
Notes from the Field:

**Lessons Learned on Building Better National Action
Plans on Business and Human Rights**

April 2016

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Introduction

In February 2016 the Government of Kenya became the first African country to announce its intention to develop a National Action Plan on Business and Human Rights (NAP).¹ The Government's decision came in part as a response to accelerating foreign direct investment and growth of the domestic private sector in Kenya. By committing to the development of a NAP, the Kenyan Government seeks to develop a "comprehensive strategy for protecting against human rights abuses by companies" as an "issue of urgent national importance."²

The Kenyan Government – through the Department of Justice and the Office of the Attorney General – has expressed its commitment to a deliberative, consultative and fact-based process to develop its NAP. This process can draw both from the experiences of a number of countries, which have produced a NAP or are in the process of doing so, as well as an increasing range of guidance materials.⁴

National Action Plans on Business and Human Rights (NAP) serve to translate the *UN Guiding Principles for Business and Human Rights* (UNGPR) into a national context. The UNGPR are the first authoritative global framework to address business impact on all human rights, applicable to both States and businesses, and clarified their respective duties and responsibilities for tackling human rights risks related to business activities. To date 8 countries have adopted a NAP: Colombia, Denmark, Finland, Lithuania, Netherlands, Norway, Sweden and the UK and 26 other states have committed to or are in the process of developing a NAP.³

This Briefing Note seeks to enrich the development process for the Kenyan NAP by highlighting good practices from a range of countries that have adopted a NAP or are in the process of developing one. It is based on the Institute for Human Rights and Business (IHRB)'s own experiences in contributing to a number of NAPs around the world and a series of conversations with practitioners from the public and private sectors and from civil society representatives who have participated in NAP processes. It offers a non-exhaustive set of recommendations that complements existing guidance, which primarily focuses on the content to be addressed in NAPs.⁵ The Briefing Note seeks to spotlight good practices that can help ensure the process is as important as the outcomes, using the great potential of the NAP process to lay the groundwork for constructive conversations with a range of stakeholders about future economic development and responsible business practices in Kenya.

¹ Githu Muigai (Attorney General of Kenya), "Kenyan Government Commits to Develop a National Action Plan on Business and Human Rights," 9 Feb 2016.

² Ibid.

³ See the Business and Human Rights Resource Centre Page on National Action Plans.

⁴ Ibid.

⁵ Business and Human Rights Resource Centre, "National Action Plans, 4. Tools and Guidance"

Part I: Build Trust from the Outset and Throughout the NAP Process

The NAP process offers an important opportunity to start a conversation within Kenyan society on the business and human rights agenda across different stakeholder groups, spanning government, business, civil society, trade unions, communities, consumers and academia. The NAP process can contribute towards developing a broader culture of dialogue around responsible business conduct that continues well beyond the NAP process. It will be necessary to build trust among stakeholders in order to promote this more open dialogue. The experiences discussed below have proven conducive to building an environment of trust among stakeholder groups during the process of developing NAPs.

✓ *Address initial reservations of stakeholder groups*

Various stakeholder groups are likely to perceive the initiation of a NAP process differently and this should be considered from the outset of the process. A lack of understanding of the implications of the NAP process can hinder proactive participation. For businesses it may be important to communicate widely that the NAP process is not a “naming and shaming” exercise but instead, an opportunity to engage more proactively with their stakeholders. For example, the Government of Finland invested heavily in engaging businesses through targeted outreach efforts. In Germany, the reluctance of small and medium-sized enterprises (SMEs) to participate was explained by a lack of understanding of the implications of the NAP process. For civil society, logistical challenges may be the bigger impediment to participation; ensuring an inclusive process may require support to civil society and communities to participate, including a consultation process that is held in various parts of the country to facilitate broader participation, as has been done for example in Colombia and the US.

✓ *Be as transparent as possible about the whole process*

It is easier to build trust among all stakeholders when NAP processes are both transparent and clearly defined. A detailed roadmap with timelines provides direction and clarity for all involved in the process. In Germany, the NAP process was set out in advance and included steps and timelines which kept all participants informed of progress. In Chile, an active website, was used to communicate important updates to interested stakeholders and keep them informed and engaged in the process.

✓ *Share ownership of the process*

Ownership of the NAP process should be shared to the greatest extent possible. In Belgium, Norway, Denmark, the Netherlands and Finland, cross-ministerial working groups developed (or are developing) the NAP, enhancing acceptance and uptake among different government ministries from the start of the process. Involving ministries dealing with domestic and external matters can help achieve a more balanced and comprehensive approach to addressing business and human rights challenges within a country as well as with respect to actions of the state and businesses abroad.

Giving participating stakeholders a role in setting the agenda for and contributing to individual consultation meetings can increase a feeling of commitment and ownership to the NAP and its outcomes. In the UK, representatives of different stakeholder groups themselves facilitated consultations. In Germany, a different stakeholder group led each consultation. A steering group composed of the National Human Rights Institution and a specialized sustainability consultancy coordinated the overall process.

✓ ***Manage expectations***

While an open conversation with all stakeholders is key to a successful and widely accepted NAP, it is necessary to carefully manage expectations from the beginning. The NAP will constitute a compromise between a wide array of interests. Defining clearly the scope of the NAP process can help to manage expectations from the outset. For example, the US Government made clear from the start that the NAP process would only cover business and human rights issues outside the country. This decision was criticised by civil society but nonetheless set clear boundaries from the start of the process. Finland and Germany chose to conduct some large consultations with the whole spectrum of stakeholders early in the process to demonstrate the scope of interests that would need to be reconciled in the final NAP.

✓ ***Consider neutral, expert facilitation***

Neutral conveners and facilitators can play an important role in safeguarding the trustworthiness of the process. The UK Government engaged IHRB to facilitate meetings with separate groups of stakeholders: business, civil society, and then brought them all together into a final multistakeholder convening. Colombia also engaged an outside expert to facilitate its dialogues. These neutral facilitators were able to focus on drawing out the participants and managing divergent views, permitting the government to engage actively in the discussions.

✓ ***Consider involving an expert committee to accompany the NAP process***

Belgium established a Commission on the National Action Plan on Business and Human Rights to monitor the development and implementation of the Belgian NAP and advise on relevant matters. The Commission is composed of approximately 10 representatives of relevant NGOs, trade unions and universities.

Part II: Promote Meaningful Stakeholder Engagement

The design of the stakeholder engagement process should be dedicated to creating an environment that encourages constructive dialogue. Ensuring an inclusive process involving proactive participation of all stakeholders is key to wide uptake and acceptance of the NAP.

✓ ***Understand your stakeholders and identify and reach out to key constituents within stakeholder groups***

A careful mapping exercise of the interested stakeholders can help to bring the principle of inclusiveness to life. The mapping exercise can also help to identify what the different stakeholder groups need to be able to proactively contribute to the process. A repeated theme across NAP processes is the importance of identifying key constituents within each stakeholder group and considering the different modes of engagement that may be needed to reach those constituents.

For example, the private sector is composed of a wide range of investors, large multinational enterprises, business and industry associations and SMEs. In Colombia, Germany and Finland it was pointed out that SMEs are more likely to be unfamiliar with international business and human rights frameworks and may have limited resources to participate in the NAP process or follow up. However, their participation is particularly important to ensure widespread impact of the NAP process and a transformation of local business culture. The German and Finnish Governments, for example, as part of their NAP processes organised specific consultations with SMEs.

Within civil society, there are many subgroups that represent a wide-range of constituencies. While larger and more vocal groups often play a role in NAP processes, disadvantaged and at-risk groups and their representatives have largely been left out to date despite the fact that they may be the most affected by particular business operations and have the most to gain from responsible business practices.

✓ ***Consider the number and frequency of consultations from the outset***

The German experience shows that the number and nature of consultations should be carefully considered at the outset of the NAP process. On the one hand, it is important that stakeholder engagement takes place, both so that individuals, organisations and community representatives can express their interests openly and so that conversations happen not only within specific stakeholder groups, but across them as well. At the same time, it is important to limit the number of consultations per stakeholder group to prevent stakeholder fatigue in a context of limited resources. Fatigue is more likely to occur when stakeholders perceive the consultations as unproductive. Hence, the stakeholder mapping exercise as described above is paramount in order to choose the most suitable type of engagement for the different sub-groups of stakeholders.

✓ **Consider different options for structuring consultations**

Large multistakeholder consultations

- Large multistakeholder consultations have been useful in Finland, Germany and Brazil at the outset of the NAP process to set the scene, exchange views on positions and interests and to agree on priority areas for the upcoming NAP process. They are also useful to manage expectations of the various actors involved as it allows stakeholders to understand the full range of interests and views to be addressed and accommodated as part of the process. At the same time, particular attention needs to be paid to encouraging open dialogue, while limiting accusatory dynamics between stakeholders. While different tensions between stakeholders cannot and should not be ignored, careful facilitation can help channel disparate views into a more constructive list of issues to be addressed during the course of discussions on the NAP.
- Several governments, including the US and the UK, hosted open, online consultation processes in advance of their first NAP meetings. This gave stakeholders an opportunity to present their views in advance, enriching these large consultations.
- Large-scale consultations have also been used effectively at subsequent points in the NAP process. Finland is one of the few countries to date that has held a large-scale consultation to discuss a draft of its NAP. The UK Government held stakeholder consultations on the one-year review of its NAP to encourage discussion on what worked well and what needed to be improved.

Small-scale consultations with subgroups of stakeholders

- In the UK and the US, small thematic consultations have been highlighted as an effective way to engage with stakeholders because they allow focused discussions on issues of particular interest to the country. Finland and Germany have had similar experiences. In the German, Finnish, Danish and UK experiences, smaller consultations with stakeholder subgroups helped to identify their respective needs and expectations.
- Smaller scale consultations held under the Chatham House Rule⁶ enable very open conversations between government and stakeholder groups. They create a trustful environment to express concerns and expectations. They however require particular attention to managing expectations. When specific actors are consulted in isolation from stakeholders with differing interests, they may come to believe their points will be taken into account unrestrictedly because there are no opposing views expressed within their limited subgroup, whereas in large consultations it is more immediately apparent that the government may need to reconcile a wider range of diverging opinions in the final document.

Small-scale educational training workshops to accompany the consultation process

- Providing training on the side of or in advance of consultations can be used to improve the level of expertise of relevant stakeholder groups so that they can

⁶ When a meeting, or part thereof, is held under the [Chatham House Rule](#), participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

engage more actively in the process. This type of training proved very successful in Germany.

✓ **Encourage knowledge transfer throughout the NAP process and in different ways**

Norwegian, German and Finish experiences demonstrate that a baseline assessment is an important exercise at the outset of the NAP process to understand the existing national regulatory framework on responsible business conduct.⁷ While this exercise is useful to identify gaps and steps for action, it can consume significant resources. To ensure that the value of such an assessment is maximised, the planning of the NAP process should include a strategy to ensure the findings generated are used throughout the NAP process and inform the formulation of the final NAP document, rather than treating it as an initial exercise that once completed, is filed away.

The consultation process itself can provide a valuable learning opportunity for the public officials in charge of drafting the final NAP: in Germany and the UK it was highlighted that the teams leading the drafting personally participated in the consultations.

✓ **Hold consultations in different parts of the country to ensure an inclusive consultation**

Colombia's experiences show that conscious efforts to accommodate the logistical and financial limitations of civil society organisations, communities and SMEs are needed to enable meaningful and truly inclusive discussions on the NAP process. This is critical groundwork needed to build more widespread interest in and uptake of the NAP when completed. In Colombia, even though five meetings were held in regional capitals, rural voices were still largely missing from the debate. Many business operations are conducted outside the main cities and affect rural and marginalised communities. Engaging these stakeholders in a national conversation on business and human rights will remain an on-going challenge for countries with largely rural populations.

✓ **Provide materials in local languages and based on national concepts**

In Norway, one of the more surprising but significant side benefits of the NAP process was the translation of many of the significant materials on business and human rights into the Norwegian language. Prior to the NAP process, most of the materials were available only in English, limiting access and engagement. The translation process also served another important purpose of contextualising the concepts in the Norwegian legal and policy framework.

⁷ As recommended in the DIHR/ICAR [Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks](#) (July 2014).

Part III: Give the NAP a Life Beyond the Consultation Process

While the consultations contributing to the development of the NAP can lay important groundwork both in building a better NAP and developing a constructive dialogue among stakeholders, the real value is in continuing that engagement to follow up on the NAP. In order for implementation to be effective, continued dialogue is needed to reflect on progress and discuss other national challenges around business and human rights.

✓ ***Set up a specific follow-up process***

The NAP constitutes only a first stepping-stone towards a cultural transformation in favour of responsible business conduct. Generally, NAPs lay out a roadmap for the implementation of principles for responsible business conduct. It therefore constitutes the beginning of a process and not an end in itself. The UK and Finnish governments acknowledged this by including clear guidance in regards to follow-up processes to their NAPs.

The UK Government committed to publish an updated version of the NAP by the end of 2015. It also announced that the Foreign and Commonwealth Office would report annually on its progress of implementing the NAP through its Annual Report on Human Rights and Democracy. The Finnish Government charged a dedicated CSR Committee under the auspices of the Ministry of Employment and the Economy to lead the follow-up process. This CSR Committee is a multi-stakeholder institution, which consists of business representatives, civil society organisations and trade organisations. Its activities are focused on developing the knowledge base on the business and human rights agenda and related capacity building activities. The Belgian Commission highlighted above is also charged with follow up on the NAP. The Colombian Government has similarly committed to a Working Group on Human Rights and Business that will be responsible for monitoring progress of the implementation of the NAP, involving companies and a wide range of ministries.

✓ ***Build on the dialogue and networks to address other national initiatives such as the UN Sustainable Development Goals***

The dialogue and networks built can also be a stepping stone for other national discussions that involve business and human rights. For example, countries will be developing plans to implement the United Nations Sustainable Development Goals (SDGs), where the private sector is expected to play an ever-increasing role. The national conversation on business and human rights can be capitalised on to ensure a solid foundation of responsible business conduct underpins private sector involvement in the SDGs.

The Nairobi Process

The 'Nairobi Process: A Pact for Responsible Business' is an initiative developed by the Institute for Human Rights and Business (IHRB) in collaboration with the Kenya National Commission on Human Rights (KNCHR) which aims to embed the application of the UN Guiding Principles on Business and Human Rights in the extractives sector in Kenya.

The Institute for Human Rights and Business

IHRB is a global centre of excellence and expertise on the relationship between business and internationally proclaimed human rights standards. We seek to shape policy, advance practice and strengthen accountability, with a view to ensuring that the activities of companies do not contribute to negative human rights impacts, and in fact lead to positive outcomes.
