



PERMANENT MISSION OF THE REPUBLIC OF KENYA
TO THE UNITED NATIONS

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The Permanent Mission of the Republic of Kenya to the United Nations presents its compliments to the Chairperson, Working Group on Business and Human Rights of the Office of the United Nations High Commissioner for Human Rights and has the honour to refer to the latter's letter dated June 10, 2015 regarding the 2015 Forum on Business and Human Rights scheduled to be held from November 16-18, 2015 at the Palais des Nations, Geneva, and inviting States to provide information on policies and practices relating to specific aspects of the Guiding Principles on Business and Human Rights, specifically the roles and responsibilities of States as economic actors.

The Permanent Mission of Kenya hereby attaches the response from the Ministry of Devolution and Planning of the Republic of Kenya, to the questionnaire on the **Survey on the Implementation of the Guiding Principles on Business and Human Rights: The Role of the State as Economic Actors.**

The Permanent Mission of the Republic of Kenya to the United Nations avails itself of this opportunity to renew to the Chairperson, Working Group on Business and Human Rights of the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

New York, August 25, 2015



**Chairperson,
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SURVEY ON THE IMPLEMENTATION OF THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: THE ROLE OF THE STATE AS ECONOMIC ACTORS.

The Kenya government is committed to the implementation of the United Nations Guiding Principle (UNGPs). Chapter four of the Constitution of Kenya on Fundamental Human rights gives general provisions relating to the bill of rights, rights and fundamental freedoms, specific application of rights and formation of the Kenya National Human Rights and Equality commission whose mandate is to focus on human rights and business among others.

This role of business has also been recognized by the Government through Kenya Vision 2030 which commits to ensure that; a conducive environment for business is created, maintained and continuously improved.

The Kenya government also continues to ensure that international legal instruments ratified by Kenya, as well as the direct application of general rules of international law are enforceable in the local courts.

Policy and Legal Frameworks

Human rights implementation relies on standards and principles whether derived from international law, regional or national frameworks. The main reference for human rights and business is the Constitution of Kenya, 2010, various national laws including labor and environment laws and the UN Protect, Respect, Remedy Framework.

Article 59 (2) (c) of the Constitution, provides for promotion, protection and observance of human rights in public and private institutions. The Bill of Rights in Article 20 (1) states that 'the Bill of Rights applies to all and binds all State organs and persons; further it defines 'person' as including 'a company, association or other body of persons whether incorporated or unincorporated'. There is therefore a strong constitutional backdrop that underpins the call to business to think and act in ways that pay attention to their responsibility to respect human rights.

The government of Kenya has made a solid commitment to develop the National Action Plan (NAP) on business and Human Rights. This was made earlier in the year during the universal periodic review (UPR) meeting in Geneva.

The Kenya National Commission on Human Rights and the AG's office anticipate beginning preparations for NAP development by September this year. Initial contacts have been made with the department of Justice (the two institutions) are the lead agency.

Business enterprise owned or controlled by the state

There have been wide consultations on laws and policies under development regarding business; such as the Mining Bill, the Energy Bill and Policy and others. Though there is not explicit reference to the UN Guiding Principles on Business and Human Rights (UNGPs), the government's initiative to subject the development of such laws to wide consultative process is an indication of commitment to best practice.

The government through Ministry of Energy and Petroleum and the World Bank, is reviewing petroleum sector laws and engaging stakeholders at national and local levels to discuss how to share the revenues between the central government and resource-rich county authorities as well as with the investors.

Various studies have been done on various mega projects including LAPPSET, oil and gas exploration etc. that seeks to establish international legal and policy framework for best standards and practice in the implementation of such projects to ensure that communities are not adversely affected by human rights violations as the industry braces for takeoff; and Work to enhance community-company relations to ensure that projects are mutually beneficial.

The Nairobi Process: A Pact for Responsible Business is one of such initiatives developed by the Institute for Human Rights and Business (IHRB) in collaboration with the Kenya National Commission on Human Rights (KNCHR) which seeks to provide such support to companies and the Kenyan government to help ensure that a human rights approach is integrated into the activities of this fast growing sector. The initiative also seeks the involvement of local civil society organizations and is committed to building their capacity to apply the UN Guiding

Principles on Business and Human Rights and other relevant standards in their awareness-raising activities with host communities and in their advocacy work with government.

The NAP will be used as an authoritative tool to assist in the implementation of the UNGPs and hence its development will mark the State's commitment to subjecting business entities to human rights compliance.