

# THE STATE OF BUSINESS AND HUMAN RIGHTS IN AFRICA

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August 2022



Business enterprises and transnational corporate actors operate in a complex global environment, especially when operating in high risk sectors such as oil and gas, mining, construction, banking, and health care amongst others. While there have been some commitments to the business and human rights agenda in Africa, there remain gaps in policy and institutional alignments as well as the implementation of the UNGPs.



AU organs, especially the African Commission on Human and Peoples' Rights, have a strong history of adopting thematic and country specific resolutions and general comments on specific provisions of the Africa Charter which provide normative content and clarity to state parties on their human rights obligations. The Policy Framework is one avenue, which, if adopted, will indicate Africa's commitments to safeguarding business and human rights standards.



The consequential effect of the Policy Framework can be fruitfully realised if Member States can adopt and integrate the Policy Framework into their body of laws, particularly the Constitution, corporate, banking and security laws, policies, and regulations.

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### The Friedrich-Ebert-Stiftung African Union Cooperation Office

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## EXECUTIVE SUMMARY

On 16 June 2011, the Human Rights Council, through Resolution 17/4 (Human rights and transnational corporations and other business enterprises) endorsed the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs are anchored on three foundational principles: the state duty to protect human rights, corporate responsibility to respect human rights, and access to remedy. Consequently, the UNGPs provide an allocation of tasks between states (as duty bearers with regard to the protection and realisation of human rights established in international treaties) and companies, which are duty-bound to respect rights and apply due diligence in their activities, especially when operating in weak zones.

To further domesticate and adapt the UNGPs to African realities, the African Union drafted a Policy Framework on Business and Human Rights in Africa. The draft Policy is instrumental in curbing corporate excesses in Africa, for a number of reasons. First, despite the deleterious activities of corporate actors in various sectors in Africa, there has been no robust response in terms of policy documents and regulatory capacity to compel corporations to respect human rights at the continental level. National judicial systems have not effectively prevented, investigated or prosecuted business and human rights. Until recently, human rights mechanisms have been silent on this issue. Second, the Policy Framework marks an important step towards mainstreaming and integrating human rights into business practices at the national and regional levels. It will galvanise state entities and provide guidance for regional institutions and civil society. It will further steer the discourse on business and human rights towards practical and positive implementation efforts at the state level. Consequently, the present study represents a practical instrument to enable AU Member States to call attention to these critical corporate excesses and human rights violations and to hasten the elimination of such practices.

Business enterprises and transnational corporate actors operate in a complex global environment, especially when operating in high risk sectors, such as oil and gas, mining, construction, banking, and health care, among others. For states and companies therefore understanding human rights responsibilities, impacts and socially responsible behaviour is an essential component of risk management in Africa.

The adoption of the UNGPs is in line with the emergence of a rapidly developing set of international legal norms on the human rights responsibilities of businesses and transnational corporations. In addition to minimising litigation, financial and reputational risks, understanding and demonstrating states' duty to protect human rights and corporate respect for human rights is vital to building a culture of trust and integrity among local communities, investors and shareholders.

While some commitments have been made to the business and human rights agenda in Africa, there remains some gaps in policy and institutional alignments, as well as in the implementation of the UNGPs. For example, the African Commission's Working Group on Extractive Industries, Environment and Human Rights Violations has developed State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, and a Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector, which urges States Parties to adopt laws and regulations aimed at easing the economic hardships of communities affected by extractive activities in line with regional and international human rights laws and principles. The African Commission also adopted the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People's Rights on 26 May 2010.<sup>1</sup> The Guidelines provide a more detailed explanation of States Parties' obligations under the African Charter. The Tunis Reporting Guidelines were adopted to give further guidelines to States Parties to the African Charter in reporting on implementation of their obligations concerning the realisation and enjoyment of social, economic and cultural rights under the Charter.<sup>2</sup>

AU organs, especially the African Commission, have a strong history of adopting thematic and country-specific resolutions and general comments on specific provisions of the Africa Charter, which provide normative content and clarity to States Parties on their human rights obligations. The Policy Framework is one indication of Africa's commitments to safeguarding business and human rights standards. To implement the Policy Framework, Member States and Regional Economic Communities must develop a National Baseline Assessment and a National Action

<sup>1</sup> Also known as the Nairobi Principles and Guidelines, see Articles 7; 59(e),(f), (h); 86(w) and 95 (n) of the Guidelines. Available at: [https://www.achpr.org/public/Document/file/English/achpr\\_instr\\_guide\\_draft\\_esc\\_rights\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf)

<sup>2</sup> State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and People's Rights; available at: [https://www.achpr.org/public/Document/file/English/State%20Reporting%20Guidelines%20on%20ECOSOC%20Rights%20\(2012\).pdf](https://www.achpr.org/public/Document/file/English/State%20Reporting%20Guidelines%20on%20ECOSOC%20Rights%20(2012).pdf)

Plan on Business and Human Rights. Furthermore, national human rights institutions must heighten their monitoring and reporting of business and human rights challenges, including documenting complaints and resolution of those complaints. The consequential effect of the Policy Framework can be realised fruitfully if Member States can adopt and integrate the Policy Framework into their body of laws, particularly constitutions, corporate, banking and security laws, policies and regulations.

The African Union may request that an advisory body determine the validity and interpretation of treaties such as investment treaties, trade agreements and development projects that conflict with the Policy Framework or states' human rights obligations.

# ABBREVIATIONS

|                           |  |
|---------------------------|--|
| <b>African Commission</b> | African Commission on Human and Peoples’ Rights  |
| <b>AfCFTA</b>             | African Continental Free Trade Area  |
| <b>ACHPR</b>              | African Court on Human and Peoples’ Rights   |
| <b>AU</b>                 | African Union  |
| <b>AUC</b>                | African Union Commission   |
| <b>BHRs</b>               | Business and human rights  |
| <b>BHRC</b>               | Business and Human Rights Resource Centre  |
| <b>CSO</b>                | Civil society organisation   |
| <b>ECOWAS</b>             | Economic Community of West African States  |
| <b>ESCR</b>               | Economic, social and cultural rights   |
| <b>GBV</b>                | Gender-based violence  |
| <b>Malabo Protocol</b>    | Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights |
| <b>MNC</b>                | Multinational companies  |
| <b>RECs</b>               | Regional economic communities  |
| <b>RM</b> s               | Regional mechanisms  |
| <b>NAP</b> s              | National Action Plans  |
| <b>NBA</b>                | National Baseline Assessments  |
| <b>NHRIs</b>              | National human rights institutions   |
| <b>OAU</b>                | Organisation of African Unity  |
| <b>SRS</b> G              | Special Representative on Business and Human Rights  |
| <b>UN</b>                 | United Nations   |
| <b>UNGP</b> s             | UN Guiding Principles on Business and Human Rights   |
| <b>UNWG</b>               | UN Working Group on the Issue of Human Rights and Transnational Corporations and Business Enterprises  |
| <b>ZELA</b>               | Zimbabwean Environmental Law Association   |

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## 1

## INTRODUCTION

## 1.1. Background, Scope and Context of Study

1. This Study examines the extent of adaptation and implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) in Africa. The UNGPs constitute the global policy framework for the promotion and protection of human rights and business. Although this is soft law, it is likely to be instrumental in the effective implementation of the draft AU Policy Framework for Business and Human Rights in Africa.
2. The draft AU Policy Framework on Business and Human Rights in Africa (Policy Framework) is an adaptation of the UNGPs to the realities of corporate excesses in Africa. It is important to emphasise that activities and interventions on business and human rights include normative and regulatory instruments. For example, the African Charter on Human and Peoples' Rights provides for the protection of the rights of peoples to pursue their social and economic development in terms of policies they have freely chosen. The Charter also provides for citizens' management of their natural resources in the exclusive interest of the people and in a generally satisfactory environment. Specifically, Article 20 of the African Charter provides that all Africans have the right of existence, that is, an 'unquestionable and inalienable right to self-determination'. The article also provides for the right to freely pursue economic and social development in line with policies they have freely chosen. Article 21 focuses on the right to freely dispose of wealth and natural resources. All Africans shall have the right to the lawful recovery of their property, as well as to adequate compensation. The right to freely dispose of wealth and natural resources must be exercised in the exclusive interest of the people.
3. To effectuate these rights, the African Commission on Human and Peoples' Rights (ACHPR), through Resolution ACHPR/Res.148 (XLVI) 09, established the Working Group on Extractive Industries, Environment and Human Rights Violations at the 46th Ordinary Session held in Banjul, The Gambia, 11–25 November 2009. The Working Group has a responsibility to promote and protect business and human rights, especially within the framework of extractive resource activities. Regional human rights court such as the ECOWAS Community Court and other sub-regional and national human rights institutions engage in a variety of activities and interventions on human rights and business in Africa. The African Commission had also established a Working Group on Economic, Social and Cultural Rights in Africa.
4. As the AU Secretariat and AU policy organs are currently working towards the adoption of a Policy Framework, comprehensive research on business and human rights in Africa will be critical to prepare the AU Member States towards the adoption and effective implementation of the proposed Policy in the near future. The overall goal of this Study is to generate a data baseline on business and human rights on the continent and to promote effective implementation of the proposed AU Business and Human Rights Policy.
5. The draft Policy Framework is instrumental to curbing corporate excesses in Africa for several reasons. First, despite the deleterious activities of corporate actors in various sectors in Africa, there has been no robust response in terms of policy documents and regulatory capacity to compel corporations to respect human rights at the continental level. National judicial systems have not effectively prevented, investigated or prosecuted business and human rights. Until recently, human rights mechanisms have been silent on this issue. This has encouraged multinational companies to continue their human rights abuses. Second, the Policy Framework marks an important step towards mainstreaming and integrating human rights into business practices at the regional and national levels. It will galvanise state entities and provide guidance for regional institutions and civil society. It will further steer the discourse on business and human rights towards practical and positive implementation efforts at the state level. Consequently, this study provides a practical instrument to prepare AU Member States to call attention to these critical corporate excesses and human rights violations and to hasten the elimination of these practices.
6. Integrating human rights into business activities is fundamental to a peaceful and secure society. From its inception, the AU has constantly advanced a determined agenda towards promoting peace and security, inclusive economic growth and social development, as well as the realisation of human and people's rights.<sup>3</sup> The AU is attaching more importance to business and economic integration and strives to build an organisation with a more supranational character. Critical momentum in this new commitment was given by the adoption of Agenda 2063 on the fiftieth anniversary of the

3 The AU Constitutive Act was adopted on 11 July 2000 and entered into force on 26 May 2001. The AU is the successor to the OAU, which was established in 1963.

establishment of the OAU in 2013.

7. The Policy Framework is premised on Agenda 2063; the AU's 10-year Action Plan on Human and People's Rights; the African Mining Vision (2009) and its Action Plan (2011); and the AU Agreement Establishing the African Continental Free Trade Agreement (2018).
8. Agenda 2063 is anchored in inclusive social and economic development, democratic governance, peace and security. The Agenda is premised on seven core aspirations of the AU.<sup>4</sup> These aspirations are:

- A prosperous Africa based on inclusive growth and sustainable development – aimed at increasing standards of living, quality of life and wellbeing; developing Africa's human and social capital through education and a technology revolution; expanding access to quality health-care services; transforming Africa's economies to create jobs through benefiting from natural resources and industrialisation; transforming agriculture to improve food security; exploiting Africa's marine resources to accelerate growth; and ensuring sustainable management of Africa's rich biodiversity, forests, land and water in response to climate change.
- An integrated continent that is politically united based on the ideals of Pan-Africanism and the vision of Africa's renaissance – aimed at accelerating progress towards continental unity and integration focused on trade, free movement of people and fast-tracking economic integration through the Continental Free Trade Area; improving connectivity through the development of continental infrastructure; and completion of the decolonisation of Africa.
- An Africa of good governance, democracy, respect for human rights, justice and rule of law – aimed at entrenching respect for a culture of democratic values and human rights, improving the quality of governance and building strong institutions for a development state headed by development-oriented and visionary leaderships.
- A peaceful and secure Africa – aimed developing mechanisms for peaceful prevention and resolution of conflicts through good governance, accountability and transparency, and ensuring capabilities for financing security needs.
- An Africa with strong cultural identity, common heritage, shared values and ethics – aimed at inculcating the ideals of Pan-Africanism and preserving and utilising Africa's rich cultural heritage to ensure that the creative arts play a major role in Africa's growth and transformation.
- An Africa whose development is people-driven – aimed at ensuring gender equality in all spheres,

eliminating discrimination and violence against women and girls and creating opportunities for Africa's youth and children to harness their potential.

- Africa as a strong, united, resilient and influential global player and partner – aimed at improving Africa's place in the global governance system and ensuring that Africa forms the right partnerships that will enable it to be self-sufficient and less dependent on development aid.

Figure 1: Agenda 2016 Framework Document<sup>5</sup>



9. The challenge is to determine how this innovative AU Agenda can transform the business landscape. Thus, the AU must take a strict stand on ensuring business respect for human rights.

## 1.2. Methodology of the Study

11. This study focuses on various sectors of the economy, including, but not limited to, the extractive, energy, pharmaceutical, construction, finance, coffee, and textile industries. These sectors have the potential to generate significant human rights impacts in relation to labour, land grabs and displacements, water and other things.
12. In surveying African countries in order to determine business and human rights concerns, and to assess which countries have developed a National Action Plan (NAP) and generated a National Baseline Assessment (NBA), the study adopted a mixed methodology consisting of quantitative and qualitative research methods to identify gaps in data and analysis concerning the status of the implementation of the UNGPs in Africa, and the potential for adopting the Policy Framework. The quantitative methods adopted include thorough reviews of the literature, the legal and policy framework, annual reports, commissioned reports, statutory and legal documents, opinion papers and NGO reports, as well as court decisions for any reference to the UNGPs or corporate responsibility

<sup>5</sup> African Union Commission, 'Agenda 2063 Framework Document, The Africa we want'; available at: <[https://uclgafrica-alga.org/wp-content/uploads/2019/06/INL\\_\\_Agenda-2063-Technical-Document.pdf](https://uclgafrica-alga.org/wp-content/uploads/2019/06/INL__Agenda-2063-Technical-Document.pdf)>

<sup>4</sup> African Union, 'Our aspirations for the Africa we want'; available at <<https://au.int/en/agenda2063/aspirations>>

to respect human rights. This approach helped to document the background of the business and human rights legal and policy framework, and the most common human rights concerns related to businesses in Africa. It also helped to identify the main barriers at a sub-regional level. From the documents sourced, an assessment-based methodology was established to evaluate and understand how African states could respond to the Policy Framework and the BHR agenda, why support is low, and how it can be improved.

13. Qualitative research methods were utilised to obtain deeper insights into the specific objectives of the study through consultations with relevant stakeholders in different subregions. Semi-structured interviews were conducted with various stakeholders (including, but not limited to, government officials, members of CSOs, AU officials, RECs, and human rights institutions in Member States). Questionnaires were also sent out to stakeholders for input. Results

from the methodology, as well as a review of the literature informed the policy recommendations for the study. Due to the scope of the interviews conducted, and the nature of the methodological approach, the survey can by no means be regarded as representative. However, because it is combined with a review of the literature, it builds a rough profile of the key business and human rights challenges in Africa and the potential for the adoption of the Policy Framework.

## 2

# IMPLEMENTATION OF THE UNGPS IN AFRICA

### 2.1. Business and Human Rights Agenda

14. In July 2005, then UN Secretary General Kofi Annan appointed Professor John G. Ruggie as his Special Representative on Business and Human Rights (SRSG).<sup>6</sup> Initially, Ruggie’s duty was to ‘identify and clarify standards of corporate responsibility and accountability regarding human rights, elaborate on states’ roles in regulating and adjudicating corporate activities, clarify concepts such as “complicity” and spheres of influence, develop methodologies for human rights impact assessments and consider state and corporate best practices’.<sup>7</sup> The SRSG, after widespread consultations, eventually produced the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs provide an allocation of tasks between states (as duty bearers with regard to protecting and realising human rights established in international treaties) and companies, which are

duty-bound to respect rights and apply due diligence in their activities, especially when they are operating in weak zones.<sup>8</sup>

15. This resolution doubtless marks a turning point in terms of creating an inclusive standard for corporate liability for business-induced human rights violations. The UNGPs re-emphasise the significance of states’ existing obligations in protecting human rights, the need for businesses to comply with domestic laws and rules and to provide adequate remedies to victims of human rights violations. Applying these principles to the various sectors of economic development in Africa, the UNGPs seek to enhance corporate practices in order to achieve concrete results for victims of human rights violations, as well as for the communities that host development projects and are the victims of corporate-induced environmental disasters.<sup>9</sup>
16. Business enterprises and transnational corporate actors operate in a complex global environment,

6 Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, U.N. Doc. A/HRC/17/31 (21 March 2011).

7 See Human Rights Resolution 2005/69, ‘Human Rights and Transnational Corporations and Other Business Enterprises’, Chapter XVII, E/CN.4/2005/L.10/Add.17 (20 April 2005).

8 Ibid.

9 B. Hamm, ‘The Struggle for Legitimacy in Business and Human Rights Regulation—a Consideration of the Processes Leading to the UN Guiding Principles and an International Treaty’ (2021) Human Rights Review.

especially when operating in high risk sectors, such as oil and gas, mining, construction, banking, and health care, among others. Understanding human rights responsibilities, impacts and socially responsible behaviour is, therefore, an essential component of risk management for states and companies in Africa. The issue of the UNGPs, an instrument consisting of 31 principles on this issue, has further underscored the emergence of a rapidly developing set of international legal norms on the human rights responsibilities of businesses and transnational corporations. In addition to minimising litigation, financial and reputational risks, understanding and demonstrating states' duty to protect human rights and corporate respect for human rights is vital to building a culture of trust and integrity among local communities, investors and shareholders. While there have been some commitments to the business and human rights agenda in Africa, there remain a number of gaps in policy and institutional alignments, as well as in the implementation of the UNGPs. For example, the African Commission's Working Group on Extractive Industries, Environment and Human Rights Violations, has developed State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment,<sup>10</sup> and a Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector,<sup>11</sup> which urges States Parties to adopt laws and regulations aimed at easing the economic hardships of communities affected by extractive activities in line with regional and international human rights laws and principles. These documents refer to the UNGPs, although based on a broader approach to corporate respect for human rights.

## 2.2. Business and human rights challenges in Africa

17. The recent discoveries of natural resources in various forms in Africa are shaping the continent's economy and influencing social behaviour in dynamic ways. Corporate and social practices are having powerful

10 See African (Banjul) Charter on Human and Peoples' Rights. Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986. Article 21: Right to Free Disposal of Wealth and Natural Resources; Article 24: Right to a General Satisfactory Environment. See the African Commission, State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment; available at: <<https://www.achpr.org/presspublic/publication?id=75>>. See also the African Commission's Advisory note to the African group in Geneva on the legally binding instrument to regulate in international human rights law, the activities of transnational corporations and other business enterprises (legally binding instrument); available at: <<https://www.achpr.org/news/viewdetail?id=206>>

11 Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector - ACHPR/ Res. 367 (LX) 2017 <<https://www.achpr.org/presspublic/publication?id=77>>

impacts on societies, with new challenges for local communities, human rights violations, and advancement of economic and social inclusion and/or exclusion.<sup>12</sup>

18. African countries, hampered by lack of regulatory clarity and enforcement provisions, have not fully maximised the opportunities that business and human rights present. While the worst cases of human rights violations by corporate entities occur in Africa, such cases are dealt with in the home states of these multinational companies (MNCs). Challenges range from governance of MNCs, weak corporate laws and lack of political will, without a nuanced understanding of the negative impact of the lack of regulatory frameworks for investment facilitation, regional economic integration and economic growth.
19. Africa is a vast continent with huge business activities, ranging from small-scale enterprises to MNCs. In this context, the commitment of AU Member States to the UNGPs varies from country to country. For example, while Kenya and Uganda have developed a comprehensive NAP, others – such as Ghana, Mozambique, Nigeria, Tanzania and Zambia – are still in the process of developing them.
20. When it comes to curbing corporate excesses in the extractive and energy sector, it appears that at the national level legal approaches and overarching regulatory instruments are either non-existent, outdated or inadequate. The failure of these frameworks to keep up with business and human rights challenges is striking. Overall, there is a fair degree of inadequacy in two areas of regulation on the African continent that this study intends to address: extractive industry (including the regulation and monitoring of corporate due diligence, human rights impact assessments and the corporate–local community nexus) and energy (social inclusion in Africa's energy markets, renewable energies, gendered impact of climate change and energy projects). These areas require careful study in order to develop meaningful policy approaches and proposals that meet the needs of local communities, while addressing states' development needs. Furthermore, development projects in Africa have faced remonstrations from host communities resisting such projects on the basis that they have not been properly consulted or have been denied participation in such projects. This study has identified some key areas in which businesses have impacted human rights on the continent.

12 See generally, Oyeniyi Abe, 'Untying the Gordian Knot: Re-Assessing the Impact of Business and Human Rights Principles on Extractive Resource Governance in Sub-Saharan Africa' (2016) 32 Am. U. Int'l L. Rev. 895.

## 2.2.1. Corruption

21. In a 2015 corruption survey on Africa by Transparency International, business executives were considered the second most corrupt group, after the police.<sup>13</sup> The prevalence of corruption on the continent has a huge impact not only on economic growth but also on sustainable development and the realisation of human rights. One of the ways in which business-related corruption and human rights come into conflict in Africa concerns secret deals in the extractive industries. In 2000, for example, Marathon Oil transferred more than 13 million US dollars (USD) to the Angolan state-owned Sonangol. The payment was 'one-third of the bonus' agreed for oil exploration rights in Angola's offshore reserves.<sup>14</sup> In subsequent months, the funds were moved into organisations owned by Angolan government officials.<sup>15</sup>
22. In the Democratic Republic of Congo, at least USD 1.36 billion (twice the national budget for health and education) was lost in secret deals between businesses and government officials between 2010 and 2012.<sup>16</sup>
23. Bribery scandals in Guinea involving the erstwhile government and MNCs over the ore-rich Simandou region have halted exploratory activities that have the potential to boost socio-economic development in this poor country.<sup>17</sup>
24. Counterfeit drugs are another opportunity for business-related corruption. With income generation of more than USD 75 billion,<sup>18</sup> the lucrateness of counterfeit drugs creates a huge challenge globally.
25. In Kenya, counterfeit medication worth billions of shillings were purportedly allowed into the country by corrupt practices involving traders and the pharmacy and poisons regulatory board.<sup>19</sup> In Uganda, research reveals that '68–77% of pharmaceutical workers had stolen and resold publicly procured drugs at least once' and that 80 per cent indicated an openness to the possibility of accepting bribes from drug merchants.<sup>20</sup>

13 Transparency International, 'Corruption Perceptions Index'; available at: <<https://www.transparency.org/en/cpi/2015/index/nzl>>

14 Van Niekerk, Philip/Peterson, Laura, 'Greasing the skids of corruption', The International Consortium of Investigative Journalists, 4 November 2002.

15 Ibid.

16 'Congo's secret sales', Global Witness, 13 May 2014.

17 'Crying foul in Guinea', The Economist, 4 December 2014.

18 Beard, Stephen, 'Fake pharmaceuticals are a \$75 billion global industry', Marketplace, 26 September 2013.

19 Murumba, Stellar, 'Whistleblower lifts lid on fake drugs import at Poisons Board', Business Daily, 9 August 2016.

20 Silas Webb, 'A bitter pill to swallow: the problem of, and solutions to, Sub-Saharan Africa's counterfeit pharmaceutical trade' (2014) 4(2) Columbia University Journal of Global Health 19.

26. Between 2012 and 2017 more than 750 million illicit drugs were confiscated at ports in Africa by the World Customs Organization and the Institute of Research against Counterfeit Medicine.<sup>21</sup> While weak regulatory systems, lack of information and poor technology make it difficult to trace some of these drugs, corruption significantly exacerbates the situation. Counterfeit drugs account for '50 per cent of drug sales in sub-Saharan Africa'.<sup>22</sup> With fake pharmaceuticals accounting for between 30 and 60 per cent of the drugs on the continent, the human rights risks of counterfeit drugs are evident. Annually, 800,000 deaths occur due to these drugs, mainly in Africa.<sup>23</sup> Every year, more than 120,000 people die on the continent solely from counterfeit anti-malarial drugs.<sup>24</sup> With the high prevalence of malaria in Africa, the human rights risks of business-related corruption are an urgent concern.

## 2.2.2. Illicit Financial Flows

27. The AU Convention on Preventing and Combatting Corruption recognises illicit financial flows as a related offence to corruption under Article 6 and thus requires states to act against 'the conversion, transfer or disposal' of proceeds from corruption. In the past five decades, Africa has lost over USD 1 trillion to illicit financial flows.<sup>25</sup> Each year, it is estimated that the continent loses more than USD 50 billion from these flows, 65 per cent of which relates to commercial activities by corporations. The weak legal and regulatory architectures of most African states are readily exploited by non-state actors. Three key manifestations of these flows in commercial activities are: tax avoidance and evasion,<sup>26</sup> concealment of wealth, and sidestepping of local levies and customs duties.<sup>27</sup>
28. Concerning taxes, Africa loses over USD 38 billion annually to evasion.<sup>28</sup> In Tanzania, USD 18.73 billion was lost between 2002 and 2011 due to mis-invoicing.<sup>29</sup> In Liberia, corporations in the forestry sector owe an estimated USD 25 million from taxes

21 Barbière, Cécile, 'Counterfeit Chinese and Indian drugs invade Africa', Euractiv, 24 January 2017.

22 Webb (above n 18).

23 Sarah Elzas, 'Fake drugs impact Africa, more profitable than illicit drug market', RFI, 14 September 2015.

24 Matthew Wall, 'Counterfeit drugs: "People are dying every day"', BBC News, 27 September 2016.

25 UNECA (2015) Illicit financial flows: report of the High-Level Panel on illicit financial flows from Africa, Addis Ababa; available at: <<https://repository.uneca.org/ds2/stream/?#/documents/0ca955c2-2e56-5120-a605-9e8a7566c7d3/page/4>>

26 International tax and investment treaties are ways of closing gaps exploited by corporations to avoid paying tax.

27 UNECA (n 23).

28 'Africa loses \$38 billion to tax evasion', Post Online Media, 25 May 2016.

29 Global Financial Integrity, Hiding in plain sight: trade misinvoicing and the impact of revenue loss in Ghana, Kenya, Mozambique, Tanzania, and Uganda: 2002–2011 (Washington: Global Financial Integrity, 2014).

evaded in some cases over a period of eight years.<sup>30</sup> Following the Marikana massacre in South Africa, investigations into the activities of Lonmin revealed that the world's third largest platinum corporation moved an annual profit of ZAR 400 million from South Africa to Bermuda to evade taxes for almost two decades.<sup>31</sup> These illicit flows essentially deprive the continent of essential resources for socio-economic development. However, the UNECA High Level Panel Report noted that while corruption impedes Africa's development, the continent loses more money through illicit financial flows than it receives in aid, loans and investment combined.<sup>32</sup>

### 2.2.3. Conflict

29. Between 1999 and 2002, the Greater Nile Petroleum Operating Company – a consortium of oil corporations including Canada-based Talisman – engaged in violent attacks against civilians in Sudan with the aid of the military.<sup>33</sup> While villages in the eastern part of Heglig were destroyed by army officials, attacks were launched against Ruweng County in the Western Upper Nile, leaving over 6,000 houses burnt down.<sup>34</sup> According to a 2002 Report by the UN Special Rapporteur on the human rights situation in Sudan, there were accounts of 'scorched earth tactics used by air and ground forces to clear oil-rich areas, chase people out of their villages and ensure that they would not return'.<sup>35</sup> Royalties from the company's upstream oil activities were used to exacerbate the conflict in the Heglig region.<sup>36</sup>
30. In Angola, the 27-year civil war was significantly exacerbated by extractive companies.<sup>37</sup> In the oil sector, the state-owned Sonangol corporation established in 1978 as the 'exclusive concessionaire for oil exploration and development',<sup>38</sup> gave equity

interests to businesses with links to the global arms trade as a form of payment for brokering arms deals.<sup>39</sup> One of the key actors in the conflict was the French Elf Aquitaine. Between 1990 and 1994, Elf Aquitaine arranged oil-backed loans both for government forces and the opposition in the Angolan civil war.<sup>40</sup> Elf's actions at the time were motivated by the belief, in common with other corporations in the extractive industries, that it was 'easy to make money on the war by offering loans to the respective guerrilla leaders – at exorbitant interest rates – in exchange for promises of oil contracts'.<sup>41</sup> Beyond Angola, Elf Aquitaine also provided financial support to the Sassou-led government in the 1997 civil war in exchange for 'future rights to exploit Congo's substantial oil reserves'.<sup>42</sup>

31. In the Central African Republic, businesses have also featured in the financial ramifications of the ongoing civil war between government forces, the Séléka and Anti-Balaka rebel movements.<sup>43</sup> In 2015, UN sanctions were imposed on the Bureau d'Achat de Diamant en Centrafrique (BADICA) and its Belgian counterpart Kardiam for purchasing conflict diamonds in the Séléka-controlled mining areas. In the logging sector, more than 3.4 million euros (€) were paid to rebel forces in 2013 by multinationals in the country in order to be able to continue the logging of conflict timber.<sup>44</sup> Global Witness reports that in a single transaction in 2013, over 381,000 was paid by the Central African Forestry Company (SEFCA) to the Séléka group after it had seized power in a military coup 'as bribes, to pass roadblocks, for armed escort, and for the protection of their logging sites'.<sup>45</sup>
32. The Gambia has also experienced communal tensions that led to violent conflicts between law enforcement and communities over the issue of natural resource exploration.<sup>46</sup> For instance, on 18 June 2018, there were clashes between Faraba Banta community and the Police Intervention Unit.<sup>47</sup> The tension arose over sand mining rights by a private company in the areas of Faraba Banta

30 Global Witness, *Holding the Line* (London: Global Witness, 2017) 8.

31 Faku, Dineo, 'Lonmin repatriated R400m, says AIDC report', *Business Report*, 3 June 2015.

32 UNECA (n 23).

33 El Jack, Amani, 'Gendered implications: development-induced displacement in Sudan' in Vandergeest, Peter/Idahosa, Pablo/Bose, S Pablo (eds) *Development's displacements: ecologies, economics, and cultures at risk* (2007).

34 Moro, Leben, 'Oil development induced displacement in the Sudan' Sir William Luce Fellowship, *Durham Middle East Papers* 10 (September 2009).

35 UN General Assembly, *Situation of human rights in the Sudan: interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Sudan*, Gerhart Baum, Note by the UN Secretary-General, UN Doc. A/57/326 (20 August 2002). Para 39.

36 Bakx, Kyle, 'Oil, politics and human rights: a look back at Talisman' *CBC News* 22 February 2015.

37 Tordo, Silvana/Anouti, Yahya, *Local content policies in the oil and gas sector: case studies* (Washington D.C.: World Bank Publications, 2013) 14.

38 Global Witness, *A crude awakening: the role of the oil and banking industries in Angola's Civil War and the plunder of state assets* (London: Global Witness, 1999).

39 Luvhengo, Victor, *Multinational corporations and human rights violations in African conflict zones: the case study of Angola 1992-2005* (University of Witwatersrand, April 2006).

40 Markus, Ustina, *Oil and gas: the business and politics of energy* (2015) 281-282.

41 *Ibid.*, 281.

42 Brack, Duncan /Hayman, Gavin, 'Building markets for conflict-free goods' in Brown' Oli/Halle, Mark/Peña, M Sonia/Winkler, Sebastian (eds), *Trade, aid and security: an agenda for peace and development* (2007) 98.

43 Morrison, Mark, *Central African Republic governance and political conflict* (2017).

44 Global Witness, *Blood timber: how Europe played a significant role in funding war in the Central African Republic* (2015).

45 *Ibid.*

46 See The Gambia-NHRC, *Roundtable Conference on Business and Human Rights and Validation of Advisory Note on Environmental Rights in The Gambia*, 20–22 October 2021.

47 *Ibid.*

and the indigenous community and resulted in deaths, injuries and destruction of properties in the community.<sup>48</sup> Tensions have also been reported recently in Kartong, Sanyang and Gunjur due to sand mining, fishing and environmental degradation.<sup>49</sup> Corporate–community tensions continue to exacerbate human rights challenges. For example, the Faraba Banta incident in which tensions arose over a sand mining license, resulted in deaths and wanton destruction of property. Recurring tensions also continue in the coastal towns of Sanyang, Kartong and Gunjur.<sup>50</sup> Industrial fishing has brought traditional fishing to near collapse and has led to an increase in illegal fishing due to The Gambia's poor surveillance of fisheries resources on the high seas.<sup>51</sup>

#### 2.2.4. Environmental Pollution

33. The Niger-Delta situation in Nigeria spotlights the issue of environmental pollution. In its 2021 report, the World Bank identified Nigeria as one of the top seven gas flaring countries for almost a decade.<sup>52</sup> Market and economic constrictions, as well as a lack of regulatory clarity complicate the importance of ending gas flaring in Nigeria. The result is brazen pollution of the atmosphere, 'including carbon dioxide, methane and black carbon'.<sup>53</sup> Gas flaring has not only created negative changes in atmospheric conditions,<sup>54</sup> but has also reduced life expectancy in the Niger Delta region.<sup>55</sup> The United Nations Environment Programme estimates life expectancy in the region at 'less than 50 years'.<sup>56</sup> From 1991 to 1994, about 32 billion cubic feet of gas was flared by Shell in the region.<sup>57</sup>
34. Following the discovery of oil in Nigeria in the 1950s, MNCs involved in global exploration – including Shell and Chevron – acquired licenses to engage in oil extraction. While the income accruing to the country from the activities of these MNCs has risen steeply, the environmental pollution from cavalier exploration

48 Ibid.

49 Ibid.

50 See Roundtable Conference on Business and Human Rights and Validation of Advisory Note on Environmental Rights in the Gambia, 3–4 November 2021.

51 Ibid.

52 World Bank, 'Global Gas Flaring Tracker Report' (28 April 2021); available at: <<https://thedocs.worldbank.org/en/doc/1f7221545bf1b7c89b850dd85cb409b0-0400072021/original/WB-GGFR-Report-Design-05a.pdf>>

53 Ibid.

54 Ologunorisa E. Temi, 'A review of the effects of gas flaring on the Niger Delta environment' (2001) 8(3) *International Journal of Sustainable Development and World Ecology* 253.

55 Oluduro, Olubayo, Oil exploration and human rights violations in Nigeria's oil producing communities (2014) 243.

56 UNEP, *Environmental Assessment of Ogoniland* (2011) 10.

57 Okonto, Ike/Douglas, Oronto, *Where Vultures Feast: Shell, Human Rights, and Oil in the Niger Delta* (2003).

has been colossal. Between 1976 and 1990, about 2,796 spillage incidences were recorded in the Niger-Delta region of Nigeria.<sup>58</sup> The Nigerian National Petroleum Corporation<sup>59</sup> estimates that, annually, 2,300 cubic metres of crude oil are spilled in 300 different incidences in the region.<sup>60</sup> Between 1976 and 1996, the Nigerian Department of Petroleum Resources reported that over 2.4 million barrels of oil were spilled. Over 100 million barrels of oil were reportedly spilled in the Niger-Delta region between 1960 and 1997.<sup>61</sup>

35. In 1978, the Gulf Oil Company of Nigeria (later Chevron) spilled 300,000 barrels of crude oil polluting the environment.<sup>62</sup> The same year, 580,000 barrels of oil were spilled by Shell in the Forcados Terminal.<sup>63</sup> On 17 January 1980, an estimated 400,000 barrels of oil were spilled from Texaco's Funiwa-5 offshore station.<sup>64</sup> In 1998, more than 40,000 barrels of oil were spilled from Mobil's oil pipeline.<sup>65</sup> In 2010, ExxonMobil reportedly spilled over a million gallons of oil in the region over a week.<sup>66</sup> Although most of the spills are blamed on sabotage, the Department of Petroleum Resources reported that between 1976 and 1990, only 4 per cent of oil spills were from sabotage.<sup>67</sup>

#### 2.2.5. Displacement

36. Displacement due to business-related development projects is one of the most pertinent human rights challenges in Africa. Following independence, many African states embarked on large-scale development projects to position Africa economically with the rest of the world. Large-scale investment projects from businesses were significantly encouraged particularly in the extractive sector. And while the economic

58 Ebegbulem, C. Joseph/Ekpe, Dickson/Adejumo O., Theophilus, 'Oil exploration and poverty in the Niger Delta region of Nigeria: a critical analysis' (2013) 4(3) *International Journal of Business and Social Science* 282.

59 Nigeria's state-owned enterprise.

60 Oriola B. Temitope, *Criminal resistance? the politics of kidnapping oil workers* (2013) 168.

61 Offiong J. Offiong/Robert Dibia, 'Environmental policy and issues in Nigeria' in Dibia, A Robert (ed.) *Comparative perspective on environmental policies and issues* (2014) 268.

62 Anyanwu, O. Julius, 'Maritime tanker accident on coastal areas in Nigeria' (2014) 14(2) *Global Journal of Research in Engineering* 7.

63 Nwilo C., Peter/Badejo T., Olusegun, 'Impacts and management of oil spill pollution along the Nigerian coastal areas' in *International Federation of Surveyors* (eds), *Administering marine spaces: international issues* (2006) 119, 123.

64 Aghalino O., Samuel/Eyinla, Bolade, 'Oil exploitation and Marine pollution: evidence from the Niger Delta, Nigeria' (2009) 28(3) *Journal of Human Ecology* 178.

65 Ibid.

66 Jandt, E. Fred, *An introduction to intercultural communication: identities in a global community* (2013).

67 Oki, R. Abudu, *Barbarism to decadence: Nigeria and foreign complicity* (2017).

benefits of these projects have been tremendous, the way population displacements are often carried out for their realisation has had an immense impact on the socio-economic livelihood of those displaced. Issues of cosmetic consultation, inadequate notices, and unfair and unjust compensation have often raised pertinent human rights questions.

37. Following the end of the war in Sierra Leone in early 2000s, Koidu Holdings Limited (KHL) acquired mining rights in the Kono district for Kimberlite mining. In line with the Environmental Protection Act of 2000,<sup>68</sup> KHL commissioned an Environmental Impact Assessment (EIA), which revealed that 4,537 people would be negatively affected. The EIA recommended that resettlement should be carried out and the welfare of the vulnerable group should be ensured. However, KHL lingered in the implementation of this recommendation for more than a year, arguing that it was yet to make budgetary arrangements because its agreement with the government was to the effect that the land was vacant.<sup>69</sup> As such, any occupation was illegal. After erecting a little 'shambolic housing',<sup>70</sup> the company carried out blasting activities in contravention of the EIA. In early 2005, the local communities threatened massive protests, following which KHL negotiated with the local communities and agreed that 'houses were to be constructed by community residents, and KHL was to bear the cost of construction materials, labor, and supervision'.<sup>71</sup>
38. In Ghana, proper negotiations with the displaced people of the Nkwantakrom community (achieved through protests in the Kono case) were judicially imposed. In 1997, 45 people were evicted from the Nkwantakrom community in the western region of Ghana (Nana Kofi Karikari & 44 Others v. Ghanaian Australian Goldfields (GAG) Ltd.<sup>72</sup> This eviction was carried out to make way for the Ghanaian Australian Goldfields Mining Project (GAGMP). Besides the fact that the eviction was not sanctioned by law, those displaced were not offered compensation, neither were they consulted prior to their displacement. As a result, a case was instituted in the Tarkwa High Court (THC) for a declaration that the demolition was unlawful, for damages and for an order of court for the appointment of valuers 'to value the demolished buildings in order to apply to the Minister for Mines and Energy for compensation under Minerals and Mining Law'.<sup>73</sup> The mining company argued that the Nkwantakrom community did not exist prior to

their acquisition of the mining concession, inferring that the members of the community were not only encroachers but had settled on the land for the purpose of obtaining compensation.<sup>74</sup> The THC rejected the argument, emphasising that 'it was incumbent on the company to meet with the chiefs, opinion leaders and the inhabitants in the area to dialogue over the demolition and the payment of appropriate compensation'.<sup>75</sup> The THC further inferred a prejudice often found in the manner in which local communities are treated in displacement situations, stating that 'it appears from the attitude shown by the defendant right from the day of invasion that ... [the company] thinks of the ... [community] as weak and voiceless',<sup>76</sup> and as such, they were supposed to stay 'quiet if a wealthy and influential multinational company demolishes their place of abode and uses their land in the way it likes'.<sup>77</sup>

39. In 2001, the Ugandan government entered an investment agreement with the Hamburg-based Neumann Kaffee Gruppe for the establishment of a large-scale coffee plantation. In 2000, the Neumann Kaffee Gruppe sought to establish a location to produce Robusta coffee, at a time when Uganda was implementing an agricultural policy as part of its Poverty Eradication Action Plan, aimed primarily at reducing poverty,<sup>78</sup> 'through a profitable, competitive, sustainable and dynamic agricultural and agro-industrial sector'.<sup>79</sup> For this purpose, the investment by the Neumann Kaffee Gruppe was a timely opportunity. Such investment, which had the potential of realising an export-oriented agricultural transformation, could have a positive long-term impact on poverty eradication. For the purpose of Neumann Kaffee Gruppe's large-scale investment in Uganda's coffee sector, the Ugandan Investment Authority (UIA) acquired 2,510 ha (hectares) of land from a freehold title holder named Mr Kayiwa and leased the land for a period of 99 years to the Neumann Kaffee Gruppe for the establishment of the Kaweri Coffee Plantation.<sup>80</sup> However, the land had a nuanced history. Not only was it not vacant, but about 538 ha of the land belonged to another

68 Network Movement for Justice and Development, 'Diamonds, blood and tears: the relationship between Koidu Holdings Ltd and the affected property owners of Kono' Focus on Mining Companies Series No. 1 (April 2010) 16.

69 Ibid., 15.

70 Ibid.

71 Bermúdez-Lugo, Omayra, 'The mineral industry of Sierra Leone' (2005) United States Geological Survey Mineral Yearbook 34.1.

72 Suit No. LS.34/97.

73 Ibid.

74 Ibid.

75 Ibid.

76 Ibid.

77 Ibid.

78 Ministry of Finance, Planning and Economic Development Uganda, 'Poverty reduction strategy paper: Uganda's poverty eradication action plan: summary and main objectives' (2000); Muduuli, C. Mary, 'Uganda's poverty eradication action plan: national sustainable development strategy principles tested', presentation at the International Forum on National Sustainable Development Strategies (NSDSs), Accra, Ghana, 7–9 November 2001.

79 Republic of Uganda, 'Plan for modernisation of agriculture: eradicating poverty in Uganda: government strategy and operational framework' (2000) VI.

80 Neumann Kaffee Gruppe, 'Chronology of events, Kaweri Coffee Plantation' (2013).

owner called Ssebbowa.<sup>81</sup> Although there was an agreement by the Ugandan authorities that those persons in occupation of the land could remain, they were issued a notice to vacate the land.<sup>82</sup>

40. In the Tete province in Mozambique, there was resettlement following the displacement of more than 2,000 families from 2009 to 2014 for coal mining activities by Vale and Rio Tinto. However, the resettlement process implemented by the companies was fraught. One problem with the resettlement was that arable land was not sufficient for food production. Families moved to Cateme village were assured two hectares of land for agriculture, however, only one hectare was given, which was noted to be unproductive.<sup>83</sup> There were also discriminatory patterns in the way families were moved. For instance, families moved by Vale to 25 de Setembro were employed at the mines and thus lived close to the mines and to the urban settlement. Families moved to Cateme village were 40 kilometres away from the urban capital and as such experienced a challenge getting jobs.<sup>84</sup>
41. Similarly, in the case of the Dambankhoto community in Senegal, where families were displaced for mining purposes, the resettlement plan implemented by the Sabodala Gold Mine (SGM) was flawed for two reasons. First, the resettlement agreement was not fully complied with in the implementation process. In the Protocole d'Accord, it was agreed that housing units 'each with the same number of rooms as the homes people were losing at Dambankhoto' will be provided, along with 'a borehole equipped with mechanical pump' and compensation for loss of agricultural products.<sup>85</sup> However, families arrived at the resettlement site to discover that there was not arable land and the housing units provided were not adequate. Second, the consent of the families was sought and obtained only following the government approval of SGM, as a result, this gave the displaced families 'only limited ability to negotiate the terms of ... displacement'.<sup>86</sup>

## 2.3. Country Case Studies

42. It is important to note that, while this study attempts to conduct an investigation of the state of business and human rights in each African state, there are significant variations from country to country with

81 Zeemeijer, Ilse, 'Who gets what, when and how? New corporate land acquisition and the impact on local livelihoods in Uganda' (Utrecht University December 2011), 133.

82 Ibid.

83 Jentsch, Corinna, 'Mozambique: photographs from the promised land', *The Guardian*, 21 January 2013.

84 Kabemba, Claude/Nhancale, Camilo, *Coal versus communities: exposing poor practices by Vale and Rio Tinto in Mozambique* (Southern Africa Resource Watch Open Policy, 2012) 5.

85 Amnesty International, *Mining and human rights protection in Senegal: closing the gaps in protection* (Amnesty International Report Index: AFR 49/002/2014), 16–17.

86 Ibid.

regard to contents, description, language barriers, availability of participants and spatial information. These limitations constitute existential gaps when it comes to articulating and understanding key business and human rights challenges in relevant countries. For example, there are extensive and significant descriptions for countries such as Kenya, South Africa, Nigeria, and Uganda, while other countries, mostly in North Africa, have little literature or practical resources on business and human rights. Kenya and Uganda, for instance, are the only two Member States that have developed a National Action Plan on Business and Human Rights. Thus, extensive research on practices and lessons learnt are readily available. Consequently, the findings, and the nature of the methodological approach, can by no means be regarded as representative; however, since it is combined with a review of the literature, it builds up a rough profile of the key business and human rights challenges in Africa.

### 2.3.1. Algeria

43. Article 67 of the Algerian Constitution (2020) obliges the state to work towards preserving the environment and provides that 'the law shall determine the obligations of natural and legal persons pertaining to the protection of the environment'. Article 222 provides for an office of the National Council of Human Rights (NCHR) with the responsibility of carrying out the 'function of monitoring and providing early warnings and evaluation in terms of respecting human rights'.<sup>87</sup> The Council and Algerian Human Rights Institution are key to implementing the UNGPS and AU Policy Framework.
44. The National Human Rights Institution (NHHR) initiated its first activity on 21 June 2014, organising a study day on 'Human Rights and Business'. Some of the activities the human rights council has facilitated include training workshops for the benefit of public and private companies on business and human rights and organising awareness seminars on themes related to business and human rights in collaboration with NGOs. The Permanent Mediation Commission of the NHRI has taken up a number of petitions dealing with allegations of human rights violations in the business sector. The NHRI has also taken up recommendations on BHR in its annual reports, and in the reports to the regional mechanisms on the human rights situation in Algeria.
45. In fulfilling its constitutional responsibility, it is important that the Council introduce awareness-raising actions, information and communication to promote human rights. The Council is obligated to monitor and provide early warnings and evaluations of business respect for human rights and to make recommendations on the promotion and protection of human rights. While human rights violations

87 See Article 223.

do arise in Algeria,<sup>88</sup> there does not appear to be documented evidence of business-induced human rights violations.

46. Algeria does not have any machinery in place for a National Action Plan on Business and Human Rights. The critical challenge appears to be awareness-raising and orientation on the part of the Council and stakeholders.

### 2.3.2. Angola

47. Article 12 of the Angolan Constitution (2010) creates a pathway to the application of the UNGPs. It stipulates that Angola shall ‘respect and implement the principles’ of the UN and OAU (now AU) Charter on the basis of respect for human rights. Article 38 guarantees the right to free economic initiative, whereby everyone can engage in free enterprise in accordance with the Constitution and the law. The Constitution mandates that business associations must apply ethical standards within the confines of constitutional order, fundamental human rights or the law.<sup>89</sup> Under Article 26 (3), the Angolan courts must apply international legal instruments. Article 75 imposes civil liability on the state and public corporate bodies for any act committed in the exercise of their ‘legislative, judicial and administrative duties’ which results in the ‘violation of rights, freedoms and guarantees’ of Angolan citizens. Individuals who are parties to the violations shall also be criminally liable.
48. Angola is heavily dependent on extractive resources. Arguably, it has become a highly organised rent-seeking machine and extractive industry has become a lucrative source of economic rents. It remains to be seen whether these rents will be ploughed back into social development and environmental protection. There are reports of consultancy-enabled tax avoidance and corruption in Angola,<sup>90</sup> as well as crackdowns on peaceful protesters and activists in the oil rich Cabinda and diamond-rich Lunda Norte.<sup>91</sup> Furthermore, mining companies have hidden behind the pandemic to violate the human rights of workers and local communities.<sup>92</sup> Other significant human rights challenges include: unlawful

88 Human rights violations and challenges include lack of freedom of expression, violence against women and girls, expulsion of asylum seekers, unreliable electricity supply, costly data, poor bandwidth and lack of infrastructure. See Human Rights Watch, World Report 2021; available at: <<https://www.justice.gov/eoir/page/file/1352966/download#page=20>>

89 See Article 49.

90 Hallman, Ben/Gurney, Kyra/Alecci, Scilla/de Haldevang, Max, ICIJ (19 January 2020).

91 See Human Rights Watch, ‘Angola Events of 2019’; available at: <<https://www.hrw.org/world-report/2020/country-chapters/angola>>

92 See ‘Voices from the Ground: How the Global Mining Industry is Profiting from the COVID-19 Pandemic’; available at: <[https://miningwatch.ca/publications/2020/6/2/voices-ground-how-global-mining-industry-profiting-covid-19-pandemic?\\_\\_cf\\_chl\\_jschl\\_tk\\_\\_=pmd\\_4b049dce0aacba6ba924a737bb5f52b4ddf0c44a-1626848782-0-ggNtZGzNAk2jcnBszQeO](https://miningwatch.ca/publications/2020/6/2/voices-ground-how-global-mining-industry-profiting-covid-19-pandemic?__cf_chl_jschl_tk__=pmd_4b049dce0aacba6ba924a737bb5f52b4ddf0c44a-1626848782-0-ggNtZGzNAk2jcnBszQeO)>

or arbitrary killings, including extra-judicial killings by the state, inhuman or degrading treatment, acts of corruption, lack of investigation of violence against women,<sup>93</sup> and deaths of miners in Chiwele town.<sup>94</sup>

49. Angola does not have a National Action Plan on BHR, neither does it have a BHR policy and plan.

### 2.3.3. Republic of Benin

50. Article 58 of the Constitution (1990) allows the President, upon consultation, to ‘take the initiative of the referendum’ on any question relating to the promotion of, and reinforcement of human rights. Benin included gender equality in its Constitution and is working towards implementing the Document on the National Policy on Women, adopted on 30 January 2001.<sup>95</sup>
51. Article 4 of the law establishing the Commission Béninoise des Droits de l’Homme (CBDH) mandates it to promote and safeguard human rights in Benin Republic. Information on the Commission’s website does not indicate whether the Commission is actively seeking and pursuing human rights protection, especially with regard to business and human rights. The CBDH will be instrumental in the implementation of the UNGPs and Policy Framework.
52. Benin does not have a National Action Plan on BHR.

### 2.3.4. Botswana

53. The Constitution (1996) does not obligate businesses to respect human rights. Though the Ditshwanelo – the Botswana Centre for Human Rights – pursues human dignity, activities and information from the Centre do not indicate activity related to BHRs. The Centre could be instrumental in engaging with government in awareness-raising on BHRs. For example, the lack of transparency in extractive contracts has complicated the determination of how citizens are benefitting from the country’s wealth.<sup>96</sup> Other instances of corporate-related human rights violations include government utilisation of private technology, such as using the Israeli technology Cellebrite to monitor citizens, thereby violating their constitutional right to privacy.<sup>97</sup> Additionally, ReconAfrica’s exploratory project of a new oilfield

93 See ‘Angola 2020 Human Rights Report’; available at: <<https://www.justice.gov/eoir/page/file/1381621/download>>

94 Vieira, Arnaldo, ‘30 killed in Angola mine collapse’, The East African (17 March 2019); available at: <<https://www.theeastafrican.co.ke/news/africa/Scores-killed-in-Angola-mine-collapse/4552902-5029202-14oiu8/index.html>>

95 UN Document: A/65/840 (17 May 2011), ‘Note verbale dated 13 May 2011 from the Permanent Mission of Benin to the United Nations addressed to the President of the General Assembly’; available at: <[https://www.un.org/ga/search/view\\_doc.asp?symbol=A/65/840](https://www.un.org/ga/search/view_doc.asp?symbol=A/65/840)>

96 Admin, ‘The diamond deception’; available at: <<https://www.thegazette.news/news/the-diamond-deception/>>

97 Rozen, Jonathan, ‘Botswana police use Israeli Cellebrite tech to search another journalist’s phone’; available at: <<https://cpj.org/2021/07/botswana-cellebrite-search-journalists-phone/>>

in a wilderness threatens the lives of thousands of elephants.<sup>98</sup>

54. The National Vision of 2016 did not include corporate respect for human rights, despite claiming to be geared towards sustained development and achieving social justice. Hopefully, the Presidential task force on National Vision 2036 will, to some extent, focus on the issues of BHR challenges in Botswana. This will consolidate Botswana's progressive policy and legislative reforms in ensuring its laws, policies and practices conforming with human rights standards.
55. Botswana does not have a National Action Policy on BHRs.

### 2.3.5. Burkina Faso

56. Article 16 of the Constitution (1991) provides for the right to establish a business. However, the Constitution provides no basis for businesses' respect for human rights. Recent reports indicate that the development of gold mining has fuelled human trafficking, child labour, inequality, and disrupted socioeconomic outcomes.<sup>99</sup> Likewise, MNCs extracting cocoa products have been implicated in child labour accusations.<sup>100</sup> Despite significant human rights challenges in the chocolate processing sector, Burkina Faso has not developed a National Action Plan on BHRs.

### 2.3.6. Burundi

57. The Constitution (2018) does not oblige businesses to protect human rights. Article 19, however, incorporates all rights and duties guaranteed by international human rights instruments. Most human rights challenges have focused on the state's deprivation of citizens' basic freedom. For instance, the state recently blocked social media to prevent protests against the President's decision to stand for re-election.<sup>101</sup> This has been a continuing process.
58. Burundi does not have any documented process for creating a National Action Plan or National Baseline Assessment.

98 Taylor, Matthew, 'New oilfield in African wilderness threatens lives of 130,000 elephants'; available at: <<https://www.theguardian.com/environment/2021/jun/20/new-oilfield-in-african-wilderness-threatens-lives-of-130000-elephants>>

99 Zabsonré, Agnès/Agbo, Maxime/Somé, Juste/Haffin, Irène, 'Gold exploitation and socioeconomic outcomes: the Case of Burkina Faso'; available at: <[https://media.business-humanrights.org/media/documents/files/documents/PMMA-12783-Final-Report-revised\\_004.pdf](https://media.business-humanrights.org/media/documents/files/documents/PMMA-12783-Final-Report-revised_004.pdf)>

100 Yucatan Times, 'The Darker and Lighter Side of Chocolate – A Story of Bitterness and Hope', The Yucatan Times (17 September 2020); available at: <<https://www.theyucatanimes.com/2020/09/the-darker-and-lighter-side-of-chocolate-a-story-of-bitterness-and-hope/>>

101 BBC, 'Burundi blocks social media amid anti-Pierre Nkurunziza protests', BBC (29 April 2015); available at: <<https://www.bbc.com/news/world-africa-32512668>>

### 2.3.7. Cameroon

59. The Constitution (1972) does not obligate corporate bodies to respect human rights. Cameroon is faced with a crisis of internally displaced people due to violence and corporate activities. Other human rights violations include gender-based violence, abuses by Anglophone separatist armed groups, crackdowns on peaceful protests and arbitrary arrest of those who exercise their rights to freedom of expression and assembly.<sup>102</sup> Lack of free, prior and informed consent in the sugar cane industry has prevented the achievement of sustainable and human rights-compliant sugar production.<sup>103</sup> Article 16 of the Cameroonian land tenure rules<sup>104</sup> does not ensure compensation when national land is allocated to agribusinesses, service providers or state institutions on the pretence that public interest is paramount. Furthermore, indigenous peoples are being discriminated against in forestry, mining operations, and agro-allied business activities.<sup>105</sup>
60. The National Commission on Human Rights and Freedoms (NCHRF)<sup>106</sup> was set up with the core mandate of conducting crucial investigations into human rights violations and fundamental freedoms.<sup>107</sup> Its business and human rights agenda is moderately low as a priority thematic area.<sup>108</sup> The Commission conducted numerous site visits and fact-finding missions on the construction sites of Lom Pangar from 14 to 17 July 2014, and Mbandjock from 17 to 18 September 2015 and from 20 to 23 April 2016. The Commission noted that these development projects do not comply with social and environmental assessments, invariably leading to human rights violations. The Commission also noted issues of insignificant compensation, the lack of consideration for farm crops and structures, and the resettlement of local populations.<sup>109</sup> During an investigative mission to the Kribi Deep Seaport from 14 to 17 March 2017, the Commission observed the violation of the people's right to property.<sup>110</sup>

102 Amnesty International, 'The State of the World's Human Rights'; available at: <<https://www.justice.gov/eoir/page/file/1384176/download#page=65>>

103 Sam Szoke-Burke, 'As Agribusiness Sustainability Initiatives Face Flak, Here's How they can do better'; available at: <<https://news.climate.columbia.edu/2020/09/14/agribusiness-sustainability-initiatives-face-flak-heres-can-better/>>

104 Ordinance No. 74-1 of 6 July 1974.

105 International Labour Organization, Indigenous peoples in Cameroon: a guide for media professionals (2015) 14 (Indigenous Peoples in Cameroon).

106 No. 2004/016 of July 2004.

107 The National Commission on Human Rights and Freedoms; available at: <<https://www.nanhri.org/wp-content/uploads/2016/04/CAMEROON.pdf>>

108 Ibid.

109 Report on the State of human rights in Cameroon, 2017; available at: <[http://www.cndhl.cm/sites/default/files/NCHRF\\_EDH\\_%202017\\_0.pdf](http://www.cndhl.cm/sites/default/files/NCHRF_EDH_%202017_0.pdf)>

110 Ibid.

The Commission is also tasked with responsibility for carrying out 'field visits to companies and to project development sites in the country'.<sup>111</sup> In its 2018 Annual Report, the Commission reported that the implementation of the 2019 Action Plan for Human Rights concerning the cement sector focused on the promotion and protection of workplace victims of human rights violations.<sup>112</sup> Implementation focused on education and awareness, monitoring and advocacy.<sup>113</sup> Partners of the Commission in the implementation of the Work Plan are: the UNCHR-CA, civil society organisations (CSOs), MINCOMMERCE, the MINPMEESA, the MINSANTE, the Senior Divisional Offices, the GICAM, the MECAM, the ECAM, MINJUSTICE, communities, the Bar Association, the Society of Bailiffs, trade union confederations, and donors.

61. Cameroon has not drafted a National Action Plan; neither has it conducted a National Baseline Assessment.

### 2.3.8. Cape Verde

62. The Constitution (1980) does not obligate businesses to respect human rights. The UN Human Rights Committee has raised concerns about anti-discrimination legislation, gender-based violence, failure to protect children from violence, child labour, and corruption in Cape Verde.<sup>114</sup> While the government has taken significant steps to address these challenges, there is no evidence of corporate redress of human rights violations.<sup>115</sup> The National Commission for Human Rights and Citizenship (CNDHC) has the core mandate of developing and implementing a national action plan for human rights. To date, it has not undertaken any project on business and human rights.<sup>116</sup> The CNDCH should be enjoined to protect, promote, and reinforce business and human rights in Cape Verde.
63. Cape Verde has not conducted a National Action Plan, nor has it conducted a National Assessment Baseline.

111 Ibid.

112 2018 Annual Report of the NCHRF; available at: <<http://www.cndhl.cm/sites/default/files/2018%20ANNUAL%20REPORT%20OF%20THE%20NCHRF.pdf>>

113 Ibid.

114 Human Rights Committee, 'In dialogue with Cabo Verde, Human Rights Committee Experts raise concerns about anti-discrimination legislation, gender-based violence, the court system and corruption'; available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25190&LangID=E>>

115 See further Cabo Verde 2019 Human Rights Report; available at: <<https://www.state.gov/wp-content/uploads/2020/02/CABO-VERDE-2019-HUMAN-RIGHTS-REPORT.pdf>>

116 National Commission for Human Rights and Citizenship of the Republic of Cabo Verde, 'Parallel Report on the implementation of the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families'; available at: <[https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/CPV/INT\\_CMW\\_IFL\\_CPV\\_32149\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/CPV/INT_CMW_IFL_CPV_32149_E.pdf)>

### 2.3.9. Central African Republic

64. Article 13 of the Constitution (2016) guarantees the right to establish a business, but does not obligate businesses to respect human rights.
65. There are significant human rights violations in Central African Republic (CAR). These are perpetrated mainly by armed groups and militias who commit war crimes and other human rights abuses, such as sexual violence, environmental degradation and attacks on humanitarian workers. Multinational companies have been implicated in land and water pollution.<sup>117</sup> There are also reports of illegal international trafficking networks that fund and supply armed groups with weapons.<sup>118</sup> Businesses have also been implicated in forest desertification, mercury contamination of rivers, and lack of local community participation and consultation.<sup>119</sup>
66. Hopefully, the National Commission for Human Rights and Fundamental Freedoms in the CAR will seek to implement business and human rights principles.<sup>120</sup>
67. CAR has not developed a National Action Plan, nor has it executed a National Baseline Assessment.

### 2.3.10. Chad

68. Article 64 of the Constitution (2018) guarantees the right to establish a business but not an obligation for businesses to respect human rights. Most human rights violations are committed by the security forces and include extrajudicial killings, torture and rape, and prevalent corruption. Women are particularly impacted by such egregious state and militia conduct. The Boko Haram insurgency has particularly worsened the human rights situation in the Lake Chad area.<sup>121</sup>
69. The Commission Nationale des Droits de l'Homme (National Human Rights Commission) (CNDH) was established to advise government on human rights matters. Unfortunately, the Commission has been weakened by the ineffectiveness of state machinery. Hence, the Commission has found it difficult to provide assistance to national and international institutions on business-related human rights concerns.
70. Chad does not have a National Action Plan and it has not executed a National Baseline Assessment.

117 Amnesty International, Central African Republic 2020; available at: <<https://www.amnesty.org/en/countries/africa/central-african-republic/report-central-african-republic/>>

118 Ibid.

119 Ibid.

120 See further Human Rights Council, 'Human rights situation in the Central African Republic – Report of the Independent Expert on the situation of human rights in the Central African Republic (A/HRC/42/61)'; available at: <<https://reliefweb.int/report/central-african-republic/human-rights-situation-central-african-republic-report-independent>>

121 See generally, Amnesty International, 'Chad 2020'; available at: <<https://www.amnesty.org/en/countries/africa/chad/report-chad/>>

### 2.3.11. Comoros

71. Substantial human rights violations in the Comoros Islands include torture, arbitrary detention, unjustified arrests or prosecutions against journalists, severe restrictions of religious freedom, widespread acts of corruption, and forced child labor<sup>122</sup> in domestic work, fishing and agriculture. There is no direct evidence of corporate abuses despite the probability of its occurrence.
72. The Comoros does not have a national human rights institution and the Ministry of Justice, Islamic Affairs, Public Administration and Human Rights does not have any programme or plan on business and human rights.
73. Comoros Islands do not have a National Action Plan and National Baseline Assessment.

### 2.3.12. Democratic Republic of the Congo (DRC)

74. The DRC's conflict-prone political economy illustrates the impact of illicit natural resource exploitation that has gone on for far too long.<sup>123</sup> This has not only resulted in the pillaging of the country's extractive resources with the complicity of its political leaders but has also led to severe rent seeking practices.<sup>124</sup> The DRC situation presents further evidence of corporate mismanagement by MNCs of another nation's resources.<sup>125</sup> The DRC is the world's largest producer of ore and other minerals.<sup>126</sup> The Congo wars have resulted in the deaths of millions of Congolese and the displacement of hundreds of thousands. Political instability, corruption, human rights violations, and commercial exploitation of natural resources have heightened the necessity for a business and human rights agenda in the DRC.<sup>127</sup>
75. Corporate activities in the mining sector have resulted in a number of long-term effects, including exposure to toxic pollution which causes birth

defects in the offspring of cobalt and copper miners.<sup>128</sup> It is therefore imperative that corporate respect for human rights be a thematic priority area for government and non-state actors. The DRC provides a striking example of the link between mineral exploitation and criminal activities, indirectly encouraged by corporate actors.<sup>129</sup>

76. In 2017, the La Commission Nationale des Droits de l'Homme de la Republique Democratique du Congo (CNDH-RDC) produced a report which reviewed the various violations and attacks on economic and social rights suffered by women in certain public and private companies in the city of Kinshasa.<sup>130</sup> The report was designed to ensure the promotion and protection of women's rights in the Democratic Republic of the Congo by protecting their economic, social and cultural rights, as well as respecting women's economic and social rights in public enterprises in the city of Kinshasa. The survey revealed that women workers were victims of violations of economic and social rights, resulting in low representation of women in decision-making bodies (the levels are 19 per cent women on the boards of public companies and 11 per cent in private companies).<sup>131</sup> Based on the results of the survey, the CNDH noted that there were cases of violations and abuse of the economic and social rights of women working in public and private companies in the city-province. The CNDH enjoined government to enforce constitutional guarantees that consider the appointments of women to boards of directors and management committees of public companies. It also called on companies to avoid harassment practises among their professional staff and to adopt recruitment policies based on gender parity.<sup>132</sup>
77. In 2018, the National Human Rights Commission (CNDR) commissioned a survey on the social responsibility law of forestry and mining companies.<sup>133</sup> The survey recommended the effective application of the new mining code to promote implementation of the CSR programme in the DRC, particularly with regard to social legislation, environmental legislation and respect for human rights.<sup>134</sup> It also called for the popularisation of the CSR concept in order to

122 US State Department, '2019 Country Reports on Human Rights Practices: Comoros'; available at: <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/comoros/>>

123 See generally Reps. of the U.N. Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC, S/2001/357 (April 12, 2001), S/2002/ 565 (May 22, 2002), S/2002/1072 (Nov 13, 2001), S/2002/1146 (Oct. 16, 2002) and S/2003/1027 (Oct. 28, 2003).

124 See Phillippe Le Billion, *Wars of Plunder: Conflicts, Profits, and the Politics of Resources* (2012) 151–157.

125 Nest, Michael W./Frignon, Francois/Kisangani, Emizet F., *The Democratic Republic of Congo: Economic Dimensions of War and Peace* (2006) 1.

126 Cobalt: World Mine Production, by Country; available at: <[https://www.indexmundi.com/en/commodities/minerals/cobalt/cobalt\\_t8.html](https://www.indexmundi.com/en/commodities/minerals/cobalt/cobalt_t8.html)>

127 See further Abe, O./Ordor, A., 'Addressing Human Rights Concerns in the Extractive Resource Industry in Sub-Saharan Africa using the Lens of Article 46 (C) of the Malabo Protocol' (2018) 11(2) *The Law and Development Review* 843–878.

128 Amnesty International. 'DRC: Alarming research shows long lasting harm from cobalt mine abuses' (6 May 2020); available at: <<https://www.amnesty.org/en/latest/news/2020/05/drc-alarming-research-harm-from-cobalt-mine-abuses/>>

129 Abe (n 119) 853.

130 See CNDH-RDC, 'Rapport d'enquete sur les violations des droits economiques et sociaux des femmes dans les entreprises publiques et privees dans la ville de Kinshasa', September-October 2017.

131 Ibid.

132 Ibid.

133 CNDH-RDC, *Avis et propositions de la commission nationale des droits de l'homme (CNDR) sur la responsabilite societale des entreprises d'exploitation forestiere et miniere en Republique Democratique du Congo*, AVOS No 005/AP/CNDH-RDC/2019, Avril 2019.

134 Ibid.

promote and protect economic, social and cultural rights, and ensure that the headquarters of the various companies are gradually established in the provincial capitals close to the mining sites.<sup>135</sup> It also recommended tribunals to penalise government authorities that assist mining companies in avoiding tax payment, and to apply the law impartially against operators who violate human rights.<sup>136</sup> The survey called on companies to include CSR programmes in their managerial policy and more specifically to ensure compliance with local laws.

78. In the 2021 'Rapport d'enquete sur les droits économiques et sociaux au sein des entreprises dans la ville province de Kinshasa',<sup>137</sup> the CNDH called on the state to show more political will in the realisation of its population's economic and social rights in order to improve their living conditions by serving as an example in, among other things, the application of SMIG at its third level for public companies and to ensure its regulatory role with private companies for the application of laws and standards.<sup>138</sup>
79. The CNDC has been proactive in realising BHR norms. In 2021, the CNDC conducted surveys on economic and social rights in extractive industry, forestry, mining, cosmetics, and food, among others. It mediated in cases of conflict between RUASHI Mining and the local communities of Ruashi in the provinces of Haut-Katanga and Lualaba. One of the main issues raised by the communities was relocation without compensation. Furthermore, the NHRI has supported communities in obtaining access to remedy in several cases, including the case of abusive dismissal of agents by the company SHEKINA SARL in the city of Kolwezi, in the province of Lualaba;<sup>139</sup> as well as participation in consultations of the working group on business and human rights; developing opinions and recommendations contained in the published reports of the NHRI; and raising awareness of companies through advocacy and information exchange with regard to their duty to respect human rights, while also sharing the findings and recommendations from inquiries and investigations conducted by the NHRI.
80. Despite the tremendous human rights implications with regard to corporate actors, the DRC has not drafted a National Action Plan nor executed a National Baseline Assessment.

135 Ibid.

136 Ibid.

137 CNDH-RDC, 'Rapport d'enquete sur les droits économiques et sociaux au sein des entreprises dans la ville province de Kinshasa', July 2021.

138 Ibid.

139 Ibid.

### 2.3.13. Republic of the Congo

81. Article 214 of the Constitution (2015) establishes the National Commission of the Rights of Man. The Commission is tasked with the promotion and protection of human rights.<sup>140</sup>
82. Human rights violations in the Republic of the Congo have focused largely on the strong impact of development projects on indigenous peoples, especially the Mbuti, the Baka and the Batwa peoples, who remain challenged in relation to their ancestral lands and natural resources, ethnic conflicts and human rights violations.<sup>141</sup> The Congolese Parliament adopted a law to promote and protect the rights of indigenous peoples on 25 February 2011.<sup>142</sup>
83. Republic of Congo does not have a National Action Plan or a National Baseline Assessment.

### 2.3.14. Djibouti

84. Human rights violations in Djibouti revolve around unlawful or random killings by government agents; punitive and life-threatening prison conditions; baseless arrests or prosecutions of journalists; corruption; worker safety and accountability for abusive employers; and gender-based domestic violence.<sup>143</sup> The Commission nationale consultative des droits de l'homme (National Consultative Commission on Human Rights) does not have any business and human rights plan or project currently ongoing.
85. There is currently no National Action Plan or National Baseline Assessment.

140 Article 215.

141 IWGIA, 'Indigenous peoples the Democratic Republic of Congo'; available at: <<https://www.iwgia.org/en/democratic-republic-of-congo/4214-iw-2021-drc.html?highlight=WyJyZXB1Ym9mYyYy-IsIm9mliwiY29uZ28iLCJjb25nb25nbydzliwicmVwdWJsaWVWbmdvIl0=>>

142 IWGIA, 'The Indigenous World 2021: Republic of the Congo'; available at: <<https://www.iwgia.org/en/republic-of-congo/4245-iw-2021-republic-of-the-congo.html?highlight=WyJyZXB1Ym9mYyYy-IsIm9mliwiY29uZ28iLCJjb25nb25nbydzliwicmVwdWJsaWVWbmdvIl0=>>

143 USDOS, 'Country Report on Human Rights Practices 2019 – Djibouti'; available at: <<https://www.eoi.net/en/document/2027490.html>>

### 2.3.15. Egypt

86. The Egyptian Constitution (2014) guarantees the presence of workers' representatives on the boards of public sector companies.<sup>144</sup> Representation extends to profit sharing.
87. Terrorism remains the greatest challenge in Egypt. Human rights violations include political imprisonment,<sup>145</sup> torture, arbitrary detention and political imprisonment.<sup>146</sup>
88. The National Council for Human Rights is tasked with maintaining and promoting human rights. In its 2016 Annual Report, the Council recommended the development of a national plan to promote and create job opportunities 'through cooperation between public and private business sectors'.<sup>147</sup> The Council participated in a Conference on 'Human Rights and Business', held on 29 September–1 October 2011.<sup>148</sup> Although the Council encourages a human rights culture at all levels, there is no other documented evidence of the Council facilitating business and human rights compliance.
89. Egypt does not have a National Action Plan and a National Baseline Assessment has not been conducted.

### 2.3.16. Equatorial Guinea

90. Equatorial Guinea has vast oil reserves and extractive resources. However, corruption, poverty and mismanagement of oil revenue have prevented citizens from realising their social and economic rights.<sup>149</sup> The depth of corrupt practices committed by the state and failure to mandate companies to disclose information about extractive activities has heightened business and human rights concerns.<sup>150</sup> Furthermore, the evidence is that these human rights violations are perpetrated mainly by the state.<sup>151</sup>
91. Equatorial Guinea does not have a National Action Plan and a National Baseline Assessment has not been conducted.

144 Article 42.

145 Soliman, Omar, 'My brother is one of Egypt's 60,000 political prisoners – and Trump is happy to let him rot in jail', *The Independent* (17 January 2020); available at: <<https://www.independent.co.uk/voices/moustafa-kassem-abdel-fattah-el-sisi-trump-egypt-us-prisoner-a9288401.html>>

146 BBC, 'Egypt torture centre, report says' (11 April 2007); available at: <[http://news.bbc.co.uk/2/hi/middle\\_east/6544149.stm](http://news.bbc.co.uk/2/hi/middle_east/6544149.stm)>

147 National Council for Human Rights, 'Executive Summary of the National Council of Human Rights Annual Report 2015–2016'; available at: <<https://www.nchr.eg/Uploads/publication/en/Executivesummary2015-20161570450220.pdf>>

148 National Council for Human Rights, '8th Annual Report of the National Council for Human Rights 2011–2012'; available at: <<https://www.nchr.eg/Uploads/publication/en/annualreport8E1570449101.pdf>>

149 Human Rights Watch, 'Equatorial Guinea, Events of 2018'; available at: <<https://www.hrw.org/world-report/2019/country-chapters/equatorial-guinea>>

150 Ibid.

151 Amnesty International, 'Equatorial Guinea 2020'; available at: <<https://www.amnesty.org/en/countries/africa/equatorial-guinea/report-equatorial-guinea/>>

### 2.3.17. Eritrea

92. Article 21 of the Constitution (1997) guarantees the right to establish a business but no obligation to respect human rights. However, the National Assembly can enact laws securing and safeguarding the 'rights and conditions of labor and other rights' of the citizens.<sup>152</sup> Furthermore, Article 7 (2) prohibits any activity that violates the human rights of women or limits their role and participation.
93. Business and human rights challenges have been mainly in the extractive sector. Several human rights violations have been perpetrated by the Canadian mining company in Eritrea. Hence, victims of these human rights violations prefer to challenge corporate activities in the home state of the multinational companies concerned.<sup>153</sup> In the Nevsun lawsuit (re Bisha mine, Eritrea),<sup>154</sup> Eritrean plaintiffs allege forced work at an extractive site controlled by a Canadian company, Nevsun. On 28 February 2020, the Canadian Supreme Court held that international norms can be applied to the plaintiff's case. In October 2020, Nevsun settled the lawsuits with the plaintiffs for a substantial but undisclosed amount.<sup>155</sup> In an ongoing case, some Eritrean citizens filed a lawsuit against Italian authorities at the civil court in Rome alleging that the authorities pushed back the plaintiffs to Libya by the ship 'Asso Ventinove' 'as part of operations coordinated by Italian authorities in collaboration with the so-called Libyan coast guard'.<sup>156</sup> Other instances of human rights violations are state led, such as arbitrary arrest and detention, freedom of press and religion.<sup>157</sup> State-owned businesses continue to utilise forced and slave labour in mining projects.
94. Eritrea does not have a NAP and a NBA.

### 2.3.18. Eswatini

95. Government crackdowns on protests have occasioned severe human rights violations,<sup>158</sup> coupled with national shutdowns of internet

152 See Article 24.

153 Butler, Paula, *Colonial Extractions: Race and Canadian Mining in Contemporary Africa* (2015).

154 *Nevsun Resources Ltd v Araya*, 2020 SCC 5.

155 Brend, Yvette, 'Landmark settlement is a message to Canadian companies extracting resources overseas: Amnesty International', *CBC News* (23 October 2020); available at: <<https://www.cbc.ca/news/canada/british-columbia/settlement-amnesty-scoc-africa-mine-nevsun-1.5774910>>

156 ANSA, 'Five Eritreans take legal action against Italy over alleged pushback', *InfoMigrants* (16 February 2021); available at: <<https://www.infomigrants.net/en/post/30285/five-eritreans-take-legal-action-against-italy-over-alleged-pushback>>

157 Amnesty International, 'Eritrea 2019'; available at: <<https://www.amnesty.org/en/countries/africa/eritrea/report-eritrea/>>

158 Masuku, Lunga, 'Eswatini army called in to curb looting at anti-riots', *Reuters* (1 July 2021), available at: <<https://news.trust.org/item/20210701150342-x8xs8>>

services.<sup>159</sup> These protests are largely in response to the profligate spending by the royal family, and government corruption which have impoverished the citizens. Other incidents of human rights violations perpetrated mostly by the state include extrajudicial killings by security forces, use of excessive force, gender-based violence, and restrictions on fundamental freedoms of life and liberty.<sup>160</sup> Swaziland's Commission on Human Rights and Public Administration/Integrity has a moderate priority thematic focus on business and human rights.<sup>161</sup> The Commission mediates complaints arising from land disputes between businesses and local communities. However, Eswatini has not drafted an NAP nor conducted a National Baseline Assessment.

### 2.3.19. Ethiopia

96. Human rights violations include unlawful killings by security forces, arbitrary arrests, torture, inhuman and degrading treatment.<sup>162</sup> Clothing and manufacturing companies have been enjoined to step up their commitment to business respect for human rights.<sup>163</sup> The Ethiopian Human Rights Commission (EHRC) investigates and addresses human rights violations. It does not have any programme on business and human rights in Ethiopia. Ethiopia does not have an NAP and has not conducted a National Baseline Assessment.
97. The United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises held an African Regional Forum on Business and Human Rights in Ethiopia on 16–18 September 2014, focused primarily on advancing a business and human rights agenda in Africa. Since then, there has been no consultative forum to consider the implementation of business and human rights on the continent.

### 2.3.20. Gabon

98. Human rights violations include restrictions on freedom of expression, association and assembly, corruption, gender-based violence, forced child

labour and political prisoners.<sup>164</sup> Lack of transparency and disclosures on the human risks of extractive projects have led to environmental abuses. There have been allegations of forest desertification,<sup>165</sup> and dumping of polluted water used in mineral purification into the surrounding environment.<sup>166</sup> Gabon does not have an NAP and has not conducted a National Baseline Assessment.

### 2.3.21. Gambia

99. The Gambian Constitution (1996) is progressive. Article 17 provides that 'all natural and legal persons in The Gambia' shall respect and uphold the fundamental human rights and freedoms protected by the Constitution. Article 175 (5) obligates a state-owned enterprise to submit a report to the National Assembly on its business operations, including human rights, during the preceding year.
100. Protests against development projects, such as sand mining, have led to the deaths of a number of protesters.<sup>167</sup> Other protests have focused on disputes over land designed to be used for estate development by an Indian company,<sup>168</sup> and 'poor working conditions, salary increment' in Gambia Milling Corporation (GMC).<sup>169</sup> Enforced disappearances, human trafficking, torture, restrictions on freedom of expression still linger in The Gambia.<sup>170</sup> The National Human Rights Commission (NHRC) was established in 2017 to monitor, investigate and report on the observance of human rights in all spheres of life in The Gambia.<sup>171</sup> Objective 6 of the Strategic Plan of the NHRC 2020 concerns business and human rights and requires the Commission to articulate a strong link between human rights and development. In seeking to deepen respect for a culture of human rights, a

164 USDOS, '2019 Country Reports on Human Rights Practices: Gabon'; available at: <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/gabon/>>

165 Agencies, 'Dilemma in Gabon's forest conservation and economic interests' (6 October 2019); available at: <<https://www.newtimes.co.rw/africa/dilemma-gabons-forest-conservation-and-economic-interests>>

166 Mining with Meaning Protecting Human Rights and the Environment in the Shift to Clean Energy; available at: <<https://vigilance-plan.org/wp-content/uploads/2020/10/Sherpa-MINING-WITH-MEANING.pdf>>

167 BHR Resource Centre, 'Gambia: Two environmental activists killed during protests against sand mining'; available at: <<https://www.business-humanrights.org/en/latest-news/gambia-two-environmental-activists-killed-during-protests-against-sand-mining/>>

168 Madiba Singhateh, 'Gambia: Communities Protest Against Estate Developer', AllAfrica (29 May 2017); available at: <<https://allafrica.com/stories/201705300231.html>>

169 Halimatou Ceesay, 'GMC workers protest "poor working conditions"', The Point (28 February 2017); available at: <<https://thepoint.gm/africa/gambia/article/gmc-workers-protest-poor-working-conditions>>

170 Amnesty International, 'Gambia Human Rights'; available at: <<https://www.amnestyusa.org/countries/gambia/>>

171 NHRC, 'About NHRC/Who we are'; available at: <<https://www.gm-nhrc.org/about-nhrc>>

159 Faku, Dineo, 'MTN takes urgent legal action to end internet shutdown in Eswatini', IOL News (5 July 2021); available at: <<https://www.iol.co.za/business-report/companies/mtn-takes-urgent-legal-action-to-end-internet-shutdown-in-eswatini-ba8e38db-d921-4dcc-b31e-b44412da5484>>

160 Amnesty International, 'Swaziland'; available at: <<https://www.amnesty.org/download/Documents/28000/afr550062011en.pdf>>

161 Swaziland Commission on Human Rights and Public Administration Integrity (SCHR); available at: <<https://www.nanhri.org/wp-content/uploads/2016/04/SWAZILAND.pdf>>

162 Amnesty International, 'Ethiopia 2020'; available at: <<https://www.amnesty.org/en/countries/africa/ethiopia/report-ethiopia/>>

163 Baumann-Pauly, Dorothy, 'Ethnic conflict could unravel Ethiopia's valuable garment industry', The Conversation (20 January 2021); available at: <<https://theconversation.com/ethnic-conflict-could-unravel-ethiopias-valuable-garment-industry-152844>>

key approach of the Commission, as envisaged in its Strategic Plan 2021–2025, is to focus on and support efforts directed at eradicating systemic abuses by business, particularly where impacts are most pronounced for vulnerable communities and groups.

101. The NHRC organised a round table conference in 2021. At the conference, the NHRC identified the need for the state to develop an NAP on BHRs.<sup>172</sup> The roundtable also revolved around four main issues: the applicability of the UNGPs to the Gambian context; the impact of the private sector on the realisation of socio-economic rights; the intersection of various rights within the framework of business and human rights; and the validation of the draft Advisory Note.
102. The conference explored the regulatory framework on mining, natural resource management and environmental rights in The Gambia in light of human rights standards; and proposed recommendations to address and resolve any challenges.
103. The NHRC is committed to creating a National Working Group on Business and Human Rights, with the Ministry of Justice taking the lead partnering with the NHRC, which would provide technical support. The Gambia does not have an NAP and has not conducted a National Baseline Assessment.

### 2.3.22. Ghana

104. While the Constitution (1992) provides for the right to establish a business,<sup>173</sup> section 12 (1) further provides that corporate entities must observe and comply with the Bill of Rights contained in the Constitution. Thus, victims of corporate induced human rights violations can challenge egregious corporate conduct in courts.
105. Business and human rights challenges are widespread in the gold mining, the nascent oil and gas sector and the cocoa production sector, as these sectors are important to the Ghanaian economy. The UN Working Group on the issue of human rights and transnational corporations and other business enterprises undertook an official visit to Ghana from 8 to 17 July 2013.<sup>174</sup> The Working Group noted with great concern the involvement of children in hazardous labour in the fishing industry on Lake Volta.<sup>175</sup> In other sectors, automobile companies have been tasked with addressing human rights abuses in their aluminium supply chains. There

were allegations that a bauxite mine in the Atewa rainforest could contaminate the local community's drinking water.<sup>176</sup> Representatives of the BMW Group, part of the consortium, indicated that, if the bauxite mining project violated the 'government's commitments to fight climate change and protect biodiversity', BMW would reject any aluminium originating from the bauxite mine. Some CSOs have also challenged this project,<sup>177</sup> arguing that the project will disrupt the community's way of life and existence. A 2008 environmental impact assessment of several mines found that mining areas have comparatively 'higher concentrations of arsenic, particularly within the areas of old, large mines such as Obuasi, Bibiani, and Prestea.'<sup>178</sup>

106. Article 216 of the Constitution establishes the Commission on Human Rights and Administrative Justice (CHRAJ) with the mandate to safeguard human rights and investigate 'complaints of violations of fundamental rights and freedoms, injustice, corruption, practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution'. The CHRAJ has established substantial expertise in business and human rights and provides support in achieving remedy for people adversely impacted by business activities.
107. On 13 July 2021, Ghana conducted a National Validation Workshop on the NBA in collaboration with the Ghana Institute of Management and Public Administration (GIMPA), with funding provided by DIHR. The Baseline Assessment assesses Ghana's preparedness for achieving its obligations to guarantee fundamental human rights and liberties, access to effective remedies for victims of human rights violations and compliance levels with regard to business respect for human rights. The Assessment also identified regulatory gaps in critical areas such as labour, environment, anti-corruption and businesses' criminal culpability. The validation exercise will pave the way for the development of a NAP.<sup>179</sup>

176 Human Rights Watch, 'Aluminum: The Car Industry's Blind Spot: Why car companies should address the human rights impact of aluminum production' (22 July 2021); available at: <<https://www.hrw.org/report/2021/07/22/aluminum-car-industrys-blind-spot/why-car-companies-should-address-human-rights>>

177 Kwasi Gyamfu Asiedu, 'Ghanaian activists sue government to save forest from mine', Reuters (8 July 2020); available at: <<https://www.reuters.com/article/us-ghana-mining-environment-trfn/ghanaian-activists-sue-government-to-save-forest-from-mine-idUSKBN24930W>>

178 African Commission on Human and Peoples' Rights, 'Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realisation of Human and Peoples' Rights under the African Charter on Human and Peoples' Rights', Working Group on Extractive Industries, Environment and Human Rights, 69th Ordinary Session of the African Commission on Human and Peoples' Rights, 23 November 2021, p. 21; available at: <https://www.achpr.org/sessions/info?id=374>

179 See further CHRAJGHANA, <<https://twitter.com/CHRAJGHANA/status/1415369985657085955>>; <<https://chraj.gov.gh/?s=business+and+human+rights>>

172 See Roundtable Conference on Business and Human Rights and Validation of Advisory Note on Environmental Rights in the Gambia, 3–4 November 2021.

173 Article 36 (2) (b) of the Constitution.

174 Human Rights Council, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/26/25/Add.5. (6 May 2014).

175 Ibid.

### 2.3.23. Guinea

108. Article 23 of the Constitution (2010) enjoins the state to protect and defend the rights of its citizens, as well as defenders of human rights. Guinea has one of the world's highest rates of female genital mutilation.<sup>180</sup> State sanctioned torture of political opponents, rape by security forces, abuse of women and children, lack of transparency in land sales and business contracts, and corruption are some examples of human rights violations. Guinea is largely dependent on proceeds from its agrarian economy. It also has large deposits of mineral resources.
109. The Guinean Organization for the Defense of Human Rights and the Citizen (OGDH) does not have any documented evidence of programs geared towards business respect for human rights.<sup>181</sup>

### 2.3.24. Guinea-Bissau

110. Human rights violations include restrictions on freedom of expression, assembly and association, attacks on human rights defenders, inhuman or degrading treatment, corruption, gender-based violence, and child labour.<sup>182</sup> Guinea Bissau does not have an NAP or an NBA.

### 2.3.25. Ivory Coast

111. State-induced human rights violations range from restrictions on freedom of expression and assembly, to illegal killings, torture, and arbitrary arrests.<sup>183</sup> Most corporate-related violations have been within the context of child slave labour on cocoa farms. Ivory Coast produces 41 per cent of the world's cocoa,<sup>184</sup> but the benefits of this resource have not been enjoyed by the citizens. Researchers have attempted to utilise DNA testing on cocoa beans to enable consumers to determine the 'origins and ethics' of their chocolate.<sup>185</sup> Consequently, consumers are able to identify which chocolate

originates from cocoa grown on farms that employ child labour or are environmentally harmful.

112. In *Nestle USA, Inc. v Doe et al*,<sup>186</sup> the Malian plaintiffs (now respondents) alleged that they were trafficked into Ivory Coast as child slaves to produce cocoa on farms operated by the American companies Nestle USA, Inc. and Cargill. The companies do not own or operate cocoa farms in Ivory Coast, but they purchase cocoa from farms there, providing the farms with financial and technical support. The US Supreme Court held that the respondents could not bring a claim under the Alien Tort Statute (ATS) given that the ATS 'does not rebut the presumption of domestic application'.<sup>187</sup> Furthermore, because the ATS does not apply extraterritorially, plaintiffs must establish that 'the conduct relevant to the statute's focus occurred in the United States, even if other conduct occurred abroad'.<sup>188</sup>
113. The Ligue Ivoirienne des Droits de l'Homme (LIDHO) is the foremost human rights organisation in Ivory Coast. However, political unrest has impeded the functioning of this organisation. Furthermore, Ivory Coast does not have an NAP or an NBA.

### 2.3.26. Kenya

114. Article 20 of the Constitution (2010) provides that the Bill of Rights binds all state organs and all persons, who are defined in Article 260 to include a 'company, association or other body of persons whether incorporated or unincorporated'. Effectively, the Kenyan constitution obliges companies to respect human rights. Article 22 further grants the right to all persons to institute court proceedings claiming denial, violation, infringement, or threat against any right or fundamental freedom under the Bill of Rights. This has opened an avenue for public interest litigation in Kenya, which has gone a long way in developing jurisprudence in human rights law generally. Article 59 (2) (c) of Kenya's Constitution establishes the Kenya National Human Rights and Equality Commission (KNHREC), which has been mandated with the duty of promoting the protection and observance of human rights in public and private institutions.
115. Other legislation relevant to business and human rights in Kenya includes the Environmental Management and Coordination Act No 8 of 1999 (substantively revised in 2015), the Water Act No 43 of 2016, the Companies Act No 17 of 2015, the Community Land Act No 27 of 2016, the Mining Act No 12 of 2016, the Proceeds of Crime and Anti-Money Laundering Act No 9 of 2009, the

180 R Van Rossem, AJ Gage, "The effects of female genital mutilation on the onset of sexual activity and marriage in Guinea" (2009) 38(2) Arch Sex Behav. 178.

181 Guinean Organization of Human Rights, <<https://www.sitesofconscience.org/en/membership/guinean-organization-of-human-rights/>>

182 USDOS, "2020 Country Reports on Human Rights Practices: Guinea-Bissau" <<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/guinea-bissau/>>

183 Amnesty International, "Cote D'Ivoire 2020" <<https://www.amnesty.org/en/countries/africa/cote-d-ivoire/report-cote-divoire/>>

184 Challenges of the Cocoa Economy in Côte D'Ivoire; available at: <<http://www.cacao.gouv.ci/index.php?rubrique=1.1.6&langue=en>>, Christina Lamb, 'The child slaves of the Ivory Coast – bought and sold for as little as £40', Daily Telegraph (22 April 2001); available at: <<https://www.telegraph.co.uk/news/worldnews/africaandindianocean/cotedivoire/1317006/The-child-slaves-of-the-Ivory-Coast-bought-and-sold-for-as-little-as-40.html>>

185 University of Bath, 'Cocoa DNA testing to end slavery and child labor in chocolate industry' (14 July 2021); available at: <<https://phys.org/news/2021-07-cocoa-dna-slavery-child-labor.html>>

186 593 U.S. (2021).

187 Ibid.

188 Ibid.

Ethics and Anti-Corruption Commission Act No 22 of 2011, the Climate Change Act No 11 of 2016 and the Employment Act No 11 of 2007.

116. Land-related conflicts are prevalent in Kenya, especially where development projects result in illegal evictions and displace indigenous people from their ancestral land. In the Ogiek case, indigenous peoples were forcefully evicted from their ancestral land in the Mau Forest, and their farms destroyed.<sup>189</sup> Similarly, the Sengwer hunter-gatherer's community was forcefully evicted from their Embobut forest home in the Cherengany Hills.<sup>190</sup>
117. The Kenyan courts have been an avenue to progressively realise business respect for human rights. In *Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another*,<sup>191</sup> *Save Lamu*, a community-based organisation representing the Lamu community, challenged the grant of a license for the construction of the Lamu Coal-fired Power Plant,<sup>192</sup> as well as the process of obtaining the Environmental Impact Assessment (EIA) license by the energy company contracted by the Kenyan government to develop a coal power generation project. It was the contention of the appellants that the project lacked proper public participation in the preparation of the Economic and Social Impact Assessment (ESIA) report, and a flawed EIA report was drafted that was plagued by misrepresentations, inconsistencies and omissions. Other contentions were that the project will have adverse effects on the marine environment through the discharge of thermal effluent because of the poor and outdated cooling system. The lack of sound mitigation measures also compounded the project's unviability.<sup>193</sup> The Tribunal subsequently cancelled the license issued to Amu Power by NEMA and ordered Amu Power to conduct a fresh ESIA report before commencement of the project. Additionally, NEMA was required to comply with the relevant regulations by engaging with the lead agencies and the public in drafting the report. The Tribunal emphasised the need for public participation in the preparation as this will create access to information for the affected community, through meaningful and effective participation.<sup>194</sup> The impact of this decision affected funding of the project as some financiers started to withdraw

their funding on the basis of its environmental and social risks. Similarly, in *KM & 9 others v Attorney General & 7 others*<sup>195</sup> the petitioners were residents of Owino-Uhuru community. They alleged that the 7th Respondent in the case had set up a lead acid battery recycling factory in a neighbouring plot, which produced toxic waste. The waste seeped into the village and caused petitioners serious illness and diseases as a direct consequence of lead poisoning.<sup>196</sup> The Court found that the petitioners were entitled to compensation in monetary and non-monetary relief and granted them declaratory relief in relation to their right to a clean and healthy environment; the highest attainable standard of health and the right to clean and safe water guaranteed by Article 43 of the Constitution, and a Declaration on the right to life as guaranteed by the provisions of Article 26 of the Constitution. However, the state has appealed the decision, contending that the apportionment of liability to state agencies is contrary to the 'polluter pays' principle.<sup>197</sup> The case is yet to be determined. In *Kenneth Gona Karisa v Top Steel Kenya Limited*,<sup>198</sup> the Petitioner accused the corporate Respondent of engaging in activities that have led to serious human rights abuses in violation of the UNGPs.<sup>199</sup>

118. In 2016, the Kenyan Attorney General initiated the process of developing an NAP, which was officially published on 24 July 2019. In April 2021, the NAP was approved by the Cabinet, to be reviewed after five years. Kenya thus became the first African country to publish an NAP.<sup>200</sup> The NAP is aligned with Kenya's Vision 2030 and government's commitment to achieving the Sustainable Development Goals (SDGs).
119. The Kenyan NAP acts as a guiding tool for all actors in relation to respect for human rights, rather than the creation of new obligations.<sup>201</sup> The strategic objectives of the NAP are to enhance existing policy, as well as the legal, regulatory and administrative framework for ensuring respect of human rights by businesses through legal review and development of specific guidance for business; to enhance understanding of the obligation of business to respect human rights; to improve access to justice for victims of business-related

189 Amnesty International, 'Kenya: Ruling in Ogiek case gives hope to Indigenous peoples everywhere' (26 May 2017); available at: <<https://www.amnesty.org/en/latest/news/2017/05/kenya-ruling-in-ogiek-case-gives-hope-to-indigenous-peoples-everywhere/>>

190 Nita Bhalla, 'Kenya's forest communities face eviction from ancestral lands - even during the pandemic', Thomson Reuters Foundation News (23 July 2020); available at: <<https://news.trust.org/item/20200723153009-6peip/>>

191 [2019] eKLR.

192 Ibid.

193 Ibid.

194 Ibid.

195 [2020] eKLR, 178.

196 Ibid.

197 Bwana, 'State Appeals Sh1.3b Award for Lead Victims', The Star (Nairobi, 8 August 2020).

198 Petition No 3 of 2018 (Employment and Labour Relations Court of Mombasa).

199 Ibid., at para 11.

200 'Around the Globe: Business Human Rights Update'; available at: <<https://www.nortonrosefulbright.com/en-ug/knowledge/publications/2020>>, <<https://www.nortonrosefulbright.com/en-ug/knowledge/publications/0ed8097a/around-the-globe-business-human-rights-update>>

201 Kenya, 'National Action Plan on Business and Human Rights'; available at: <<http://nap.knchr.org/Portals/0/2019%20FINAL%20BHR%20NAP%20JUNE%20PDF.pdf>>

human rights abuses; and to establish an NAP implementation and monitoring mechanism that will also act as a platform for dialogue on business and human rights issues in the country.<sup>202</sup>

120. The NAP focusses on five thematic areas: land and natural resources,<sup>203</sup> environmental protection,<sup>204</sup> labour rights, revenue transparency, and access to remedy. It also identifies the following concerns related to business and human rights:
- a. Sexual harassment is widespread and underreported, and women account for the majority of victims. Fear of job loss is a major factor in the reluctance to report. Furthermore, there is low enforcement of the Sexual Offences Act, 2006.
  - b. Lack of access to maternity and paternity leave. While the law provides for and protects both maternity and paternity leave, not all workers in the private sector are able to access this benefit for fear of job loss. Once again, enforcement of the law in this respect remains weak.
  - c. Low level of awareness of labour rights among workers (mostly women in low income or low skilled jobs) and employers.
  - d. Lack of effective regulation of recruitment agencies for migrant workers.
  - e. Lack of publicly available statistics disaggregated by sex and other vulnerabilities that could be useful in addressing sex and other forms of discrimination in the workplace.

- f. Lack of effective remedies for victims of labour-related grievances resulting in high prevalence of unresolved labour-related grievances. A weak enforcement mechanism, in particular an inadequate number of state labour inspectors and the lack of effective operational-level grievance mechanisms were cited as contributing factors.<sup>205</sup>

### 2.3.27. Lesotho

121. Global clothing brands have been implicated in sexual harassment claims in local factories that provided these brands with raw materials.<sup>206</sup> Other human rights violations include gender-based violence, restrictions on freedom of movement, torture, inhuman or degrading treatment or punishment, and corruption.<sup>207</sup>
122. Lesotho has not published an NAP or conducted an NBA.

### 2.3.28. Liberia

123. The New Liberty Gold mine has led to serious human rights violations, including land displacement, land and water pollution, disruption of farming and artisanal mining.<sup>208</sup> International development companies, mainly German and French national development banks have been implicated in these violations. The complaints from the victims of these human rights violations will be heard by the Independent Complaints Mechanism.<sup>209</sup> A Singapore-owned palm oil company, Golden Veroleum Liberia (GVL), has also been implicated in labour rights violations and inhuman treatment. The company had reneged on its promise to provide jobs and development for the rural community of Sinoe County.<sup>210</sup>
124. Objective 1 of the National Human Rights Action Plan (NHRAP) supports 'initiatives for incorporation of business and human rights standards' in investment contracts.<sup>211</sup> It also calls on businesses to

202 Ibid.

203 The challenges identified in the NAP relating to land and natural resources rights and business are: lack of a predictable compensation and resettlement framework for the voluntary and compulsory acquisition of land; lack of guidance on community consultation in the context of natural resource governance, resulting in inadequate participation of local communities in decision-making; and adjudication has not been undertaken in some areas where businesses are operating or propose to operate, complicating decisions on who are the rightful parties to be consulted and compensated. The Mining Act has not been fully operationalised with regard to the sharing of revenues, effectively denying local communities impacted by the operations of mining companies rights and protections under the law; cultural and historical barriers to access to land on the part of women, minorities and marginalised groups such as indigenous persons. These barriers limit these groups' participation in and decision-making power over land-related issues. There is also a lack of sustainable benefits for host communities from the exploitation of natural resources despite the constitutional imperative of sharing benefits equitably.

204 The NAP identifies the following two concerns related to the impacts of businesses on the environment. First, environmental pollution by business operations, including through discharge of effluent into waterways, air and noise pollution and poor disposal of solid waste, toxic and hazardous substances. These negative impacts compromise people's rights to a clean and healthy environment, health, reasonable standards of sanitation, clean and safe water. Second, loss of biodiversity due to destruction and encroachment on the natural environment for commercial purposes which negatively impact livelihoods, health and the access to clean and safe water for present and future generations.

205 Kenya (n 183).

206 HRW, 'Global clothing brands should respond to the #MeToo Mandate'; available at: <<https://www.hrw.org/news/2019/11/24/global-clothing-brands-should-respond-metoo-mandate>>

207 USDOS, '2020 Country Reports on Human Rights Practices'; available at: <<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/lesotho/>>

208 Cholo Brooks, 'Victims of Liberian gold mine disaster see groundbreaking complaint against development banks accepted', GNN Liberia (9 August 2021); available at: <<https://gnnliberia.com/2021/08/09/victims-of-liberian-gold-mine-disaster-see-groundbreaking-complaint-against-development-banks-accepted/>>

209 Ibid.

210 Varney Kamara, 'Liberia: Hundreds of sacked GVL employees still waiting for jobs; company blames the pandemic' (26 May 2021); available at: <<https://www.farmlandgrab.org/post/view/30320>>

211 Liberia, 'National Human Rights Action Plan of Liberia' (NHRAP), 2013–2018; available at: <[https://www.ohchr.org/Documents/Issues/NHRA/Liberia\\_en.pdf](https://www.ohchr.org/Documents/Issues/NHRA/Liberia_en.pdf)>

implement human rights standards in their spheres of operations. Liberia is currently in the process of developing an NAP through its strategic Agenda for Prosperity and Development.<sup>212</sup> Objective 1 of the National Human Rights Action Plan (NHRAP) supports 'initiatives for incorporation of business and human rights standards' in investment contracts.<sup>213</sup> It also calls on businesses to implement human rights standards in their spheres of operations.

### 2.3.29. Libya

125. The human rights situation has been complicated by protracted civil wars, armed groups, militias and various warring parties who have violated international humanitarian law.<sup>214</sup> These protracted conflicts have led to gender-based violence, arbitrary detention, torture and ill treatment.
126. Executives of a French company have been implicated in the commission of torture through their sale of surveillance equipment to Libya and Egypt which was utilised to track government opponents.<sup>215</sup>
127. Libya has not drafted an NAP nor conducted an NBA.

### 2.3.30. Madagascar

128. Human rights violations in Madagascar include government-induced unlawful killings, corruption, gender-based violence and forced child labour.<sup>216</sup> There have been serious concerns about Rio Tinto's operations, which have led to significant human rights impacts, including environmental degradation, land and water pollution.<sup>217</sup> Recently, the Supreme Court in Madagascar criticised the issuance of permits and regulatory approval to an Australian company, Base Resources, for serious and grave human rights violations in the large mineral

212 See Liberia, 'Pro Poor Agenda for Prosperity and Development (PAPD)' (2 July 2018); available at: <<https://globalnaps.org/wp-content/uploads/2019/01/liberia-national-development-agenda-pro-poor-agenda.pdf>>

213 Liberia, 'National Human Rights Action Plan of Liberia' (NHRAP), 2013–2018; available at: <[https://www.ohchr.org/Documents/Issues/NHRA/Liberia\\_en.pdf](https://www.ohchr.org/Documents/Issues/NHRA/Liberia_en.pdf)>

214 Amnesty International, 'Libya 2020'; available at: <<https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>>

215 Sarah Elzas, 'French executives face torture charges for selling spy gear to Libya, Egypt', RFI (22 June 2021); available at: <<https://www.rfi.fr/en/france/20210622-french-executives-face-torture-charges-for-selling-spy-gear-to-libya-egypt-amesys-nexa-human-rights>>

216 Amnesty International, 'Madagascar 2020'; available at: <<https://www.amnesty.org/en/countries/africa/madagascar/report-madagascar/>>

217 Yvonne Orengo, 'Open letter with questions to Rio Tinto from five countries – including Madagascar (regarding the QMM mine in Anosy)' (13 May 2020); available at: <<http://www.andrewleestrust.org/blog/?p=1520>>

sands project in southwest Madagascar.<sup>218</sup> The Project has generated controversies surrounding transfer of land rights, lack of local community consultation and participation.<sup>219</sup>

129. Madagascar's Ministry of Justice has held a series of training courses on the UNGPs since 2012 in partnership with mining companies Sherrit and QMM.<sup>220</sup> However, Madagascar has not published an NAP, neither has it conducted an NBA.

### 2.3.31. Malawi

130. Human rights challenges in Malawi include gender-based violence, criminalisation of same-sex marriages, corruption, and restrictions on fundamental human rights.<sup>221</sup> The DIHR, in collaboration with the Citizens for Justice, Malawi, published a Human Rights and Business Country Guide in 2015.<sup>222</sup> The Guide provides guidance to companies on their responsibility to respect human rights and contains information regarding actual and potential human rights impacts of businesses.<sup>223</sup>
131. Article 129 of the Constitution (1994) established the Human Rights Commission with the mandate to protect and investigate human rights violations in Malawi. The Commission produced a National Human Rights Plan of Action on business and human rights in consultation with stakeholders.<sup>224</sup> The first draft of the Action Plan (2016–2020) was developed between 26 and 29 August 2015. The Commission has been involved in a Human Rights Dialogue and stakeholder training on BHRs. For instance, it trained some tobacco companies on how to handle complaints related to corporate-

218 Edward Carver, 'Madagascar's top court criticizes government handling of mining project', Mongabay (9 October 2020); available at: <[https://news.mongabay.com/2020/10/madagascars-top-court-criticizes-government-handling-of-mining-project/?utm\\_source=Mongabay+Newsletter&utm\\_campaign=6ac001219b-Newsletter\\_2020\\_04\\_30\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_940652e1f4-6ac001219b-77224349&mc\\_cid=6ac001219b&mc\\_eid=6fff6094d61](https://news.mongabay.com/2020/10/madagascars-top-court-criticizes-government-handling-of-mining-project/?utm_source=Mongabay+Newsletter&utm_campaign=6ac001219b-Newsletter_2020_04_30_COPY_01&utm_medium=email&utm_term=0_940652e1f4-6ac001219b-77224349&mc_cid=6ac001219b&mc_eid=6fff6094d61)>

219 Ibid.

220 Human Rights Council, 'Report of the Working Group on the Universal Periodic Review', A/HRC/28/13 (23 December 2014); available at: <<https://www.refworld.org/pdfid/54f859bf4.pdf>>

221 USDOS, 'Malawi 2020 Human Rights Report'; available at: <<https://www.state.gov/wp-content/uploads/2021/03/MALAWI-2020-HUMAN-RIGHTS-REPORT.pdf>>

222 'Human Rights and Business Country Guide, Malawi' (August 2015); available at: <<https://globalnaps.org/wp-content/uploads/2018/04/business-and-human-rights-guide-to-malawi.pdf>>

223 Ibid.

224 OHCHR, 'Call for input by the Working Group on Business and Human Rights on the role of national human rights institutions in facilitating access to effective remedy for business and human rights abuses'; available at: <[https://www.ohchr.org/Documents/Issues/Business/Remedy/Malawi\\_HumanRightsCommission\\_Malawi.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/Malawi_HumanRightsCommission_Malawi.pdf)>

induced human rights violations.<sup>225</sup> The Commission has investigated mining issues around Lake Malawi, land and management challenges in the green belt and the Kwota Sugar plantation conflicts.<sup>226</sup> Malawi does not currently have an NAP.

### 2.3.32. Mali

132. Child labour and gender-based violence remain prevalent in Mali, in addition to other state-induced human rights violations, such as torture, inhuman and degrading treatment, restrictions on fundamental freedoms and liberties.<sup>227</sup> Mali does not have any documented report of an NAP, nor has it conducted an NBA.

### 2.3.33. Mauritania

133. There are several cases of state-induced human rights violations, such as restrictions on fundamental rights and liberties, gender-based violence, and cruel and inhumane treatment.<sup>228</sup> There is no documented evidence of business impact on human rights in Mauritania.<sup>229</sup>

### 2.3.34. Mauritius

134. In 2020, a Japanese-owned bulk carrier vessel MV spilled oil off the coast of Mauritius.<sup>230</sup> About 30 kilometres of shoreline were heavily affected and the ‘presence of contaminated algae has been identified in multiple locations’.<sup>231</sup> The oil spill heavily impacted air quality, animals, including whales and dolphins have died, and the government response has not been encouraging.<sup>232</sup> This has led to a series of protests following the oil spill. Communities surrounding the oil spill area have been suffering from oil-related health challenges and seeping of

225 OHCHR, ‘Call for input by the Working Group on Business and Human Rights on the role of national human rights institutions in facilitating access to effective remedy for business and human rights abuses’; available at: <[https://www.ohchr.org/Documents/Issues/Business/Remedy/Malawi\\_HumanRightsCommission\\_Malawi.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/Malawi_HumanRightsCommission_Malawi.pdf)>

226 See further HRW, ‘They Destroyed Everything. Mining and Human Rights in Malawi’ (September 2016); available at: <[https://www.hrw.org/sites/default/files/report\\_pdf/malawi09\\_brochure\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/malawi09_brochure_web.pdf)>

227 Amnesty International, ‘Mail’; available at: <<https://www.amnestyusa.org/countries/mali/>>

228 HRW, ‘Mauritania’; available at: <<https://www.hrw.org/world-report/2021/country-chapters/mauritania>>

229 Commission Nationale des Droits de l’Homme; <<https://www.cndh.fr>>

230 ‘Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes’, AL OTH 79/2020 (14 December 2020); available at: <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25723>>.

231 Ibid.

232 Ibid.

oil from the coastline.<sup>233</sup>

135. An Inclusive Development Guidelines for Businesses was published by an independent business organisation in October 2020.<sup>234</sup> The Guidelines seek to offer some pathways for businesses to be more engaged in inclusive development and eradication of poverty.<sup>235</sup> Mauritius has not developed an NAP.

### 2.3.35. Morocco

136. Morocco has not yet adopted a NAP. However, the Moroccan National Human Rights Council has identified some key priority areas in which business and human rights challenges remain paramount. These areas include: health (including environmental health, workplace health and safety); sexual harassment; other core labour rights (including freedom of association and trade union rights); operations in conflict zones; and impacts on children, including child labour.<sup>236</sup> In its 2018–2022 National Action Plan for Democracy and Human Rights,<sup>237</sup> Sub-area VII of the Plan recommends adequate measures in the BHRs agenda. Recommendations include:

- Elaborate and adopt a national action plan on business and human rights involving all stakeholders (government departments, Parliament, the private sector, trade unions, governance institutions, participatory democracy and human rights institutions and civil society organisations, etc.).
- Encourage companies to set up a general internal code of conduct on human rights.
- Mainstream respect for human rights into business in law and practice, and promote companies’ roles with regard to human rights and the values of citizenship.
- Promote the role of the company in assessing the impact of its activities on human rights.
- Promote national participation in international and regional events on business and human rights.<sup>238</sup>

233 Nishan Degnarain, ‘Wakashio Four Months On: Mauritius Drenched In Oil, Health And Debt Issues’, Forbes (12 December 2020); available at: <<https://www.forbes.com/sites/nishandegnarain/2020/12/12/wakashio-four-months-on-mauritius-drenched-in-oil-health-and-debt-issues/?sh=403967a35336>>

234 Signe Natir, ‘Inclusive Development Guidelines for Businesses’; available at: <<https://www.lovebridge.mu/sites/default/files/business-mauritius-guidelines-inclusive-development.pdf>>

235 Ibid.

236 BHRRC, ‘Morocco/Western Sahara’; available at: <<https://old.business-humanrights.org/en/morocco-western-sahara>>

237 Morocco, ‘National Action Plan for Democracy and Human Rights (2018–2021)’; available at: <<https://rm.coe.int/national-action-plan-for-democracy-and-human-rights/16809e0d7f>>; <<http://didh.gov.ma/en/publications/national-action-plan-democracy-and-human-rights-2018-2021>>

238 Ibid., paras 211–215.

138. The strategic objectives of the business and human rights plan include to ‘harmonize national labour laws and policies with relevant international instruments and standards; [and] strengthen national presence at the international level’.<sup>239</sup> In May 2016, the Moroccan Human Rights Council signed an agreement with the General Confederation of Moroccan Enterprises to promote human rights in Moroccan companies.<sup>240</sup> Some of the main priorities of this agreement are to promote the UNGPs at the workplace, as well as ‘good corporate practices in ensuring equality between men and women at the workplace’.

### 2.3.36. Mozambique

138. The role and responsibility of companies in integrating human rights in their practices have evolved over the years.<sup>241</sup> Article 56 of the Constitution (2004) provides that businesses are bound to comply with fundamental rights and freedoms in their operations. Despite this provision, significant human rights violations are rampant. These violations include land grabs, child labour, gender-based violence, enforced disappearances and impunity.<sup>242</sup> Battles over control of natural resources and years of neglect by the central government have led to severe human rights violations, such as killings, gender-based violence and arson, mostly perpetrated by armed insurgents and terrorist affiliated groups.<sup>243</sup>
139. The DIHR in conjunction with the Mozambique League of Human Rights has published a Human Rights and Business Country Guide which serves as guidance to companies in their approach to BHR compliance.<sup>244</sup>
140. In 2014, a joint initiative between the state and CSOs to develop an NAP commenced.<sup>245</sup> Several

activities, including seminars, training workshops and baseline assessment of BHRs have been implemented.<sup>246</sup> Mozambique has also structured its NAP development into phases. Some of the phases will address awareness and sensitisation workshops, and the development of baseline assessments.

141. In November 2017, a three-day seminar and training course was held for government, parliament, business and CSOs in order to build capacity on BHRs.<sup>247</sup> These activities will lead to the development of an NAP.

### 2.3.37. Namibia

142. Human rights challenges in Namibia include gender-based violence, child labour, discrimination and violence based on sexual orientation, harassment and political intimidation, and corruption.<sup>248</sup>
143. In 2014, stakeholders held a meeting on ‘Business and Human Rights’ in Namibia.<sup>249</sup> Participants discussed the need for good labour practices. There was also a debate on Namibian practice and international perspectives on the UNGPs. There was an emphasis on the need to respect international labour standards and practices in businesses, especially in supply chains.
144. The office of the Ombudsman is tasked with investigating and resolving cases of human rights violations. There is no evidence the office has investigated or worked on BHRs issues. Namibia does not have an NAP and has not conducted a Baseline Assessment.

### 2.3.38. Niger

145. Decades of armed insurrection, military incursions into politics and terrorist attacks have created avenues for human rights violations. There are several instances of extra-judicial killing by state security agencies. Journalists have been incarcerated and fundamental rights and liberties are restricted.<sup>250</sup>

239 Ibid., 56.

240 EU Parliament, Policy Department, ‘Implementation of the UN Guiding Principles on Business and Human Rights’ (February 2017); available at: <[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO\\_STU\(2017\)578031\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf)>

241 Editor, ‘Mozambique: Role of Business in Human Rights Discussed’ (17 September 2013); available at: <<https://allafrica.com/stories/201309180276.html>>

242 Amnesty International, ‘Mozambique 2020’; available at: <<https://www.amnesty.org/en/countries/africa/mozambique/report-mozambique/>>

243 Neha Wadekar, ‘The fight for Cabo Delgado: A hidden war over Mozambique’s natural resources’, The Telegraph (21 July 2021); available at: <<https://www.telegraph.co.uk/global-health/terrorism-and-security/mozambiques-hidden-war/>>

244 Human Rights and Business Country Guide, Mozambique; available at: <<https://globalnaps.org/wp-content/uploads/2017/11/mozambique.pdf>>

245 UN Committee on the Rights of the Child, ‘Concluding

observations on the combined third and fourth periodic reports of Mozambique’ (27 November 2019); available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/332/55/PDF/G1933255.pdf?OpenElement>> para 598.

246 Ibid.

247 Global NAPS, ‘Mozambique’; available at: <<https://globalnaps.org/country/mozambique/>>

248 Namibia 2012 Human Rights Report; available at: <<https://acjr.org.za/resource-centre/us-department-of-state-human-rights-report-namibia-2012>>

249 ILO, ‘Business and Human Rights in Namibia’ (13 May 2014); available at: <[https://www.ilo.org/africa/whats-new/WCMS\\_243067/lang--en/index.htm](https://www.ilo.org/africa/whats-new/WCMS_243067/lang--en/index.htm)>

250 Amnesty International, ‘Niger Human Rights’; available at: <<https://www.amnestyusa.org/countries/niger/>>

Corporate-induced human rights violations have led to water, air and land pollution and the discharge of toxic materials into the atmosphere, hurting local communities and creating lasting health and environmental impacts.<sup>251</sup>

146. AREVA, a French company, is licensed to extract uranium in Niger and Gabon.<sup>252</sup> A 2007 report found neglect and lack of precautions in AREVA's operations. There were allegations that the company was 'negligently exposing its employees and other populations living in the mining areas to very high radioactivity rates through a lack of due care'.<sup>253</sup> As a result, employees of AREVA would not disclose the risks of working close to the radioactive ore for workers. Due to exposure to radioactive materials, many of its employees have developed cancer, and suffer from lung, dermatological, ophthalmological, and cardiovascular pathologies.<sup>254</sup>
147. The National Human Rights Commission (La commission nationale des droits humains CNDH) was established under article 44 of the Constitution (2010). It is mandated to verify cases of violations of human rights and fundamental freedoms in Niger; organise seminars and conferences on human rights and fundamental freedoms in Niger; and promote human rights and recommend to the public authorities human rights instruments with a view to adoption.<sup>255</sup>
148. In its 2016 Annual Report, the Commission conducted an inquiry into human rights in two public companies: the Niamey refrigerated slaughterhouse, and the Niamey Tannery.<sup>256</sup> It found several human rights violations, including workers' rights, child labour and environmental rights.<sup>257</sup> It recommended the strengthening of labour departments and agencies involved in workers' rights.<sup>258</sup>
149. Niger has not developed an NAP; nor has it conducted a baseline assessment.

### 2.3.39. Nigeria

150. The Niger-Delta people of Nigeria present a striking example of a region impoverished by the deleterious activities of corporate actors. Not only do they face systemic discrimination but they also live in polluted areas and are denied the benefits of good health and a healthy environment.<sup>259</sup> Major oil companies, particularly Shell Nigeria, have been involved in these violations for decades. In *Gbemre v SPDC and Others*,<sup>260</sup> the Federal High Court of Nigeria ruled that gas flaring in the Iwerekhan Community of Delta State was a violation of the constitutionally guaranteed rights to life and dignity, which include the right to 'a clean, poison-free, pollution-free, healthy environment'.<sup>261</sup>
151. Shell Nigeria has been implicated in several human rights violations. Recently, it was accused of engaging in ecocide and depleting the Niger Delta's resources without any commensurate human development.<sup>262</sup> A Federal High Court in Abuja, Nigeria, ordered ExxonMobil Producing Nigeria Unlimited to pay N81.9 billion as compensation for oil spillage which occurred in the Niger Delta between 2000 and 2010.<sup>263</sup> In *Okpabi v Royal Dutch Shell Plc*,<sup>264</sup> the local communities of Ogale and Bille in Nigeria's Niger Delta alleged that several oil spills from Shell's oil pipelines and associated infrastructure caused severe environmental damage, including serious water and ground contamination. The appellants further claimed that the company failed to adequately clean or remediate their action. The question was whether the parent company could be liable for the acts of its subsidiary, in this case, Shell Nigeria.<sup>265</sup> The UK Supreme Court held that based on the level of control and management, the parent company owed a duty of care to the claimants because of the extent of environmental damage and human rights abuses. Thus, the parent company could be sued in the UK courts for the actions of its Nigerian subsidiary.<sup>266</sup>

251 DIHR, 'Mining and oil industries in Niger threaten human rights' (20 April 2015); available at: <<https://www.humanrights.dk/news/mining-oil-industries-niger-threaten-human-rights>>

252 African Commission on Human and Peoples' Rights, 'Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realisation of Human and Peoples' Rights under the African Charter on Human and Peoples' Rights', Working Group on Extractive Industries, Environment and Human Rights, 69th Ordinary Session of the African Commission on Human and Peoples' Rights, 23 November 2021, p. 20; available at: <https://www.achpr.org/sessions/info?id=374>

253 Ibid.

254 Ibid.

255 Republic of Niger, 'La Commission nationale des droits humains CNDH'; available at: <<https://www.presidence.ne/commission-nationale-des-droits-humains-cndh>>

256 DIHR, 'National Human Rights Institutions and Access to Remedy in Business and Human Rights' (2020); available at: <[https://www.cndh-niger.org/images/pdf/nhris\\_and\\_bhr\\_remedy\\_part\\_2\\_final\\_march2020.pdf](https://www.cndh-niger.org/images/pdf/nhris_and_bhr_remedy_part_2_final_march2020.pdf)>

257 Ibid.

258 Ibid.

259 O. Abe, 'Utilisation of Natural Resources in Nigeria: Human Rights Considerations' (2014) 70(3) *India Quarterly* 1-14.

260 Unreported suit no: FHC/B/CS/53/05 (14 November 2005).

261 Ibid.

262 Blessing Anaro, 'Group accuses Shell of abandoning Nigerian community after draining resources', *Blueprint* (4 August 2021); available at: <<https://www.blueprint.ng/group-accuses-shell-of-abandoning-nigerian-community-after-draining-resources/>>

263 Usman Bello, 'Group Urges Mobil to Obey Court Judgement On Oil Spillage', *Daily Trust* (29 June 2021); available at: <<https://dailytrust.com/group-urges-mobil-to-obey-court-judgement-on-oil-spillage>>

264 [2021] UKSC 3.

265 Ibid.

266 Ibid.

152. The Nigerian National Human Rights Commission was established to promote and protect human rights, and to investigate alleged violations of human rights. It is also empowered to examine carefully 'legislation at all levels to ensure compliance with human rights norms'.<sup>267</sup>
153. In February 2016, the Commission commenced investigation into human rights violations perpetrated by extractive companies in the Niger Delta. The violations range from environmental degradation to air, land and water pollution. The investigations into these complaints were cut short when several oil companies challenged the Commission's power to conduct such investigations.<sup>268</sup> The Federal High Court sided with the extractive companies and ruled that the Commission had no legal authority to conduct such an inquiry. However, the Court of Appeal overturned the Federal High Court's decision and affirmed the Commission's power to investigate human rights violations.<sup>269</sup>
154. The Commission has been instrumental in the development of an NAP. It has led collaborative efforts with CSOs to facilitate stakeholder consultations on BHR between 2012 and 2017. In February 2017, the joint efforts led to the drafting of a Consultative Draft of Nigeria's NAP.<sup>270</sup> There is no documented evidence that Nigeria has conducted a baseline assessment.

### 2.3.40. Rwanda

155. Apart from the human rights implications of the 1994 Rwandan genocide, other human rights violations include state sponsored arbitrary killings, forced disappearances, torture by the government, and restrictions on fundamental freedoms and liberty.<sup>271</sup>
156. In the *Sherpa, Collectif des parties civiles pour le Rwanda and others v BNP Paribas* case,<sup>272</sup> the

Coalition of Civil Parties for Rwanda lodged a complaint against BNP Paribas for complicity in the Rwandan genocide, war crimes and crimes against humanity. BNP Paribas participated in financing the purchase of 80 tonnes of weapons, which served to perpetrate the genocide. This was despite the UN embargo on arms sales to Rwanda.<sup>273</sup> If the facts raised by the complainants are proven, the case will create significant jurisprudence on corporate responsibility to respect human rights.<sup>274</sup> This case is still ongoing, while investigations are still under way.<sup>275</sup>

157. The Rwandan National Commission for Human Rights (NCHR) has identified the need to increase the Commission's resources so as to ensure an 'effective and robust monitoring of respect for human rights in business'.<sup>276</sup> To this end, it is providing training to the private sector and trade unions on business and human rights.<sup>277</sup> Some of the BHR challenges identified by the Commission are in the mining, agribusiness and horticulture sectors.<sup>278</sup> There are concerns about safety in mines, increased child labour and degrading working conditions in the agribusiness sector.
158. From 22 to 25 June 2021, the NCHR, in partnership with the Office of the High Commissioner for Human Rights (OHCHR-Rwanda) and the Ministry of Commerce, organised a training workshop for corporate executives and legal experts from various sectors. The workshop was designed to strengthen stakeholders' and practitioners' capacity in addressing human rights violations by MNCs and local businesses.<sup>279</sup>
159. The Rwanda Mining Authority and the Rwanda Mining Association have taken steps to ensure that no minerals from conflict zones are smuggled

267 NHRC, 'NHRC Mandate'; available at: <<https://www.nigeriarights.gov.ng/about/nhrc-mandate.html>>

268 See generally, *Oriental Energy Resources Limited v National Human Rights Commission FHC/ABJ/CS/628/2016*; *Addax Petroleum Development (Nig.) Limited v National Human Rights Commission FHC/ABJ/CS/431/2016*; *Addax Petroleum Development (Nig.) Limited v National Human Rights Commission FHC/ABJ/CS/431/2016*; *National Human Rights Commission v Addax Petroleum Development (Nig.) Limited FHC/ABJ/CS/431/2016*.

269 DIHR (above n 239).

270 NHRC, 'National Action on Business and Human Rights in Nigeria to support the Implementation of The United Nations Guiding Principles on Business and Human Rights'; available at: <<https://globalnaps.org/wp-content/uploads/2017/11/nhr-national-action-plan.pdf>>

271 USDOS, '2020 Country Reports on Human Rights Practices: Rwanda' (30 March 2021); available at: <<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/rwanda/>>

272 'Involvement of BNP Paribas in the Tutsi genocide in Rwanda:

opening of the legal inquiry and nomination of an investigation judge'; available at: <<https://www.asso-sherpa.org/involvement-of-the-bnp-paribas-in-the-tutsi-genocide-in-rwanda-opening-of-the-legal-inquiry-and-nomination-of-an-investigation-judge>>

273 Ibid.

274 Ibid.

275 Cedric Ryngaert, 'Accountability for Corporate Human Rights Abuses: Lessons from the Possible Exercise of Dutch National Criminal Jurisdiction over Multinational Corporations' (2018) 29 *Criminal Law Forum* 1.

276 National Commission for Human Rights, 'Strategic Plan 2018–2024' (October 2018); available at: <[http://www.cndp.org.rw/fileadmin/user\\_upload/NCHR\\_Strategic\\_Plan.pdf](http://www.cndp.org.rw/fileadmin/user_upload/NCHR_Strategic_Plan.pdf)>

277 Ibid.

278 Ibid.

279 Rwandan NCHR, 'Business Practitioners and Trade Union trained on Business and Human Rights'; available at: <[http://www.cndp.org.rw/index.php?id=187&tx\\_news\\_pi1%5Bnews%5D=167&tx\\_news\\_pi1%5Bday%5D=25&tx\\_news\\_pi1%5Bmonth%5D=6&tx\\_news\\_pi1%5Byear%5D=2021&cHash=8fb640bfd608f71cd40af-809f0e825e3](http://www.cndp.org.rw/index.php?id=187&tx_news_pi1%5Bnews%5D=167&tx_news_pi1%5Bday%5D=25&tx_news_pi1%5Bmonth%5D=6&tx_news_pi1%5Byear%5D=2021&cHash=8fb640bfd608f71cd40af-809f0e825e3)>

into the country. One effective step is to ensure traceability of conflict minerals.<sup>280</sup> A blockchain system was created by UK-based Circular and went live in three mines in an ore-sorting facility.<sup>281</sup> The goal is ‘to prove beyond doubt that every bag of tantalum ore from Rwanda was mined, transported, and processed under OECD-approved conditions, without any child or slave labor’.<sup>282</sup>

160. Artisanal and small-scale mining is a fast-growing business in Rwanda. However, mine collapses are becoming more frequent, including the Piran Resources mine collapse, killing fourteen people.<sup>283</sup> Consequently, the Rwanda Mines, Petroleum and Gas Board took steps to reduce illegal artisanal mining, introducing artisanal mining licenses, which the government encourages people to obtain before embarking on artisanal mining.<sup>284</sup>
161. Rwanda does not have an NAP or an NBA yet.

### 2.3.41. Democratic Republic of São Tomé e Príncipe

162. São Tomé e Príncipe is struggling to manage the proceeds from its vast deposit of hydrocarbons. A lack of transparency and financial accountability has led to citizen unrest, which is exacerbated by the lack of state infrastructure to follow through with reform efforts.<sup>285</sup> São Tomé and Príncipe is relatively compliant with guarantees on fundamental rights and liberties, and government respect for the rule of law is high.<sup>286</sup> Although in recent times there have been reports of police brutality and other state sponsored attacks on citizens, there have been no severe human rights violations.<sup>287</sup>

280 H. Rubasha, ‘First-Step Analysis: Business and Human Rights in Rwanda’ (28 February 2020); available at: <<https://www.lexology.com/library/detail.aspx?g=1f015ba1-fa55-4422-9455-585d6d42bd43>>

281 Circular achieves first-ever mine-to-manufacturer traceability of a conflict mineral with Hyperledger Fabric; available at: <<https://www.hyperledger.org/learn/publications/tantalum-case-study>>

282 Ibid.

283 Ivan Mugisha, ‘14 killed after hill collapses on mine in Rwanda’, *The East African* (21 January 2019); available at: <<https://www.theeastafrican.co.ke/news/ea/14-killed-after-hill-collapses-on-mine-in-Rwanda/4552908-4944872-yjd1d6/index.html>>

284 EARF, ‘Economic Contributions of Artisanal and Small-Scale Mining in Rwanda: Tin, Tantalum, and Tungsten’ (January 2018); available at: <[https://www.responsiblemines.org/wp-content/uploads/2018/03/Rwanda\\_case\\_study.pdf](https://www.responsiblemines.org/wp-content/uploads/2018/03/Rwanda_case_study.pdf)>

285 HRW, ‘An Uncertain Future: Oil Contracts and Stalled Reform in Sao Tome e Principe’ (24 August 2010); available at: <<https://www.hrw.org/report/2010/08/24/uncertain-future/oil-contracts-and-stalled-reform-sao-tome-e-principe>>

286 2010 Ibrahim Index of African Governance Country Rankings and Scores; available at: <[https://web.archive.org/web/20111019173824/http://www.moibrahimfoundation.org/en/media/get/20101108\\_eng-table-iiaag2010-revised.pdf](https://web.archive.org/web/20111019173824/http://www.moibrahimfoundation.org/en/media/get/20101108_eng-table-iiaag2010-revised.pdf)>

287 USDOS, ‘2019 Country Reports on Human Rights Practices: Sao Tome and Principe’; available at: <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sao-tome-and-principe/>>

163. São Tomé e Príncipe does not have an NAP or an NBA.

### 2.3.42. Senegal

164. Internal skirmishes have led to state sponsored unlawful or arbitrary (extrajudicial) killings, torture, arbitrary arrest or detention, corruption, gender-based violence, and serious problems with the independence of the judiciary.<sup>288</sup>
165. The National Observatory for the Respect of Human Rights and Transparency in the Exploitation of Mineral Resources (ONRDH-SE) was officially launched on 4 December 2015 at the Café de Rome, Boulevard de la République, Dakar.<sup>289</sup> The Observatory was designed to promote and protect human rights in the mineral exploitation sector; support an environment conducive to dialogue and peace between stakeholders; and inform and ‘empower’ actors and citizens on mineral resources and human rights. The Observatory organised a workshop on 24–26 March 2016 to raise stakeholders’ awareness, particularly businesses, of the negative and positive aspects of their activities.<sup>290</sup> The workshop increased the participants’ awareness of the UNGPs, the ECOWAS Guidelines and the African Mining Vision.
166. The ONRDH-SE created a platform for discussing the harmonisation and implementation of the UNGPs, ECOWAS community directives, the African Mining Vision, and the adoption of a working method by the members of the National Observatory for the respect of human rights in the extractive sector.<sup>291</sup>
167. The Human Rights Commission (CSDH) facilitated a workshop on Mineral Resources, Human Rights and Transparency from 7 to 8 November 2014 in Ngor Diarama. The Workshop was designed to stimulate an interactive discussion among various actors involved in the fight against poverty, respect for human rights and transparency in extractive resource negotiations.<sup>292</sup> Participants in the Workshop included members of the CSO, local communities, the private sector, the state, the National Assembly, and the media. At the end of the Workshop, participants recommended the adoption of the ECOWAS Mineral Development

<<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sao-tome-and-principe/>>

288 USDOS, ‘2020 Country Reports on Human Rights Practices: Senegal’; available at: <<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/senegal/>>

289 Formation des membres de l’Observatoire national pour le respect des Droits Humains dans le secteur extractif au Sénégal (31 March 2016); available at: <<http://cndh.info/?p=743>>

290 Ibid.

291 Ibid.

292 ‘Conclusion’, Workshop on Mineral Resources, Human Rights and Transparency; available at: <<http://cndh.info/?p=432>>

Policy aimed at transparency, respect for human rights, the environment and local community.<sup>293</sup> Participants also enjoined the government to raise awareness of and implement the UNGPs.<sup>294</sup> The ONRDH-SE also recommended that the government strengthen the capacities of its agents in conflict management and social mediation, and that extractive companies improve the employment conditions of local communities.

- 168. The ONRDH-SE is currently conducting a baseline study on the implementation of the UNGPs in the mining sector.
- 169. Senegal does not have an NAP and has not conducted a baseline assessment.

### 2.3.43. Seychelles

- 170. There is no documented evidence of corporate induced human rights violations. However, the Seychelles Human Rights Commission (SHRC) was established to promote, protect and monitor implementation of and compliance with international human rights treaties.<sup>295</sup> The Commission also investigates and helps resolve complaints.<sup>296</sup> There was no activity relating to business and human rights in the Commission's 2019 Annual Report.<sup>297</sup>
- 171. Seychelles does not have an NAP and has not conducted a baseline assessment.

### 2.3.44. Sierra Leone

- 172. Sierra Leone's prolonged civil war, which ended in 2002, caused tremendous human rights violations, including state sponsored abuse and use of excessive force on detainees, arbitrary arrest, weak judicial process and rule of law systems, official corruption, gender-based violence, female genital mutilation and child abuse.<sup>298</sup> Building a resilient health care system was challenging in the wake of the 2014–2016 Ebola outbreak and recovery.
- 173. Human rights complaints largely arose from large-scale land acquisition without proper consultation and compensation, environmental degradation, displacement, loss of livelihood, and food security issues.
- 174. The Human Rights Commission of Sierra Leone (HRCSL) was established to monitor and document

293 Ibid.

294 Ibid.

295 See the Seychelles Human Rights Commission Act 2018 (Act 7 of 2018).

296 Ibid.

297 'SHRC Annual Reports'; <[http://www.seychelleshumanrights.com/downloads/Annual\\_2019\\_Report.pdf](http://www.seychelleshumanrights.com/downloads/Annual_2019_Report.pdf)>

298 USDOS, 'Sierra Leone 2020 Human Rights Report'; available at: <<https://www.state.gov/wp-content/uploads/2021/03/SIERRA-LEONE-2020-HUMAN-RIGHTS-REPORT.pdf>>

human rights violations in Sierra Leone. In 2013, the Commission produced the 'Guidelines for Monitoring Business and Human Rights in Sierra Leone' following the 2012 Bumbuna Public Inquiry into alleged human rights abuses.<sup>299</sup> In its 13th Annual Report in 2019, the Commission monitored seven MNCs (three mining companies, two agro-business companies and one construction company) between July and December 2019 and assessed their compliance with domestic policies and laws, the UNGPs and other relevant international and regional standards.<sup>300</sup> The Commission noted challenges to the management's ability to implement business and human rights standards. HRCSL particularly noted the following labour rights violations:

- 175. *Poor safety standards (lack of protective gear, no strict supervision of workers on compliance with safety standards, no policy guidelines on safety of workers, etc.); poor salary structure as the current minimum wage of Le 500,000 falls short of addressing the basic welfare needs of workers; short-term workers recruited without contract documents; weak and sometimes no internal redress mechanisms for workers in most companies; no separate insurance cover for workers engaged in high-risk jobs, such as those working with explosives, dangerous chemicals and climbing towers.*<sup>301</sup>
- 176. Despite HRCSL's proactive approach, Sierra Leone does not have an NAP and has not conducted a baseline assessment.

### 2.3.45. Somalia

- 176. Incidents of human rights violations include insecurity, lack of state protection, armed conflict, civil unrest and gender-based violence because of the ongoing civil war.<sup>302</sup> This has resulted in a lack of basic social, economic and cultural rights protections for citizens, despite the large deposits of minerals and natural resources.
- 177. The government has established a Ministry for Human Rights,<sup>303</sup> and endorsed a Human Rights Roadmap, which outlines government obligations

299 DIHR, 'NHRI Case Study – The Human Rights Commission of Sierra Leone'; available at: <[https://media.business-humanrights.org/media/documents/files/NHRI\\_CASE\\_STUDY\\_\\_THE\\_HUMAN\\_RIGHTS\\_COMMISSION\\_OF\\_SIERRA\\_LEONE.pdf](https://media.business-humanrights.org/media/documents/files/NHRI_CASE_STUDY__THE_HUMAN_RIGHTS_COMMISSION_OF_SIERRA_LEONE.pdf)>

300 HRCSL, 'The State of Human Rights in Sierra Leone 2019'; available at: <<http://hrc-sl.org/PDF/Media/SoHR%20Report%202019%20Report.pdf>>

301 Ibid.

302 HRW, 'Somalia Events of 2019'; available at: <<https://www.hrw.org/world-report/2020/country-chapters/somalia>>

303 UPI, 'Somalia takes human rights steps' (3 September 2013); available at: <[https://www.upi.com/Top\\_News/Special/2013/09/03/Somalia-takes-human-rights-steps/34071378218185/?ur3=1](https://www.upi.com/Top_News/Special/2013/09/03/Somalia-takes-human-rights-steps/34071378218185/?ur3=1)>

and sets specific benchmarks within a two-year timeframe.<sup>304</sup> Somalia's Human Rights Commission was established constitutionally to promote knowledge of human rights, 'specifically Shari'ah, setting implementation standards and parameters for the fulfilment of human rights obligations, monitoring human rights within the country, and investigating allegations of human rights violations'.<sup>305</sup> There is no documented evidence of the Commission's work on BHR.

178. Somalia has not developed an NAP, nor conducted a baseline assessment.

### 2.3.46. South Africa

179. Article 8(2) of the Constitution (1996) imposes human rights obligations on businesses. Likewise, the Companies Act, 2008 enjoins compliance with the Bill of Rights, as guaranteed under the Constitution.<sup>306</sup> This creates a fundamental pathway for human rights victims to seek justice against corporate actors. In *University of Stellenbosch Legal Aid Clinic and others v Minister of Justice and Correctional Services and others*,<sup>307</sup> the issues surrounding debt collection procedures employed by the micro-lending industry, which raises significant irregularities, were considered. The First Applicant on behalf of the other Applicants encountered large-scale abuse of emoluments attachment orders (EAO) by credit providers and allegations of fraud in the issuance of the EAOs. EAOs allow the attachment of a debtor's earnings and obliges the judgment creditor to deduct specific instalments from debtors' earnings. These deductions are to be paid until the judgment debt and legal costs are paid in full.<sup>308</sup> Unfortunately, the fact that the debtor is a low-income earner is immaterial. There is 'no statutory limit for deductions, neither is there a limit on the number of EAOs which may be made against a judgment debtor. The employer must deduct from employees' salaries the amount

stated in the EAO and pay it to the creditor.'<sup>309</sup> For example, an EAO was granted for more than half of the second applicant's salary, while the clerk of the court issued three EAOs on the same day attaching almost the entire salary of the fourth applicant.<sup>310</sup> The Applicants argued that the grant of EAOs by the court clerk is inconsistent with the constitution and invalid as they fail to provide for judicial oversight over the issuance of the EAO.<sup>311</sup> They further sought an order to invalidate the EAOs that were obtained in jurisdictions alien to them on the basis that it was against the law, declaring invalid the following reliefs, and an order to set aside the EAOs granted against each of them on the basis that the orders were unlawful and invalid.<sup>312</sup>

180. In its considered judgment, the Western Cape Division of the High Court of South Africa contemplated a litany of international human rights instruments, including the ILO's Protection of Wages Convention, the ILO Recommendation concerning the Protection of Wages, the UNGPs, and Human Rights Council Resolution 26/22 of 15 July 2014. With reference to the UNGPs, the court noted that they 'place a duty upon the state to take measures to prevent the abuse of human rights in their territory by business enterprises. States are obliged to reduce legal and practical barriers that may deny individuals a remedy.'<sup>313</sup> Consequently, the court held that the South African EAO system fails to comply with human rights principles as encapsulated in various instruments. In declaring the issued EAOs to be unlawful, invalid and of no force and effect, the court found that EAOs may be issued by the clerk without oversight by a judicial officer; employees were not given an opportunity to make representations before an EAO is issued; and also that it constituted an ineffective remedy when an excessive portion of a debtor's earnings is attached.<sup>314</sup>

181. On appeal, the Constitutional Court did not confirm the order of constitutional invalidity made by the High Court.<sup>315</sup> However, it considered some changes to the wordings of the legislation relied on by the High Court to align with the intent and purposes of the Constitution. While the Court did not rely

304 'Somalia: UN expert hails human rights effort but urges broader consultation process'; available at: <<https://archive.is/20140220063126/http://www.un.org/apps/news/story.asp?www.wmo.int/html/story.asp#selection-611.0-611.83>>

305 See Article 41 of the Constitution (2012).

306 Section 7.

307 Case No. 16703/14 (8 July 2015); available at: <[https://cisp.cachefly.net/assets/articles/attachments/55805\\_university\\_of\\_stellenbosch\\_99.pdf](https://cisp.cachefly.net/assets/articles/attachments/55805_university_of_stellenbosch_99.pdf)> The case went on appeal to the Constitutional Court where the highest Court did not refer to the UNGPs. See *University of Stellenbosch Legal Aid Clinic and others v Minister of Justice and Correctional Services and others* [2016] ZACC 32.

308 Ibid.

309 Ibid.

310 Ibid.

311 Ibid.

312 Ibid.

313 Para 71.

314 Para 75.

315 See *University of Stellenbosch Legal Aid Clinic and others v Minister of Justice and Correctional Services and others* [2016] ZACC 32.

on the UNGPs, it did confirm the Court's obligation to consider factors before EAOs are issued to avoid a punitive effect on debtors and ensure that those orders apply to excess earnings after the costs of the debtor's maintenance have been considered.

182. South Africa was one of the countries that led the process for a treaty on BHR, through Resolution 26/9.<sup>316</sup> The Resolution established an Open-Ended Intergovernmental Working Group (OEIWG) on Transnational Corporations and other business enterprises with regard to human rights, with the mandate of developing an international legally binding instrument that will regulate activities of transnational corporations and other business enterprises.<sup>317</sup> The OEIWG released the third revised draft of the Treaty on 17 August 2021.<sup>318</sup> The South African approach to support the treaty at international level could have involved any effort to support a normative approach, such as an NAP at domestic level.
183. Section 184 of the Constitution establishes the South African Human Rights Commission (SAHRC) with a mandate to promote respect for human rights and a culture of human rights; to promote the protection, development and attainment of human rights; and to monitor and assess the observance of human rights in the Republic. The SAHRC has been proactively engaging businesses concerning the importance of the UNGPs. The Commission adopted the BHR concept as its strategic focus area for the period 2014–2015.<sup>319</sup> The aim was to increase its institutional understanding of the ways in which businesses impact on the enjoyment of human rights, particularly in respect of the impact on children.<sup>320</sup>
184. On 27 June 2013, the Commission held a conference on 'Business and Transparency', in line with the Commission's broader mandate in relation to corporate accountability for human rights, as articulated in the UNGPs. Participants noted that the role and responsibility of financial and business institutions in the financial crisis highlighted the need for compliance with human rights obligations, such as transparency and accountability. Other critical reflections included South Africa's arms deals, which raises the question of how easily global

arms corporations could re-orient the country's priorities. Furthermore, Marikana has not only focused attention on police brutality and employees' labour and social conditions, but has also opened the critical debate on how the mining industry can break with its past to uphold human rights. In March 2015, the DIHR and SAHRC produced a Business Country Guide, which provides country-specific guidance to help companies respect human rights and contribute to development.<sup>321</sup> The Country Guide refers to the several cases the Commission is involved with and also makes recommendations to government and other stakeholders on issues involving business, such as setting a minimum wage in sectors such as agriculture, improving monitoring of employment contracts, and enforcing environmental obligations.<sup>322</sup> In April 2016, the SAHRC organised a discussion on BHRs with a thematic focus on 'access to justice: creating access to effective remedies for victims of business-related human rights violations'.<sup>323</sup> The discussion noted the importance of the right of access to justice, especially for the poor. In March 2018, the Commission, in collaboration with DIHR, released a Business and Human Rights Dialogue Report, which builds on the earlier activities of the Commission.<sup>324</sup> The Dialogue focused on key human rights challenges in South African business sectors and sought to enhance public understanding and awareness of the roles and responsibilities of stakeholders in upholding and protecting human rights.<sup>325</sup> The objective of the Dialogue is to create a platform for further engagement and identification of the role of business in equality and development, corporate accountability and SOEs, as well as community engagement and employment equity. These capacity development programmes are geared towards positioning the Commission to fulfil its mandate of protecting human rights and investigating corporate abuses.

185. A 'Shadow' National Baseline Assessment of Current Implementation of Business and Human Rights Frameworks was launched by the Centre for Human Rights, University of Pretoria, in conjunction with the International Corporate Accountability Roundtable (ICAR).<sup>326</sup> The Baseline Assessment

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 316 Human Rights Council, Resolution 26/9, 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights'; available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/O82/52/PDF/G1408252.pdf?OpenElement>>  
 317 Ibid.  
 318 OEIWG Chairmanship, Third Revised Draft, 17.08.2021; available at: <<https://www.ohchr.org/Documents/HRBodies/HRCouncil/WG-TransCorp/Session6/LB13rdDRAFT.pdf>>  
 319 SAHRC, 'Annual Report 2015/16'; available at: <<http://www.sahrc.org.za/home/21/files/SAHRC%20Annual%20Report%202016%20full%20report%20low%20res%20for%20web.pdf>>  
 320 Ibid.

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 321 SAHRC, 'Human Rights and Business Country Guide'; available at: <[Human Rights and Business Country Guide South Africa](#)>  
 322 Ibid.  
 323 SAHRC, 'Business and Human Rights: Access to fair play for those affected by business-related human rights violations is possible via SA's Constitution'; available at: <<https://www.sahrc.org.za/index.php/sahrc-media/opinion-pieces/item/372-business-and-human-rights-access-to-fairplay-for-those-affected-by-business-related-human-rights-violations-is-possible-via-sa-s-constitution>>  
 324 SAHRC, 'Business and Human Rights Dialogue Report'; available at: <<https://www.sahrc.org.za/home/21/files/Business%20and%20Human%20Rights%20Dialogue%20Report.pdf>>  
 325 Ibid.  
 326 'Shadow National Baseline Assessment of Current Implementation

found a lack of access to judicial remedies for victims of human rights abuse. Other findings include land reform as a controversial issue due to South Africa's historically discriminatory and turbulent dispensation of land, and a lack of human rights due diligence requirements and of impact assessments in business conduct.<sup>327</sup> The South African government has not committed to developing an NAP.

### 2.3.47. South Sudan

186. South Sudan has endured civil war and experienced ethnic violence, resulting in human rights violations. Different parties to perennial conflicts have contributed to ethnic massacres, recruitment of child soldiers, killing of journalists, arbitrary arrests and gender-based violence.<sup>328</sup>
187. The Commission on Human Rights, South Sudan plays a pivotal role in 'documenting serious breaches of human rights and international humanitarian law'.<sup>329</sup> The Commission noted the lack of oversight responsibilities over extractive companies, which has resulted in corporate-induced human rights violations.<sup>330</sup>
188. South Sudan has not developed either an NAP or an NBA.

### 2.3.48. Sudan

189. Severe human rights violations arising from state sponsored attacks on citizens,<sup>331</sup> torture, ethnic discrimination, killing of protesting young people and child soldiers.<sup>332</sup>
190. The Sudanese National Human Rights Commission's thematic focus does not include business and human rights,<sup>333</sup> neither does its strategic plan

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of Business and Human Rights Frameworks' (April 2016); available at: <<https://www.chr.up.ac.za/images/centrenews/2016/files/Shadow-SA-NBA-Final.pdf>>

327 Ibid.

328 BBC, 'South Sudan rivals Salva Kiir and Riek Machar strike unity deal', BBC News (22 February 2020); available at: <<https://www.bbc.com/news/world-africa-51562367>>; see further Amnesty International, "South Sudan" <<https://www.amnesty.org/en/countries/africa/south-sudan/>>

329 Amnesty International, 'South Sudan: UN Human Rights Council renews mandate of Commission on Human Rights' (24 March 2021); available at: <<https://www.amnesty.org/en/latest/news/2021/03/south-sudan-un-human-rights-council-renews-mandate-of-commission-on-human-rights/>>; see also UN Human Rights Council, 'Commission on Human Rights in South Sudan'; available at: <<https://www.ohchr.org/en/hrbodies/hrc/cohsouthsudan/pages/index.aspx>>

330 Human Rights Council, 'Report of the Commission on Human Rights in South Sudan', A/HRC/40/69; available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/065/05/PDF/G1906505.pdf?OpenElement>>

331 BBC, 'Sudan's security forces attack long-running sit-in'; available at: <<https://www.bbc.com/news/av/world-africa-48495713>>

332 HRW, 'Sudan: Protesters killed, injured'; available at: <<https://www.hrw.org/news/2019/04/09/sudan-protesters-killed-injured#>>

333 Sudan NHRC; available at: <<https://www.nanhri.org/wp-content/>>

incorporate plans to implement BHR principles.<sup>334</sup>

191. Sudan does not have an NAP, nor has it conducted a baseline assessment.

### 2.3.49. Tanzania

192. Human rights abuses in Tanzania have focused largely on attacks against people living with albinism, often resulting in deaths or body mutilations.<sup>335</sup> Other violations include restrictions on fundamental freedoms, arrest of journalists and gender-based violence.<sup>336</sup>
193. Case studies on business impacts on human rights have focused on how large infrastructural projects have affected multiple basic human rights, including workers' rights, property rights, the right to safe and healthy living conditions, and the right to effective remedy if rights are violated.<sup>337</sup> For example, the East African Crude Oil Pipeline, which cuts across eight regions in northern Tanzania, raises critical corporate human rights challenges.<sup>338</sup>
194. In its 2013–2017 Human Rights Action Plan, the Commission for Human Rights and Good Governance (CHRAGG) was tasked with the responsibility of developing a National Baseline Study on Business and Human Rights and to support the development of a National Action Plan on Business and Human Rights.<sup>339</sup> The National Baseline Assessment was eventually released on 9 November 2017.<sup>340</sup> It specifies a wide-ranging interpretation of the importance of human rights and business in Tanzania, and noted the lack of awareness of the UNGPs among state entities. It also identified the lack of a policy and institutional

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uploads/2016/04/SUDAN.pdf>

334 NHRC, 'Strategic Plan 2014 – 2018'; available at: <[https://info.undp.org/docs/pdc/Documents/SDN/NHRC%20Strategic%20plan\\_final\\_%20English\\_27\\_2\\_2014.pdf](https://info.undp.org/docs/pdc/Documents/SDN/NHRC%20Strategic%20plan_final_%20English_27_2_2014.pdf)>

335 International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A., State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2016); available at: <[https://web.archive.org/web/20171010135034/http://ilga.org/downloads/02\\_ILGA\\_State\\_Sponsored\\_Homophobia\\_2016\\_ENG\\_WEB\\_150516.pdf](https://web.archive.org/web/20171010135034/http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf)>

336 HRW, 'Tanzania Events of 2019'; available at: <<https://www.hrw.org/world-report/2020/country-chapters/tanzania-and-zanzibar>>

337 Hans Merket/Mieke Thierens, 'Voices from Tanzania: Case studies on Business and Human Rights (Vol. 1)'; available at: <<https://ipisresearch.be/wp-content/uploads/2019/04/1904-Voices-from-Tanzania-Business-and-Human-Rights-WEB.pdf>>

338 Ibid.

339 URT, 'National Human Rights Action Plan, 2013–2017'; available at: <[https://www.ohchr.org/Documents/Issues/Education/Training/actions-plans/Excerpts/Tanzania\\_en%202013-2017.pdf](https://www.ohchr.org/Documents/Issues/Education/Training/actions-plans/Excerpts/Tanzania_en%202013-2017.pdf)>

340 CHRAGG, 'National Baseline Assessment (NBA) of Current Implementation of Business and Human Rights Frameworks in the United Republic of Tanzania' (November 2017); available at: <[https://globalnaps.org/wp-content/uploads/2017/11/tanzania-bhr-nba-final\\_nov2017.pdf](https://globalnaps.org/wp-content/uploads/2017/11/tanzania-bhr-nba-final_nov2017.pdf)>

framework to implement the UNGPs.<sup>341</sup> Tanzania has not developed an NAP.

### 2.3.50. Togo

195. The perennial human rights situation in Togo has been complicated by the state's use of excessive force, including torture, which has resulted in the deaths of many political detainees.<sup>342</sup> Other human rights violations include arbitrary arrests and detention, lack of judicial independence, restrictions on the right to privacy, expression, press and movement, corruption, child abuse and gender-based violence.<sup>343</sup> The National Human Rights Commission (CNDH) does not have any investigation or programme on BHRs. Togo has not developed an NAP, nor has it conducted a National Baseline Assessment.

### 2.3.50. Tunisia

196. Human rights violations are triggered mainly by state authorities and include unlawful or arbitrary killings, torture by government agents, arbitrary arrests and detentions, restrictions on fundamental freedoms and liberties.<sup>344</sup> While Tunisia has established some specialised tribunals to try those accused of human rights abuses,<sup>345</sup> there is no documented evidence of corporate liability for human rights violations.

197. Article 128 of the Constitution (2014) establishes the Human Rights Commission and mandates the Commission to promote human freedoms and rights. The Commission is also tasked with investigations into human rights violations and referring those complaints to the competent authorities. There is no documented activity of the Commission on the implementation of BHRs in Tunisia. Tunisia has not developed an NAP, nor has it conducted a baseline assessment.

### 2.3.51. Uganda

198. The Ugandan Constitution (1995) mandates corporate actors to respect human rights. Article 20 provides that 'rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons'.

341 Ibid.

342 USDOS, '2020 Country Reports on Human Rights Practices: Togo'; available at: <<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/togo/>>

343 Ibid.

344 USDOS, '2020 Country Reports on Human Rights Practices: Tunisia'; available at: <<https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/tunisia/>>

345 ICTJ, 'Legal Frameworks for Specialized Chambers: Comparative Studies for the Tunisian Specialised Criminal Chambers'; available at: <<https://www.ictj.org/publication/legal-frameworks-specialized-chambers-comparative-studies-tunisian-specialized-criminal>>

Article 257 (10) stipulates that 'persons' include reference to corporations. Chapter 19 of the Third National Development Plan (NDPIII) 2020/21 – 2024/25 is aimed at strengthening compliance with the Uganda Bill of Rights.<sup>346</sup> To achieve this, the Development Plan enjoins Uganda to 'finalise and implement the Uganda National Action Plan on Human Rights and adopt the National Action Plan on Business and Human Rights'.<sup>347</sup>

199. The Uganda Human Rights Commission (UHRC) was constitutionally established to investigate 'complaints made by any person or group of persons against the violation of any human rights; monitor the Government's compliance with international treaty and convention obligations on human rights and educate and encourage the public to defend the Constitution at all times against all forms of abuse and violation'.<sup>348</sup> Its 2018 Annual Report does not include any activity concerning business and human rights.<sup>349</sup> The UHRC, in conjunction with the DIHR, published a 'Human Rights and Business Country Guide', which contains information on actual and potential human rights impacts of businesses in Uganda. The Country Guide is intended to help companies measure their respect for human rights.<sup>350</sup>

200. State-induced human rights violations include unlawful killings, torture and ill-treatment, forced evictions, restrictions on freedom of expression, peaceful assembly and association.<sup>351</sup> The increased discussions around business and human rights can be attributed to the increasing number of corporates and their power, control and influence in the provision of basic services.<sup>352</sup> Discrimination between local and foreign employees, economic exploitation, land grabbing, and inadequate compensation for expropriated land are some of the labour rights infringed by the state and corporations.<sup>353</sup> Land conflicts are prevalent in

346 National Planning Authority, 'Third National Development Plan (NDPIII) 2020/21 – 2024/25' (July 2020); available at: <[http://www.npa.go.ug/wp-content/uploads/2020/08/NDPIII-Finale\\_Compressed.pdf](http://www.npa.go.ug/wp-content/uploads/2020/08/NDPIII-Finale_Compressed.pdf)>

347 Ibid.

348 See Sections 51 and 52 of the Constitution (1995).

349 UHRC, 'The 21st Annual Report – 2018'; available at: <<https://www.uhrc.ug/download/uhrc-21st-annual-report/?wpdm-dl=417&refresh=60fcfab1227921627191985>>

350 UHRC, 'Human Rights and Business Country Guide'; available at: <<https://www.uhrc.ug/download/uganda-business-and-human-rights-country-guide/?wpdm-dl=489&refresh=60fcfb4a09de1627192228>>

351 Amnesty International, 'Uganda 2020'; available at: <<https://www.amnesty.org/en/countries/africa/uganda/report-uganda/>>

352 Uganda Consortium on Corporate Accountability, 'Business and Human Rights in Uganda: A Resource Handbook on the Policy and Legal Framework on Business and Human Rights in Uganda' (2018) 10.

353 UCCA, 'Business and Human Rights in Uganda' (September

Uganda. Despite the constitutional guarantee of access to land, compulsory requisitions have been used as a mechanism to displace many Ugandans from their ancestral lands, with no reparations. Little or no compensation is paid to citizens who have been displaced from their land through government acquisition or development projects.<sup>354</sup> A forced eviction was carried out in 2014 where 40,000 residents living close to the Port Bell railway line to Kampala and the Kyengera railway line to Namanve were evicted from their homes to pave the way for the construction of a waste management plant. There were also evictions on Buvuma Island.<sup>355</sup> Businesses are also involved in forest desertification, air, land and water pollution. In *Advocates Coalition for Development and Environment (ACODE) v AG*,<sup>356</sup> a private company, Kakira Sugar Works Ltd, was issued a 50-year forest permit by the government for the purpose of growing sugarcane in Butamira Forest Reserve. The applicants contended that an Environmental Impact Assessment (EIA) had not been conducted and the local communities had not been consulted, and thus the permit should be revoked. Although the court granted the applicants declarative relief, no restoration order was issued, and therefore the applicants could not enforce the said judgment.<sup>357</sup> Other cases of corporate impunity include *Skyfat Tannery Company*, a skin and hides factory, which was polluting the waters of Lake Victoria by emitting a poisonous chemical, affecting the surrounding communities' domestic usage of water and the fishing industry.<sup>358</sup> In *Greenwatch and Advocates Coalition for Development & Environment v Golf Course Holdings Ltd*,<sup>359</sup> the court's refusal to grant a temporary injunction enabled the construction of a hotel and shopping mall by the respondents on land that the applicants contended to be part of a wetland. In August 2001, approximately 4,000 people who had lived in the Mubende District for years were violently evicted from their land by the

Uganda Peoples' Defence Force.<sup>360</sup> Their land was to be leased to the Kaweri Coffee Plantation Ltd, a wholly owned subsidiary company of the Neumann Kaffee Gruppe (NKG), Germany.<sup>361</sup> In 2002, the evictees sued the Government of Uganda and Kaweri Coffee Plantation Ltd, challenging their eviction. In 2013, Court condemned the action of the government and the company and ordered compensation of approximately 11 million to be paid to the evictees.<sup>362</sup> In their claim, the plaintiffs alleged that the eviction was cruel, and in all ways a violation of their rights, which included mistreatment and the burning of their homes. The Court blamed the Ugandan Investment Authority's lawyers for allegedly giving misleading advice to the government to purchase the land and acquitted the two defendants.<sup>363</sup> The Ugandan Investment Authority's lawyers appealed, and the judgment was overturned in 2015. A retrial was ordered.<sup>364</sup> However, the case is currently undergoing mediation proceedings.<sup>365</sup>

201. In a Report of the Working Group on the Universal Periodic Review,<sup>366</sup> a group of experts recommended that Uganda adopt an NAP on BHR to implement the UNGPs. Uganda accepted this recommendation and began the process of developing an NAP. The process was led by the Ministry of Gender Labour and Social Development. Nine regional consultations were held between April and June 2019.<sup>367</sup> Following from these stakeholder consultations, an NAP on BHRs was published in August 2021.<sup>368</sup>
202. Uganda's NAP on BHRs provides clear strategies and roles for stakeholders in its implementation. The NAP promotes a cordial engagement between businesses and local communities by 'providing a comprehensive framework for coordination of multi-sectoral efforts to ensure respect for human

360 Human Rights Violations in the Context of Kaweri Coffee Plantation/Neumann Kaffee Gruppe in Mubende/Uganda; available at: <[https://www.fian.org/files/files/HR\\_violations\\_in\\_the\\_context\\_of\\_Kaweri\\_Coffee\\_Plantation\\_in\\_Mubende.pdf](https://www.fian.org/files/files/HR_violations_in_the_context_of_Kaweri_Coffee_Plantation_in_Mubende.pdf)>

361 Ibid.

362 Kaweri Coffee (part of Neumann Gruppe) lawsuit (re forced eviction in Uganda); available at: <<https://www.business-humanrights.org/en/latest-news/kaweri-coffee-part-of-neumann-gruppe-lawsuit-re-forced- eviction-in-uganda/>>

363 Ibid.

364 Chronology of events, Kaweri Coffee Plantation, 2000 to 2020; available at: <<https://www.nkg.net/wp-content/uploads/2021/01/Chronology.pdf>>

365 Ibid.

366 UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Uganda (27 December 2016) A/HRC/34/10; available at: <<https://www.refworld.org/docid/58ad66944.html>>

367 NAPs on BHRs, Uganda; available at: <<https://globalnaps.org/country/uganda/>>

368 Republic of Uganda, 'The National Action Plan on Business and Human Rights' (August 2021); available at: <[https://globalnaps.org/wp-content/uploads/2021/08/uganda\\_approved-national-action-plan-on-business-and-human-rights\\_august-2021.pdf](https://globalnaps.org/wp-content/uploads/2021/08/uganda_approved-national-action-plan-on-business-and-human-rights_august-2021.pdf)>

2018); available at: <<https://ucca-uganda.org/wp-content/uploads/2020/03/18-11-15-Business-Human-Rights-in-Uganda-Handbook.pdf>>; 18. The main statutes regulating labour rights in Uganda include the 1995 Uganda Constitution, the Employment Act No. 6 of 2006, the Workers Compensation Act 2000 (chapter 225), the Labour Unions Act no. 7 of 2006, the Labour Disputes (Arbitration and Settlement) Act no. 8 of 2006, the Occupational Safety and Health Act no. 9 of 2006 and the respective relevant subsidiary legislations.

354 UCCA (above) 44.

355 Ibid., 52.

356 Miscellaneous Cause No. 0100 of 2004 (13 July 2005).

357 *Advocates Coalition for Development and Environment (ACODE) v Attorney General*, Miscellaneous Cause No. 0100 of 2004 (13 July 2005) | ELAW; available at: <[https://elaw.org/UG\\_ACODE\\_13Jul2005](https://elaw.org/UG_ACODE_13Jul2005)> accessed 12 July 2021.

358 Frank Muramuzi, 'The leather-tannery industry in Uganda risks to the environment and to Human Health'.

359 *Greenwatch & ACODE v Golf Course Holdings Ltd* | Greenwatch; available at: <<https://www.greenwatch.or.ug/judicial-decisions/greenwatch-acode-vs-golf-course-holdings-ltd>>

rights in business operations'.<sup>369</sup> The objective of the Plan is to reduce or mitigate corporate-induced human rights violations. The specific objectives are:

- 202.1.1.1. to strengthen the institutional capacity, operations and coordination efforts of state and non-state actors for the protection and promotion of human rights in businesses;
- 202.1.1.2. to promote human rights compliance and accountability by business actors;
- 202.1.1.3. to promote social inclusion and rights of the vulnerable and marginalised individuals and groups in business operations;
- 202.1.1.4. to promote meaningful and effective participation and respect for consent by relevant stakeholders in business operations; and
- 202.1.1.5. to enhance access to remedy for victims of business-related human rights abuses and violations in business operations.<sup>370</sup>

203. The five-year Action Plan highlights eight focal areas: land and natural resources; environment; labour rights; revenue transparency, tax exemptions and corruption; social service delivery by private actors; consumer protection; access to remedy; and women, vulnerable and marginalised groups.<sup>371</sup> The Action Plan is designed to be implemented by reinforcing cooperation between state entities working on BHRs, including capacity building for state and non-state actors, allocation of resources to ensure effective monitoring of implementation, effective access to judicial remedies for victims of human rights violations, and protection of vulnerable members of local communities.<sup>372</sup>

### 2.3.53. Zambia

204. The Constitution (1991) guarantees the Bill of Rights, which applies to 'persons'.<sup>373</sup> 'Person', as defined under the Constitution, 'means an individual, a company or an association of persons, whether corporate or unincorporate'.<sup>374</sup> This creates an avenue for victims of corporate human rights abuses to affirm their constitutional rights.

205. There are numerous cases of developmental projects that have impacted human rights in Zambia. The

369 Ibid.

370 Ibid.

371 Ibid.

372 Ibid.

373 Section 266 of the Constitution.

374 Ibid.

Mining Slag Dump (Black Mountain) in Kitwe led to the deaths of about ten people when a Zambian dump for copper mining waste collapsed.<sup>375</sup> The incident was largely due to the activities of informal 'artisanal' miners who re-excavate copper and other metals from the Black Mountain waste site.<sup>376</sup> Despite closure, mine contamination in Kabwe region has led to high lead levels and lead-contaminated soil.<sup>377</sup> The Vedanta case, which was eventually decided in the UK courts, arose out of an action brought by Zambian citizens, members of a rural farming community, in the Chingola District of Zambia, over toxic emissions from the Nchanga Copper Mine and water pollution by the subsidiary's copper mining operations, which led to adverse impacts on land and their livelihoods.<sup>378</sup>

206. In *James Nyasulu et al. v Konkola Copper Mines Plc*,<sup>379</sup> the High Court of Zambia held that there was a 'lack of corporate responsibility' when the mining company polluted the Chingola community's main source of water. The court also enjoined foreign investors to adhere to environmental benchmarks. Similarly, in *Longwe v Intercontinental Hotel*,<sup>380</sup> the plaintiff sought a declaration that her constitutional guarantees under Articles 11 and 23(2) of the Constitution were violated when the Intercontinental Hotel refused her entry to the bar on the grounds that she did not have male company, which was a hotel prerequisite for women wanting to enter the bar. The International Hotel argued that constitutional provisions apply only to state actions and public agencies, that is, there is vertical application and not horizontal as between individual citizens. Musumali J giving the decision of the court rejected this argument and concluded that 'the Constitutional provisions in this country are intended to apply to everybody, whether public or private persons, unless the context otherwise dictates'.<sup>381</sup> He further ordered the hotel to discontinue its policy as it

375 See Reuters, 'Ten killed in collapse at Zambian copper mining dump', Reuters (20 June 2018); available at: <<https://www.reuters.com/article/us-zambia-mining/ten-killed-in-collapse-at-zambian-copper-mining-dump-idUSKBN1JG1H3>>

376 Ibid.

377 HRW, 'We have to be worried: The Impact of Lead Contamination on Children's Rights in Kabwe, Zambia' (23 August 2019); available at: <<https://www.hrw.org/report/2019/08/23/we-have-be-worried/impact-lead-contamination-childrens-rights-kabwe-zambia>>

378 See HRC, Zambia, 'The Corporate Responsibility to Respect Human Rights: The Case of mining and agriculture sectors in Zambia' (August 2020). See also *Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents)*, [2019] UKSC 20.

379 2007/HP/1286.

380 1992/HP/765 (HC).

381 Ibid., at J16.

‘discriminated on the basis of sex’.<sup>382</sup>

207. The Constitution establishes a Human Rights Commission, with the mandate, among other things, to ‘investigate and report on the observance of rights and freedoms; and take necessary steps to secure appropriate redress where rights and freedoms are violated’.<sup>383</sup> As part of its constitutional mandate, the Commission is undertaking an investigation within the context of Zambia’s obligation under the UNGPs and the goal of ensuring comprehensive and sustainable best mining practices in Zambia.<sup>384</sup>
208. The Commission (with support from DIHR) was instrumental in the development of a National Baseline Assessment (NBA) on Business and Human Rights (BHR) with regard to Pillar II of the UNGPs.<sup>385</sup> This complemented the initial National Baseline Assessment published on 9 July 2016.<sup>386</sup> The NBA highlighted the state’s duty to protect human rights, and access to remedies for victims of corporate-induced human rights violations. It enjoined the state to commit formally to implementing the UNGPs by developing an NAP. The Commission also recommended that state objectives and obligations could be well articulated through acknowledgement of the Universal Periodic Review (UPR) recommendations which, among other things, enjoined the state to develop an NAP on BHRs.<sup>387</sup>
209. The Commission continues to observe the implementation status of UNGPs in Zambia. For instance, to address human rights violations in the mining and agricultural sectors, the Commission investigated human rights violations in those sectors in the Central, Copperbelt, Lusaka, North-Western and Southern Provinces, and assessed how businesses were complying with international human rights standards, including

the UNGPs.<sup>388</sup> These investigations and assessments will provide a satisfactory understanding of the corporate adaptation of UNGPs in their conduct and operations. The Zambian government has not committed to developing an NAP on BHRs, even though it supported the UPR’s recommendation to develop one.

### 2.3.54. Zimbabwe

210. State-induced human rights violations have increased the continuous deterioration of human rights.<sup>389</sup> Torture, forced abductions, restrictions of fundamental freedoms and liberties run rampant.<sup>390</sup> Corporate violations of human rights are also rampant in the mining industry. CSOs have called on government and extractive companies operating in Zimbabwe to adopt the UNGPs.<sup>391</sup> The Zimbabwean Environmental Law Association, in partnership with the DIHR, has produced a Country Guide to help businesses respect human rights and contribute to development.<sup>392</sup>
211. Article 242 of the Constitution (2013) establishes the Zimbabwe Human Rights Commission (ZHRC), with the mandate, among other things, to ‘promote awareness of and respect for human rights and freedoms at all levels of society; to promote the protection, development and attainment of human rights and freedoms; to monitor, assess and ensure observance of human rights and freedoms; to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate; to conduct research into issues relating to human rights and freedoms and social justice’.<sup>393</sup>
212. In its 2019 Report, the ZHRC noted the severity of environmental degradation due to incessant illegal artisanal mining activities, and corporate actors that do not adhere to BHR principles.<sup>394</sup> The Environmental Rights Thematic Working Group of

382 Ibid., at J20.

383 Article 230 of the Constitution.

384 HRC, ‘Human Rights Commission calls for effective redress to the bereaved families of the Black Mountain tragedy and calls for review of the operations to guarantee protection of human rights at the mining slag dump’ (28 June 2018); available at: <<http://www.hrc.org.zm/index.php/multi-media/news/301-human-rights-commission-calls-for-effective-redress-to-the-bereaved-families-of-the-black-mountain-tragedy-and-calls-for-review-of-the-operations-to-guarantee-protection-of-human-rights-at-the-mining-slag-dump>>

385 HRC, ‘Annual Report, 2019’ (22 April 2021); available at: <<http://www.hrc.org.zm/index.php/publications/annual-reports/file/333-hrc-annual-report-2019>>

386 National Baseline Assessment on Business and Human Rights: Zambia; available at: <<https://globalnaps.org/wp-content/uploads/2018/08/zambia-nba.pdf>>

387 HRC, ‘The State of Human Rights in Zambia, 2017–18’; available at: <<http://www.hrc.org.zm/index.php/publications/state-of-human-rights/file/268-2017-2018-state-of-human-rights-report>>

388 HRC, ‘Annual Report, 2019’; available at: <<http://www.hrc.org.zm/index.php/publications/annual-reports/file/333-hrc-annual-report-2019>>

389 HRW, Zimbabwe, Events of 2019; available at: <<https://www.hrw.org/world-report/2020/country-chapters/zimbabwe>>

390 Ibid.

391 BHRC, ‘Zimbabwe NGOs statement on the United Nations Guiding Principles on Business and Human Rights’; available at: <<https://www.business-humanrights.org/en/latest-news/zimbabwe-ngos-statement-on-the-united-nations-guiding-principles-on-business-and-human-rights/>>

392 ZELA & DIHR, ‘Human Rights and Business Country Guide, Zimbabwe’ (April 2016); available at: <<https://globalnaps.org/wp-content/uploads/2018/04/business-and-human-rights-guide-to-zimbabwe.pdf>>

393 See Article 243 of the Constitution.

394 ZHRC, Annual Report, 2019; available at: <<https://www.zhrc.org.zw/wp-content/uploads/2020/11/ZHRC-2019-Annual-Report.pdf>>

the ZHRC conducted stakeholders' consultations on a model NAP on BHRs and facilitated three mobile human rights clinics, at Marange, Mhondongori and Mapanzure.<sup>395</sup> The objective was to raise the communities' awareness of their environmental rights. To strengthen capacity building and train the ZHRC on pathways for Zimbabwe to develop an NAP on BHRs, the Working Group went on a consultative visit to the Kenya National Commission on Human Rights in November 2019.<sup>396</sup> Zimbabwe has not developed an NAP, nor has it conducted a baseline assessment.

### 2.3.55. Sahrawi Arab Democratic Republic (Western Sahara)

213. Sahrawi Arab Democratic Republic (SADR), also known as the Western Sahara, is a partially recognised de facto sovereign state. It claims the non-self-governing territory of Western Sahara.
214. Business and human rights in the Sahrawi Arab Democratic Republic are further complicated by Morocco's occupation of part of the Western Sahara. Businesses have sought to explore hydrocarbons and fishing operations off the Western Sahara coast. Businesses that explore resources from Morocco-occupied territory could face reputational risk or be in violation of international human rights principles.<sup>397</sup>
215. SADR has no programme on BHRs. It has not developed an NAP, nor has it conducted a baseline assessment.

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395 Ibid.

396 Ibid.

397 Isa Mirza/Gare Smith, 'New U.S. Policy, Same Human Rights Expectations: Companies Sourcing from the Western Sahara Are Still Obligated to Respect International Law', Foley Hoag LLP (23 December 2020); available at: <<https://www.globalbusinessandhumanrights.com/2020/12/23/new-u-s-policy-same-human-rights-expectations-companies-sourcing-from-the-western-sahara-are-still-obligated-to-respect-international-law/>>

## 3

# DRAFT AU POLICY FRAMEWORK ON BUSINESS AND HUMAN RIGHTS

## 3.1. History and Background

216. The first African Forum on Business and Human Rights was held on 18 September 2014 in Addis Ababa. The Forum called for action to make business a force for improving human rights in Africa. At the Forum, senior officials underscored the fact that ‘amid rapid economic growth and new investments in land and natural resources, there is an increasing awareness of why human rights must be brought into business strategies and operations’.<sup>398</sup> The Regional Forum was convened by the United Nations Working Group on Business and Human Rights, with the support of the African Union Commission, the United Nations Economic Commission for Africa and the Office of the United Nations High Commissioner for Human Rights.<sup>399</sup> Participants from across Africa called for responsible business practices that respect human rights, provide adequate safeguards to protect against business-related rights abuses, and ensure that victims can seek redress.<sup>400</sup> NAPs were identified as an important tool to advance the business and human rights agenda.<sup>401</sup> Such plans should be developed through inclusive consultative processes, bringing on board all stakeholders, to identify problems and find solutions.<sup>402</sup>
217. Furthermore, a stakeholders meeting was held in 2017 at which participants underscored the need to include some African norms and standards in the Policy Framework.<sup>403</sup> Participants highlighted three levels of obligations. First, the state’s duty to protect human rights, anchored in regulatory mechanisms, protection of human rights defenders, and adoption of NAPs on BHRs. Second, access to remedies. Third, other considerations must focus on the inclusion of human rights obligations under Bilateral Investment Treaties (BITs), regulation of

398 Statement by Michael K. Addo, then chair of the UN Working Group on Business and Human Rights, at the African Forum on Business and Human Rights, Addis Ababa (16–18 September 2014).

399 Ibid.

400 Ibid.

401 Ibid.

402 Ibid.

403 AU Commission, Development of an African Union Policy Framework on Business and Human Rights, Midrand, Johannesburg, 16 February 2017.

investors, including parent companies that have control over subsidiaries, and states’ obligations to emphasise open contracting, beneficial ownership, access to information, consultation and community engagement.

218. The draft policy recognises that businesses have positively impacted development in Africa. It also contends that the operations of many businesses in Africa have also negatively impacted human and peoples’ rights on the continent. It provides for realisation of the right to development, and the rights of marginalised groups in business environments to be fully protected in Africa. The policy provides for states to have national laws and action plans on BHRs. It places strong emphasis on traditional institutions as complementary mechanisms for promoting and protecting BHRs. The Framework also calls on AU Member States to implement decisions and recommendations on BHRs and further provides for monitoring and reporting on business activities and their impacts on human and peoples’ rights at all levels of governance in Africa from community/local to state, regional and continental levels (media, CSOs, government, RECs and AU).
219. The Policy Framework, which clearly articulates human rights standards for state and non-state actors, has triggered further debates on policy and regulatory frameworks to address escalating business and human rights risks in Africa. It is also in harmony with the AU’s approach to repositioning Africa for inclusive social and economic development, under Agenda 2063. This Agenda is oriented towards the objective of a prosperous Africa based on inclusive growth and sustainable development.<sup>404</sup> The Policy Framework has the potential to impact standard-setting on BHRs and to regulate non-state actors in all sectors.

## 3.2. Context and Current Approach

220. The draft Policy reinforces the need for implementation of the UNGPs. There are two core objectives of the draft Policy. First, it seeks to foster a culture of corporate human rights compliance. Second, it seeks to serve as a tool for states in

404 AU, ‘Our aspirations for the Africa we want’; available at: <<https://au.int/en/agenda2063/aspirations>>

the development of NAPS on BHRs. The Draft Policy is divided into three sections. Section 1 is introductory and gives the background, rationale and objectives of the Policy Framework. This section recognises that while businesses contribute immensely to the development of the continent, some of their activities have occasioned human rights challenges. The impacts of these activities have not only negatively affected peoples' right to development, but they have also made specific groups – such as women, children, the elderly, migrants and persons with disabilities – more vulnerable. Seven cardinal principles are highlighted, namely: responsibility, accountability, African shared values, the human rights-based approach, local ownership, participation and inclusiveness, and non-discrimination.

221. Section 2 deals with the foundational pillars or indicative elements of the Policy, namely: the state duty to protect human and peoples' rights, business responsibility to respect human and people's rights, and access to judicial remedies. Section 3 examines resource mobilisation, relevant actors and implementation mechanisms.
222. To fulfil their duty to protect human and peoples' rights, the Draft Policy enjoins states to pursue 14 indicative elements to realise their obligations. These indicative elements include:
  1. adopting national laws, policies, and strategies for regulating human rights related activities of businesses;
  2. synergising national laws and policies with BHR principles and the Draft Policy;
  3. creating an enabling environment to implement and enforce the recommendations and decisions of judicial and non-judicial mechanisms at national and regional levels concerning the human and peoples' rights impacts of the businesses that operate on their territories;
  4. encouraging a human and peoples' rights culture among the businesses that operate on their territories through support for training programmes and activities;
  5. mandating periodic human rights reporting on how businesses address adverse human rights impacts in their spheres of operation;
  6. integrating human and peoples' rights risk management into investment contracts that could generate social, economic or environmental risks;
  7. concluding bilateral and multilateral agreements that adopt human rights with the home states of the transnational companies;
  8. engaging with businesses which operate in conflict zones to avoid, identify, assess, mitigate, and redress human and peoples' rights related risks;
  9. enhancing human rights practices within SOEs, business transactions by the state and agencies linked to the state;
  10. protecting peoples' rights and the rights of local communities;
  11. establishing an effective tax regime and administration capable of collecting due taxes from the relevant businesses to be deployed toward the realisation of the human and peoples' rights of the relevant population(s);
  12. acknowledging the importance of informal sector businesses for the economic development of the state, and thus for the realisation of human rights;
  13. deterring conflict of interest among state officials and business leaders that may affect realisation of the duty to protect human and peoples' rights;
  14. encouraging the protection of human and peoples' rights defenders working on ensuring that businesses respect human and peoples' rights.
223. The policy further incorporates seven benchmarks against which to assess the compliance of states with the duty to protect human rights, including: effective laws and efficient institutions for regulating the activities of business enterprises; protection of local communities from activities of business enterprises negatively impacting the rights of these communities; increased awareness among businesses of their responsibility to respect human rights; sustained efforts at fostering compliance of businesses with recommendations and decisions of judicial and non-judicial mechanisms at various levels of governance; timely provision of assistance to businesses to identify, mitigate, avoid, assess and redress negative human rights impacts; and inclusion of human rights clauses in state–investor contracts and the existence of an efficient tax revenue agency for the collection of corporate taxes.
224. To realise the responsibility to respect human rights, eight imperatives are outlined in the Policy. First, businesses must develop and adopt policy statements to respect human and peoples' rights standards. Second, businesses are to conduct human rights due diligence. This needs to be in line with relevant standards at global and regional levels. Third, businesses should have due regard to relevant standards at global and regional levels in the delivery of public services, notably, in situations in which such services are outsourced to them. Fourth, displacement of communities should be prevented and consultation should be advanced. Fifth, there is also a need for local communities to benefit from the proceeds of business activities through fair and equitable benefit sharing. Sixth, businesses are to ensure that their activities do not

contribute to environmental degradation which affects the right to the environment guaranteed in Article 24 of the African Charter on human and peoples' rights. Seventh, businesses are to ensure that they strengthen due diligence and respect for international humanitarian law through self-regulatory mechanisms in (post-)conflict situations, where there are no effective governance structures for the furtherance of human rights. Eight, businesses are to ensure that they set up effective remediation processes to address adverse human rights impacts and in this regard, adopt case-specific measures, track efficiency of response, engage external monitoring mechanisms and publish human rights performance. Finally, businesses are to register for tax purposes and transparency of revenue flows. The policy further incorporates six benchmarks against which to assess the compliance of states with the duty to protect human rights, including: adoption of a policy statement detailing respect for human rights in line with international and regional standards; the existence of efficient measures for redress of adverse human rights impacts; meaningful engagement with local communities geared towards free, prior and informed consent, reports on the performance of human rights impact assessments, effective remediation of adverse human rights activities and adherence to recommendations of external oversight and monitoring mechanisms, including traditional structures.

225. Concerning access to remedy, the Policy Framework advances a wide range of measures for the furtherance of adequate remediation – judicial and non-judicial, state-based, and non-state based. Thus, states and businesses are required to ensure access to remedy. States are obliged to establish and strengthen state-based judicial and non-judicial mechanisms; institutionalise and support non-state-based grievance mechanisms; and provide access to effective remedies. On their part, businesses

must ensure that they establish remediation by developing operational-level grievance mechanisms for the purpose of identifying adverse human rights impacts. Furthermore, businesses are supposed to advance transitional justice processes in line with the AU Transitional Justice Policy. Businesses should also acknowledge that victims of adverse human rights impacts do not waive their right to seek remedy from judicial mechanisms through participation in operational-level grievance mechanisms. Additionally, businesses are to ensure that they respect and implement decisions of judicial and non-judicial mechanisms regarding human rights violations. The Policy document further specifically provides for benchmarks against which access to remedy will be assessed, including the existence of mechanisms for redressing business-related human rights violations, awareness of such mechanisms, provision of financial and technical resources, absence of procedural barriers and the existence of specific remedies for specific categories, including women and children.

226. Section 3 covers resource mobilisation and implementation. At the national level, states are required to ensure enhanced budgetary allocations for the purpose of human rights protection and establish an independent fund to mobilise financial support from businesses towards projects for the protection of local communities and for business and human rights advocacy. At the sub-regional level, RECs and relevant Regional Mechanisms (RMs) are required to support implementation of the Policy and to establish sub-regional contributory funds for AU Member States for the furtherance of regional solidarity. At the continental level, the AU is supposed to promote collaboration with various institutions and stakeholders and to provide technical support to Member States in implementation of the Policy and resource mobilisation.

## 4

# AFRICAN CONTINENTAL FREE TRADE AREA (AFCFTA) AGREEMENT AND AU ORGANS

### 4.1. African Continental Free Trade Area (AfCFTA) Agreement

227. Pursuant to the Lagos Plan of Action signed in 1980,<sup>405</sup> the AU set out to create the African Economic Community through a free trade area, customs union and a common market among the 55 African Member States.<sup>406</sup> This was aimed at achieving greater cohesion and economic integration in the continent.<sup>407</sup> The most recent of these initiatives is the African Continental Free Trade Area (AfCFTA),<sup>408</sup> an agreement to make intra-African trade easier and more competitive by minimising tariff and non-tariff barriers and gradually eliminating 90 per cent of tariffs within a period of five to fifteen years, based on the developing and least-developed country classification.<sup>409</sup>
228. The Agreement seeks to ‘create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with... Agenda 2063; create a liberalised market for goods and services through successive rounds of negotiations; contribute to the movement of capital and natural persons, and facilitate investments building on the

405 See the Treaty Establishing the African Economic Community, Lagos Plan of Action for the Economic Development of Africa 1980–2000 4 (1980); Adopted on 3 June 1991; entered into force on 12 May 1994.

406 See the Preamble and Art. 3 of the Agreement establishing the African Continental Free Trade Area (AfCFTA).

407 See also the Statement of the Chairperson of the African Union Commission, Moussa Faki Mahamat at the Tenth Extraordinary Session of the Assembly of the Union on the African Continental Free Trade Area, Kigali, Rwanda (21 March 2018) calling the Agreement the fourth ambitious integration initiative of the continent alongside the AEC, AU and AUDA-NEPAD; available at: <[https://au.int/sites/default/files/speeches/34028-sp-kigali.cfta\\_\\_21.march\\_18.final\\_.pdf](https://au.int/sites/default/files/speeches/34028-sp-kigali.cfta__21.march_18.final_.pdf)>

408 See O. Abe/S. Taye, ‘The “Flexibility” Standard in the African Union and its Ramification for the Implementation of the African Continental Free Trade Area (AfCFTA) Agreement’ (2021) 16(2) Global Trade and Customs Journal 80.

409 AU, Report to the Specialized Technical Committee on Trade, Industry and Minerals: Progress on the African Continental Free Trade Area (AfCFTA) for the Period from May 2016 to Dec. 2018, 2&3 (AUC/DTI/AfCFTA/STC/Rep/D).

initiatives and developments in the States Parties and RECs; promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the States Parties’, among other objectives.<sup>410</sup> Consequently, achieving the socio-economic development of Member States includes adopting the Policy Framework that provides for business respect for human rights.

229. The Agreement entered into force on 30 May 2019.<sup>411</sup> As of April 2022, 41 countries had deposited their instruments of AfCFTA ratification, while 54 countries had signed the Agreement.<sup>412</sup>

### 4.2. Business and human rights under AfCFTA

230. While AfCFTA recognises the importance of human rights for the development of international trade and economic cooperation,<sup>413</sup> it does not contain any specific provision on BHRs.
231. At a two-day validation workshop on the Draft Policy Framework co-organised by the African Union Commission’s Department of Political Affairs and the European Union (EU) on Tuesday, 21 March 2017,<sup>414</sup> participants noted the need for a BHR policy that can address multifarious corporate-induced human rights violations in Africa. Current stakeholder consultations and negotiations under Phase 2 cover three broad areas: investment, intellectual property rights, and competition policy. Hopefully, specific reference to BHRs will be incorporated under the Protocol on Investment to guarantee achievement of the Sustainable Development Goals and responsible

410 Article 3 of AfCFTA.

411 TRALAC, ‘African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents’; available at: <<https://www.tralac.org/resources/by-region/cfta.html>>

412 TRALAC, Status of AfCFTA Ratification; available at: <<https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html>>

413 Preamble to the Agreement.

414 TRALAC, Validation workshop of the African Union Policy on Business and Human Rights (24 March 2017); available at: <<https://www.tralac.org/news/article/11450-validation-workshop-of-the-african-union-policy-on-business-and-human-rights.html>>

business practices in Africa. Also, a Human Rights Impact Assessment (HRIA) is needed to verify actual or potential human rights impacts of trade activities under AfCFTA, which will guide further negotiations and encourage 'equitable, poverty-reducing and human rights-consistent outcomes'.<sup>415</sup>

232. Article 28 provides that the Agreement be subject to review every five years upon its entry into force, to adapt to evolving regional and international developments. Hopefully, this Article could create a pathway for integrating business and human rights into the Agreement when it is subject to review.
233. Furthermore, if the transformative agenda of AfCFTA is to be realised and sustainable socio-economic development is to be achieved, human rights language must be integrated in the AfCFTA as a pathway to implementing BHRs through trade. One area in which human rights can be achieved is through relaxation of the rules on digital trade. While some countries have adopted data localisation policies, other countries have data protection laws or restrict cross-border data transfers, especially through electronic means.<sup>416</sup> Adaptation of human rights to digital trade will ensure that 'stakeholders whose inclusion and participation' is fundamental to trade objectives are identified and therefore able to enjoy the benefits of digital trade.<sup>417</sup> When states and businesses restrict data flows, they decrease access to information, which invariably weakens economic growth, efficiency and invention, locally and internationally.<sup>418</sup> Consequently, a human rights and business provision is needed in AfCFTA.

### 4.3. Regional Economic Communities

234. The Regional Economic Communities (RECs) are regional groupings of African states. RECs facilitate regional economic integration between members of the individual regions and through the wider African Economic Community (AEC), which was established under the Abuja Treaty in 1991. The 1980 Lagos Plan of Action for the Development of Africa and the Abuja Treaty proposed the creation of RECs as the basis for wider African integration. The RECs are instrumental to organising AU Member States' interests in various areas, including development, governance and human rights.

415 'The Continental Free Trade Area (CFTA) in Africa – A Human Rights Perspective'; available at: <[https://www.ohchr.org/Documents/Issues/Globalization/TheCFTA\\_A\\_HR\\_ImpactAssessment.pdf](https://www.ohchr.org/Documents/Issues/Globalization/TheCFTA_A_HR_ImpactAssessment.pdf)>

416 Lukman Abdulrauf/Oyeniyi Abe, 'The (Potential) Economic Impact of Data Localisation Policies on Nigeria's Regional Trade Obligations', Policy Brief 04, Mandela Institute, University of Witwatersrand, South Africa.

417 TRALAC, 'Digital Trade In Africa Implications for Inclusion and Human Rights'; available at: <<https://www.tralac.org/documents/news/2893-digital-trade-in-africa-implications-for-inclusion-and-human-rights-executive-summary-and-policy-recommendations-july-2019/file.html>>

418 Abdulrau and Abe (n 399).

235. The 2012 Resolution on a Human Rights-Based Approach to Natural Resource Governance (2012 Resolution),<sup>419</sup> calls on governments to 'set up independent monitoring and accountability mechanisms that ensure that human rights are justiciable and extractive industries and investors legally accountable in the country hosting their activities and in the country of legal domicile'.<sup>420</sup> This echoes the importance to MNCs of foreseeing and preventing any human rights implications of their projects.
236. Other efforts by African governments to require the provision of social and environmental safeguards by investors in the extractive industries include the 2009 ECOWAS Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector, declarations of the Pan African Parliament, and the 2009 African Mining Vision.

#### 4.3.1. Arab Maghreb Union (AMU)

237. The Arab Maghreb Union (AMU) is a trade agreement geared towards the economic, social and political unity of Arab countries of the Maghreb in North Africa. It currently consists of five countries: Algeria, Libya, Mauritania, Morocco and Tunisia.<sup>421</sup> The AMU has specialised committees focused on, among other things, food security, economic and financial affairs, basic infrastructure, and human resources. There is no specialised committee on human rights, however, and no available information on the organ's efforts towards enforcing business and human rights. The AMU has been largely dysfunctional due to an intractable dispute between Algeria and Morocco over the status of the Western Sahara, annexed by Morocco in 1975.

#### 4.3.2. Common Market for Eastern and Southern Africa (COMESA)

238. COMESA is a regional economic community in Africa, formed in 1994 to promote peace and security in East and Southern Africa.<sup>422</sup> Its key objectives include the 'creation of an enabling environment for foreign, cross-border and domestic investment, including the joint promotion of research and adaptation of science and technology for development; promotion of joint development in all fields of economic activity and the joint adoption of macro-economic policies and programmes to raise the standard of living of

419 Resolution on a Human Rights-Based Approach to Natural Resources Governance, African Commission on Human and Peoples' Rights, 51st Session (2012); available at: <<https://www.achpr.org/sessions/resolutions?id=243>>

420 Ibid.

421 Francesco Tamburini, 'L'Union du Maghreb arabe, ovvero l'utopia di una organizzazione regionale Africana' (2008) 63(3) Africa: Rivista Trimestrale di Studi e Documentazione 405–427.

422 COMESA, 'COMESA Objectives and Priorities'; available at: <<https://www.comesa.int/what-is-comesa/>>

its peoples and to foster closer relations among its Member States'.<sup>423</sup> Trade facilitation is central to the functioning of COMESA. While COMESA has huge reserves of extractive resources, it does not have a plan or programme on business and human rights. COMESA's programme on trade and customs can integrate business and human rights in the implementation of programmes that enhance trade and monetary affairs to achieve a fully integrated and sustainable approach to trade across Member States. The COMESA Treaty does not indicate whether the Community Court will have jurisdiction over human rights issues. Consequently, the Court has not referred to the UNGPs, neither has there been a case focusing on a business obligation to respect human rights.

### 4.3.3. Economic Community of West African States (ECOWAS)

239. ECOWAS is a regional group of 15 West African States.<sup>424</sup> It was founded on 28 May 1975 by the Treaty of Lagos with a mission to promote economic integration across the region. A revised version of the treaty was created pursuant to the provisions of Articles 6 and 15 of the Revised ECOWAS Treaty. The Court's mandate is 'to ensure the observance of law and of the principles of equity and the interpretation and application of the provisions of the Revised Treaty and all other subsidiary legal instruments adopted by the Community'.<sup>425</sup>
240. In *SERAP v Nigeria*,<sup>426</sup> the plaintiff, Socio-Economic Rights and Accountability Project (SERAP), a human rights NGO registered in Nigeria, alleged that Nigeria's oil-rich Niger-Delta region has suffered from decades of oil spillage. This spillage has caused destruction of farmlands and damaged the quality and productivity of soil that the communities use for farming. The allegation claimed that the Nigerian

government and oil companies had violated local communities' rights to an adequate standard of living, including the rights to food, work, health, water, life and human dignity, a clean and healthy environment, and economic and social development as a consequence of, and because of the impact of oil-related pollution and environmental damage on agriculture and fisheries, oil spills and waste materials polluting water used for drinking and other domestic purposes. The plaintiff further claimed that the Nigerian government had failed to secure the underlying determinants of health, including a healthy environment and to enforce laws and regulations to protect the environment and prevent pollution.<sup>427</sup>

241. The Court found that the Nigerian government 'by comporting itself in the way it is doing, in respect of the continuous and unceasing damage caused to the environment in the Region of Niger Delta, has defaulted in its duties in terms of vigilance and diligence as party to the African Charter on Human and Peoples' Rights, and has violated Articles 1 and 24 of the said instruments'.<sup>428</sup> Article 1 of the African Charter states that: 'The Member States of the Organization of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them', and Article 24 provides that 'All peoples shall have the right to a general satisfactory environment favourable to their development.' Consequently, the Court ordered Nigeria to 'take all effective measures, within the shortest possible time, to ensure restoration of the environment of the Niger Delta; take all measures that are necessary to prevent the occurrence of damage to the environment; take all measures to hold the perpetrators of the environmental damage accountable'.<sup>429</sup> Unfortunately, the Court ruled that it lacked jurisdiction over the corporate defendants.

### 4.3.4. The East African Community (EAC)

242. The EAC is a regional intergovernmental organisation of six Partner States: Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda, with its headquarters in Arusha, Tanzania.<sup>430</sup> The Community works largely to deepen political, economic and social cooperation among Member States. The EAC does not have any policy or programme on business and human rights. Furthermore, the East African Court of Justice has decided numerous cases on human rights. However, there is no available information about any decision that refers to the UNGPs.

423 See further Article 3 of the Agreement Establishing the Common Market for Eastern and Southern Africa (COMESA).

424 ECOWAS, 'Member States'; available at: <<https://www.ecowas.int/member-states/>>

425 ECOWAS, 'Community Court of Justice'; available at: <<https://www.ecowas.int/institutions/community-court-of-justice/>>

426 Judgment N° ECW/CCJ/JUD/18/12; available at: <<https://ihrda.uwazi.io/en/document/pftlz3gneo0wxsgq0kdszto6r?page=2>>. This case originated from a complaint brought on 23 July 2009 by SERAP under Article 10 of the Supplementary Protocol A/ SP.1/01/05 against Nigeria, the Attorney General of the Federation, NNPC, Shell Petroleum Development Company, ELF Petroleum Nigeria Ltd, AGIP Nigeria PLC, Chevron Oil Nigeria PLC, Total Nigeria PLC and Exxon Mobil. In this case, the Court ruled that it lacked jurisdiction over the corporate defendants because companies cannot be sued under international law. See *SERAP v Nigeria* ECW/CCJ/APP/08/09; Rul. No: ECW/CCJ/APP/07/10 (10 December 2010); available at: <[http://www.worldcourts.com/ecowascj/eng/decisions/2010.12.10\\_SERAP\\_v\\_Nigeria.htm](http://www.worldcourts.com/ecowascj/eng/decisions/2010.12.10_SERAP_v_Nigeria.htm)> (Here the Court noted that the 'need to make corporations internationally answerable has led to some initiatives, namely the nomination of Special Representative of the Secretary General of the United Nations whose report titled "Protect, Respect and Remedy: A framework for Business and Human Rights" (the Ruggie Report) is one of the greatest references on the accountability of multinationals for human rights violations in the world.')

427 Ibid.

428 Ibid.

429 Ibid.

430 EAC, 'Overview of EAC'; available at: <<https://www.eac.int/overview-of-eac>>

### 4.3.5. The Community of Sahel-Saharan States (CEN-SAD)

243. The CEN-SAD seeks to facilitate economic unity through the implementation of the free movement of people and goods with the goal of achieving a free trade area for Member States. There is no programme or plan of action on business and human rights.

### 4.3.6. Other AU Organs

244. Other AU Organs include the Economic Community of Central African States (ECCAS), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC). These organs do not have significant plans and programmes for business and human rights.

## 4.4. African Commission on Human and Peoples' Rights

245. The African Charter on Human and Peoples' Rights<sup>431</sup> established the African Commission on Human and Peoples' Rights.<sup>432</sup> Article 45 of the African Charter provides that the African Commission, a quasi-judicial body, will be empowered to promote and protect human and peoples' rights, as well as the interpretation of the provisions of the Charter. In furtherance of this objective, the African Commission published the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment.<sup>433</sup> Considering the importance of the extractive industries to Africa's economy, this Guideline becomes instructive. Article 21 guarantees the right of all peoples to freely dispose of their wealth and natural resources. Article 24 provides for the right of all peoples to a general satisfactory environment, favourable to their development.

246. The State Reporting process under Article 62 of the African Charter provides a pathway for the African Commission to monitor the implementation of the rights safeguarded by the African Charter. Furthermore, the African Commission initially adopted the Tunis Guidelines, and subsequently a Resolution on Developing Reporting Guidelines with Respect to the Extractive Industries ACHPR/ Res. 364(LIX) 2016, authorising the Working Group

to elaborate State Periodic Reporting Guidelines on Articles 21 and 24 of the African Charter.<sup>434</sup> It also provides a basis for states to measure and reflect on their performance with respect to their obligations under the African Charter and offers a policy platform for constructive dialogue on current and developing concerns touching on the rights guaranteed in the Charter. It further recognises difficulties under Articles 21 and 24 of the African Charter concerning which States Parties should provide information in their Periodic Reports to the African Commission generally and with specific reference to the operations of extractive industries in their jurisdictions. The Reporting Guidelines were adopted by the African Commission at its 62nd Ordinary Session in May 2018.

247. In the Explanatory Note to the State Reporting Guidelines on the Contents of the Rights and Obligations under Articles 21 and 24 of the African Charter,<sup>435</sup> the Guidelines make specific reference to the UNGPs. It re-emphasises multinational companies' obligations towards rights holders.<sup>436</sup> Failure to enforce such obligations will create a 'human rights vacuum' in their spheres of operations.<sup>437</sup> These obligations are anchored on the 'direct negative obligation' based on the 'do no harm' principle. Thus, corporate entities should ensure that 'their actions or operations do not result in or trigger the occurrence of harm or the curtailment or deprivation of the rights guaranteed under the African Charter'.<sup>438</sup> In particular, the Guidelines state as follows: 'The duty to respect and consider others and maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance is provided for in Article 28 of the African Charter. The United Nations Guiding Principles on Business and Human Rights (the Ruggie Principles) confirm in Principle 11 that businesses "should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved".'<sup>439</sup> Where egregious conduct occurs, companies must immediately mitigate and prevent further occurrence.<sup>440</sup> For example, where their activities result in environmental degradation, they must pay appropriate compensation to affected people for all 'material and non-material damages'. Also, companies are enjoined to 'adequately inform and

431 African Charter on Human and Peoples' Rights (adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986), Article 30 [African Charter].

432 Ibid.

433 ACHPR, 'State Reporting Guidelines and Principles on Arts 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment' (2018); available at: <<https://www.achpr.org/public/Document/file/English/Articles%2021%20&%2024%20State%20Reporting%20Guidelines.pdf>>

434 Ibid., vi.

435 Ibid., 19.

436 Ibid., 23.

437 Ibid., 37.

438 Ibid.

439 See also ACHPR/Res. 367 (LX) 2017 Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries; available at: <<https://www.achpr.org/presspublic/publication?id=77>>

440 See further Articles 27(1) and (2) and 28 of the African Charter.

substantively consult with the affected people on any of their activities or on decisions that may materially affect the people and implement such activities having regard to the concerns of the people and the requisite cautionary measures for mitigating such impacts'.<sup>441</sup> As part of their indirect negative obligations, corporate entities must ensure that activities or action undertaken 'on their behalf or to their benefit do not cause harm or result in interference in the enjoyment of protected rights'.<sup>442</sup>

248. The Working Group adopted resolutions on States' Obligations to Regulate Private Actors Involved in the Provision of Health and Education Services on 14 May 2019.<sup>443</sup> The African Commission also adopted Resolution 434 on the Need to Develop Norms on States' Obligations to Regulate Private Actors Involved in the Provision of Social Services.<sup>444</sup>
249. The Commission also refers to the UNGPs in its reports, policies and documents. In its report on the Rights of Indigenous Peoples and Extractive Industries, the African Commission Working Group on Indigenous Populations/Communities in Africa instructed companies to adhere to the UNGPs and ensure that 'indigenous peoples' rights are protected and respected and remedies availed for violations'.<sup>445</sup> Businesses must also acknowledge the 'ownership rights of indigenous peoples of their lands and territories' and 'apply a human rights based approach to development' through widespread consultations and participation of indigenous peoples before any developmental project.<sup>446</sup>
250. The Commission, through its Working Group on Extractive Industries, Environment and Human Rights in Africa, developed an 'Advisory Note' to support the Africa Group in Geneva in navigating its 'way through the technical and human rights considerations in the present ongoing process in the United Nations for a Binding Instrument on

Business and Human Rights'.<sup>447</sup> In doing so, it relied on its mandate to investigate the effect of extractive activities in Africa, and also to undertake research on corporate-induced human rights violations. It draws on the prevailing principles, especially those 'established by the African Commission, the IFF report of the AU, the African Mining Vision and the UN Guiding Principles on Business and Human Rights'.<sup>448</sup> With regard to binding instruments, the Advisory Note states that 'the WGEI therefore proposes that the Binding Instrument should go further than the very minimum and also envision promotion and fulfilment of certain human rights obligations by business enterprises. In this regard the adoption of sustainable and ethical business practices should not be voluntary but should be a binding duty on business enterprises. These obligations on business enterprises should be recognised in the operative section of the Legally Binding Instrument and not only in the Preamble'.<sup>449</sup>

251. The Working Group on Extractive Industries, Environment and Human Rights Violations published a report on the operations of the extractive industries in Africa.<sup>450</sup> The report specifically refers to the UNGPs, and the African Union Draft Policy Framework on Business and Human Rights. It noted that the Draft Policy Framework, in combination with the African Charter, commissions State Reporting Guidelines on Articles 21 and 24, provides 'stronger protections, and more contextual relevance than the universal norms of the Ruggie Principles'.<sup>451</sup> Furthermore, the Background Report notes the main challenges impacting extractive resource governance in Africa to include bad governance, illicit financial flows and underdevelopment. Despite its potential for improved conditions of living, the study exposes how the extractive industries in Africa function in a context characterised by human rights violations. This impacts local communities, the environment and the financial stability of the host states.

441 Ibid., 39. See also Article 9 of the African Charter. The Guidelines refer to Principle 11, which provides that: 'Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.'

442 Ibid., 39.

443 420 Resolution on States' Obligation to Regulate Private Actors Involved in the Provision of Health and Education Services – ACHPR / Res. 420 (LXIV) 2019; available at: <<https://www.achpr.org/sessions/resolutions?id=444>>

444 Resolution on the Need to Develop Norms on States' Obligations to Regulate Private Actors Involved in the Provision of Social Services – ACHPR/Res. 434 (EXT.OS/ XXVI1) 2020; available at: <<https://www.achpr.org/sessions/resolutions?id=465>>

445 National Dialogue on the Rights of Indigenous Peoples and Extractive Industries, from 7 to 8 October 2019, Nairobi, Kenya; available at: <<https://www.achpr.org/news/viewdetail?id=203>>

446 Ibid.

447 Advisory note to the African group in Geneva on the legally binding instrument to regulate in international human rights law the activities of transnational corporations and other business enterprises (legally binding instrument); available at: <<https://www.achpr.org/public/Document/file/English/Advisory%20note%20Africa%20Group%20UN%20Treaty.ENG.pdf>>

448 Ibid.

449 Ibid., 4.

450 African Commission on Human and Peoples' Rights, 'Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realisation of Human and Peoples' Rights under the African Charter on Human and Peoples' Rights', Working Group on Extractive Industries, Environment and Human Rights, 69th Ordinary Session of the African Commission on Human and Peoples' Rights, 23 November 2021; available at: <https://www.achpr.org/sessions/info?id=374>

451 Ibid., 72.

252. In Communication 292/04 – Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v Angola,<sup>452</sup> the African Commission found the Respondent State in violation of Article 15 of the African Charter for ‘capricious arrest and deportation’ of 14 persons, ‘on the grounds that foreigners were not permitted to engage in mining activities in Angola’.<sup>453</sup>

253. The African Commission’s decisions that bear a resemblance to BHRs predate the UNGPs. In the seminal case SERAC v Nigeria,<sup>454</sup> two NGOs – Social and Economic Rights Action Committee (SERAC) and the Center for Economic and Social Rights (CESR) – on behalf of the Ogoni people in 1996, claimed that the Nigerian state, through its state-owned subsidiary, Nigerian National Petroleum Corporation, ‘caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni people’,<sup>455</sup> and was in violation of the following Articles of the African Charter:

253.1.1.1. Article 2: Right to the enjoyment of the rights and freedoms recognised and guaranteed under the Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political, national, and social origin, fortune, birth or any status.

253.1.1.2. Article 4: Right to life and integrity of person.

253.1.1.3. Article 14: Right to property.

253.1.1.4. Article 16: Right to physical and mental health.

253.1.1.5. Article 18: Right to protection of the family.

253.1.1.6. Article 21: Right of peoples to freely dispose of their resources.

253.1.1.7. Article 24: Right to a general satisfactory environment favourable to their development.

254. In this case, the Nigerian military government had been involved in oil exploration through the state enterprise Nigerian National Petroleum Corporation (NNPC). The NNPC operates a joint-venture programme with various oil companies, at the ratio of 60:40. The NNPC is the majority shareholder, while Shell is the largest oil company in this consortium. The relationship between Shell and the NNPC led to environmental degradation

and health problems for the Ogoni people. The complaint seriously indicted the oil companies for their harmful activities – such as disposing of toxic wastes into the environment in violation of international environmental standards, so causing contaminated air, water and soil with serious short- and long-term effects. The complaint further alleged that the Nigerian government had condoned the activities of Shell by placing the legal and military powers of the state at the disposal of the oil companies. One such incident led to the series of events that culminated in the execution of the leader of the Ogoni people, Ken Saro Wiwa, and also several other residents.

255. In its decision, the African Commission found that the Nigerian government had violated Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter, and directed the government to ensure the protection of the environment, health and livelihood of the people of Ogoniland.<sup>456</sup> It also enjoined the government to conduct an investigation into the human rights violations described above, and to prosecute officials of the security forces, the NNPC, and any relevant agencies involved in the human rights violations.<sup>457</sup> The government was directed to pay adequate compensation to victims of the human rights violations and to undertake a comprehensive clean-up of lands and rivers damaged by oil operations.<sup>458</sup> Although the decision effectively re-emphasised the state’s duty to protect human rights, it missed the opportunity to enjoin corporate responsibility to respect human rights as it did not make any determination on NNPC, the primary culprit in these human rights violations.

256. In Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (the Endorois case),<sup>459</sup> the African Commission was of the opinion that the ‘right of indigenous communities to use and enjoy natural resources under their property rights is confined to those resources that lie on and within the land, including subsoil natural resources, to the extent that they are traditionally used by the community concerned and necessary for the very survival, development and continuation of their way of life’.<sup>460</sup> Consequently, the Commission held that Article 21 of the African Charter protects all natural resources within the traditional lands of the community concerned, even if they have not traditionally used all of these resources.<sup>461</sup>

452 Available at: [https://adsdatabase.ohchr.org/IssueLibrary/ACH-PR\\_Institute%20for%20Human%20Rights%20and%20Development%20in%20Africa%20v%20Angola.pdf](https://adsdatabase.ohchr.org/IssueLibrary/ACH-PR_Institute%20for%20Human%20Rights%20and%20Development%20in%20Africa%20v%20Angola.pdf)

453 Ibid., para 8.

454 (2001) AHRLR 60.

455 Ibid.

456 Ibid., at 9.

457 Ibid.

458 Ibid.

459 Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Case 276/2003, African Comm’n H.R. (2010), §257–260.

460 Ibid.

461 Ibid.

257. In *IHRDA and others v DRC*,<sup>462</sup> an Australian mining company extracting copper and silver in Dikulushi, 50 kilometres from Kilwa, provided operational support to local military forces who indiscriminately shot at civilians, killing about 28 people in the process. The involvement of a mining company in local political discourse brings to the fore the responsibility of corporate actors for human rights violations. The African Commission recognised the role played by Anvil Mining Company in enabling human rights violations and found a violation of Article 1 of the African Charter.

#### 4.5. African Court on Human and Peoples' Rights

258. The African Court on Human and Peoples' Rights (ACHPR) was established by Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) in June 1988.<sup>463</sup> The Protocol came into force on 25 January 2004. The ACHPR was established to 'complement and reinforce the functions of the African Commission on Human and Peoples' Rights'.<sup>464</sup> The Courts mission is geared towards 'strengthening the human rights protection system in Africa and ensuring respect for and compliance with the African Charter on Human and Peoples' Rights, as well as other international human rights instruments, through judicial decisions'.<sup>465</sup> While the Court has received cases hinged on other normative instruments,<sup>466</sup> it has not specifically mentioned the UNGPs.

#### 4.6. Malabo Protocol

259. In June 2014, the Summit of the African Union Heads of States and Governments adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights.<sup>467</sup> If duly ratified, the Protocol will expand the jurisdiction of the African Court of Justice and Human Rights (ACJHR), and consequently establish the first regional criminal court in the

world to adjudicate cases of corporate criminal responsibility.<sup>468</sup> The Malabo Protocol presents an opportunity to bring to justice corporations that are involved in recurrent ongoing criminal activities.<sup>469</sup> The fact that the Protocol clearly spells out a criminal jurisdiction for the ACJHR represents a major progressive step in an environment in which the international criminal court has been challenged.<sup>470</sup> Chapter IVA, Article 46 (c) provides for corporate criminal liability under the Malabo Protocol. While fifteen states have signed, no state has yet ratified the Protocol.<sup>471</sup>

#### 4.7. Cross-Border Trade and the Informal Economy

260. Africa's informal sector is one of the largest in the world.<sup>472</sup> The sector increasingly generates jobs for various sectors of the economy. While this sector lacks the necessary access to capital to be able to sustain the economy, there is increasing evidence that women and vulnerable members of the public are greatly impacted.<sup>473</sup> This impact revolves around gender inequality, asymmetrical information, inadequate knowledge-based systems, financial exclusion, and a lack of focus on these critical issues by trade policies and agreements.<sup>474</sup> Additionally, women experience barriers in pursuing access to effective remedies for corporate-induced human rights abuses. BHR discourses in Africa have not sufficiently addressed the differentiated impacts of corporate human rights abuse on women. It is therefore critical that the Policy Framework addresses how states can

462 Communication 373/10 – IHRDA v DRC.

463 Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

464 ACHRR, 'African Court in Brief'; available at: <<https://www.african-court.org/wpafc/basic-information/>>

465 Ibid.

466 A reference to the Guiding Principles on Extreme Poverty and Human Rights was made in the Request for an Advisory Opinion by the Socio-Economic Rights and Accountability Project (Advisory Opinion) (2017) 2 AfCLR 572, 574. See further PULP, African Court Law Report Vol 2 (2017-2018) does not make any reference to the UNGPs; available at: <<https://www.african-court.org/wpafc/african-court-law-reports/>>

467 African Union, Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, A.U.Doc. No. STC/Legal/Min. 7(1) Rev. 1 (14 May 2014). The African Heads of State adopted the Malabo Protocol on 30 June 2014, at its Twenty-Third Ordinary Session [Malabo Protocol].

468 See the jurisdiction of the Rome Statute of the International Criminal Court (17 July 1998) 2187 U.N.T.S. 9. [Rome Statute]. Other international tribunals include the Statute of the International Criminal Tribunal for the Former Yugoslavia (7 July 2009), the Statute of the International Criminal Tribunal for Rwanda (14 August 2002), and the Statute of the Special Court for Sierra Leone, (12 April 2002) 2178 U.N.T.S.138.

469 See O. Abe/A. Ordor, 'Addressing Human Rights Concerns in the Extractive Resource Industry in Sub-Saharan Africa using the Lens of Article 46 (C) of the Malabo Protocol'" (2018) 11 (2) Law and Development Review 843–865.

470 Ibid., 852.

471 AU, 'List of Countries Which Have Signed, Ratified/Accessed to the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights'; available at: <<https://au.int/sites/default/files/treaties/36398-sl-PROTOCOL%20ON%20AMENDMENTS%20TO%20THE%20PROTOCOL%20ON%20THE%20STATUTE%20OF%20THE%20AFRICAN%20COURT%20OF%20JUSTICE%20AND%20HUMAN%20RIGHTS.pdf>>

472 Daouda Sembene/Hannah Brown, 'Financing opportunities and challenges for Africa's informal sector', CDC talks (26 October 2021); available at: <https://www.cgdev.org/blog/financing-opportunities-and-challenges-africas-informal-sector#:~:text=Africa's%20informal%20sector%20remains%20the,in%20its%20size%20across%20countries>

473 O. Abe, 'Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions' (2022).

474 See Article 13 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, Mozambique 11 July 2003 Entry into Force 25 November 2005 (Maputo Protocol).

accommodate the interests of women involved in the informal sector by providing needed capital and security to carry on with their business.<sup>475</sup>

261. The Maputo Protocol mandates States Parties to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. This includes integrating a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life.<sup>476</sup> Women, in particular, are prone to be affected by the negative

socio-economic and environmental impacts of corporate activities, health-related challenges, sexual exploitation, and gender-based violence, especially in the extractive sector. Trade agreements, such as AfCFTA, and BHRs in Africa must provide adequate mechanisms for protecting the interests of women and other vulnerable members of the informal sector. Corporations must include these protective mechanisms in their due diligence reporting requirements.

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475 Ibid., Article 19; Article 24 of the African Charter.

476 Ibid., Article 2(1).

# 5

## RECOMMENDATIONS

### 5.1. Government

To ensure effective implementation of the Policy Framework, Member States should:

- a. Recognise that the development of a National Baseline Assessment is instrumental to ratifying the Policy Framework. States should therefore encourage a survey of business-induced human rights violations, and assess their key laws and regulations that guide the conduct of business to identify the extent to which they address human rights, their enforcement, institutional arrangements, gaps and recommendations. Critical areas in which businesses impact human rights include labour, the environment, health and education.
- b. Realise that Africa lags behind in the implementation of BHRs, despite being one of the continents that suffers most from egregious conduct on the part of non-state actors. There is a missing narrative on BHR in Africa. Consequently, developing NAPs on BHRs is critical to realising the goals of the Policy Framework. States must be committed to the development of NAPs on BHRs that set out the expectations of governments, their agencies and businesses, while at the same time outlining key priorities and commitment towards the implementation of the UNGPs and the Policy Framework. NAPs must include pathways towards implementation, how priorities will be measured and evaluated, periodic reviews, and independent experts to monitor progress in implementation. NAPs should be for an initial period of five years.
- c. Provide adequate funding for the development of NAPs on BHR as well as a Policy Framework. Lack of financial resources will complicate the process of obtaining adequate information as a baseline for drafting NAPs. The provision of funds and other resources will also guarantee the appointment of technical experts on BHRs that will assist in the development of NAPs. The guidance on the NAP process follows five phases, consisting of fifteen steps. The process is as follows:<sup>477</sup>

#### Phase 1: Initiation

1. Seek and publish a formal government commitment.
2. Create a format for cross-departmental collaboration and designate leadership.

3. Create a format for engagement with nongovernmental stakeholders.
4. Develop and publish a work plan and allocate adequate resources.

#### Phase 2: Assessment and consultation

5. Obtain an understanding of adverse business-related human rights impacts.
6. Identify gaps in state and business implementation of the UNGPs.
7. Consult stakeholders and identify priority areas.

#### Phase 3: Drafting of initial NAP

8. Draft the initial NAP.
9. Consult on the draft with interested stakeholders.
10. Finalise and launch the initial NAP.

#### Phase 4: Implementation

11. Implement actions and continue cross-departmental collaboration.
12. Ensure multi-stakeholder monitoring.

#### Phase 5: Update

13. Evaluate impacts of the previous NAP and identify gaps.
14. Consult stakeholders and identify priority areas.
15. Draft updated NAP, consult on, finalise and launch it.

- d. Reduce the challenges associated with lack of regulatory clarity, and comprehensive laws to control corporate actors. For example, only six countries – Ghana, Kenya, Mozambique, South Africa, Uganda and Zambia – have constitutional provisions that mandate business respect for human rights. Consequently, African countries should provide constitutional provisions that oblige businesses to respect human rights. Additionally, sectoral legislation should reflect human rights provisions that protect host communities and vulnerable members of the public. States can enact new laws that integrate BHRs. Existing laws must be periodically reviewed to ensure they are able to adapt to contemporary challenges. Furthermore, states should encourage the utilisation of pro bono legal aid services and build monitoring mechanisms in the state and MNCs to monitor projects aimed at thwarting the veto powers of local communities under ILO Convention No. 169.

<sup>477</sup> See, UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights UN Working Group on Business and Human Rights' (November 2016); available at: [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

- e. Effectively collaborate with, and guarantee independence of the NHRIs.
- f. Guarantee that state-owned enterprises carry out human rights' due diligence and human rights impact assessment.
- g. Collectively begin the process of developing a treaty on BHRs, which is Africa-focused and in line with African realities. The proposed Treaty will encompass issues such as victim compensation, adequate and effective remedies, business obligations and duties to respect human rights.
- h. Speedily ratify the Malabo Protocol, which guarantees corporate criminal liability.
- i. Mandate the application of free, prior, informed consent (FPIC) in any development project. Thus, states must guarantee that MNCs will document the process for obtaining the consent of host communities and the right of host communities to withdraw consent where such development projects continue to cause insufferable conditions for workers, host communities and vulnerable members of the community. Adequate and timely information about a particular project must be given to local communities.
- j. Consult widely with local communities and obtain their FPIC before trade or investment treaties are signed. Furthermore, adequate provisions should be made to protect the interests of vulnerable members of the public, including women, persons with disabilities or children in trade agreements. As a bare minimum, the Policy Framework must be integrated into all investment treaties and national policies.
- k. Strengthen their oversight and regulatory responsibilities over businesses, have adequate resources, relevant knowledge and expertise to fulfil their obligations, and ensure that the workplace environment adheres to sustainable practices.
- l. Institute effective awareness of the Draft Policy which must be distributed widely to all stakeholders and provide monitoring and knowledge-based measures to encourage adherence to the Guiding Principles.
- m. Ensure that businesses do not encroach on the land rights of its citizens. Where land displacement occurs, adequate compensation and sustainable relocation must be enforced.
- n. Guarantee effective access to remedies for victims of corporate-induced human rights violations. This can be achieved by the speedy administration of justice for all cases concerning BHRs as well as reducing the cost of access to justice.
- o. Ensure that the judicial branch is adequately trained on BHR standards and the international human rights obligations of businesses.
- p. Increase pro bono services for victims of corporate-induced human rights violations and expand legal

aid programmes.

- q. Set up independent monitoring and accountability mechanisms to enforce compliance with the Guiding Principles.
- r. Include questions regarding steps taken to curtail business and human rights challenges in state reporting guidelines.
- s. Consider the transposition of the Policy Framework into AU law and translation into some African languages for greater awareness raising.

## 5.2. Business Enterprise

Businesses should:

- 261.1. formally adopt the Policy Framework and periodically report on compliance efforts;
- 261.2. undertake human rights impact assessment and human rights due diligence before, during and after the conclusion of development projects or operations;
- 261.3. ensure that adequate training and periodic capacity development programmes are instituted as a cultural norm within the organisation. In particular, senior management must be adequately equipped with sufficient information on BHR principles and provide mechanisms for monitoring compliance in line with human rights standards;
- 261.4. adopt a rights-based approach in implementing BHR principles, especially those in the extractive sector. Adequate remedies must be provided for those impacted by their activities including compensation, and continuous engagement;
- 261.5. develop human rights policy, codes of conduct, sustainability plans anchored on BHRs and provide indicators for adherence to those codes and policies;
- 261.6. promote operational wide awareness programmes for employees, staff, supply chains and third parties associated with the business on BHRs, sustainable practices and labour rights in host communities;
- 261.7. engage and consult critically with local communities, understand local customs and traditions, and provide adequate and timely information about their projects;
- 261.8. understand gendered disparities in human rights impacts, especially with regard to how women experience human rights violations in projects involving land displacement and resettlement;
- 261.9.
- 261.10.
- 261.11. guarantee living wages for their employees and safeguard the rights of workers;

- 261.12. prohibit the employment of child labour, either as direct employees or in the supply chain;
- 261.13. establish operational level non-judicial grievance mechanisms within the company.

### 5.3. Regional Economic Communities (RECs/AU)

The RECs/AU should:

- a. initiate and support the process of developing an African treaty on BHRs;
- b. be proactive in adopting human rights standards and principles. Currently, only ECOWAS and the African Commission have provided structures for implementing BHR principles. Other regions should develop plans and programmes on BHRs and create awareness on the Policy Framework;
- c. create awareness and assist states in ratification of the Malabo Protocol. Furthermore, the AU should provide an avenue for corporate actors to be liable for human rights violations through an extension of the jurisdiction of REC courts to enable them to adjudicate over businesses' egregious behaviour;
- d. ensure that state reporting mechanisms include states' efforts to adopt and implement BHR principles. Compliance efforts must be part of such reports;
- e. mandate the inclusion and integration of BHR principles in investment promotion, infrastructure and development projects in each region. The AU can require that international financial institutions develop a social and labour plan as part of their contractual documents to indicate that the financing of any development project will not result in actual or potential violation of human rights;
- f. develop guidelines for Member States to review investment agreements, trade agreements, company laws, legislation, and policy in line with the human rights standards;
- g. conduct regional consultations or forums on the imperatives of the Policy Framework and UNGPs.

### 5.4. National Human Rights Institutions (NHRIs)

NHRIs should:

- 261.14. propose amendments to existing legislation, especially corporate and security laws, anchored in human rights principles and standards; increase internal capacity to promote and sensitise citizens on the provisions of the Policy Framework. There is currently a critical lack of knowledge or awareness of the existence of the Framework. NHRIs should be empowered to review investment agreements and identify human rights implications of those agreements;

- 261.15. undertake proactive investigations into specific risk areas for businesses.

### 5.5. Civil Society Organisations (CSOs)

CSOs are critical to implementing the Policy Framework. They should:

- a. increase awareness campaigns, policy and advocacy, research, analysis and information dissemination on the UNGPs and the Policy Framework. This awareness campaign must involve the Office of the Ombudsman and Maladministration, and focus on civic participation, women's rights and gender justice in the informal sector;
- b. monitor corporate compliance with the Policy Framework and business approaches to adopting BHR principles;
- c. mobilise rights holders to demand accountability from Member States on steps to curb corporate excesses;
- d. engage with host communities to identify priority areas and inform business practices in that regard;
- e. provide capacity-building and facilitate training on BHRs for states, businesses, and stakeholders;
- f. facilitate engagement and dialogue between states, businesses, host communities, chambers of commerce and other stakeholders.

### 5.6. AfCFTA

The Secretariat should:

- a. engage with young people in disseminating information on the realisation of the Agreement and its potentials to resolve intractable BHR challenges in Africa;
- b. emphasise the importance of free movement of people, goods and trade;
- c. promote global best practices and reliable trade information on business and human rights;
- d. promote sustainable cross-border trade that adheres to business and human rights principles;
- e. ensure that companies involved in cross-border trade provide a social and labour plan that articulates women's rights and integrates how stakeholders in the informal sector will be protected.

## 6

## BUSINESS AND HUMAN RIGHTS INDEX

## 6.1. List of CSOs working on business and human rights in Africa

| S/No | Country       | Organisation  | Website/E-mail address  | Phone number                                 | Contact person                 |
|------|---------------|---|---|--|--------------------------------|
| 1    | Benin         | Nature Tropicale ONG  | www.naturetropicale.org, <a href="https://twitter.com/NatureTropicale">https://twitter.com/NatureTropicale</a> , <a href="mailto:info@naturetropicale.org">info@naturetropicale.org</a>   | 229 96100837/95409414; 229 61315252/64573939 |                                |
|      |               | La Dynamique OSCAF  | <a href="mailto:dynamique_oscaf@yahoo.fr">dynamique_oscaf@yahoo.fr</a>  | 229 97891163                                 |                                |
| 2    | Burundi       | Action Ceinture Verte pour l'Environnement (ACVE)                             | <a href="mailto:niyobalibere@yahoo.fr">niyobalibere@yahoo.fr</a>  | 257 22217758, 257 22218409                   | Libčre Niyobampama             |
|      |               | CAFOB   | <a href="mailto:claphen@yahoo.fr">claphen@yahoo.fr</a>  | 257 79404330                                 | Claphe Christine Ntunzwenimana |
| 3    | Burkina Faso  | Optimum Travail du Burkina (OTB)  | <a href="https://otburkina.org">https://otburkina.org</a>   |  |                                |
| 4    | Cameroon      | Centre for Human Rights and Democracy in Africa                               | <a href="https://twitter.com/chrda_africa?lang=en">https://twitter.com/chrda_africa?lang=en</a> , <a href="https://www.facebook.com/AgborNkonghoF">https://www.facebook.com/AgborNkonghoF</a> ; <a href="mailto:info@chrda.org">info@chrda.org</a> , <a href="mailto:admin@chrda.org">admin@chrda.org</a> , <a href="mailto:cameroonoffice@chrda.org">cameroonoffice@chrda.org</a> , <a href="mailto:nkongho@chrda.org">nkongho@chrda.org</a> | 237 33323783, 237 233322979                  | Felix Agbor Nkongho            |
|      |               | Commission Nationale des Droits de L'Homme et de Libertés du Cameroun (CNDHL) | <a href="http://www.facebook.com/nchrf.cm">www.facebook.com/nchrf.cm</a> , <a href="mailto:cndhl@cndhl.cm">cndhl@cndhl.cm</a> , <a href="mailto:edwigelessa@gmail.com">edwigelessa@gmail.com</a> , <a href="mailto:cndhl@iccnnet.cm">cndhl@iccnnet.cm</a>   | 237 242226117                                | Yolande Elessa                 |
|      |               | Global Network for Good Governance (GNGG)                                     | <a href="mailto:contact@gngg.us">contact@gngg.us</a> , <a href="mailto:tmukete@yahoo.com">tmukete@yahoo.com</a>   | 237 677536682                                | Justice Mukete Tahle Itoe      |
|      |               | ONG Un Monde Avenir   | <a href="mailto:1mondeavenir@gmail.com">1mondeavenir@gmail.com</a> , <a href="mailto:p_nanga@yahoo.fr">p_nanga@yahoo.fr</a>   | 237 233432028, 237 694284686, 237 677611007  | Philippe Nanga                 |
|      |               | Reach Out Cameroon  | <a href="mailto:esther@reachoutcameroon.org">esther@reachoutcameroon.org</a>  | 237 677405602                                |                                |
|      |               | Réseau Camerounais des Organisations des Droits de l'Homme (RECODH)           | <a href="https://recodh.org">https://recodh.org</a> , <a href="mailto:recodhcameroun@gmail.com">recodhcameroun@gmail.com</a>  |  |                                |
| 5    | Chad          | Public Interest Law Center (PILC)   | <a href="mailto:ddjiraibe@hotmail.com">ddjiraibe@hotmail.com</a>  | 235 66299509                                 | Delphine Djirabei              |
| 6    | Congo         | Rencontre pour la Paix et les Droits de l'Homme (RPDH)                        | <a href="mailto:contact@rpdh-cg.org">contact@rpdh-cg.org</a> , <a href="mailto:loufouafred@gmail.com">loufouafred@gmail.com</a>   | 242 055955246                                | Franck Bessi                   |
| 7    | Côte D'Ivoire | Groupe de Recherche et de Plaidoyer sur les Industries Extractives (GRPIE)    | <a href="mailto:myoboue@gmail.com">myoboue@gmail.com</a>  |  | Michel Yoboue                  |
| 8    | DRC           | Action Contre l'Impunité pour les Droits Humains (ACIDH)                      | <a href="http://www.acidhcd.org">www.acidhcd.org</a> , <a href="mailto:donatbenbellah@outlook.fr">donatbenbellah@outlook.fr</a> , <a href="mailto:donatm@acidhcd.org">donatm@acidhcd.org</a>  |  | Donat Ben-Bellah               |
|      |               | Action des Chrétiens Activistes des Droits de l'Homme ř Shabunda (ACADHOSHA)  | <a href="mailto:acadhosha@yahoo.fr">acadhosha@yahoo.fr</a>  | 243 9975037727                               | Blaise Bubala                  |

| S/No | Country | Organisation  | Website/E-mail address   | Phone number                  | Contact person                        |
|------|---------|---|--|-------------------------------|---------------------------------------|
|      |         | Action Paysanne Contre la Faim (APCF/ONGD)  | apcfongd@yahoo.fr  | 243 998760717                 | Sandrine Nsanga                       |
|      |         | Action pour la Défense des Droits de l'Homme (ADDH)   | daudetkitwa@gmail.com  | 243 997025716                 | Daudet Kitwa                          |
|      |         | Actions pour les Droits, l'Environnement et la Vie (ADEV)                                   | www.adevcongo.org, adevcongo@gmail.com   | 243 819055743                 | Muanda Tsasa Jean-Marie               |
|      |         | African Resources Watch (AFREWATCH) Observatoire Africain des Ressources Naturelles         | info@afrewatch.org, rim@afrewatch.org, emmanuelumpula1@gmail.com, emmanuelumpula@afrewatch.org |                               | Lunga Mukena Richard, Emmanuel Umpula |
|      |         | APACI ASBL  |  | 243 818577577                 |                                       |
|      |         | Bureau de Développement Communautaire de l'Eglise Catholique Libérale                       |  |                               |                                       |
|      |         | Centre d'Appui à la Gestion Durable des Forêts Tropicales                                   |  |                               |                                       |
|      |         | Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO)   | https://twitter.com/Creddho_ongdh, creddhocoordin@gmail.com, florencekavs075@gmail.com         | 243 997703162                 | Kaswera Sitwaminy Florence            |
|      |         | Comité de Suivi pour la Contribution des Communautés et Eglises à la Transformation Humaine | info@coscct.org, coscct_inter@yahoo.fr   |                               |                                       |
|      |         | Conseil National des Organisations Non Gouvernementales de Développement (CNONGD)           | cnongdrdc@gmail.com, ddtshimpidimbuam@gmail.com  | 243 998303720, 243 853973939  | Dieudonne Tshimpidimbua               |
|      |         | Dynamique des Femmes des Mines (DYFDEM)   | pangobashali@gmail.com   |                               | Bashali Mubuya Kishali Brigitte       |
|      |         | Groupe d'Appui aux Exploitants des Ressources Naturelles                                    | gaernkor@yahoo.fr  | 243 993732004                 |                                       |
|      |         | Institut de Recherche en Droits de l'Homme (IRDH)   | www.irdh.co.za, info@irdh.co.za  |                               |                                       |
|      |         | Justice Pour Tous   | www.justicepourtous.org, raoulkitungano@gmail.com  | 243 994184777                 | Raoul Kitungani Mulondani             |
|      |         | Justicia Asbl   | info@justiciahumanrights.org, justicia.asbl@gmail.com  | 243 814709184                 |                                       |
|      |         | Kindu Maendeleo (KM)  |  |                               |                                       |
|      |         | Maison des Mines du Kivu (MMKi)   | maisonmineskivu@gmail.com, gregoirem81@gmail.com   | 243 8422762015, 243 842276205 | Grégoire Kasadi Lumande               |
|      |         | Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale            | fkasongo@maliyetu.org, oearserc@gmail.com  | 243 995567001                 | Kasongo Numbi Freddy                  |

| S/No | Country           | Organisation   | Website/E-mail address  | Phone number                                 | Contact person                        |
|------|-------------------|--|---|--|---------------------------------------|
|      |                   | Observatoire de la Société Civile congolaise pour les Minerais de Paix (OSCMP)                                     | www.oscmprdc.org, https://www.escri-net.org/member/observatoire-societe-civile-congolaise-pour-minerais-paix-oscmp, oscmprdc@gmail.com, alexmuhima@yahoo.fr | 243 813133781, 243 997769094                 | Alex Muhima                           |
|      |                   | Observatoire Gouvernance et Paix (OGP RDC)   | Ogprdc@gmail.com  |  | Eric Kajemba Chirhalwire              |
|      |                   | PREMICONGO   | Cbwenda@protonmail.com, premicongo@yahoo.fr   | 243 990901412                                | Bwenda Katobo Christian               |
|      |                   | Réseau CREF  | www.facebook.com/reseaucrefrdc/   | 243 990901412                                |                                       |
|      |                   | Southern African Resources Watch (SARW)  | www.facebook.com/sarwatch.org/, https://www.sarwatch.co.za, info@sarwatch.org   | 27 115875026                                 |                                       |
|      |                   | Bureau d'Études Scientifiques et Techniques (BEST)   | www.bestrdc.org, philippe.ruvunangiza@bestrdc.org, philipperuvunangiza@gmail.com  | 243 81459276                                 | Philippe Ruvunangiza                  |
|      |                   | Synergie des organisations de la société civile pour la promotion des droits humains et de l'environnement (SYDHE) | sydheasblrdc@gmail.com  | 243 997740869, 243 814524861, 243 853524 817 | Leon Lumvi Muzusangabo                |
| 9    | Egypt             | Habi Center for Environmental Rights   | http://hcer.org, Habi_center1@yahoo.com   |  |                                       |
| 10   | Equatorial Guinea | Equatorial Guinea Justice (EG Justice)   | https://www.facebook.com/egjustice/, tutu@egjustice.org, info@egjustice.org   | 202 6434345                                  |                                       |
| 11   | Ethiopia          | Human Rights Council (HRCO)  | Twitter/Ethiopia Human Rights Council @hrcoethio, www.facebook.com/hrco1  | belen.ehrco@gmail.com, danethios@gmail.com   |                                       |
| 12   | Ghana             | Center for Indigenous Knowledge and Organizational Development (CIKOD)   | http://www.cikodgh.org, https://seedsoilculture.org/grants-arch/center-indigenous-knowledge-organizational-development-cikod/                               |  |                                       |
|      |                   | Livelihood and Environment Ghana (LEG)   |   |  |                                       |
|      |                   | Wassa Association of Communities Affected by Mining (WACAM)  | www.wacamghana.org, kowus@yahoo.com, wacam77@yahoo.com  |  |                                       |
|      |                   | Strategic Youth Network Development (SYND)   | synd.ghana@hotmail.com, chibeze@gmail.com   | 233 244967931                                | Chinese Ezekiel                       |
| 13   | Guinea            | Centre de Commerce International pour le Développement (CECIDE)  | facebook.com/cecideguinee, cecidegouv@gmail.com, aboubacardialogn@gmail.com   | 224 623390808                                | Ibrahim Kalil Bamba, Aboubacar Diallo |
| 14   |                   | Actions Mines Guinee   | https://www.actionmines-guinee.org/; https://twitter.com/actionmines; https://www.facebook.com/Actionmines-151500958795106; bahamadouboss@gmail.com         | 224 622825850, 224 662825850                 | Bah Amadou                            |
| 15   | Kenya             | Endorois Welfare Council (EWC)   | kipkaziwk@gmail.com   | 254 721549649                                | Wilson Kipsang Kipkazi                |

| S/No | Country    | Organisation  | Website/E-mail address   | Phone number   | Contact person         |
|------|------------|---|--|--|------------------------|
|      |            | Jamaa Resource Initiative   | oumaodhiambo@gmail.com   | 254 723466975  | Maurice Ouma Odhiambo  |
|      |            | Kenya Human Rights Commission (KHRC)  | www.facebook.com/thekhrc, twitter.com/thekhrc, admin@khrc.or.ke, mkambo@khrc.or.ke   | 254 202106763, 254 202044545, 254 722264497, 254 733629034 | Mary Kambo             |
|      |            | Kenya Union of Hair and Beauty Salon Workers (KUHABSWO)                                   | marjorymwangi@gmail.com  | 254 726150999  | Marjory Wairimu Mwangi |
|      |            | Kerio Valley Community Organization (KVCO)  | kigentommy@gmail.com, tkigen@kv-co.org   | 254 723434255  | Kigen Tomkys Kandie    |
|      |            | Narasha Community Development Group   | jackshaa@gmail.com   | 254 722353783  | Shaa Jackson Mainai    |
|      |            | Natural Resources Alliance of Kenya (KeNRA)   | mwambi@gmail.com, info@kenra.or.ke   | 254 721751869  | Thomas Mwambi Mwikamba |
| 16   | Liberia    | Committee for Peace and Development Advocacy (COPDA)                                      | https://ngoaidmap.org/organizations/7446   | 231 777558418, 231 886558418                               | Ted Brooks, Jr.        |
|      |            | Green Advocates   | greenadvocatesjohnb@gmail.com  |  | John Brownell          |
|      |            | Sustainable Development Institute (SDI)   | https://sdiliberia.org; https://twitter.com/SDILiberia; https://web.facebook.com/sdi.liberia   | 231 88664 1355; 231 330641355                              | Nora Bowier            |
| 17   | Madagascar | Centre de Recherches et d'Appui pour les Alternatives de Développement (CRAAD-OI)         | http://craadoi-mada.com/, craad.madagascar@gmail.com, volahery.andriamanantenasoa@yahoo.com  | 261 326034361  |                        |
| 18   | Malawi     | Centre for Human Rights and Rehabilitation (CHRR)   | chrr@chrrmw.org  | 265 1761122  |                        |
|      |            | Citizens for Justice (CFJ) Malawi   | reinm@cfjmalawi.org, info@cfjmalawi.org  | 265 1772580  | Reinford Mwangonde     |
|      |            | Institute for Sustainable Development (ISD)   | www.isdmalawi.org, isdmalawi20@gmail.com, godfreyfiti200@yahoo.co.uk   | 265 991502690  |                        |
| 19   | Mali       | African Mining Alliance   | c.kassoum@gmail.com, gdagroup@ymail.com,   | 223 764 65177  | Kassoum Coulibaly      |
|      |            | Fondation pour le développement au Sahel (FDS)  | https://www.peaceinsight.org/en/organisations/fondation-pour-le-developpement-au-sahel/?location=mali&theme, http://www.fds mali.org                       |  |                        |
| 20   | Mauritania | ONG Secours Net   | http://www.secoursnet.mr, secoursnet@yahoo.fr  |  | Malick Fall            |
| 21   | Mozambique | Centro Terra Viva   | https://pt-br.facebook.com/Centro-Terra-Viva, www.instagram.com/ctvmoz/, https://twitter.com/ctvmozambique, https://www.youtube.com/channel/ctv@ctv.org.mz | 258 21401256   |                        |
|      |            | League of Human Rights (LDH)  | liga.dh@tv cabo.co.mz  | 258 21401256   |                        |
| 22   | Niger      | Collectif des Organisations de Défense des Droits de L'Homme et de la Démocratie (CODDHD) |  |  |                        |

| S/No | Country | Organisation   | Website/E-mail address   | Phone number   | Contact person               |
|------|---------|--|--|--|------------------------------|
| 23   | Nigeria | African Law Foundation (AfriLaw)   | chinwikeglory@gmail.com  | 234 7030769078   | Okereke Chukwunwike Chijioko |
|      |         | CISLAC: Civil Society Legislative Advocacy Centre  | info@cislacnigeria.net, cislacuk@cislac.org  | Flat 3, No. 16 P.O.W. Mafemi Crescent, Off Solomon Lar Way, Behind Chida Hotel, Utako District, Abuja. Nigeria. +2347034118266 | Okeke Anya                   |
|      |         | Community Enhancement and Environmental Awareness Foundation (CEEAF)                                   | www.ceeaf.org, mails4andysam@gmail.com   | 234 8032680214   |                              |
|      |         | Community Policing Partners for Justice, Security and Democratic Reforms (COMPPART) Akpan Saviour Okon | comppart@comppartfoundation.org  | 234 8066680864   |                              |
|      |         | Environmental Rights Action  |  | gloryline2000@yahoo.co.uk  |                              |
|      |         | Foundation For Environmental Rights, Advocacy & Development (FENRAD)                                   | fenradnigeria@yahoo.com  | 234 8033383798   | Nelson Nnanna Nwafor         |
|      |         | Foundation for the Conservation of the Earth (FOCONE)  | seniguspat@gmail.com, patrickchiekwe@yahoo.co.uk, ocone2009@yahoo.com  | 234 806 1162477  | Patrick Afamefuna            |
|      |         | Global Rights Nigeria  | https://www.globalrights.org/ng/; abioudnb@globalrights.org  | 234 8055971317   | Abioudun Baiyewu             |
|      |         | Leadership Initiative for Transformation and Empowerment (LITE Africa)                                 | https://web.facebook.com/LITEAfrica, https://twitter.com/LITEAfrica, https://www.youtube.com/user/LITEAfrica; Office@lite-africa.org, joelbisina@gmail.com, austen@lite-africa.org | 234 8023270549, 234 8058511591   | Joel Dimiyen Bisina          |
|      |         | Peace Point Development Foundation (PPDF) / former Peace Point Action (PPA)                            | https://www.facebook.com/peace.point; ppacanopy@yahoo.com, umojohnson@gmail.com  | 234 8055184456   | Umo Johnson Isua-Ikoh        |
|      |         | Support Initiative for Sustainable Development (SISDEV)  | https://sisdev.org; sisdevngo2003@gmail.com, support@sisdevngo.org   |  |                              |
|      |         | Women's Environment and Development Network (WEDEN)  | babaogisi@gmail.com  | 234 8037242176   | Babara Ogisi                 |
|      |         | Neighbourhood Environment Watch (NEW) Foundation   | okeziekelly@gmail.com  | 234 8063360120   | Dr Kelechukwu Okezie         |
| 24   | Rwanda  | Community of Marginalized Potters of Rwanda (COPORWA)  | coporwa@yahoo.fr, coporwapotters@gmail.com, munyeshuri@outlook.com, coporwapotters@ymail.com   | 250 252502357  | Jean Donald Munyeshuri       |
|      |         | lpeace   | https://www.facebook.com/iPeace.IPDH/, president@iphr-ipdh.org   | 250 788574648  | Dr Elvis Mbembe Binda        |

| S/No | Country      | Organisation   | Website/E-mail address   | Phone number                 | Contact person                 |
|------|--------------|--|--|------------------------------|--------------------------------|
| 25   | Senegal      | Lumière Synergie pour le Développement (LSD)                         | <a href="https://web.facebook.com/LumiereSynergieDevelopement">https://web.facebook.com/LumiereSynergieDevelopement</a> , <a href="http://www.lsdseegal.org">www.lsdseegal.org</a> ; <a href="mailto:alsagne@aim.com">alsagne@aim.com</a> , <a href="mailto:bibatou39@gmail.com">bibatou39@gmail.com</a>   | 221 776417074, 221 768393745 | Aly Marie Sagne, Aby Dia       |
|      |              | Enda Lead Afrique Francophone  | <a href="mailto:se@endatiersmonde.org">se@endatiersmonde.org</a>   | 221 338699948/49             |                                |
| 26   | Sierra Leone | Community Advocacy and Development Movement (CADEM)                  | <a href="mailto:support@awokonewspaper.com">support@awokonewspaper.com</a>   |                              |                                |
|      |              | Network Movement for Justice & Development (NMJD)                    | <a href="http://www.nmjd.org">http://www.nmjd.org</a> , <a href="mailto:nmjd@nmjd.org">nmjd@nmjd.org</a> , <a href="mailto:abuabrima@gmail.com">abuabrima@gmail.com</a>  | 232 26204036, 232 76645314   | Abu Augustus Brima             |
|      |              | Women's Center for Good Governance and Human Rights (WOCEGAR)        |  |                              |                                |
| 27   | South Africa | Business & Human Rights Resource Centre                              | <a href="mailto:mabenge@business-humanrights.org">mabenge@business-humanrights.org</a>   | 27 795584683                 | Joy Mabenge                    |
|      |              | Centre for Applied Legal Studies (CALs), University of Witwatersrand | <a href="https://www.wits.ac.za/cals/">https://www.wits.ac.za/cals/</a> , <a href="mailto:tshepo.madlingozi@wits.ac.za">tshepo.madlingozi@wits.ac.za</a>   |                              | Tshepo Madlingozi              |
|      |              | Centre for Human Rights (CHR), University of Pretoria                | <a href="https://www.chr.up.ac.za/">https://www.chr.up.ac.za/</a> , <a href="https://web.facebook.com/CentreforHumanRights">https://web.facebook.com/CentreforHumanRights</a> , <a href="https://twitter.com/chr_humanrights">https://twitter.com/chr_humanrights</a> , <a href="https://www.instagram.com/centreforhumanrights/">https://www.instagram.com/centreforhumanrights/</a> , <a href="https://www.linkedin.com/company/centreforhumanrights">https://www.linkedin.com/company/centreforhumanrights</a> , <a href="https://www.youtube.com/CentreforHumanRights">https://www.youtube.com/CentreforHumanRights</a> , <a href="mailto:frans.viljoen@up.ac.za">frans.viljoen@up.ac.za</a> |                              |                                |
|      |              | Legal Resources Centre (LRC)   | <a href="https://web.facebook.com/Legal-Resources-Centre">https://web.facebook.com/Legal-Resources-Centre</a> , <a href="https://twitter.com/LRC_SouthAfrica">https://twitter.com/LRC_SouthAfrica</a> , <a href="https://www.youtube.com/user/TheLRCSouthAfrica">https://www.youtube.com/user/TheLRCSouthAfrica</a> , <a href="https://www.linkedin.com/company/legal-resources-centre">https://www.linkedin.com/company/legal-resources-centre</a> , <a href="mailto:info@lrc.org.za">info@lrc.org.za</a> , <a href="mailto:avani@lrc.org.za">avani@lrc.org.za</a>  | 27 118369831                 | Avani Singh                    |
|      |              | Natural Justice  | <a href="https://web.facebook.com/naturaljustice/">https://web.facebook.com/naturaljustice/</a> , <a href="https://twitter.com/NaturalJustice">https://twitter.com/NaturalJustice</a> , <a href="https://www.youtube.com/user/NaturalJusticeVideos">https://www.youtube.com/user/NaturalJusticeVideos</a> , <a href="http://www.naturaljustice.org">www.naturaljustice.org</a> , <a href="mailto:info@naturaljustice.org.za">info@naturaljustice.org.za</a> , <a href="mailto:pooven@naturaljustice.org">pooven@naturaljustice.org</a>   | 27 214261633, 27 824701187   | Pooven Moodley, Claire Martens |
|      |              | Organization of African Youth (OA Youth)                             | <a href="https://www.oayouth.org/">https://www.oayouth.org/</a> , <a href="https://web.facebook.com/JoomDev?_rdr=1&amp;_rdr">https://web.facebook.com/JoomDev?_rdr=1&amp;_rdr</a> , <a href="mailto:admin@oayouth.org">admin@oayouth.org</a>   | 27 671727292                 |                                |
|      |              | Economic Justice Network of FOCISSA (EJN)                            | <a href="mailto:admin@ejn.org.za">admin@ejn.org.za</a>   | 27 214249563                 |                                |

| S/No | Country  | Organisation  | Website/E-mail address  | Phone number                                | Contact person            |
|------|----------|---|---|---|---------------------------|
|      |          | International Rivers  | <a href="https://twitter.com/intlivers">https://twitter.com/intlivers</a> ,<br><a href="https://web.facebook.com/InternationalRivers">https://web.facebook.com/InternationalRivers</a> , <a href="https://www.flickr.com/photos/internationalrivers/">https://www.flickr.com/photos/internationalrivers/</a> , <a href="https://www.instagram.com/intlivers/">https://www.instagram.com/intlivers/</a> ,<br><a href="https://www.youtube.com/user/internationalrivers">https://www.youtube.com/user/internationalrivers</a> , <a href="https://www.pinterest.com/intlivers/">https://www.pinterest.com/intlivers/</a> ,<br><a href="mailto:smota@internationalrivers.org">smota@internationalrivers.org</a> |   | Sisiwe Mota               |
|      |          | Human Rights Development Initiative (HRDI)                          | <a href="mailto:aramgobin@hrdi.org.za">aramgobin@hrdi.org.za</a> , <a href="http://hrdi.org.za">hrdi.org.za</a>   | 27 123653733, 27 714920796                  | Asha Ramgobin             |
| 28   | Tunisia  | Forum Tunisien pour les Droits Economiques et Sociaux (FTDES)       | <a href="https://ftdes.net/">https://ftdes.net/</a> , <a href="mailto:alaa.talbi1@gmail.com">alaa.talbi1@gmail.com</a> , <a href="mailto:contact@ftdes.net">contact@ftdes.net</a>   |   | Alaa Taalbi               |
| 29   | Tanzania | Association for Law and Advocacy for Pastoralists (ALAPA)           | <a href="mailto:elilaltaika@yahoo.com">elilaltaika@yahoo.com</a>  | 255 788660301                               | Elifuraha Laltakaika      |
|      |          | Legal and Human Rights Centre (LHRC)                                | <a href="http://www.facebook.com/humanrightstz">www.facebook.com/humanrightstz</a> , <a href="https://twitter.com/humanrightstz">twitter.com/humanrightstz</a> , <a href="mailto:lhrc@humanrights.or.tz">lhrc@humanrights.or.tz</a> , <a href="mailto:ahenga@humanrights.or.tz">ahenga@humanrights.or.tz</a> , <a href="mailto:fmauya@humanrights.or.tz">fmauya@humanrights.or.tz</a>   | 255 222773048, 255 752820821, 255 222773038 | Felista Mauya, Anna Henga |
|      |          | Foundation HELP   | <a href="mailto:info@foundationhelp.org">info@foundationhelp.org</a>  | 255 282620575                               |                           |
|      |          | Mazingira Network – Tanzania (MANET)                                |   |   |                           |
|      |          | Tanzania Centre for Research and Information on Pastoralism (TCRIP) | <a href="mailto:info@thrdc.or.tz">info@thrdc.or.tz</a>  |   |                           |
|      |          | Zanzibar Legal Services Center (ZLSC)                               | <a href="mailto:info@zpsc.or.tz">info@zpsc.or.tz</a>  | 225 777844544                               |                           |
|      |          | Business and Human Rights Tanzania (BHRT)                           | <a href="mailto:flaviacharlz@gmail.com">flaviacharlz@gmail.com</a> , <a href="mailto:Bhrt2002@gmail.com">Bhrt2002@gmail.com</a>   | 255 75545555                                |                           |
|      |          | Women Action Towards Economic Development (WATED)                   | <a href="mailto:mariamatumui@gmail.com">mariamatumui@gmail.com</a>  | 255 745950950                               | Maria Guido Matui         |
|      |          | Tangible Initiatives for Local Development Tanzania (TIFLD)         | <a href="http://www.tangibletanzania.com">www.tangibletanzania.com</a> , <a href="https://twitter.com/tifld">Twitter@tifld</a> , <a href="https://www.instagram.com/tangibletanzania">Instagram@tangibletanzania</a> , <a href="https://www.facebook.com/tangibletanzania">Facebook@tangibletanzania</a> , <a href="mailto:geline@tangibletanzania.org">geline@tangibletanzania.org</a>   | 255 754450209                               | Geline Fuko               |
| 30   | Togo     | ONG Dimension Humaine   | <a href="mailto:dhumaine@yahoo.fr">dhumaine@yahoo.fr</a>  | 228 90099481                                | Rachel Awoussi Boyindjo   |
|      |          | PAFED   | <a href="http://www.pafedtogo.com">www.pafedtogo.com</a> , <a href="mailto:pafed_togo@yahoo.fr">pafed_togo@yahoo.fr</a>   |   | Françoise M. Gnofam       |
|      |          | Association pour l'Auto-promotion des communautés de Base           | <a href="mailto:kossi.kougblenou@yahoo.fr">kossi.kougblenou@yahoo.fr</a> , <a href="mailto:acomb9@hotmail.com">acomb9@hotmail.com</a> , <a href="mailto:pcqvptogo@yahoo.com">pcqvptogo@yahoo.com</a>  | 228 93098977                                | Pius Kossi Kougblenou     |
| 31   | Uganda   | Advocates Coalition for Development and Environment (ACODE)         | <a href="https://web.facebook.com/ACODEUganda">https://web.facebook.com/ACODEUganda</a> , <a href="https://twitter.com/ACODE_Uganda">https://twitter.com/ACODE_Uganda</a> , <a href="https://www.youtube.com/user/ACODEUganda">https://www.youtube.com/user/ACODEUganda</a> , <a href="https://www.acode-u.org/">https://www.acode-u.org/</a> , <a href="mailto:acode@acode-u.org">acode@acode-u.org</a>  | 256 312812150, 256 312812150                |                           |
|      |          | Buliisa Initiative for Rural Development Organisation (BIRUDO)      | <a href="http://www.birudo.org">www.birudo.org</a> , <a href="mailto:info@birudo.org">info@birudo.org</a> , <a href="mailto:paolyel@gmail.com">paolyel@gmail.com</a>  | 256 772994527                               | Paolyel Onencan           |

| S/No | Country  | Organisation   | Website/E-mail address   | Phone number  | Contact person                     |
|------|----------|--|--|---|------------------------------------|
|      |          | CEFoRD   | <a href="http://www.ceford.org.ug/">http://www.ceford.org.ug/</a> ,<br><a href="mailto:info@ceford.or.ug">info@ceford.or.ug</a>  |   |                                    |
|      |          | Global Rights Alert  | <a href="https://globalrightsalert.org/">https://globalrightsalert.org/</a> ,<br><a href="mailto:info@globalrightsalert.org">info@globalrightsalert.org</a>  | 256 414531661   |                                    |
|      |          | Great Lakes Institute for Strategic Studies (GLISS)                        | <a href="http://gliss.org/">http://gliss.org/</a> , <a href="https://twitter.com/GLISS_EA">https://twitter.com/GLISS_EA</a> , <a href="mailto:admin@gliss.org">admin@gliss.org</a>   | 256 414660439, 256 752841312                                      |                                    |
|      |          | Initiative for Social and Economic Rights                                  | <a href="mailto:arnques@gmail.com">arnques@gmail.com</a> ,<br><a href="mailto:jbyomuhangyi@gmail.com">jbyomuhangyi@gmail.com</a>   |   | Arnold Kwesiga, Joseph Byamuhangyi |
|      |          | International Accountability Project                                       | <a href="mailto:john@accountabilityproject.org">john@accountabilityproject.org</a>   |   | Mwebe John                         |
|      |          | Lake Albert Children Women Advocacy and Development Organization (LUCWADO) | <a href="https://www.facebook.com/LACWADO.BULIISA">facebook.com/LACWADO.BULIISA</a>  |   |                                    |
|      |          | Uganda Consortium on Corporate Accountability (UCCA)                       | <a href="http://www.ucca-uganda.org">www.ucca-uganda.org</a> ,<br><a href="mailto:arnques@gmail.com">arnques@gmail.com</a>   | 256 414581041   | Joseph Byomuhangyi                 |
|      |          | SEATINI (Strengthening Africa in World Trade)                              | <a href="mailto:SEATINI_UGANDA@SeatiniU">SEATINI_UGANDA@SeatiniU</a> ,<br><a href="mailto:jnalunga@seatiniuganda.org">jnalunga@seatiniuganda.org</a> ,<br><a href="mailto:rtomusange@seatiniuganda.org">rtomusange@seatiniuganda.org</a>   |   | Jane S. Nalunga, Rogers Tomusange  |
| 32   | Zambia   | Zambia Alliance of Women (ZAW)   | <a href="mailto:ceasarkatebe@gmail.com">ceasarkatebe@gmail.com</a>   |   | Humphrey Katebe                    |
| 33   | Zimbabwe | Chiadzwa Community Development Trust                                       |  | 00 263 773-642937   |                                    |
|      |          | Zimbabwe Environmental Law Association (ZELA)                              | <a href="https://web.facebook.com/zimbabweenvironmentallawassociation/">https://web.facebook.com/zimbabweenvironmentallawassociation/</a> , <a href="mailto:mutusod@zela.org">mutusod@zela.org</a> , <a href="mailto:info@zela.org">info@zela.org</a> , <a href="mailto:mutusod@zela.org">mutusod@zela.org</a> | 263 772424164,<br>263 4772424164,<br>263 4573601/3, 263 773642937 | Mutuso Dhiwalayo                   |

## 6.2. Member States that have developed a National Action Plan on Business and Human Rights

| S/No | AU Member States                 | NAP  | NBA   | Remarks   |
|------|----------------------------------|--|---|---|
| 1    | Algeria                          | No   | No  | No available information  |
| 2    | Angola                           | No   | No  | No available information  |
| 3    | Benin                            | No   | No  | No available information  |
| 4    | Botswana                         | No   | No  | No available information  |
| 5    | Burkina Faso                     | No   | No  | No available information  |
| 6    | Burundi                          | No   | No  | No available information  |
| 7    | Cameroon                         | No   | No  | No available information  |
| 8    | Cape Verde                       | No   | No  | No available information  |
| 9    | Central African Republic         | No   | No  | No available information  |
| 10   | Chad                             | No   | No  | No available information  |
| 11   | Comoros                          | No   | No  | No available information  |
| 12   | Democratic Republic of the Congo | No   | No  | No available information  |
| 13   | Republic of the Congo            | No   | No  | No available information  |
| 14   | Djibouti                         | No   | No  | No available information  |
| 15   | Egypt                            | No   | No  | No available information  |
| 16   | Equatorial Guinea                | No   | No  | No available information  |
| 17   | Eritrea                          | No   | No  | No available information  |
| 18   | Ethiopia                         | No   | No  | No available information  |
| 19   | Gabon                            | No   | No  | No available information  |
| 20   | Gambia                           | No   | No  | No available information  |
| 21   | Ghana                            | No   | Yes – 14 July 2021                              | NHRI/NGO led  |
| 22   | Guinea                           | No   | No  | No available information  |
| 23   | Guinea-Bissau                    | No   | No  | No available information  |
| 24   | Ivory Coast                      | No   | No  | No available information  |
| 25   | Kenya                            | Yes – June 2019                                      | Yes   | No available information  |
| 26   | Lesotho                          | No   | No  | No available information  |
| 27   | Liberia                          | No – In Process. It committed to a NAP in July 2018. | In Process. It committed to a NAP in July 2018. | No available information  |
| 28   | Libya                            | No   | No  | No available information  |
| 29   | Madagascar                       | No   | No  | No available information  |
| 30   | Malawi                           | No   | No  | Published a Human Rights Country Guide in August 2015.  |
| 31   | Mali                             | No   | No  | No available information  |
| 32   | Mauritania                       | No   | No  | No available information  |
| 33   | Mauritius                        | No   | No  | No available information  |
| 34   | Morocco                          | No – In Process                                      | Yes   | It has included a chapter on BHR in its 2018-2022 NAP for Democracy and Human Rights  |
| 35   | Mozambique                       | No – In Process                                      | Yes - ongoing                                   | Published a Human Rights Country Guide<br><br>Developed a baseline study on UNGP implementation with multi-stakeholder involvement. |
| 36   | Namibia                          | No   | No  | No available information  |
| 37   | Niger                            | No   | No  | No available information  |

| S/No | AU Member States      | NAP                                 | NBA  | Remarks   |
|------|-----------------------|-------------------------------------|--|---|
| 38   | Nigeria               | No – a draft NAP has been produced. | Yes – consultations held between 2012-2017.                          | NHRI/NGO led  |
| 39   | Rwanda                | No                                  | No   | No available information  |
| 40   | Sao Tome and Principe | No                                  | No   | No available information  |
| 41   | Senegal               | No                                  | No   | No available information  |
| 42   | Seychelles            | No                                  | No   | No available information  |
| 43   | Sierra Leone          | No                                  | No   | No available information  |
| 44   | Somalia               | No                                  | No   | No available information  |
| 45   | South Africa          | No                                  | Yes – April 2016   | NHRI/NGO led  |
| 46   | South Sudan           | No                                  | No   | No available information  |
| 47   | Sudan                 | No                                  | No   | No available information  |
| 48   | Swaziland             | No                                  | No   | No available information  |
| 49   | Tanzania              | No                                  | Yes – released 9 November 2017                                       | NHRI/NGO led  |
| 50   | Togo                  | No                                  | No   |   |
| 51   | Tunisia               | No                                  | No   |   |
| 52   | Uganda                | Yes – August 2021                   | Yes (9 regional consultations were held between April and June 2019) | Published a Human Rights Country Guide and a National Action Plan (August 2021) |
| 53   | Zambia                | No – In Process                     | Yes - released 9 July 2017   | NHRI/NGO led  |
| 54   | Zimbabwe              | No                                  | No   | Published a Human Rights Country Guide  |



## ABOUT THE AUTHOR

**Dr. Oyeniyi Abe** is a Lecturer in Law at the Huddersfield Business School, University of Huddersfield, United Kingdom. He is also a Research Associate at the Centre for Comparative Law in Africa, University of Cape Town, South Africa.

Dr Abe has practiced and taught human rights, corporate and commercial law in Africa, Europe, and North America. He has served as a visiting researcher at the Centre for Human Rights and Legal Pluralism, McGill University, Canada; Institute for Business Ethics, University of St Gallen, Switzerland, Canadian Institute of Resources Law, Canada, and as a Fulbright Scholar at Loyola University, Chicago, USA.

Dr Abe has published numerous articles, book chapters and academic essays on business and human rights, sustainable development, and natural resource management. His recent book is

“Implementing Business and Human Rights Norms in Africa” (Routledge, 2022). Dr Abe serves on the Executive Council of the International Law Association, Nigerian Branch, and is a member of the IUCN World Commission on Environmental Law, Global Business and Human Rights Scholars Association, and the Business and Human Rights Teaching Forum Meeting. He has provided consultancy services to international organizations such as the World Bank and the African Union on various aspects of development projects and human rights observance.

Dr Abe holds a doctorate (PhD) in commercial law from the University of Cape Town; a Master of Laws (LL.M.) from University of California Berkeley, and another LL.M from Central European University, Hungary, and a Bachelor in Law from University of Benin, Nigeria. He is a Fellow of the United Kingdom’s Higher Education Authority.

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# The State of Business and Human Rights in Africa



Africa lags behind in the implementation of business and human rights standards, yet it is one of the continents that suffers most from egregious conduct on non-state actors. African Union Member States should recognize that the development of a National Baseline Assessment and National Action Plan (NAP) are instrumental to ratifying the Policy Framework. Consequently, development of NAP is critical to realizing the goals of the Policy Framework. The NAP must set out the expectations of governments, its agencies and businesses at the same time outlining key priorities and commitment towards the implementation of business and human rights norms.



Businesses should formally adopt the Policy Framework and periodically report on compliance efforts, undertake human rights impact assessment, human rights due diligence before, during and after the conclusion of development projects or operations. Businesses must also adopt a rights-based approach in implementing business and human rights standards and provide adequate operational level grievance mechanisms for those impacted by their activities.



The African Continental Free Trade Area (AfCFTA) Secretariat should engage in disseminating information on the realization of the Agreement and its potentials to resolve intractable business and human rights challenges in Africa. Furthermore, the Secretariat must promote sustainable cross border trade that adheres to business and human rights principles.

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