



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS



MAINSTREAMING A HUMAN RIGHTS-BASED APPROACH FOR BUSINESSES IN KENYA

A TRAINERS GUIDE



About Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights (KNCHR) is a Constitutional Commission established by the Constitution of Kenya 2010, Article 59 (4) and operationalized through the Kenya National Commission on Human Rights Act CAP 70I. KNCHR is also guided by the 1993 United Nation's Paris Principles on National Human Rights Institutions (NHIRs). KNCHR is an accredited "A" Status.

Vision

A society that respects and upholds human rights and fundamental freedoms.

Mission

To protect and promote Human Rights and fundamental freedoms through policy, law and practice.

Motto

Haki Kwa Wote, Kila Wakati!

Core Values

Participation

Independence

Integrity

Inclusion

Accountability

MAINSTREAMING A HUMAN RIGHTS-BASED APPROACH FOR BUSINESSES IN KENYA

A TRAINERS GUIDE



© October 2025, Kenya National Commission on Human Rights (KNCHR)

ISBN: 978-9914-740-26-4

Except where otherwise noted, all original content in this document is licensed under a Creative Commons license. All users must attribute the contents of this document back to this report and refrain from suggesting that we endorse their use of the work. You are free to share this work as long as it is for non-commercial purposes.

To view a copy of this license, visit

<http://creativecommons.org/licenses/by-nc-nd/4.0/>

Published by:

Kenya National Commission on Human Rights

1st Floor, CVS Plaza, Lenana Road

P.O. Box 74359-00200

Nairobi, Kenya

Tel: 254-20-2717908 /2717256/2712664

Email: haki@knchr.org

Website: www.knchr.org

Printed in Kenya by: Twin Turret Ltd.

Design and Layout by: Studio Inferno Co. Ltd.

Financial Support: Royal Norwegian Embassy



KNCHR would appreciate receiving a copy of any materials in which information from this report is used.

ACKNOWLEDGEMENT

This curriculum has been a long journey of consultations and engagements by staff of the Kenya National Commission on Human Rights. In response to the KNCHR motto of *'human rights for all at all times'*, the teams sought to influence business practice in Kenya through the publishing of this curriculum that will offer insights and knowledge into the nexus between business and human rights. This curriculum will be a great agent of change for the business arena in Kenya, a win for both business and the stakeholders they serve.

We acknowledge James Mwenda - Assistant Director and Christina Arrumm - Senior Human Rights Officer, ECOSOC Division for the leadership in programming of business and human rights at KNCHR and in the development of this Trainer's Guide.

We thank various members of staff at KNCHR from different departments whose expertise went a long way in drafting the content of this curriculum. We acknowledge Bildad Mulanda, Hassan Abdi Omar, Veronica Mwangi, Brian Kituyi, Clement Kemboi, Lynette Manga, Noreen Wewa, Ruth Mwangangi, and Kathambi Gichunge. Additionally, we acknowledge the team that reviewed the document comprising of Patrick Bonyonte, Bildad Mulanda, Hassan Abdi Omar, Dr. Amos Wanyoike, Lynesther Mureu, Stephen Otieno and Jude Boy.

We also thank Ms. Lynette Otworu from the Kenya School of Government for her insights on curriculum development.

Special thanks to the CEO and Commission Secretary- Dr. Benard Mogesa, (PhD) and the Director, Research, Advocacy and Outreach Directorate - Ms. Anne Marie Okutoyi for the strategic guidance and leadership which has been key to the success of this project. Finally, special thanks to Commissioner, Dr. Dennis Wamalwa (PhD) for the leadership at the policy level, which has provided important guidance and support.

We express gratitude to the Royal Norwegian Embassy for the continued support in the Commission's work on business and human rights and specifically in the development of this Guide.

PREFACE

The Kenya National Commission on Human Rights is classified as an A status National Human Rights Institution (NHRI) by the accreditation committee of the Global Alliance for National Human Rights Institutions (GANHRI) as it meets the criteria set by the Paris Principles on the establishment of National Human Rights Institutions. From engaging the citizenry, to monitoring the government duty to protect human rights in Kenya, KNCHR seizes all opportunity to ensure Kenya becomes a human rights compliant state. The Commission's goal is to entrench human rights and fundamental freedoms in governance in order to uphold the dignity, freedom, and equality of all individuals.

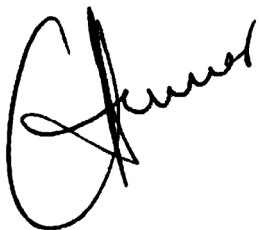
This curriculum on business and human rights has been necessitated by the need to continuously enhance knowledge and information sharing on business and human rights as the country continues to grow into an international and regional business hub. In recent years Kenya has seen significant increase in foreign investment and remarkable growth in the domestic private sector. While these trends may support economic and social development, they may have adverse human rights impacts such as community displacements, child labour, environmental degradation and deplorable working conditions.

Kenya has developed and adopted a National Action Plan (NAP) on Business and Human Rights to domesticate the UN Guiding Principles on Business and Human Rights (UNGPs). The NAP reflects the Government's commitment to its duty to protect human rights against abuses by businesses.

Focusing on five thematic issues namely: land and natural resources; labour rights; revenue transparency; environmental protection; and access to remedy, the NAP outlines concrete commitments by the Government to address adverse business-related human rights impacts. As a policy document, NAP does not create new human rights obligations but reinforces provisions under the Constitution and international human rights law.

The integration of a Human Rights-Based Approach (HRBA) into business operations also aligns with the Constitution, Kenya's Vision 2030, AU Agenda 2063, the Sustainable Development Goals (SDGs) among other key laws and policies.

The adoption and implementation of this curriculum will promote responsible and sustainable businesses that are compliant with human rights principles and standards.



Ms. Claris Ogangah

Chairperson

Kenya National Commission on Human Rights

FOREWORD

The Universal Declaration of Human Rights drafted in 1948 presents an ambitious vision for a world in which all human beings live in dignity and freedom. Further, the United Nations Guiding Principles on Business and Human Rights (UNGPs), launched in 2011, offer guidelines for companies to prevent, address and remedy human rights violations committed in business operations.

Yet despite important progress, there is still a long way to go before respect for human rights is truly universal. Businesses in every sector today are confronted with a variety of human rights issues that are intertwined with their core business objectives. These challenges can be pressing and complex for firms operating in a global economy where the cost of unmanaged human rights risks is high.

Whether it's tackling labour practices in manufacturing or agriculture, security in extractive sectors, decent work, non-discrimination or equal pay, businesses must build expertise to conduct effective human rights due diligence and institute appropriate response mechanisms to deal with identified challenges.

The *Curriculum on Business and Human Rights*, presents a timely and practical resource that strengthens the private sector's role in advancing respect for human rights and responsible business conduct in Kenya and across Africa. The curriculum provides a structured framework to help businesses, supply chains and other relevant entities to operationalize the UN Guiding Principles on Business and Human Rights, equipping them with tools to identify, prevent, and address human rights risks while fostering a culture of integrity, inclusion, and accountability.

Anchored within Kenya's National Action Plan on Business and Human Rights (NAP), developed through multi-stakeholder collaboration led by the Kenya National Commission on Human Rights and the Government of Kenya, the development of this curriculum exemplifies how collective action can drive national and global progress. Through our partnership in implementing the NAP, the Global Compact Network Kenya continues to support businesses in aligning policies and practices with national and global standards, reinforcing coherence between public and private accountability systems.

Through programmes such as the Business and Human Rights Accelerator and the Social Sustainability Impact Programme, we empower companies to embed human rights due diligence across their operations and value chains, proving that respect for human rights is not only a moral imperative but also a driver of resilience, innovation, and long-term business value.

We commend the Kenya National Commission on Human Rights and all partners for their leadership and collaboration in developing this curriculum. Together, we are building a future where business success and human dignity advance hand in hand.



Ms. Judy Njino

Executive Director

Global Compact Network Kenya

TABLE OF CONTENTS

ACKNOWLEDGEMENT	iii
PREFACE	iv
FOREWORD	v
ABBREVIATIONS AND ACRONYMS	viii
PART I: PROGRAMME OVERVIEW	1
DEFINITION OF TERMS	2
1. Trainer's Guide on Mainstreaming HRBA for Businesses in Kenya	3
2. Program Participants	3
3. Programme Goal, Aim and Objectives	4
4. Purpose of the Guide	4
5. Background and Rationale	4
6. Programme Structure	5
7. Users of the Trainer's Guide	6
8. Training Approach	6
9. Programme Assessment and Evaluation	7
PART II: MODULES	8
MODULE 1: INTRODUCTION TO BUSINESS AND HUMAN RIGHTS	9
1. Introduction	9
2. Module Description	10
3. Module Sessions	11
3.1 Session 1: Key concepts in human rights	11
3.2 Session 2: Historical evolution of human rights in business	13
3.3 Session 3: The nexus between business and human rights	15
3.4 Session 4: Misconceptions about business and human rights	17
3.5 Session 5: The role of KNCHR in promoting human rights in business.	19
MODULE 2: LEGAL AND POLICY FRAMEWORK GOVERNING BUSINESS AND HUMAN RIGHTS	20
1. Introduction	20
2. Module Description	21
3. Module Sessions	22
3.1 Session 1: International, regional and national frameworks on BHR.	22

MODULE 3: THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS	27
1. Introduction	27
2. Module Description	28
3. Module Sessions	29
3.1 Session 1: Introduction to the UNGP on Business and Human Rights	29
3.2 Session 2: State duty to protect human rights	31
3.3 Session 3: Corporate responsibility to respect human rights	34
3.4 Session 4: Access to remedy	36
MODULE 4: EMERGING TRENDS IN BUSINESS AND HUMAN RIGHTS	40
1. Introduction	40
2. Module Description	41
3. Module Sessions	42
3.1 Session 1: Emerging trends and crosscutting issues in business and human rights.	44
3.2 Session 2: Advocacy strategies for businesses towards human rights compliance	63
3.3 Session 3: Good practices for sustainable human rights integration in businesses	64
MODULE 5: INDICATORS FOR ASSESSING HUMAN RIGHTS COMPLIANCE IN BUSINESS	65
1. Introduction	65
2. Module Description	66
3. Module Sessions	67
3.1 Session 1: Human rights indicators for measuring compliance	67
3.2 Session 2: Application of Human Rights Indicators in Business	70
APPENDICES	74
Appendix 1: Children's Rights and Business Principles	74
Appendix 2: Business Case for Disability Inclusion	75
Appendix 3: Sample human rights checklist for businesses	76
Appendix 4: Sample lesson plan	77
REFERENCES AND RESOURCES	78

ABBREVIATIONS AND ACRONYMS

AI	Artificial Intelligence
BHR	Business and Human Rights
CoK	Constitution of Kenya
CSR	Corporate Social Responsibility
GANHRI	Global Alliance of National Human Rights Institutions
HRBA	Human Rights Based-Approach
HRDD	Human Rights Due Diligence
IDPs	Internally Displaced Persons
ILO	International Labour Organization
KNCHR	Kenya National Commission on Human Rights
mHRDD	Mandatory Human Rights Due Diligence
NHRI	National Human Rights Institution
NAP	National Action Plan on Business and Human rights
OECD	Organization for Economic Cooperation and Development
TNA	Training Needs Assessment
UDHR	Universal Declaration of Human Rights
UNG	United Nations Global Compact
UNGP	United Nations Guiding Principles on Business and Human Rights
VMMG	Vulnerable, Marginalized and Minority Groups

PART I

PROGRAMME OVERVIEW

DEFINITION OF TERMS

Adverse or negative business-related impact – Occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

Business enterprise – All businesses irrespective of size includes both state owned enterprises and private sector businesses.

Business relationships - Relationships a business enterprise has with business partners, entities in its value chain and any other non-State or State entity directly linked to its business operations, products or services.

Extraterritoriality in business – States application of national laws and domestic measures to regulate conduct of businesses outside of its national borders – domestic measures with extraterritorial implications.

Grievance mechanism - Any available platform where aggrieved persons or communities can lodge a complaint or report violations and seek remedy. In the context of business and human rights, this can be judicial or non-judicial in nature.

Human Rights Due Diligence - A risk management process conducted by a business enterprise to identify, prevent, mitigate and account for how they address their impacts on human rights.

Operational Level Grievance Mechanism - Grievance mechanisms established by business enterprises to address complaints or grievances from their stakeholders or clients.

Remediation/ Remedy - Refers to both the process of providing remedy for a negative human rights impact and the substantive outcomes that can counteract, or make good, the negative impact.

Stakeholder - Any individual who may affect or be affected by an organization's activities. An affected stakeholder refers here specifically to an individual whose human rights have been affected by an enterprise's operations, products or services.

Value Chain - A business enterprise's value chain encompasses the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either (a) supply products or services that contribute to the enterprise's own products or services, or (b) receive products or services from the enterprise.



1. Trainer's Guide on Mainstreaming HRBA for Businesses in Kenya

This guide titled: ***“Mainstreaming a Human Rights-Based Approach for Businesses in Kenya”*** operationalizes the Curriculum and outlines an in-depth programme that will empower participants with insights on business and human rights. It is designed to equip businesses, policymakers, and stakeholders with the knowledge and skills necessary to mainstream human rights principles into corporate strategies, policies, and day-to-day practices.

It is a tool to enhance corporate accountability, foster inclusive and ethical business environments, and promote sustainable economic growth.

Through structured learning modules, participants will be guided through sessions that will bring out the nexus between business and human rights, legal, policy and ethical frameworks in business and human rights, emerging trends in business and indicators for ensuring human rights compliance.

By implementing the learnings from this curriculum, businesses in Kenya will be better positioned to contribute to social justice, economic empowerment, and increased protection and respect for human rights in their operations.



2. Program Participants

The Curriculum can be used on the following target audiences:

- (a) Business enterprises;
- (b) Business investors;
- (c) Regulatory and industry bodies and associations;
- (d) Duty bearers such as law enforcement agencies and the judiciary,
- (e) Researchers;
- (f) Institutions of higher learning;
- (g) Human rights monitoring and compliance agencies and defenders and;
- (h) Any other stakeholder in the business sector.



3. Programme Goal, Aim and Objectives



Goal

To mainstream a Human Rights Based Approach in business practice in Kenya.



Programme Aim

To equip business enterprises with the knowledge, skills, and values necessary to incorporate human rights principles into business policies, operations, and decision-making processes to enhance responsible, ethical, and sustainable business practices.



Programme Objectives

Specifically, the programme will enable a participant to:

- (a) Explain the link between business and human rights;
- (b) Describe the international, regional and national legal and policy frameworks of business and human rights;
- (c) Examine the United Nations Guiding Principles on Business and Human Rights;
- (d) Analyse the emerging trends in business and the effects on human rights and;
- (e) Apply a checklist in monitoring human rights compliance by businesses.



4. Purpose of the Guide

The purpose of this guide is to provide practical direction to facilitators on the application of the modules covered in the Curriculum namely: Introduction to Business and Human Rights; Legal and policy frameworks in Business and Human Rights; The United Nations Guiding Principles on Business and Human Rights; Policy advocacy and emerging trends in Business and Human Rights; and Indicators for assessing human rights compliance by businesses.



5. Background and Rationale

Kenya's economic development aspirations, as set out in Vision 2030, and its commitment to the Sustainable Development Goals has seen rapid growth in foreign investment and the domestic private sector. However, this growth has also led to adverse impacts on human rights and environment by businesses. Adverse impacts include community displacements, child labour, environmental degradation, and poor working conditions.

These human rights risks not only undermine Kenya's international commitments but also threaten the sustainability of businesses, underscoring the urgent need for businesses to integrate a Human Rights-Based Approach (HRBA) into their operations.

The Government of Kenya, through the Office of the Attorney General and State Department of Justice and the Kenya National Commission on Human Rights developed a National Action Plan on Business and Human Rights (NAP), which domesticates the United Nations Guiding Principles on Business and Human Rights (UNGPs). Despite the adoption of the NAP, a gap persists in the capacity of businesses to link their operations with their human rights impacts. This awareness gap limits the capacity of business enterprises and their value chains to identify, prevent, and remedy human rights harms.

To address this gap, this trainer's guide is designed to build the capacity of business enterprises and their business relationships with the knowledge and tools to align corporate practices with human rights principles and standards. By equipping stakeholders with the skills to identify, prevent, mitigate and address human rights abuses, this programme promotes both local and global expectations for responsible business conduct, fostering an environment where economic progress, protection and respect for human rights in business are mutually reinforcing.



6. Programme Structure

Each module has a description, aim, unit objectives, sub-topics, instructions to facilitators and activities. Some of the modules have tables and figures that provide illustrations for better understanding of the concepts. At the end of the guide, references are provided for further reading.

The guide is divided into **5 modules**;

Module 1: Introduction to business and human rights

This module introduces participants to human rights, its nexus with businesses and the role of KNCHR in promoting human rights in business. It further examines misconceptions about business and human rights.

Module 2: Legal and policy frameworks in business and human rights

This module exposes participants to international, regional and national legal and policy frameworks on business and human rights. It introduces and explains the National Action Plan on Business and Human Rights.

Module 3: The United Nations guiding principles on business and human rights

The module focuses on the principles that operationalize the United Nations 'protect, respect and remedy' framework. It explains what steps the State should take to ensure the protection against human rights abuses by the businesses. It further expounds on measures that businesses should put in place to ensure they exercise the responsibility to respect human rights and remedies for victims of human rights infringements/abuses.

Module 4: Emerging trends in business and human rights

This module exposes participants to emerging trends, policy advocacy strategies and best practices in business and human rights.

Module 5: Indicators for assessing human rights compliance by businesses

This module introduces trainees to key indicators that businesses can adopt to measure compliance with human rights principles and standards.



7. Users of the Trainer's Guide

This manual is designed to guide facilitators in delivery of the Curriculum to business enterprises and their relevant stakeholders. It further gives practical aspects on how knowledge, skills and competencies in human rights based-approach can be mainstreamed in business practice.



8. Training Approach

This guide follows sequential order of modules and is to be delivered over a five-day training period but may be tailored to fit within the available time. Participants will be encouraged to work together; engage in productive discussions and network. The modules are designed to maximize available time on each day. The trainer(s) shall preview the guide ahead of the training to thoroughly understand the rationale, proposed methods, presentations and activities that will reinforce the learning points. Each Module has a list of major tasks and what the trainer should do to prepare prior to the training. Practice based scenarios, role plays and other strategies that promote interactive discussions are identified and encouraged for effective participation. The trainer(s) should consider the level and experience of participants in each cohort.

All participants should take the pre training evaluation test before training and the post-training evaluation at the end of the training. These are powerful tools that help to provide feedback and gauge training needs, as well as additional evidence for effectiveness of training. End of programme evaluation and planning tools will also be administered to measure impact after a specified period.



9. Programme Assessment and Evaluation

Formative and summative evaluations are encouraged. The following assessment tools are appendixes in the curriculum:

- (a) Participant pre-training needs assessment form;
- (b) Participant post-training form; and
- (c) Action planning template.

PART II

MODULES

MODULE 1

INTRODUCTION TO BUSINESS AND HUMAN RIGHTS

“Human rights are not only the concern of governments. All parts of society - including the private sector - have a role to play in upholding human dignity.”

~ Mary Robinson, UN High Commissioner for Human Rights, 1997 to 2002






1. Introduction



This module lays the groundwork for understanding the relationship between business and human rights. It introduces participants to the meaning and characteristics of human rights, explores their historical evolution in the business context, and addresses common misconceptions. The module also highlights the role of the Kenya National Commission on Human Rights (KNCHR) in advancing a Human Rights-Based Approach (HRBA) in the business sector.

2. Module Description



Element	Details
 Module Title	Introduction to Business and Human Rights
 Duration	2 Hrs
 Learning Objectives	<p>By the end of this module, the participant should be able to:</p> <ul style="list-style-type: none"> • Explain key concepts in human rights; • Describe developments in business and human rights; • Discuss the nexus between business and human rights; • Examine misconceptions about business and human rights; and • Analyse the role played by Kenya National Commission Human Rights in promoting human rights in business.
 Methodology	<p>The module will be delivered through the following approaches:</p> <ul style="list-style-type: none"> • Instructor-led lectures • Discussions (Group and plenary discussions) • Case studies • Experiential learning activities • Brainstorming • Multimedia Learning (videos, images, case clips)
 Resources Required	<p>The module will be supported by the following resources:</p> <ul style="list-style-type: none"> • Constitution of Kenya • Universal Declaration of Human Rights (UDHR) • A video on history of human rights https://www.youtube.com/watch?v=6XXGF_V8_7M&t=322s • KNCHR NAP website: https://bhr.knchr.org/ • Participants lived experiences

3. Module Sessions



This module consists of five sessions outlined below:

3.1 Session 1: Key concepts in human rights.

- *Defines human rights and its characteristics.*

3.2 Session 2: Historical evolution of human rights in business.

- *Gives key historical developments on business and human rights.*

3.3 Session 3: The nexus between business and human rights.

- *Explains the link between business and human rights.*


3.4 Session 4: Misconceptions about business and human rights.

- *Expounds on the mandate and functions of KNCHR in promoting respect for human rights by businesses in Kenya.*

3.1 Session 1: Key concepts in human rights



Note to the Trainer

- Introduce the session by leading a plenary discussion on
 - Definition human rights
 - The origin of human rights
- The trainer may play the video clip below on history of human rights to sum up the discussion;
 https://www.youtube.com/watch?v=6XXGF_V8_7M&t=322s
or scan here



- Link up the discussions with the concepts in this session.

Definition of human rights

Human rights are inherent, universal, and inalienable entitlements that all individuals possess simply by virtue of being human, regardless of their nationality, ethnicity, religion, or any other status.

Human rights characteristics and principles

Human rights characteristics comprise features that uniquely distinguish them i.e. universality, interdependence, indivisibility etc. while principles are the acceptable standards and norms of human rights practice e.g. (non-discrimination).

Human rights have the following main characteristics and principles:

- **Equality and Non-discrimination:** All human beings are equally entitled to human rights regardless of their race, ethnic origin, nationality, language, sex, religion, social status, age, political or other opinions, or any other distinction.
- **Universality:** Human rights are the 'birth right' of all human beings everywhere in the world and are internationally guaranteed.
- **Inherent/natural:** Human rights belong to persons simply because they are human beings. They are not granted by any person or authority.
- **Inalienability:** Human rights cannot be waived or taken away from a person except under very limited and defined circumstances allowed by law consistent with human rights obligations.
- **Indivisibility:** All human rights have equal status, and no human right is superior or has higher priority than the other. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education
- **Interrelated and interdependent:** All human rights are interrelated and interdependent. Enjoyment of one right facilitates enjoyment of another right. Violation of one's rights affects enjoyment of other rights. For example, denial of the right to education may affect enjoyment of the right to work while violation of the right to health may undermine the right to life.
- **Dignity:** Human rights focus on the inherent worthiness of a human being.

Human rights categories

Human rights include a broad range of universal entitlements that cover every aspect of human life and human interaction. They are grouped into the following three broad categories:

- **Civil and political rights:** Enable an individual to participate freely in the civic and political space of their society. The rights limit the ability of State to interfere with the freedoms and entitlements of the individual. These rights include the right to life; freedom from torture, access to justice, freedom from discrimination, right to equal protection of the law, right to privacy, right to vote, freedom of association, freedom of expression, freedom of movement and the right to fair trial.
- **Economic, social and cultural rights:** Enable individuals and communities to enjoy the basic social and economic conditions necessary for one to live a life of dignity, self-esteem and freedom. These rights include the right to health, the right to education, right to clean and safe water, right to food and right to adequate shelter, right to social security; right to fair remuneration, and freedom to form or join a trade union. Enjoyment of many of these rights require the State to take positive action including providing adequate resources to ensure realization of these rights, taking into account socio-economic status of the nation.
- **Group rights:** Are rights that one enjoys in community with others or rights that are specific to a particular group of persons. They include the right to a clean and healthy environment, the right to self-determination, right to land and natural resources, and the right to participate in cultural life of ones' community. Violation of group rights affect a large group of rights holders collectively and not necessarily as individual rights holders.

3.2 Session 2: Historical evolution of human rights in business

The relationship between business and human rights has evolved significantly over time, moving from a period of limited corporate accountability to a structured framework that promotes ethical business practices.

The case for human rights and business has been clearly demonstrated in the international human rights legal and policy framework but with no specific guidance on the relationship between the two. The Universal Declaration of Human Rights brings businesses into the human rights discourse by identifying them as specialized organs of society called upon to respect and observe human rights. The United Nations Guiding Principles on Business and Human Rights is the most authoritative and unanimously adopted guiding framework on business and human rights. Its three-pillar framework and the 31 guiding principles therein elaborate how States should exercise their duty to protect human rights, how businesses should exercise their responsibility to respect human rights and in case of any infractions, how both the State and business should ensure access to remedy for victims of human rights abuses /violations.

Table 1: Summary of key historical developments in business and human rights

Historical development	Description
Early industrialization and labour Rights 18 th – early 20 th C	<ul style="list-style-type: none"> • During the industrial revolution, businesses focused primarily on profit. • Issues such as child labour, poor working conditions, and exploitation were widespread. • Initial labour rights movements and trade unions emerged to advocate for fair wages and safer working environments.
Post-World War II era and the rise of Human Rights (1940s – 1970s)	<ul style="list-style-type: none"> • The adoption of the Universal Declaration of Human Rights (1948) laid the foundation for integrating human rights into business practices. • Labour rights gained prominence with the affiliation of the International Labour Organization (ILO) to the United Nations as a specialized agency. • The civil rights movement and anti-apartheid activism placed pressure on businesses to act ethically.
Corporate Social Responsibility (CSR) and Voluntary guidelines (1980s – 1990s)	<ul style="list-style-type: none"> • Companies began adopting Corporate Social Responsibility (CSR) initiatives, focusing on ethical labour practices, environmental responsibility, and community engagement. • The UN Global Compact (2000) encouraged businesses to align their strategies with human rights, labour, environment, and anti-corruption principles. • However, these efforts were largely voluntary and lacked enforceable accountability mechanisms.
The shift toward accountability – UN Guiding Principles (2000s – date)	<ul style="list-style-type: none"> • The United Nations Guiding Principles on Business and Human Rights (UNGPs, 2011) provide a structured framework for businesses to respect human rights through the Protect, Respect, and Remedy Framework. • Governments and organizations started adopting mandatory regulations, such as the UK Modern Slavery Act (2015) and the EU Corporate Sustainability Due Diligence Directive. • Companies are now expected to conduct human rights due diligence and integrate ethical supply chain practices.

3.3 Session 3: The nexus between business and human rights

The session explains the link between business and human rights.



Note to the Trainer

- (a) Introduce the session by probing the following from the participants:
 - (i) What is business?
 - (ii) What are the benefits of business to the society?
 - (iii) Can businesses be a cause of human rights violations and abuses?
- (b) Refer to Case Study 1 for further discussion on the linkage between business and human rights.
- (c) Summarize by discussing the link between business and human rights.
- (d) The class activity can be undertaken in plenary.

Case Study 1

The Rana Plaza Disaster

On 24 April 2013, the Rana Plaza building came crashing down, killing 1,134 people and leaving thousands more injured. People all across the world looked on in shock and horror as media reports poured in, revealing the true extent of the human toll. There were harrowing stories of survival, of people who had no choice but to amputate their own limbs in order to be freed from the rubble to survive.

On 23 April 2013, large structural cracks were discovered in the Rana Plaza building. The shops and the bank on the lower floors immediately closed. But warnings to avoid using the building after the cracks appeared, were ignored by the garment factory owners on the upper floors.

Garment workers were ordered to return to work the following day. Due to management pressure, on Wednesday 24 April, thousands of workers went to work again at their garment factories located in the cracked Rana Plaza building.

Only hours later the entire building collapsed. A total of 1,134 workers including rescue workers, were killed. Nearly 2600 workers were injured, many sustaining lifelong injuries. Many of the survivors had been trapped under tons of rubble and machinery for hours and even days before they could be rescued, sometimes only by amputating limbs.

This gruesome tragedy devastated the lives of thousands of workers and their families. Their sufferings were horrific and required immediate and long-term medical care and compensation.

Discussion questions

- (a) Identify human rights concerns from the above case study (probe for issues like unsafe working conditions, exploitation of workers, lack of corporate responsibility, weak government enforcement units etc.)
- (b) What lessons do we learn from the case study?

Conclusion

This case study demonstrates the direct link between business operations and human rights violations. It emphasizes the need for stronger regulations, corporate responsibility, and consumer awareness to ensure ethical business practices.

The linkage between business and human rights is an evolving landscape. While businesses are crucial for economic progress, they must also respect and protect human rights. The implementation of human rights frameworks, corporate accountability, and ethical business practices is essential in ensuring that businesses contribute positively to society.

Conclusion

This module has provided participants with a foundational understanding of the relationship between business and human rights. It clarified key concepts, traced the historical evolution of human rights in the business context, addressed common misconceptions, and highlighted the role of KNCHR in promoting a Human Rights-Based Approach. The discussions and case study have shown that while businesses can drive growth, they also carry the responsibility to respect and uphold human rights. Moving forward, the next module will build on this foundation by examining the legal and policy frameworks that guide and reinforce business and human rights practices at international, regional, and national levels.

3.4 Session 4: Misconceptions about business and human rights



Note to the Trainer

Commence the session by taking participants through the case scenario 1.

This session demystifies some of the misconceptions in business and human rights. Businesses often use terms such as corporate social responsibility, business ethics, corporate governance to demonstrate their respect for human rights under business and human rights. While all these concepts complement each other and refer to corporate obligations beyond simple compliance with domestic laws, they are voluntary or exercised at the discretion of a business. Human rights due diligence, which is the focus of business and human rights is anchored in law and creates an obligation on businesses to respect human rights.

Case Scenario 1

Misconceptions in business and human rights

A company donates funds to support a local school, ensures its board of directors includes independent members, and has a strict anti-bribery policy.

Discussion

- (a) From the above scenario which aspect relates to:
- (i) Corporate social responsibility
 - (ii) Corporate Governance, and
 - (iii) Ethics?
- (b) Explain your reasoning.

Conclusion

To build a sustainable, responsible, and ethical business, companies must integrate Corporate Governance, CSR, ESG, and Business and Human Rights (BHR) into one cohesive strategy. Doing good, avoiding harm, managing risk, and being accountable are all essential pillars of long-term success.

Business and Human Rights: the focus is on human rights due diligence which comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights.

Corporate Social Responsibility: a management concept whereby businesses integrate social and environmental concerns in their business operations and interactions with their stakeholders.

Business ethics: the application of ethical values to business behaviour. It is about discretionary decisions and behaviour guided by values relevant both to the conduct of individuals and to the conduct of the organisation as a whole. (Institute of Business Ethics)

Corporate Governance: the system of rules, practices and processes that are put in place to manage and control a company. Good corporate governance...fosters an environment of trust, transparency and accountability. It also helps align an organisation's purpose with the interests of society, building strong stakeholder relationships while effectively managing and maintaining its resources. (ISO 37000:2021)

Environmental Social and Governance (ESG) - is a framework used to assess an organization's business practices and performance on various sustainability and ethical issues. It also provides a way to measure business risks and opportunities in those areas. In capital markets, some investors use ESG criteria to evaluate companies and determine their investment plans, a practice known as ESG investing. Human rights issues are addressed under the social policy.

Table 2: Distinguishing Business and Human Rights from Related Concepts

	Misconception	Reality
Corporate Social Responsibility (CSR) and/ or Corporate Social Investment (CSI)	BHR is a form of CSR or CSI. By investing in social and community projects, a business is fulfilling its responsibility to respect human rights.	CSR is voluntary and philanthropic- a business chooses to do good. BHR calls for respect for human rights beyond voluntary commitments. It focuses on preventing harm in core business operations. CSI is a subset of CSR; it is project based while the latter is policy driven.
Business ethics	Ethical business practices automatically mean human rights compliance.	Business ethics cover broad moral principles (honesty, integrity), but BHR is a structured framework based on the UNGPs, requiring due diligence, accountability, and remediation of harm.
Corporate Governance	Good corporate governance ensures respect for human rights.	Businesses must integrate human rights due diligence into governance structures to enable them address human rights risks in operations and value chains.

	Misconception	Reality
Environmental, Social and Governance (ESG)	ESG incorporates human rights, so separate human rights policies are not needed.	Human rights are covered under social factors in ESG but focus is on metrics for investors rather than substantive human rights protections. It looks inwardly into risks to the business while BHR includes risks to communities outside of the business.

3.5 Session 5: The role of Kenya National Commission on Human Rights in promoting human rights in business



Note to the Trainer

- (a) In plenary probe participants to explain the role of the Commission.
- (b) Read Article 59 of the Constitution of Kenya and Section 8 of KNCHR Act, Cap 71.
- (c) Further, read the work of the Commission in relation to business and human rights.



Conclusion

KNCHR recognizes that business enterprises have immense power to influence policies which may result into violations of human rights. Even more common are abuses that arise directly from business conduct and operations. While states have the primary responsibility to promote, secure fulfilment of, respect, and protect human rights, business enterprises are required to respect those human rights recognized in international and national laws applicable in the countries within which they operate and which are within the limits of their operations and spheres of influence.

This obligation finds expression in our Constitution which states in Article 20 (1) that *‘the Bill of Rights applies to all and binds all State organs and persons; further in Article 260 it defines ‘person’ as including ‘a company, association or other body of persons whether incorporated or unincorporated’*. Furthermore, Article 59 (2) (c) of the Constitution, requires the KNCHR to promote the protection and observance of human rights in public and private institutions providing the grounding of its work on business and human rights.

MODULE 2

LEGAL AND POLICY FRAMEWORK GOVERNING BUSINESS AND HUMAN RIGHTS

“Law is order, and good law is good order.”

~ Aristotle (Greek philosopher and polymath)

1. Introduction



This module examines the international, regional, national, and county-level legal and policy frameworks that guide business and human rights. Participants will gain an understanding of the key instruments, standards, and laws that establish obligations for both governments and businesses. Particular attention is given to Kenya’s National Action Plan on Business and Human Rights, which provides a roadmap for implementing global standards in the local context.

2. Module Description



Element	Details
 Module Title	Legal and Policy Framework Governing Business and Human Rights
 Duration	2 Hrs
 Learning Objectives	<p>By the end of this module, the participant should be able to:</p> <ul style="list-style-type: none"> ● Describe international, regional, national and county legal frameworks governing business and human rights; ● Examine the National Action Plan on business and human rights and its contribution to business and human rights in Kenya.
 Methodology	<p>The module will be delivered through the following approaches:</p> <ul style="list-style-type: none"> ● Instructor-led lectures (Q&A format) ● Discussions (Group and plenary discussions) ● Experiential learning activities
 Resources Required	<p>The module will be supported by the following resources:</p> <ul style="list-style-type: none"> ● Constitution of Kenya ● The International Covenant on Economic, Social and Cultural Rights (International Bill of Rights) ● African Charter on Human and Peoples’ Rights (Regional) ● Employment Act (Acts of Parliament) ● United Nations Guiding Principles on Business and Human Rights ● National Action Plan on Business and Human Rights ● Participants ● Makueni County Trade and Investment Policy, 2021 ● The Taita Taveta County Mining Act, 2017 ● Busia County Trade Act

3. Module Sessions



This module consists of five sessions outlined below:

3.1 Session 1: International, regional and national frameworks on Business and Human Rights.

- *Highlights the frameworks on human rights in business.*

3.2 Session 2: Historical evolution of human rights in business.

- *Identifies the development process, the thematic areas, successes and challenges of implementing the NAP in Kenya.*

3.1 Session 1: International, regional and national frameworks on Business and Human Rights

International, regional and national frameworks on Business and Human Rights.



Note to the Trainer

- Begin the session by having participants work in pairs to name any legal frameworks they know that govern and regulate day to day business practices.
- Sample a few responses for plenary discussion.
- Guide the participants to categorize the frameworks as international, regional, or national. *(The notes provided in this session will offer guidance to the exercise.)*

There are several frameworks emphasizing respect for human rights that govern and regulate business operations in Kenya. The frameworks include international, regional and national laws and policies that Kenya has ratified, effectively making them part of Kenyan law.

International Instruments

International instruments include:

- **Universal Declaration of Human Rights (UDHR):** Establishes fundamental human rights that businesses must respect, including dignity, equality, and labour rights.
- **International Covenant on Civil and Political Rights (ICCPR) & International Covenant on Economic, Social and Cultural Rights (ICESCR):** Protect civil liberties, economic and social rights in business operations.
- **ILO Conventions (International Labour Organization):** Protect freedom of association, collective bargaining, and industrial relation, equality of opportunity and treatment, minimum wages and protection from forced labour and child labour.
- **UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** Promotes gender equality in business practices, employment, and economic empowerment.
- **UN Convention on the Rights of the Child (CRC):** Safeguards the best interest of the child and protects children from among others, exploitation in business environments, including child labour.
- **Paris Agreement:** Addresses businesses' role in combating climate change and environmental responsibility.

Others: Convention relating to the Status of Refugees, Convention on the Rights of Persons with Disabilities (CRPD).

Regional legal instruments

Regionally we have the following instruments:

- African Charter on Human and Peoples' Rights (ACHPR) (1981): Recognizes rights such as economic, social, and environmental rights affected by businesses.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol): Protects women's rights in economic activities and land ownership.

Others: African Charter on the Rights and Welfare of the Child, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, East Africa Community Common Market Protocol and policies such as African Union Agenda 2063: The Africa we want.

National laws and policies



Note to the Trainer

- (a) In groups (2-5) ask participants to:
 - (i) Identify articles of the Constitution that expressly relate to business operations.
 - (ii) Highlight how they are ensuring adherence to laws and policies governing business sector (tease out for compliance with the following Acts- Labour laws, Land, Environment and Property laws, Consumer protection and Data protection laws, Criminal laws, laws on special interest groups (women, children and persons with disabilities).
- (b) In plenary, probe participants to identify if they are aware of county legislations and policies that govern businesses. (Refer to Makueni County Trade and Investment Policy 2021, The Taita Taveta County Mining Act, 2017 and Busia County Trade Act as some of the County laws relating to business).
- (c) Probe for gaps, if any, in laws and policies governing business operations that need intervention or improvement and suggestions on how such gaps can be mitigated appropriately.

In Kenya, Chapter 4 of the Constitution and other national and county legislation place responsibility on businesses to respect the rights and fundamental freedoms of their employees, customers and communities throughout their supply chain. Key national laws may include:

- **Business laws:** Companies Act Cap. 486, Consumer Protection Act Cap. 501, Public Procurement and Asset Disposal Act Cap.412C.
- **Labour laws:** Employment Act Cap. 226, Labour Relations Act Cap. 233, Occupational Safety and Health Cap. 236A, Children Act Cap. 141, Sexual Offences Act Cap. 63A.
- **Land laws:** Land Act Cap. 280, Community Land Act Cap. 287, Land Registration Act Cap. 300.
- **Environmental laws:** Environmental Management and Coordination Act Cap. 387, Mining Act Cap. 306, Climate Change Act Cap.387A, Water Act Cap.372.

Other legislation such as: Data Protection Act Cap. 411C, Consumer Protection Act Cap. 501, Refugees Act Cap. 173.

When businesses integrate human rights approaches into their operations, it allows them to attract and retain employees, consumers, and investors. Businesses (micro, small, medium enterprise) have an obligation to respect human rights in their day-to-day undertakings. This can be done through embracing human rights due diligence to identify human rights risks, adopt measures to mitigate and or measures to redress where harm or violations occur as a result of their direct or indirect actions.

Soft laws

Soft law refers to rules, guidelines, principles, or declarations that are not legally binding but still influence behaviour and decision-making in international or domestic contexts. Soft law is often developed by international organizations, expert bodies, or governments and may later evolve into binding “hard law” through treaties, legislation, or customary practices.

Businesses also prescribe to voluntary principles and frameworks that govern their practices. Examples: United Nations Guiding Principles on Business and human rights, Sustainable Development Goals (SDGs), Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, Ten Principles of the United Nations Global Compact, International Organization for Standardization (ISO).

The National Action Plan on Business and Human Rights, Sessional Paper No. 3 of 2021

Development of the national action plan on human rights

The Government of Kenya, through the Office of the Attorney General and Department of Justice, in partnership with the Kenya National Commission on Human Rights (KNCHR) took lead in the development of the National Action Plan on Business and Human Rights. The NAP was approved by Cabinet in 2021 and adopted by the National Assembly in 2022 as Sessional Paper No.3 of 2021 and was officially launched in May 2023. It is a 5-year evolving plan outlining the Government’s commitment to address adverse business-related human rights impacts by providing a comprehensive policy strategy for protecting against human rights abuses by businesses, whether state-owned or private.

Thematic areas of the NAP

Kenya’s NAP focuses on five (5) thematic areas: Land and natural resources, Environmental protection, Revenue transparency, Labour and, Access to remedy. The thematic areas were identified during the national baseline assessment and regional stakeholder consultations. The disproportionate impact of businesses on gender and the rights of vulnerable, minority and marginalised groups is also taken into account in the NAP.

Policy actions

The policy statements and actions respond to the concerns raised under the identified thematic areas and seek to operationalise the United Nations Guiding Principles.

- (a) **State duty to protect:** Enforcing and strengthening legal, regulatory and administrative frameworks to protect against business-related human rights abuses through legal review and development of specific guidance for business.
- (b) **Corporate responsibility to respect:** Encouraging businesses to understand their responsibility to respect human rights and adopt human rights due diligence (HRDD) processes.
- (c) **Access to remedy:** Enhancing judicial and non-judicial mechanisms to ensure victims/ communities can seek redress for business-related human rights violations.

MODULE 3

THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

“The UN Guiding Principles have become the global authoritative standard, providing a blueprint for governments and businesses to prevent and address human rights abuses”

~ **Ban Ki-moon, UN Forum on Business and Human Rights, 2014**






1. Introduction



This module focuses on the United Nations Guiding Principles on Business and Human Rights (UNGPs), the global standard for responsible business conduct. It explores the three pillars of the framework: the state duty to protect, the corporate responsibility to respect, and access to effective remedy. Through this module, participants will develop a practical understanding of how these principles can be applied to real-world business contexts in Kenya and beyond.

2. Module Description



Element	Details
 Module Title	The United Nations Guiding Principles On Business And Human Rights
 Duration	6 Hrs
 Learning Objectives	<p>By the end of this module, the participant should be able to:</p> <ul style="list-style-type: none"> ● Explain the three UNGP pillars on business and human rights; ● Discuss the State duty to protect human rights; ● Demonstrate the corporate responsibility to respect human rights; and ● Examine access to remedy for business violations and abuses.
 Methodology	<p>The module will be delivered through the following approaches:</p> <ul style="list-style-type: none"> ● Instructor-led lectures (Q&A format) ● Discussions (Group and plenary discussions) ● Experiential learning (Role play activities, learning by doing through guided practice) ● Multimedia Learning (videos, images, case clips) ● Case studies ● Problem-Based Learning (PBL) (an experiential, inquiry-driven approach)
 Resources Required	<p>The module will be supported by the following resources:</p> <ul style="list-style-type: none"> ● UNGPs ● UDHR ● ILO Declaration on Fundamental Principles and Rights at Work. ● Constitution of Kenya. ● Employment and Labour Relations laws in Kenya. ● Infographics on remedy pathways.

3. Module Sessions



This module consists of five sessions outlined below:

3.1 Session 1: Introduction to the United Nations Guiding Principles on Business and Human Rights.

- *Introduces trainees to the United Nations Guiding Principles on Business and Human Rights and brief history on their development.*

3.2 Session 2: State duty to protect human rights.

- *Breaks down the elements in State's duty to protect human rights.*

3.3 Session 3: Corporate responsibility to respect human right.

- *Addresses itself to the corporate responsibility to respect human rights by businesses.*

3.4 Session 4: Access to remedy.

- *Explores access to remedy as a key pillar in business and human rights.*

3.1 Session 1: Introduction to the United Nations Guiding Principles on Business and Human Rights



Note to the Trainer

- (a) The trainer to introduce the session by giving a brief history on the development of UNGPs, this may be followed by screening the short video below on UNGPs

 https://www.youtube.com/watch?v=42LdWz174wg#path=/_blank



- (b) From the video probe for the following in plenary:

- The pillars of UNGPs and
- Why the pillars are important in business practice

Introduction

The UNGPs were developed under the leadership of the UN Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises and other business enterprises -Professor John Ruggie.

The United Nations Guiding Principles on Business and Human Rights are grounded in recognition of:

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

Case Scenario 2

Plenary Discussions

A big multinational corporation has set up operations in your locality. The community has expressed concerns about non-involvement in its setting up and hence there is fear that human rights abuses may occur.

Discussion Question

Discuss the possible steps that the government should take to ensure it protects human rights.

NB: Probe further on the HRBA principles to be upheld.

3.2 Session 2: State duty to protect human rights



Note to the Trainer

Class Activity: A demonstration to depict the nexus between state duty to protect and business responsibility to respect human rights.

Materials required for the demonstration

- Two role cards: State and Business
- Scenario case study – A national mining company accused of water pollution and child labour in Taita Taveta County
- Two flip charts labelled “Protect” and “Respect”
- Marker pens and sticky notes

Steps for the activity

Introduction

- Briefly explain the State’s duty to protect human rights (through laws, policies, and enforcement).
- Explain the business responsibility to respect human rights (e.g. through human rights due diligence).
- Highlight the nexus: States provide the legal framework, while businesses ensure compliance and ethical practice.

Role-playing scenario

- Case: A national mining company accused of water pollution and child labour in Taita Taveta County.
- Divide participants: Half represent the State; the other half represent the Business.
- Each group writes down on sticky notes what actions they would take to address the human rights issue based on their role.
- The State group places their sticky notes under the “Protect” poster (e.g., enforcing labour laws, conducting investigations, imposing penalties).
- The Business group places their sticky notes under the “Respect” poster (e.g., improving working conditions, implementing human rights due diligence).

Reflection

- Compare the responsibilities of each group.
- Discuss what happens when one side fails (e.g., weak state enforcement leads to business impunity).
- Emphasize that both must work together to ensure remedy for victims and the prevention of future abuse.

Conclusion

This demonstration makes it apparent that human rights protection in business operations requires both state action and corporate responsibility. While States set and enforce the rules, businesses must integrate human rights into their operations.

Unpacking the State duty to protect

The State must protect against human rights abuses within its territory and/or jurisdiction by businesses. It must take appropriate steps to prevent, investigate, punish and redress human rights abuses through effective policies, legislation, regulations and adjudication. It must also clearly set out the expectation that all business enterprises domiciled in their territory and/or jurisdiction to respect human rights throughout their operations.

In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate, require business enterprises to communicate how they address their human rights impacts.

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from the State such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

- (a) States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for business enterprises to provide services that may impact upon the enjoyment of human rights.
- (b) States should promote respect for human rights by business enterprises with which they conduct commercial transactions.
- (c) The risk of gross human rights abuses is heightened in conflict-affected areas and therefore States should ensure that business enterprises operating in those contexts are not involved with such abuses, including by:
 - (i) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;

- (ii) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
 - (iii) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
 - (iv) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.
- (d) States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.
- (e) States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.
- (f) States, when acting as members of multilateral institutions that deal with business-related issues, should:
- (i) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
 - (ii) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuses by business enterprises, including through technical assistance, capacity-building and awareness-raising;
 - (iii) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

Case Scenario 3

Discussion Question

Plenary Discussion

A company has approached the Government of Kenya to set up a lead processing plant in Pwani village. The government is considering granting the license to operate without consulting any stakeholders.

Discuss the failure of the government on its duty to protect

NB: Link the discussion with human rights principles and standards)

3.3 Session 3: Corporate responsibility to respect human rights



Note to the Trainer

Start the session by requesting each participant to:

- Define human rights risks and
- Identify those that could be encountered in their operations.

NB: This can be done individually and then a few can read out to the class.

The responsibility to respect human rights

Business enterprises should respect human rights, meaning they should avoid infringing on the human rights of others and when they cause or are involved in adverse impacts, they should address them. The rights referred to are those internationally recognised human rights, as expressed in the international bill of rights and the ILO Declaration on Fundamental Principles and Rights at Work.

- (a) The responsibility to respect human rights applies to all business enterprises regardless of their size, sector, operational context, ownership and structure. However, the scale and complexity of the business to realise that responsibility may vary according to the factors and the severity of the adverse impacts.
- (b) To meet their responsibility to respect human rights, businesses should have in place policies and processes appropriate to their size and circumstances. These include:
 - (i) Policy Commitment, to respect human rights which is approved at the highest level, is informed by relevant internal and external expertise; be publicly communicated and the policy is reflected in its operational policies and has procedures necessary to embed it throughout the business enterprise.
 - (ii) A Human Rights Due Diligence Process to identify, prevent, mitigate and account for how they address their impacts and human rights.
 - (iii) Processes to enable remediation of any adverse human rights impacts they cause or to which they contribute.
- (c) Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse.
- (d) Business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.

Reporting for businesses

- (a) Business enterprises should prepare non-financial reports and are encouraged to proactively disclose their impacts on human rights and the mitigation measures they are taking in this regard.
- (b) Formal reporting by enterprises is especially expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts.
- (c) The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights.

Remediation for businesses

Where business enterprises identify that they have **caused** or **contributed** to adverse human rights impacts, they should provide for or cooperate in their remediation through legitimate processes. Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent. Where a business enterprise identifies such a situation, whether through its human rights' due diligence process or other means, its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors.

Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so. Some situations, in particular where crimes are alleged, typically will require cooperation with judicial mechanisms.

Issues of context:

- While particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate.
- Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.

Case Scenario 4

The activity can be done in groups or in plenary

A multi-national Corporation has approached the Republic of Tumaini and requested for a license to carry out carbon trading in an indigenous people's forest. The government has directed the company to study the legal framework and conditions upon which the license would be issued. The government has also asked the business to uphold its responsibility to respect human rights.

- Discuss the possible steps the business enterprise will undertake to meet this responsibility to respect human rights. (probe for HRBA principles in the case studies)
- What are the likely scenarios if the business does not observe this responsibility?

3.4 Session 4: Access to remedy



Note to the Trainer

Class Activity: What does remedy look like?

Materials required

- Flipcharts, Sticky notes and Marker pens.
- Project or print out the case scenario: Mopani Company PLC has been prospecting for Gold in Dhahabu County. During its prospecting, the company used mercury and cyanide to extract gold and released the mercury tailings into the river. Residents of a community downstream who rely on the river for water for domestic use are increasingly suffering health issues including skin irritations. They have also lost their domestic animals after they drunk from the river. After investigations by the government chemist, the specimen extracted from the carcasses showed high levels of mercury and cyanide. The community has approached the company for remedy but the company has ignored them refusing to engage. The village elders have reported the residents' concerns to the national environment authority but no action has been taken.

Steps for the activity

- To introduce participants to Pillar 3- Access to remedy.
- Ask participants to discuss the questions in groups of 3-5, writing down their responses on sticky notes
- Invite each group to present their feedback
- As they share, note common responses on a board or flipchart. Categorize remedies that are state based judicial and non-judicial and those that are non-state based.

Note to the Trainer (CONT.)

Discussion questions

1. What are the likely mechanisms available to address the community's issues?
2. What should remedy look like for the affected individuals/ communities?
3. What kinds of barriers might victims face in seeking remedy?

Conclusion

Conclude by defining remedy, identifying the different forms of remedy, the barriers to accessing remedy, the available mechanisms and what is the criteria for an effective non-judicial mechanism.

Access to effective remedy

Access to remedy emphasizes that states must take appropriate steps to ensure that when human rights abuses occur within their jurisdiction, those affected have access to effective remedies. This principle is rooted in the acknowledgment that remedies are a cornerstone of justice and accountability. States are required to provide a combination of judicial, administrative, legislative, and other mechanisms to address grievances. The principle also recognizes that remedies should be accessible, affordable, timely, and effective in addressing the harm suffered.

- **State-based judicial mechanisms:** These are a primary avenue for victims to seek redress for business-related human rights abuses. These mechanisms include courts and tribunals that operate within a state's legal framework. States have a duty to ensure that their judicial systems are independent, impartial, and capable of addressing human rights claims effectively. This includes removing barriers such as high costs, procedural complexities, or inadequate legal representation that may hinder access to justice.

Additionally, states must ensure that their legal systems allow for the adjudication of claims against businesses operating within their jurisdiction, including multinational corporations. This may involve addressing issues such as extraterritorial jurisdiction and corporate liability to ensure that victims can seek remedies for harms caused by businesses operating across borders.

- **State-based non-judicial mechanisms:** In addition to judicial mechanisms, states are encouraged to establish non-judicial mechanisms to complement the formal court system. These mechanisms may include National Human Rights Institutions, labour tribunals, consumer protection agencies, and other administrative bodies capable of addressing grievances. State-based non-judicial mechanisms can often provide faster and more flexible resolutions than judicial processes.

To be effective, these mechanisms must be independent, transparent, and fair. They should also be adequately resourced and accessible to all individuals, including marginalized groups who may face additional barriers in seeking remedies. States are

further encouraged to ensure that these mechanisms are aligned with international human rights standards and provide enforceable outcomes.

- **Non-state based grievance mechanisms:** Non-state-based grievance mechanisms play a complementary role in providing access to remedy. These mechanisms may be established by businesses themselves (e.g., operational-level grievance mechanisms), industry associations, or multi-stakeholder initiatives. They are particularly valuable in addressing disputes at an early stage and preventing escalation.

The **UNGPs outline specific effectiveness criteria** for non-judicial grievance mechanisms to ensure they provide meaningful access to remedy. They should be:

- Legitimate:** Mechanisms must be trusted by stakeholders and operate independently from undue influence.
- Accessible:** Mechanisms should be known to all stakeholders and accessible without barriers related to language, cost, or geography.
- Predictable:** Mechanisms must provide clear procedures, timelines, and outcomes.
- Equitable:** Mechanisms must ensure that all parties have access to information and support necessary for fair participation.
- Transparent:** Processes and outcomes should be transparent while respecting confidentiality where necessary.
- Rights-compatible:** Outcomes must align with internationally recognized human rights standards.
- A source of continuous learning:** Mechanisms should incorporate feedback and adapt to improve their effectiveness over time.
- Based on engagement and dialogue:** Stakeholders should be consulted in the design and operation of grievance mechanisms to ensure they meet the needs of affected parties.

NOTE: By adhering to these criteria, non-judicial grievance mechanisms can serve as effective tools for resolving disputes and providing remedies in a manner that respects human rights.

Businesses are encouraged to pro-actively establish grievance mechanisms that are accessible to individuals and communities affected by their operations. Such mechanisms should provide a forum for dialogue and resolution without requiring victims to resort to formal legal proceedings. Importantly: Non-state-based grievance mechanisms should not replace or undermine state-based mechanisms but rather serve as an additional layer of recourse.

A case for effective operational-level grievance mechanisms

Case Study 2

The Kakuzi PLC Case

In 2020, Kakuzi PLC faced serious allegations of human rights violations, including accusations of killings, rape, violent attacks, and unlawful detentions by its security guards. These allegations led to legal action in the United Kingdom against Kakuzi's parent company, Camellia PLC, by 85 individuals claiming abuses between 2009 and 2020.

The controversy garnered significant attention, prompting major UK supermarket chains such as Tesco, Sainsbury's, and Lidl to suspend avocado supplies from Kakuzi due to the abuse claims. In February 2021, Camellia PLC settled the case for £4.6 million, covering compensation, legal costs, and funding for community schemes. However, the company did not issue an apology.

In response to these allegations, Kakuzi implemented measures to enhance its human rights compliance including:

1. Establishment of Operational-Level Grievance Mechanism - The Company established a grievance mechanism benchmarked against the UN Guiding Principles on Business and Human Rights, providing multiple avenues for employees and the community to raise concerns.
2. Constitution of an Independent Human Rights Advisory Committee (IHRAC) - In August 2021, Kakuzi became the first corporate organization in Sub-Saharan Africa to constitute an IHRAC, chaired by Kenya's former Attorney General, Prof. Githu Muigai. This committee offers independent oversight and guidance on human rights matters.

Discussion questions

1. What could the company have done to help it prevent or mitigate the adverse impacts?
2. Identify the grievance mechanisms the communities relied on in this case study.
3. What lessons do we learn from the case study?

Conclusion

This case underscores the critical need for businesses to proactively establish or participate in effective operational-level grievance mechanisms to support the identification of adverse human rights impacts as a part of an enterprise's ongoing HRDD and for early remediation of grievances by the business, once identified. This not only helps to safeguard a business enterprise's reputation but also to maintain stakeholder trust.

MODULE 4

EMERGING TRENDS IN BUSINESS AND HUMAN RIGHTS

“There are few if any internationally recognised rights business cannot impact – or be perceived to impact – in some manner. Therefore, companies should consider all such rights”

**~ Professor John Ruggie (UN Secretary-General’s
Special Representative on Business and Human
Rights)**

1. Introduction



This module introduces participants to emerging and cross-cutting issues that are shaping the field of business and human rights. It highlights challenges and opportunities in areas such as gender equality, climate change, digital transformation, and environmental sustainability. The discussions will help participants understand how businesses must adapt their practices to respond to evolving human rights concerns and stakeholder expectations.

2. Module Description



Element	Details
 Module Title	Emerging Trends in Business And Human Rights
 Duration	4 Hrs
 Learning Objectives	By the end of this module, the participant should be able to: <ul style="list-style-type: none"> ● Discuss the emerging trends in businesses and their effect on human rights; ● Examine advocacy strategies in human rights compliance; and ● Explore best practices for sustainable human rights integration for businesses in Kenya.
 Methodology	The module will be delivered through the following approaches: <ul style="list-style-type: none"> ● Instructor-led lectures (Q&A format) ● Discussions (Group and plenary discussions) ● Experiential learning ● Brainstorming ● Multimedia Learning (videos, images, case clips)
 Resources Required	The module will be supported by the following resources: <ul style="list-style-type: none"> ● UNGPs ● NAP-BHR ● How Can Businesses Impact Human Rights? https://www.ungpreporting.org/resources/how-businesses-impact-human-rights/ ● Human Rights Translated: A Business Reference Guide (OHCHR) ● 6 Ways Companies Can Integrate Human Rights (UNDP) ● The Corporate Responsibility to Respect Human Right: An Interpretive Guide (OHCHR) ● Corporate Human Rights Benchmark for Kenyan Companies (KNCHR/ DIHR) ● European Union Regulations - Corporate Sustainability Due Diligence Directive (CSDDD), Corporate Sustainability Reporting Directive (CSRD), and the Taxonomy Regulation

- UN Treaty on Business and Human Rights (in the consideration stage)
- Children's Rights and Business Principles (UNICEF)
- Business and Human Rights in the Digital Environment
- Good Business: The Economic Case for Protecting Human Rights (UNDP)
- A Guide for Business: How to Develop a Human Rights Policy (OHCHR)
- Human Rights and Business Advocacy video https://www.youtube.com/watch?v=McaE4_ivM-Q

3. Module Sessions



This module consists of five sessions outlined below:

3.1 Session 1: Emerging trends and crosscutting issues in Business and human rights.

- *Explores some of the emerging trends that impact on business and human rights.*

3.2 Session 2: Advocacy strategies for businesses towards human rights compliance.

- *Provides an overview of advocacy strategies that businesses can employ as they seek to conform to human rights principles and standards.*

3.3 Session 3: Good practices for sustainable human rights integration in businesses.

- *Seeks to help businesses to identify measures that are geared towards integration of human rights principles and standards into their supply chains.*



Note to the Trainer

Introduce the session with the learning activity below designed to help participants identify and reflect on how emerging trends and cross-cutting issues in business and human rights are interconnected, and how they affect various stakeholders.

Materials needed

- Stakeholder role cards (prepared in advance - typed or handwritten)
- Rope or string
- Flipchart or whiteboard

Instructions

(a) Setting the context

Begin with a brief introduction

In today's world, the business and human rights topography is depicted by complex and interconnected trends such as climate change, artificial intelligence, among others. These issues don't exist in singular - they impact and overlap with one another. This activity will help explore that interconnectedness.

(b) Role assignment

Give each participant below a stakeholder role:

- A factory worker in Kwetu Flour Mills
- A multinational tech CEO
- An indigenous community leader
- A government business inspection officer
- A human rights advocate
- A climate change activist
- A journalist covering corporate misconduct

Each participant to briefly reflect on what human rights concerns matter to their stakeholder and what trends are likely to affect them. For example, a human rights advocate will be concerned about job losses with the introduction of AI.

(c) Building the interconnection

To help participants visualize how different stakeholders are interlinked within the business and human rights ecosystem, facilitate the following experiential exercise:

- Ask participants to form a circle.

Note to the Trainer (CONT.)

- Start with one stakeholder and ask... “Who else in this circle is impacted by or connected to your stakeholder’s concerns?” For example, the indigenous community leader’s concern is connected to the human rights advocate, government business inspector etc.
- When a connection is made, the facilitator joins the hands of the two participants.
- Continue until many connections are made, creating a “web” of overlapping interests and issues.

(d) Discussion/debrief**Discussion questions**

- What does this web tell us about the complexity of business and human rights today?
- Which issues appeared in multiple connections?
- Why is it important to consider crosscutting issues in business and human rights work?
- Any other take away from the activity.

Conclusion

From the exercise it is obvious that business and human rights issues do not occur in isolation. Understanding the emerging trends means seeing the full picture where different stakeholders, issues, and sectors intersect.

This session will help explore those intersections and discuss how best businesses can adopt change while still respecting human rights.

3.1 Session 1: Emerging trends and crosscutting issues in business and human rights

This session highlights some of the emerging trends in business and human rights. It also identifies some crosscutting issues that businesses must mainstream in their operations, policies and product design, service delivery, supply chains and reporting for holistic realization of human rights. Some of these crosscutting issues address how business enterprises take cognizance of the rights of vulnerable and special interest groups that are often disproportionately impacted by business operations.

Table 3: Emerging Trends, Human Rights Dimensions, and Affected Groups in Business and Human Rights

Emerging Trend/ Cross Cutting Issues	Human Rights Dimension	Groups Most Affected (Special interest groups)	Business Implications / Response Strategies
Climate Change and Environmental Sustainability	Right to health, food, water, and a clean environment	Rural communities, women, children, indigenous peoples	Adopt environmental due diligence, reduce emissions, and report on sustainability impacts.
Digital Transformation and Data Protection	Right to privacy, access to information, and freedom of expression	Youth, consumers, journalists, persons with disabilities	Develop transparent data protection policies, ensure digital accessibility, and prevent surveillance abuse.
Gender Equality and Inclusion	Right to equality and non-discrimination	Women, gender minorities, persons with disabilities	Mainstream gender policies, ensure equal pay and participation, prevent workplace harassment.
Labour Rights and Decent Work	Right to fair wages, safe working conditions, and collective bargaining	Low-income workers, migrant labourers, persons with disabilities, youth	Implement fair labour practices, conduct supply-chain audits, and uphold occupational safety.
Corporate Governance and Accountability	Right to remedy, participation, and access to information	Local communities, employees, shareholders, civil society	Strengthen transparency, stakeholder engagement, and ethical governance frameworks.
Conflict Sensitivity and Humanitarian Contexts	Rights to life, dignity, and security	Displaced persons, women, children, and local communities	Apply “do no harm” policies, conduct conflict-sensitive due diligence, and support peacebuilding efforts.
Indigenous Peoples and Land Rights	Right to land, culture, and self-determination	Indigenous communities, pastoralists, women	Apply Free, Prior and Informed Consent (FPIC), respect traditional land use, and ensure equitable benefit sharing.
Youth Employment and Future of Work	Right to education, skills development, and decent work	Youth, persons with disabilities, rural populations	Promote skills training, fair internship programmes, and access to decent jobs.

Trends in business and human rights

(a) The future of human rights due diligence/ smart mix of measures

The UNGPs call on States to adopt a “smart mix” of measures - a combination of voluntary and mandatory measures, both at the national and international level, to foster business respect for human rights. There is a noticeable shift from voluntary to binding obligations with States developing new legislation and frameworks calling for mandatory human rights due diligence (mHRDD). This would require businesses to identify, prevent or mitigate and address adverse impacts of their activities on human rights and the environment across their value chains. These mandatory laws create a legally binding obligation on businesses as well as a civil liability and enforcement mechanism. The UNGPs advise that businesses (micro, small and medium enterprises) need to employ approaches that are proportional to among others, their size and the severity of human rights risks posed by their operations.

Legal developments

1. France, Germany and Netherlands have passed laws that call for certain elements of HRDD by companies and their supply chains. (France's Corporate Duty of Vigilance Law and the Netherlands' Child Labour Due Diligence Law)
2. The European Union has introduced regulations aimed at fostering respect for human rights by business and financial institutions. The Corporate Sustainability Due Diligence Directive (CSDDD), EU Deforestation Regulations (EUDR) and Corporate Sustainability Reporting Directive (CSRD) create due diligence and reporting obligations on the impact of companies on people and planet. They apply to EU companies, their subsidiaries and business partners in its *“chains of activities”*. Kenyan businesses that export must therefore build their internal HRDD processes to avoid losing EU market access.
3. There is ongoing negotiation for a UN Treaty on Business and Human Rights. It is expected to be a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. Similar negotiations are being held regionally to have an AU Policy Framework on BHR.
4. One of the policy actions in Kenya's NAP-BHR is that the Government introduces a requirement for conducting Human Rights due diligence before approval of licences/permits to businesses. This could see a review of various legislations governing business conduct in Kenya, to embed the obligations for businesses to undertake comprehensive human rights due diligence.

(b) Technology and human rights

The world continues to witness emerging technological innovations such as Artificial Intelligence (AI), machine learning and algorithms deployed by businesses to enhance efficiency, personalize customer services, and enhance market presence among others.

Technology plays a twin role of enhancing the potential of businesses to provide goods and services in an efficient manner but also risks infringing on human rights by deploying tools that exacerbate discrimination, violation of the right to privacy and freedom of expression among others, particularly in the context of data collection, surveillance and algorithmic bias.

The opportunities and challenges presented by emerging technologies demand a proactive approach to ensure that cutting edge innovations by businesses does not come at the expense of human dignity. This is important to ensure businesses deploy technological innovations to serve humanity rather than undermine it. For instance, businesses should conduct human rights due diligence to identify and mitigate potential human rights risks associated with their digital operations/footprints.

(c) Climate change in business and human rights

The intersection of human rights and climate change has become a paramount concern as the planet contends with unprecedented environmental shifts. The escalating impacts of climate change, including rising temperatures and sea-levels, extreme weather events and ecosystem disruptions, have far-reaching implications for the enjoyment of human rights. The vulnerable and marginalized populations often find themselves disproportionately exposed to climate-related risks.

Carbon trading

In the recent past, there has been rapid growth and demand in carbon trading, also referred to as emissions trading to reduce greenhouse gas emissions. This allows entities to purchase or sell carbon credits; driven by regulatory frameworks, or voluntary markets grounded in the principles of the Kyoto Protocol and the Paris Agreement, which highlight the need for innovative approaches to combat climate change.

In the global space, carbon trading has presented successes and challenges. Developed economies have shown measurable reductions in emissions through market mechanisms. However, developing economies like Kenya, continue to struggle due to a number of factors such as limitation in policy frameworks, inadequate technical capacity and capacities in engaging local communities.

Case Study 3

The Northern Rangeland Trust (NRT)

The Northern Rangelands Trust (NRT), has come out to engage in carbon trading initiative through Northern Kenya Rangelands Carbon Project (NKRCP). NKRCP facilitates activities on the ground, managing reporting for carbon credit verification, and selling carbon credits generated by the project on behalf of the participating conservancies.

However, the initiative is confronted with challenges such as disputes over land access and tenure, project methodology, access to information, inadequate public participation, revenue sharing, data accuracy, conflict between the NRT and local communities and, lack of accountability and transparency.

While it is the responsibility of both public and private actors to respect human rights, business enterprises have an obligation to prevent and address negative effects of their activities on the environment as part of their due diligence process. Due diligence should be holistic and extended to business supply chains so as to guarantee deployment of mitigation measures on actual and potential risks that would have worsened the effects of climate change.

Business enterprises should understand the impact of their operations and account for their emission's footprint, including both organizational and product-level impacts. In addition, they need to develop and implement comprehensive climate strategies and action plans to achieve their emission reduction goal. Notably, businesses play a crucial role in climate action by reducing their own emissions, developing sustainable supply chains, and innovating with green technologies. Moreover, they have a responsibility to raise awareness among employees, customers, and other stakeholders, and to work with governments and other organizations to address climate change concerns.

(d) Extra-territoriality in business and human rights

There is an emerging debate on whether it is appropriate for a State to extend its legal powers beyond its national territorial boundaries in order to combat breaches of human rights committed by businesses. There are incidences where a State allows transnational corporations and businesses to incorporate under their legal frameworks, but do not regulate the actions of such businesses outside of their jurisdiction (in host States/countries). It is worth noting that where extraterritorial activities of such businesses have significant human rights impacts in host States, a lack of enforceable human rights standards hampers the capability of victims of business-related human rights violations to obtain remediation.

The UNGPs provide that States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

Strong policy reasons have emerged for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation. States are likely to experience an increase in legal actions against business enterprises for transboundary harm.

Case Study 4

The Ground breaking Shell case (Ref: oil pollution in Nigeria)

(A case for domestic legal accountability for global human rights harms)

In 2008, four Nigerian farmers, together with Milieudefensie, filed a suit against the headquarters of Shell in The Netherlands. They sought to address the impact of oil pollution in three villages - Oruma, Goi and Ikot Ada Udo in the Niger Delta in Nigeria. The oil spills occurred between 2004 and 2007. The claim was based on duty of care under Dutch civil law.

In January 2021 (15 years later), the Dutch Court of Appeal held Shell Nigeria liable for damage caused by the oil spills. Royal Dutch Shell was held to owe a duty of care to affected villagers and liable for a failure to prevent future oil spills. It was ordered to pay compensation to the farmers and to install a leak warning system.

For the first time in history, a corporate headquarters was held responsible for the actions of their subsidiary in another country. Shell resisted the claim for many years, arguing from their headquarters in the Netherlands that the case should be heard in a Nigerian court. The Dutch Court did not agree.

(Source: Friends of the Earth Netherlands; Business & Human Rights Resource Center)

This case is among several others that affirm that a parent company headquartered in another jurisdiction can be held legally accountable for its entire value chain, wherever it operates.

(e) Prisons as business enterprises

The question of whether inmates should be paid for engaging in work during their sentences is a complex and highly debated issue. On one hand, compensating inmates for their labour can be seen as a step toward fairness and rehabilitation, while on the other hand, it raises questions about the purpose of incarceration and the ethics of prison labour.

Prison Industries in Kenya operate as a state-owned enterprise embedded within the country's correctional system. It serves two primary purposes: providing inmates with work opportunities as part of their rehabilitation and generating commercial revenue (Chapter 3, Prisons Standing Orders, 1979) for the prison system. While this initiative has the potential to contribute positively to the reintegration of inmates into society and to the financial sustainability of the prison system, it raises significant concerns when evaluated against the three pillars of the UNGPs.

Reports received by the Kenya National Commission on Human Rights (KNCHR) about injuries sustained by inmates without compensation highlight a critical gap in safeguarding the physical well-being of workers within the system. These deficiencies reflect a neglect of the state's responsibility to create and enforce policies that protect inmates from exploitation and harm.

State duty to protect prisons: The Kenyan government, as the primary duty-bearer under international human rights law, has an obligation to protect inmates from human rights abuses, including those that occur within state-owned enterprises like Prison Industries. However, the lack of payment to inmates for their labour despite provisions for an earning scheme under prison rules, violates their right to fair remuneration. This oversight suggests a failure by the State to uphold its duty to protect the economic and labour rights of inmates. Additionally, the absence of clear regulations governing working conditions and safety protocols further underscores this failure.

Corporate responsibility to respect: As a state-owned enterprise, Prison Industries is equally bound by its responsibility to respect human rights. This means ensuring that its operations do not infringe upon the rights of inmates and that it aligns its practices with internationally recognized labour standards. The fact that inmates are not compensated for their labour raises questions about forced labour and exploitation. While prison labour can be part of rehabilitation, failing to provide remuneration reduces it to an exploitative practice that undermines human dignity. Furthermore, the lack of safeguards for workplace injuries and the absence of mechanisms for addressing grievances reflect a disregard for basic human rights principles.

Prison Industries must take proactive measures to ensure that its operations respect the rights of inmates. This includes paying fair wages, establishing clear safety protocols, and providing avenues for inmates to voice concerns without fear of reprisal.

Access to remedy: The third pillar of the UNGPs emphasizes the importance of providing effective remedies for individuals whose rights have been violated. In the context of Prison Industries in Kenya, there appears to be no structured mechanism for inmates to seek redress for grievances related to unpaid wages, unsafe working conditions, or injuries sustained on duty.

The absence of compensation for work-related injuries is particularly troubling, as it denies inmates a fundamental form of remedy. Without access to justice or compensation mechanisms, inmates are left vulnerable and without recourse, further perpetuating cycles of abuse and neglect within the prison system.

Aligning prison industries with the United Nations Guiding Principles

To align Prison Industries with the UNGPs and uphold the human rights of inmates, several steps should be taken:

- (i) Implement and enforce the earning scheme outlined in prison rules, ensuring that inmates are fairly compensated for their labour.
- (j) Establish clear guidelines on workplace safety and health standards within prisons. Regular inspections should be conducted to ensure compliance.
- (k) Create a framework for compensating inmates who sustain injuries while on duty, including access to medical care and financial support.
- (l) Develop accessible and transparent grievance mechanisms that allow inmates to report abuses or violations without fear of retaliation.
- (m) Capacity building for prison staff on human rights principles and labour standards to ensure that they understand their responsibilities under both domestic laws and international frameworks.

While Prison Industries in Kenya has the potential to contribute positively to inmate rehabilitation and economic self-sufficiency, its current practices fall short when measured against the pillars of the UNGPs. There is need for concerted effort by both the Kenyan government and prison authorities to prioritize the human rights of inmates and align their operations with international standards. By doing so, Prison Industries can be transformed into a model that not only generates revenue but also upholds human dignity and justice.

Crosscutting issues in business and human rights

Globally and nationally, human rights frameworks recognise the vulnerability of special interest groups such as; children, persons with disabilities, women, migrant workers, indigenous communities among others and places the responsibility upon the State and businesses to put in measures to promote and protect their rights. Therefore, businesses are expected to conduct due diligence to demonstrate how they effectively consider issues affecting the vulnerable and special interest groups, identify potential challenges arising from the impact of their activities and measures to mitigate violations.

Pillar 2 of the UNGPs, obligates businesses to undertake due diligence in their daily operations and conducts of their supply chains to ensure that none engages in practices that result to child rights abuses such as child labour or any form of exploitation. Businesses should ensure that their business models, facilities and operations are child friendly, disability and gender sensitive to ensure safe, non-violent, inclusive and effective work environment.

SDG Target 8.7, calls upon states to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and eliminate the worst forms of child labour.

(a) Children

Integrating the promotion and protection of children's rights into business operations is both a moral imperative and a strategic approach that aligns with global human rights standards. The UNGPs provide a foundational framework for this integration, emphasizing the State's duty and business responsibility to protect children from the adverse impacts of business operations.

Building upon the UNGPs, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has conducted in-depth studies to contextualize these principles within the African landscape. The Committee's "Study on Children's Rights and Business in Africa" examines the impact of business practices on children's rights, highlighting both challenges and opportunities unique to the continent particularly in agriculture, fishing, extractives industry and energy, pharmaceutical industry, transport, telecommunications, tourism sector among others.

Strategies to effectively integrate children's rights into business practice

Business enterprises to:

- (a) Adopt the Children's Rights and Business Principles and periodically report on compliance efforts. Businesses should recognize that "the best interests of the child" is fundamental to children's rights and should therefore explicitly and comprehensively integrate children's rights into their conduct.

- (b) Prohibit the employment of underage children, either as direct employees or in the supply chain.
- (c) Integrate robust Human Rights Impact Assessments (HRIAs) and Human Rights Due Diligence (HRDD) into their business practice to prevent, mitigate, and remedy the human rights impact associated with their operations and supply chains as it affects children's rights.
- (d) Consider children's rights in Environmental, Social and Governance (ESG) assessments to inform investment decision-making, as well as in stewardship activities to improve the children's rights performance of their investee companies.
- (e) Conduct adequate training and periodic capacity development programmes within the organization. Senior management must be adequately equipped with sufficient information on children's rights, BHR principles and should provide mechanisms for monitoring compliance in line with human rights standards. Additionally, promote operational wide awareness programmes for employees, staff, supply chains, and third parties associated with the business, on children, BHR, sustainable practices and labour rights in host communities.
- (f) Adopt a rights-based approach in implementing children's rights and business principles, especially those in the high-risk sectors.
- (g) Establish operational level grievance mechanisms that are accessible to children and provide adequate remedies for those impacted by their activities including compensation, and continuous engagement.
- (h) Provide accurate data and reporting mechanisms on causes and impact of business activities on children's rights. Identification of business risks to children across value chains should be a conventional and systemic part of business impacts assessment and sustainability reporting.
- (i) Develop and communicate to both suppliers and the general public a supply chain policy for products emanating from conflict-affected zones. This policy must indicate that child labour has not been employed.
- (j) Develop human rights policies, codes of conduct, and sustainability plans anchored on children's rights and business principles and provide indicators for adherence to those codes and policies.
- (k) Critically engage and consult with local communities through inclusive and participatory approaches, understand local customs and traditions, and provide adequate and timely information about their projects.

- (l) Adopt child-friendly business policies and practices and support programmes to provide learning and skilling opportunities for children and young people, to enable them to earn a decent living and escape multi-dimensional poverty. Provide decent work for young workers, parents and caregivers.
- (m) Adopt and implement family-friendly policies including employment income protection, paid leave and care for family members, flexible working arrangements, and access to quality emergency childcare. Guarantee living wages and maternity leave for women and safeguard the rights of workers.
- (n) Ensure that products and services are safe and seek to support children's rights through them. Use marketing and advertising that respects children's rights.

Case Study 5

Safaricom's Digital Inclusion and Education Initiatives Practice

(Ways in which companies address children's rights in their business activities)

Safaricom, Kenya's telecom giant has taken a number of steps to safeguard children's rights including: operating two crèches on-site in Nairobi, offering services for employees' children between 3 months to 7 years. This made the company an attractive employer and reduced childcare-related absenteeism and workplace disruption. The Telco also launched "Twaweza" to provide free digital learning platforms and low-cost internet for schools.

By integrating these strategies, businesses not only comply with international standards but also contribute positively to the well-being and development of children, thereby fostering a more just and equitable society.

(b) Migrant workers

Businesses play a pivotal role in safeguarding and promoting the rights of migrant workers. By adopting comprehensive strategies that encompass policy advocacy, internal practices, and collaborative efforts, businesses can ensure the protection and empowerment of migrant workers who are vital to global economies, yet face systemic vulnerabilities, including exploitation, discrimination, and unsafe working conditions.

Strategies to effectively integrate migrant workers/ labourers' rights into business practice

- (a) **Advocacy for safe labour migration pathways:** Businesses can leverage their influence to advocate for governments to establish safe, legal migration pathways (IHRB 2025), reducing reliance on irregular routes that expose workers to trafficking or abuse. UNGP 28 encourages businesses to engage in policy dialogue to support human rights. For example, companies in agriculture or construction can lobby for bilateral labour agreements that protect migrant worker contracts.
- (b) **Promotion of awareness and inclusion:** Fostering a workplace culture that recognizes and values the contributions of migrant workers is essential. Businesses can implement training programs to counter biases, promote diversity, and enhance workplace cohesion. This approach not only supports the dignity of migrant workers but also leads to a more harmonious and productive work environment. Awareness reduces bias and improves team dynamics.
- (c) **Public campaigns:** Use corporate platforms to challenge xenophobic narratives, aligning with UNGP 29 call for businesses to address adverse impacts on individuals and communities.
- (d) **Implementation of ethical recruitment and employment practices:** Ensuring fair recruitment and employment practices is crucial. Businesses should adhere to ethical standards that prevent exploitation by ensuring that migrant workers receive equal wages, benefits, and access to grievance mechanisms (UNGPs 14, 31) which prohibits practices like passport confiscation or exploitative recruitment fees. They should also adopt International Labour Organisations (ILO) standards for occupational safety, particularly in high-risk sectors like manufacturing or domestic work, such as charging illegal recruitment fees or imposing debt bondage. Recent investigations into labour exploitation in sectors like agriculture and gig economy services highlight the need for stringent oversight and ethical practices.
- (e) **Collaboration with policymakers and civil society:** Engaging with governments, non-governmental organizations, and other stakeholders allows businesses to contribute to frameworks that protect migrant workers' rights. Collaborative efforts can lead to the development of policies that ensure lawful migration routes and uphold human rights standards.
- (f) **Supply Chain Accountability:** Partner with suppliers to enforce human rights due diligence, as stressed in the UNGP Reporting Framework, ensuring transparency across value chains.

- (g) Remediation and access to justice: Establish accessible channels for effective grievance mechanisms that enable migrant workers to report abuses without fear of retaliation in line with (UNGP 22). This not only helps with addressing individual cases but also in identifying systemic issues that require attention. This can also be achieved by establishing legal aid partnerships to help migrants navigate labour disputes, aligning with UNGP 25's focus on remediation.
- (h) Commitment to Transparency and Reporting: Regular public reporting on labour practices and the impact on human rights demonstrates a company's commitment to accountability. Utilizing frameworks like the UNGPs Reporting Framework helps businesses assess and communicate their human rights performance.

Further cases on successes in business practices...

Case Study 6

Kenya Flower Farms: Inclusive Training and Worker Integration

Large flower farms in Naivasha, Kenya, employ significant numbers of migrant workers from neighbouring countries (e.g., Uganda, Tanzania). To foster inclusion, farms like Oserian and Finlay's conduct mandatory anti-bias training for managers and local staff. The programs emphasize cultural sensitivity, language support, and awareness of migrant workers' rights under Kenyan labour laws.

Impact: Reduced workplace tensions and improved collaboration between local and migrant workers. Migrant workers report better access to grievance mechanisms and healthcare for their families, indirectly safeguarding children's rights (e.g. stable income for education).

The call is for businesses to address systemic exclusion and uphold dignity for migrant families.

(c) Refugees and internally displaced persons

Refugees and internally displaced persons frequently encounter a myriad of human rights violations as a result of their vulnerabilities.

In Kenya, the refugee population exceeds 800,000 as of April 2024, according to UNHCR, with most coming from Somalia (53%), South Sudan (25%), and Congo (10%). Almost half reside in Dadaab (49.3%), with 37.3% in Kakuma and the rest in urban areas.

Table 4: Comparison between Refugees and Internally Displaced Persons (IDPs)

Criteria	Refugees	Internally Displaced Persons (IDPs)
Definition	Persons who, owing to a well-founded fear of persecution based on race, religion, nationality, membership of a social group, or political opinion, have crossed an international border and cannot or will not seek their country's protection (1951 Refugee Convention). Regional instruments extend this to those fleeing aggression, occupation, conflict, or massive human rights violations.	Persons forced to flee or leave their homes due to armed conflict, violence, human rights violations, or disasters, but who remain within their own country's borders (UN Guiding Principles on Internal Displacement, 1998).
Legal Framework	1951 Refugee Convention, 1967 Protocol, and 1969 OAU Convention. Host States must accord refugees lawfully staying similar treatment to nationals regarding wages, work conditions, and collective bargaining (Art. 24).	UN Guiding Principles on Internal Displacement and national laws. Address displacement from conflict, disasters, or development projects and ensure access to rights and basic services (Principle 22).
Protection and Movement	Under host-state protection and UNHCR mandate. Movement may be restricted by national policies or camp regulations.	Under national government protection; retain freedom of movement within the country.
Socio-economic Context	Often face restricted mobility and limited access to formal work; host communities experience strain from large influxes.	Freely participate in local economies; businesses engage them as workers, clients, or community members across operations.

Within the refugee camps, there is heightened commercial investments that reflect a vibrant economy. Historically, the private sector has been supporting refugee interventions to include corporate social responsibility and humanitarian initiatives. However, in the recent past, the sector has continued to redirect support to unlock the economic potential of refugees and the host communities, through commercial investments, services, and provision of employment opportunities. Within the camps setting, the refugees continue to build and expand the investment ecosystem creating direct jobs, while induced jobs are created from those companies operating outside the camps.

Operating businesses in displacement contexts can present opportunities and challenges. Businesses have a responsibility to prioritize protection and ensure that their operations do not harm displaced communities. Responsible engagement and partnerships, geared towards securing durable solutions for internal displacement while engaging in business are critical.

Role of businesses in promoting dignity for refugees and IDPs

Kenya continues to experience rapid development to include expansion of business operation sites and conservation efforts that have led to displacement of communities. Notably, businesses have a long-lasting social impact by empowering refugees and displaced population through ethical employment practices. Furthermore, inclusive workplaces promote economic integration, community stability, and the potential of refugees and IDPs as workers, entrepreneurs, and clients. As vulnerable groups within business operations, refugees and IDPs are likely to suffer human rights violations such as unfair wages and abusive or excessive working hours, workplace discrimination, forced and bonded labour, participation and consultation, health and safety violations.

Businesses have a duty to ensure that their operations do not contribute to or increase the existing vulnerabilities among the refugees and IDPs.

By integrating a refugee lens into their Human Rights Due Diligence (HRDD) frameworks, businesses can help to identify potential risks and adopt appropriate mitigation approaches in their operations. In addition, businesses are encouraged to adopt and implement the existing policies and work practices to incorporate refugees and displaced peoples' perspectives and needs. This also helps businesses to identify and come up with appropriate risk mitigation measures. Similarly, businesses are encouraged to invest in awareness creation within their operations about refugees and displaced groups as potentially vulnerable groups. Additionally, partnerships among businesses is encouraged to advocate for refugees and displaced persons' rights like the right to work, decent housing, freedom of movement and financial inclusion.

In the absence of elaborate safeguards, vulnerabilities of these groups can lead to exploitative and unsafe working conditions, harming individuals and exposing businesses to reputational and operational risks.

(d) Indigenous persons

While there is no universally adopted definition of the term 'indigenous persons', they are identified as peoples whose cultures and ways of life differ considerably from the dominant society, and whose cultures are under threat. They are largely dependent on the environment and natural resources in their respective lands and territories. Indigenous persons are among the groups whose rights are often disproportionately impacted by businesses. The violations are centred around lack of free, prior and informed consent, land dispossession, benefit sharing, loss of livelihood and disruption of culture.

Extracts from Recommendations made to Kenya by International Human Rights Mechanisms on special interest groups

In December 2024, the Committee on Elimination of All Forms of Racial Discrimination issued the following recommendation to Kenya:

Ensure that Indigenous Peoples are not dispossessed or displaced from their customary lands, territories and resources without their free, prior and informed consent, and guarantee that those affected by climate change and conservation measures are properly consulted and compensated for any damage or loss suffered.

The Human Rights Committee in its review of Kenya in 2021 under the International Covenant on Civil and Political Rights issued the following recommendation on indigenous peoples:

Set up safeguards against forced evictions of indigenous peoples and ensure the consistent and effective application of the principle of free, informed and prior consent before any developmental or other activities take place on lands traditionally used, occupied or owned by indigenous communities.

(e) Persons with disabilities

Persons with disabilities engage with business as workers, businesses in the supply chain, consumers of goods and services and, as members of the community. Businesses should therefore take measures such as conducting accessibility audits, providing reasonable accommodation and training workers on inclusion to ensure disability rights are protected and persons with disabilities are included. The table below illustrates how disability inclusion generates measurable value across four interconnected dimensions of business activity:

Table 5: Strategic Dimensions and Benefits of Disability Inclusion for Business, Workplace, Marketplace, and Community

Dimension	Interpretive Representation
Business	<ul style="list-style-type: none"> ● Gain a reputation on the international stage and demonstrate leadership: Inclusive practices visibly align the company with global sustainability and human-rights standards, strengthening legitimacy and influence. ● Further own corporate values and social priorities: Integrating disability inclusion embodies the firm’s ethical principles—equity, dignity, and respect—within daily operations. ● Recognize inclusion as a key component of diversity: Disability inclusion broadens diversity strategies, ensuring they reflect the full range of human experience. ● Foster an environment that promotes dignity and respect for all persons: A culture of acceptance improves morale, trust, and unity across all levels. ● Meet and exceed legal requirements: By proactively implementing inclusive measures, companies minimize risk, ensure compliance, and display voluntary leadership.
Workplace	<ul style="list-style-type: none"> ● Gain greater access to a wider talent pool: Opening recruitment to persons with disabilities expands capacity, creativity, and innovation. ● Be better able to avoid skills shortages or labour-supply gaps: Tapping into diverse capabilities safeguards continuity and competitiveness. ● Decrease labour turnover: An inclusive environment enhances commitment, loyalty, and retention. ● Access an untapped resource of different skills, points of view, and abilities: Distinct cognitive and experiential diversity strengthens problem-solving and adaptability. ● Increase employee satisfaction and engagement: When staff see fairness in action, motivation and collaboration rise. ● Improve teamwork, productivity, and morale among employees: Mutual respect and inclusive design lead to more cohesive and effective teams. ● Lower incidence of health and safety risks: Reasonable accommodations and accessible design benefit all workers, reducing workplace hazards.

Dimension	Interpretive Representation
Marketplace	<ul style="list-style-type: none"> ● Access an overlooked and under-served market segment: Persons with disabilities and their families represent vast purchasing power and customer loyalty potential. ● Reflect the diverse demands of the customer base, making the business more receptive and responsive to unique needs, and helping it to develop better products and services: Universal design turns accessibility into innovation and broader market appeal. ● Foster innovation in products and services: Inclusive thinking inspires adaptable, technology-driven solutions that reach new audiences. ● Enhance supplier diversity by also sourcing from companies owned by and employing persons with disabilities: Inclusive procurement strengthens value chains and community linkages. ● Enhance customer loyalty with inclusive marketing and advertising and avoid the negative repercussions of using stereotypes: Authentic representation builds trust, reputation, and sustained engagement.
Community	<ul style="list-style-type: none"> ● Through increased inclusion and accessibility, contribute to an improved enabling environment for all members of the community, including business, to thrive and grow: Inclusive practices expand opportunities and social cohesion. ● Contribute to positive social change through leading by example and positively influencing attitudes: Visible corporate leadership challenges stigma and promotes equality. ● Make business better prepared to address the growing market of older persons: Accessible environments and adaptive design anticipate demographic shifts and aging populations.

Source: *Guide For Business on the Rights of Persons with Disabilities (ILO, UN Global Compact)*

f) Human Rights Defenders

Human Rights Defenders¹ (HRDs) are defined as any person or group of persons who individually or in association with others work to promote and protect Human Rights at national and international levels. HRDs are generally not defined by who they are, but by what they do i.e. by focusing on their activity rather than their identity. This means that anyone can be a HRD when lawfully taking actions that promote and protect Human Rights. Within HRDs, there are groups that are vulnerable and experience impacts disproportionately. These include women human rights defenders, trade union leaders, worker representatives, environmental and land defenders, whose vulnerabilities are exacerbated by structural discrimination, gender norms, unequal power relations and entrenched economic and political interests.

¹ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998 (1998 Declaration) Article 1 UN Declaration on Human Rights Defenders

The UN Special Rapporteur on HRDs has highlighted that HRDs are not always welcome and increasingly face hostility based on the nature of the issues that they champion as well as the activities that they undertake.² The work of HRDs often entails challenging powerful corporate or state actors, placing them at a greater risk for harassment, intimidation, surveillance, arbitrary detention, sexual and gender-based violence, strategic lawsuits against public participation (SLAPP), smear campaigns and criminalization of their lawful activities.

In line with the UNGPs and the Kenyan NAP, corporate actors have a responsibility to respect the role of HRDs and refrain from interfering with their lawful activities aimed at seeking accountability. Within operations and the communities in which they operate, businesses should support freedom of expression, association, peaceful assembly as well as the right to participate in public and societal affairs. This responsibility can be demonstrated through clear policy commitments, the effective implementation of human rights due diligence (HRDD) to identify, prevent, mitigate and account for how they address impacts on human rights; and the support of inclusive and safe engagement platforms (including with HRDs) that strengthen early warning systems for adverse impacts, thereby helping to prevent abuses and the escalation of grievances into serious human rights abuses.

Case Study 7

The Ogoni Nine

In the early 1990s, the Ogoni people of Nigeria's Niger Delta mobilized against severe environmental degradation caused by oil extraction in ancestral lands. The movement was led by a HRD, Ken Saro-Wiwa, alongside other Ogoni leaders, who organized a non-violent movement demanding environmental remediation, fair benefit-sharing and respect for Ogoni economic, social and cultural rights. Their advocacy exposed the profound adverse impacts of businesses activities on land, water, livelihoods and cultural survival.

At the center of the controversy, were multinational oil operations associated with Shell, operating in partnership with the Nigerian state during a period of military rule. As protests intensified, the government responded with repression including arbitrary arrests and detention, intimidation and violence against Ogoni communities. Ken Saro-Wiwa and eight other Ogoni leaders were tried by a military tribunal that failed to meet international fair trial standards and were subsequently executed in 1995, triggering widespread international condemnation. Although the executions were carried out by the state, the case raised serious questions about corporate involvement and responsibility. Allegations included corporate silence in the face of abuses, benefit from state security operations, and failure to use leverage to prevent harm, underscoring that companies may contribute to human rights abuses through both action and omission.

² https://digitallibrary.un.org/record/1472996/files/A_HRC_37_51-EN.pdf

Key lessons

The legacy of the Ogoni Nine reinforces the importance of respecting and protecting human rights defenders. Rather than being treated as adversaries to business, HRDs play a vital role in identification of risks, amplifying community concerns and preventing harm. Companies operating in high-risk contexts have a responsibility to proactively prevent and mitigate adverse impacts linked to their operations and business relationships by meaningfully engaging affected communities and HRDs in good faith, avoiding actions that may contribute to intimidation or criminalization and using their leverage to oppose reprisals by state and non-state actors. Respect for HRDs and their work, is now recognized as an integral component of effective HRDD, enabling early warning of adverse impacts and advancing responsible business conduct.

3.2 Session 2: Advocacy strategies for businesses towards human rights compliance

Advocacy strategies involve interrelated actions that are strategically designed to bring desired change at various levels. These strategies may range from solving a specific problem by changing a law or policy to raising general awareness about human rights violations in a specific sector. Advocacy strategies that can be employed include public awareness and education, media campaigns, lobbying and legislative reforms, capacity building for businesses.

The global business and human rights discourse that led to the development of the United Nations Guiding Principles on Business and Human Rights emanated from the recognition that business enterprises function as specialized organs of society, performing specialized functions, and are therefore required to comply with all applicable laws and to respect human rights as well as provide appropriate remedies where breaches occur.

The advocacy efforts at the global level saw the formal adoption of the Guiding Principles. At the national level, various stakeholders advocated for the domestication of the UNGPs through the National Action Plan on Business and Human Rights, whose implementation is on course.

Businesses can identify how their operations can potentially impact human rights and come up with tailored policies such as development of human rights due diligence checklist, corporate human rights charters or policies and employment of human rights managers among others. This helps businesses to systematically address gaps and enhance compliance with the specified code of conduct for businesses.

3.3 Session 3: Good practices for sustainable human rights integration in businesses



Note to the Trainer

- (a) Introduce the session by inquiring from the participants in plenary what they consider as good/ best business practices in their locality.
- (b) Guide participants on the below practices as good/ best practices for businesses to integrate human rights principles and standards in their operations:
 - (i) **Understand risks and impacts:** identify your business's human rights risks and impacts and know your scope of responsibility.
 - (ii) **Regular training of employees:** ensure they are aware of human rights principles and standards so that they can help integrate them internally into the business activities.
 - (iii) **Articulate policy commitment:** publicly share your business's commitment to upholding human rights through a policy or statement.
 - (iv) **Transparency and public consultations:** engage with relevant stakeholders in the entire business supply chain and publicly report progress realized, challenges and sustainable ways of addressing identified gaps.
 - (v) **Provide remedy:** develop an appropriate remedial intervention/operational grievance mechanism.
 - (vi) **Cross cutting good practices:** embed inclusion in policies and HRDD frameworks, collect disaggregated data, build internal staff capacity and use leverage to influence business relations, design inclusive grievance mechanisms.

Business enterprises are increasingly taking measures to integrate human rights principles and standards into their activities as this allows them to attract and retain employees, consumers, and investors.

The UNGPs advise on the appropriate methods of human rights integration through human rights due diligence, consideration of intersectionality of issues of gender, vulnerability and/or marginalization. Some of the good practices that businesses can use to mainstream human rights include development of human rights charters, establishing human rights compliance offices/ officers, sensitising workers, stakeholders and supply chains on businesses' commitments to human rights and providing accessible remediation.

MODULE 5

INDICATORS FOR ASSESSING HUMAN RIGHTS COMPLIANCE IN BUSINESS

“Human rights are not a burden on business; they are the foundation of sustainable success.”

~ Adopted from the UNGPs on Business and Human Rights






1. Introduction



This module provides participants with practical tools, checklists, and indicators for assessing human rights compliance in business operations. It focuses on monitoring, evaluation, and reporting mechanisms that enable businesses to identify risks, track progress, and demonstrate accountability. By the end of this module, participants will be able to use evidence-based approaches to strengthen compliance and embed human rights in their organisational practices.

2. Module Description



Element	Details
 Module Title	Indicators For Assessing Human Rights Compliance In Business
 Duration	4 Hrs
 Learning Objectives	<p>By the end of this module, the participant should be able to:</p> <ul style="list-style-type: none"> ● Outline human rights checklist for monitoring compliance in businesses; ● Describe human rights monitoring/assessment tools; ● Analyse the benefits of measuring compliance by businesses on human rights; and ● Implement human rights checklist in monitoring compliance in businesses.
 Methodology	<p>The module will be delivered through the following approaches:</p> <ul style="list-style-type: none"> ● Instructor-led (Lectures and Demonstration) ● Discussions (Group and plenary) ● Experiential learning
 Resources Required	<p>The module will be supported by the following resources:</p> <ul style="list-style-type: none"> ● Human Rights-Based Approach (HRBA) checklist for businesses ● Corporate Human Rights Benchmark (CHRB) indicators ● KNCHR/DIHR Corporate Human Rights Benchmark for Kenyan Companies (November 2023) ● Global Compact Self-Assessment Tool ● Danish Institute for Human Rights- Human rights indicators for business: https://www.humanrights.dk/tools/human-rights-indicators-business

3. Module Sessions



This module consists of five sessions outlined below:

3.1 Session 1: Human rights indicators for measuring compliance.

- *Differentiates between structural, process, and outcome indicators as tools to assess human rights.*

3.2 Session 2: Application of human rights indicators in business.

- *Guides businesses on how to use human rights indicators to track their commitments and human rights risks.*



Note to the Trainer

- Introduce the module by probing the following from the participants in plenary
 - What are human rights indicators?
 - Are human rights indicators vital for their business? If yes, why?
 - How are they ensuring human rights compliance in their business practice?
- Link the plenary responses with the discussions in **3.1** and **3.2**.

3.1 Session 1: Human rights indicators for measuring compliance

An indicator is information that measures or shows the state or level of an object, event or activity.

A human rights indicator is:

- One that relates to human rights norms and standards,
- Addresses and reflects human rights principles and concerns,
- And is used to assess and monitor the promotion and implementation of human rights.

Human rights indicators help assess the extent to which governments, businesses, and other entities comply with human rights obligations. These indicators can be structural, process, or outcome-based.



Note to the Trainer

Introduce a case study to participants to provide a practical context for the session. Briefly outline the scenario and encourage participants to begin thinking about what kind of change or results they would expect to see and how these could be measured. Let them know that as the session progresses, they will learn about different types of indicators and will use the case study to identify and develop relevant indicators in real time.

Case Scenario 5

Kahawa-T Ltd., a mid-sized agricultural company in Kenya, produces and exports tea and coffee. The company employs a mixed workforce of permanent and seasonal workers, with women making up a significant portion of the seasonal workforce. To align with international human rights standards, Kahawa-T has developed human rights policies, conducted human rights due diligence, and established a gender and human rights office to address concerns raised by employees.

Allegations and Issues: Despite these measures, reports have surfaced that several managers at Kahawa-T have engaged in serious labour rights violations, particularly against female seasonal workers. Allegations include: Some managers have been coercing women into sexual relationships in exchange for job security and contract renewals; Several women have developed health complications due to sexual exploitation, with some experiencing unwanted pregnancies; Victims are afraid to report the violations due to the risk of job loss, given their vulnerable socio-economic status; and with increasing mechanization, there is a looming risk that many workers, particularly seasonal employees, may be rendered redundant, exacerbating poverty in the neighbouring communities.

Kahawa-T Ltd. has acknowledged the allegations and taken the following steps: The company has dismissed the managers found guilty of violating labour rights, Kahawa-T is reviewing and improving its OGM to ensure it is gender-sensitive, accessible, and trusted by workers and the company insists that it conducts human rights due diligence and has mitigation measures in place to address risks related to human rights violations.

Class discussion

Based on the case scenario (Kahawa-T Ltd):

- (a) What are human rights risks that the business can identify?
- (b) What specific changes or outcomes should Kahawa-T Ltd monitor to determine whether it is making meaningful progress in addressing its human rights risks?

Conclusion

(c) What are the indicators the business could develop or use to assess progress in respecting human rights across its operations and value chain?

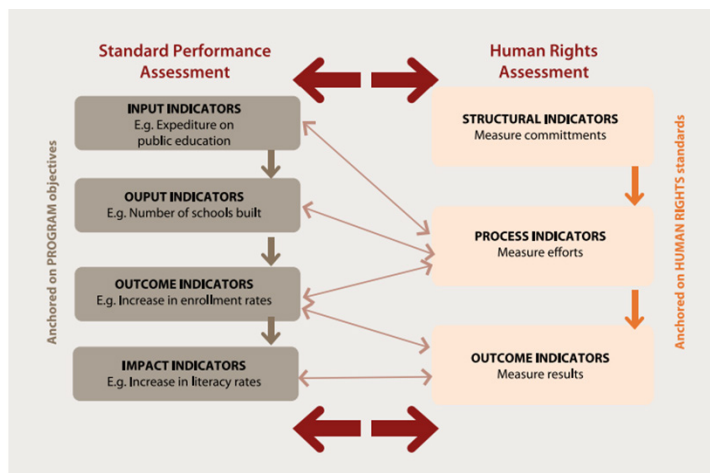
(To help them design the indicators they may be guided by the format (What risk is being measured) + (Who it affects) + (How it is measured) + (Why does it matter).)

HRDD is not only about identifying risks—it is also about tracking whether actions taken are actually working. This session focuses on how business enterprises can use indicators to measure progress in respecting human rights.

Human rights indicators are categorized into three levels:

- (a) **Structural indicators** - Examine the legal framework, policies, and institutional mechanisms adopted by businesses to facilitate the realization of human rights.
- (b) **Process indicators** - Assess the implementation of policies, monitoring mechanisms, and resource allocation.
- (c) **Outcome indicators** - Measure the actual realization of human rights, reflecting individual and collective rights attainment.

NOTE: While there are points of convergence, human rights indicators measure how a business enterprise’s actions impact people’s rights while performance assessment indicators track how well a business is achieving its internal goals. See figure below.



Source: OHCHR HRBA Training

Figure 1: Indicator framework - compliance vs performance assessments

Why should businesses track their compliance with human rights?

Businesses operate within legal, ethical, and social frameworks that require them to respect human rights. Tracking compliance is a key step in the human rights due diligence process that ensures they meet their obligations and avoid negative consequences. Below are key reasons why businesses should monitor their human rights compliance:

- Legal and regulatory compliance.
- Risk management and reputation protection.
- Competitive advantage and market access.
- Social responsibility and sustainability.
- Ethical and moral responsibility.
- To check whether it has effectively addressed the identified human rights impacts - it highlights repeated problems that may require more systemic changes to policies or processes.
- To drive continuous improvement - it brings out good practices that can be disseminated across the enterprise to further reduce risk and improve performance.

Tracking human rights compliance is not just a legal necessity but a strategic advantage. It protects businesses from risks, enhances reputation, ensures sustainability, and strengthens stakeholder trust. Companies that actively track and improve human rights compliance are better positioned for long-term success.

3.2 Session 2: Application of Human Rights Indicators in Business

Human rights indicators help businesses measure their compliance with human rights standards, assess their impact, and improve policies and practices. These indicators align with frameworks such as the UNGPs, OECD Guidelines for Multinational Enterprises, IFC Performance Standards, World Bank Environmental and Social Standards and the Sustainable Development Goals (SDGs).

Human rights indicators

Structural Indicators: Legal Commitments to Human Rights

Businesses should develop indicators to assess their commitment to respecting human rights. Examples:

Commitment to respect human rights

Indicator:

- The business publicly affirms their adherence to international human rights standards (e.g., UN Guiding Principles on Business and Human Rights).

Commitment to respect the human rights of workers

Indicator:

- The business commits to respecting workers' rights, including fair wages, non-discrimination, and freedom of association.

Commitment to remedy

Indicator:

- The business commits to providing for or cooperating in remediation for affected individuals and communities through legitimate processes where it has caused or contributed to adverse impacts.

Process Indicators: Implementation and Accountability

Businesses should establish procedures for identifying and addressing human rights-related risks. Examples of indicators that can be used to demonstrate such efforts:

Responsibility and resources for day-to-day human rights functions

Indicator:

- Assigning senior-level responsibility for human rights within the organization.
- Allocating resources and expertise to manage human rights risks.

Grievance mechanisms for workers, communities and other stakeholders

Indicator:

- Established grievance mechanisms through which complaints and concerns can be reported.

Outcome Indicators: Assessing Impact

Outcome indicators help in assessing the results or impact of business efforts/ processes in furthering the enjoyment of human rights. Examples include:

Assessing human rights risks and impacts

Indicator:

- Prioritising salient human rights risks and impacts once identified.
- Engaging with stakeholders and vulnerable groups in decision-making processes.

Remedying adverse impacts

Indicator:

- Implementing corrective measures to address human rights violations.



Note to the Trainer

To help participants understand the different types of human rights indicators and how they relate to human rights impacts, prepare work sheets in advance with two columns; one with human rights impacts/ risks and the other with indicators. The risks and indicators should be scrambled up and not matching. Divide them into small groups and ask them to match each impact/ risk to the most appropriate indicator. The responses will be sampled with participants sharing the reasons for their choices.

Class Activity: Matching indicators to corresponding human rights impacts

Human Rights Impact / Risk	Human Rights Indicator	Type of Indicator
Injuries on construction sites	Existence of a gender-sensitive grievance mechanism	
Retaliation against whistle-blowers	Company policy explicitly referencing to UNGPs and core labour standards	
Child labour on farms	Number of reported occupational health and safety incidents	
Gender-based harassment in the workplace	% of children below 18 found working on farms during compliance audits	
Lack of commitment to human rights	Mechanism in place to protect whistle-blowers and track retaliation complaints	

Applying human rights indicators in business helps enhance accountability, mitigate risks, and improve corporate reputation. Companies that integrate human rights tracking into their operations not only comply with regulations but also gain a competitive advantage in ethical business practices. Refer to **Appendix 3** for a *sample human rights checklist*.

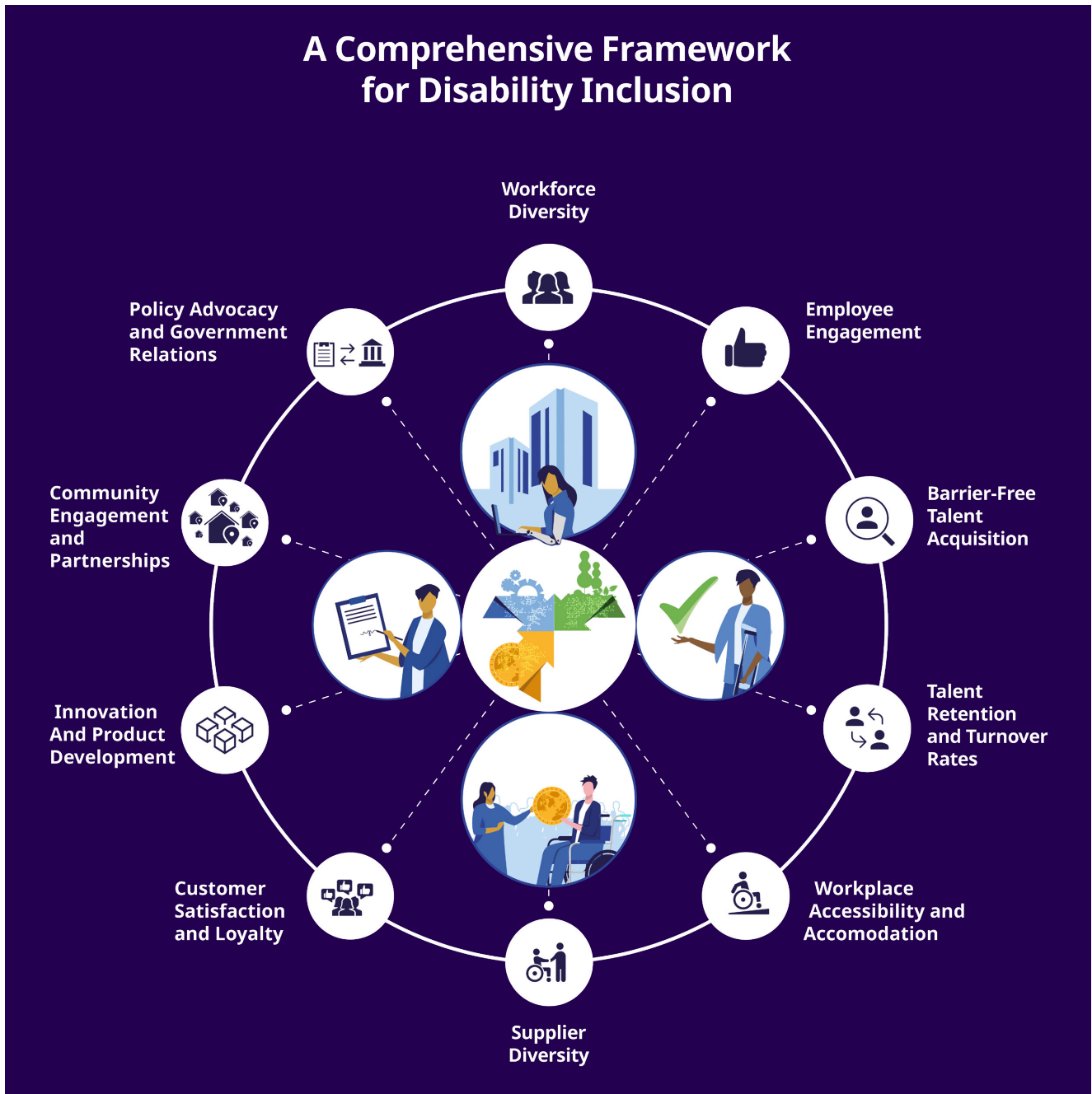
APPENDICES

Appendix 1: Children's Rights and Business Principles



Source: UNICEF

Appendix 2: Business Case for Disability Inclusion



Source: *Putting the I in ESG: Inclusion of Persons with Disabilities as Strategic Advantage of Sustainability Practices for Corporates and Investors (ILO)*

Appendix 3: Sample human rights checklist for businesses

Sample human rights indicator for businesses/ overarching questions

1. Does the company have a policy commitment to respect human rights throughout its business operations?
2. Does the company assess actual and potential human rights impacts with which it is involved? Does the company integrate and act upon the findings?
3. Does the company track the effectiveness of its responses and communicate how impacts are addressed?
4. Does the company provide for or cooperate in a trusted process to remedy adverse impacts it has caused or contributed to?
5. Do employees have written employment contracts?
6. Does the company respect minimum age standards in its hiring practices?
7. Does the company have a grievance mechanism that provides for confidential or anonymous complaints, to report harmful, unsafe or unhealthy working conditions or practices?
8. Does the company comply with national environmental regulations and industry specific codes of practice? Does the company provide all relevant environmental information to the authorities (NEMA, relevant Ministries) and the public?
9. Does the Company do due diligence to ascertain land owners and rights holders before acquiring land (lease or purchase)?
10. Does the company monitor its security arrangements and the impact on local communities? Does the company have mechanisms in place to address allegations of human rights abuses against the community?
11. Does the organizational culture, policies, procedures and processes favour or hinder gender mainstreaming? Is gender mainstreaming a priority for management?
12. Does senior management demonstrate commitment to and leadership on gender issues?
13. Does the company have policies on maternal and paternal benefits and child care?
14. Does the company have a gender-responsive grievance mechanism that provides for confidential or anonymous complaints, to report harmful, unsafe or unhealthy working conditions or practices including SGBV?

Appendix 4: Sample lesson plan

2-Hour Lesson Plan: Module 1 Introduction To Human Rights Training

Session Overview

This 3-hour session aims at providing participants with a foundational understanding of human rights including the meaning, characteristics and the linkage to business.

Learning Objectives

By the end of the session, participants will be able to:

- (a) Explain key concepts in human rights;
- (b) Describe developments in business and human rights;
- (c) Discuss the nexus between business and human rights;
- (d) Examine misconceptions about business and human rights; and
- (e) Analyse the role played by Kenya National Commission Human Rights in promoting human rights in business.

Lesson Plan

Time	Activity	Methodology	Materials
10mins	Introductions to the session and learning outcomes	Plenary discussion, icebreaker game	Flipchart, markers
20mins	The Concepts in Human Rights	Presentation, Q&A	PowerPoint slides, projector, Video
30mins	The nexus between business and human rights	Presentation, Q&A, plenary discussions	PowerPoint slides, projector, participants experiences
20mins	Misconceptions about business and human rights	Group discussions, Q and A	Flipchart, markers, projector, participants experiences
30mins	The role of Kenya National Commission on Human Rights in promoting human rights in business	Small group work, plenary feedback	Case study handout, flipchart

REFERENCES AND RESOURCES

1. The Constitution of Kenya
2. UN HRC, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, 21 March 2011, UN A/HRC/17/31
3. Kenya’s National Action Plan on Business and Human Rights, Sessional paper No.3 of 2021
4. OHCHR, Interpretive Guides
 - The Corporate Responsibility to Respect Human Right: An Interpretive Guide ([hr.puB.12.2_en.pdf](#))
 - Access To Remedy in Cases of Business-Related Human Rights Abuse ([access-to-remedy-bhr-interpretive-guide-en.pdf](#))
5. African Committee of Experts on the Rights and Welfare of the Child, Study on Children’s Rights and Business (2023)
6. IFC’s Performance Standards on Environmental and Social Sustainability
7. ILO, Guide for Business on the Rights of Persons with Disabilities
8. KNCHR and DIHR - Corporate Human Rights Benchmark for Kenyan Companies
9. KNCHR and CESSCR, Rights Based Policy Monitoring: KNCHR Primer on Assessing Compliance with Economic and Social Rights Obligations
10. United Nations Global Compact, Global Compact Self-Assessment Tool
11. United Nations Global Compact, Women’s Empowerment Principles Gap Analysis Tool (WEPs Tool)
12. Voluntary Principles Initiative, Voluntary Principles on Security and Human Rights
13. World Benchmarking Alliance, Corporate Human Rights Benchmark – Core UNGP Indicators
14. Case Studies
 - Collapse of the Rana Plaza factory building in Bangladesh
<https://cleanclothes.org/campaigns/past/rana-plaza>
 - True cost of our tea: Sexual abuse on Kenyan tea farms revealed
<https://www.bbc.com/news/uk-64662056>
 - The People vs Kakuzi PLC. ~ An Unrelenting Fight for Justice and Remedy by Rural Kenyan Communities
<https://khrc.or.ke/wp-content/uploads/2024/02/Kakuzi-longread-FINAL-for-publication.pdf>
 - Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others [2015] eKLR
 - Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another [2019] eKLR
 - “*Owino Uhuru Case*” National Environment Management Authority & another v KM (Minor suing through Mother and Best friend SKS) & 17 others (Civil Appeal E004 of 2020 & E032 of 2021 (Consolidated)) [2023]
 - “Meta Case” Meta Platforms, Inc & 2 others v Motaung & 186 others; Kenya National Human Rights and Equality Commission & 14 others (Interested Parties) [2024] KECA 1262 (KLR)
15. Websites
 - Kenya National Commission on Human Rights <https://www.knchr.org/Publications/Thematic-Reports/Ecosoc-Rights/Business-Human-Rights>
 - Business & Human Rights Resource Centre
<https://www.business-humanrights.org/en/>
 - Danish Institute for Human Rights
<https://www.humanrights.dk/our-work/business-human-rights>
 - National Action Plans on Business and Human Rights
<https://globalnaps.org/>
 - Global Digital Partners
<https://www.gp-digital.org/>
Business and Human Rights in the Digital Environment - https://www.gp-digital.org/wp-content/uploads/2020/02/BHR-in-the-Digital-Environment_.pdf

HEAD OFFICE

1st floor CVS plaza, Lenana road
P.O Box 74359 – 00200 Nairobi, Kenya
Tel: 020 3969000
Mobile: 0726 610 159
Email: haki@knchr.org
X:@hakiKNCHR
Facebook: KNCHR
YouTube: KNCHR
Website: www.knchr.org
KNCHR SMS: 22359

North Rift Office - Kitale

AFC Building, Mak Asembo Street
Opposite Mega Centre Mall
P.O Box 2999 – 30200 Kitale
Telephone: 054 31773
Mobile: 0708271216 / 0786236683
Email: northrift@knchr.org
X: @KNCHRKitale

North Eastern Office - Wajir

Imall Building, 2nd floor, Shallete road,
Off Wajir airport road
P.O Box 363 – 70200 Wajir
Telephone 046 – 4421512/0742 023 681
Email: northernkenya@knchr.org
X: @KNCHRWajir

Coast Regional Office - Mombasa

Imaara Building, 10th Floor Unit 13
Dedan Kimathi Avenue Kizingo
Opposite Pandya Memorial Hospital
P.O Box 90171 -80100 Mombasa
Telephone: 041 2220468 / 0769 710 434
Email: coast@knchr.org
X: @KNCHRMombasa

Western Regional Office - Kisumu

Re Insurance Plaza, 3rd floor
Oginga Odinga Street
P.O Box 7768-40100 Kisumu
Tel: 057 2020078/ 0746 425 714/ 0794 675 745
Email: kisumu@knchr.org
X: @KNCHRkisumu

Central Regional Office - Laikipia

AFC Building, Adjacent to Nyahururu Law Courts
P.O Box 650 -20300 Nyahururu
Office Mobile: 0705982617
email: laikipia@knchr.org
X: @KNCHRLaikipia

Garrissa Office

IPOA House, Off Kismayu Road,
Behind Hass Petrol Station
Email: Garissa@knchr.org
X: KNCHRGarissa



@hakiKNCHR



KNCHR



KNCHR



complaints@knchr.org



22359



www.knchr.org



0800 720 627 Toll free



0798 849 871 WhatsApp