AFRICAN BUSINESS AND HUMAN RIGHTS FORUM

The African Decade: Shaping the next 10 years of business and human rights

12 – 13 OCTOBER 2022 | ACCRA, GHANA AND ONLINE

Organized by:

The African Business and Human Rights Forum took place in Accra, Ghana the 12 and 13 October of 2022. It was convened by the African Union, and co-organized by the UN, through the Office of the Hight Commissioner of Human Rights (OHCHR) and the Working Group (UNWG), the UNDP and the German cooperation (BMZ/GIZ).
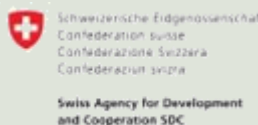
Convened by:

AFRICAN UNION

With the collaboration of:

NANHRI RINADH — Réseau des Institutions Nationales Africaines des Droits de l'Homme

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From the People of Japan

CONTENTS

ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
AfCFTA	African Continental Free Trade Area
AU	African Union
AUC	African Union Commission
BHR	Business and Human Rights
CSO	Civil Society Organization
CS3D	Corporate Sustainability Due Diligence Directive
BMZ	Federal Ministry for Economic Cooperation and Development of the Federal Republic of Germany
EEAS	European External Action Service
GIZ	Gesellschaft für Internationale Zusammenarbeit
FES	Friedrich-Ebert-Stiftung
hHRDD	Heightened Human Rights Due Diligence
IHRL	International Human Rights Law
IHL	International Humanitarian Law
ILO	International Labour Organization
IOE	International Organization of Employees
mHRDD	Mandatory Human Rights Due Diligence
NAP	National Action Plan
NBA	National Baseline Assessment
NHRI	National Human Rights Institution
SMEs	Small and Medium Enterprises
OHCHR	Office of the High Commissioner for Human Rights
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNWG	UN Working Group on Business and Human Rights

EXECUTIVE SUMMARY

Overview

This year marked the first annual African Business and Human Rights Forum convened by the UN Office of the High Commissioner for Human Rights, UNDP, the African Union, the UN Working Group on Business and Human Rights, and the Deutsche Gesellschaft für Internationale Zusammenarbeiten (GIZ), in close collaboration with a series of local and regional actors. The Forum brought together stakeholders from across Africa to take stock of progress and discuss challenges and opportunities for promoting responsible business conduct and corporate accountability in the region.

Envisioned as an annual event aiming to devise a coherent continental platform for discussing how to promote and ensure responsible business conduct in Africa, the Forum provided an invaluable opportunity for stakeholders to learn about progress and challenges, to share best practices, to identify needs, and to engage in peer-learning through constructive dialogue.

Looking forward

Participants highlighted the need for meaningful and balanced participation and representation of vulnerable groups to continue these conversations in the future.

Future forums should consider having sessions on specific dimensions of vulnerability to human rights harms.

High Demand for Regional Platforms

More than 1,000 participants from almost 100 countries including 48 African countries took part in the Forum. The 375 in-person participants in Accra were joined by 643 online participants in the fully hybrid event, with a high percentage of different representations.

- Civil society
- Governments
- Businesses
- NHRIs and other stakeholders

31%
54%
7%
8%
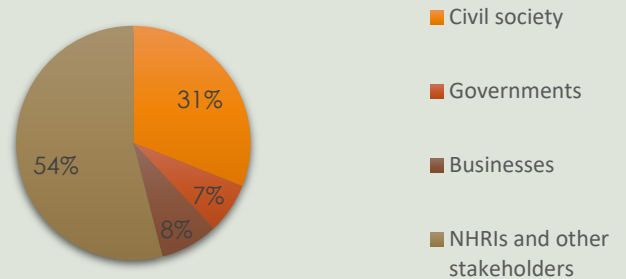
Key Developments Highlighted at the Forum

International level

- There were calls for broader participation internationally. Participants also noted the need for constructive engagement in the process to develop the legally binding treaty on business and human rights.

Regional level

- Participants noted that the adoption of the draft policy by the AU is widely anticipated. Implications of the AfCFTA for human rights in the region were also considered.

National level

- AU Member States provided updates on their progress towards implementing the state duty to protect human rights. Kenya and Uganda discussed their progress in implementing NAPs. Other State representatives presented on their countries' progress towards developing NAPs and NBAs.

OPENING PLENARY – Business and Human Rights in Africa: shaping the next decade

Panelists

- <u>Moderator</u>: **Livio Sarandrea** – UNDP

- **Arnold Kwesiga** – University of Pretoria

- **Dr. Roselyn Akombe –** UNDP Regional Bureau for Africa

- **Maarit Kohonensheriff –** OHCHR

- **Dr. Damilola Olawuyi –** UNWG member representing the Africa Region

- **Alex Nkosi –** ITUC-Africa

- **Matthias Thorns –** International Organization of Employers (IOE)

- **Joseph Whittal –** Network of African National Human Rights Institutions

> **"Dialogues and policy developments, including this Forum, are more than ever necessary to inform and guide our collective response."**
>
> *Maarit Kohonen Sheriff*
> *Chief, Africa Branch, OHCHR*

opportunities and growing momentum of BHR worldwide, especially in Africa.

The session recognized that in an increasingly interconnected world, the advancement of the human rights agenda in Africa has implications that stretch far beyond the region itself – it will

The High-level Opening Plenary set the stage for the event and presented the Forum as a key platform for dialogue and exchange to advance the business and human rights agenda in the region in the next decade. Keynote remarks addressed the crucial importance of the African business and human rights agenda and highlighted the priority issues in responsible business practice. Speakers emphasized both the

affect all of us worldwide. It also highlighted the main challenges to shape the next decade:

- Coherence among regulatory frameworks and actions at the national, regional, sub-regional and international levels, to ensure alignment with the UNGPs and local and regional contexts.

- The need for participatory dialogue, awareness, and engagement from governments, businesses, CSOs, NHRIs and other relevant stakeholders involved in business and human rights relations.

- Commitment to develop strong and coherent business and human rights frameworks, including the development and adoption of National Action Plans (NAPs) aligned with the recently drafted regional policy on business and human rights.

Finally, the panellists provided recommendations for the way forward, including the need for collaboration between agencies and organizations in all domains to achieve a greater goal of sustainable development. This includes a greater commitment from States at all levels to create impact through consolidated actions; adoption of business and human rights legal frameworks that translate to real human development and better human rights conditions; and meaningful engagement in dialogues with communities, especially those whose human rights have been impacted.

SESSION I – Advancing the business and human rights agenda in Africa: Regional BHR trends, challenges, and opportunities

Panelists

- <u>Moderator:</u> **Siniša Milatović** – UNDP

- **Armania Embaye** – UNDP

- **Victoria de Mello** – UNDP

- **John Ikubaje** – African Union Commission (AUC)

- **Joseph Kibugu** – Business and Human Rights Resource Centre (BHRRC) +

- **Wangari Kinoti** – Action Aid

- **Alexander Geiger** – Friedrich-Ebert-Stiftung (FES) African Union Cooperation Office

- **Oyeniyi Abe** – Business and Human Rights Expert

- **Aquilas Koko Ngomo** – Indigenous Representative

- **Josee Laporte** – International Labour Organization

This session discussed the conditions for an enabling environment to promote responsible business conduct, such as promoting public freedoms and

strengthening the rule of law. It explored practical approaches for AU member states to strike a balance between the twin rights to development and disposal of their natural resources as recognised under international law with the imperative of , upholding human rights and adhering to best practices.

Mr. Geiger and Mr. Abe presented FES' recently released study, The State of Business and Human Rights in Africa, which examines where the region stands regarding BHR. The study used quantitative and qualitative methods to review the BHR performance of 55 AU member states, specific sectors, and the impact of the AfCFTA agreement. The report showcases notable initiatives, such as Uganda and Kenya's adoption of NAPs, and the ongoing efforts in other countries like Liberia and Ghana to conduct NBAs. The report also discusses BHR developments in national and regional courts, the African Commission on Human and People´s Rights, and the Working Group on Extractive Industries, Environment and Human Rights Violations.

Ms. de Mello and Mr. Kibugu presented UNDP's recent study, A Baseline Assessment on Business and Human Rights in Africa: From the First Decade to the Next. The study takes stock of the progress and challenges in implementing the UNGPs in sub-Saharan Africa. The

study aim to provide grounded and empirical perspectives on developments in each country, including: an overview of measures implemented by States at the national level to protect human rights; an examination of actions taken by businesses to ensure respect for human rights; and an analysis of the disproportionate impact that business operations have on women, human rights defenders, and indigenous communities in targeted countries.

Among the developments made in the African region in the last decade, the speakers underscored several key aspects. Firstly, they highlighted the African Union Draft Policy Framework on Business and Human Rights, which encompasses three pillars aligned with the UNGPs. Additionally, the region has witnessed progress in the development of NAPs and NBAs on BHR. Moreover, the AU has committed to combatting child labour, forced labour, modern slavery, and human trafficking through a 10-year Action Plan. These are expected to be implemented in the following years as part of the rules and regulations that make up the "smart mix" of measures called upon by the UNGPs to effectively foster business respect for human rights.

Nevertheless, gaps and challenges persist within the region. Multinational corporations continue to commit numerous human rights violations, and there remains a lack of awareness regarding due diligence processes among business communities in Africa. Speakers also pointed out the need for a comprehensive platform for engagement in BHR in the region.

As part of the recommendations discussed in this session, the following were highlighted:

- States should embrace business and human rights in legislation and regional agreements, including the facilitation of NAPs.

- States should incentivize business compliance with human rights, embed human rights due diligence (HRDD) and grievances mechanisms, and provide more technical and financial support.

> **"We need to put forward a political commitment to a new way of living. The current system was created by people, so it can be changed by people."**

Wangari Kinoti
Global Women´s Rights and Feminist Alternatives Lead, Action Aid

- State-owned businesses should provide leadership in respecting human rights.

- National and regional judicial and quasi-judicial mechanisms should be strengthened.

- Root causes of child and forced labour should be addressed, such as income for adults and strong labour protections and administration.

- A feminist and gender justice lens must be employed in addressing BHR issues, including special attention to the informal economy, which is largely driven by women.

SESSION II – The State duty to protect human rights in the context of business activities in Africa

Panelists

◆ <u>Moderator:</u> **Victor Brobbey –** Lancaster University Ghana

◆ **Hon Diana Asonaba Dappah** – Deputy Attorney General and Minister of Justice of Ghana

◆ **Harriet Asibazuyo** – Ministry of Gender, Labour and Social Development, Uganda

◆ **Claris Kariuki-Mwirigi** – Office of the Attorney General and Department of Justice, Kenya

◆ **Adriano Nuvunga** – Centro para Democrazia et la Desenvolvimento CDD, Mozambique

◆ **Abdulai Bangura** – Human Rights Commission of Sierra Leone

◆ **Nyenati Tuan** –Ministry of Justice, Liberia

◆ **Livio Sarandrea** – UNDP

In this session, the participants reviewed the progress made by States in the region in developing comprehensive national BHR regulatory, policy and institutional frameworks. The region's government representatives and civil society organisations reflected on their experiences and lessons learned in developing such frameworks, including NAPs and NBAs, as well as the role of different stakeholders in

> **"We learned that we have so many laws but there's a lack of policy coherence. The [laws] are not speaking to each other."**
>
> Claris Kariuki-Mwirigi
> *Office of the Attorney General and Department of Justice, Kenya*

the implementation of the UNGPs framework in the region.

Progress and initiatives in the region highlighted by the speakers included the following:

▪ Adoption of NAPs by Kenya and Uganda after conducting multiagency consultations and baseline assessments.

▪ NBA conducted by Ghana and the establishment of a committee for the purposes of drafting a NAP for the country.

▪ Business and human rights reports issued by Sierra Leone and its Human Rights Commission regarding BHR cases and measures taken in the country to cultivate a human rights culture in the private sector. Sierra Leone is also in the process of adopting a NAP.

● Ongoing work in Mozambique regarding the right to development, which includes involving local people in solving structural problems

surrounding extractive policies, excessive central governance, and dependence on political will.

▪ Adoption of a roadmap and draft NAP in Liberia and raising awareness among citizens of the impact of business activities on human rights.

The session also identified common challenges in the region regarding States' duty to protect, including the need for government transparency in promoting accountability, political leadership, and technical and financial support from the States. Speakers also highlighted the need for further engagement with corporations and other relevant stakeholders to identify objectives and main concerns based on local needs.

Finally, speakers discussed how the UNGPs 10+ Global Roadmap for the Next Decade of Business and Human Rights can be utilised in the region to improve States' action to strengthen the protection of human rights in

business contexts. Speakers specifically emphasized the role of States to lead by example as economic actors, including through State-Owned Enterprises and public procurement.

SESSION III – Mandatory human rights due diligence developments in the EU and beyond: The implications for Africa

Panelists

◆ <u>**Moderator:**</u> **Arnold Kwesiga** – Centre for Human Rights, University of Pretoria, South Africa

◆ **Michaela Dodini** – European External Action Service (EEAS) European Union

◆ **István Németh** – European Commission

◆ **Marlene Landes** – German Federal Ministry for Economic Cooperation and Development (BMZ), Government of Germany

◆ **Miwa Yamada** – Institute of Developing Economies (IDE-JETRO), Government of Japan

◆ **Douglas Opio** – Federation of Uganda Employers (FUE)

◆ **Alex Nkosi** – African Regional Organisation of the International Trade Union Confederation (ITUC-Africa)

◆ **Joseph Byomuhangyi** – Uganda Consortium on Corporate Accountability

"**Mandatory regulation in Europe has to be designed and implemented in such a way as to achieve maximum impact – good European laws can protect people in Africa from exploitation, create decent jobs, and protect the environment.**"

Marlene Landes
Senior Policy Advisor – BMZ

The UNGPs call on States to consider a smart mix of measures, involving national and international measures, both mandatory, and voluntary, to foster business respect for human rights. This approach may include requirements for businesses to carry out HRDD, encompassing the identification, prevention, mitigation, and accountability for adverse human rights impacts.

Increasingly, governments worldwide are introducing regulatory instruments that make HRDD mandatory for business. These new regulations have influenced the expected conduct of business across the regions, creating a higher standard of engagement for

companies and their supply chains. This session explored the implications of these developments for the African region.

Certain European Union (EU) member States have already introduced mandatory human rights due diligence (mHRDD) requirements. Amongst others, Germany adopted its Corporate Due Diligence Obligations in Supply Chains Act in 2021, and the legislation has entered into force in 2023. France and The Netherlands have also adopted legislation that mandates HRDD in recent years. The European Commission published in February 2022 its proposed draft Corporate Sustainability Due Diligence Directive (CS3D), which imposes mandatory due diligence obligations on certain companies, including large EU-based companies, non-EU companies with operations in the EU, and companies in high-impact sectors, such as garments and footwear, agriculture, and mining. Notably, the Directive includes provisions for civil action in specific circumstances related to harm caused by enterprises falling under its purview.

Beyond the EU, other States, including Norway, have introduced similar legislation. Meanwhile, other States are increasingly encouraging and supporting businesses to undertake HRDD. As a case in point, in September 2022, Japan published new Guidelines on Respect for Human Rights in Responsible Supply Chains, which certainly will affect Japanese companies operating in Africa and those with a business nexus to African countries through supply chains, trade, and investment.

For the African region, these legislative initiatives will have significant implications, especially considering the requirements and recommendations for engaging actors in the supply chain. This presents an opportunity for African companies to proactively engage with human rights issues and improve their business practices, while gaining a competitive advantage in the global market.

While the evolving regulatory landscape regarding due diligence forms a fundamental part of the smart mix approach envisioned by the UNGPs, the speakers acknowledged the persistent challenges in effectively responding to these measures. For example, SMEs involved in the supply chains of Japanese and EU-based companies need to be well-informed these regulatory measures. Moreover, there is a need for capacity-building support to enhance the understanding of mHRDD and the practical implications of existing and developing legislation.

SESSION IV – Responsibility of business to respect human rights: lessons learned, challenges and the way forward for Africa

Panelists

- **Moderator:** **Abdul Abdulrahim –** OHCHR

- **Joseph Kibugu** - Business and Human Rights Resource Centre (BHRRC) +

- **Charles H Mchomboh** - TotalEnergies Mozambique

- **Norman Mukwakwami** - Trafigura

- **Edward Kareweh** - General Agricultural Workers Union

- **Cynthia Muffuh** - United Nations Global Compact (UNGC)

do what we need to do and meet the needs of people."

Cynthia Muffuh
United Nations Global Compact

In the African region, the corporate responsibility to respect human rights has been recognized at the regional level by the African Commission on Human and Peoples´ Rights (ACHPR), and at the 2014 African Forum on Business and Human Rights, participants called for responsible business practices that respect human rights. The draft regional policy framework on business and human rights being developed by the AU emphasizes the importance of HRDD and proposes to set out imperatives and benchmarks in this regard.

Recent studies highlight that challenges persist in raising awareness amongst business communities regarding their human rights responsibilities, and foster business cultures that respect human rights. The findings indicate that many business in the region having human rights policies in place are subsidiaries of parent companies headquartered outside the region that have adopted global human rights policies. However, the implementation of such policies by mother companies is not consistently effective in practice.

Further challenges persist in the region regarding the implementation of the corporate responsibility to respect human rights. For instance, a study conducted by UN Global Compact revealed that only 18% of business participants reported conducting HRIAs Additionally, 46% of all companies assessed failed to score any points under the Corporate Human Rights Benchmarks due diligence indicators, and 99% of all companies assessed failed to demonstrate the basics of socially responsible business conduct.

The Business and Human Rights Resource Centre (BHRRC) identified other challenges in the business implementation of HRDD processes, mainly, the insufficient will to participate in these conversations and perform HRIAs, and the lack of transparency and support of the BHR movement from businesses communities in the region.

To address the obstacles, speakers noted that engagement with local stakeholders is a key element in HRDD process and provided practical examples from African companies. For instance, Total Energies Mozambique and Trafigura have conducted HRIAs and developed programmes for supply chain monitoring. These companies have also engaged in mapping strengths and challenges of their stakeholders.

Additionally, governments play a crucial role in ensuring business compliance with due diligence standards. It is essential for the States to establish a "smart mix" of mandatory and voluntary measures to protect human rights. This requires investing in the development of NAPs through inclusive and meaningful consultations with multi-stakeholders.

SESSION V – Stakeholder perspectives on the development of an African Regional Roadmap on the implementation of the UNGPs

Panelists

◆ **Moderator: Dr. Damilola Olawuyi** – UNWG member representing the Africa Region

◆ **Elizabeth Kemigisha** – Uganda Association of Women Lawyers

◆ **Dr. Pichamon Yeophantong –** UN Working Group on Business and Human Rights

◆ **Solomon Dersso** – African Commission on Human and Peoples' Rights

◆ **Patrick Karanja** – Advocates for International Development

◆ **Jovina Jovita Muchunguzi** – CHRAGG Tanzania

◆ **Alex Frimpong** – Ghana Employers' Association (GEA)

In this session, the UN Working Group on Business and Human Rights (UNWG) presented its UNGPs 10+ Global Roadmap for the Next Decade of Business and

Human Rights, with recommendations on how to scale up implementation of the UNGPs.

Following the presentation of the UNGPs 10+ Roadmap, the UNWG heard perspectives and key messages from representatives of various stakeholder groups from the region on what is needed to realize a higher ambition and increased pace of UNGPs implementation in the Africa region. The session initiated a consultation process for the potential development of a regional roadmap for the next decade of implementation of the UNGPs.

Of the 8 action areas identified in the UNGPs 10+ Roadmap, the speakers identified Goal 4 – move from paper to practice in tackling barriers to access to remedy – as a priority for action in the Africa region.

"**Indeed, the UN Guiding Principles on Business and Human Rights provide the basis, not necessarily the ceiling, of what we need to have in order to address the plethora of human and peoples' rights issues that we have on the African continent.**"

Solomon Dersso
African Commission on Human and Peoples' Rights

However, challenges to address priority areas remain in the region, including a lack of regulatory and institutional capacity to implement existing regulations, the limited mandate of NHRIs to facilitate access to remedy, and the general absence of knowledge among companies about regulations.

In order to address these concerns, speakers made the following recommendations:

- Building the staff capacity of NHRIs to investigate and monitor the methodologies of business activities, reach communities living around corporate operations, and perform country-level assessments.

- Enhancing the UNWG's engagement with NHRIs through country visits and consultations.

- Investing in strengthening international cooperation and assisting with the interpretation of international jurisprudence for their application in Africa.

- Supporting capacity building for rightsholders and businesses to address human rights violations related to company operations.

- Promoting collective action, raising the consciousness of communities, and supporting human rights defenders.

- Supporting the need for commitment and availability of resources to ensure the Africa region reaches the target of 35 National Action Plans.

SESSION VI – Mainstreaming human rights in the implementation of the African Continental Free Trade Agreement

Panelists

◆ <u>**Moderator:**</u> **Emin Aslanov** – OHCHR

◆ **Million Habte** – AfCFTA, Secretariat

◆ **Jacquiline Pimer** – UN Economic Commission for Africa (UNECA)

◆ **Emmanuel K. Bensah Jr** – AfCFTA Policy Network

◆ **Hibist Kassa** – University of Cape Town

◆ **David Barissa** – Network of African National Human Rights Institutions

The establishment of the African Continental Free Trade Area (AfCFTA) Agreement is a milestone for the African continent. Much hope is being pinned upon the initiative to serve as a vehicle for diversifying, industrialising, and transforming the economies of African countries and contributing to their sustainable development.

This session highlighted the importance of mainstreaming human rights, including the right to development, into trade under the AfCFTA Agreement and all related processes. The session also highlighted the paramount relevance of the UNGPs for the implementation of the AfCFTA Agreement. During the session, a comprehensive review was undertaken on the major efforts made by national and international stakeholders to integrate human rights into the AfCFTA Agreement. Pertinent challenges were discussed, along with potential strategies to overcome them. This includes the Human Rights Impact Assessment (HRIA) of AfCFTA conducted by the OHCHR in 2017 and the follow-up study on human rights and the AfCFTA Agreement in2022. The research provide policy guidance on mainstreaming human rights in the AfCFTA Agreement and note that the institutional structure of the AfCFTA Agreement needs to be broadened to ensure that human rights

are tackled as a priority and not just a secondary issue.

The speakers also highlighted opportunities and risks that trade liberalization under the AfCFTA Agreement

"**By promoting and protecting human rights, governments can turn the economic growth brought by trade into real development – an inclusive and sustainable one.**"

Emin Aslanov
Right to Development Section, OHCHR

might have on the human rights, including their right to development. While the AfCFTA Agreement is poised to greatly enhance and expand African trade, it is important to consider the African informal business sector and uphold the right to development for its people. The promotion and protection of socio-economic rights will significantly contribute to tackling the ongoing conflicts in Africa. Furthermore, mainstreaming the inclusion of women and youth as part of the implementation of the AfCFTA Agreement will foster an inclusive environment for their participation and promoting their right to freedom of movement.

In summary, the speakers emphasized that the AfCFTA Agreement presents an opportunity to promote and protect human rights in business activities. However, it is crucial for the agreement's implementation to go beyond mere acknowledgment and ensure the institutional integration of human rights. NHRIs and CSOs have a great role to play for the success of the AfCFTA Agreement. Nevertheless, there should be more commitment from States to maximize the benefits of the Agreement. Specifically, speakers noted that the Agreement can be complemented by the enforcement of the African Union Free Movement Protocol.

SESSION VII – Access to effective remedy and the role of national and regional institutions

Panelists

- <u>**Moderator:**</u> **Mercy Obonyo** – Network of African National Human Rights Institutions
- **Samantha Rowe** – Debevoise & Plimpton LLP
- **Seraphine Kando** – African Union Commission (AUC)
- **David Simpson** - African Development Bank (AfDB)
- **Claris Kariuki-Mwirigi** – Office of the Attorney General & Department of Justice, Kenya
- **Ahoutou François Konangui** – Conseil National des Droits de l'Homme, Côte d'Ivoire
- **Gerald Kankya** – Twerwaneho Listeners' Club (TLC)
- **Teresa Mutua** – Accountability Counsel

> "*When it comes to judicial mechanisms, we are already seeing Africa's regional courts engage deeply with the UNGPs. This is likely to have a 'trickle-down' effect over the next decade.*"
>
> Samantha Rowe
> *Debevoise & Plimpton LLP*

This session provided a reflection on challenges and opportunities faced by victims of business-related human rights abuses in accessing effective remedies through judicial and non-judicial mechanisms. Panellists examined the accountability mechanisms available at the regional and national level in the continent , including the organs of the AU, courts of regional economic communities, and NHRIs. Speakers aimed to identify gaps and opportunities for victims to access remedy and recommended measures to enhance the accessibility of effective remedy and redress for rightsholders.

The African continent has taken numerous steps towards increasing access to remedy. In particular, the speakers identified the AU Draft Policy Framework on Business and Human Rights (AU Draft Policy) and the development of NAPs by states as key initiatives. The AU Draft Policy provides parameters for administrative, legislative, judicial, and other measures that are necessary to ensure transparent and accessible remedy. As more African states consider implementing NAPs, the panellists noted that these NAPs provide an opportunity for capacity building. For example, the Kenya NAP focuses on

building capacity regarding the UNGPs among both the judiciary and citizens.
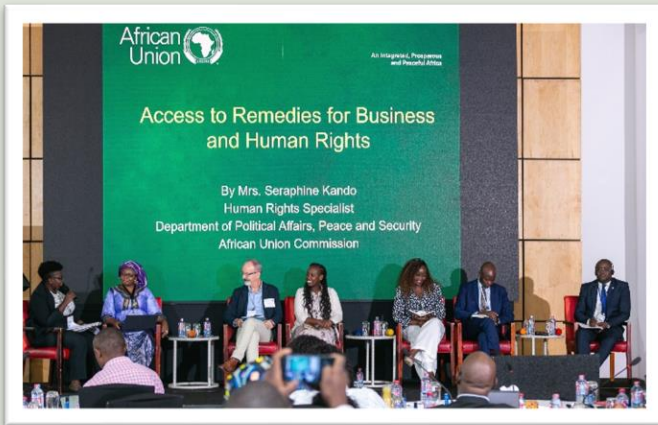
Independent Accountability Mechanisms (IAMs) were also recognized as an important tool for enhancing access to remedy. IAMs are non-judicial grievance mechanisms offered by financial institutions, enabling victims adversely affected by projects funded by the institution to seek recourse. However, panellists noted that the greatest challenge for IAMs lies in the lack of awareness about their existence. Thus, moving forward, it is essential to focus on initiatives that aim to foster understanding about IAMs and educate individuals on how to access these mechanisms.

With respect to access to judicial mechanisms, there remain a number of challenges. Victims of adverse human rights impacts have reported difficulties in accessing courts, whether due to the absence of knowledge, lack of resources, or geographical distance.

Additionally, a report on the impact of the UNGPs on courts and judicial mechanisms was shared during the session. Conducted by Debevoise & Plimpton LLP at the invitation of the UNWG, the report found that there is limited use of the UNGPs in courts across the world as a whole and, Specifically, in Africa, there have been only two decisions at the national level and one decision by the ECOWAS Court of Justice.

The session concluded with recommendations for improving access to remedy, which, among other things, included empowering NHRIs. Panellists highlighted the importance of having well-funded and independent NHRIs since they are often the first to receive human rights complaints from victims. Additionally, it was recommended that remedial measures always take into account local contexts and traditions.

SESSION VIII – The impact of extractive industries on the environment and human rights

Panelists

◆ <u>Moderator:</u> **Dr. Damilola Oluwuyi** – UNWG member representing the Africa Region

◆ **Foster Hamuyube** – Human Rights Commission of Zambia

◆ **Sarah Ngachi** – Amnesty International

◆ **Hermine Gatsing Kembo** – African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

◆ **Louis Maréchal** – Organisation for Economic Co-operation and Development (OECD)

Instances of misconduct by companies operating in the extractive sector, such as in mining and oil, may lead to severe environmental impacts and the creation of hazardous working conditions, the violation of the right to property, and the infringement upon communities' rights to participate in decisions affecting them, which often go unaddressed across the region. Consequently, local communities are bearing the brunt of these negative impacts of extractive industries while reaping minimal, if any, benefits.

This session reflected on measures to ensure that companies operating in the extractive industries effectively discharge their responsibilities under the UNGPs, including those taken by the Working Group on Extractive Industries, Environment and Human Rights Violations (WGEI) of the African Commission on Human and Peoples Rights, and of other initiatives.

Speakers highlighted several concerns regarding the extractives industry in Africa. For example, gold mining in the Central African Republic has been linked to high mercury concentrations, oil spillages, and chemical waste pollution of rivers to the point that they are unsuitable for domestic use. 7 people have died in open pits and there have been no restoration processes.

Furthermore, unregulated cobalt mining in the Democratic Republic of Congo has increased with the growing demand for critical minerals in support of the energy transition. This has led to processes of land dispossession without compensation and disputes over water resources.

Communities are not provided information about the negative effects of mining, nor are they advised of any remedial mechanisms available.

> " In the last 8 months of this year, [the extractive industry] has contributed to more than 45 per cent of our revenue … but at the same time, we cannot deny the truth. We cannot ignore the impact that has been caused by the extractive industry."

Foster Hamuyube
Human Rights Commission of Zambia

In light of the foregoing, speakers noted the importance of raising awareness of human rights abuses through investigations and providing public access to information on the design of mines and socio-environmental impacts. To achieve this, the role of NHRIs needs to be strengthened through capacity building.

Moreover, panellists advised that State-owned companies and those from the Global North should reassess their business practices. While there is optimism about the adoption of NAPs as a way to solve these problems, further consideration must be given to integrating NAPs into national development programs. This requires coherence in policy design and implementation for critical mineral extraction, with input from different stakeholders.

Finally, the abovementioned negative cases demonstrate that it is essential to ensure accessible means to achieve justice and reparation for victims. It was acknowledged that while companies are endeavouring to implementing grievance mechanisms, the effort is insufficient without the government's implementing policies, laws, and supervisory mechanisms.

In moving forward in the energy transition, those in vulnerable conditions cannot be left behind. Thus, an overall human rights-based approach to mining is urgent.

SESSION IX – Individuals and groups at heightened risk of business-related human rights abuses

Panelists

◆ <u>Moderator:</u> **Charmika Samaradiwakera** – University of the Witwatersrand, Johannesburg (Wits) School of Law

◆ **Gerald Kankya** – Twerwaneho Listeners' Club

◆ **Resiato Salyan** – Maasai pastoralist community, Ujamaa Community Resource Team (UCRT)

◆ **Bisi Alimi –** Bisi Alimi Foundation

◆ **Michel Youboue** – Groupe de Recherche et de Plaidoyer sur les Industries Extractives

◆ **David Simpson** – African Development Bank (AfDB)

Certain individuals and groups are particularly vulnerable to business-related human rights abuses, such as women, indigenous peoples, youth, persons with a different sexual orientation and gender identity, persons with disabilities, and others, including in the context of displacement (IDPs, refugees and migrants). This session highlighted the specific challenges these groups encounter, with a view to exploring measures to reduce the exposure to business-related human rights risks and abuses, and to improve access to justice and effective remedy.

The speakers reflected on the gravity of the situation currently facing most marginalized individuals and groups in the region. For example, it was noted that members of the LGBTQI+ community face criminalization, limited access to health care, increased risk of living in poverty, and refusal of employment (e.g., people with HIV). As a first step forward towards addressing these issues, changing the law must be included in the state duty to protect.

The Maasai pastoralist community faces displacement, among other things, because businesses do not consider the realities of local people. Pastoralists and indigenous communities need land as their unique means of survival. Therefore, businesses in their territories must acknowledge local

ways of living before thinking about investing in their land. International human rights instruments, such as the United Nations Declaration on the Rights of

Indigenous Peoples can offer guidelines for the State and companies involved.

Speakers noted that in order to avoid conflicts, meaningful participation is required to ensure that local communities and people impacted can have their voices heard in the decision-making process. Participation includes access to information, channels for local peoples to raise their voices without the fear of retaliation, and the implementation of grievance mechanisms.

It was recognized that vulnerabilities are the result of human dynamics. Therefore, an intersectional understanding of local realities can offer a path forward to ensure meaningful participation. Social and environmental impact assessments must consider a human rights-based approach, particularly ensuring the participation of people living in vulnerable conditions.

"**We depend on [land] as means for our survival. So, if there are any projects of businesses that need to be implemented on our source of survival, the UN Declaration on the Rights of Indigenous Peoples and the UN Guiding Principles on Business and Human Rights should be looked at by the State.**

Resiato Salyan
Maasai pastoralist community, Ujamaa Community Resource Team (UCRT)

SESSION X – Business and human rights in conflict-affected areas

Panelists

- **Moderator**: **Dr. Pichamon Yeophantong –** UN Working Group on Business and Human Rights

- **Siniša Milatović** – UNDP

- **Alan Bryden** – Geneva Centre for Security Sector Governance (DCAF)

- **Luis Bitone Nahe** – NHRC for the B&HR and impact on conflict in Cabo Delgado

- **Celine Tshizena** – Afrewatch.

- **Charles Mchomboh** – Total E&P Mozambique

"Heightened human rights due diligence means identifying potential and actual impacts on human rights, as well as context conflict. Therefore, business should carry out heightened Human Rights Due Diligence on an ongoing basis."

Siniša Milatović
UNDP

This session highlighted the issue of the independent responsibility of businesses in respecting the rights of people affected by conflict and post-conflict, including in the context of displacement. In 2018, the UNWG launched "The business, human rights and conflict-affected regions project" to clarify the practical steps that States and business enterprises should take to implement the UNGPs in conflict and post-conflict contexts to prevent and address business-related human rights abuses. The project reflects Principles 7 and 23 of the UNGPs, which state that the risk of human rights abuses is higher in conflict-affected areas, and this in turn exacerbate the potential of enterprises being involved in gross human rights infringements.

As part of the project, the UNWG issued its report on [Business, human rights and conflict-affected regions: towards heightened action](#), which underscored, as one of its key findings, that businesses operating in conflict-affected areas are required to take a conflict-sensitive approach and to conduct 'heightened' HRDD.

This session unpacked the report's implications and highlighted efforts to implement the UNWG's recommendations in the region. In particular, the UNDP's recently published toolkit, Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide, was presented during the panel. The purpose of this document is to provide clarity on hHRDD by addressing four main questions:

- **Why hHRDD:** In conflict or post-conflict contexts, the risk of human rights abuses is heightened. Therefore, due diligence should be proportionate to the heightened risk.

- **Where to apply hHRDD:** hHRCC should be applied where there are armed conflicts, situations of widespread violence (including civil war and inter-state violence), armed insurrections, and violent extremism or other forms of organized violence. This implies that businesses must respect International Human Rights Law (IHRL) and International Humanitarian Law (IHL).

- **When to apply hHRDD:** Businesses must assess whether is widespread "non-conventional" armed violence taking place. To determine when hHRDD should be applied, businesses should ask: Is there an international armed conflict between two states? Is there an internal armed conflict? Is there a military occupation? Are gross human rights violations taking place?

- **How to apply hHRDD:** The guide provides a set of practical actions to implement hHRDD.

The panellists also addressed some of the existing challenges in conducting hHRDD in conflict-affected areas, including the lack of awareness and knowledge about IHRL and IHL principles and standards by companies and the affected communities, and the absence of a proper environment in which companies can join with different actors to take coordinated actions in circumstances of conflict.

Finally, the panellists in this session pointed out the importance of political will and engagement in conflict- and post-conflict-affected contexts to assist companies and hold them accountable for their behaviour. They called for action to build the capacity of States, businesses, and other key stakeholders collectively through the knowledge and awareness of these documents.

SIDE EVENT – Multistakeholder approaches to addressing security and human rights challenges: The role of the Voluntary Principles on Security and Human Rights

Panelists

◆   <u>**Moderator:**</u> **Christopher Galvin** – International Code of Conduct for Security Providers, ICoCA

◆   **Marie-Chantal Kaninda** – Glencore, Democratic Republic of Congo

◆   **Louis Maréchal** – Organisation for Economic Co-operation and Development (OECD)

◆   **Alan Bryden** – Geneva Centre for Security Sector Governance (DCAF)

◆   **Adriano Nuvunga** – Centro para Democrazia e Desenvolvimento CDD, Mozambique

This session focused on how innovative multistakeholder initiatives – including the Voluntary Principles on Security and Human Rights (VPs) and the International Code of Conduct for Private Security Companies Association (ICoCA) - can promote smart partnerships between national authorities, companies

and civil society to address and prevent conflicts in the natural resource sector.

The VPs are a set of guidelines for corporations in the extractive sector, and specifically find its form in complex environments where national and local groups all come together to address security issues in the sector. The VPs Initiative is an international multistakeholder initiative that promotes the VPs and includes 9 governments, 32 companies, 14 NGOs, and 9 observers. During the session, the speakers reflected on the importance of translating the VPs into practical tools and, to that end, presented the Addressing Security and Human Rights in Complex Environments Toolkit developed by the Geneva

Centre for Security Sector Governance, the International Committee of the Red Cross, and the Geneva Centre for Business and Human Rights an important resources for companies.

ICoCa complements the VPs Initiative by focusing on implementation. Based on IHL and reflective of the UNGPs, the International Code of Conduct aims to reduce risk in the security supply chain. In particular, ICoCa engages in desk-based and on-site monitoring of security company operations and provides a complaint mechanism to hear complaints about its member companies. The organization also urges its member companies to set up their own grievance mechanisms to increase access to remedy.

The speakers further explored how to reinforce synergies between the VPs, ICoCA, the OECD, and the UNGPs. For example, the OECD works with companies in mapping their supply chain to determine security and human rights risks. However, this work requires access to information, which is where collaboration with the VPs Initiative and ICoCA is imperative. Their multistakeholder function helps build trust and collect necessary and reliable information for due diligence.

In discussing the importance of multistakeholder, the speakers acknowledged that both private companies and local communities must be engaged. For example, Glencore, a prominent global cobalt producer and one of the biggest copper producers in Africa, expressed its commitment to responsible operations when it came to interacting with employees, the environment, and institutions. by joining the VPs Initiative in 2015 In addressing challenges of illegal intrusions, the company has used the VPs to train security employees on how to deal with intruders without harming them.

On the other hand, organizations like the Centro para Democrazia e Desenvolvimento CDD work to create a platform where human rights defenders can raise concerns with businesses and governments without fear of reprisal. Their space for dialogue has been used

> **"When you need to deploy heavy security to protect your businesses, it means that something needs to be addressed. There is a need to sit and talk."**
>
> Adriano Nuvunga
> *Centro para Democrazia e Desenvolvimento CDD, Mozambique*

to address issues around resettlement, development, and the rights of local communities.

Finally, the speakers commented on the relationship between security and development. They recognized that security cost is one of the biggest recoverable costs in the structure of the extractive resources sector and that it is not by chance that there are conflicts in each of the resource-rich countries in Africa. These conflicts require boosting security, but then divert resources away from development. Limiting the need and militarization of security must therefore be a priority. Security should be community-centric and about building trust within the community.

SIDE EVENT – Understanding and mitigating the human rights impacts of the use and development of technologies by businesses in Africa

Panelists

◆ **Moderator: Abdul Abdulrahim** – OHCHR

◆ **Catherine Muya** – Article 19

◆ **Marina Madale** – MTN Group

◆ **Wendy Trott** – Alt Advisory

◆ **Claris Kariuki-Mwirigi –** Office of the Attorney General & Department of Justice, Kenya

◆ **Pwadumi John Okoh** – National Human Rights Commission Nigeria

The United Nations and the African Union recognize the positive impact of technology in achieving the Sustainable Development Goals (SDGs) globally and Agenda 2063 Aspirations in Africa. However, it is important to acknowledge that the development and use of technologies can also pose risks to human rights. In Africa, there is growing investments in the technology sector, both within and beyond the region.

Sustainable digitalization in Africa can only be achieved if businesses uphold respect for human rights as fundamental principle.

Framed by the UNGPs, this session focused on understanding and mitigating human rights impacts associated with the development and use of technologies by businesses in Africa. Speakers noted that digitization often impacts rights such as privacy, freedom of expression, freedom of association, and non-discrimination. States are often dealing with the human rights dilemma of increased surveillance and infringement of the right to privacy.

Speakers expressed concern that governments are lagging behind in creating laws and regulations in response to digitalization. While some African countries have passed data protection regulations, most lack proper enforcement authorities. Moreover, there is an absence of legislation or national strategies specifically addressing Artificial Intelligence (AI), the

private sector's compliance and engagement in this area remain insufficient. Nonetheless, there have been recent advancements, such as the ACHPR passing a resolution to undertake a study on human and peoples' rights and AI, robotics, and other new and emerging technologies in Africa.

Speakers recommended that states should work towards catching up with technology and implementing necessary laws and regulations. It is critical to consider the relationship between states and businesses, as states are the major consumers of technology and should lead by example in respecting human rights while using technology. Additionally, establishing independent systems is essential to empower citizens and ensure government accountability. Regulators should be empowered to carry out their mandates.

Finally, acknowledging the prevalence of SMEs in the technology sector in the region, the session also highlighted lessons learned, challenges, and pathways forward for SMEs. Speakers cited African tech start-ups to illustrate how smaller companies can integrate respect for human rights into their business operations and relationships. Speakers recommended that tech companies collaborate as an industry to co-develop solutions for human rights issues, particularly when faced with requests from authoritative governments. The UNGPs and HRDD should be used to create a roadmap for tech companies in their journey towards responsible business conduct.

CLOSING PLENARY

Panelists

- **Moderator:** **John Ikubaje –** African Union Commission (AUC)
- **Dr. Damilola Olawuyi –** UNWG member representing the Africa Region
- **Dylan Van Tromp –** OHCHR
- **Amanuel Desalegne Haile –** Friedrich-Ebert-Stiftung (FES) AU
- **Mercy Obonyo –** Network of African National Human Rights Institutions
- **Maria Matui** – African Coalition for Corporate Accountability (ACCA)
- **Jason Pegat-Toquet –** International Organization of Employers (IOE)
- **Victoria De Mello –** UNDP

"**The Forum is riding a wave of momentum to advance the human rights agenda in the region. Clearly, this type of forum meets a need and fills a gap. In this regard, OHCHR welcomes, and shares the vision of the co-organizers that the Forum that is concluding today is envisaged to be the first in an annual series of Africa regional BHR forums.**"

Dylan Van Tromp
Business and Human Rights Unit, OHCHR

This session featured high-level experts taking stock of the discussions during the Forum and charting a way forward on BHR in Africa. Across the Forum, the participants were able to identify business and human rights issues, challenges, trends, and practices in specific industry sectors, with sector-specific dialogues on the extractives and technology sectors, as well as learnings and strategies to advance in the implementation of the BHR framework within the next decade.

The BHR agenda in Africa is being impacted by developments beyond Africa. Companies in different sectors undertake different types of activities, and

therefore typically have different impacts on human rights. At the regional and national level, different stakeholders addressed the implications for Africa of mHRDD instruments in the EU and beyond. At the international level, there was the call for broader participation and constructive engagement in the process to develop a legally binding treaty on BHR.

Among the challenges identified, one notable issue worth highlighting was the lack of participation from certain groups, including, women, gender diverse individuals, persons with disabilities, children, elders, indigenous peoples, human rights defenders, and groups at heightened risk of business and human rights abuses. Therefore, it is crucial to ensure

meaningful and balanced participation and representation of these groups to foster ongoing and inclusive conversations in the future.

The panellists also emphasized opportunities for each stakeholder group to further engage with the BHR agenda in the coming years. For instance, governments are expected to continue developing and adopting NAPs on BHR across the continent, create a conducive environment for implementing the BHR agenda by providing financial and technical support and tools to advance the UNGPs among different stakeholders.

Businesses are also expected to take concrete steps and make changes to their processes and product to align their practices with the UNGPs framework. This includes implementing HRDD processes, assessing and reporting on operations and impacts, as well as supporting and financing for BHR programmes.

CSOs and media have significant role in continuing to raise awareness of the importance of the BHR agenda, particularly highlighting the need for protection of vulnerable groups.

NHRIs and other relevant institutions should work to increase their participation in promoting the BHR agenda across the region. This includes active involvement in the NAPs development process, capacity-building initiatives, and support for stakeholders in implementing the UNGPs at the local level.
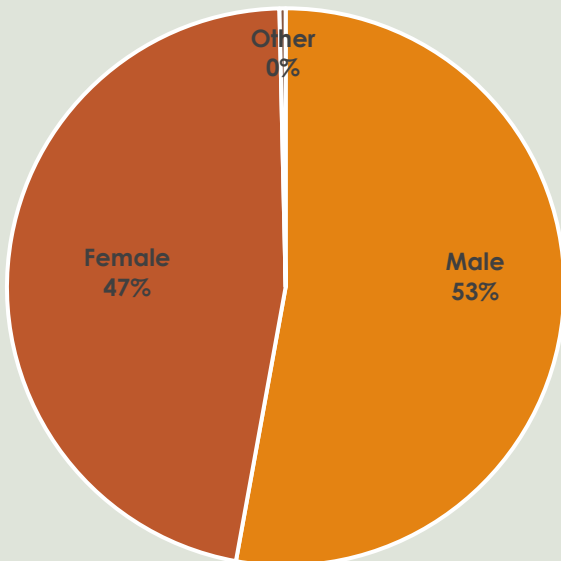
ANALYTICS

941 **delegates** from **89** **countries**   **344** In-Person **597** Virtual

Breakdown of participants by industry
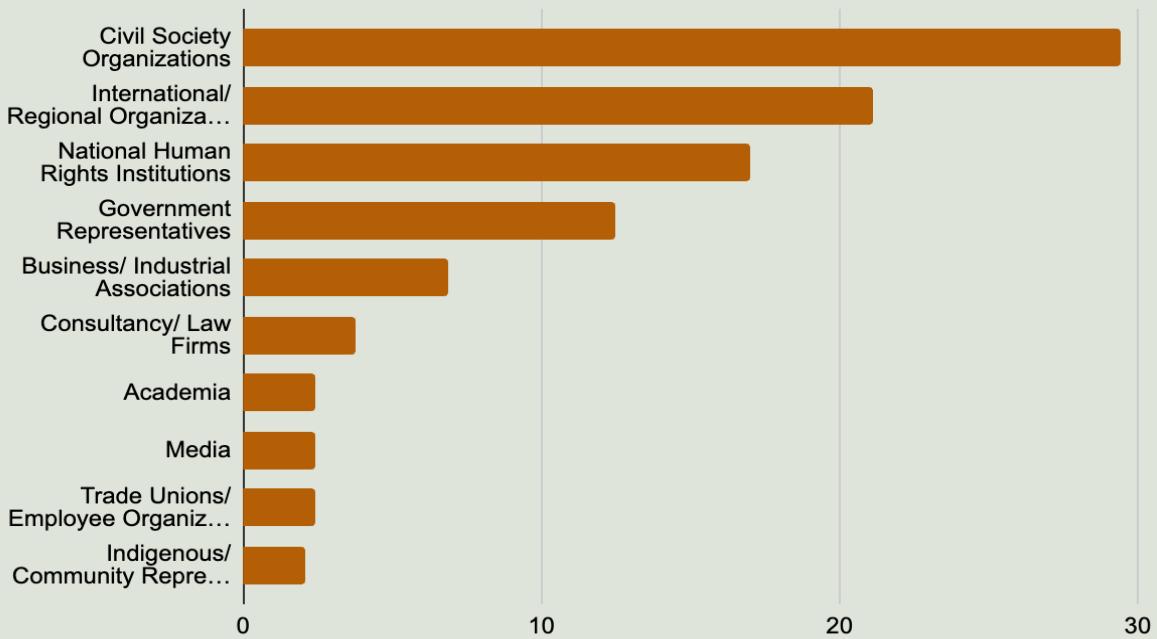
Breakdown of participants by gender

Biggest
Delegations

1. Ghana
2. Kenya
3. Uganda
4. Nigeria
5. South Africa
6. Ethiopia
7. Democratic Republic of Congo
8. Tanzania
9. The Gambia