National Action Plan on Implementing the UN Guiding Principles on Human Rights (UNGPs).

The Kenya National Commission on Human Rights (KNCHR) is the National Human Rights Institution of Kenya. It is a constitutional body that meets the Paris Principles criteria and is currently an ‘A’ status human rights institution. Key among its mandates is the protection and promotion of human rights in the country and is the chief government advisor on matters of human rights especially in relation to international human rights instruments and obligations.

Whereas Kenya has one of the most progressive constitutions, with a comprehensive chapter on the bill of rights, the government has not demonstrated any advances to implementing the UN guiding principles on business and human rights. However, in keeping with its mandate, KNCHR wishes to engage in the process of implementing the principles. It is of note that the both the state and the non state actors have limited capacity to implement the same and hence there is need for building this capacity amongst all actors.

In this recognition, KNCHR has partnered with the Institute for Human Rights and Business (IHRB) in order to advance the concept (and practice) of human rights due diligence in business by applying the UN Guiding Principles on business and human rights. Though the partnership focuses on the oil and gas sub-sector, it gives a model of
approach to the wider business and human rights sector. This therefore forms the basis on which the NAP should be drawn.

As is right now, there is a lot of excitement and expectation in regard to the emerging fortunes in the extractive industry. However, extreme attention and expectation has been placed on oil and gas with little attention being paid to the impending dangers on human rights violations that will be occasioned by the activities leading to production of the oil and gas. It is for this reason that KNCHR and IHRB have partnered in order to pre-empt such violations by building proper strategies to prevent the violations.

KNCHR would propose an enhanced action plan based the 3 pillars of the UN Guiding Principles on business and Human Rights.

i. Advocacy with government to implement its duties to protect rights under the UN Guiding Principles and integrate relevant international corporate responsibility standards into new legislation. The priority interventions here would be,

   a) Review of laws and policies in order to entrench the UN guiding principles on business and human rights. For example the government must require and monitor that companies develop investment guidelines that are human rights compliant
b) Encourage the various sectors of the businesses to develop own guidelines relevant and applicable to their sectors.
c) Promote community consultation and engagement. Following the best practice of FPIC, it will be critical that the government adequately informs the communities of the intended explorations and exploitation of resources in their areas and also to discuss the implications of such activities. This will promote communities’ right to participate in decision making and enhance conflict free consent.
d) The state in anticipation of the third pillar of the UNGPs must develop mechanisms aimed at offering remedy where violations occur. This will include facilitating judicial processes and institutional capacity to handle matters that relate to business and human rights.
e) Facilitate international cooperation for addressing violations by multinationals.
f) The government should act as convenor between the various actors on the implementation process.

ii. Business-to-business learning by bringing them together to explore common challenges and good practice based on international standards, and sharing lessons from the wider East Africa region and beyond in order for them to meet their obligations to respect human rights. Key action points will include:
a) All companies operating or intending to operate in Kenya must develop clear policies that are human rights compliant with special emphasis on the UNGPs  
b) All companies must commit to respect human rights in their operations  
c) Companies should promote community engagement so as to acquire consent of the communities and subsequently acquire a social license to operate in their areas.  
d) Businesses should constantly evaluate their grievance and redress mechanisms to be in line with international standards and also be ready to offer remedy where violations have occurred.

iii. Civil society capacity-building with national human rights institutions (NHRIs) in East Africa and civil society actors around the application of the UN Guiding Principles and other international standards within the oil and gas sector.

a) Capacity building for KNCHR (NHRI), CSOs, CBOs and other community formations in order to raise awareness on the UNGIPs and to enhance community demand for implementation of UNGPs.  
b) Build capacity of the state to appreciate and apply the guiding principles in its policies and their operationalization, through human rights training
c) Monitoring observance of UNGPs and other business regulatory mechanisms by businesses and shadowing of government enforcement reports

d) Undertaking Public interest litigation in aid of communities affected by poor business practices.

e) Build capacities of communities to claim fair business practices from the businesses and the government to enforce statutory and international instruments on business and human rights.

KNCHR would further recommend that the government should require periodic reports from its line agencies on the implementation of the UN Guiding Principles on Business and Human Rights. This will ensure consistent compliance with the principles and other international mechanisms that promote human rights business. In line with international reporting mechanisms, it will be important for report on the UNGPs implementation and status to be included in the U*PR reporting process. This will help government to keep the eye on the implementation.