Kenya Revenue Authority |
| Comcraft Group of companies | Finlays Horticulture |
| Unilever | Base Titanium |
| East Africa Breweries LTD | Novartis Pharmaceuticals |
| Glaxo Smithkline LTD | Ethical Trading initiative |
| Green Pencils Ltd | Global Partners Digital |
| AAA Growers limited | State Corporations Advisory Committee |
| Mabati Rolling mills | Athi River Mining |
| Bidco Africa | Bamburi La Ferge |
| Kenya Electricity Transmission Company Limited (KETRACO) | Telkom Kenya |
| Geothermal Development Company | Council of Governors |
| UNDP | Commission on Administrative Justice |

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| Kenya Platform on Oil and Gas | Agricultural Employers Association |
| Ufadhili Trust | |