



Kingdom of the Netherlands

# Responsible Business Conduct Handbook

## for Dutch Businesses in Kenya

This handbook supports Dutch businesses to conduct responsible business in alignment with both the Kenyan regulatory context as well as providing international best practice on Responsible Business Conduct.



**2026 Edition**

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# Preface

Responsible Business Conduct (RBC) is no longer a voluntary add-on; it is a strategic imperative. It offers a compelling business case for entering and strengthening positions in strategic growth markets, where compliance with high environmental, social and governance standards increasingly determines access to finance, partnerships and public procurement. Companies that embed RBC into their core strategy are better positioned to manage risks, secure market access, and build resilient supply chains to minimize supply chain vulnerabilities. Therewith, Dutch foreign economic policy explicitly integrates trade with the promotion of human rights, environmental protection, and sustainable development. This integrated approach reflects evolving legislation and policy frameworks in both the European Union and the Netherlands, where due diligence requirements, climate commitments, and transparency standards are raising the bar for companies operating internationally.

Within this context, Kenya stands out as a strategic partner in East Africa. As a regional economic hub with a dynamic private sector, Kenya offers significant opportunities for Dutch businesses, particularly in agriculture, logistics, water management, health and renewable energy. Sectors where Dutch expertise aligns closely with Kenya's development priorities. The Netherlands has demonstrated its long-term commitment through targeted programmes - for example by IDH, Solidaridad and the Subsidy programme for Responsible Business (RVO/SPVO) - that promote sustainable value chains, strengthen compliance with international standards, and facilitate access for Kenyan business and SME's to Dutch and EU markets. These interventions not only deepen bilateral relations but also foster an enabling environment for responsible and inclusive growth, especially needed with the challenges and the complex regulatory environment of today.

The Dutch Ministry of Foreign Affairs and the Embassy of the Kingdom of the Netherlands to Kenya recognize the practical and regulatory challenges businesses encounter in international markets and are committed to providing clear guidance and active support, to help companies navigate these complexities with confidence and integrity. This RBC-handbook addresses these challenges and includes information on sectoral risks, opportunities and practical tools to practice RBC. All in all, the Dutch government remains committed to partnering with businesses to meet RBC standards while achieving business potential. By embracing responsible business conduct as integral to corporate strategy, Dutch enterprises can strengthen their competitive position and contribute meaningfully to sustainable development in Kenya and beyond.



Kingdom of the Netherlands

**Embassy of the Kingdom of the Netherlands  
in Kenya/Ministry of Foreign Trade and  
Development Co-operation,**

**The Netherlands**



**This handbook is designed for flexible use — whether you need quick answers to specific questions or comprehensive guidance on Responsible Business Conduct (RBC) in Kenya, you can navigate it in multiple ways.**

It contains checklists on the requirements of the various legislations or regulations in Kenya which you can read through and check in reference to your business and operations, it also contains 'Tips' and 'Notes' for those who are new to RBC and would want to start this journey. *Part 2: The Tools* further contains additional information and templates which businesses can refer to.

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*PART 1*

# THE GUIDANCE

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# Section 1

## Welcome to the handbook

Click on any topic to jump straight to it:

- ↘ Why has this handbook been developed?
- ↘ How has this handbook been developed?
- ↘ What is in this handbook?





This handbook supports Dutch businesses to conduct responsible business in alignment with both the Kenyan regulatory context as well as providing international best practice on Responsible Business Conduct. It applies to those businesses either currently are operating in Kenya or those looking to operate in Kenya.

### Why has this handbook been developed?

The guidance has been developed by Partner Africa and commissioned by the Embassy of the Kingdom of the Netherlands in Kenya. It responds to the need to have detailed and pragmatic guidance on responsible business conduct that is tailored for Dutch businesses operating or seeking to operate in Kenya. For Dutch businesses with operations in Kenya, those looking to begin operations in Kenya, or those who have supply chains in Kenya, this handbook provides practical guidance on the minimum legal requirements, as well as including best practices and continuous improvement strategies to advance responsible business conduct beyond a licence to operate.

### How has this handbook been developed?

The handbook was developed through in-depth desk research into the RBC related regulatory frameworks in Kenya, a review of Partner Africa's database on its projects in Kenya to pick out the human rights and environmental risks and impacts that were identified, desk-top research on human rights and environmental risks and impacts in the agriculture (floriculture, horticulture), renewable energy, water, health and logistics sectors in Kenya, and finally stakeholder engagement with Dutch businesses operating in Kenya to understand their challenges and needs from such a guidance.

### What is in this handbook?

This handbook provides comprehensive guidance on responsible business conduct in Kenya, divided into two parts:

- **Part 1** sets out the guidance, organised into seven sections covering everything from quick-start checklists and setup roadmaps to detailed regulatory frameworks, sector-specific risks, and stakeholder engagement strategies;
- **Part 2** contains the ready-to-use tools, including checklists and templates.

The guidance is grounded in two core frameworks:

1. **KENYA'S CONSTITUTION (2010)** which establishes enforceable rights to fair labour practices (Article 41), a clean environment (Article 42), and proper governance—these are legal obligations, not optional standards.
2. **KENYA'S NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS (2020-2025)** which operationalises these constitutional rights through five priority themes (land, labour, revenue transparency, environment, and remedy) and aligns Kenya's legal requirements as outlined above with international standards (United Nations Guiding Principles, International Labour Organisation Conventions, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct).





## Section 2 ↘

# The cultural and operational context in Kenya: Understanding the environment for responsible business conduct

The following section will give you an insider's guide to the history of Kenya alongside insights into what the implications are for Dutch businesses. Later sections will then guide you how to set your business up for success within this landscape.

Click on any topic to jump straight to it:

- ↘ **Historical Context: The shadow of colonialism and the hope of devolution**
- ↘ **Social dynamics: Community, ethnicity, and inequality**
- ↘ **Business culture; Relationships and hierarchy**
- ↘ **Operational realities: Infrastructure, bureaucracy, and informality**
- ↘ **Why is it important to conduct responsible business?**





## Before we look at the Kenyan legislations and regulations that relate to businesses when it comes to Responsible Business Conduct, it is important to first understand the cultural and operational context in Kenya.

Kenya is not the Netherlands. While this may seem obvious, many Dutch businesses underestimate how profoundly cultural, historical, and operational differences shape what responsible business conduct means in practice. Understanding Kenya's unique context - its history, social dynamics, business culture, and stakeholder expectations - is essential for Dutch companies seeking not just to comply with regulations, but to build trust, manage risks, and create sustainable value.

### Historical Context: The shadow of colonialism and the hope of devolution

**Colonial legacy:** Kenya's experience as a British colony (1895–1963) continues to shape perceptions of foreign business. Historical land dispossession, exploitative labour practices, and resource extraction with limited local benefit have left lasting grievances, contributing to ongoing scepticism toward foreign companies unless they demonstrate responsible and inclusive business practices.

→ **IMPLICATION FOR DUTCH BUSINESSES:** You might inherit this scepticism towards your business. Communities may initially assume you will extract value and leave problems behind. Overcoming this requires demonstrable commitment from the outset to ensure local benefit including fair employment, community investment, transparent operations, and genuine partnership rather than paternalism.

**Devolution and county power:** Kenya's 2010 Constitution devolved significant power to 47 county governments, including authority over trade licensing, planning, some environmental functions, and community development. Implication for Dutch businesses: You must engage both national and county governments. Counties vary widely in capacity, priorities, and governance quality. Building relationships with county leadership is crucial, and public participation at the county level is not optional, it's constitutionally mandated.

### Social dynamics: Community, ethnicity, and inequality

**Ethnic diversity and sensitivities:** Kenya's ethnic diversity strongly influences social and economic dynamics, and perceptions of ethnic bias in hiring or procurement can quickly lead to tension.

→ **IMPLICATION FOR DUTCH BUSINESSES:** Businesses should demonstrate ethnic neutrality, promote inclusive recruitment and procurement practices, and be especially mindful during sensitive periods such as elections due to the occasional electoral violence rooted in ethnic tensions

**Inequality and expectations:** Kenya has stark inequality where extreme wealth and extreme poverty coexist. Communities hosting businesses, especially in rural areas, often live in poverty whilst seeing companies profit.

→ **IMPLICATION FOR DUTCH BUSINESSES:** Visible inequality can quickly undermine trust. Large gaps between expatriate living standards and local workers' conditions often fuel grievances. Aiming to pay living wages, investing in community development, and being mindful of optics are essential to maintaining a company's social licence to operate.

**Gender dynamics:** While Kenya has strong gender equality laws, patriarchal norms remain widespread, especially in rural areas. Women continue to face barriers in land ownership, employment, and leadership, and workplace gender-based violence is often underreported.

→ **IMPLICATION FOR DUTCH BUSINESSES:** Businesses should actively promote gender equality by ensuring women's participation in consultations, offering equal employment opportunities, enforcing robust anti-harassment policies, and supporting women's economic empowerment, rather than assuming existing structures are gender equitable. At the same time, when promoting individuals in vulnerable positions such as women into existing leadership or workplace structures, be mindful of potential backlash, tokenism, or isolation, and ensure adequate support, mentoring, and safe reporting channels are in place for them.





## Continued:

### Social dynamics: Community, ethnicity, and inequality

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### Business culture: Relationships and hierarchy

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### Operational realities: Infrastructure, bureaucracy, and informality

**Religion and workplace dress code:** Kenya is predominantly Christian, with significant Muslim and smaller Hindu and Sikh communities. While constitutionally secular, religion strongly influences workplace expectations.

- **IMPACT FOR DUTCH BUSINESSES:** Employers should reasonably accommodate religious practices, including prayer time (e.g., Friday Jumu'ah), Ramadan fasting, and major religious holidays. Dress codes should balance professionalism with constitutional protections under Article 32 - religious attire such as hijabs, niqabs, turbans, and modest dress must be permitted. Policies should explicitly allow religious dress and managers should be trained to handle accommodation requests fairly and consistently.
- 

**Relationship-driven context:** Business in Kenya is built on trust and personal relationships rather than purely transactional dealings. Credibility is earned over time through consistent engagement, not just formal credentials.

- **IMPLICATION FOR DUTCH BUSINESSES:** Invest in relationship-building with government, communities, and partners by showing up in person, following through on commitments, and engaging stakeholders as long-term partners, not obstacles.

**Hierarchical context:** Kenyan business culture places strong emphasis on hierarchy, seniority, and respect for authority, with decisions often made top-down.

- **IMPLICATION FOR DUTCH BUSINESSES:** It is essential to engage leadership directly, respect formal protocols, and avoid bypassing established structures. However, effective and responsible engagement also requires building from the bottom up by creating safe and meaningful spaces for workers, women, youth, and other stakeholders to contribute their perspectives. Balancing respect for hierarchy with deliberate inclusion is key to long-term trust and legitimacy.
- 

**Infrastructure gaps:** Despite relatively strong regional infrastructure, parts of Kenya still face unreliable electricity, limited water supply, poor rural roads, and occasional internet disruptions.

- **IMPLICATION FOR DUTCH BUSINESSES:** Build in contingencies by budgeting for backup power, alternative water sources, and flexible logistics.

**Bureaucracy and “facilitation”:** Regulatory processes in Kenya can be slow and complex, involving multiple agencies, and while corruption persists, enforcement is improving.

- **IMPLICATION FOR DUTCH BUSINESSES:** Engage regulators early, use reputable and ethical legal or advisory support, document all interactions, and be patient but persistent. Avoid shortcuts such as bribes; suspected extortion should be reported to the Ethics and Anti-Corruption Commission (EACC) and, where appropriate, raised with the Dutch Embassy.

**Informal sector dominance:** Over 80% of Kenya's workforce operates informally, often without registration, contracts, or protections.

- **IMPLICATION FOR DUTCH BUSINESSES:** Responsible business conduct applies regardless of formality. When engaging informal suppliers or casual workers, carry out due diligence, ensure fair pay and safe conditions, formalise arrangements where possible, and support gradual formalisation.





## Why is it important to conduct responsible business?

According to the OECD Guidelines for Multinationals on Responsible Business Conduct<sup>1</sup>, Responsible Business Conduct (RBC) is about making sure that the activities of businesses and investors are aligned with the needs of society, today and in the future. Kenya offers a vibrant and strategic business environment for Dutch companies – whether they are seeking to invest directly, expand operations or strengthen existing supply chains. Kenya continues to attract Dutch businesses across sectors such as floriculture, horticulture, renewable energy, manufacturing, logistics and digital innovation.

However, for a business to operate responsibly in Kenya, it requires a sound understanding of both the formal regulatory landscape and the informal cultural and social dynamics that influence business practices. From a legal and reputational standpoint, failing to conduct business in a responsible manner can result in non-compliance with local legislation, human rights due diligence (HRDD) expectations (see info box – What is Human Rights Due Diligence?) and other sustainability commitments, leading to fines, audit failures and exclusion from ethical supply chains.

Kenya has developed a comprehensive regulatory ecosystem for RBC that reflects its commitment to sustainable development, human rights protection, and environmental stewardship. This framework represents a convergence of constitutional provisions, legislative instruments, institutional mechanisms, and international commitments that collectively shape how businesses must operate within the country.

Understanding this landscape is critical for foreign businesses or investors, as non-compliance carries significant financial, reputational, and operational risks, while proactive engagement with RBC principles can unlock business opportunities and the social license to operate.

### What is Human Rights Due Diligence?



In an interconnected world, businesses are increasingly operating in a complex environment. This is fundamentally affecting the way decisions are made on the use of resources, time, and people in a company.

As such, consumers, civil societies, investors and trade unions are more and more concerned with the impact of international supply chains on workers' and communities' human rights. The adoption of the United Nations Guiding Principles on Business and Human Rights, made businesses responsible for respecting human rights. This responsibility includes identifying, assessing, and addressing any harm to human rights in business supply chains – a process called human rights due diligence (HRDD).

The UNGPs paved the way for legal and financial pressures on businesses to ensure they are responsible for human rights risks in their operations and supply chains, even in places where they are not directly sourcing from such as Kenya.

<sup>1</sup> <https://www.oecd.org/en/topics/policy-issues/responsible-business-conduct.html>





## Section 3

# Constitutional and policy foundations

Click on any topic to jump straight to it:

- ✎ [The Constitution of Kenya 2010](#)
- ✎ [Right to fair labour practices \(Article 41\)](#)
- ✎ [Kenya's labour and employment framework](#)
- ✎ [Right to a clean and healthy environment \(Article 42\)](#)
- ✎ [Kenya's environmental regulatory framework](#)
- ✎ [Corporate Governance And Business Regulations](#)
- ✎ [Companies Act, 2015](#)
- ✎ [Additional requirements for foreign companies](#)
- ✎ [Capital Markets Authority \(CMA\) and Listed Company Requirements](#)
- ✎ [County-Level Frameworks - Fourth Schedule of Constitution](#)
- ✎ [Practical implications of country governments for businesses](#)
- ✎ [Who to Engage at County Level \(For Dutch Businesses Operating in Kenya\)](#)





## The Constitution of Kenya 2010

The 2010 Constitution<sup>2</sup> represents a transformative legal framework that fundamentally reshaped Kenya's governance structure and embedded RBC principles at the highest legal level. Several aspects of the Constitution of Kenya (2010) effectively establish the foundation for RBC by creating binding obligations that apply not only to the State, but also directly and indirectly to businesses and private actors. While the Constitution does not use the term "RBC," its principles align closely with the UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines.

### Right to fair labour practices (Article 41)

Article 41 of Kenya's Constitution guarantees every person the right to fair labour practices, including fair remuneration, reasonable working conditions, the right to form and join trade unions, and the right to participate in collective bargaining.

These are constitutional rights that cannot be waived as courts have consistently upheld workers' rights even where employment contracts attempted to exclude constitutional protections, rendering such waiver clauses void and unenforceable.

<sup>2</sup> [https://www.parliament.go.ke/sites/default/files/2017-05/The\\_Constitution\\_of\\_Kenya\\_2010.pdf](https://www.parliament.go.ke/sites/default/files/2017-05/The_Constitution_of_Kenya_2010.pdf)

### What does the constitution of Kenya expect from businesses when it comes to RBC?

In the Bill of Rights section (Chapter 4) of the constitution of Kenya, it recognises environmental, economic, social, and cultural rights as enforceable rights, not mere aspirations. This includes:

#### ARTICLE 41

Right to fair labour practices

#### ARTICLE 42

Right to a clean and healthy environment

#### ARTICLE 10

National values and principles of governance that bind all persons, including companies, whenever they apply or interpret the Constitution or law





## Kenya's labour and employment framework

Kenya has developed comprehensive labour laws reflecting the International Labour Organization (ILO) conventions and strong constitutional protections for workers. While labour relations are generally positive, they can become adversarial if workers feel exploited or unfairly treated. Understanding and complying with labour law is critical for Dutch businesses to avoid operational disruptions, costly litigation, and reputational damage.

Kenya's labour framework is structured around four principal statutes, each addressing different aspects of the employment relationship:

### Employment Act, 2007

Provides guidance on individual employment contracts, working conditions, and basic employment rights such as **protection against discrimination**

### Labour Relations Act, 2007

Provides guidance on collective labour relations, trade unions, and industrial disputes

### Occupational Safety and Health Act (OSHA), 2007

Provides guidance on workplace safety and health standards

### Work Injury Benefits Act (WIBA), 2007

Provides guidance on compensation for workplace injuries and occupational diseases

### Employment Act, 2007

The Employment Act is Kenya's primary legislation governing individual employment relationships, establishing minimum standards for employment contracts, working conditions, remuneration, and termination.

#### FAIR REMUNERATION AND LABOUR PRACTICES

These are the **minimum requirements** as per the Kenyan constitution where companies should ensure the following within their operations:

- All employment must be in writing within 60 days of commencement with terms of employment clearly stipulated.
- Wages meet or exceed legal minimum wage for sector/location (Key figures effective November 2024, more information can be found below):
  - ↘ **Major cities (Nairobi, Mombasa, Kisumu) - General worker:** Ksh 16,113.75/month (Ksh 144.05/hour).
  - ↘ **Major cities - Cook/ House servant:** Ksh 17,402.94/month (Ksh 156.68/hour).
  - ↘ **Municipalities:** Around Ksh 14,025/month for some roles, with specific rates for skilled/unskilled.
  - ↘ **Unskilled workers (General):** Around Ksh 7,997/month
- Equal pay for equal work is ensured and is gender and ethnicity neutral
- Salary structure is transparent and fair
- Overtime is paid at legally required rates (1.5x)
- All statutory deductions are correctly calculated and remitted (PAYE, NSSF, SHA, Housing Levy)
  - ↘ **PAYE (Pay As You Earn):** Income tax deducted by employer on salaries, calculated progressively (10-35%)
  - ↘ **NSSF (National Social Security Fund):** Both employer and employee contribute (6% each of pensionable earnings, capped)
  - ↘ **SHIF (Social Health Insurance Fund):** Monthly contribution based on salary band (2.75% of gross salary)
  - ↘ **(AHL) Affordable Housing Levy:** 1.5% contribution from employer and from employee based on gross salary.
- Payslips are provided showing earnings and deductions
- Wages are paid on time i.e. within 7 days of every month end
- No illegal deductions from wages
- Wage reviews are conducted regularly
- Benefits are provided including annual leave, sick leave, maternity/paternity leave



### Practical implications for business on labour relations as outlined by Kenyan law:

The constitutional protection of worker rights means that employment practices contrary to these provisions can be challenged directly in court, bypassing labour tribunals. This has strengthened workers' bargaining power.





## Continued:

### Kenya's labour and employment framework

Employment Act, 2007

Labour Relations Act, 2007

Occupational Safety and Health Act (OSHA), 2007

Work Injury Benefits Act (WIBA), 2007

**Note:** Minimum wage is a minimum, not a ceiling. Most formal sector employers pay above the minimum wage. For more information on the minimum wage in Kenya, please refer to the guidelines as provided<sup>3</sup>.

**Living Wage consideration:** While not legally mandated, international standards (including the Corporate Sustainability Due Diligence Directive (CSDDD) increasingly expect employers to pay a **living wage** — which is a wage sufficient to meet basic needs and provide discretionary income. Dutch businesses should benchmark wages against living wage estimates for Kenya. Some living wage benchmarks to guide you include: the Global living Wage Coalition, based on the Anker methodology,<sup>4</sup> WageIndicator Foundation<sup>5</sup> which provides region-specific estimates and comparisons and Fairtrade International<sup>6</sup> which includes living wage benchmarks for flower and tea sectors in Kenya.

<sup>3</sup> [https://wageindicator.org/salary/minimum-wage/kenya/2182-cities-nairobi-mombasa-and-kisumu#:~:text=Table\\_title:%20Job%20Type%20/%20Grade%20Table\\_content:%20header:,day:%20KES1%20C750.54%20%7C%20Per%20month:%20KES36%20C360.92%20%7C](https://wageindicator.org/salary/minimum-wage/kenya/2182-cities-nairobi-mombasa-and-kisumu#:~:text=Table_title:%20Job%20Type%20/%20Grade%20Table_content:%20header:,day:%20KES1%20C750.54%20%7C%20Per%20month:%20KES36%20C360.92%20%7C)

<sup>4</sup> <https://www.globallivingwage.org/countries/africa/kenya/>

<sup>5</sup> <https://wageindicator.org/salary/living-wage/kenya>

<sup>6</sup> <https://www.fairtrade.net/programmes-and-projects/living-wage>

- Sick leave: Minimum entitlement based on service duration:
    - 7 days full pay, 7 days half pay (service under 1 year)
    - 14 days full pay, 14 days half pay (service 1-3 years)
    - 21 days full pay, 21 days half pay (service 3-5 years)
    - 28 days full pay, 28 days half pay (service 5+ years)
  - Maternity leave: 3 months (90 days) with full pay for female employees. Protected period from dismissal during pregnancy and maternity leave - except for gross misconduct.
  - Paternity leave: 2 weeks with full pay.
  - Annual leave: Minimum 21 working days per year after 12 months service. Must be paid at full wage rate. Leave cannot be waived or paid in lieu except on termination.
- 13th month or bonus scheme considered if it's industry practice
- Notice is provided before termination. Notice required depends on payment frequency:
- **Daily paid workers:** 24 hours' notice
  - **Weekly paid workers:** 7 days' notice
  - **Monthly paid workers:** 28 days' notice (commonly interpreted as 1 calendar month)
- Fair termination procedure has been followed even in cases of gross misconduct [See Part 2: The Tools on Fair termination procedure to follow].
- Fair redundancy procedure is followed [See Part 2: The Tools for redundancy procedures to follow].

### REASONABLE WORKING CONDITIONS

These are the minimum legal requirements on reasonable working conditions as outlined in Kenya's constitution:

- Maximum 52 hours per week (typically 8 hours/day, 6 days/week or 10 hours/day, 5 days/week).
- Rest breaks are provided (1 hour for 5+ hour shifts)
- Weekly rest days are provided (at least 1 day)
- Public holidays are observed or double pay provided when employees work
- Night shift compensation/arrangements are fair
- Workplaces are clean, well-lit, and ventilated
- Toilets and washing facilities are adequate and clean
- Drinking water is available and accessible
- Rest areas are provided
- There is a canteen or meal arrangements are provided (if required)





## Continued:

### Kenya's labour and employment framework

Employment Act, 2007

Labour Relations Act, 2007

Occupational Safety and Health Act (OSHA), 2007

Work Injury Benefits Act (WIBA), 2007



- Personal protective equipment (PPE) is provided free
- Safe machinery and equipment is maintained
- Workplace temperature is controlled (if applicable)
- Ergonomic considerations are addressed
- Transport is provided or subsidised (if in a remote location)
- Accommodation is adequate (if provided) – in terms of privacy, sanitation and safety

#### **PROTECTION AGAINST DISCRIMINATION**

The constitution further provides clear guidelines for protection against discrimination.

##### **Forms of discrimination:**

- **Direct:** Treating a person less favourably due to a protected characteristic
- **Indirect:** Applying neutral policy that disproportionately disadvantages protected groups without justification
- **Harassment:** Unwanted conduct violating dignity or creating a hostile environment
- **Victimisation:** Retaliation for asserting rights or supporting a discrimination complaint

##### **Equal pay for equal work:**

- Men and women performing work of equal value must receive equal remuneration
- Gender pay gaps can be challenged if they are not objectively justified
- Regular pay audits is recommended to identify and address disparities

##### **Reasonable accommodation for disabilities:**

- Employers must make reasonable adjustments for disabled workers to work
- "Reasonable" considers cost, size of organisation and practicality
- Failure to provide reasonable accommodation is considered as discrimination

##### **Sexual harassment:**

- Prohibited under the Sexual Offences Act, 2006 and the Employment Act
- Employers are liable if they fail to prevent or address harassment
- Companies must have a clear policy, complaint procedure, training, and enforcement to prevent and mitigate sexual harassment

##### **Some of the mandatory policies against discrimination that are required:**

- A **Sexual harassment policy** with the complaint and investigation procedure clearly defined
- An **HIV/AIDS workplace policy** clearly outlining: no discrimination, no mandatory testing, guaranteeing confidentiality and offering support
- An **Equal opportunity policy** outlining non-discrimination, promotion of diversity, and affirmative action



## Continued:

### Kenya's labour and employment framework

Employment Act, 2007

Labour Relations Act, 2007

Occupational Safety and Health Act (OSHA), 2007

Work Injury Benefits Act (WIBA), 2007

The Constitution of Kenya clearly prohibits both child labour and forced labour. It forbids slavery, servitude, and forced labour, and protects children from exploitative work that may be harmful to their health, development, or education.

These constitutional protections place a direct responsibility on businesses to ensure that their operations and supply chains do not involve child labour, forced labour, or other forms of exploitation, and to put in place effective due diligence and remediation measures where risks are identified.



### CHILD LABOUR AND FORCED LABOUR

#### Minimum age for employment in Kenya:

- 18 years for formal employment (exceptions are provided for light work ages 13-16 with safeguards, but rare in the formal sector)
- Child labour under 13 is strictly prohibited

#### Forced labour:

- Any form of forced or compulsory labour is prohibited (Constitution Article 30)
- Includes debt bondage, retention of identity documents, physical confinement, and threats

#### Human trafficking:

- Trafficking for labour exploitation is criminalised under Counter-Trafficking in Persons Act, 2010
- Employers must ensure recruitment practices don't facilitate trafficking

#### Due diligence required for businesses:

- Age verification at hiring using the national ID or birth certificate.
- Supply chain monitoring for child and forced labour
- Ethical recruitment practices such as no excessive fees or no document retention



## Continued:

### Kenya's labour and employment framework

Employment Act, 2007

Labour Relations Act, 2007

Occupational Safety and Health Act (OSHA), 2007

Work Injury Benefits Act (WIBA), 2007

Imagine 85 of your 150 workers join a union. What happens next? Under the Labour Relations Act, 2007, that union now has the right to be recognised as the collective bargaining agent for all workers in that category (even the 65 who didn't join), and you must negotiate with them in good faith. This means discussing wages, working hours, leave, safety conditions, and other employment terms to reach a Collective Bargaining Agreement (CBA). If negotiations fail, the Act doesn't leave you stuck - a government conciliator steps in to mediate during a mandatory 21-day period. But if conciliation fails and the union follows the proper procedures (getting member approval through a ballot and giving you and the Ministry 7 days' notice), they can legally strike, and you cannot dismiss striking workers. Whilst lockouts are legally permitted, many employers find they lead to production losses without addressing the root causes of the dispute. The Act channels conflict into structured processes: unions cannot just walk out on a whim, and employers cannot just ignore worker representatives.

For Dutch businesses used to the "polder model", the Kenyan system is similar in spirit i.e. social dialogue and structured negotiation but different in tone i.e. more adversarial, more frequent use of strikes as leverage and less consensus-oriented. Success requires taking collective labour rights seriously, good communication, being fair in negotiations, and recognising that organised workers are legitimate partners, not problems to be suppressed.

### Labour Relations Act, 2007

The Kenyan Labour Relations Act governs collective labour relations, trade unions, and industrial disputes.

#### RIGHT TO FORM AND JOIN TRADE UNIONS

Here are the **minimum legal requirements** on the right to form and join trade unions as outlined in Kenya's constitution:

- Workers are informed of their right to join unions
- No discrimination against union members or activities
- Union's access to workplace is permitted at reasonable times and with notice
- A check-off system for union dues that is operational (if workers authorise this)
- Union representatives are recognised and allowed time for union activities
- No interference with union formation or operations
- A freedom of association policy is in place and enforced
- Union-related terminations are avoided since it automatically accounts as unfair dismissal

Here are the **minimum legal requirements** on the right to participate in collective bargaining as outlined in Kenya's constitution:

- Union recognition is granted if majority membership is in bargaining unit
- Good faith collective bargaining is conducted
- Collective Bargaining Agreement (CBA) is negotiated and signed (if unionised)
- CBA is registered with Registrar of Trade Unions
- CBA terms are implemented fully by all parties

### Occupational Safety and Health Act (OSHA), 2007

Workplace safety is a major concern in Kenya, given relatively high rates of occupational accidents and injuries across sectors such as agriculture, manufacturing, and construction. The Occupational Safety and Health Act (OSHA), 2007 establishes comprehensive requirements for ensuring safe and healthy working conditions. It places a duty on employers to identify workplace hazards, implement preventive measures, provide appropriate training and personal protective equipment (PPE), and report occupational accidents and diseases. The Act is enforced by the Directorate of Occupational Safety and Health Services (DOSHS), and non-compliance may result in penalties, closure notices, or legal action.





## Continued:

### Kenya's labour and employment framework

Employment Act, 2007

Labour Relations Act, 2007

Occupational Safety and Health Act (OSHA), 2007

Work Injury Benefits Act (WIBA), 2007

The Work Injury Benefits Act (WIBA) provides a framework for compensating employees who suffer work-related injuries or occupational diseases, replacing the previous workers' compensation system. Under WIBA, employers are required to obtain insurance cover for their employees and are responsible for reporting workplace accidents and illnesses. The Act aims to ensure prompt and fair compensation for affected workers while reducing the need for lengthy court processes. Non-compliance may expose employers to financial penalties and legal liability.

#### Who is covered under WIBA:

- All employees under contract of service or apprenticeship.

#### What is covered under WIBA:

- Injuries arising out of and in course of employment
- Occupational diseases
- Injuries during work-related travel
- Injuries at employer-organised events

#### What's not covered under WIBA:

- Self-inflicted injuries
- Injuries from wilful misconduct
- Injuries while under influence of alcohol/drugs (unless there is employer tolerance)

### Work Injury Benefits Act (WIBA), 2007

#### OCCUPATIONAL HEALTH AND SAFETY

These are the **minimum legal requirements** on occupational health and safety and work injury benefits as per the OSHA and WIBA Acts:

- Have a written Occupational Safety and Health (OSH) policy in place
- Ensure a OSH committee is established and meeting regularly (if you have 20+ employees)
- Appoint a safety officer (qualifications are verified):
  - ↳ 20-100 employees: Have a part-time safety officer
  - ↳ 100-500 employees: Have one full-time safety officer
  - ↳ 500+ employees: have additional safety officers
- Have workplace risk assessments conducted for all work activities and have them documented
- Ensure safety procedures and work instructions are available and visible
- Ensure all employees are trained on safety at induction and provide ongoing trainings
- Have first aid facilities and trained first aiders available
- Have fire safety equipment installed and maintained
- Emergency evacuation plan is posted and practiced
- An accident reporting system is in place
- An accident register is maintained
- Serious accidents are reported to the Directorate of Occupational Safety and Health (DOSHS) within the required timeframes:
  - ↳ **Fatal accidents:** Report immediately to DOSHS
  - ↳ **Major injuries:** Report within 24 hours (fractures, amputations, serious burns, loss of consciousness)
  - ↳ **Dangerous occurrences:** Report within 24 hours (explosions, structural collapse, equipment failure)
  - ↳ **Occupational diseases:** Report when diagnosed
- Accident investigations are conducted and corrective actions are taken
- Safety performance indicators are tracked
- WIBA registration is current, and premiums are paid
- Have medical surveillance for workers exposed to hazards
- Ensure personal protective equipment (PPE) is provided, maintained, and replaced
- Machinery is properly guarded
- Hazardous substances are properly labelled and stored (a Material Safety Data Sheet (MSDS) is available)
- DOSHS inspection readiness is maintained





## Right to a clean and healthy environment (Article 42)

Article 42 of Kenya's Constitution guarantees every person the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations. This provision has been interpreted by courts to impose positive obligations on both the State and private actors, including businesses, to prevent environmental degradation.



## Kenya's environmental regulatory framework

Kenya has developed one of Africa's most comprehensive environmental regulatory frameworks, reflecting strong constitutional provisions and international commitments. Environmental compliance is non-negotiable and enforced with significant penalties.

**Environmental Management and Co-ordination Act (EMCA), 1999 (Amended 2015)**

**Climate Change Act, 2016**

**Water Act, 2016**

**Forest Conservation and Management Act, 2016**

**Environmental Management and Co-ordination Act (EMCA), 1999 (Amended 2015)**

EMCA is the principal environmental legislation in Kenya, providing a comprehensive framework for environmental management.

### KEY REQUIREMENTS

- **Environmental Impact Assessment (EIA):** An EIA is mandatory for prescribed projects before commencement. The EIA process evaluates potential environmental effects and requires mitigation measures.
- **Strategic Environmental Assessment (SEA):** An SEA is applied to policies, plans, and programs (not individual projects) to ensure environmental considerations are integrated into decision-making at the strategic level, including county development plans and sectoral policies.
- **Environmental Audits:** Environmental audit are mandatory annual audits for existing facilities to assess environmental performance and compliance. They are similar to EIAs but are broader in scope, focusing on cumulative impacts and ongoing operations rather than pre-project assessment.

**Climate Change Act, 2016**

Kenya is highly vulnerable to climate change impacts including droughts, floods, and agricultural disruption.

### THE CLIMATE CHANGE ACT ESTABLISHES THE REGULATORY FRAMEWORK FOR CLIMATE ACTION, REQUIRING:

- National and county climate change action plans
- Climate change reporting obligations for businesses
- Integration of climate considerations into development planning
- Low carbon development pathways





## Continued:

### Kenya's environmental regulatory framework

Environmental Management and Co-ordination Act (EMCA), 1999 (Amended 2015)

Climate Change Act, 2016

Water Act, 2016

Forest Conservation and Management Act, 2016



#### Water Act, 2016

Water is a critical and often contentious resource in Kenya.

The Water Act establishes comprehensive regulation of water resources, including:

#### **WATER REGULATORY STRUCTURE:**

- **Water Resources Authority (WRA):** Regulates and manages water resources, issues water permits, and monitors water quality
- **Water Services Regulatory Board (WASREB):** Regulates water and sewerage services provision
- **Regional Water Basins:** Kenya is divided into six water basins, each with a catchment area authority managing the resource

**NOTE:** Several businesses in the engagement for this guidance reported overlapping or unclear requirements between the Water Resources Authority (WRA)<sup>7</sup> and the Water Services Regulatory Board (WASREB)<sup>8</sup>. Companies are advised to verify the respective mandates and licensing requirements of both bodies before making any payments related to permits, monitoring, or compliance to avoid duplication or unnecessary costs.

#### **KEY REQUIREMENTS FOR BUSINESS UNDER THE WATER ACT:**

- **Water abstraction permit:** Required for any water use (surface or groundwater) that is above domestic quantities
- **Discharge permit:** Required for any discharge of effluent into water sources
- **Drilling permit:** Required for borehole drilling
- **Water quality standards:** Strict standards for wastewater discharge, including pH levels, Biochemical Oxygen Demand (BOD)/ Chemical Oxygen Demand (COD) limits, heavy metal restrictions, and temperature controls
- **Regular monitoring:** Permit holders must conduct water quality testing and report to WRA

<sup>7</sup> <https://wra.go.ke/#>

<sup>8</sup> <https://wasreb.go.ke/who-we-are/>





## Continued:

### Kenya's environmental regulatory framework

Environmental Management and Co-ordination Act (EMCA), 1999 (Amended 2015)

Climate Change Act, 2016

Water Act, 2016

Forest Conservation and Management Act, 2016



#### Forest Conservation and Management Act, 2016

Kenya has experienced significant deforestation, making forest protection a national priority.

The Act establishes the following provisions to ensure conservation of forests:

#### KEY PROVISIONS:

- **Forest categories:** Public forests, community forests (managed by Community Forest Associations), and private forests
- **Restrictions:** No commercial activity in water catchment forests without special authorisation; logging requires permits and approved forest management plans
- **Compensation requirements:** One must plant more trees than they have harvested
- **Private land requirements:** 10% tree cover is required on individual landholding (i.e., per parcel/site), particularly for agricultural and commercial land.
- **Penalties:** Heavy fines (up to KES 20 million) or imprisonment for illegal logging, charcoal burning, or forest encroachment

#### BUSINESS IMPLICATIONS:

- Companies adjacent to forests face restrictions and monitoring requirements
- Businesses using timber or wood products must ensure legal sourcing and maintain chain of custody documentation
- Deforestation risks in supply chains require attention, particularly for compliance with EU Deforestation Regulation (EUDR) (more on EUDR in section 8 below)
- Forest carbon: There are emerging opportunities in carbon credits through forest conservation and restoration projects





## National Environment Management Authority (NEMA)

NEMA is Kenya's principal environmental regulator. Understanding how to work with NEMA is crucial for environmental compliance for a business.

### NEMA's functions:

- Issue, suspend, or revoke EIA licenses
- Conduct environmental inspections and monitoring
- Enforce environmental standards
- Issue environmental restoration orders
- Prosecute environmental offenses

### Working with NEMA:

- Pre-application consultations are available to discuss project concepts and EIA requirements
- Online EIA submission and tracking system is available
- NEMA is legally required to respond within set timelines, though delays can occur
- Decisions can be appealed to the National Environment Tribunal, with further appeals to the High Court

**NOTE:** Several businesses have indicated that engagement with the National Environment Management Authority (NEMA), particularly for inspections, licensing, or environmental reporting, may involve delays. Companies are therefore advised to initiate engagement with NEMA early in their project planning timelines to accommodate potential administrative or procedural delays.

## ENVIRONMENT, CLIMATE AND WATER MANAGEMENT

Here are the minimum legal requirements as outlined in the Environment Management, climate, forest and water Acts:

- Have a valid Environmental Impact Assessment (EIA) license obtained from NEMA **before** operations begin (check if this is required for your project with NEMA).
- Do annual environmental audits and submit reports to NEMA
- Implement an Environmental Management Plan and have it regularly reviewed
- Have pollution control systems installed and functioning (for air, water and noise)
- Have a waste management system in place including segregation, storage and disposal/recycling.
- Ensure the effluent treatment plant is operational (if applicable) with regular testing
- Ensure environmental incidents are documented and reported to NEMA
- Staff are trained on environmental procedures and emergency response
- Community complaints mechanism for environmental concerns is in place
- Regular environmental inspections are scheduled and documented
- Environmental restoration fund/bond is in place (if required)
- Have a long-term environmental impact monitoring system
- Climate resilience measures are incorporated into operations
- Sustainable resource use practices are well documented
- Supplier code of conduct includes environmental requirements for suppliers
- Supplier environmental screening is conducted during qualification
- Suppliers are required to have valid EIA licenses (where applicable)
- Supplier environmental audits are included in the monitoring plan
- Deforestation risks are mapped and mitigated (particularly in the coffee, tea and timber sectors)
- Water pollution risks from suppliers are assessed
- Agricultural pesticide/chemical use are monitored
- Transport environmental impacts are considered (such as emissions and spills)
- Packaging sustainability is addressed





## Practical guidance for Dutch businesses on environmental protection as per the legal requirements

Understanding the legal framework is one thing; navigating it successfully is another. The difference between companies that move through Kenya's EIA process smoothly and those that face costly delays often comes down to a few critical practices.



### Early engagement:

Start the EIA process early in the project planning phase. The typical 6–12-month timeline is often underestimated, leading to project delays.

### Quality of consultants:

Engage experienced, NEMA-registered EIA experts with a proven track record in your sector. Poor quality EIA reports will be rejected.

### Genuine public participation:

Do not treat public participation as a formality. Communities are increasingly sophisticated and will challenge inadequate consultations. Document all engagements thoroughly.

### Comprehensive baseline data:

Invest in comprehensive baseline studies indicating air quality, water quality, biodiversity and social conditions. This data is crucial for the impact assessment and future monitoring.

### Adequate mitigation budget:

Budget generously for mitigation measures. NEMA expects practical, funded mitigation plans, not just theoretical commitments.

### Ongoing compliance:

EIA approval is not the end. Establish systems for ongoing compliance monitoring, annual audits, and reporting. Non-compliance can lead to license revocation.

### County coordination:

Ensure County government involvement in the EIA process. NEMA consults counties, and county opposition can complicate approvals. See section on county-level frameworks on how county governments work

### Alignment with EU requirements:

Dutch companies familiar with EU environmental regulations will find Kenya's framework increasingly aligned with international standards. Leverage your existing environmental management systems and adapt them to the Kenyan context, ensuring compliance with both Kenyan law and EU requirements such as CSRD environmental reporting and deforestation-free supply chains.





## Corporate Governance And Business Regulations

Kenya has modernised its corporate governance framework, aligning with international best practices and increasing transparency requirements.

This handbook will focus on two regulatory requirements:

### Companies Act, 2015

#### Company formation and registration

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#### Directors' duties and liabilities

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#### Financial reporting and audits

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#### Non-financial reporting

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#### Additional requirements for foreign companies

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### Capital Markets Authority (CMA) and Listed Company Requirements

#### ESG reporting frameworks

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#### County-Level Frameworks - Fourth Schedule of Constitution

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#### Practical implications of country governments for businesses

### Companies Act, 2015

The Companies Act an Act of Parliament developed to consolidate and reform the law relating to the incorporation, registration, operation, management and regulation of companies; to provide for the appointment and functions of auditors; to make other provision relating to companies; and to provide for related matters. The 2015 Act overhauled company law, introducing modern governance standards and increased disclosure requirements. This Act applies to all Dutch businesses operating in Kenya.

Government agencies such as the Office of the Registrar of Companies, professional bodies including the Institute of Certified Public Accountants of Kenya (ICPAK), the Law Society of Kenya (LSK), and the Institute of Directors (IoD Kenya), as well as business associations such as the Federation of Kenya Employers (FKE) and the Kenya Private Sector Alliance (KEPSA), can provide valuable guidance on implementing effective corporate governance in line with the Companies Act.

#### Company formation and registration

Under the Act, companies are required to formally register with the Registrar of Companies, disclose beneficial ownership information, appoint directors and company secretaries where applicable, and maintain accurate statutory records. These requirements promote transparency, accountability, and responsible corporate behaviour, and form a key foundation for Responsible Business Conduct.

#### **INITIAL REGISTRATION:**

Here are the **minimum requirements** as outlined in the Companies Act on initial registration for a company:

- Company is registered with Registrar of Companies (can be done online via eCitizen platform)
- Certificate of Incorporation has been obtained
- The type of company has been correctly designated (as private limited, public, branch, or subsidiary)
- Memorandum and Articles of Association have been filed
- Statement of capital and initial shareholdings has been filed (if a share capital company)
- Statement of proposed officers (directors and secretary) has been filed
- Registered office in Kenya has been designated
- Foreign company registration has been completed (if applicable - external company provisions)





**Continued:**

## **Corporate Governance And Business Regulations**

**Companies Act, 2015**

**Capital Markets Authority  
(CMA) and Listed Company  
Requirements**

**Company formation and  
registration**

---

**Directors' duties and liabilities**

---

**Financial reporting and audits**

---

**Non-financial reporting**

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**Additional requirements for foreign  
companies**

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### **MINIMUM REQUIREMENTS TO BE MET:**

- At least ONE director who is a natural person (corporate directors are allowed, but must have at least one individual)
- At least ONE director must be a resident in Kenya - for foreign companies operating locally
- The director's minimum age is 18 years
- Directors are not disqualified through undischarged bankruptcy, or disqualified in foreign jurisdiction
- A company secretary has been appointed (mandatory only if paid-up capital exceeds KES 5 million)
- The registered office is maintained in Kenya at all times

### **Directors' duties and liabilities**

The Companies Act 2015 codifies directors' fiduciary duties – these are legally enforceable with civil consequences for breach.

### **STATUTORY DUTIES:**

Here are the **minimum requirements** to be met on Statutory duties - Every director must:

- Act in accordance with the company's constitution
- Act in good faith and in the best interests of the company
- Exercise powers only for proper purposes
- Exercise independent judgment (not fetter discretion)
- Exercise reasonable care, skill, and diligence
- Avoid conflicts of interest
- Not accept benefits from third parties
- Declare interest in proposed or existing transactions

### **Financial reporting and audits**

The Companies Act also sets out requirements for financial reporting and audits, supporting transparency, accountability, and good corporate governance. Proper financial reporting helps businesses prevent financial misconduct, corruption, and fraud, while audited financial statements strengthen trust with regulators, investors, workers, and other stakeholders.

### **FINANCIAL STATEMENTS:**

**Minimum requirements** on financial statements as outlined in the Act:

- We file annual returns with the Registrar of Companies within 42 days of the Annual General Meeting (AGM) and includes:





## Continued:

### Corporate Governance And Business Regulations

Companies Act, 2015

Capital Markets Authority  
(CMA) and Listed Company  
Requirements

Company formation and  
registration

Directors' duties and liabilities

Financial reporting and audits

Non-financial reporting

Additional requirements for foreign  
companies

- Financial statements
- List of directors and shareholders
- Registered office
- Company activities
- Annual financial statements are prepared in accordance with International Financial Reporting Standards (IFRS)
- Financial statements include:
  - Statement of financial position (balance sheet)
  - Statement of comprehensive income (profit and loss)
  - Statement of changes in equity
  - Statement of cash flows
  - Notes to financial statements
- Directors' report is prepared
- Financial statements are approved by the Board
- Financial statements are signed by at least one director

#### **AUDIT REQUIREMENTS:**

- **Public companies:** Mandatory audit is required
- **Private companies:** Audit is required if turnover exceeds KES 1 million or at shareholder request
- **Small companies:** Can opt out of audit if shareholders agree

Here are the **minimum requirements** on auditing as outlined in the companies act:

- Auditor is a member of Institute of Certified Public Accountants of Kenya (ICPAK)
- Auditor is independent of the company
- Auditor's eligibility is verified (not ineligible person)
- Auditor is appointed at the AGM
- Auditor's remuneration is approved by shareholders
- Auditor's report is obtained and included in financial statements
- Auditor resignation or removal is handled per the statutory procedures

#### **Non-financial reporting**

This is a critical, though often overlooked, requirement under Kenyan company law. Section 26 of the Companies Act, 2015 requires directors to consider a range of non-financial factors when making decisions. This includes considering the interests of employees, fostering responsible relationships with suppliers, customers, and other business partners, and assessing the impacts of the company's operations on the wider community and the environment. Together, these obligations embed





## Continued:

### Corporate Governance And Business Regulations

Companies Act, 2015

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Responsible Business Conduct principles into corporate decision-making, beyond financial performance alone.

#### **NON-FINANCIAL REPORTING REQUIREMENTS:**

Here are the requirements on non-financial reporting as outlined in the companies act:

- A Non-financial report is prepared addressing Section 26 matters
- Report covers:
  - Employee welfare and interests
  - Supplier and customer relationships
  - Community impacts of business operations
  - Environmental impacts of business operations
- Non-financial report is included in annual report or published separately
- Stakeholder engagement is documented
- Corporate social responsibility (CSR) activities are reported
- Compliance with Kenya's National Action Plan (NAP) on Business and Human Rights is considered in reporting (more on the NAP in *Section 4*)

#### **Additional requirements for foreign companies | External company registration**

If a Dutch company operates a business in Kenya without incorporating<sup>9</sup> locally, it must register as an external company under the Companies Act, 2015. This requires the company to formally disclose its presence, appoint a local representative, and comply with Kenyan legal, tax, labour, and regulatory obligations. Proper registration supports transparency, accountability, and responsible business conduct, and ensures that the company can be held accountable for its operations and human rights and environmental impacts in Kenya.

#### **EXTERNAL COMPANY REGISTRATION REQUIREMENTS:**

Minimum requirements as outlined in the companies act:

- The external company registration is completed
- A local registered office has been designated
- An agent for service of process has been appointed in Kenya
- A certified copy of the constitution/incorporation documents has been filed
- The list of directors has been filed
- Annual returns have been filed (same as that of local companies)
- Any changes in home country status has been notified to Kenyan Registrar

<sup>9</sup> **Incorporating** refers to registering a new legal entity in Kenya (for example, a private limited company) that is separate from the Dutch parent company. Once incorporated, the Kenyan entity becomes a locally registered company with its own legal personality, capable of entering into contracts, owning assets, employing staff, and being held liable in its own name.





Continued:

## Corporate Governance And Business Regulations

Companies Act, 2015

Capital Markets Authority  
(CMA) and Listed Company  
Requirements

## ESG reporting frameworks

County-Level Frameworks - Fourth  
Schedule of Constitution

Practical implications of country  
governments for businesses

### Capital Markets Authority (CMA) and Listed Company Requirements

CMA regulates Kenya's capital markets, including Nairobi Securities Exchange (NSE). CMA issued Environment, Social and Governance (ESG) reporting guidelines which currently are voluntary, but there is a growing expectation. This includes preparing an Annual Sustainability report that covers the three pillars: Environment, Social and Governance (See the list below to see what to include in the sustainability report for each pillar):

#### **ENVIRONMENT, SOCIAL AND GOVERNANCE (ESG):**

##### Environmental:

- Carbon footprint and Green House Gas (GHG) emissions (Scope 1, 2, and 3 where feasible)
- Energy consumption and efficiency
- Water consumption and management
- Waste generation and management (including recycling rates)
- Biodiversity impacts
- Climate risks and opportunities
- Environmental compliance and incidents

##### Social:

- Employee diversity and inclusion in terms of gender, disability and ethnicity
- Health and safety performance including injury rates, fatalities and safety training
- Training and capacity development hours
- Employee turnover and retention
- Community engagement and impact
- Human rights due diligence efforts
- Supply chain labour practices
- Customer satisfaction and product safety

##### Governance:

- Board composition and diversity
- Board independence
- Director attendance
- Ethics and anti-corruption programs/ trainings
- Risk management effectiveness
- Stakeholder engagement processes
- Tax transparency
- Regulatory compliance





## Continued:

### Corporate Governance And Business Regulations

Companies Act, 2015

Capital Markets Authority  
(CMA) and Listed Company  
Requirements

## ESG reporting frameworks

### County-Level Frameworks - Fourth Schedule of Constitution

Practical implications of country  
governments for businesses

## ESG reporting frameworks

While ESG reporting is currently voluntary for most Kenyan companies, 29 listed companies have adopted it, and trend is toward mandatory ESG disclosure. Dutch companies under EU Corporate Sustainability Reporting Directive (CSRD) must report anyway, so they can leverage Kenya ESG reporting to meet both requirements (See section 7 for more on CSRD).

### **REQUIREMENTS:**

ESG reporting is aligned with recognised frameworks including:

- Global Reporting Initiative (GRI) Standards
- Sustainability Accounting Standards Board (SASB) Standards
- Task Force on Climate-related Financial Disclosures (TCFD)
- Integrated Reporting Framework
- UN Global Compact principles

The framework used is clearly stated in the sustainability report

### Assurance:

- ESG data accuracy is ensured through internal controls
- Third-party assurance is obtained (limited or reasonable) - best practice
- The assurance provider and scope is disclosed

### Publication:

- ESG/sustainability report is published as a standalone or integrated in the annual report
- Report is accessible on the company website
- Report is submitted to CMA (as required)
- Report is communicated to all stakeholders

### Practical Impact of the capital markets authority and listed company requirements:

While it initially applies to listed companies, it creates a norm for large companies and influences investor expectations.

### County-Level Frameworks - Fourth Schedule of Constitution

Kenya's devolution system created 47 county governments with significant regulatory authority. Counties have jurisdiction over several RBC-relevant areas over business operations, including licensing, environmental compliance, and service delivery through the following functions as outlined in the Fourth Schedule of the Constitution.

- County planning and development
- Implementation of specific national policies on natural resources





**Continued:**

**Corporate Governance  
And Business Regulations**

Companies Act, 2015

Capital Markets Authority (CMA) and Listed Company Requirements

ESG reporting frameworks

County-Level Frameworks - Fourth Schedule of Constitution

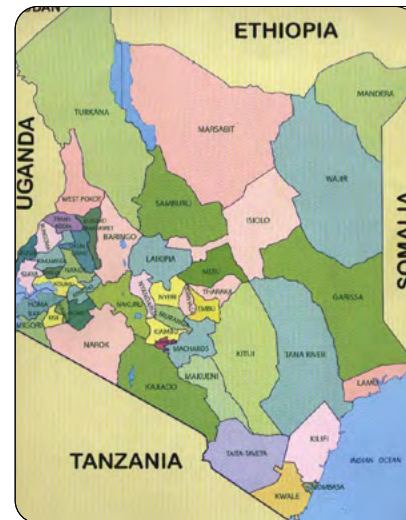
Practical implications of country governments for businesses

- County public works and services
- Trade development and regulation
- County health services
- Control of pollution and environmental conservation
- Cultural activities and facilities

**Practical implications of country governments for businesses**

- Businesses must obtain licenses and approvals from both national and county governments
- Environmental regulations have both national (NEMA) and county (County Environment Committees) enforcement
- Labour inspections can be conducted by both national and county officials
- Tax obligations exist at both levels (national taxes plus county levies)
- Public participation requirements apply at county level for projects affecting local communities

**Investor/ Business challenges:** Some businesses reported that Kenya’s dual regulatory framework (national and county levels) can create complexity and inconsistent requirements. Others noted that regulatory capacity also varies across counties. At the same time, other businesses noted that the devolved system can enable faster, more localised decision-making compared to engaging solely with national authorities. Investors are therefore advised to engage county governments early and maintain constructive working relationships with relevant county officials.



**A map of the 47 counties in Kenya**

Source: <https://maps-kenya-ke.com/>





## Who to Engage at County Level (For Dutch Businesses Operating in Kenya)

While national laws set the framework, many approvals and regulatory processes are implemented at the county level. Early and structured engagement with county authorities is critical.

### County Executive Committee Members (CECs)

Engage the relevant CEC (e.g., Trade, Labour, Environment, Lands, Water, Agriculture) for sector-specific policy guidance and regulatory clarification.

### Chief Officers

These are the technical heads responsible for implementation. They are key contacts for:

- Licensing and permits
- Compliance requirements
- Inspections and operational approvals

### County Trade & Licensing Department

Engage when you need:

- Single Business Permits
- Local trade licences
- County-level regulatory fees

### County Labour Office

Engage them for:

- Labour inspections
- Employment standards compliance
- Worker-related grievances

### County Environment & Planning Departments

Engage them for activities such as:

- Local environmental approvals (in addition to NEMA)
- Zoning and land-use approvals
- Building and development permits

### County Assembly Committees

These are relevant when:

- A county law or regulation affects your operations
- Participating in public participation processes



**Tip:** Many operational risks arise from county-level implementation rather than national law. Engage counties early, maintain written records of interactions, and build transparent relationships to reduce compliance disputes and delays.





## Section 4 ↘

# Kenya's National Action Plan on Business and Human Rights

Click on any topic to jump straight to it:

- ↘ Major requirements outlined in the Kenyan NAP on Business and Human Rights
- ↘ Human rights policy commitment
- ↘ Have a Human Rights Due Diligence (HRDD) process in place
- ↘ Have an operational grievance mechanism in place
- ↘ Have a process in place to manage business relationships responsibly
- ↘ Conduct training and capacity building on responsible business conduct
- ↘ NAP practical implications for Dutch businesses





## Now that we have looked at the legislative requirements on RBC as outlined in Kenya's constitution, let us look at the regulatory framework on RBC that have been adopted by Kenya.

Kenya launched its National Action Plan (NAP) on Business and Human Rights<sup>10</sup> in December 2021, becoming one of the first African countries to do so. Kenya's NAP runs from 2020-2025 and is up for review; businesses should aim to stay updated on any revisions or new requirements. The NAP does not create new legal obligations but consolidates existing constitutional and legal requirements (rights to fair labour practices (Article 41), a clean environment (Article 42), and proper governance) and sets government expectations for business conduct.

Kenya's NAP is based on the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>11</sup> three-pillar framework:

**PILLAR 1** State duty to protect human rights

**PILLAR 2** Corporate/ Business responsibility to respect human rights

**PILLAR 3** Access to remedy

The NAP also focuses on five thematic areas that are vital to Kenya's context:

1. **Land and natural resources:** Land rights, acquisition, community consent, benefit sharing
2. **Labour rights:** Fair wages, working conditions, freedom of association, health and safety
3. **Revenue transparency:** Tax compliance, anti-corruption, beneficial ownership disclosure
4. **Environmental protection:** Pollution prevention, climate action, biodiversity conservation
5. **Access to remedy:** Grievance mechanisms, judicial and non-judicial remedies

**NOTE:** There are other cross-cutting issues included in the NAP such as: gender equality, inclusion of persons with disabilities, indigenous groups, youth and marginalised communities that should also be considered while implementing the guidelines provided in the NAP.

The NAP further identifies several sectors as priorities based on a risk assessment that was carried out during the development of the NAP:

1. **Agriculture and agribusiness:** Issues include land rights, labour conditions for seasonal workers, use of pesticides, water access
2. **Extractives (mining, oil, and gas):** Issues include community displacement, environmental degradation, revenue transparency, local content
3. **Manufacturing:** Issues include worker safety, fair wages, environmental pollution, supply chain issues
4. **Information and Communication Technology (ICT):** Issues include data privacy, digital rights, platform worker rights
5. **Real estate and construction:** Issues include land rights, labour conditions, environmental impact, forced evictions

### Major requirements outlined in the Kenyan NAP on Business and Human Rights

The NAP requires businesses to have several policies or processes in place. These include:

- Showing commitment through a human rights policy
- Have a Human Rights Due Diligence (HRDD) process in place
- Have an operational grievance mechanism
- Have a process in place to manage business relationships responsibly
- Conduct training and capacity building on responsible business conduct

Each of these will be explained in more detail below with definitions and a step-by-step guide on how to implement.

<sup>10</sup> <https://globalnaps.org/wp-content/uploads/2024/01/NAP-Kenya-2020-2025-English.pdf>

<sup>11</sup> <https://www.undp.org/asia-pacific/bizhumanrights/publications/guiding-principles-business-and-human-rights>





## NAP Requirements:

### Human rights policy commitment

A human rights policy serves as your company's public commitment to respecting human rights and provides the foundation for all subsequent due diligence activities.

Kenya's National Action Plan on Business and Human Rights requires every business - regardless of size, sector, or ownership structure - to adopt a human rights policy that meets the requirements explained on the following pages.



#### Tip:

Words matter. When drafting a policy commitment, companies should commit only to what they can deliver on to manage stakeholder expectations and avoid legal risks. Starting small and then expanding a commitment is a strong signal of business credibility and seriousness. Companies should also avoid too prescriptive language or language that is linked to state obligations.

### **POLICY DEVELOPMENT AND COMMUNICATION:**

Here are the **NAP requirements** on a human rights policy development:

- Have a written human rights policy statement that is approved by senior management/ Board (see template in the *Part 2: The Tools* section)
- Human rights policy has been developed through engagement with internal and external stakeholders.
- The human rights policy explicitly commits to respecting internationally recognised human rights
- Have the human rights policy publicly available on the website, the workplace, and shared with stakeholders
- The human rights policy references Kenya's Constitution Bill of Rights (Articles 41, 42, etc.)
- Human rights policy references UN Guiding Principles on Business and Human Rights
- Human rights policy references ILO Core Conventions
- Human rights policy covers all five NAP thematic areas: land, labour, revenue, environment, access to remedy
- The human rights policy addresses cross-cutting issues: gender, disability, indigenous peoples, and youth
- Human rights policy extends to business relationships including suppliers, contractors, and other business partners
- Human rights policy includes commitment to provide remedy for violations
- Human rights policy is translated into local languages where operations affect non-English speakers
- The human rights policy is regularly reviewed and updated (at least annually)

Here are the **NAP requirements** on a communicating a human rights policy:

- Human rights policy is communicated to all employees during induction
- Human rights policy is communicated to Board, management, and workers at all levels
- Human rights policy is communicated to business partners, suppliers, and contractors
- Human rights policy is communicated to affected communities and stakeholders
- Training is provided to ensure policy understanding across the organisation
- Human rights policy is embedded in employment contracts and supplier agreements
- Human rights policy enforcement mechanisms are clearly defined
- Accountability for human rights policy implementation is assigned to specific roles





## NAP Requirements:

### Have a Human Rights Due Diligence (HRDD) process in place

The NAP requires businesses to conduct ongoing human rights due diligence [See the information Box in section 3 on what HRDD is].

The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

The implementation of HRDD relies on various steps that have been outlined in the UNGPs. However, as a business, there are important steps and elements for you to consider before beginning the HRDD process itself.



#### Tip:

You may wish to create a human rights working group comprised of senior directors who meet on a monthly or quarterly basis to review human rights issues and track progress on HRDD.

## PRACTICAL STEPS TO CONSIDER BEFORE IMPLEMENTING HRDD:

- **FIRSTLY – Ensure compliance and remain compliant:** In addition to meeting the general corporate legal obligations from Kenya, it is essential to begin with a thorough mapping of and assessment of any applicable hard laws [see section 7 for laws that apply to Dutch businesses] particularly those relating to HRDD that might apply to your company or impact you.
- **SECONDLY – Undertake a cost and resource assessment:** Assess the resources, investment and time your company might need to embark on this. Consider what budget the company may have or needs to create for HRDD and what it would cost to call in external expertise.
- **THIRDLY – Assignment of roles and responsibilities:** As a company who is starting on this journey, start by determining and discussing internally with your staff who will be responsible for what, especially if you have limited resources.
- **FINALLY – Collaborate with your business partners and Employer or Business Membership Organisations:** This helps you ensure you integrate collective action and alignment to ensure your strategy and commitment is followed by others to avoid being in a situation of unfair competition. If you are a supplier of a bigger company that is more advanced on this issue, speak to them to see what guidance and support they can offer.

The graphic to the right shows the cyclical nature of HRDD, which requires companies to continuously:

- **COMMIT** to responsible business policies and management systems that respect human rights
- **KNOW** and prioritise human rights risks and impacts
- **ACT** to address the identified human rights risks and impacts, considering their root causes
- **TRACK** key milestones by monitoring and reporting progress to ensure steady improvement.





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

**HRDD Phase 1: Commit to embedding responsible business conduct**

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**HRDD Phase 2: Assess, Identify and Prioritise risks**

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**HRDD Phase 3: Take action to prevent and mitigate adverse impacts**

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**HRDD Phase 4: Ongoing monitoring and tracking**

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**HRDD Phase 5: Communication and reporting**



### Tip:

Businesses with limited resources may assign a person in a management or human-resources role to be responsible for human rights. That person should preferably know the business well as well as the company's business partners and stakeholders. She/he may also work with external sources of expertise like counsels or industry groups.

## **HRDD PHASE 1: COMMIT TO EMBEDDING RESPONSIBLE BUSINESS CONDUCT**

The first phase of Human Rights Due Diligence begins with a clear policy commitment that sets out a company's commitment to respecting human rights for internal and external stakeholders. This policy commitment should be tailored to the company's own business, reflecting the company's vision and strategy.

Companies should begin by drafting appropriate policy commitments.

### Two common policies are:

- A human rights statement or policy, which is a formal document expressing a company's commitment to respecting internationally recognised human rights. See more on a human right's policy in the above section.
- A supplier code of conduct, which sets out the ethical, social, environmental and legal standards that a company expects its suppliers and subcontractors to meet. It is part of responsible supply chain management and is used to ensure that suppliers operate in line with the company's values and legal obligations [\[See template of a supplier code of conduct in the Part 2: The Tools\]](#).

## **HRDD PHASE 2: ASSESS, IDENTIFY AND PRIORITISE RISKS**

The next phase of the Human Rights Due Diligence (HRDD) process identifying and prioritising the human rights risks and impacts that a business causes, contributes to, or is directly linked to through its operations and business relationships.

This process should:

- Draw on internal and/or independent external human rights expertise
- Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise, the nature and context of the operation

### **Understanding the meaning of risk under the Kenyan NAP on Business and Human Rights**

For many enterprises, the term "risk" means primarily risks to the enterprise – financial risk, market risk, operational risk, reputational risk, etc. Enterprises are concerned with their position in the market vis-à-vis their competitors, their image and long-term existence, so when they look at risks, it is typically risks to themselves. The NAP and other guidelines such as the UNGPs however, refer risks to the likelihood of adverse impacts on people, the environment and society that enterprises cause, contribute to, or to which they are directly linked. In other words, it is an outward-facing approach to risk.





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

HRDD Phase 2: Assess, Identify and Prioritise risks

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

HRDD Phase 4: Ongoing monitoring and tracking

HRDD Phase 5: Communication and reporting



### Tip:

Businesses with limited resources may assign a person in a management or human-resources role to be responsible for human rights. That person should preferably know the business well as well as the company's business partners and stakeholders. She/he may also work with external sources of expertise like counsels or industry groups.

## How do you know what human rights risks your business faces?

Human rights due diligence is not a one-time exercise but an ongoing process of understanding, preventing, and addressing the risks your business poses to people. This section provides a practical, step-by-step approach to identifying and prioritising these risks.

### Steps to identify risks:

- **STEP 1: MAP YOUR BUSINESS OPERATIONS AND RELATIONSHIPS**
- **STEP 2: ENGAGE STAKEHOLDERS MEANINGFULLY**
- **STEP 3: CONDUCT RISK MAPPING**
  - ↳ [A] Understand risks related to your country of operation
  - ↳ [B] Understand risks related to your sector
  - ↳ [C] Understand risks related to your suppliers

### Steps to prioritisation of risks:

- **STEP 1: ASK YOURSELF, "HOW SEVERE IS THIS RISK?"**
- **STEP 2: CONTINUOUS MONITORING AND REVIEW**

### Steps to identify risks:

#### **STEP 1: MAP YOUR BUSINESS OPERATIONS AND RELATIONSHIPS**

Before you can identify risks, you need to understand the full scope of your business footprint.

**Why this matters:** Human rights risks do not only exist in your direct operations - they often occur in your business relationships where you have less control but still bear responsibility. A comprehensive map ensures you do not miss critical risk areas.

### What to map:

- Direct operations: All locations where you operate (offices, factories, farms, construction sites, retail outlets)
- Supply chain: Suppliers of raw materials, components, and services across all tiers (Tier 1 suppliers you contract directly, Tier 2 who supply your Tier 1, etc.). **TIP:** Use contract information to build your list and engage suppliers to fill gaps.
- Logistics and distribution: Transport, warehousing, freight forwarders, distributors
- Business partners: Joint ventures, franchisees, licensees, contractors, subcontractors
- Service providers: Security, cleaning, catering, IT, recruitment agencies



## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

HRDD Phase 2: Assess, Identify and Prioritise risks

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

HRDD Phase 4: Ongoing monitoring and tracking

HRDD Phase 5: Communication and reporting

## Steps to identify risks:

### STEP 2: ENGAGE STAKEHOLDERS MEANINGFULLY

The people most affected by your business are often the best source of information about human rights risks. Don't rely solely on desk research - talk to people.

As you engage these stakeholders it is important to inform them the purpose of the engagement, how their inputs will be used, what decisions may result, and what constraints exist.



## Who to engage:

- Rights-holders (people potentially affected by your business):
  - ✎ Workers at all levels (management, permanent staff, casual workers, contract workers)
  - ✎ Workers' representatives and trade unions (both at your company and sectoral/ regional unions)
  - ✎ Local communities near your operations or supply chain facilities
  - ✎ Vulnerable groups (women, youth, persons with disabilities, migrants, indigenous peoples)
  - ✎ Consumers and end-users of your products/services
- Other stakeholders you could engage include:
  - ✎ Civil society organisations and NGOs working on human rights, labour, or environmental issues in your sector or location
  - ✎ Human rights defenders and community advocates
  - ✎ Employer organisations and business associations
  - ✎ Government agencies and regulators
  - ✎ Independent experts on human rights and sector-specific issues



## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

HRDD Phase 2: Assess, Identify and Prioritise risks

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

HRDD Phase 4: Ongoing monitoring and tracking

HRDD Phase 5: Communication and reporting

### Steps to identify risks:

#### STEP 3: CONDUCT RISK MAPPING

Risk mapping involves building a detailed picture of where human rights risks exist within your operations and business relationships. Focus on three levels:

- [A] Understand risks related to your country of operation
- [B] Understand risks related to your sector
- [C] Understand risks related to your suppliers



#### [A] Understand risks related to your country of operation

A country risk assessment includes understanding the broader national and local context in which your business operates.

#### The major key factors to consider in a country risk assessment are:

##### Political and social stability:

- Is the country experiencing conflict, civil unrest, or political instability?
- Are there conflicts in neighbouring countries causing refugee influxes? (Refugees are particularly vulnerable to exploitation)
- Are there ethnic, religious, or regional tensions affecting certain areas?

##### Economic context:

- What is the poverty rate? (Endemic poverty heightens workers' vulnerability and desperation, making them more susceptible to exploitation)
- Are there significant income inequalities?
- Is unemployment high, creating excess labour supply that employers can exploit?

##### Rule of law and governance:

- How strong is enforcement of national labour, environmental, and human rights laws?
- Are government administrative systems effective, or are they weak and under-resourced?
- What is the level of corruption? (Corruption undermines labour protection mechanisms, environmental enforcement, and access to justice)
- Can courts be trusted to provide fair remedies?





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

---

HRDD Phase 2: Assess, Identify and Prioritise risks

---

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

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HRDD Phase 4: Ongoing monitoring and tracking

---

HRDD Phase 5: Communication and reporting



### An example of Kenya's country risk assessment (not comprehensive):

1. Kenya is generally stable politically, but there are localised conflicts usually over land and resources
2. Kenya has strong constitutional protections for human rights, but enforcement is inconsistent
3. Corruption remains a challenge in Kenya despite anti-corruption efforts
4. Refugee populations are present in certain regions in Kenya (especially near the borders) who are vulnerable
5. There is an active civil society in Kenya and a relatively free media that provide accountability

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### Human rights situation:

- What do international human rights reports say about the country? (UN, ILO, Amnesty International, Human Rights Watch)
- Are there specific groups facing discrimination or persecution?
- What is the status of freedom of association and expression?

### [B] Understand risks related to your sector

Understanding the specific human rights risks associated with your industry or sector and the potential vulnerabilities of workers in that sector.

Certain sectors inherently present higher human rights risks due to the nature of their operations, workforce composition, or operating environments.

### Why sectoral risk assessment matters:

Sectoral risks are crucial to understand, especially for:

- **Ancillary services** your company uses (cleaning, security, catering, logistics) where you may have limited awareness of labour challenges but still bear responsibility
- **Upstream activities** in your supply chain (raw material extraction, primary processing) where risks are often highest
- **Downstream activities** (recycling, waste disposal) where workers are often informal and highly vulnerable

**When assessing sectoral risks, companies should consider several factors such as:**

### Remoteness of operations:

- Sectors like forestry, mining, and large-scale agriculture often operate in remote areas
- These areas tend to have limited government oversight and inspection
- Workers in these operations have limited access to protection mechanisms e.g labour offices, courts, police





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

HRDD Phase 2: Assess, Identify and Prioritise risks

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

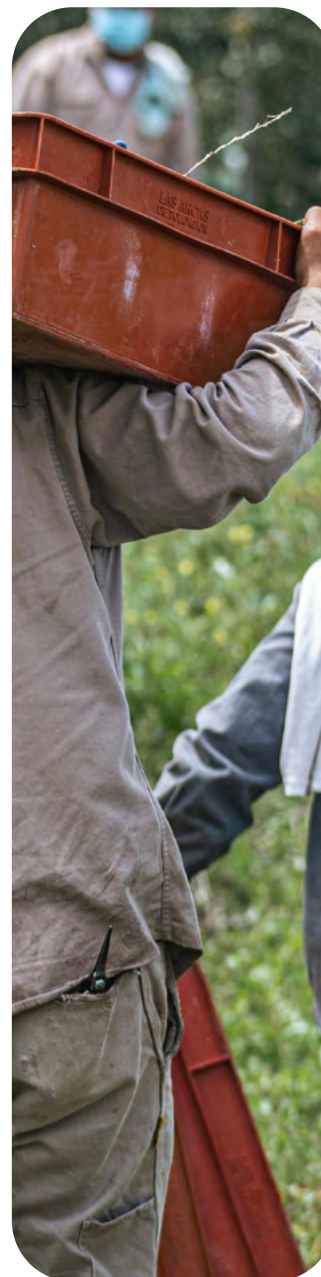
HRDD Phase 4: Ongoing monitoring and tracking

HRDD Phase 5: Communication and reporting



### See Part 2: The Tools:

Navigate to *Part 2: The Tools* which provides a detailed sector-specific risk table covering the most significant Responsible Business Conduct risks in Kenya, with early warning indicators and mitigation measures. Use it to screen risks, design assessments, develop monitoring protocols, and train staff for your specific sector.



### Hazardous work environments such as:

- Manufacturing with heavy machinery
- Agriculture with pesticide exposure
- Mining with explosion/collapse risks
- Construction with falls from heights
- In these cases, workers face heightened risk of injury, illness, or death

### Workforce composition:

- Whether there is a high proportion of **migrant workers** who are vulnerable to exploitation, face language barriers and deportation threats
- **Seasonal or casual workers** who have precarious employment, no job security, and limited benefits
- **Women workers** who are concentrated in certain roles such as the garment, horticulture, and hospitality industries often face gender-based discrimination and violence
- **Child labour risks often found** in agriculture, mining, and domestic work
- **Low-skilled workers** with limited bargaining power

### Sector stigma and marginalisation:

- Stigmatised industries such as waste disposal, tanning, certain types of agriculture, sex work-adjacent sectors often concentrate the most vulnerable and marginalised workers
- Workers in these sectors may lack alternative employment options and employers may exploit workers' limited choices

### Supply chain complexity and opacity:

- **Far upstream** such as commodity extraction and raw material processing which are often unfamiliar to downstream buyers, there is limited visibility and no direct contractual relationship
- **Far downstream** such as end-of-life recycling and disposal where there could be a dominance of the Informal sector and difficulty in obtaining information
- Multiple intermediaries also tend to obscure visibility of the supply chain





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

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HRDD Phase 2: Assess, Identify and Prioritise risks

---

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

---

HRDD Phase 4: Ongoing monitoring and tracking

---

HRDD Phase 5: Communication and reporting



## [C] Understand risks related to your suppliers

Even when you lack direct operational control, as a business you have the responsibility to assess how the practices of your suppliers, contractors and business partners may affect workers and communities.

### Key indicators of supplier risk:

The following indicators suggest where human rights abuses or labour violations may be more likely. They are **not determinative** (i.e., their presence doesn't prove violations exist), but they should prompt deeper due diligence.

### Business structure and formality:

- Supplier lacks legal registration or operates informally
- Supplier has underdeveloped or weak management structures
- Supplier has no human resources department or systems
- Supplier has poor record-keeping such as no employment contracts, payroll records, or safety documentation

### Employment practices:

- Heavy reliance on **casual or temporary labour** who have limited job security, and no benefits.
- Use of **third-party recruitment agencies** known for unethical practices such as charging excessive fees and withholding documents
- High employee turnover which may indicate poor working conditions
- Use of **subcontractors** with limited transparency or oversight

### Operational characteristics:

- **Multiple production sites** with limited central oversight
- Remote locations which are difficult to monitor
- Night shifts or excessive working hours are more common





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

---

HRDD Phase 2: Assess, Identify and Prioritise risks

---

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

---

HRDD Phase 4: Ongoing monitoring and tracking

---

HRDD Phase 5: Communication and reporting

### Important Note:

Some indicators - such as employing migrant workers, seasonal workers, or women do reflect the workforce composition and are not inherently problematic practices. **The presence of these groups doesn't mean violations are occurring**, but it indicates higher **vulnerability** which requires more careful attention and protective measures.

### Workforce composition:

- High proportion of migrant workers who are vulnerable to passport retention, wage theft, and deportation threats
- Presence of seasonal work patterns which can indicate irregular income and precarious employment
- Supplier has predominantly women workers who may face gender-based discrimination, harassment and wage gaps
- Presence of young workers who are near minimum working age could indicate a risk of child labour

### Financial and commercial pressure:

- Supplier is under intense price pressure from buyers which could put workers in a position to be exploited such as forcing excessive overtime
- Supplier operates on very thin profit margins which could indicate precarious working conditions
- Supplier faces unpredictable or volatile orders which could make stable employment of workers difficult

### Past performance:

- Previous audit findings of supplier show history of violations
- Supplier has a history of labour disputes or strikes
- There are complaints from workers or communities about the supplier

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Once you conduct preliminary desk research to assess country and sectoral risks, it is essential to engage directly with your suppliers beginning with questionnaires that encourage detailed responses on how they manage labour and human rights issues rather than simple yes/ no responses. Beyond questionnaires, direct dialogue with your suppliers' management is key to deepening understanding of the working conditions in their operations as is engagement with the suppliers' workers and their representatives.





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

HRDD Phase 2: Assess, Identify and Prioritise risks

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

HRDD Phase 4: Ongoing monitoring and tracking

HRDD Phase 5: Communication and reporting

In summary, here are various methods companies can use to identify risks in their operations and supply chain:

- Desktop research – reviewing existing reports, media, NGO publications, and country risk assessments
- Supply chain mapping – tracing business relationships to identify risks in value chains
- Stakeholder consultations – engaging with affected or potentially affected rights-holders (workers, communities, vulnerable groups)
- Site assessments – visiting operational locations to observe conditions firsthand and discuss practices with management
- Worker interviews – confidential discussions with employees to understand workplace issues
- Community surveys – gathering input from local populations affected by operations
- Expert consultations – engaging human rights specialists, legal experts, and civil society organisations

### Steps to prioritisation of risks:

#### STEP 1: ASK YOURSELF, "HOW SEVERE IS THIS RISK?"

Once you have identified risks, you cannot address all of them at once. According to the UNGPs, prioritisation should be set by assessing the risks based on the **severity** of the violation and the **likelihood** of the occurrence of the risk.

### Severity of risks is determined through:



**Scope:** How many people could be affected by the adverse impact?



**Scale:** How serious would the adverse impact be for the victim?



**Remediability:** Will remedy restore the victim to the same or equivalent position before the harm?

**Likelihood of occurrence** is determined by, for example, effectiveness of existing mitigation processes, the local context, known cases in the past.





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

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HRDD Phase 2: Assess, Identify and Prioritise risks

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HRDD Phase 3: Take action to prevent and mitigate adverse impacts

---

HRDD Phase 4: Ongoing monitoring and tracking

---

HRDD Phase 5: Communication and reporting

### Important Note:

Forced labour, child labour and workplace practices that endanger workers' lives are universally recognised as top priorities because their consequences are irreversible.

Rights such as non-discrimination and freedom of association serve as enabling rights, meaning they are important in themselves, and help prevent other violations.

Other rights should be prioritised according to their ability to reduce the vulnerability of workers, which is often the root cause of rights violations. These transformations can be challenging because they require changes in a company's culture and may involve addressing deeply rooted prejudices. Therefore, it is important to be realistic about the rate of change and how much support and monitoring may be needed.

### Steps to identify risks:

#### **STEP 2: CONTINUOUS MONITORING AND REVIEW**

Before you can identify risks, you need to understand the full scope of your business footprint.

Likelihood is generally rated as:

- **High** – When it is expected to occur or has occurred repeatedly
- **Medium** – Where it could occur under certain conditions
- **Low** – When it is unlikely given current controls and context

**Severity + Likelihood of occurrence = Prioritised risks - High / Medium / Low**

### Key principle:

- Risks involving high severity impacts (especially human rights or serious environmental harm) should generally be prioritised as High even if the likelihood is lower.
- High-priority risks require immediate mitigation measures and senior-level oversight.
- Medium risks require planned mitigation and monitoring.
- Low risks should still be tracked but may be addressed through routine controls.

The last step includes continuous monitoring and review. As a company you should regularly review and update your information on country and sector risks, track mitigation efforts with your suppliers and reprioritise risks as needed. By doing this you will maximise your contribution to protecting workers' rights in the short term while empowering workers to take the lead in safeguarding their own rights over the long-term.





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

---

HRDD Phase 2: Assess, Identify and Prioritise risks

---

**HRDD Phase 3: Take action to prevent and mitigate adverse impacts**

---

HRDD Phase 4: Ongoing monitoring and tracking

---

HRDD Phase 5: Communication and reporting

### **HRDD PHASE 3: TAKE ACTION TO PREVENT AND MITIGATE ADVERSE IMPACTS**

Once as a company you have identified and assessed your adverse human rights and environmental impacts, you should decide what actions to take based on the findings. In practice, taking action under phase 3 depends on whether the harm has already occurred or not. This will determine whether your company should provide or cooperate in remediation or focus on prevention and mitigation measures to reduce the likelihood or severity of impacts.

As a company it is important to distinguish between mitigation and prevention measures.

**Prevention:** These are measures taken before harm occurs to prevent adverse impacts from happening in the first place.

→ Example: One company mentioned that they have introduced a supplier code of conduct that prohibits child labour, another company conducts pre-contract due diligence for their suppliers, while another company is providing training for staff on human rights to raise awareness and build internal capacities, and carrying out human rights impacts assessments before starting a project.

**Mitigation:** These are measures taken to reduce the extent, likelihood or severity of adverse impacts. This can be before or after harm has occurred.

→ Example: If child labour is found in your supply chain, you work with the supplier to withdraw children from work and put in place monitoring to avoid recurrence; if workers are exposed to unsafe conditions, you provide them with protective equipment, or reducing exposure hours; and if there is a risk of excessive working hours, you adjust production planning and hire additional workers to mitigate the risks of excessive overtime.

This third step of the HRDD process should also take into account the **four thematic areas** as outlined in the Kenyan NAP on business and human rights.

### **WAYS OF TAKING ACTION TO PREVENT AND MITIGATE ADVERSE IMPACTS ON LAND AND NATURAL RESOURCES:**

- Land acquisition follows the legal procedures as outlined in Land Act 2012
- Free, Prior, and Informed Consent (FPIC) is obtained from communities
- Fair compensation is provided in terms of replacement cost and not depreciated value
- A Resettlement Action Plan is developed and implemented (if displacement occurs)
- Livelihood restoration programs are established





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

HRDD Phase 2: Assess, Identify and Prioritise risks

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

HRDD Phase 4: Ongoing monitoring and tracking

HRDD Phase 5: Communication and reporting

- Community benefits from natural resource exploitation are defined and delivered
- Women's land rights are specifically protected
- Cultural and sacred sites are protected
- Water access for communities is maintained
- Community engagement should be ongoing and not just one-time consultation

### **WAYS OF TAKING ACTION TO PREVENT AND MITIGATE ADVERSE IMPACTS ON LABOUR:**

- Fair wages are paid to workers where minimum wage is used as the floor and living wage as the goal
- Equal pay for equal work is enforced to ensure gender equity
- Working hours comply with law (max 52 hours/week)
- Overtime compensation is provided (1.5x rate)
- All statutory deductions are correctly calculated and remitted (PAYE, NSSF, SHIF, Housing Levy)
- Employment contracts are provided to all workers in written form within 60 days
- Casual employment is minimised and a regularisation pathway is provided
- Maternity leave is provided (3 months) and protected (no dismissal)
- Paternity leave is provided (2 weeks)
- Safe working conditions are maintained according to the OSH Act compliance (as explained in section 3 above)
- PPE is provided free of charge
- Safety training is conducted regularly
- OSH committee is established and functional (if 20+ employees)
- A safety officer is appointed and qualifications are verified. (See section 3 for safety officer requirements)
- Accidents are reported to DOSHS within required timeframes (see section 3 for reporting times)
- WIBA registration is current and premiums are paid (See section 3 on WIBA requirements)
- A sexual harassment policy is in place and enforced
- Gender-based violence prevention measures are implemented
- Non-discrimination policies are enforced including on gender, disability, HIV, ethnicity, and religion
- Freedom of association is respected and there is no anti-union discrimination
- Collective bargaining is in good faith (if unionised)
- Child labour is prohibited, and verification systems are in place
- No forced labour and indicators are monitored
- Migrant workers are protected - no passport retention and no excessive recruitment fees





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

---

HRDD Phase 2: Assess, Identify and Prioritise risks

---

**HRDD Phase 3: Take action to prevent and mitigate adverse impacts**

---

HRDD Phase 4: Ongoing monitoring and tracking

---

HRDD Phase 5: Communication and reporting

→ Adequate housing is provided (if applicable) where privacy, proper sanitation and safety are provided

### **WAYS OF TAKING ACTION TO PREVENT AND MITIGATE ADVERSE IMPACTS ON THE ENVIRONMENT:**

- A valid Environmental Impact Assessment license is obtained and conditions are implemented
- Have an operational Environmental Management Plan
- Annual environmental audits are conducted and submitted to NEMA
- Pollution prevention and control systems are functional
- Effluent treatment is operational and discharge standards are met
- Waste management system is effective (reduce, reuse, recycle)
- Air emissions are monitored and controlled
- Hazardous materials are properly managed including storage, labelling, have a Material Safety Data Sheet, and disposal
- Water conservation measures are implemented
- Use of energy is efficiency maximised
- Renewable energy is used where feasible
- Biodiversity protection measures are in place
- Climate change mitigation and adaptation measures are implemented
- Environmental incidents are prevented and response plans are ready
- Community environmental complaints are addressed promptly

### **WAYS OF TAKING ACTION TO PREVENT AND MITIGATE ADVERSE IMPACTS ON REVENUE TRANSPARENCY:**

- All taxes are fully paid and on time (corporate tax, Value Added Tax, Pay As You Earn, With Holding Tax, etc.)
- A tax compliance certificate is maintained
- Transfer pricing documentation is compliant
- No participation in tax evasion or illicit financial flows
- An anti-corruption policy is in place and enforced
- Conduct training on anti-bribery and conflict of interest
- Gifts and hospitality policy limits interactions with public officials
- Conduct due diligence on agents, brokers, and consultants
- No facilitation payments are made
- Beneficial ownership is disclosed (as required)
- Contracts are disclosed (where legally required or appropriate)
- Extractives revenue payments are disclosed (if applicable) or the join Extractives Industry Transparency Initiative (EITI)
- Financial reporting complies with International Financial Reporting Standards (IFRS)





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

---

HRDD Phase 2: Assess, Identify and Prioritise risks

---

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

---

### HRDD Phase 4: Ongoing monitoring and tracking

---

HRDD Phase 5: Communication and reporting

## HRDD PHASE 4: ONGOING MONITORING AND TRACKING

The next phase of the HRDD cycle is monitoring and tracking. In order to verify whether adverse human rights impacts are being addressed, business enterprises should set up measurable indicators to collect data to track and monitor the effectiveness of their HRDD efforts.

### ONGOING MONITORING AND TRACKING:

- Human rights performance indicators are tracked regularly
- Monitoring data is disaggregated by gender and vulnerability
- Internal audits include human rights compliance
- Site inspections are conducted regularly
- On-going worker surveys are conducted, and they are confidential, safe, and in languages employees can understand
- Community feedback is collected systematically
- Grievance data is tracked and analysed to check for trends
- Supplier compliance is monitored through audits, assessments
- Incidents are investigated and root causes are identified
- Corrective actions are implemented and verified
- Adopt a continuous improvement approach [see Box below on what is continuous improvement]
- Evaluate the effectiveness of mitigation measures

### What is continuous improvement?

Continuous improvement means establishing a management system that strengthens working conditions and responsible business practices over time. It involves regularly reviewing operations, identifying gaps, and implementing practical steps to respect worker dignity and maintain good standards. By fostering a culture of **ongoing improvement**, businesses can better support their workers' well-being while maintaining high operational standards.

**Practically**, this means progressing from meeting basic expectations that include the provisions set out in local law to adopting international best practices. Where international standards are more comprehensive than national law, this Handbook incorporates both Kenyan constitutional provisions and the National Action Plan on Business and Human Rights.





## NAP Requirements:

### Continued:

## Have a Human Rights Due Diligence (HRDD) process in place

HRDD Phase 1: Commit to embedding responsible business conduct

---

HRDD Phase 2: Assess, Identify and Prioritise risks

---

HRDD Phase 3: Take action to prevent and mitigate adverse impacts

---

HRDD Phase 4: Ongoing monitoring and tracking

---

**HRDD Phase 5: Communication and reporting**

### **HRDD PHASE 5: COMMUNICATION AND REPORTING**

The last phase of the HRDD cycle is communication and reporting. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally. Business enterprises should be able to document and report on their HRDD efforts internally and externally with business partners, customers and other relevant stakeholders.

#### **HERE ARE THE NAP HRDD REQUIREMENTS ON INTERNAL REPORTING:**

- Share regular human rights reports to Board/senior management
- Discuss human rights performance in management meetings
- Lessons learned are shared across the whole organisation including with all business entities

#### **HERE ARE THE NAP HRDD REQUIREMENTS ON EXTERNAL REPORTING (PUBLIC DISCLOSURE):**

- An annual sustainability report is published and covers human rights performance
- Report covers all five NAP thematic areas
- Report includes actual impacts and mitigation measures
- Report describes all the activities done as per the HRDD process
- Report discloses stakeholder engagement that has been done
- Report presents grievances received and the remediation that has been provided
- Report is aligned with recognised frameworks such as GRI and the UN Guiding Principles Reporting Framework
- Report is accessible to affected stakeholders in terms of language and format
- Report is shared with Kenya National Commission on Human Rights (KNCHR)
- Report is shared with relevant government agencies

#### **HERE ARE THE NAP HRDD REQUIREMENTS ON STAKEHOLDER COMMUNICATION:**

- Regular updates are provided to workers through meetings and bulletins
- Community engagement meetings are held regularly
- There is transparency on human rights performance with business partners
- Response to civil society inquiries and concerns is provided
- Participation in multi-stakeholder initiatives and platforms





## NAP Requirements:

### Have an operational grievance mechanism in place

The Kenyan NAP on BHR requires businesses to have an operational grievance mechanism in place as part of their responsibility to respect human rights. EU regulations such as the CSDDD also require businesses to set up an OGM as a practical risk management tool, enabling early detection and resolution of problems before they escalate into reputational crises, legal disputes, or operational disruptions.

### What is an operational grievance mechanism (OGM)?

When a flower farm worker in Kenya experiences sexual harassment, when a community near a manufacturing plant notices water pollution, or when a smallholder farmer in your supply chain isn't paid fairly - where do they turn? An operational-level grievance mechanism provides the answer. It's a structured system, established and managed by your company, that gives affected people a direct line to report problems and seek solutions. Unlike going to court - which can be expensive, slow, and intimidating - or waiting for government inspections which are irregular, and reactive, - an operational grievance mechanism is immediate, accessible, and focused on dialogue and remedy. The mechanism might include a confidential hotline, complaint boxes at workplace and community centres, a dedicated staff member to receive concerns, and a clear process for investigation and resolution. When designed and run effectively - meaning it's trusted, easy to use, fair, timely, and actually provides remedies - it becomes a powerful tool for protecting human rights, building stakeholder relationships, and managing business risks.

### Based on the United Nations Guiding Principles on Business and Human Rights, effective grievance mechanisms need to meet 7 effectiveness criteria:

1. Legitimate - enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes.
2. Accessible - being known to all stakeholder groups for whose use they are intended and providing adequate assistance for those who may face particular barriers to access.
3. Predictable - providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.
4. Equitable - seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.
5. Transparent - keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.
6. Rights-compatible - ensuring that outcomes and remedies accord with internationally recognised human rights.
7. A source of continuous learning - drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.



## NAP Requirements:

### Continued:

### Have an operational grievance mechanism in place



#### **NAP REQUIREMENTS ON POLICY AND PROCEDURES FOR A GRIEVANCE MECHANISM:**

- We have written grievance policy
- Clear procedures are documented (how to file, investigation, resolution, appeal)
- The policy and procedures are communicated to all stakeholders (workers, community members, suppliers, consumers)
- We have a non-retaliation policy that is explicit and enforced

#### **NAP REQUIREMENTS ON ACCESSIBILITY FOR A GRIEVANCE MECHANISM:**

- Multiple grievance channels are available (in-person, phone hotline, email, suggestion box, online portal, SMS)
- Anonymous reporting options are available
- Grievance channels are accessible to all including women, persons with disabilities, non-literate, and available in different languages)
- Information on how to file grievances is widely disseminated through posters, handbooks, level 1 morning meetings, community meetings)
- No cost to file a grievance
- Safe and confidential reporting is ensured

#### **NAP REQUIREMENTS ON THE SCOPE FOR A GRIEVANCE MECHANISM:**

- Grievance channels are open to all stakeholders including workers, communities, suppliers, contractors, and others could be affected.
- Grievance mechanism covers all human rights issues (labour, environment, land, discrimination, etc.)
- Grievance mechanism handles individual and collective grievances
- Grievance mechanism allows third-party representatives (unions, CSOs) to file on behalf of affected persons

#### **NAP REQUIREMENTS ON THE PROCESSES FOR A GRIEVANCE MECHANISM:**

- We have a process in place that ensures that grievances are acknowledged promptly (e.g., within 48 hours)
- Grievances are assigned to appropriate personnel for investigation e.g. welfare officers or human resources team
- A thorough and impartial investigation on grievances is conducted
- All parties are given an opportunity to present their case
- Decisions that are made are based on evidence and human rights standards
- Timelines for resolution are communicated and adhered to
- Decisions are communicated to the grievant with reasoning
- We have an appeal mechanism available
- Records of all grievances are maintained in a confidential manner



## NAP Requirements:

### Continued:

**Have an operational grievance mechanism in place**



**Have a process in place to manage business relationships responsibly**

The Kenya NAP on business and human rights requires businesses to manage business relationships responsibly since the responsibility of respecting human rights and the environment extends to the supply chain and other business partners.

### **NAP REQUIREMENTS ON THE OUTCOMES FOR A GRIEVANCE MECHANISM:**

- Appropriate remedies are provided including an apology, compensation, cessation, restitution, and non-repetition guarantee
- Systemic issues are adequately addressed through changes in policy and procedures.
- Lessons learned are integrated into operations
- Retaliation against grievant is prohibited and monitored

### **NAP REQUIREMENTS ON MONITORING AND REPORTING FOR A GRIEVANCE MECHANISM:**

- Data on grievances is tracked (number, type, source, resolution, time taken)
- Trends in grievances are analysed
- The effectiveness of the grievance mechanism is evaluated regularly
- Stakeholder feedback on the grievance mechanism is sought
- Improvements to the grievance mechanism are made based on feedback
- Statistics on grievance statistics are reported publicly in an anonymised form

### **NAP REQUIREMENTS ON AN OPERATIONAL GRIEVANCE MECHANISM COORDINATION WITH OTHER MECHANISMS:**

- Workers are informed of judicial and administrative remedies available such as the labour court, DOSHS, etc.
- The grievance mechanism does not impede access to state-based remedies
- There is cooperation with government investigations/inspections
- There is referral to appropriate authorities for serious violations such as criminal matters, or regulatory violations.
- There is participation in industry-wide or multi-stakeholder grievance mechanisms where available

### **NAP REQUIREMENTS ON THE SELECTION OF SUPPLIERS:**

- There is a human rights criteria included in our supplier/contractor qualification
- Our pre-qualification assessments include human rights performance
- Suppliers who are considered high-risk are identified and prioritised for engagement

### **NAP REQUIREMENTS ON THE PROVISIONS IN CONTRACTS FOR SUPPLIERS:**

- The supplier code of conduct includes human rights requirements (aligned with NAP themes). See template in *Part 2: The Tools* for an example of a supplier code of conduct.
- Contracts include human rights clauses including in compliance requirements, audit



## NAP Requirements:

### Continued:

**Have a process in place to manage business relationships responsibly**



rights, consequences of non-compliance

- Expectations on are HRDD communicated clearly
- Payment terms support decent wages and working conditions such as no price pressure which could lead to violations and follow responsible purchasing practices

### **NAP REQUIREMENTS ON THE CAPACITY BUILDING OF SUPPLIERS:**

- We provide training to suppliers on human rights expectations
- We offer technical assistance to improve supplier practices
- Best practice examples from suppliers are shared in reports or forums
- We have adopted a joint problem-solving approach is

### **NAP REQUIREMENTS ON THE MONITORING OF SUPPLIERS:**

- We conduct regular supplier audits/assessments (announced and unannounced).
- Worker interviews are included in audits and confidentiality is maintained.
- Audit findings are shared with suppliers
- Corrective Action Plans (CAPs) are required for non-compliances.
- Implementation of CAPs is monitored and verified
- Performance is tracked over time

### **NAP REQUIREMENTS ON LEVERAGE ON SUPPLIERS:**

- Engagement is escalated for persistent violations by a supplier
- Termination is considered if violations are severe and the supplier is unwilling to improve
- A responsible exit strategy is in place if termination is necessary by considering impacts on workers

### **NAP REQUIREMENTS ON COLLABORATION WITH OTHER STAKEHOLDERS:**

- Participation in industry initiatives to address systemic issues. See section 6 for examples of industry bodies you can engage with
- Collaboration with other buyers sourcing from same suppliers
- Engagement with multi-stakeholder platforms including those that are sector specific



## NAP Requirements:

### Conduct training and capacity building on responsible business conduct

The Kenyan NAP on BHR requires businesses to conduct training and capacity building on RBC. This includes equipping directors, management, and employees with the knowledge and skills to understand and implement human rights responsibilities in daily operations, as well as building the capacity of suppliers, contractors, and other business partners where risks are higher.

### **NAP REQUIREMENTS ON CONDUCTING INTERNAL TRAINING:**

- Board and senior management are trained on business and human rights and/or Kenyan NAP requirements
- All employees have received basic human rights awareness training
- Trainings for specific roles has been training provided (e.g., procurement on supplier due diligence, HR on labour rights, operations on environmental rights)
- Security personnel are trained on human rights and use of force
- Supervisors are trained on preventing discrimination and harassment
- Training that is provided is in accessible formats and languages
- Training effectiveness evaluated through surveys or assessments
- Refresher trainings are conducted regularly e.g. twice a year

### **NAP REQUIREMENTS ON CONDUCTING EXTERNAL TRAINING:**

- Suppliers and contractors are trained on expectations such as on the supplier code of conduct, and attached policies
- Community members are informed of their rights
- We participate in government capacity building initiatives (when invited)
- We share our expertise with industry peers and stakeholders

### NAP practical implications for Dutch businesses

The NAP allows businesses operating in Kenya to not only meet the minimum legal requirements on responsible business conduct but take the extra step to operate responsibly including through taking additional action such as:

**Due diligence expectations:** While not legally mandatory, the NAP creates a clear expectation that businesses operating in Kenya will conduct human rights due diligence. This aligns with emerging EU regulations like CSDDD, making it a natural requirement for Dutch companies.

**Grievance mechanisms:** The NAP's emphasis on access to remedy means businesses are expected to establish accessible grievance mechanisms. Companies without such mechanisms may face reputational and legal risks.

**Reporting expectations:** The NAP encourages transparency and reporting on human rights impacts. This creates opportunities for companies already reporting under EU frameworks to leverage their existing systems.

**Sector-specific guidance:** Dutch companies in priority sectors (Agriculture and agribusiness, Extractives (mining, oil, and gas), manufacturing, ICT, real estate and construction) should expect increased scrutiny and engagement from government and civil society but also access to sector-specific guidance and multi-stakeholder initiatives.

**Alignment with EU requirements:** The NAP's framework closely aligns with CSDDD requirements, making Kenya a relatively predictable environment for companies already complying with EU human rights due diligence obligations.





# Section 5

## Sector-specific regulations

Click on any topic to jump straight to it:

- ✎ [Agriculture and Agribusiness](#)
- ✎ [Mining and Extractives](#)
- ✎ [Energy Sector](#)
- ✎ [Manufacturing](#)
- ✎ [ICT and Data Protection](#)





Certain industries in Kenya are subject to additional sector-specific laws and regulatory authorities. Businesses operating in these sectors should ensure compliance with the following key legislative frameworks and oversight bodies:

**Agriculture and Food Safety**– Agriculture, Fisheries and Food Authority Act

**Mining and Extractives** – Mining Act, 2016

**Energy and Petroleum** – Energy Act, 2019

**Manufacturing and Export Processing Zones**  
– Special Economic Zones Act, 2015

**ICT and Data Protection** – Data Protection Act, 2019

## Agriculture and Agribusiness

Kenya's agriculture sector is heavily regulated due to its economic importance and food security concerns.

### Agriculture and Food Authority (AFA)

AFA became fully operational in 2014 following the gazettelement and consolidation of the predecessor commodity boards.

#### FUNCTIONS OF AFA:

Regulates production, processing, marketing of agricultural products.

#### SCHEDULED CROPS UNDER AFA:

Specific regulations for coffee, tea, cotton, sugar, pyrethrum, nuts, sisal, horticultural crops.

AFA Provides licensing to dealers, processors, exporters must be licensed by AFA.

#### QUALITY STANDARDS REGULATED UNDER AFA:

Products must meet quality standards for domestic sale and export.

#### CESS COLLECTION:

AFA collects cess (levy) on agricultural produce.

#### LAND USE REGULATIONS

- Agricultural land: There are special protections for high-potential agricultural land under AFA such as restrictions on subdivision and change of use.
- Water rights: Agriculture competes with other water uses, for example, irrigation projects require water permits.
- Catchment protection: Restrictions on farming in water catchment areas and riparian zones.





**Continued:**

## **Agriculture and Agribusiness**

## **Mining and Extractives**

Mining in Kenya is politically sensitive due to historical community grievances, environmental impacts, and revenue distribution concerns.

### **PESTICIDES AND AGROCHEMICALS**

- Pest Control Products Board (PCPB): Regulates pesticides, fertilisers, other agrochemicals.
- Registration: All pest control products must be registered before sale.
- Standards: Products must meet efficacy and safety standards.
- Dealer licensing: Dealers must be licensed and meet storage/handling requirements.
- Restricted products: Some highly hazardous products banned or restricted.

### **FOOD SAFETY**

- Kenya Bureau of Standards (KEBS): Sets food safety and quality standards.
- Inspection: They carry out regular inspection of food processing facilities.
- Certification: Businesses require a KEBS certification mark for compliant products.
- Traceability: There is increasing requirements for traceability in food supply chains particularly important for EU export market and EUDR compliance.

### **Mining Act, 2016**

The Mining Act, 2016 establishes a comprehensive regulatory framework for Kenya's mining sector that balances investor rights with community protections and environmental safeguards in place.

### **LICENSING REQUIREMENTS:**

Mineral rights are separate from land rights. Requirements for licensing include:

- Prospecting license (reconnaissance)
- Exploration license (detailed exploration)
- Mining license (extraction)

**Application process:** Apply to the Mining Cadastre Portal, submit technical and financial capacity evidence, undergo EIA, and obtain community consent.

#### **→ License duration:**

- ↳ Prospecting: up to 2 years
- ↳ Exploration: up to 4 years (renewable)
- ↳ Mining: up to 25 years (renewable)

→ **Royalties:** Government receives royalty on minerals extracted (rates vary by mineral, typically 3-10% of value).

→ **Local content:** Preference for Kenyan goods, services, and workers. You must demonstrate local procurement and employment plans.





**Continued:**  
**Mining and Extractives**



**COMMUNITY PARTICIPATION**

- Free, Prior, and Informed Consent (FPIC): Communities must be consulted and consent to mining activities affecting them.
- Community Development Agreements (CDAs): Mining companies must negotiate CDAs with affected communities specifying benefits, compensation, environmental management, dispute resolution.
- Benefit sharing: Percentage of royalties are channelled to county governments and local communities.
- Community concerns: Land access, environmental impacts, employment, health and safety, cultural sites, water resources.

**ENVIRONMENTAL REQUIREMENTS**

- EIA is mandatory: For all mining activities.
- Environmental management plan: Detailed plan for managing environmental impacts throughout the mine lifecycle.
- Rehabilitation bond: Financial guarantee for site rehabilitation and closure costs.
- Progressive rehabilitation: Rehabilitate mined areas progressively, not just at closure.
- Water management: Prevent acid mine drainage, manage water use and discharge.
- Waste management: Tailings dams, waste rock dumps must meet safety standards.

**Extractive Industries Transparency Initiative (EITI)**

**Kenya's EITI Membership:** Kenya is implementing EITI, committing to transparency in extractive revenues.

**REQUIREMENTS UNDER EITI:**

- Disclosure of all payments to government (royalties, taxes, fees)
- Disclosure of production volumes
- Beneficial ownership disclosure
- Contract transparency

**Reports:** Annual EITI reports reconciling company payments and government receipts.





## Energy Sector

### Energy Act, 2019

The Energy Act, 2019 establishes a unified regulatory framework for Kenya's energy sector through the Energy and Petroleum Regulatory Authority (EPRA).

**Energy and Petroleum Regulatory Authority (EPRA):** Regulates electricity, renewable energy and the petroleum downstream sector.

- EPRA licensing: Generators, distributors, retailers must be licensed.
- Feed-in tariffs: Guaranteed prices for renewable energy (solar, wind, biomass, geothermal) to encourage investment.
- Net metering: Allows consumers with own generation to sell excess power to grid.
- Rural electrification: Universal access goal driving grid extension and off-grid solutions.

## Manufacturing

### Special Economic Zones (SEZs) and Export Processing Zones (EPZs)

The Special Economic Zones (SEZ) Act, 2015 establishes designated areas in Kenya aimed at attracting foreign and domestic investment, promoting export-oriented production, facilitating technology transfer, and creating employment opportunities. SEZs offer incentives such as tax benefits, simplified customs procedures, and streamlined licensing processes to enhance Kenya's competitiveness as an investment destination.

#### **INCENTIVES OF SEZS AND EPZS:**

- 10-year corporate tax holiday, then 15% rate (vs. standard 30%)
- VAT and customs duty exemptions on inputs
- Withholding tax exemptions
- Streamlined licensing

#### **REQUIREMENTS:**

- Operate within designated SEZ
- Export-oriented (at least 80% of output exported)
- Create employment
- Meet environmental and labour standards

**Oversight:** SEZ Authority licenses and regulates SEZ enterprises and developers.

**Practical considerations:** While incentives are attractive, SEZs have operational restrictions (limited domestic sales), and compliance monitoring is strict.





## ICT and Data Protection



### Data Protection Act, 2019

The Data Protection Act, 2019 regulates the collection, processing, storage, and transfer of personal data in Kenya, establishes the Office of the Data Protection Commissioner (ODPC), and requires businesses to ensure lawful, transparent, and secure handling of personal information.

**The Office of the Data Protection Commissioner (ODPC)** is responsible for regulating the processing of personal data.

**Data protection principles include:** Lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity.

**Lawful basis for processing personal data includes:** Consent, contract, legal obligation, vital interests, public interest, legitimate interests.

**Data subject rights include:** Access, rectification, erasure, restrict processing, data portability, object to processing.

#### **DATA CONTROLLER OBLIGATIONS:**

- Register with ODPC
- Appoint Data Protection Officer if large-scale processing
- Conduct Data Protection Impact Assessments for high-risk processing
- Implement technical and organisational security measures
- Report data breaches within 72 hours
- Maintain records of processing activities

**Data transfers:** Transfers outside Kenya require adequacy decision or safeguards (e.g., standard contractual clauses).

**Penalties:** Fines up to KES 5 million or 1% of annual turnover (whichever higher), imprisonment up to 3 years.

**Practical impact:** All businesses collecting personal data (customer databases, employee records, online transactions) must comply. Compliance burden significant for SMEs.





## Section 6 ↘

# Kenya's institutional landscape for RBC

**Understanding which institutions to engage, how they function, and their mandates is crucial for effective RBC implementation.**

**Click on any topic to jump straight to it:**

- ↘ **NGO Member Organisations and Platforms Working on RBC in Kenya**
- ↘ **Business Associations and Private Sector Bodies**
- ↘ **Sector-Specific Associations**
- ↘ **Civil Society Organisations**
- ↘ **Environmental Organisations**
- ↘ **Labour Rights Organisations**





## NGO Member Organisations and Platforms Working on RBC in Kenya

### United Nations Global Compact Kenya (UNGC-K / GCNK)

Kenyan chapter of the world's largest corporate sustainability initiative, bringing together businesses committed to aligning their operations with universal principles on human rights, labour, environment, and anti-corruption.

#### CORE FUNCTIONS:

- Promote and advance the [Ten Principles](#) among Kenyan businesses
- Support companies in implementing responsible business practices
- Facilitate learning, dialogue, and partnerships on sustainability
- Encourage Communication on Progress (COP) reporting by members
- Align business contributions to UN Sustainable Development Goals (SDGs)
- Connect Kenyan businesses with global sustainability networks

#### MEMBERSHIP CATEGORIES AND REQUIREMENTS:

##### WHO CAN JOIN:

- Business Participants: Companies of any size (multinationals, large local, SMEs) committed to Ten Principles
- Non-Business Participants: Civil society organizations, academic institutions, cities, public sector organisations supporting Global Compact mission

##### RELEVANCE TO DUTCH BUSINESSES

- Alignment with Dutch/EU Commitments:
- UNGC Ten Principles align with OECD Guidelines for Multinational Enterprises
- Supports compliance with EU CSDDD (human rights and environmental due diligence)
- COP reporting framework can inform CSRD sustainability reporting
- Dutch government promotes Global Compact participation as part of IRBC policy

#### VALUE FOR DUTCH COMPANIES IN KENYA:

- Credibility and reputation:
  - ✎ Demonstrates public commitment to responsible business conduct
  - ✎ Recognized global standard (not a "boutique" certification)
  - ✎ Enhances brand reputation with customers, investors, government
- Peer learning and networking:
  - ✎ Connect with 80+ Kenyan companies on sustainability journey
  - ✎ Learn from both local (Safaricom, Equity Bank, KCB) and multinational (Unilever, Coca-Cola, Standard Chartered) members
  - ✎ Access global network of 20,000+ companies
- Practical implementation support:
  - ✎ Tools, templates, and guidance for implementing Ten Principles
  - ✎ Training on human rights due diligence, environmental management, anti-corruption
  - ✎ Action platforms for collaborative problem-solving (e.g., water stewardship in Lake Naivasha where many horticulture companies operate)





**Continued:**

**NGO Member Organisations and Platforms Working on RBC in Kenya**

**United Nations Global Compact Kenya (UNGC-K / GCNK)**

- Reporting framework:
  - ↳ COP reporting provides structure for sustainability reporting
  - ↳ Can be basis for or integrated with CSRD, GRI, or CDP reporting
  - ↳ Demonstrates transparency and accountability
- Government and stakeholder relations:
  - ↳ UNGC membership signals credibility to Kenya government
  - ↳ Facilitates engagement with civil society and communities
  - ↳ Platform for dialogue on sustainability policy

**Benefit Corporation (B Corp) Certification**

A third-party certification verifying that a company meets rigorous standards of social and environmental performance, accountability, and transparency. In Kenya, B Corp certification is administered globally by B Lab, with growing interest and uptake among Kenyan businesses.

**CORE REQUIREMENTS:**

**PERFORMANCE (B IMPACT ASSESSMENT - BIA):**

- Score minimum 80 points out of 200 on B Impact Assessment
- Assessment covers five impact areas: Governance, Workers, Community, Environment, Customers
- Verified through documentation review and on-site audits (for high scores or risk areas)

**ACCOUNTABILITY (LEGAL REQUIREMENT):**

- Amend corporate governing documents (Articles of Association, Charter) to include stakeholder considerations
- In Kenya: Typically add provisions to Articles requiring directors to consider impact on workers, community, environment (aligns with Companies Act Section 26)

**TRANSPARENCY (PUBLIC DISCLOSURE):**

- Publicly disclose B Impact Assessment score on B Corp website
- Disclose company's performance on all five impact areas
- Recertify every three years with improved or maintained score

**VALUE FOR DUTCH COMPANIES:**

- Market differentiation:
  - ↳ Stand out as purpose-driven business in competitive markets
  - ↳ Appeal to conscious consumers, impact investors, responsible buyers
  - ↳ B Corp logo recognized globally as mark of verified impact
- Attract impact investment:
  - ↳ Preferred by impact investors, ESG funds, development finance institutions
  - ↳ Signals credible commitment to triple bottom line (people, planet, profit)
  - ↳ Easier access to blended finance, catalytic capital





**Continued:**

**NGO Member Organisations and Platforms Working on RBC in Kenya**

**Benefit Corporation (B Corp) Certification**

- Operational excellence:
  - ✎ BIA identifies improvement areas across governance, workers, community, environment
  - ✎ Framework for continuous improvement (recertify every 3 years with maintained/improved score)
  - ✎ Benchmarking against global peer companies
- Stakeholder credibility:
  - ✎ Third-party verified (unlike self-reported sustainability claims)
  - ✎ Demonstrates genuine commitment, not greenwashing
  - ✎ Builds trust with customers, communities, government, NGOs
- Regulatory alignment:
  - ✎ BIA overlaps significantly with CSDDD due diligence requirements (workers, environment, supply chain)
  - ✎ Can inform CSRD sustainability reporting
  - ✎ Demonstrates proactive ESG leadership

**Blue Company Certification (Kenya)**

A Kenyan national certification program recognising companies committed to environmental sustainability, social responsibility, and good governance.

**VALUE FOR DUTCH COMPANIES:**

- Local credibility:
  - ✎ Shows commitment to Kenyan sustainability priorities (not just European standards)
  - ✎ Demonstrates partnership mindset (investing in local certification, not just importing international ones)
- Affordable entry point:
  - ✎ Lower cost than ISO 14001, B Corp, or other international certifications
  - ✎ Good starting point for SMEs or subsidiaries building sustainability capacity
- Regulatory alignment:
  - ✎ Explicitly checks Kenyan regulatory compliance (NEMA, OSHA, Companies Act, etc.)
  - ✎ Can help ensure alignment with Kenya NAP
- Stakeholder engagement:
  - ✎ Blue Company requires community engagement and grievance mechanisms
  - ✎ Aligns with CSDDD stakeholder consultation requirements
- Stepping stone:
  - ✎ Blue Company can be pathway to international certifications
  - ✎ Builds internal systems and data that support ISO, B Corp, or CSRD compliance later





## Continued:

### NGO Member Organisations and Platforms Working on RBC in Kenya

#### Code of Ethics for Business (Institute of Certified Public Accountants of Kenya - ICPAK)

A professional code of conduct for accountants and auditors but has broader implications for corporate governance and business ethics in Kenya. While not a certification program per se, it provides an ethical framework that businesses—particularly those with professional accountants—are expected to uphold.

#### VALUE FOR DUTCH COMPANIES:

- Hiring Kenyan accountants:
  - ↘ Ensure your Kenyan finance team (CFO, accountants, auditors) are ICPAK members
  - ↘ ICPAK membership signals professional competence and ethical standards
  - ↘ Non-members legally cannot provide accounting/auditing services in Kenya
- Financial governance:
  - ↘ Align your company's financial policies with ICPAK Code principles
  - ↘ Support ethical culture (no pressure on accountants to manipulate results)
  - ↘ Establish whistleblowing mechanisms for financial concerns
- Audit quality:
  - ↘ Engage ICPAK-registered audit firms for statutory audits
  - ↘ Ensure auditor independence (rotation, no conflicts of interest)
  - ↘ Audit Committee should include ICPAK members or those familiar with Code
- Anti-corruption:
  - ↘ Code's anti-bribery provisions reinforce company anti-corruption policies
  - ↘ Accountants obliged to report or resign if asked to facilitate corruption
- Not a Certification But...:
  - ↘ While Code doesn't certify companies, it sets ethical baseline for financial management
  - ↘ Compliance demonstrates financial integrity and good governance





## Business Associations and Private Sector Bodies

### Kenya Private Sector Alliance (KEPSA)

This is the umbrella organisation representing the private sector, membership includes sector associations and large companies.

#### ***FUNCTIONS OF KEPSA:***

- Private sector advocacy to government
- Policy dialogue platform
- Business integrity programs
- Sustainability initiatives
- Public-private partnerships

#### ***VALUE FOR DUTCH BUSINESSES:***

- Having a voice in policy discussions
- Networking with the Kenyan business community
- Access to policy makers
- Being involved in sector-specific working groups
- Being involved in RBC and other sustainability programs

**How Dutch businesses can engage with KEPSA:** Membership is available, participation in working groups, partnership on initiatives.

### Kenya Association of Manufacturers (KAM)

KAM represents businesses in the manufacturing sector.

#### ***FUNCTIONS OF KAM:***

- Advocacy for the manufacturing sector
- Promotion of trade and investment
- Initiating sustainability and environmental programs
- Training and capacity building for member businesses
- Promotion of quality standards

#### ***KEY INITIATIVES OF KAM:***

- Environmental performance benchmarking
- Energy efficiency programs
- Cleaner production support
- Occupational safety programs

**Value for Dutch businesses:** Sector-specific advocacy, technical support, and peer learning.





Continued:

## Business Associations and Private Sector Bodies

### Federation of Kenya Employers (FKE)

FKE is an employer organisation focused on labour relations.

#### ***FUNCTIONS OF FKE:***

- Employer representation in industrial relations
- Labour law advisory services
- Collective bargaining support
- Training on labour relations
- Labour policy advocacy

#### ***SERVICES OFFERED BY FKE:***

- Human resources and industrial relations advisory
- Representation in labour disputes
- Salary surveys
- Model contracts and policies
- Conciliation services

**Value for Dutch businesses:** FKE is essential for navigating labour relations, especially if facing unionisation issues or disputes.

### Kenya National Chamber of Commerce and Industry (KNCCI)

This is a Chamber of commerce with national and regional chapters.

#### ***FUNCTIONS OF KNCCI:***

- Business advocacy
- Trade facilitation
- Business networking
- Capacity building
- Offering certificates of origin

**Value for Dutch businesses:** Local business connections, offering regional insights, and trade documentation.

## Sector-Specific Associations

Examples:

- **Fresh Produce Exporters Association of Kenya (FPEAK):** for horticultural exports
- **Kenya Flower Council:** which promotes floriculture sustainability
- **Kenya Tea Development Agency:** for the tea sector
- **Coffee Directorate:** for the coffee sector
- **Avocado Society of Kenya:** Promote sustainable avocado production and trade





## Continued:

### Sector-Specific Associations

- **Fresh Produce Consortium of Kenya:** umbrella organisation representing Kenya's fresh produce export sector, particularly horticulture (fruits, vegetables, flowers, herbs)
- **Africa Seed NETWORK (ASNET):** a regional organisation promoting the development of a vibrant, competitive seed industry across Africa, with strong presence and activities in Kenya.
- **Nuts and Oil Crops Producers Confederation of Kenya (NPCK):** represents farmers, processors, and traders in Kenya's nuts and oil crops sector, particularly macadamia, cashew nuts, coconut, sunflower, and other oil seeds.
- **Seed Trade Association of Kenya (STAK):** national association representing seed companies, seed producers, distributors, and seed industry stakeholders in Kenya.

**Value for Dutch businesses:** Easy access to sector-specific standards, market intelligence and collective action on common issues.

### Civil Society Organisations

Kenya has a vibrant civil society, who are important stakeholders for RBC including:

- Human Rights and Governance Organisations
- Transparency International Kenya: which focuses on anti-corruption advocacy, governance monitoring, and integrity systems.
- Kenya Human Rights Commission: which focuses on human rights monitoring, advocacy, and legal support.
- Article 19 Eastern Africa: which focuses on freedom of expression and access to information.

#### Value for Dutch businesses:

- Partnership opportunities on governance and transparency
- Access to early warning of emerging issues
- Access to credible third-party perspectives
- Potential allies or critics depending on your performance

### Environmental Organisations

As a business, you may wish to engage with the following environmental organisations, which work across conservation, biodiversity, and sustainable development in Kenya:

- Nature Kenya (BirdLife International partner): Which focuses on biodiversity conservation and environmental advocacy.
- Green Belt Movement: Which focuses on community environmental conservation and tree planting.
- WildlifeDirect: Wildlife conservation and anti-poaching.
- Practical Action: Which focuses on sustainable development, appropriate technology.

#### Value for Dutch businesses:

- Environmental partnership opportunities
- Access to technical expertise on conservation
- Community mobilisation
- There are reputational risks if opposed and benefits if partnered





## Labour Rights Organisations

You may wish to engage with the following labour rights organisations, which support worker representation, sector-specific advocacy, and responsible industrial relations in Kenya:

- Central Organisation of Trade Unions (COTU): National umbrella body representing trade unions and advocating for worker rights.
- Kenya Plantation and Agricultural Workers Union (KPAWU): Represents workers in the agricultural and plantation sectors.
- Solidarity Center: Supports worker rights, collective organising, and capacity building.

### Value for Dutch businesses:

- Being able to understand worker concerns
- Potential partnerships on worker welfare
- Dialogue channels during labour tensions





## Section 7 ↘

# International Regulations

Click on any topic to jump straight to it:

- ↘ [Relevant Dutch Frameworks/Laws](#)
- ↘ [Relevant EU Laws](#)
- ↘ [Other European Laws](#)





## Other legal frameworks impacting Dutch companies operating in or sourcing from Kenya

Dutch companies operating in or sourcing from Kenya are increasingly subject to a complex set of national and international legal frameworks aimed at promoting responsible business conduct. Beyond Kenyan law, Dutch companies may need to comply with national legislation such as the Dutch Child Labour Due Diligence Act, as well as major EU instruments like the Corporate Sustainability Due Diligence Directive (CSDDD), the Corporate Sustainability Reporting Directive (CSRD), the EU Deforestation Regulation (EUDR) and the EU Forced Labour Regulation. In addition, companies may also be affected – directly or indirectly – by other European laws, including the UK Modern Slavery Act, France’s Corporate Duty of Vigilance Law, Norway’s Transparency Act, and Germany’s Supply Chain Due Diligence Act. Together, these frameworks require companies to identify, prevent, mitigate and report on adverse human rights and environmental impacts across their operations and global value chains.

### Relevant Dutch Frameworks/Laws

#### National Action Plan Business and Human Rights

#### **NATIONAL ACTION PLAN BUSINESS AND HUMAN RIGHTS**

- **Status:** first adopted in 2013, a second one was adopted in 2022 (for 2022-2026)
- **About the National Action Plan:** The Plan lays out actions that the Dutch government commits to taking as per the UN Guiding Principles on Business and Human Rights (UNGPs). It includes commitments to **implement due diligence legislation** at the EU level, including reporting obligations in line with the EU Corporate Sustainability Reporting Directive (see below), developing national due diligence legislation, supporting businesses in their application of due diligence, encourage businesses to **provide remedy**, integrate protection programmes and risk prevention for human rights defenders in the private sector, and inform businesses on conflict sensitivity.

### Relevant EU Laws

#### EU Corporate Sustainability Due Diligence Directive (CSDDD) EU

#### **EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CSDDD)**

- **Status:** In force as of 2024 but revised as a result of the Omnibus I-package, which was formally adopted on 24 February 2026. EU Member States have until 26 July 2028 to transpose the revised CSDDD. Companies must comply with the new obligations from July 2029.
- **Companies in scope:** EU companies with 5,000+ employees and a €1.5 billion net annual turnover; non-EU companies with a €1.5 billion net annual turnover in the EU. The amended CSDDD includes a review clause to potentially revise the scope in the future.
- **About the law:**
  - ↘ In-scope companies are obliged to conduct human rights and environmental due diligence in their value chains, and to take appropriate measures to prevent, mitigate, or terminate such impacts, where possible.
  - ↘ They must identify and address risks in their supply chain following a risk-based approach, in line with international standards as the OECD Guidelines on Multinational Companies and the United Nations Guiding Principles on...

#### Corporate Sustainability Reporting Directive (CSRD)

#### EU Deforestation Regulation (EUDR)

#### EU Forced Labour Regulation

#### EU Unfair Trading Practices for Agriculture & Food Supply Chains Directive





## Continued: Relevant EU Laws

### EU Corporate Sustainability Due Diligence Directive (CSDDD) EU

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### Corporate Sustainability Reporting Directive (CSRD)

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### EU Deforestation Regulation (EUDR)

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### EU Forced Labour Regulation

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### EU Unfair Trading Practices for Agriculture & Food Supply Chains Directive

...Business and Human Rights. This means companies can focus their efforts on hotspots in the value chain that hold the greatest risks.

- ✎ Information may be requested from business partners only where this is necessary, and, in the case of business partners with fewer than 5,000 employees, only where the information cannot reasonably be obtained by other means.
- ✎ The CSDDD includes provisions specifically aimed at preventing negative impacts in producing countries, such as expectations that large companies support their SME partners in making improvements to their business operations.

### **EU CORPORATE SUSTAINABILITY REPORTING DIRECTIVE (CSRD)**

- **Status:** In force as of 2023, but recently revised. The revision will delay the implementation of the second and third waves of reporting under the CSRD by two years (to 2027 and 2028). The first wave of companies will have to continue reporting under the revised CSRD.
- **Companies in scope:** Recent changes ask for the scope to be reduced to EU companies with 1,000+ employees and a €450+ million net turnover. The new scope will also extend to parent companies of groups meeting the thresholds on a consolidated basis. Non-EU companies are also covered in the scope. The scope of the obligation to request information from supply chain partners is reduced for companies subject to the CSRD. This means that companies subject to the CSRD may only request information from companies in their value chain that are also subject to the CSRD. For supply chain partners not subject to the CSRD, this requirement is limited to the VSME standard. This is called the value chain cap.
- **About the law:** The CSRD requires companies to report on the social and environmental risks they face, and on how their activities impact people and the environment. This includes:
  - ✎ Social standards including information on their own workforce, value chain workers, affected communities, and consumers/end users.
  - ✎ Environmental standards including information on climate change, pollution, water, biodiversity & ecosystems, resources use and circular economy.
  - ✎ A governance standard with information on business conduct.

### **EU DEFORESTATION REGULATION (EUDR)**

- **Status:** In force as of 13 December 2024. Rules will apply from 14 December 2027.
- **Companies in scope:** All businesses, sectors and products, regardless of where the products are made. It does not apply to services.





**Continued:**  
**Relevant EU Laws**

EU Corporate Sustainability Due Diligence Directive (CSDDD) EU

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Corporate Sustainability Reporting Directive (CSRD)

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**EU Deforestation Regulation (EUDR)**

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**EU Forced Labour Regulation**

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**EU Unfair Trading Practices for Agriculture & Food Supply Chains Directive**

→ **About the law:**

- ↘ This European law prohibits businesses from placing products made with forced labour (as defined by the ILO) on the EU market or exporting them from the EU, including forced child labour.
- ↘ Suspicions of forced labour are investigated by the lead competent authority:
  - outside the EU, the competent authority is the European Commission;
  - within the EU, each member state will designate a competent authority.
- ↘ If the use of forced labour is established by the competent authority, it adopts a decision. That decision includes a ban on placing specific products made with forced labour on the EU market or exporting them, as well as an order to withdraw these products from the market and remove them.
- ↘ The law also tries to combat unfair competition; some companies still use forced labor as a business model.

**EU FORCED LABOUR REGULATION**

- **Status:** In force as of 2024. Requirements will apply in 2027.
- **Companies in scope:** any company placing, selling or exporting products on the EU market, regardless of size, sector, or location.
- **About the law:** The Regulation requires companies to **map their supply chain** to identify, prevent, and mitigate risks of forced labour **in all stages of production**. Companies must be prepared to demonstrate that their supply chains are free from forced labour or will be required to withdraw their products from the EU market.

**EU UNFAIR TRADING PRACTICES FOR AGRICULTURE & FOOD SUPPLY CHAINS DIRECTIVE**

- **Status:** In force as of 2021. Requirements apply since 2022.
- **Companies in scope:** suppliers with an annual turnover up to €350 million selling to larger buyers, regardless of where the buyer is located.
- **About the law:** The Directive bans several trading practices considered “unfair”, such as payments later than 30 days for perishable agricultural and food products, payments later than 60 days for other agri-food products, short notice cancellations of perishable agri-food products, unilateral contract changes by the buyer, refusal of a written confirmation of a supply agreement by the buyer, return of unsold products, and others.





## Other European Laws

### UK Modern Slavery Act

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### France's Corporate Duty of Vigilance Law

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### Norway's Transparency Act

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### Germany's Supply Chain Due Diligence Act

#### **UK MODERN SLAVERY ACT**

- **Status:** In force as of 2015.
- **Companies in scope:** all companies that carry on a business, or part of a business, in the UK, regardless of where they are incorporated.
- **About the law:** The Act requires companies to report annually on the action taken to prevent slavery, servitude, **forced or compulsory labour**, and human trafficking. Reports must outline due diligence, risk assessment, training, and policies implemented to ensure no modern slavery exists in the companies' **operations and supply chains**. A similar Act was adopted in Australia in 2018 (Modern Slavery Act).

#### **FRANCE'S CORPORATE DUTY OF VIGILANCE LAW**

- **Status:** In force as of 2017.
- **Companies in scope: All companies (French or with a subsidiary in France)** employing 5,000+ employees in France, or 10,000+ employees in France and abroad combined.
- **About the law:** The Law requires companies to create a public, annual plan, reporting on their mapping and identification of human rights and environmental risks, **regular evaluation of subsidiaries, subcontractors and suppliers**, mitigation actions taken to prevent serious harm, reporting mechanisms, and monitoring and evaluation systems.

#### **NORWAY'S TRANSPARENCY ACT**

- **Status:** In Force as of 2022.
- **Companies in scope: All companies (based in Norway or offering goods and services in Norway)** that meet at least two criteria: 50+ employees, a NOK 70 million turnover, or a NOK 35 million balance sheet total.
- **About the law:** The Act requires companies to **conduct human rights due diligence**, including mapping, identifying and mitigating negative impacts on human rights and working conditions. It further requires companies to respond within three weeks to anyone requesting information regarding how the company handles human rights impacts.

#### **GERMANY'S SUPPLY CHAIN DUE DILIGENCE ACT**

- **Status:** In force as of 2023.
- **Companies in scope:** All companies (German or with branches in Germany) employing 1,000+ employees.
- **About the law:** The Act requires companies to implement a risk management system, **conduct regular risk analyses**, adopt policy statements, establish complaint procedures, and take preventative/remedial measures for human rights and environmental issues, such as child labour, forced labour, unsafe working conditions, hazardous waste, and toxic pollutants.



*PART 2*

# THE TOOLS

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# The Tools ↘

## Additional Information





## ADDITIONAL INFO

### Termination of Employment and Redundancy Procedure

#### Minimum notice depends on service duration and payment frequency:

- Daily paid: 24 hours' notice
- Weekly paid: 7 days' notice
- Monthly paid: 28 days' notice (or 1 month as commonly interpreted)

Longer notice periods can be agreed in contract (e.g., 3 months for senior positions).

**Summary dismissal:** No notice is required - Only for gross misconduct after a fair hearing.

Examples include:

- Theft of company property
- Violence or threats against others
- Gross insubordination
- Serious negligence endangering life or property
- Fraud or dishonesty
- Being under the influence of alcohol/drugs at work
- Unauthorised disclosure of confidential information

**Fair termination procedure (MANDATORY):** Even for gross misconduct, employer must follow fair procedure:

1. Written notice of allegations given to employee such as a charge sheet/show cause letter
2. Employee given opportunity to respond through a hearing/disciplinary meeting
3. Employee may be accompanied by representative (colleague or union official, not external lawyer)
4. Investigation is conducted and evidence considered
5. Decision is made considering all evidence and employee's response
6. Written dismissal letter is issued with clear reasons
7. Employee has right to appeal internally or to higher management or Board

**Failure to follow fair procedure makes dismissal automatically unfair**, even if valid reason existed.

**Situation where it is considered unfair dismissal:** It is presumed unfair unless employer proves otherwise):

- Pregnancy or related reasons
- Trade union membership or activities
- Participation in lawful strike
- Whistleblowing on illegal/unethical conduct
- Asserting legal rights (demanding minimum wage, safe conditions, etc.)

- Remedies for unfair dismissal: Employment and Labour Relations Court may order:
- Reinstatement through returning to same position with back pay for lost wages
- Compensation of up to 12 months gross salary
- In some cases, both reinstatement and compensation

**Redundancy (Economic Termination):** A special procedure required when dismissing for business/economic reasons:

Genuine redundancy situation required:

- Closure of business or part of business
- Restructuring or reorganisation
- Introduction of new technology reducing workforce needs
- Economic necessity if proven financial distress

#### Fair redundancy procedure:

1. Notify Ministry of Labour at least 1 month in advance you must provide reasons, number of workers affected and criteria for selection
2. Consult with employees/union on redundancy plans and alternatives
3. Apply objective selection criteria (e.g., last-in-first-out, performance, skills needed for remaining roles)
4. Consider alternatives such as redeployment, reduced hours and voluntary redundancy
5. Pay redundancy compensation: Minimum 15 days wages per completed year of service
6. Provide notice as per contract or statutory minimum
7. Assist employees with references and job search support if feasible

#### Unfair redundancy:

- Redundancy used as pretext to dismiss specific individuals through discriminatory selection
- No genuine redundancy situation
- Unfair selection process
- Failure to consult or notify Ministry
- Rehiring similar position shortly after redundancy





## ADDITIONAL INFO

### Overview of key risks in various sectors in Kenya

This table identifies the most significant Responsible Business Conduct risks across key sectors in Kenya as identified through Partner Africa's extensive work with various organisations and businesses in Kenya and through external research.

For each risk, we provide a description of the risk; early warning indicators which are red flags suggesting the risk may be present; and ways to prevent or mitigate these risks in your operations and supply chain. Dutch businesses could use this table to conduct an initial risk screening for your specific sector, design human rights risk or impact assessments tailored to your sector, develop sector-specific monitoring and audit protocols and train staff on risks relevant to your sector.



#### PART 2: THE TOOLS

SECTOR	HIGHEST RISK PRIORITY FOR DUTCH BUSINESSES ENTERING KENYA	EARLY WARNING INDICATORS	HOW TO PREVENT/MITIGATE THESE RISKS
<b>Agriculture</b> (Tea, Coffee, Flowers, Horticulture)	<ul style="list-style-type: none"> <li>Casualisation and seasonal employment without benefits</li> <li>Below living wage pay (despite meeting minimum wage)</li> <li>Excessive working hours during peak seasons</li> <li>Child labour (especially on smallholder outgrower farms)</li> <li>Gender-based violence and sexual harassment</li> <li>Poor housing conditions for workers</li> <li>Pesticide exposure without adequate protection</li> <li>Union suppression or lack of worker representation</li> <li>Community land disputes and contested ownership</li> </ul>	<ul style="list-style-type: none"> <li>High proportion of casual/temporary workers (&gt;50%)</li> <li>Wages at or barely above minimum wage</li> <li>Frequent overtime during harvest</li> <li>Workers under 18 present</li> <li>Gender-segregated, isolated work areas</li> <li>Dilapidated worker housing</li> <li>No PPE for pesticide applicators</li> <li>No union or worker committee</li> <li>History of land conflicts in area</li> </ul>	<ul style="list-style-type: none"> <li>Payroll analysis (wage levels, contract types)</li> <li>Confidential grievance mechanisms</li> <li>Housing inspections</li> <li>Age verification such as ID checks</li> <li>Pesticide use and safety records review</li> <li>Health surveillance data (respiratory issues, skin conditions)</li> <li>Gender-disaggregated grievance data</li> <li>Freedom of association assessment</li> <li>Land title verification and historical land use research</li> <li>Community consultations and grievance review</li> </ul>
<b>Health sector</b> (Private Hospitals, Clinics, Pharmaceutical Companies, Medical Equipment Suppliers, Health Insurance, Telemedicine)	<ul style="list-style-type: none"> <li>Overwork and burnout of medical staff (long shifts, inadequate rest)</li> <li>Low wages for support staff (cleaners, security)</li> <li>Occupational health risks (needle-stick injuries, infectious disease exposure, violence from patients)</li> <li>Harassment and discrimination (especially against female nurses and support staff)</li> <li>Lack of employment contracts for casual/locum staff</li> <li>Inadequate PPE and infection control</li> </ul>	<ul style="list-style-type: none"> <li>Medical staff working &gt;60 hours/week regularly</li> <li>High staff turnover, especially nurses</li> <li>Support staff wages at or below minimum wage</li> <li>Frequent needle-stick injury reports</li> <li>Female staff reporting harassment by senior doctors/patients</li> <li>Locum doctors/nurses with no written contracts</li> <li>PPE stockouts or staff buying their own supplies</li> <li>No counselling or mental health support for staff</li> <li>Infectious waste mixed with general waste</li> </ul>	<ul style="list-style-type: none"> <li>Review of staff working hours and shift patterns</li> <li>Analysis of payroll and wages (support staff wages vs. living wage)</li> <li>Review of occupational injury and illness records (OSHA reporting)</li> <li>Have records on vaccination and post-exposure prophylaxis</li> <li>Gender-sensitive staff interviews to identify any form of harassment or discrimination</li> <li>Audit of employment contracts for permanent vs. casual staff</li> <li>Review of PPE inventory</li> <li>Assessment of mental health support programme</li> </ul>



## ADDITIONAL INFO

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#### PART 2: THE TOOLS

SECTOR	HIGHEST RISK PRIORITY FOR DUTCH BUSINESSES ENTERING KENYA	EARLY WARNING INDICATORS	HOW TO PREVENT/MITIGATE THESE RISKS
<b>Health sector</b> (Private Hospitals, Clinics, Pharmaceutical Companies, Medical Equipment Suppliers, Health Insurance, Telemedicine)	<ul style="list-style-type: none"> <li>Emotional and psychological trauma without support</li> <li>Improper biomedical waste disposal (infectious waste, sharps, pharmaceuticals)</li> </ul>	<ul style="list-style-type: none"> <li>Sharps containers overflowing or not puncture-proof</li> <li>Medical waste burned in open pits</li> </ul>	<ul style="list-style-type: none"> <li>Have staff wellness and satisfaction surveys</li> <li>Biomedical waste segregation inspection (color-coded bins, signage)</li> <li>Waste disposal records and licensed transporter contracts</li> </ul>
<b>Water sector</b> (Water supply & sanitation, Water infrastructure, Irrigation systems)	<ul style="list-style-type: none"> <li>Low wages for workers particularly the maintenance staff</li> <li>Hazardous working conditions such as confined spaces in tanks/ sewers, or chemical exposure</li> <li>Inadequate PPE for sewage and wastewater workers</li> <li>Casualisation of workforce</li> <li>Lack of safety training for confined space entry and use of machinery</li> <li>Over-abstraction thus depleting community water sources</li> <li>Denial of community access to traditional water points</li> <li>Water commercialisation excluding poor households</li> <li>Conflicts with downstream users</li> <li>Pollution of community water sources</li> <li>Lack of Free, Prior, and Informed Consent for water projects</li> </ul>	<ul style="list-style-type: none"> <li>Wages are at or below minimum wage</li> <li>Workers entering tanks/ sewers without harnesses, monitors, or ventilation</li> <li>Lack of gas detectors for confined spaces</li> <li>Workers handling chlorine without respirators or protective gear</li> <li>High proportion of casual contracts</li> <li>Lack of permits on confined space entry or rescue plans</li> <li>Community complaints about reduced water availability</li> <li>Wells or rivers drying up after company operations/ projects begin</li> <li>Traditional water access routes blocked or restricted</li> <li>Unaffordable water tariffs which exclude poor households</li> <li>Downstream users reporting water scarcity</li> <li>Visible water pollution that is affecting communities</li> <li>Lack of documented community consent for water projects</li> </ul>	<ul style="list-style-type: none"> <li>Analysis of payrolls on wages vs. living wage</li> <li>Audits on confined space entry procedures</li> <li>Provision of PPE and inspection on usage</li> <li>Availability of gas detection equipment and calibration</li> <li>Training on operating in confined spaces and use of rescue equipment</li> <li>Review of employment contracts to meet legal requirements</li> <li>Inspection of working conditions to ensure compliance with OSHA in terms of permits, procedures, and training records</li> <li>Monitoring of water abstraction permits vs. actual usage</li> <li>Comparison of baseline water availability vs. current levels</li> <li>Mapping and assessment of the community's access to water</li> <li>Analysis of water tariff affordability by household e.g. what percentage of household income it takes</li> </ul>



## ADDITIONAL INFO

### Overview of key risks in various sectors in Kenya

This table identifies the most significant Responsible Business Conduct risks across key sectors in Kenya as identified through Partner Africa's extensive work with various organisations and businesses in Kenya and through external research.

For each risk, we provide a description of the risk; early warning indicators which are red flags suggesting the risk may be present; and ways to prevent or mitigate these risks in your operations and supply chain. Dutch businesses could use this table to conduct an initial risk screening for your specific sector, design human rights risk or impact assessments tailored to your sector, develop sector-specific monitoring and audit protocols and train staff on risks relevant to your sector.



#### PART 2: THE TOOLS

SECTOR	HIGHEST RISK PRIORITY FOR DUTCH BUSINESSES ENTERING KENYA	EARLY WARNING INDICATORS	HOW TO PREVENT/ MITIGATE THESE RISKS
<b>Water sector</b> (Water supply & sanitation, Water infrastructure, Irrigation systems)			<ul style="list-style-type: none"> <li>Regular measurements of downstream flow</li> <li>Water quality testing both upstream/downstream of operations</li> <li>Documentation review of FPIC</li> <li>Conduct community perception surveys on water access</li> <li>Obtain and verify Water Resource Use Authority permits for all abstraction points</li> </ul>
<b>Renewable energy sector</b> (Renewable Energy, Power Generation, Roads, Dams, Construction)	<ul style="list-style-type: none"> <li>Hazardous construction work (falls, electrocution)</li> <li>Migrant worker exploitation in construction</li> <li>Wage theft and delayed payments</li> <li>Lack of employment contracts</li> <li>Large-scale land acquisition displacing communities</li> <li>Lack of FPIC for projects on community land</li> <li>Ecosystem disruption (dams, transmission lines)</li> <li>Biodiversity impacts</li> </ul>	<ul style="list-style-type: none"> <li>High accident rates</li> <li>Workers from other regions in isolated camps</li> <li>Workers complaining of unpaid wages</li> <li>No written contracts for workers</li> <li>Community opposition to project</li> <li>Land not formally acquired or leased</li> <li>No resettlement plan despite displacement</li> <li>Projects in ecologically sensitive areas</li> <li>No biodiversity offset plan</li> </ul>	<ul style="list-style-type: none"> <li>Have records on safety inspection and accident logs</li> <li>Ensure migrant workers have contracts and good working conditions</li> <li>Verification of payroll and wage payment</li> <li>Audit of subcontractor labour practices</li> <li>Documentation of land acquisition process</li> <li>Verification FPIC process</li> <li>Tracking of livelihood restoration</li> <li>Carrying out an Environmental and Social Impact Assessment (ESIA)</li> <li>Biodiversity monitoring</li> <li>Environmental audits Construction site</li> </ul>
<b>Logistics and Transport sector</b> (Road Transport, Freight/ Cargo, Warehousing, Last-Mile Delivery)	<ul style="list-style-type: none"> <li>Excessive working hours and fatigue which could lead to road safety risk</li> <li>Low wages and wage theft such as deductions for damages and fuel</li> </ul>	<ul style="list-style-type: none"> <li>Drivers working &gt;12 hours/ day regularly</li> <li>Wages at minimum wage with excessive deductions</li> <li>Drivers being classified as "independent contractors" to avoid paying benefits</li> </ul>	<ul style="list-style-type: none"> <li>Review of driver logbook and tachograph to check for hours worked and rest periods</li> <li>Payroll analysis to check for wages, deductions and allowances</li> </ul>



## ADDITIONAL INFO

### Overview of key risks in various sectors in Kenya

This table identifies the most significant Responsible Business Conduct risks across key sectors in Kenya as identified through Partner Africa's extensive work with various organisations and businesses in Kenya and through external research.

For each risk, we provide a description of the risk; early warning indicators which are red flags suggesting the risk may be present; and ways to prevent or mitigate these risks in your operations and supply chain. Dutch businesses could use this table to conduct an initial risk screening for your specific sector, design human rights risk or impact assessments tailored to your sector, develop sector-specific monitoring and audit protocols and train staff on risks relevant to your sector.



#### PART 2: THE TOOLS

SECTOR	HIGHEST RISK PRIORITY FOR DUTCH BUSINESSES ENTERING KENYA	EARLY WARNING INDICATORS	HOW TO PREVENT/MITIGATE THESE RISKS
<b>Logistics and Transport sector</b> (Road Transport, Freight/ Cargo, Warehousing, Last-Mile Delivery)	<ul style="list-style-type: none"> <li>• Precarious employment such as the owner-driver models or gig economy</li> <li>• Lack of employment contracts for workers/contracted workers</li> <li>• No social protection for workers/contracted workers such as NSSF, SHIF or WIBA</li> <li>• Intimidation and violence against drivers</li> <li>• Denial of rest breaks and leave</li> <li>• Exposure to theft and highway robbery which compromises drivers' safety</li> <li>• Gender-based violence and harassment particularly for female workers in male-dominated sector</li> <li>• Hazardous working conditions such as use of forklifts, falling objects, manual handling of products or machinery</li> <li>• Use of subcontractors/ labour agencies with poor labour practices</li> <li>• Exploitation of the informal sector transporters</li> </ul>	<ul style="list-style-type: none"> <li>• No written employment contracts</li> <li>• Drivers/ warehouse workers not registered for statutory benefits</li> <li>• Reports of threats or violence from supervisors/ employers</li> <li>• Drivers unable to take meal breaks or rest days</li> <li>• Drivers reporting insecurity on certain routes</li> <li>• Few or no female workers, or reports of harassment</li> <li>• High injury rates such as back injuries or crushed limbs</li> <li>• Heavy reliance on subcontracted transport</li> <li>• Subcontractors with no legal registration or insurance</li> <li>• Informal motorcycle/ bicycle couriers with no protections</li> </ul>	<ul style="list-style-type: none"> <li>• Clarification of employment status classification employee vs. contractor</li> <li>• Contract review to check for employment vs. service contracts</li> <li>• Verification of NSSF, SHIF, WIBA registration for workers and sub-contracted workers</li> <li>• Conduct confidential interviews or interviews or surveys with drivers to assess on issues of harassment</li> <li>• Regular review of leave records</li> <li>• Review and investigate incidents reports of intimidation or violence</li> <li>• Conduct a risk assessment of routes and provide security measures for insecure routes</li> <li>• Carry out a gender composition assessment and develop a policy against harassment</li> <li>• Regular safety inspection of the warehouse to ensure compliance with OSHA requirements</li> <li>• Review of injury and illness records</li> <li>• Carry out due diligence and monitoring of your subcontractors</li> <li>• Assessment of the working conditions of informal transporters</li> </ul>



## ADDITIONAL INFO

### Useful websites

- **RBC-helpdesk:** since September 2022 this support center serves as a vital resource for Dutch companies seeking guidance on implementing due diligence within their business operations and value chains, following the six steps outlined in the OECD guidelines. The Dutch RBC Helpdesk provides a clear starting point, acting as a sparring partner and knowledge coordinator for all companies in the Netherlands aiming to practice due diligence. It also assists businesses in preparing for upcoming RBC legislation, such as the CSDDD, as well as related regulations like the CSRD, EUDR and FLR and has tools, e-learnings and assessments to provide for practical assistance, such as the 'RBC-legislation check'. In addition, the Helpdesk plays a key role in uniting existing tools from various stakeholders, developing new resources, and facilitating the exchange of knowledge and experiences.
- **CSR- risk check:** The CSR Risk Check tool is aimed at companies that are importing from or have production facilities in foreign countries. Companies can start the (short) check to find out which RBC risks their business activities might be exposed to and what companies can do to manage and minimize them according to the OECD-guidelines. In the end, a roadmap and checklist can be retrieved to learn and monitor how to approach due diligence step by step.
- **Sectoral Partnerships:** allows business to jointly address and mitigate the most common risks in their value chains, including risks related to human rights, labor, and the environment within sectoral collaboration. By applying due diligence in collaboration within their sector, businesses can: reduce individual burdens; build mutual trust; learn from each other; and exert influence together.
- **Subsidy Responsible business SME:** this subsidy program is provided for SME's in order to be able to practice or improve their due diligence. Companies could use the subsidy for example to set up an RBC-policy or to assemble stakeholders to create more impact by retrieving insights in risks and mitigating measures. This subsidy could also be used to prepare (as a chain partner) for (indirect) legal requirements of business upstream in the supply chain.
- **Subsidy Programme for Responsible Business | RVO.nl:** The Subsidy Programme for Responsible Business (SPVO) supports Dutch companies and their suppliers in developing countries, together with local NGOs and trade unions, in addressing key social and environmental risks in value chains through a multi-stakeholder approach. A key lesson learned is that this integrated, multi-stakeholder approach not only

helps companies meet EU RBC legislation, but also contributes to more resilient and stable supply chains.

- **Pathways to Prosperity: Ensuring equal and rewarded participation of producers in global value chains - Solidaridad Network:** Solidaridad's Pathways to Prosperity programme works towards long-term sustainability and inclusivity, with the ultimate ambition of transformative system change that benefits all equally. With Pathways to Prosperity programme, Solidaridad works to address the challenges of creating sustainable value chains through a number of pathways which are expected to lead to systemic outcomes with a positive impact. Through this approach, Solidaridad strives to take away the key barriers for sustainable production and trade, working towards fair and inclusive access to knowledge, skills, services, finance, and rewarding markets. Solidaridad integrates a financial inclusion approach in these pathways, whereby they will strive to ensure that producers are finance-ready; for example, through stimulating financial literacy and setting up Village Savings and Loans Associations (VSLAs) to help foster this. They are also working in Kenya in the coffee and gold sector.
- **IDH Transforming Markets:** IDH brings businesses, governments, investors, and communities together. By convening, co-creating and co-financing programs worldwide across the value chain, IDH transforms markets for the benefit of people, planet, and progress. They do this for example through their work on living wage and living income. IDH believes that living wage and living income are key elements in solving several of today's social development challenges, from reducing inequality to advancing human rights and driving economic empowerment. To support companies' efforts, IDH has developed living wage and living income roadmaps. The living wage Roadmap is the work of partnership: many partners are thinking along on developing solutions to barriers and testing them. This has led to five clear steps with practical tools through which companies can progress. From measuring to action. An concrete example in Kenya is IDH's work on the East Africa Living Income Program (EALI), which creates and strengthens a multi stakeholder approach towards integrating living income into the coffee sector through measurement and closing of living income gaps for coffee farming households.





# The Tools ↘

## Checklists





## CHECKLIST

### RELEVANT SECTION

### Section 3: Constitutional and policy foundations

### RELEVANT TOPIC

### Employment Act, 2007

### RELEVANT SUBTOPIC

### Fair remuneration and Labour practices



## My Checklist: Fair remuneration and Labour practices

These are the minimum requirements as per the Kenyan constitution where companies should ensure the following within their operations:

- All employment must be in writing within 60 days of commencement with terms of employment clearly stipulated.
- Wages meet or exceed legal minimum wage for sector/ location (Key figures effective November 2024, more information can be found below):
  - Major cities (Nairobi, Mombasa, Kisumu) - General worker: Ksh 16,113.75/month (Ksh 144.05/hour).
  - Major cities - Cook/ House servant: Ksh 17,402.94/ month (Ksh 156.68/hour).
  - Municipalities: Around Ksh 14,025/month for some roles, with specific rates for skilled/unskilled.
  - Unskilled workers (General): Around Ksh 7,997/month
- Equal pay for equal work is ensured and is gender and ethnicity neutral
- Salary structure is transparent and fair
- Overtime is paid at legally required rates (1.5x)
- All statutory deductions are correctly calculated and remitted (PAYE, NSSF, SHA, Housing Levy)
- PAYE (Pay As You Earn): Income tax deducted by employer on salaries, calculated progressively (10-35%)
- NSSF (National Social Security Fund): Both employer and employee contribute (6% each of pensionable earnings, capped)
- SHIF (Social Health Insurance Fund): Monthly contribution based on salary band (2.75% of gross salary)
- (AHL)Affordable Housing Levy: 1.5% contribution from employer and from employee based on gross salary.
- Payslips are provided showing earnings and deductions
- Wages are paid on time i.e. within 7 days of every month end
- No illegal deductions from wages
- Wage reviews are conducted regularly
- Benefits are provided including annual leave, sick leave, maternity/paternity leave
- Sick leave: Minimum entitlement based on service duration:
  - 7 days full pay, 7 days half pay (service under 1 year)
  - 14 days full pay, 14 days half pay (service 1-3 years)
  - 21 days full pay, 21 days half pay (service 3-5 years)
  - 28 days full pay, 28 days half pay (service 5+ years)
- Maternity leave: 3 months (90 days) with full pay for female employees. Protected period from dismissal during pregnancy and maternity leave - except for gross misconduct.
- Paternity leave: 2 weeks with full pay.
- Annual leave: Minimum 21 working days per year after 12 months service. Must be paid at full wage rate. Leave cannot be waived or paid in lieu except on termination.
- 13th month or bonus scheme considered if it's industry practice
- Notice is provided before termination. Notice required depends on payment frequency:
  - Daily paid workers: 24 hours' notice
  - Weekly paid workers: 7 days' notice
  - Monthly paid workers: 28 days' notice (commonly interpreted as 1 calendar month)
- Fair termination procedure has been followed even in cases of gross misconduct
- Fair redundancy procedure is followed

## CHECKLIST

### RELEVANT SECTION

## Section 3: Constitutional and policy foundations

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### RELEVANT TOPIC

## Employment Act, 2007

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### RELEVANT SUBTOPIC

## Reasonable working conditions

## My Checklist: Reasonable working conditions

**These are the minimum legal requirements on reasonable working conditions as outlined in Kenya's constitution:**

- Maximum 52 hours per week (typically 8 hours/day, 6 days/week or 10 hours/day, 5 days/week).
- Rest breaks are provided (1 hour for 5+ hour shifts)
- Weekly rest days are provided (at least 1 day)
- Public holidays are observed or double pay provided when employees work
- Night shift compensation/arrangements are fair
- Workplaces are clean, well-lit, and ventilated
- Toilets and washing facilities are adequate and clean
- Drinking water is available and accessible
- Rest areas are provided
- There is a canteen or meal arrangements are provided (if required)
- Personal protective equipment (PPE) is provided free
- Safe machinery and equipment is maintained
- Workplace temperature is controlled (if applicable)
- Ergonomic considerations are addressed
- Transport is provided or subsidised (if in a remote location)
- Accommodation is adequate (if provided) – in terms of privacy, sanitation and safety





## CHECKLIST

### **RELEVANT SECTION**

### **Section 3: Constitutional and policy foundations**

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### **RELEVANT TOPIC**

### **Labour Relations Act, 2007**

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### **RELEVANT SUBTOPIC**

### **Right to form and join Trade Unions**

## **My Checklist: Right to form and join Trade Unions**

**Here are the minimum legal requirements on the right to form and join trade unions as outlined in Kenya's constitution:**

- Workers are informed of their right to join unions
- No discrimination against union members or activities
- Union's access to workplace is permitted at reasonable times and with notice
- There is a check-off system for union dues that is operational (if workers authorise this)
- Union representatives are recognised and allowed time for union activities
- No interference with union formation or operations
- A freedom of association policy is in place and enforced
- Union-related terminations are avoided since it automatically accounts as unfair dismissal

**Here are the minimum legal requirements on the right to participate in collective bargaining as outlined in Kenya's constitution**

- Union recognition is granted if majority membership is in bargaining unit
- Good faith collective bargaining is conducted
- Collective Bargaining Agreement (CBA) is negotiated and signed (if unionised)
- CBA is registered with Registrar of Trade Unions
- CBA terms are implemented fully by all parties





## CHECKLIST

### RELEVANT SECTION

### Section 3: Constitutional and policy foundations

### RELEVANT TOPIC

### Work Injury Benefits Act (WIBA), 2007

### RELEVANT SUBTOPIC

### Occupational Health and Safety



## My Checklist: Occupational Health and Safety

**These are the minimum legal requirements on occupational health and safety and work injury benefits as per the OSHA and WIBA Acts:**

- Have a written Occupational Safety and Health (OSH) policy in place
- Ensure a OSH committee is established and meeting regularly (if you have 20+ employees)
- Appoint a safety officer (qualifications are verified).
  - 20-100 employees: Have a part-time safety officer
  - 100-500 employees: Have one full-time safety officer
  - 500+ employees: have additional safety officers
- Have workplace risk assessments conducted for all work activities and have them documented
- Ensure safety procedures and work instructions are available and visible
- Ensure all employees are trained on safety at induction and provide ongoing trainings
- Have first aid facilities and trained first aiders available
- Have fire safety equipment installed and maintained
- Emergency evacuation plan is posted and practiced
- An accident reporting system is in place
- An accident register is maintained
- Serious accidents are reported to the Directorate of Occupational Safety and Health (DOSHS) within the required timeframes:
  - Fatal accidents:** Report immediately to DOSHS
  - Major injuries:** Report within 24 hours (fractures, amputations, serious burns, loss of consciousness)
  - Dangerous occurrences:** Report within 24 hours (explosions, structural collapse, equipment failure)
  - Occupational diseases:** Report when diagnosed
- Accident investigations are conducted and corrective actions are taken
- Safety performance indicators are tracked
- WIBA registration is current, and premiums are paid
- Have medical surveillance for workers exposed to hazards
- Ensure personal protective equipment (PPE) is provided, maintained, and replaced
- Machinery is properly guarded
- Hazardous substances are properly labelled and stored (a Material Safety Data Sheet (MSDS) is available)
- DOSHS inspection readiness is maintained



## CHECKLIST

### RELEVANT SECTION

## Section 3: Constitutional and policy foundations

### RELEVANT TOPIC

## National Environment Management Authority (NEMA)

### RELEVANT SUBTOPIC

## Environment, climate and water management



## My Checklist: Environment, climate and water management

Here are the minimum legal requirements as outlined in the Environment Management, climate, forest and water Acts:

- Have a valid Environmental Impact Assessment (EIA) license obtained from NEMA **before** operations begin (check if this is required for your project with NEMA).
- Do annual environmental audits and submit reports to NEMA
- Implement an Environmental Management Plan and have it regularly reviewed
- Have pollution control systems installed and functioning (for air, water and noise)
- Have a waste management system in place including segregation, storage and disposal/recycling.
- Ensure the effluent treatment plant is operational (if applicable) with regular testing
- Ensure environmental incidents are documented and reported to NEMA
- Staff are trained on environmental procedures and emergency response
- Community complaints mechanism for environmental concerns is in place
- Regular environmental inspections are scheduled and documented
- Environmental restoration fund/bond is in place (if required)
- Have a long-term environmental impact monitoring system
- Climate resilience measures are incorporated into operations
- Sustainable resource use practices are well documented
- Supplier code of conduct includes environmental requirements for suppliers
- Supplier environmental screening is conducted during qualification
- Suppliers are required to have valid EIA licenses (where applicable)
- Supplier environmental audits are included in the monitoring plan
- Deforestation risks are mapped and mitigated (particularly in the coffee, tea and timber sectors)
- Water pollution risks from suppliers are assessed
- Agricultural pesticide/chemical use are monitored
- Transport environmental impacts are considered (such as emissions and spills)
- Packaging sustainability is addressed

## CHECKLIST

### RELEVANT SECTION

## Section 3: Constitutional and policy foundations

### RELEVANT TOPIC

## Companies Act, 2015

### RELEVANT SUBTOPIC

## Company formation and registration

### My Checklist: Initial registration

Here are the minimum requirements as outlined in the Companies Act on initial registration for a company:

- Company is registered with Registrar of Companies (can be done online via eCitizen platform)
- Certificate of Incorporation has been obtained
- The type of company has been correctly designated (as private limited, public, branch, or subsidiary)
- Memorandum and Articles of Association have been filed
- Statement of capital and initial shareholdings has been filed (if a share capital company)
- Statement of proposed officers (directors and secretary) has been filed
- Registered office in Kenya has been designated
- Foreign company registration has been completed (if applicable - external company provisions)

### My Checklist: Minimum requirements to be met

Minimum requirements to be met as outlined in the Companies Act:

- At least ONE director who is a natural person (corporate directors are allowed, but must have at least one individual)
- At least ONE director must be a resident in Kenya - for foreign companies operating locally
- The director's minimum age is 18 years
- Directors are not disqualified through undischarged bankruptcy, or disqualified in foreign jurisdiction
- A company secretary has been appointed (mandatory only if paid-up capital exceeds KES 5 million)
- The registered office is maintained in Kenya at all times



## CHECKLIST

### **RELEVANT SECTION**

### **Section 3: Constitutional and policy foundations**

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### **RELEVANT TOPIC**

### **Companies Act, 2015**

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### **RELEVANT SUBTOPIC**

### **Directors' duties and liabilities**



## My Checklist: Statutory duties

**Here are the minimum requirements to be met on Statutory duties - Every director must:**

- Act in accordance with the company's constitution
- Act in good faith and in the best interests of the company
- Exercise powers only for proper purposes
- Exercise independent judgment (not fetter discretion)
- Exercise reasonable care, skill, and diligence
- Avoid conflicts of interest
- Not accept benefits from third parties
- Declare interest in proposed or existing transactions



## CHECKLIST

### RELEVANT SECTION

### Section 3: Constitutional and policy foundations

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### RELEVANT TOPIC

### Companies Act, 2015

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### RELEVANT SUBTOPIC

### Financial reporting and audits

## My Checklist: Financial statements

### Minimum requirements on financial statements as outlined in the Act:

- We file annual returns with the Registrar of Companies within 42 days of the Annual General Meeting (AGM) and includes:
  - Financial statements
  - List of directors and shareholders
  - Registered office
  - Company activities
- Annual financial statements are prepared in accordance with International Financial Reporting Standards (IFRS)
- Financial statements include:
  - Statement of financial position (balance sheet)
  - Statement of comprehensive income (profit and loss)
  - Statement of changes in equity
  - Statement of cash flows
  - Notes to financial statements
- Directors' report is prepared
- Financial statements are approved by the Board
- Financial statements are signed by at least one director

## My Checklist: Audit requirements

### Here are the minimum requirements on auditing as outlined in the companies act:

- Auditor is a member of Institute of Certified Public Accountants of Kenya (ICPAK)
- Auditor is independent of the company
- Auditor's eligibility is verified (not ineligible person)
- Auditor is appointed at the AGM
- Auditor's remuneration is approved by shareholders
- Auditor's report is obtained and included in financial statements
- Auditor resignation or removal is handled per the statutory procedures





## CHECKLIST

### **RELEVANT SECTION**

### **Section 3: Constitutional and policy foundations**

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### **RELEVANT TOPIC**

### **Companies Act, 2015**

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### **RELEVANT SUBTOPIC**

### **Non-financial reporting**

## **My Checklist: Non-financial reporting**

**Here are the minimum requirements to be met on Statutory duties - Every director must:**

- A Non-financial report is prepared addressing Section 26 matters
- Report covers:
  - Employee welfare and interests
  - Supplier and customer relationships
  - Community impacts of business operations
  - Environmental impacts of business operations
- Non-financial report is included in annual report or published separately
- Stakeholder engagement is documented
- Corporate social responsibility (CSR) activities are reported
- Compliance with Kenya's National Action Plan (NAP) on Business and Human Rights is considered in reporting





## CHECKLIST

### **RELEVANT SECTION**

### **Section 3: Constitutional and policy foundations**

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### **RELEVANT TOPIC**

### **Additional requirements for foreign companies**

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### **RELEVANT SUBTOPIC**

### **External company registration**

## **My Checklist: External company registration**

**Here are the minimum requirements to be met on Statutory duties - Every director must:**

- The external company registration is completed
- A local registered office has been designated
- An agent for service of process has been appointed in Kenya
- A certified copy of the constitution/incorporation documents has been filed
- The list of directors has been filed
- Annual returns have been filed (same as that of local companies)
- Any changes in home country status has been notified to Kenyan Registrar





## CHECKLIST

### RELEVANT SECTION

#### Section 3: Constitutional and policy foundations

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### RELEVANT TOPIC

#### Capital Markets Authority (CMA) and Listed Company Requirements

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### RELEVANT SUBTOPIC

#### Environment, Social and Governance (ESG)



## My Checklist: Environment, Social and Governance (ESG)

### Environmental:

- Carbon footprint and Green House Gas (GHG) emissions (Scope 1, 2, and 3 where feasible)
- Energy consumption and efficiency
- Water consumption and management
- Waste generation and management (including recycling rates)
- Biodiversity impacts
- Climate risks and opportunities
- Environmental compliance and incidents

### Social:

- Employee diversity and inclusion in terms of gender, disability and ethnicity
- Health and safety performance including injury rates, fatalities and safety training
- Training and capacity development hours
- Employee turnover and retention
- Community engagement and impact
- Human rights due diligence efforts
- Supply chain labour practices
- Customer satisfaction and product safety

### Governance:

- Board composition and diversity
- Board independence
- Director attendance
- Ethics and anti-corruption programs/ trainings
- Risk management effectiveness
- Stakeholder engagement processes
- Tax transparency
- Regulatory compliance



## CHECKLIST

### RELEVANT SECTION

### Section 3: Constitutional and policy foundations

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### RELEVANT TOPIC

### Capital Markets Authority (CMA) and Listed Company Requirements

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### RELEVANT SUBTOPIC

### ESG reporting frameworks



## My Checklist: ESG reporting frameworks

### ESG reporting is aligned with recognised frameworks including:

- Global Reporting Initiative (GRI) Standards
- Sustainability Accounting Standards Board (SASB) Standards
- Task Force on Climate-related Financial Disclosures (TCFD)
- Integrated Reporting Framework
- UN Global Compact principles
- The framework used is clearly stated in the sustainability report

### Assurance:

- ESG data accuracy is ensured through internal controls
- Third-party assurance is obtained (limited or reasonable) - best practice
- The assurance provider and scope is disclosed

### Publication:

- ESG/sustainability report is published as a standalone or integrated in the annual report
- Report is accessible on the company website
- Report is submitted to CMA (as required)
- Report is communicated to all stakeholders



## CHECKLIST

### RELEVANT SECTION

#### Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

#### Major requirements outlined in the Kenyan NAP on Business and Human Rights

### RELEVANT SUBTOPIC

#### Policy development and communication



## My Checklist: Policy development and communication

### Here are the NAP requirements on a human rights policy development:

- Have a written human rights policy statement that is approved by senior management/ Board (see template in the Annex section)
- Human rights policy has been developed through engagement with internal and external stakeholders.
- The human rights policy explicitly commits to respecting internationally recognised human rights
- Have the human rights policy publicly available on the website, the workplace, and shared with stakeholders
- The human rights policy references Kenya's Constitution Bill of Rights (Articles 41, 42, etc.)
- Human rights policy references UN Guiding Principles on Business and Human Rights
- Human rights policy references ILO Core Conventions
- Human rights policy covers all five NAP thematic areas: land, labour, revenue, environment, access to remedy
- The human rights policy addresses cross-cutting issues: gender, disability, indigenous peoples, and youth
- Human rights policy extends to business relationships including suppliers, contractors, and other business partners
- Human rights policy includes commitment to provide remedy for violations
- Human rights policy is translated into local languages where operations affect non-English speakers
- The human rights policy is regularly reviewed and updated (at least annually)

### Here are the NAP requirements on a communicating a human rights Policy:

- Have a written human rights policy statement that is approved by senior management/ Board (see template in the Annex section)
- Human rights policy has been developed through engagement with internal and external stakeholders.

- The human rights policy explicitly commits to respecting internationally recognised human rights
- Have the human rights policy publicly available on the website, the workplace, and shared with stakeholders
- The human rights policy references Kenya's Constitution Bill of Rights (Articles 41, 42, etc.)
- Human rights policy references UN Guiding Principles on Business and Human Rights
- Human rights policy references ILO Core Conventions
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## CHECKLIST

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Have a Human Rights Due Diligence (HRDD) process in place

### RELEVANT SUBTOPIC

## HRDD Phase 3: Take action to prevent and mitigate adverse impacts



## My Checklist: Taking action to prevent and mitigate adverse impacts on Land and natural resources, labour, Environment, and Revenue transparency

### Ways of taking action to prevent and mitigate adverse impacts on land and natural resources:

- Land acquisition follows the legal procedures as outlined in Land Act 2012
- Free, Prior, and Informed Consent (FPIC) is obtained from communities
- Fair compensation is provided in terms of replacement cost and not depreciated value
- A Resettlement Action Plan is developed and implemented (if displacement occurs)
- Livelihood restoration programs are established
- Community benefits from natural resource exploitation are defined and delivered
- Women's land rights are specifically protected
- Cultural and sacred sites are protected
- Water access for communities is maintained
- Community engagement should be ongoing and not just one-time consultation

### Ways of taking action to prevent and mitigate adverse impacts on labour:

- Fair wages are paid to workers where minimum wage is used as the floor and living wage as the goal
- Equal pay for equal work is enforced to ensure gender equity
- Working hours comply with law (max 52 hours/week)
- Overtime compensation is provided (1.5x rate)
- All statutory deductions are correctly calculated and remitted (PAYE, NSSF, SHIF, Housing Levy)
- Employment contracts are provided to all workers in written form within 60 days
- Casual employment is minimised and a regularisation pathway is provided
- Maternity leave is provided (3 months) and protected (no dismissal)
- Paternity leave is provided (2 weeks)
- Safe working conditions are maintained according to the OSH Act compliance (as explained in section 3 above)

- PPE is provided free of charge
- Safety training is conducted regularly
- OSH committee is established and functional (if 20+ employees)
- A safety officer is appointed and qualifications are verified. (See section 3 for safety officer requirements)
- Accidents are reported to DOSHS within required timeframes (see section 3 for reporting times)
- WIBA registration is current and premiums are paid (See section 3 on WIBA requirements)
- A sexual harassment policy is in place and enforced
- Gender-based violence prevention measures are implemented
- Non-discrimination policies are enforced including on gender, disability, HIV, ethnicity, and religion
- Freedom of association is respected and there is no anti-union discrimination
- Collective bargaining is in good faith (if unionised)
- Child labour is prohibited, and verification systems are in place
- No forced labour and indicators are monitored
- Migrant workers are protected - no passport retention and no excessive recruitment fees
- Adequate housing is provided (if applicable) where privacy, proper sanitation and safety are provided

### Ways of taking action to prevent and mitigate adverse impacts on the environment:

- A valid Environmental Impact Assessment license is obtained and conditions are implemented
- Have an operational Environmental Management Plan
- Annual environmental audits are conducted and submitted to NEMA
- Pollution prevention and control systems are functional
- Effluent treatment is operational and discharge standards are met
- Waste management system is effective (reduce, reuse, recycle)



## CHECKLIST

### RELEVANT SECTION

#### Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

#### Have a Human Rights Due Diligence (HRDD) process in place

### RELEVANT SUBTOPIC

#### HRDD Phase 3: Take action to prevent and mitigate adverse impacts



## Continued — My Checklist: Taking action to prevent and mitigate adverse impacts on Land and natural resources, labour, Environment, and Revenue transparency

- Air emissions are monitored and controlled
- Hazardous materials are properly managed including storage, labelling, have a Material Safety Data Sheet, and disposal
- Water conservation measures are implemented
- Use of energy is efficiency maximised
- Renewable energy is used where feasible
- Biodiversity protection measures are in place
- Climate change mitigation and adaptation measures are implemented
- Environmental incidents are prevented and response plans are ready
- Community environmental complaints are addressed promptly

### Ways of taking action to prevent and mitigate adverse impacts on revenue transparency:

- All taxes are fully paid and on time (corporate tax, Value Added Tax, Pay As You Earn, With Holding Tax, etc.)
- A tax compliance certificate is maintained
- Transfer pricing documentation is compliant
- No participation in tax evasion or illicit financial flows
- An anti-corruption policy is in place and enforced
- Conduct training on anti-bribery and conflict of interest
- Gifts and hospitality policy limits interactions with public officials
- Conduct due diligence on agents, brokers, and consultants
- No facilitation payments are made
- Beneficial ownership is disclosed (as required)
- Contracts are disclosed (where legally required or appropriate)
- Extractives revenue payments are disclosed (if applicable) or the join Extractives Industry Transparency Initiative (EITI)
- Financial reporting complies with International Financial Reporting Standards (IFRS)



## CHECKLIST

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Have a Human Rights Due Diligence (HRDD) process in place

### RELEVANT SUBTOPIC

## HRDD Phase 4: Ongoing monitoring and tracking



## My Checklist: Ongoing monitoring and tracking

### Ways of taking action to prevent and mitigate adverse impacts on land and natural resources:

- Human rights performance indicators are tracked regularly
- Monitoring data is disaggregated by gender and vulnerability
- Internal audits include human rights compliance
- Site inspections are conducted regularly
- On-going worker surveys are conducted, and they are confidential, safe, and in languages employees can understand.
- Community feedback is collected systematically
- Grievance data is tracked and analysed to check for trends
- Supplier compliance is monitored through audits, assessments
- Incidents are investigated and root causes are identified
- Corrective actions are implemented and verified
- Adopt a continuous improvement approach (see Box below on what is continuous improvement)
- Evaluate the effectiveness of mitigation measures

### What is continuous improvement?

Continuous improvement means establishing a management system that strengthens working conditions and responsible business practices over time. It involves regularly reviewing operations, identifying gaps, and implementing practical steps to respect worker dignity and maintain good standards. By fostering a culture of **ongoing improvement**, businesses can better support their workers' well-being while maintaining high operational standards. **Practically**, this means progressing from meeting basic expectations that include the provisions set out in local law to adopting international best practices. Where international standards are more comprehensive than national law, this Handbook incorporates both Kenyan constitutional provisions and the National Action Plan on Business and Human Rights.



## CHECKLIST

### RELEVANT SECTION

#### Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

#### Have a Human Rights Due Diligence (HRDD) process in place

### RELEVANT SUBTOPIC

#### HRDD Phase 5: Communication and reporting



## My Checklist: Communication and reporting

### Here are the NAP HRDD requirements on internal reporting:

- Share regular human rights reports to Board/senior management
- Discuss human rights performance in management meetings
- Lessons learned are shared across the whole organisation including with all business entities

### Here are the NAP HRDD requirements on external reporting (Public disclosure):

- An annual sustainability report is published and covers human rights performance
- Report covers all five NAP thematic areas
- Report includes actual impacts and mitigation measures
- Report describes all the activities done as per the HRDD process
- Report discloses stakeholder engagement that has been done
- Report presents grievances received and the remediation that has been provided
- Report is aligned with recognised frameworks such as GRI and the UN Guiding Principles Reporting Framework
- Report is accessible to affected stakeholders in terms of language and format
- Report is shared with Kenya National Commission on Human Rights (KNCHR)
- Report is shared with relevant government agencies

### Here are the NAP HRDD requirements on stakeholder communication:

- Regular updates are provided to workers through meetings and bulletins
- Community engagement meetings are held regularly
- There is transparency on human rights performance with business partners
- Response to civil society inquiries and concerns is provided
- Participation in multi-stakeholder initiatives and platforms



## CHECKLIST

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Have an operational grievance mechanism in place

### RELEVANT SUBTOPIC

## Grievance mechanism implementation



### PART 2: THE TOOLS

## My Checklist: Grievance mechanism implementation

### NAP requirements on policy and procedures for a grievance mechanism:

- We have written grievance policy
- Clear procedures are documented (how to file, investigation, resolution, appeal)
- The policy and procedures are communicated to all stakeholders (workers, community members, suppliers, consumers)
- We have a non-retaliation policy that is explicit and enforced

### NAP requirements on accessibility for a grievance mechanism:

- Multiple grievance channels are available (in-person, phone hotline, email, suggestion box, online portal, SMS)
- Anonymous reporting options are available
- Grievance channels are accessible to all including women, persons with disabilities, non-literate, and available in different languages)
- Information on how to file grievances is widely disseminated through posters, handbooks, level 1 morning meetings, community meetings)
- No cost to file a grievance
- Safe and confidential reporting is ensured

### NAP requirements on the scope for a grievance mechanism:

- Grievance channels are open to all stakeholders including workers, communities, suppliers, contractors, and others could be affected.
- Grievance mechanism covers all human rights issues (labour, environment, land, discrimination, etc.)
- Grievance mechanism handles individual and collective grievances
- Grievance mechanism allows third-party representatives (unions, CSOs) to file on behalf of affected persons

### NAP requirements on the processes for a grievance mechanism:

- We have a process in place that ensures that grievances are acknowledged promptly (e.g., within 48 hours)
- Grievances are assigned to appropriate personnel for investigation e.g. welfare officers or human resources team
- A thorough and impartial investigation on grievances is conducted
- All parties are given an opportunity to present their case
- Decisions that are made are based on evidence and human rights standards

- Timelines for resolution are communicated and adhered to
- Decisions are communicated to the grievant with reasoning
- We have an appeal mechanism available
- Records of all grievances are maintained in a confidential manner

### NAP requirements on the outcomes for a grievance mechanism:

- Appropriate remedies are provided including an apology, compensation, cessation, restitution, and non-repetition guarantee
- Systemic issues are adequately addressed through changes in policy and procedures.
- Lessons learned are integrated into operations
- Retaliation against grievant is prohibited and monitored

### NAP requirements on monitoring and reporting for a grievance mechanism:

- Data on grievances is tracked (number, type, source, resolution, time taken)
- Trends in grievances are analysed
- The effectiveness of the grievance mechanism is evaluated regularly
- Stakeholder feedback on the grievance mechanism is sought
- Improvements to the grievance mechanism are made based on feedback
- Statistics on grievance statistics are reported publicly in an anonymised form

### NAP requirements on an operational grievance mechanism coordination with other mechanisms:

- Workers are informed of judicial and administrative remedies available such as the labour court, DOSHS, etc.
- The grievance mechanism does not impede access to state-based remedies
- There is cooperation with government investigations/inspections
- There is referral to appropriate authorities for serious violations such as criminal matters, or regulatory violations.
- There is participation in industry-wide or multi-stakeholder grievance mechanisms where available



## CHECKLIST

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Have a process in place to manage business relationships responsibly

### RELEVANT SUBTOPIC

## Supplier and contract management



## My Checklist: Supplier and contract management

### NAP requirements on the selection of suppliers:

- There is a human rights criteria included in our supplier/contractor qualification
- Our pre-qualification assessments include human rights performance
- Suppliers who are considered high-risk are identified and prioritised for engagement

### NAP requirements on the provisions in contracts for suppliers:

- The supplier code of conduct includes human rights requirements (aligned with NAP themes). See template in Annex for an example of a supplier code of conduct
- Contracts include human rights clauses including in compliance requirements, audit rights, consequences of non-compliance.
- Expectations on are HRDD communicated clearly
- Payment terms support decent wages and working conditions such as no price

### NAP requirements on the capacity building of suppliers:

- We provide training to suppliers on human rights expectations
- We offer technical assistance to improve supplier practices
- Best practice examples from suppliers are shared in reports or forums
- We have adopted a joint problem-solving approach is

### NAP requirements on the monitoring of suppliers:

- We conduct regular supplier audits/assessments (announced and unannounced).
- Worker interviews are included in audits and confidentiality is maintained.
- Audit findings are shared with suppliers
- Corrective Action Plans (CAPs) are required for non-compliances.
- Implementation of CAPs is monitored and verified
- Performance is tracked over time

### NAP requirements on leverage on suppliers:

- Engagement is escalated for persistent violations by a supplier
- Termination is considered if violations are severe and the supplier is unwilling to improve
- A responsible exit strategy is in place if termination is necessary by considering impacts on workers

### NAP requirements on collaboration with other stakeholders:

- Participation in industry initiatives to address systemic issues. See section 6 for examples of industry bodies you can engage with
- Collaboration with other buyers sourcing from same suppliers
- Engagement with multi-stakeholder platforms including those that are sector specific



## CHECKLIST

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Conduct training and capacity building on responsible business conduct

### RELEVANT SUBTOPIC

## Internal and external training

## My Checklist: Internal and external training

### NAP requirements on conducting internal training:

- Board and senior management are trained on business and human rights and/or Kenyan NAP requirements
- All employees have received basic human rights awareness training
- Trainings for specific roles has been training provided (e.g., procurement on supplier due diligence, HR on labour rights, operations on environmental rights)
- Security personnel are trained on human rights and use of force

### NAP requirements on conducting external training:

- Suppliers and contractors are trained on expectations such as on the supplier code of conduct, and attached policies
- Community members are informed of their rights
- We participate in government capacity building initiatives (when invited)
- We share our expertise with industry peers and stakeholders





# The Tools ↘

# Templates





## TEMPLATE

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Human rights policy commitment

### DISCLAIMER:

This template is intended to serve as inspiration for SMEs wishing to start implementing HRDD. As such, it is neither a comprehensive compliance document nor does it constitute legal advice and must be tailored to reflect the specific legal obligations, operational realities and risk exposure of each individual company. The scope of this template is deliberately limited initially to the company's own employees since SMEs may have limited capacity. However, it includes a reference to a future commitment extending to suppliers and business partners.



### PART 2: THE TOOLS

## Human Rights Policy Commitment Template

At [Company Name], we are committed to operating our business with respect for the internationally recognised human rights of all individuals employed by us. This policy outlines our commitment to uphold internationally recognised human rights standards in relation to our own workforce and forms part of our broader dedication to ethical and responsible business practices. This Human Rights Policy is guided by our values and supports the principles outlined in our [Code of Conduct/ Employee Handbook]. It applies to all employees of [Company Name], across all roles and locations.

### 1. Our Commitment to Human Rights

At [Company Name], respect for human rights is fundamental to the way we do business. We respect and uphold all internationally recognised human rights of our employees in line with the principles of the following international frameworks:

- The Universal Declaration of Human Rights (UDHR),
- The International Labour Organization (ILO) Declaration on Fundamental Principles and
- Rights at Work,
- The United Nations Guiding Principles on Business and Human Rights (UNGPs),
- The OECD Guidelines for Multinational Enterprises,
- The ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy.

Consistent with the UNGPs, we acknowledge that national governments hold the primary duty to protect human rights, and non-state actors, including our Company, have a responsibility to respect them within, as applicable and appropriate, the parameters of applicable national law and consistent with this Policy Commitment.

The purpose of this policy is to define and facilitate consistency in how we address international recognised human rights by providing guidance to our employees and business partners on the extent of our responsibilities and commitments as well as our expectations from them.

This policy statement should be read in conjunction with any other associated policy and/or statement, [including our Supplier Code of Conduct and, as applicable, the Employee Handbook].

### 2. Compliance with Local Law

We comply with all applicable national and local laws and regulations related to labour and human rights. Where local laws differ from international human rights standards, we will comply with the law while seeking to uphold the underlying principles of internationally recognised human rights to the extent feasible within our context.

### 3. Key Areas of Focus

In line with the size and scope of our company, our commitment focuses on the following core areas relevant to our workforce:

- Fair and respectful treatment: We are committed to maintaining a workplace where all individuals are treated with dignity and respect, free from discrimination, harassment or abuse of any kind.
- Non-discrimination and equal opportunity: We provide equal employment opportunities based on merit and qualifications, regardless of race, gender, age, religion, disability, sexual orientation or other protected characteristics.
- Safe and healthy working conditions: We strive to provide a safe and healthy work environment and to meet or exceed all applicable occupational health and safety laws.
- Freedom of association: We respect our employees' rights to join or form trade unions and to engage in collective bargaining, where applicable and in accordance with applicable laws.
- Fair working hours and wages: We comply with local labour laws regarding working hours, minimum wage, overtime pay and leave entitlements.
- Prevention of forced and child labour: We do not tolerate any form of forced labour, human trafficking or child labour within our operations.

### 4. Implementation and Responsibilities

Responsibility for implementing this policy lies with [insert relevant role, e.g., the managing director, HR manager or compliance officer]. All managers and supervisors are expected to uphold the principles in this policy and to lead by example in fostering a respectful workplace culture.



## TEMPLATE

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Human rights policy commitment

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### PART 2: THE TOOLS

## Continued: Human Rights Policy Commitment Template

We encourage all employees to raise concerns about possible human rights abuses through [insert internal mechanism, e.g., an internal grievance procedure, designated contact point or confidential reporting process] without fear of retaliation.

### 5. Future Engagement with External Partners

As our business grows and evolves, we recognise that we may interact with suppliers, contractors or other business partners. In such cases, we will:

- Seek to understand and assess potential human rights risks in our external relationships, where relevant.
- Take steps to use our leverage, where it exists, to encourage respect for human rights by those we work with.
- Prioritise action in cases where we may be linked to severe human rights impacts through our products, services or operations.

While our direct influence may be limited, we will act responsibly and in good faith, and, where possible, collaborate with others to improve human rights outcomes in our business relationships.

### 6. Review and Commitment

We will review this policy periodically to ensure it remains appropriate for our business and aligned with evolving best practices and expectations. Updates will be communicated clearly to all employees.

**[Signed]**

**[Name]**

**[Date]**

**[Title – e.g., Managing Director or CEO]**



## TEMPLATE

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Supplier Code of Conduct Template

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### PART 2: THE TOOLS

## Supplier Code of Conduct Template

[Company] and its global affiliates and subsidiaries (collectively "[Company]") share common core values. We are committed to applying high standards of ethics and business conduct in every country in which we operate and within every business relationship we have worldwide. That includes our business relationships with our vendors and suppliers (collectively "suppliers").

We expect our suppliers to all conduct business activities within the guidelines of [Company]'s Supplier Code of Conduct at all times. These obligations are in addition to supplier obligations contained in [insert applicable agreements] with [Company]. This Supplier Code of Conduct is in no way intended to conflict with or modify the terms and conditions of any existing contract. In the event of a conflict, suppliers must first adhere to applicable laws and regulations, then the contract terms, followed by this Supplier Code of Conduct.

- I. **We expect our suppliers** to fully cooperate with our compliance requests and comply with their obligations under applicable law and otherwise. [Company] reserves all rights, by way of example, to cease any business relationship due to non-compliance with this Supplier Code of Conduct or [Company]'s Code of Conduct and to conduct any, in person or remote, investigation and/or audit to verify compliance with this Supplier Code of Conduct or [Company]'s Code of Conduct.
- II. **Compliance with laws:** We expect our suppliers to maintain full compliance with all laws and regulations applicable to their business.
- III. **Maintain accurate records:** We expect suppliers to create accurate and verifiable records and not alter any record entry to conceal or misrepresent the underlying transaction represented by it. All records, regardless of format, made or received as evidence of a business transaction must fully and accurately represent the transaction or event being documented. When a record is no longer needed to conduct current business, records should still be retained based on the applicable retention requirements.
- IV. **Ethical sourcing: We expect suppliers to comply with the non-exhaustive ethical sourcing items below:**
  - a.) Child labour: We expect our suppliers to ensure that

child labour is not used in the performance of their work. The term "child" refers to any person under the minimum legal age for employment under applicable law where the work is performed and, as applicable, the type of work being performed by the supplier.

- b.) Slavery, human trafficking and forced labour: We believe that any employment relationship should be voluntary, and the terms of employment must comply with applicable laws and regulations. We are therefore opposed to slavery, human trafficking and forced labour and are committed to complying with applicable laws prohibiting exploitation. We expect our suppliers to adhere to applicable law prohibiting slavery, human trafficking and forced labour and to comply with all applicable local laws in the country or countries in which they operate.

### V. Labour and employment practices

- a.) Harassment: We expect suppliers to ensure their employees are afforded an employment environment free of physical, psychological and verbal harassment or other abusive conduct consistent with any and all applicable law.
- b.) Non-discrimination: We expect suppliers to provide equal employment opportunity to employees and applicants for employment, without regard to race, ethnicity, religion, colour, sex, national origin, age, military veteran status, ancestry, sexual orientation, gender identity or expression, marital status, family structure, genetic information or mental or physical disability, consistent with any and all applicable law.
- c.) Freedom of Association: [Company] respects the principles of freedom of association and the right to effective collective bargaining in accordance with applicable law and practice.

### VI. Anti-corruption and antitrust

- a.) Anti-corruption laws: Suppliers must comply with the anti-corruption laws, directives and/or regulations that govern operations in the countries in which they do business. We require



## TEMPLATE

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Supplier Code of Conduct Template

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### PART 2: THE TOOLS

## Continued: Supplier Code of Conduct Template

our suppliers to refrain from offering or making any improper payments of money or anything of value to government officials, political parties, candidates for public office or other persons. This includes a prohibition on facilitating payments intended to expedite or secure performance of a routine governmental action, even in locations where such activity may not violate local law. Personal safety payments are permitted where there is an imminent threat to health or safety. We expect our suppliers to exert due diligence to prevent and detect corruption in all business arrangements, including partnerships, joint ventures, offset agreements and the hiring of consultants.

- b.) **Illegal payments:** Suppliers must not offer any illegal payments to, or receive any illegal payments from, any customer, supplier, their agents, representatives or others. The receipt, payment and/or promise of monies or anything of value, directly or indirectly, intended to exert undue influence or improper advantage is prohibited. This prohibition applies even in locations where such activity may not violate local law.
- c.) **Gifts/business courtesies:** We expect our suppliers to compete on the merits of their products and services. The exchange of business courtesies may not be used to gain an unfair competitive advantage. In any business relationship, our suppliers must ensure that the offering or receipt of any gift or business courtesy is permitted by law and regulation, that these exchanges do not violate the rules and standards of the recipient's organisation, is consistent with reasonable marketplace customs and practices and will not adversely impact the reputation of [Company].
- d.) **Fair Competition:** We expect suppliers to compete honestly and fairly, comply with applicable antitrust and competition laws and never participate in anti-competitive practices. Suppliers must not fix prices or rig bids with their competitors. They must not exchange current, recent or future pricing information with competitors.

**VII. Conflict of interest:** We expect our suppliers to avoid all conflicts of interest or situations giving the appearance

of a potential conflict of interest in their dealings with [Company]. We expect our suppliers to provide notification to all affected parties in the event that an actual or potential conflict of interest arise. This includes a conflict between the interests of [Company] and personal interests or those of close relatives, friends or associates.

### VIII. Information protection

- a.) **Confidential/proprietary information:** We expect our suppliers to properly handle sensitive information, including confidential, proprietary and personal information. Information should not be used for any purpose (e.g., advertisement, publicity and the like) other than the business purpose for which it was provided unless there is prior authorisation from the owner of the information.
- b.) **Intellectual property:** We expect our suppliers to respect and comply with all laws governing intellectual property rights assertions, including protection against disclosure, patents, copyrights and trademarks.
- c.) **Information security:** Suppliers must protect the confidential and proprietary information of others, including personal information, from unauthorised access, destruction, use, modification and disclosure, through appropriate physical and electronic security procedures. Suppliers must comply with all applicable data privacy laws. Suppliers shall assure extension of this requirement to all sub tier sources they employ.

**IX. Environment, health and safety:** We expect our suppliers to operate in a manner that actively manages risk, conserves natural resources and protects the environment. We expect our suppliers to apply environmental management system principles in order to establish a systematic approach to the management of risks, hazards and opportunities associated with the environment. That includes potential risks from regulatory non-compliance, reputational loss, and opportunities for business growth through operational and product stewardship. We expect our suppliers to comply with all applicable environmental, health



## TEMPLATE

### RELEVANT SECTION

## Section 4: Kenya's National Action Plan on Business and Human Rights

### RELEVANT TOPIC

## Supplier Code of Conduct Template

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### PART 2: THE TOOLS

## Continued: Supplier Code of Conduct Template

and safety laws, regulations, and directives<sup>33</sup>. Suppliers should protect the health, safety and welfare of their people, visitors and others who may be affected by their activities.

**X. Quality:** Suppliers must take due care to ensure their product meets [Company]'s quality standards. We expect our suppliers to have processes in place that ensure the delivery of a product whose quality meets or exceeds the contract requirements. Controls and processes that enable suppliers to identify defects and implement corrective actions must be in place.

### XI. Code expectations and violations

- a.) Suppliers shall take active steps, including audits and inspections, to ensure compliance with this Supplier Code of Conduct and applicable legal requirements. If a supplier identifies areas of non-compliance, the supplier agrees to notify [Company] of the non-compliance as well as its corrective actions, including a timeline.
- b.) Suppliers should report violations of this Supplier Code of Conduct or [Company]'s Code of Conduct via the following website: [insert link]
- c.) [Company] or its representatives may engage in monitoring activities to confirm the supplier's compliance with this Supplier Code of Conduct, including on-site inspections of facilities, use of questionnaires, surveys or report cards, review of publicly available information, or other measures necessary to assess the supplier's performance.
- d.) Whistleblower protection: We expect our suppliers to provide their employees with avenues for raising legal or ethical issues or concerns without fear of retaliation. We expect our suppliers to take action to prevent, detect and correct any retaliatory actions.
- e.) Consequences for violating the Supplier Code of Conduct: In the event of a violation of any of the above expectations, [Company] may pursue corrective action to remedy the situation. In the case of a violation of law or regulation, [Company] may be required to report those violations to the proper authorities. [Company] reserves the right to terminate its relationship with

any supplier under the terms of the existing procurement/purchasing contract.

- f.) Ethics policies: Commensurate with the size and nature of their business, we expect our suppliers to have management systems in place to support compliance with laws, regulations and the expectations related to or addressed expressly within this Supplier Code of Conduct. We expect our suppliers to implement their own written code of conduct and to flow down the principles in this Supplier Code of Conduct to the entities that furnish them with goods and services.



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