

Data for Governance Alliance Policy Brief No.24

Business and Human Rights in Africa:
Mirroring Existing Principles with African
Realities

PraiseGod Joseph

10 January 2024



Data for Governance Alliance
African voices for African policy



Funded by the
European Union



PraiseGod Joseph is a dedicated human rights lawyer with an unwavering commitment to advocating for justice, the rule of law, good governance, and equality. With more than 7 years of experience in the field of Human Rights, PraiseGod has fearlessly researched, litigated, and been actively involved in cases involving Indigenous communities, business and human rights, environmental law, access to justice, discrimination, striving to protect the rights of refugees and asylum seekers, and climate justice. Her litigation expertise cuts across from National to Regional Courts, in her current role as Programme Officer - Human & Peoples Rights at the Pan African Lawyers Union she leads the litigation department in several cases before the African Court on Human and Peoples Rights (AfCHPR) and the East African Court of Justice (EACJ). Alongside her work, PraiseGod leverages her profound insights and expertise to write articles that shed light on pressing human rights issues in Africa. Through her articulate and thoughtful publications, she strives to ignite conversations and inspire action towards a more equitable and compassionate world. PraiseGod's roles as an advocate and writer exemplify her commitment to effecting meaningful change both inside and outside the courtroom. She holds a master's degree (LLM) from the University of Dar-es-Salaam, and a Post Graduate Diploma in Law from the Law School of Tanzania.

E-mail the author: millen.pj@gmail.com

Introduction

This article examines the legal framework for business and human rights from an African Perspective. It begins with an overview of the concept of business and human rights, followed by an examination of the existing laws regulating this intersection in Africa. It then delves into the various approaches taken towards recognizing the importance of business and human rights within the African context, while also addressing the limitations inherent in promoting these rights within current frameworks. With a particular focus on selected African states, the article reinforces the critical necessity of adopting an African binding treaty on business and human rights. This article further unpacks the challenges of regulating corporations in Africa, noting the limitations in Africa but mostly the fact that the corporation's parent operations are in the global north. From this perspective, this article considers the need to adopt an African business and human rights treaty that takes cognizance of the situation in Africa to ensure an effective approach towards enforcing business compliance with human rights obligations.

Overview of Existing Frameworks on Business and Human Rights

In the past few decades, the world has experienced a shift in the privatization of the economy and liberalization of trade which has evidenced that state action and obligations do not suffice to protect human rights. As this trend is growing globally, Africa has the front seat in this change with its growing speed in promoting foreign investment for economic growth, especially in natural resources.¹

African states have opened their doors to investors for economic development, but they have unfortunately failed to set standards and mechanisms to regulate and monitor corporate responsibility to respect human rights throughout their operations. In the rising cases of human rights violations by corporations in the last 40 years, there has been the adoption of different soft laws that aim to encourage voluntary adherence to human rights by corporations but also set principles that states can adopt at the national level to ensure the protection of human rights.

International Framework on Business and Human Rights

The quest for enforcing corporate responsibility to protect human rights was first championed by the Organization for Economic Cooperation and Development (OECD) which adopted the OECD Guidelines for Multinational Enterprises in 1976.² However, these OECD Guidelines fell short as they did not address the issue of the human rights obligation of corporations. To address specific challenges identified such as employment standards and labour rights, the International Labour Organization (ILO) adopted a Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

¹ O. Abe & D. Olawuyi (eds), *Business and Human Rights Law and Practice in Africa*, in O. Abe & D. Olawuyi, "Introduction - Business, Human Rights, and the United Nations Guiding Principles: The Search for a Good-fit Approaches in Africa", Edward Elgars Publishing limited, UK, 2022, 2.

² Policy Brief on the OECD Guidelines for Multinational Enterprises, 2001 (<https://www.oecd.org/investment/mne/1903291.pdf>).

In understanding the need for immediate action by the international community to address the overall issues of business and human rights, the United Nations adopted the United Nations Global Compact (UNGC). Under the UNGC, corporations agreed to make voluntary reports on compliance with the principles it set forth. This became the first soft law that incorporated corporate responsibility among others on issues of human rights. However, though it became the first soft law that recognised corporate responsibility to respect human rights, there was no binding mechanism to make corporations accountable for non-compliance with the set principles.³

Recognizing the limitations of the UNGC, the UN Sub-Commission for Human Rights developed the Draft Norms on the Responsibility of Transnational Corporations, and Other Business Enterprises (Draft Norms).⁴ The draft norms were structured to create a binding obligation to corporations to respect human rights in line with the existing international human rights instruments. They provided comprehensively relevant rules to subject corporations' activities in relation to human rights.⁵

Though the draft norms provided hope to the international community towards establishing an obligation upon corporations to respect human rights, the international business community objected to the draft norms because the obligation to protect and enforce human rights standards provided for by different international human rights instruments is solemnly the responsibility of states and not corporations.⁶

These draft norms did not gain recognition from different institutions such as the International Chamber of Commerce and the International Organization of Employers. Apart from the independent institutions, some states also criticised the draft norms arguing that they were vague and failed to distinguish state obligations from the responsibility placed upon corporations, thus failing to meet the very objective they were established for.⁷ Though the said draft norms did not receive international recognition and support, the issue of business and human rights was still a very important subject that had to be regulated.

It is with this background that in 2005, the UN Secretary-General appointed a special representative on the issue of business and human rights, Prof. John Ruggie (Special Representative), to conduct a baseline study on business and human rights. As part of the extended mandate of the Special Representative, the Human Rights Council gave him the mandate to adopt guidelines towards business and human rights, which resulted in the birth of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011.⁸

³ S. Deva & D. Bilchitz (eds), *Building a Treaty on Business and Human Rights: Context and Contours*, in D. Bilchitz, *"Introduction: Putting Flesh on the Bone: What Should a Business and Human Rights Treaty Look Like?"*, Cambridge University Press, UK, 2017, 5.

⁴ N. Rosemann, *the UN Norms on Corporate Human Rights Responsibilities: An Innovating Instrument to Strengthen Business' Human Rights Performance*, Friedrich Ebert Stiftung, Berlin, 2005, 6.

⁵ Ibid.

⁶ A.O. Ogunranti, *Voices from Below-Africa's Contribution to the Development of the Norm of Corporate Responsibility to respect Human Rights*, Schulich School of Law, Dalhousie University, PhD Dissertation, 2022, 16.

⁷ Ibid.

⁸ O. Abe & D. Olawuyi (eds), *Business and Human Rights Law and Practice in Africa*, in O. Abe & D. Olawuyi, *"Introduction- Business, Human Rights, and the United Nations Guiding Principles: The Search for a Good-fit Approaches in Africa"*, Edward Elgars Publishing limited, UK, 2022, 10.

The UNGP provided an overall framework for states and corporations to protect, respect, and remedy issues of human rights. These UNGP provisions received wide acceptance and recognition by the international community and became an authoritative guide to issues of business and human rights. As stated in the report by the Special Representative, these UNGPs were not intended to be the final word on the regulation of business, but rather the beginning of establishing a common global platform for action on which cumulative progress can be built, step-by-step without foreclosing any other promising longer-term developments.⁹

The UNGP has received widespread recognition and acceptance as a regulatory framework on business and human rights that states should implement in ensuring corporations respect human rights and victims receive appropriate remedies for the violations. While not legally binding, the UNGPs offer extensive provisions mandating corporations to respect and protect human rights in all their operations.

As the UNGP continue to gain ground and acceptance, the remaining challenge is on the implementation of the laid down principles by states and corporations specifically in the African context where the states' level of applications of the said principles remains unscratched. Understanding how the said principles guide how states and corporations should respect and protect human rights, an African binding treaty on business and human rights will enable a more effective and better governance on promoting investment, and economic growth while considering respect for human rights.

As explained above, the UNGP has received acceptance and contributed significantly to the issue of business and human rights which has led to the discussion on the development of the business and human rights Treaty.

In 2014, the UN Human Rights Council passed Resolution 26/9 establishing the open-ended intergovernmental working group (OEIGWG) on transnational corporations and other business enterprises for human rights. The OEIGWG mandate is to develop a legally binding instrument to regulate the activities of transnational corporations and other businesses for human rights.¹⁰

Since the establishment of OEIGWG, four drafts of the Treaty have been developed. Among its limitations, was the first draft of the Treaty (Zero draft) lack of adopting an International Court with jurisdiction over business and human rights. Upon identifying the limitations, the OEIGWG in 2019 developed the revised draft of the Treaty which addressed the challenges identified.¹¹

However, after the 2019 revised draft, the OEIGWG developed a second revised draft in 2020 and a third

⁹ Ibid.

¹⁰ <https://ishr.ch/latest-updates/hrc52-next-steps-toward-a-binding-treaty-on-business-and-human-rights/> (accessed on 6/12/2023).

¹¹ https://www.law.georgetown.edu/transnational-business-center/blog/an-overview-of-the-proposed-legally-binding-instrument-to-regulate-in-international-human-rights-law-the-activities-of-transnational-corporations-and-other-business-enterprises/#_ftn18 (accessed on 6/12/2023).

revised draft in 2021. Among the provisions in the third draft, is the requirement for states to establish a monitoring mechanism that aims to ensure effective implementation.¹²

Key stakeholders' comments on the draft Treaty highlight concerns about its limited scope in addressing crucial issues like the environmental and climate impacts of business, labor rights, and insufficient protection and support mechanisms for victims. This identifies the draft as a setback for ongoing efforts to establish a binding Treaty.¹³

In the 9th Ordinary session of the UNHRC, the third draft Treaty was tabled and key stakeholders such as CSOs raised concerns about the existing draft that required amendment to be able to adopt a Treaty that responds to the existing need in the protection of business and human rights. The conclusion on the draft Treaty in the session was for the OEIGWG to revise the draft and share the same in the upcoming 55th session in March 2024.¹⁴

Therefore, the issue of business and human rights remains without a binding instrument that can make states accountable for protecting human rights, corporate responsibility to respect human rights and establishing effective remedies for victims.

Africa's Regional Framework on Business and Human Rights

As at the international level, the regional level provides for binding instruments on human rights. The main African regional human rights instrument adopted is the African Charter on Human and Peoples Rights (The African Charter).¹⁵

The African Charter was adopted in 1981 and entered into force in 1986 providing for human and people's rights. These rights have over the years been enforced and violations of such rights by states have been challenged in both national and regional courts. Among the human rights that are linked with the concept of business and human rights is the right to a safe and clean environment as provided for under Article 24.¹⁶

Acknowledging that the Charter only places an obligation upon states to implement the existing provisions, the African Commission Working Group on Extractive Industries, Environment and Human Rights Violations in Africa is given the mandate to examine the role of corporations in human rights violations and how they can be made liable for the violations occasioned by their operations as per the Charter.¹⁷

¹² Ibid.

¹³ <https://www.fidh.org/en/issues/business-human-rights-environment/business-and-human-rights/un-binding-treaty-position-2023> (accessed on 6/12/2023).

¹⁴ Ibid.

¹⁵ <https://africanlii.org/akn/aa-au/act/charter/1981/human-and-peoples-rights/eng@1981-06-27> (accessed on 5/12/2023).

¹⁶ O. Abe, *the State of Business and Human Rights in Africa*, Friedrich Ebert Stiftung, 2022, Ethiopia, 7.

¹⁷ Ibid.

Apart from the establishment of the working group, the African Union summit passed a resolution in 2012 to require a human rights-based approach to natural resource governance. This resolution, among others, requires states to make corporations accountable for their violations in the extractive industries, such as environmental pollution.¹⁸

Apart from the African Charter, in 2019 the African Union adopted a draft policy framework on business and human rights (AU draft policy).¹⁹ This policy draws much precision from the UNGP including some wording of its content. The AU draft policy not only defines key terms related to business and human rights but also emphasizes the crucial aspect of establishing the state's duty to protect and businesses' responsibility to respect human rights. Additionally, it acknowledges the importance of providing remedies for individuals whose rights have been violated.²⁰

Further, the AU draft policy identifies categories of issues by the corporations that amount to human rights violations including environmental pollution, forced displacement, and corruption. The AU draft policy intentionally retains much of the content from the guiding principles to maintain consistency with the UNGP, which has already gained acceptance in the international community. This aligns with the duties and responsibilities that most states of origin for foreign corporations have accepted and committed to implementing.²¹

Furthermore, the policy provides for elements that states should meet to ensure adherence to standards set towards meeting their obligation to protect human rights. This involves the enactment of laws and the establishment of institutions to monitor and regulate corporate activities. It also requires the presence of institutions that offer adequate remedies for communities impacted by corporate actions. Additionally, a human rights-based approach to state-investor contracts is necessary, with the inclusion of human rights clauses that bind corporations to respect human rights. Violations of these clauses must prompt swift action.²²

With the above initiatives taken in Africa, business and human rights continue to face challenges as the region lacks a binding instrument in line with African perspective. States are thus urged to adopt national baseline assessments and national action plans on business and human rights that will domesticate the principles stipulated in the UNGP and the AU draft policy to create a binding force at the national level. This step will enable the realization and enforcement of the principles of business and human rights at the national level.

¹⁸ <https://africanlii.org/akn/aa-au/statement/resolution/achpr/2012/224/eng@2012-05-02> (accessed on 05/12/2023).

¹⁹ O. Abe, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions*, Routledge Publisher, London, 2022, 26.

²⁰ O. Abe & D. Olawuyi (eds), *Business and Human Rights Law and Practice in Africa*, in R. Adeola & J. Ikubaje, "A Regional Policy Framework on Business and Human Rights in Africa", Edward Elgar Publishing Ltd, UK, 2022, 276.

²¹ *Ibid.*

²² O. Abe, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions*, Routledge Publisher, London, 2022, 26.

Although only two states have adopted the national action plan (that is Kenya and Uganda) to ensure corporations respect human rights, there is still hope that other states will eventually follow suit. For instance, nine other states have already initiated the process to adopt the same in their respective countries.²³

Nevertheless, given that both the UNGP and the AU draft policy are non-binding soft laws, their complete implementation hinges on their integration into national legislation. This underscores the continent's anticipation of the adoption of a binding Treaty on business and human rights, mirroring existing instruments like the African Charter.

For there to be economic development, through the promotion of investors, and an assurance of an end to the ongoing human rights violations by corporations in Africa, enactment of a binding AU Treaty on business and human rights is imperative.

Missing Narrative to African Realities in Existing Laws

The UNGP contains three pillars: state duty to protect human rights, corporate responsibility to respect human rights, and access to remedy for the victims. These UNGPs have placed a primary obligation on the corporation to respect human rights, however, the same can only be attained in a truly democratic state that can ensure corporate accountability. However, the democratic situation, or lack thereof, in African states limits the accountability of non-state actors to human rights issues and further impedes the ability to ensure effective remedies.²⁴

While much of the debate on issues of business and human rights has been made by the international community, a significant proportion of instances where there has been a serious violation of human rights by corporations has occurred in Africa.

The evidence of these corporate violations in Africa often stems from actions by states that grant considerable leeway to transnational corporations, aiming to attract investment across various sectors to foster economic growth and development. However, this leeway granted by the African states has resulted in transnational corporations holding remarkable and unmatched power and influence legally, politically, and economically.

The overreliance on these corporations for the growth of economies has further granted them massive contract negotiation powers over the state's powers. The states are ultimately disarmed which limits their power in holding the corporations accountable for violations occasioned by their operations.

²³ H.C. Rivera, National Action Plans on Business and Human Rights: Progress or Mirage, *Business and Human Rights Journal*, Vol 4 Issue 2, Cambridge University Press, 2019, 213-237.

²⁴ J. Ruggie, *Protect, Respect & Remedy: A Framework for Business and Human Rights*, United Nations, 2005 <https://www.researchgate.net/publication/24090059> (accessed on 15/10/2023).

By design, the UNGP are voluntary and thus requires states to adopt national action plans as previously analysed. The voluntary nature of the UNGPs in Africa allows both states and corporations to hesitate in implementing essential measures and initiatives to safeguard human rights in corporate activities.

African states are faced with increasing poverty and declining economies, worsened by the plunge in global commodity prices, COVID-19, economic crises etc., which has seen them prioritizing investments over human rights principles.²⁵ Arguably, this has created a desperation by governments to attract foreign direct investment. However, these investments have also come with significant violations of civil, political, social, economic, cultural, and environmental human rights.²⁶

Due to the above circumstances, African states that have abundant resources like minerals, oil, and gas have faced numerous adverse effects from ongoing operations across various sectors. These include environmental impacts such as oil spills and gas discharges leading to water pollution, climate change, and air pollution. These issues persist due to the absence of a binding legal framework that holds corporations accountable for respecting human rights.

Apart from the above-identified problem that has a direct correlation with the corporations' extractive activities, the corporations have occasioned other severe human rights violations. These violations include abuse of labour rights, land grabbing, forced displacement, enforced disappearances, and killings. In these violations, the corporations act by themselves, or with support from different government entities.

Protection of Business and human rights in Africa is also tainted with the lack of effective remedy which is a cornerstone of ensuring every individual enjoys their human rights. Different international human rights instruments and the UNGP have also recognized that the right to an effective remedy is to ensure corporate accountability and thus requires states to take the necessary measures for victims of corporate abuse to have access to an effective remedy. In recognizing the need for an effective remedy, the UNGP went further to not only recognize judicial mechanisms but also non-judicial mechanisms.²⁷

In the African context, there exists an ongoing criticism of the fact that most judiciaries in Africa are not effective, fair and just avenues for protecting human rights due to their lack of independence and corruption.²⁸ Citizens have lost trust in them due to the lack of judicial independence, which is affected by among others, corruption and political influence. When analyzing the UNGP concerning access to remedies

²⁵ D. S. Olawuyi & O. Abe, *Business and Human Rights Law and Practice in Africa*, in O. Abe & D. S. Olawuyi, "Introduction-Business, human rights and the United Nations Guiding Principles: The search for good-fit approaches in Africa", Edward Elgar Publishing Limited, USA, 2022, 7.

²⁶ O. Abe, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions*, Routledge Publisher, London, 2022,30.

²⁷ C. Adrij & M. Anahita, *United Nations Guiding Principles and the Business and Human Rights in India*, Centre for Legislative Research and Advocacy, 2018, 5.

²⁸ *Human Rights and Traditional Justice System in Africa*, United Nations Human Rights Office of the High Commissioner, 2016, 49.

for victims of human rights violations by corporations, it imposes an obligation on states to investigate these violations, hold perpetrators accountable, and provide redress for the victims affected by such violations.²⁹

Though the UNGP provide measures for effective remedies for victims, the African judicial system is tainted with a judiciary that is not independent, delays in prosecution, high costs of instituting cases, unnecessary public holidays, the inability to secure legal representation, lack of training, and lack of expertise and support for state prosecutors to investigate corporate-related human rights abuses.

These ongoing challenges within the judiciary in Africa have resulted in victims of corporate-related human rights abuse seeking remedy in the foreign jurisdictions where the corporations originate from. An example is the case filed at the British High Court by Tanzanian communities, as discussed further below.

There is a need for African states to make necessary reforms in the judicial system to ensure victims of human rights violations by corporations can engage in national systems and obtain the remedies sought for the violations they have suffered.

Apart from the judicial mechanism, the National Human Rights Institutions (NHRI) have a critical role to play as non-judicial organs in monitoring business and human rights. The NHRIs are faced with multiple challenges that impact their capacity to effectively address business-related human rights violations. These challenges include low levels of compliance by states, weak enforcement mechanisms of decisions from NHRIs, and impartiality of NHRI due to political interference from the executive arm of the state as NHRI officials in some states are political appointees of the president.³⁰

Furthermore, the NHRI mandate to act against the corporation is highly limited by the fact that the parent companies of most corporations are usually domiciled in different jurisdictions (usually developed states) with only subsidiaries, branches, or representative offices, that the parent companies still have control over, hosted in African states. The NHRIs unfortunately cannot deal with business and human rights cases involving multiple jurisdictions.³¹

In this regard, the first step to be taken is empowering the NHRIs to have an extended mandate that transcends jurisdictions on issues of business and human rights, especially against corporations originating from the OECD states.

There are other limiting factors to the NHRI mandate, such as the NHRI working with a narrow definition and

²⁹ O. Abe, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions*, Routledge Publisher, London, 2022,91.

³⁰ R. Mares (ed), *the UN Guiding Principles on Business and Human Rights: Foundations and Implementation*, in M. Brodie, "Pushing the Boundaries: The Role of National Human Rights Institutions in Operationalising the 'Protect, Respect and Remedy' Framework", Martinus Nijhoff Publishers, 2012, 257.

³¹ *Ibid.*

understanding of human rights which does not include the concept of business and human rights, or the obligation of corporations to respect human rights.

Despite numerous challenges faced by the NHRIs in playing a pivotal role in ensuring state and corporations take responsibility to respect and protect human rights, the Ghana NHRI can be taken as a casing example of initiatives taken towards ensuring the promotion of business and human rights. In 2006, the Ghana Commission on Human Rights and Administrative Justice (GCHRAJ) launched a national inquiry into the human rights of mining communities.³²

Through this inquiry mission, the GCHRAJ produced a comprehensive report that documents the ongoing violations by the mining companies. The report identified government inaction due to failure to monitor and regulate the corporation, contributing to a loss of faith among communities in the government agency, among other consequences. Further, the report showed the clear disregard by the companies to respect human rights in their operations.³³

The report from the Commission contributed to the ongoing mining reforms in Ghana which is a casting example of the role other NHRIs in Africa can play towards reforms in their states, in contributing to effective state and corporation responsibility towards respecting and protecting human rights in their operations.

Country Case Study

The United Republic of Tanzania: Mining sector

Tanzania is one of the leading African states in mining exploration and the mining sector contributes to 10.2% of the Gross Domestic Product. Several reports have been made on the ongoing violations by the mining companies. These violations include land grabbing, pollutions, and killing.³⁴

A case example is the violations in North Mara Gold Mine. For years, communities surrounding the North Mara Gold Mine have endured issues such as land grabbing and air pollution. Barrick's North Mara Gold Mine came under scrutiny for its involvement in contaminating the Tigite River, which feeds into the Mara River, due to a burst pipe originating from the mine.³⁵

Also, in 2020 a case was filed challenging the actions of the security officers in North Mara which resulted in the killing of community members. This case was filed at the British High Court against the Barrick Gold Mine

³² R. Mares (ed), the UN Guiding Principles on Business and Human Rights: Foundations and Implementation, in M. Brodie, "Pushing the Boundaries: The Role of National Human Rights Institutions in Operationalising the 'Protect, Respect and Remedy' Framework", Martinus Nijhoff Publishers, 2012, 266.

³³ Ibid.

³⁴ <https://www.trade.gov/country-commercial-guides/tanzania-mining> (accessed on 12/10/2023)

³⁵ <https://www.theguardian.com/environment/2019/jun/18/murder-rape-claims-of-contamination-tanzanian-goldmine> (accessed on 12/10/2023)

Corporation.³⁶

Nigeria: The oil sector

Nigeria is one of the leading African states in oil exploration. Though oil exploration in the Niger Delta in Nigeria is one of the key contributions of GDP in Nigeria, the communities in the area have experienced the negative effects of the oil exploration, mainly environmental pollution, which has resulted in serious health complications for the Ogoni community. The Ogoniland community have experienced environmental and health challenges resulting from the oil spillage and gas flaring by the Shell Petroleum development company. This company has over the years conducted exploration of oil and gas in the Niger Delta contributing to health problems such as cancer, blood disorders and skin diseases.³⁷

The ongoing operations and their repercussions are not foreign issues to the government of Nigeria, however, reports have shown no action taken by the government to restrict such operations or to take measures to make the shell company liable for the violations and provide sufficient remedy to the victims.³⁸

Another case example is the case filed by Okpabi in the UK Court challenging the violations by the Royal Dutch Shell Company in Nigeria.³⁹ In this case, the UK Court held that it has jurisdiction to hear the matter brought by the Nigerian challenging the violations of the subsidiary company in Nigeria.

Democratic Republic of Congo: Mining sector

The lack of an effective judicial mechanism on corporate responsibility for business and human rights-related violations has been detrimental to victims to obtain effective remedies, and this can be well evidenced by the Glencore PLC (Glencore) suit in the US and UK. This is a case example of the lack of an effective judicial system in the African states and the inability of African states to make companies accountable for business human rights-related violations.⁴⁰

On separate occasions, Glencore one of the huge mining corporations conducting its activities in several African states such as the Democratic Republic of Congo was sued in the US and UK by the government on the violations it occasioned in African states through its operations.

As a result of the cases, the Company was ordered in both states to pay different amounts as a fine for the violations (\$428.5 million in the US and \$1.1 billion in the UK).⁴¹ Though Glencore has been made accountable

³⁶ <https://www.theguardian.com/environment/2019/jun/18/murder-rape-claims-of-contamination-tanzanian-goldmine> (accessed on 12/10/2023).

³⁷ O. Abe, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions*, Routledge Publisher, London, 2022, 7.

³⁸ *Ibid.*

³⁹ *Okpabi and others v. Royal Dutch Shell Plc and another* (2021) UKSC 3 on appeal from (2018) EWCA Civ 191.

⁴⁰ <https://icar.ngo/accountable-for-corruption-but-not-for-human-rights-abuse-the-case-of-glencore/> (accessed on 12/10/2023).

⁴¹ <https://www.reuters.com/legal/government/glencore-appear-court-us-uk-over-corruption-probe-2022-05-24/>

in the said jurisdictions for the violations occasioned in Africa, the challenge remains that the business and human rights-related violations were done in Africa and thus the victims of such violations have not received the remedies deserved due to the inability of the company to be sued within the African states jurisdictions.

With the above concerns and constant violations by companies, it is imperative to have a binding document that reflects the African realities towards promoting business and human rights. A framework tailored to the African context would align with the objectives of the African Charter on Human and Peoples' Rights, aiming to establish rights that reflect the specific landscape and requirements of African populations.

Conclusion

There is a need for the development of a binding African regional instrument on business and human rights. Such a treaty will serve as a response to enforce state and corporate responsibility for the protection of human rights. This article has provided insight into the areas which need to be addressed for the promotion of business and human rights.

As the adoption of this treaty unfolds as a process, the first step involves African states collectively adopting national action plans and legal frameworks. These frameworks will establish standards for corporations to follow in their operations and ensure effective remedies for victims of corporate violations.

END



Data for Governance Alliance

African voices for African policy

