

Implementing Business and Human Rights for Sustainable Development under Nigeria's Domestic Legal Regime

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Abstract: *Protecting business and human rights in Nigeria is challenging in view of the national insecurity and violence. The study undertook an overview the United Nations' Guiding Principles on Business and Human Rights. It examined the legal regime of business and human rights under Nigerian domestic laws. It also identified and appraised challenges to the implication of the UNBHR in Nigeria. The study adopted a doctrinal method, adopting primary and secondary sources of information. The primary source comprised the Constitution of the Federal Republic of Nigeria 1999, Arbitration Act 2004; Nigeria Export Import Promotion Act 2004, Labour Act 2004, Trade Disputes Act 2004 to mention a few and the case law. The secondary source included textbooks, journal articles, conference proceedings, newspapers, and the internet. The study found that the UNGP are comprehensive and protect business and human rights of persons, corporate bodies, and the government. Findings further revealed that the domestic laws in Nigeria handshake the UNBHR because their provisions are adequate and sufficient to protect business and human rights. There are legal and institutional challenges to the full implementation of UNBHR due to weak implementation of domestic laws, rule of law, pervasive corruption, ignorance, unemployment, and poverty. The paper concluded with a recommendation that for business and human rights to be protected, sustainable battles must be fought against corruption, poverty and insecurity to promote good governance.*

Keywords: Human Rights, Business Rights, Rule of Law, Foreign Direct Investment, Good Governance, Sustainable Development Goals

1. Introduction

Business and human rights concerns in corporate management have become necessary in view of the rapid expansion of private and government sponsored businesses operating across and within many countries due to globalisation. These rights have particularly become important within the increasing realisation that human beings as workers, consumers and operations of businesses are in a

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precarious position occasioned by technology and globalisation.¹ Furthermore, this rapid expansion in private businesses have social and economic effects, both positive and negative on the people.² Digitalisation, globalisation and technology have impacted greatly on people's business rights especially in the areas of privacy, data protection and copy right. While the impacts are pervasive in Sub-Saharan Africa, these vary by countries and even within a country.³

The Guiding Principles focused on the States' existing duties to "respect, protect and fulfill rights and fundamental freedoms," emphasized obligation of State Parties and corporate organizations. The Protocol assumes that Members States have legal and institutional frameworks for achieving these rights within their enclaves and regulating the operations of stakeholders for sustainable economic growth of the nation and welfare of the citizens.

The UN Guiding Principles on Business and Human Rights (UNGPHR) are divided into three parts,⁴ namely: the State duty to protect business and human rights (Articles 1 – 10); Corporate responsibility role (11 – 24) and accessing remedies to the breach (25 – 31).

The UNGPHR is addressed to the States and the corporate bodies, detailing ways of preventing rights abuse and getting remedies upon infraction. It strives to ensure global best practices in business relations, with transnational corporations and rapidly developing municipal business. State parties, therefore, have the obligations to ensure the UNGP are enforced and remedies are accessed based on their domestic laws on business and human rights.

Nigeria, as a market leader in Africa, has the duty to ensure that these principles which foster business best practices are implemented, by translating them into roadmap through which municipal laws could offer protection to businesses and individuals dealing with them.⁵ This study undertook an overview of the UNGP, examined the legal framework for human and business rights and appraise

¹ UNDP (United Nations Development Programme), 'The impact of digital technology in human rights in Europe and Central Asia: Trends and challenges related to data protection, artificial intelligence and digital technology issues (Istanbul, UNDP, 2023). Accessed from <<https://www.undp.org>> on 27 March, 2024

² Mariete van Huipistee, Victor Ricco, Laurei Ceresna-Chatuwedi. 'How to use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy Guide for Civil Society Organisation' (Somo, Cedha and Cividien, India, 2012).

³ Andar Abdychev and Others 'Digitalisation in Sub-Saharan Africa Regional Outlook: Sub-Saharan Africa (International Monetary Fund, April 2020)

⁴ UNHR, Training Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (New York, 2011).

⁵ UNHR (Note 4)

constraints to their implementation as an international instrument in Nigeria.⁶

2. Overview of United Nations Guiding Principles

2.1 Brief History

The UNGP are a set of global standards on business and human rights which was endorsed by the UN Human Rights Council in 2011. It provides guidelines for States and companies to forestall business and human rights abuses in their operations. Rapid developments in globalisation, digitalisation and technology have necessitated that human rights would be central to the operation of the corporate bodies. These also presupposed that the interaction between States and corporate bodies would continue to impact negatively in the quiet enjoyment of individual rights.⁷ The UNGPBHR was endorsed based on the assumption that corporate business organisations affect the human rights of various stakeholders in the private and public sectors of the economy. Positive impacts could include access to employment, improvement in public services and donation of corporate goodwill projects,⁸ while negative impacts involve environmental pollution, casualisation and underpayment of workers, eviction of communities from their ancestral homes and insensitivities to the call for improved safety precaution.⁹ In recent times the interface between business and human rights, and criminal duties and obligation has provoked a lot of social tensions especially in the Nigeria's Niger Delta.¹⁰

Efforts to develop the UNGPBHR could be traced to the then Special Representative of the UN Secretary General, Professor John Ruggie following his extensive investigation and consultations with business organizations, civil society groups, State Parties and the people whose human rights were abridged by the corporate groups. The Human Rights Council set up a UN Working Group on Business and Human Rights to promote the dissemination and implementation of the principles.¹¹ The Group worked on States to develop National Action Plans

⁶ UNDP (United Nations Development Programme) (Note 1)

⁷ *ibid*

⁸ OHCHR, 'The UN Guiding Principles on Business and Human Rights: An Introduction' (n.d). accessed from "<<https://www.ohchr.org>> on 6 March, 2024

⁹ (Aidar Abdchev and others (n3)

¹⁰ Aisha Dawak Farouk and Yemi Widowaty, 'National Resources Conflict in the Niger Delta Region of Nigeria: ADR as an Option' (January 11, 2022). Available at SSRN: Accessed from <https://ssrn.com/abstract=4006408> on 19 April 2024

¹¹ OHCHR, 'National action plans on business and human rights' (August 2021). https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/uganda_approved-national-action-plan-on-business-and-human-rights_august-2021.pdf/ > accessed 19 April

(NAP) on Business and Human Rights. Each State was mandated to enact an NAP for the dissemination and implementation of the UNGPs.¹²

2.2 Obligations of Stakeholders under the UNGP

Obligations of the stakeholders to observe business and human rights are stated in the Guiding Principles in form of a framework which consists of three pillars, namely: duty of the State to protect human rights, secondly, the obligation of the corporate organizations to respect human rights and thirdly, access to remedies for victims of business-related abuse.¹³ The UNDP clearly identifies and states duties of States and responsibilities of the business entities. The rules are applicable to all States and all companies, whatever the size in every sector.

2.2.1 State Obligations

Article 1 – 10 capture the obligations of States in ensuring the protection of businesses and human rights globally. The UNGPBHR emphasizes in its first pillar the duty of the State to ensure that human rights are protected as part of international human and corporate business rights law. This requires States to respect, protect and fulfill individual human and corporate business rights within their territories. This covers the protection of individuals against third party abuse, including business enterprises.¹⁴ States may fail in this duty if human rights abuses are committed by them, or they tolerate business entities within their jurisdictions to abuse rights of individuals. In Sub-Sahara Africa, States have been reported to flagrantly trampling on human rights of the individuals.¹⁵ Reports have indicated that human dignity is debased by the governments and corporations, due to the weaknesses of the citizens to stand up and protect them, in the face of poverty, unemployment, lack of access to critical resources and infrastructures.¹⁶ This situation is being compounded by unlawful attacks by armed

2024.

¹² *ibid.*

¹³ HC Scheu and J Brodska, 'The UN Guiding Principles on Business and Human Rights and their implementation in Germany and the (Czech Republic)' 290/bsp *Bialostocki Studia Prawnicze*, DOI 10.15290/bsp 2019 24.02.01. https://www.researchgate.net/publication/334290843_The_UN_Guiding_Principles_on_Business_and_Human_Rights_and_their_Implementation_in_Germany_and_the_Czech_Republic accessed 9 March 2025.

¹⁴ Art 1, UN Guiding Principles on Human and Business Rights.

¹⁵ Joseph Mario Royo, Celia Murias Morcillo, Ivan Navarro Millian, 'The Human Rights Situation in Sub-Sahara Africa. Progress, Violations, and Remaining Challenges in Times of Pandemic, *IDEES-Revistas de termes contemporanis (2021)* 6 <https://revistaidees.cat/en/the-human-rights-situation-in-sub-saharan-africa-progress-violations-and-remaining-challenges-in-times-of-pandemic/> accessed 27 March 2024..

¹⁶ Scott Martin, *A Baseline Assessment on Business and Human Rights in Africa.* 'From the First Decade to the Next. UNDP 2022 < <https://www.undp.org/sites/g/files/zskgke326/files/2022-10/>

groups and government forces in some of these countries' repression of freedom of expression and assembly; arrests and detention; refusal to obey the court order and breakdown of the rule of law.¹⁷

States are under obligation to ensure that businesses in their jurisdiction have respect for and ensure the observance of human rights in their operations.¹⁸ Although under international human rights law, no State is obliged to control the extraterritorial activities of businesses established in their territories, nor is it prohibited from doing so, the UNGPBHR has saddled States with this responsibility.¹⁹ Hence, some international human rights' activists have made cases for policy change, in view of the fact that some States are either in support or own some of these businesses.²⁰

The UNGP requires States to implement municipal laws in businesses with to respect human rights and assess their adequacy in that regard.²¹ In its implementation guidelines, the UNHRC notes that the inability of the State to make business entities' respect human rights is a breach of the law which hampers integrated national development.²² The laws pertaining to human and business rights in Nigeria include: CFRN 1999,²³ Companies and Allied Matters Act, 2020,²⁴ Labour Act 2004;²⁵ Trade Disputes Act 2004;²⁶ transparency and fiscal responsibility laws such as Economic and Financial Crimes Act 2004;²⁷ Independent and Corrupt Practices Act (2004),²⁸ Procurement Act 2004²⁹ etc. The duty of the State is to ensure that the laws are enforced to cater for the interests of the employees, consumers and corporate organizations. States should provide

Baseline% 20Assessment% 20BHR% 20Report% 20EN% 20-% 20web.pdf> accessed 19 April 2024.

¹⁷ Amnesty International, 'Africa 2022' *Africa Regional Overview* (June 2021).<https://www.amnesty.org/en/wp-content/uploads/2021/06/pol1001102004en.pdf/> accessed 27 March 2024.

¹⁸ UNGP Art. 2

¹⁹ Scott Martin (n16)

²⁰ UNHR, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect", "Respect" and "Remedy" Framework' (New York, 2011).

²¹ Art. 3

²² See note 9

²³ Cap C23 Law of the Federation of Nigeria (LFN) 2004

²⁴ Cap 123 LFN 2004

²⁵ Cap L1 LFN 2004

²⁶ T14 LFN 2004

²⁷ Cap P4 LFN 2004

²⁸ Cap C31 LFN 2004

²⁹ Cap 410 LFN 2004

ample protection for the stakeholders in term of non-discriminatory access to jobs, environmental protection, access to movable and immovable property etc.

The United Nations Guidelines for Business and Human Rights (UNGPBHR) further encourage States to prevent abuses of human rights in business entities in which they have ownership/controlling interest through due diligence in the protection of human rights.³⁰ This confers advantages on States as for additional responsibilities in the implementation of policies, legislations and regulations that foster respect for human rights.³¹

Other duties of the State under the UNGPBHR are respect for international human rights, fulfilment of contract obligations with business organisations and individuals.³² In commercial transactions, States should encourage business entities to have respect for human rights,³³ transparent in contracts, procurement and tariff payment to prevent abuses of business rights.³⁴ The Government's duties to protect lives and properties include: providing security, resolving conflicts with the business organizations and the communities, providing support to businesses, to reducing abuses, especially those related to gender and sexual violence.³⁵ The Government is also required to withdraw public support and services from an organization which violates human and people's rights.³⁶

A cardinal obligation of the State is to ensure a domestic policy that handshakes human rights obligations specified in the UNGPBHR in its role as either a participant or a regular in business enterprises. Such as economic agreements (bilateral investment treaties, free trade agreements or contracts for the investment projects).³⁷ Nigeria is a member of global, continental and regional economic groups such as World Trade Organisation (WTO), African Continental Free Trade Zone free (AfCFTA) and Economic Commission of West African States (ECOWAS), in addition to being a part of various bilateral and multilateral agreements where due diligence is required in the protection of human and business rights.³⁸ The nation owes other members of the global community a duty to ensure that its own territory is devoid of business and human rights violation.

³⁰ Art. 4

³¹ See n16)2

³² Art. 5

³³ Art. 6

³⁴ Art. 7

³⁵ Art. 7(b)

³⁶ Art. 7(c)

³⁷ *ibid*

³⁸ Arts. 9 & 10

2.3 Corporate Responsibility

Pillar II directs business entities to focus on provisions that would prevent, mitigate, and in some occasions, remediate the victims. In this regard, business organisations are enjoined to cooperate with States to strengthen the judicial processes.³⁹

Business organisations are directed to contribute to the promotion of human rights in their activities.⁴⁰ Therefore, corporate organisations should avoid situations that could lead to the infringement of rights of others, either as employees the consumers, or suppliers, or service providers. The Pillar safeguards relationships of businesses with business partners, employees, consumers and other entities within the production value chain and take into consideration their rights.⁴¹

The size, sector, operational context the ownership and structure notwithstanding, each business entity is required to design policies and processes for protecting human and business rights. Hence, the UNGPBHR operational principles for protection of human rights include a statement of policy that is approved by the Management, informed by relevant internal and external considerations, address concerns of staff, business partners and other stakeholders interested in its operation.⁴² In the policy formulation, it should be participatory, while its content must be publicly available to all stakeholders.⁴³ The policy impact is to ensure that human right policy for the organisation emerges through collective agreement and participation.

Business entities should carry out human rights diligence for the identification, prevention and mitigation of negative human rights incidence, assess both actual and potential impacts and consider actions to be taken in case of the breach.⁴⁴ Remedies envisaged by the UNGP include apologies, restitution, rehabilitation, financial and non-financial compensation and punitive actions.⁴⁵ It also includes preventive action which may be instituted to prevent further injury of business and human rights.

Each organisation is expected to develop a grievance procedure mechanism capable of attending to perceived breach, which may be based on fulfilling

³⁹ Art. 11

⁴⁰ Art 13

⁴¹ See note -

⁴² Article 16(a) – (c)

⁴³ Article 16(d) and (e)

⁴⁴ Art 17

⁴⁵ *UN Guiding Principles on Business and Human Rights*

contractual obligations between the business organizations and the States.⁴⁶ Hence, remedies available are State-Based and Non-State Based. The State-Based judicial mechanisms include judicial approach to address business-related human rights abuse and reduction of legal and institutional barriers such as prohibited costs of accessing courts high legal fee structures inadequate resources, lack of expertise and support to investigate and prosecute the breaches.⁴⁷

2.4 Accessing Remedies

Article 26 of the UNGP requires States to set up an effective domestic judicial mechanism to address business and human rights abuses and reduce legal and institutional barriers. Most countries including Nigeria have effective judicial facilities to curb human and business rights abuses but the administration of the judicial process poses a major challenge.⁴⁸ The UNGP also recognises State-Based non-judicial governance mechanisms which may be in form of Alternative Dispute Resolution Methods such as negotiation, mediation, conciliation and arbitration which are available under Arbitration and Mediation Act.⁴⁹ The grievance mechanisms have to be legitimate, accessible, predictable, equitable transparent, rights compatible and dynamic.⁵⁰ They should be based on engagement and dialogue.⁵¹

In order to reduce BHR abuses, States should develop public awareness and understanding of the mechanisms to remedy them and provide support (financial an export) that could assist their achievements.⁵² Institutions that could help in this regard include UNHRC, Amnesty International, Regional bodies and business and human rights such as Economic Community of West Africa and Africa Continental Free Trade Area.⁵³ At the domestic level, Legal Aid Council, National Human Rights Commissions, Ombudsmen System, Corporate Affairs Commission etc

⁴⁶ *ibid*

⁴⁷ *ibid*, 29

⁴⁸ Adejumo Kabir, 'Int'l Human Rights Day: A look at the State of Human Rights in Nigeria.' *HumAngle*, December 10, 2023 <<https://www.humanglemedia.com/author/kabir/page/6/>> accessed 12 March, 2024..

⁴⁹ National Human Rights Commission, < *National Action Plan (NAP) on Business and Human Rights (Draft)* <https://www.nigeriarights.gov.ng/files/nap/NAP%20on%20BHR%20for%20Final%20Review%20in%20July-converted.pdf> >accessed 14 March 2024.

⁵⁰ Art 31

⁵¹ National Human Rights Commission, *National Action Plan (NAP) on Business and Human Rights (Draft)*. <https://www.nigeriarights.gov.ng/files/nap/NAP%20on%20BHR%20for%20Final%20Review%20in%20July-converted.pdf>> accessed 14 March, 2024.

⁵² UN Guiding Principles on Business and Human Rights

⁵³ Scott Martin, *A Baseline Assessment on Business and Human Rights in Africa: From to First Decade to the Next*. UNDP (2022).

could help formulate and implement BHR for sustainable economic development.

The implication of this analysis is that whatever mechanisms that will be put to use to meet the business and human rights needs of the citizens must meet the dictates of the rule of law, transparency and promotion of sustainable development. It must consider the relevance of UNBHR to Nigerian situation. The issue of ownership of the BHR has been alleged that the BHRs advocated do not consider African situation and that Africa may not have accepted them as their policies. It is suggested that although human rights are universal and culturally transcendental, the Guidelines need to be domesticated in the National Action Plan on Business and Human Rights (NAP) of various countries for easy implementation.

3. Legal Framework for Achieving United Nations Guidelines for Business and Human Rights (UNGPBHR) in Nigeria

Nigeria has a complex legal system characterized by its inheritance of the Received English Law comprising of the common law doctrines of equity and statutes of general application in England as of 1st January 1900. While the received law accepts and recognises pre-existing legal system in the form of customary law, its acceptance is subject to it not being obnoxious to good conscience.⁵⁴ The UNGP is a body of rules for the observance of Business and Human Rights for the protection of human right in business settings, emanating from global best practices as viewed by the UNO. However, for their implementation, the UNGBHR must be domesticated and understood in the light of domestic conceptions, legislations and practices on human and business rights.

States set up national frameworks for its implementation in compliance with the Treaty. Many African countries, including Nigeria, have formulated National Action Plan (NAP)⁵⁵ for ease of implementation. In Nigeria, the plan was at the draft stage in Nigeria as at 2023, it was hoped, it would be implemented for sustainable economic development and human rights protection.⁵⁶ A critical challenge before the National Action Plan on Business and Human Rights (NAP) Committee should be the issue of ownership of the final document, to reflect realities of doing businesses in Nigeria.

Remedies to BHR in Nigeria includes legal, administrative, judicial and non-judicial remedy. The State-Based Judicial Mechanism are associated with adversarial/litigational system of formal courts and tribunals. It involves justice

⁵⁴ I.O. Agbede, *Conflict of Laws* (Shaneson, C.I., 1991).

⁵⁵ National Human Rights Commission, *National Action Plan (NAP) on Business and Human Rights (Draft)*.

⁵⁶ Soji Apampa and Others, 'Press Statement on NAP-BHR' or *Business and Human Rights Roundtable*. Accessed from <https://globalrights.com> on 30 March 2024

delivery through litigations which is fraught with challenges such as delay in the judicial process, over bearing political interference, lack of judicial autonomy, judicial corruption and low level of awareness of the UNGP's rules and guidelines.⁵⁷ The Nigerian Government has made strenuous efforts to ameliorate these negative factors through the Nigerian Judicial Council⁵⁸ which strives to ensure an “integrity driven” judiciary, to “enhance timely and equitable dispensation of justice.”⁵⁹

3.1 Institutional Efforts

In order to co-ordinate the activities of all agencies of Government on BHR, the Federal Government has established a National Working Group on Business and Human Rights (NWGBR)⁶⁰ comprising the membership of key Ministries, Departments and Agencies (MDAs), some of which are: Ministry of Justice, National Human Rights Commission (NHRC), Ministry of Trade, Industry and Investment, Ministry of Mines and Power, Ministry of Petroleum Resources and Ministry of Environment. Others are Ministry of Labour and Productivity, Ministry of Niger Delta, Consumer Protection Council (CPC) and Corporate Affairs Commission, National Agency for Food and Drug Administration and Control (NAFDAC), Standard Organisation of Nigeria (SON) etc. States of the Federation and Federal Capital Territory have the NWGBHR, with similar membership composition. The National Working Group determines and conducts the capacity needs and trainings of business and Ministries, Departments and Agencies (MDAs) and design an acceptable format for reporting human and business rights using UNGP framework. In addition, the NWG provides technical support for stakeholders and has an oversight function on corporate human rights due diligence. It convenes annual BHR Forum for periodic review of developments in the field. The NAP which is to drive the UNGP in Nigeria is transiting to a workable document upon its approval in 2023.⁶¹ The passage of the National Action Plan on Business and Human Rights (NAP) to an implementable document would help the achievement of this initiative.

The bodies enumerated above have set domestic standards for the achievement of individual and corporate rights, prior to the approval of BHR Treaty. In fashioning out an acceptable BHR document, NAP would have to understudy the bodies, Acts/laws setting them up, their roles in national development; observe gaps in their performances, for the effective implementation of UNGBHR in Nigeria. Any implementation document that fails the domestic test may suffer the fate of poor implementation.

⁵⁷ *ibid*

⁵⁸ Constitution of the Federal Republic of Nigeria 1999 Cap 53, L23, S. 153

⁵⁹ NJC, NJC Recommends the dismissal of Two Judges: National Judicial Council 201, < <https://njc.gov.ng/index.php/69/news-details> 8> accessed 30 March 2024

⁶⁰ Nigeria has 36 States and a Federal Capital Territory

⁶¹ Soji Apampa and others (Note 56).

3.2 Domestic Laws on BHR Rights

Prior to the adoption of UNGBHR, the 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN)⁶² and domestic legislations such as Labour Act,⁶³ Trade Disputes Act,⁶⁴ Companies and Allied Matters Act.⁶⁵ The Investment and Securities Act,⁶⁶ Environmental Impact Assessment Act,⁶⁷ Harmful Waste (Special Criminal Provisions) Act 2004,⁶⁸ Oil Pipelines Act 2004.⁶⁹ These laws are part of the complex legal framework which regulate the rights of the people at work. Some regulate the rights of the corporate bodies too.⁷⁰ Section 43 of the 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN) regulates the rights of persons and groups to own movable and immovable property, and to have quiet enjoyment of the property without molestation.

3.2.1 Investment and Securities Act 2007 (ISA)

The ISA gives the Securities and Exchange Commission the powers to protect investors and regulate the market against risks, authorises it to maintain fairness, efficiency and transparency in the market and a punishment commensurate with market rights' infraction. The ISA sets up a Tribunal which, among other things, have the power to determine disputes between capital market operators, capital market operators and their clients, capital market operators and self-regulatory organisation, the Commission and self-regulatory organisations, an investor and the commission, an issuer of securities and commission, and disputes which arise in the course of administration, management and operators of the collective investment schemes.⁷¹ Powers invested in the Tribunal are ample. Its jurisdiction on investment matters cannot be taken over by any court in Nigeria. it may be argued that this provision of the ISA is to protect investment and securities in Nigeria. A situation in which unending litigations will be instituted on matters affecting investment will lead to major economic losses because of the long delays. By its composition,⁷² the Tribunal comprises of experts who are knowledgeable and experienced in business matters. With the UNGPBHR, the provisions of ISA

⁶² Cap C23 Law of the Federation of Nigeria (LFN) 2004, 17.

⁶³ Cap L1, LFN 2004.

⁶⁴ Cap C432, LFN 2004.

⁶⁵ Cap Repeals CAMA 2004, Cap C20 LFN 2004.

⁶⁶ Cap 29 LFN 2004 (ISA 2007).

⁶⁷ Cap e12, LFN 2004.

⁶⁸ Cap H1 LFN 2004.

⁶⁹ Cap M12, LFN 2004.

⁷⁰ ISA Cap 122 LFN 2004.

⁷¹ *ibid*, S. 284(1).

⁷² *ibid*, S. 275 (1) & (2).

have already provided a road map for accessing remedies on business rights of the investors and capital market operators. The National Action Plan on Business and Human Rights (NAP) appears to recognise this nexus when it listed the ISA as a key domestic legislation in this respect. The decision of the Tribunal is final decision in which it has an original jurisdiction.⁷³ The appeal against the decision goes to the Court of Appeal.⁷⁴ This Tribunal is constituted in a way as to ensure its independence and impartiality, has an administrative and judicial powers to give final judgement; can review its own decisions and its decision can be appealed against. Under the ISA, the business rights of the investors and capital market operators is protected in accordance with Pillar II of UNGP.⁷⁵ UNGP advocates that a business entity should not be used as a vehicle of fraud and deceit or used to deprive other persons or groups of their inalienable human, or business rights.⁷⁶

3.2.2 Procurement Act 2004

The Act provides for the administrative review of (in)action which occurs in the procurement process.⁷⁷ An aggrieved bidder who is not satisfied with the bidding process has a right to enforce its business rights by submitting the complaint to the Accounting Officer of the disposing entity.⁷⁸ The petition would be considered to review the bidding process by taking corrective action or suspending the process.⁷⁹ But if the Accounting Officer is not satisfactory, the aggrieved bidder may forward a complaint to the Bureau of Public Procurement (BPP), not more than 21 after the complaint is received.⁸⁰ The decision of the BPP may be contested at the Federal High Court within 30 days of the BPP decision being reported.⁸¹

3.2.3 Constitution of Federal Republic of Nigeria 1999

The 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN) provides for business and human rights in Nigeria's corporate environment. Apart from its Chapter IV which states the fundamental rights that a person is entitled to as a human being,⁸² its other parts restate the fundamental objectives and

⁷³ *ibid*, S. 295 (1)

⁷⁴ *ibid*, S. 295 (1)(b)

⁷⁵ See particularly, Articles 11 - 24

⁷⁶ Art 11

⁷⁷ 2007, S. 55(1)

⁷⁸ *ibid*, S.55(2)(c)

⁷⁹ *ibid*, S. 55(3) & (4)

⁸⁰ *ibid*, S. 55(5)

⁸¹ *ibid*, S. 55(6)

⁸² *ibid*, Ss. 33 – 46.

directive principles of State policy.⁸³ A community reading of these constitutional provisions affirm the position of the Federal Republic of Nigeria to ensure that human rights, either business or otherwise, are adequately protected.

The Social Order Policy⁸⁴ which the nation affirms is based on the equal rights and obligations before the law, sacredness of human life, recognition of human dignity, non-exploitation of human or national resources other than for communal good; the impartiality and integrity of courts of law and ease of access to them; policy of non-discrimination in social, economic and business lives, just conditions of work, and health, safe and welfarist policy.⁸⁵ The State Policy on the protection of BHR is already captured by Section 17(3) of the Constitution. It states succinctly the provision of adequate medical and health facilities; equal pay for equal work, non-discrimination on the bases of religion, gender and ethnicity, or nationality; and the evolution and promotion of family life, among others.⁸⁶

These provisions predate the UNGP which was adopted in 2011. The implication is that the Three Pillar Rights which the UNGP provide, have since been catered for by 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN), before the international obligations on same. Nigeria has been a major player in international law and understanding. Previous Treaties of which Nigeria is a signatory, which include: The African Charter of Human and Peoples' Rights 1981; The Universal Declaration of Human Rights 1948; Right of Women (Belying Declaration), 1995 among other have formed part of the Nigeria's domestic laws through the Constitution. Hence, Nigeria has a robust tradition of legislations in this respect.

3.3 State-Based Non-Judicial Mechanism

These consist of agencies of Government where non-judicial exercise of statutory powers are put in place to ensure BHR. The State Agencies have the potentials to protect many human and business rights abuses because they are clothed with statutory powers and saddled with regulatory functions.⁸⁷ These Agencies include: NHRC, Public Complaints Commission (PCC); National Oil Spill Detection and Response Agency (NOSDRA); Nigerian Communications Commission (NCC); National Administration of Food and Drug Control (NAFDAC); National Bio-Safety Agency; National Environmental Standard and Regulatory Enforcement Agency (NESREA); Standards Organisation of Nigeria (SON); Central Bank of Nigeria (CBN); Corporate Affairs Commission (CAC),

⁸³ *ibid*, Ss. 13 – 24.

⁸⁴ *ibid*, S. 17.

⁸⁵ *ibid*, S. 17 (2).

⁸⁶ *ibid*, S. 17 (3).

⁸⁷ NHRC, 'National Action Plan' (Draft).

Labour unions, Non-governmental organisations, Media Groups, communities etc.⁸⁸

The NAP has suggested that in order to ensure effective performances of these statutory creations, which are non-judicial based, there should be capacity building to achieve the human rights mandate in their enabling statutes and promote their ability to remedy the aggrieved; periodic meetings of the regulatory agencies to streamline their human rights functions; development of community sensitization on the Agencies' human rights functions and collation of the reports and feedback on the progress each Agency has made based on their non-judicial action.⁸⁹

The suggestions of the National Action Plan on Business and Human Rights (NAP) are timely and capable of reawakening the agencies to their assigned duties. In view of the Federal Government's efforts to implement the 2012 Report of Oronsaye Committee to restructure and rationalise Government Parastatals, Commissions and Agencies, the issue of violations of employment rights are likely to be increased.⁹⁰ However, in view of increasing cost of public governance, public service efficiency and avoiding duplication of efforts, the decision to merge some of the agencies appear sound, but the infractions to business and human rights that would arise may wreak more injustice.⁹¹

The full implementation of the Report may dislocate some other policies and programmes, including the implementation of UNGBHR. Agencies for the consumer right protection (Standards Organisation of Nigeria, National Agency for Food and Drug Administration and Control (NAFDAC), Consumer Protection Council (CPC), regulatory matters (NAFDAC), investment protection (Investments and Securities Act Tribunal (ISA Tribunal)) may now function under the Ministry of Finance while other transparency institutions such as EFCC, ICPC, BPP may operate as appendages of Ministry of Justice or Finance. In the implementation of the Report, Federal Government's focus on due diligence, corporate social responsibility, promotion of foreign direct investment and access to remedy for victims of business and human rights abuse should not be sacrificed.

4. Constraints to UNGBHR for Sustainable Development

Despite the availability of legal and institutional frameworks, these are still challenges to the implementation of people's rights in Nigeria for sustainable

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ Solomon Odeniyi, FG Inaugurates Oronsaye Report Implementation Committee' Punch 8 March 2024. Accessed from <https://www.punchng.com> on 15 March 2024.

⁹¹ *ibid*

development. The situation is not different in other Sub-Saharan African nations. This section interrogates some of these in the preceding paragraphs.

4.1 Conflict of Laws

Nigeria has complex legal system due to its colonial heritage and its federal structure.⁹² The colonial heritage led to the reception of English law comprising the common law, doctrines of equity and statutes of general application in force in England at 1st January 1900. Nigeria is also a signatory to many private international treaties on human and people's rights which impose international obligations on it. Few among these are: The Universal Declaration of Human Rights (UNDHR) 1948, African Charter of Human and People's Rights 1981, The Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979, etc. These treaties impose obligations on Nigeria to protect human rights across its territory.⁹³

Conflicts of laws also exist between the Federal and State laws, while many of the Received laws are obsolete and require amendments. For example, substantial differences exist between the Criminal Code Act⁹⁴ operating in Southern Nigeria and Penal Code⁹⁵ Law of Northern Nigeria in terms of definitions of crimes and the acts that are criminalised. While the Criminal Code Act does not criminalise *hadi* infractions such as adultery, the Penal Code determines the legal rights of the citizens in Northern Nigeria based on such provisions. In recent times, some states⁹⁶ in Northern Nigeria have introduced Shariah Criminal Law, using the contending window of section 277(1) of 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN) which states:

The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the state, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic Personal Law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.

⁹² I.O. Agbede, *Themes on Conflict of Laws* (Revised Edition, Princeton Publishing Co Ltd, 2018) 3

⁹³ *ibid*

⁹⁴ Cap 77 Law of the Federation of Nigeria (LFN) 2004

⁹⁵ (Northern States) Federal Provisions Act

⁹⁶ Zamfara, Katsina, Sokoto, Kano, Jigawa States among others

The use of “in addition to such other jurisdiction as may be conferred on it...” has been construed by the states in Northern Nigeria to mean that Shariah Criminal Law has been allowed.⁹⁷ Based on the complexity of laws regulating people’s business and human rights, implementing UNGBHR must factor in local peculiarities and situations in different parts of Nigeria, on the determination of people’s rights. For example, a crime of adultery under the Penal Code is not a crime under the Criminal Code Act.

4.2 Casualisation

Casualization of employment in critical areas of the economy such as the oil and gas sector, telecommunications, banking and educational sector are rampant. This is allowed by the Labour Act for only three months⁹⁸ from the beginning of employment, but it has been abused by business entities which put employees on permanent casual employment to avoid payment of full salaries and compensation.⁹⁹ across the country, In practice, many workers are in perpetual casual employment in workplaces where they cannot complain because of the high level employment and poverty.¹⁰⁰ This derogates from efforts of UNGBHR. The author observes that are permanent positions are sometimes filled without any consideration for the in-house casual workers.¹⁰¹ The workers in this category are vulnerable, easily dispensable, live-in poverty and accept whatever is given to them as a lifeline.

In implementing UNGBHR with success, attention needs to be paid to domestic laws, like the Labour Act which allows casualisation of labour, deprivation of human rights to dignified labour. The Labour Act is recommended for review in this regard.

4.3 Lack of Awareness of Communal Rights

Communities have rights to the protection of their environment, their land,

⁹⁷ Osita N. Ogbu, ‘Punishments in Islamic Criminal Law as Antithetical to Human Dignity: The Nigerian Experience, *Nigerian Law Guru* (en.d) < <https://nigerianlawguru.com/wp-content/uploads/2024/09/PUNISHMENTS-IN-ISLAMIC-CRIMINAL-LAW-AS-ANTITHETICAL-TO-HUMAN-DIGNITY-THE-NIGERIAN-EXPERIENCE.pdf>> accessed 29 November, 2023; Aminu Adamu Bello, ‘Enforcement of Hudood Punishment under Islamic Law in Nigeria: Implications for a Parent Legal System’ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1537633 accessed January 16, 2010). 27 November 2023.

⁹⁸ Labour Act, Cap 198, LFN 2004, S. 7(1)

⁹⁹ Oladosu Ogunniyi, *Nigerian Labour and Employment Law in Perspective* (Second Edition, Folio Publisher Limited, 2004).

¹⁰⁰ Rasak Bamidele, ‘Casualisation and Labour Utilisation in Nigeria’ (2011) (6)(5) *Journal of International Labour Organisation* 1 - 35

¹⁰¹ *ibid* Rasak Bamidele (note 59).

peaceful co-existence and all other rights guaranteed by Chapter IV of the CFRN 1999. These rights are available against the Government, business entities and individuals. However, rights cannot be recognised and protected in the face of the ignorance of their existence. While businesses have legal obligations to comply with any local, national and international environmental legislations, and protect the environment sustainability, only a community that is aware of these can pressurise the Government to ensure compliance. Multinational corporations, especially oil companies have, in the past, neglect host environment, to the detriment of the people of the environment.¹⁰²

Nigeria has robust municipal legislations that provide for the implementation of rights. Those include Constitution of the Federal Republic of Nigeria (CFRN) 1999; Companies and Allied Matters Act 2020 (CAMA 2020); Trade Union Act 2005; Trade Disputes Act 2004 etc. But the provisions of those rights are weakly implemented by the government. In addition, illiteracy, poverty, employment, culture and religion all combined to predispose people to seek and pursue their rights against the government, business entities and individuals.

4.4 Insecurity and Violence

Although efforts are being made by the Nigeria's Federal Government to stop cases of insecurity and violence, they still pose serious threats to the achievement of business and human rights.¹⁰³ Educational institutions, businesses, barracks of armed forces and police have been raided by the insurgents and bandits in the last decade, while rural security is continually threatened by a combination of herdsmen/farmers conflicts, kidnapping, banditry and cattle rustling.¹⁰⁴ National Action Plan on Business and Human Rights attributes the security failure to a "lack of inclusive security coverage for every entity in the business value chain, including business facilities, employees suppliers, contractors, infrastructure and the community."

Human rights abuse in the face of insecurity and violence have dwarfed the call for BHR in workplaces. Starting with the kidnap of more than 200 Chibok school girls in 2014, many other incidents of school-based kidnapping and violence had been reported in Northern Nigeria.¹⁰⁵ The continued existence of kidnappings

¹⁰² Olawumi Ojo, 'Environmental Laws and Sustainable Practices in Nigeria Legal Responsibilities for Businesses. *The Trusted Advisor* (Sept 25, 2023) < <https://trustedadvisorslaw.com/environmental-laws-and-sustainable-practices-in-nigeria-legal-responsibilities-for-businesses/> accessed 23 April, 2024

¹⁰³ Mike Omilusi, *Insurgency and Terrorism in Nigeria: Perspectives, Phasis and Consequences* (Olugbenga Press & Publishers, 2016).

¹⁰⁴ *ibid.*

¹⁰⁵ Chinedu Asadu, 'Gunmen Kidnap nearly 300 students in northwest Nigeria 2 days later, some lose hope in finding them. *AP News* (10 March 2024) < <https://www.washingtontimes.com/>

have been attributed to the desperation of the embattled families, communities and state governments to free abductees through ransom payment.¹⁰⁶ Although this fact has been rejected by the Federal Government,¹⁰⁷ the widespread insecurity and violence sabotaged efforts on protecting human rights. The abductees have been reportedly subjected to sexual assault, dehumanising human treatments, torture and death without the Government being able to provide workable remedy.¹⁰⁸

Furthermore, the Government at all levels have not been able to ensure human rights are protected by the security outfits. The EndSARs' Protest 2020 started as a campaign against the excesses of the Special Anti-Robbery Squad who, in the course of their duties, abused rights of citizens.¹⁰⁹ Despite the abuses of the Special Anti-Robbery Squad, the security responded to the protest with excessive force which caused the death and serious injuries to many protesters. Since the incident, Nigerian Government has not been able to bring to justice those who caused the abuses and the protests.¹¹⁰ Rather than addressing the remote and immediate causes of the protests, the protesters were tortured, debased and dehumanised in Nigerian prisons, while the police brutality has resurged.¹¹¹

4.4 Lack of Clear Exit Strategy for Businesses whose Operations have Ended

Foreign and local companies operating in Nigeria often have a timeline for completion of projects or assignments, or in some situations wind up their operations for many reasons, including merging, and, or acquisition. While Companies and Allied Matters Act 2020 (CAMA)¹¹² provides ample regulations for the winding up, which may be by court order or resolution of the shareholders,

news/2024/mar/10/armed-kidnappers-abduct-300-students-in-northwest-/ accessed 24 April 2024.

¹⁰⁶ Taiwo Adebayo, 'Why School Children are being abducted in Northern Nigeria amid the region's security crisis' *AP News* (March 8, 2024) < <https://apnews.com/article/nigeria-abduction-gunmen-kaduna-2b5537957ce605ca06576d99a0756901> accessed 24 April 2024.

¹⁰⁷ UN Office for the Coordination of Humanitarian Affairs (OCHA), 'Nigeria: 'Fresh abduction is a sign that impunity reigns.' *Amnesty International* (14 March 2004), < <https://apnews.com/article/nigeria-abduction-gunmen-kaduna-2b5537957ce605ca06576d99a0756901>> accessed 24 April, 2024.

¹⁰⁸ *ibid.*

¹⁰⁹ Benson Ibeabuchi, 'Nigeria: A Year on, No Justice for EndSARS (Crackdown: *Human Rights Watch* (19 October 2021) <https://www.hrw.org/news/2021/10/19/nigeria-year-no-justice-endsars-crackdown> accessed 24 April 2024.

¹¹⁰ Amnesty International, 'Nigeria: Three years after EndSARS at least 15 Protesters Languish in Lagos Jail' *Amnesty International*, (20 October 2023) < <https://www.amnesty.org.ng/2023/10/20/nigeria-three-years-after-endsars-at-least-15-protesters-languish-in-lagos-jail/>> accessed 24 April 2024.

¹¹¹ Amnesty International, Nigeria Three Years after Endsars... (Note -)

¹¹² SS 578 (1); 588, 625, CAMA, 2020 for winding up rules.

it is important that the rights of the various stakeholders are not infringed. Many companies that have exited business operations owe salaries, pension benefits or other compensations to the employees, fail to fulfil corporate responsibility obligations to the communities and the Government, sometimes fail in their regulatory supervisory functions through the Corporate Affairs Commission.¹¹³ Hence, privatization of public enterprises in Nigeria and the winding up of foreign companies' operations have created challenges such as corruption, labour problem, undue political interference,¹¹⁴ which often lead to BHR abuses.

5. Conclusion

5.1 Summary

This study examined the provisions of the UNGBHR which rested on three pillars of the State Duty, the Corporate Social Responsibility and Access to Remedy globally. Although the guidelines are comprehensive and offer valuable insights on the protection of various stakeholders in the workplaces, its implementation in Nigeria is confronted with many challenges, both legal and institutional.

5.2 Findings

Nigeria has comprehensive municipal legislations on human rights which have ample provisions for the protection of human and business rights. However, the study identified the problem of conflict of laws, contradictory legal provisions, weak implementation. It was further identified that poverty and unemployment played major roles in undermining human rights protection in workplaces where casualisation of employees, underpayment below the national minimum wage and non-payment of pension to public service workers and private sector employees hold sway.

Furthermore, the lack of awareness of communal laws inhibits the achievement of UNGBHR, particularly as it relates to the rights of citizens and foreigners to own land for business and commercial transactions. Certain customary law practices such as gender discrimination stand in the way of achieving business rights. Although Companies and Allied Matters Act (CAMA) 2020 is detailed on winding up procedure of businesses operating time specific projects in Nigeria, it does not have provisions for other stakeholders like workers, contractors, clients etc., who may have a stake in its holdings. The lack of clear exit strategy for

¹¹³ Ifeoluwa Adediran, 'Unpaid benefits: Ex NAHCO workers threaten lawsuit against PTAD, BPE, NAHCO.' *Premium Times* (December, 2020) < <https://www.premiumtimesng.com/news/top-news/431168-unpaid-benefits-ex-nahco-workers-threaten-lawsuit-against-ptad-bpe-nahco.html> > accessed 24 April, 2024

¹¹⁴ Adekola Abdulazeez Alao and Raheem T. Kazeem, Privatization of Public Enterprises in Nigeria: Challenges and Prospects'. (2016)(5)(1), *Entrepreneurial Journal of Management Science*. <https://alhikmah.edu.ng/ejms/index.php/ejms/article/download/5/3/> accessed 24 April 2024

foreign businesses operating time specific projects is not spelt out under CAMA.

5.3 Recommendations

Based on the above conclusions, the following recommendations are made. The recommendations from the National Action Plan on Business and Human Rights' Draft are adopted for the effective implementation of UNGBHR on Nigeria which include the enforcement and review of the extant laws such as the Labour Act 2004; Trade Disputes Act 2004 etc., to reflect their mandates and ensure that all business plans to enforce Human Rights Impact Assessment before commencing operation, while those in operation should do so within two years of their operations.¹¹⁵

The Trade Union Act (2005)¹¹⁶ should be amended to address the challenges of freedom of association, the right to collective bargaining and the right to strike actions in line with section 40 of the 1999 Constitution of the Federal Republic of Nigeria. Section 11 of the Trade Union Act is therefore recommended for amendment in view of its stance on the freedom of association and access to collective bargaining. It is suggested that rather than place a ban on the freedom of association of those concerned under the Act, they should have access to restrictive union practices that will not totally clog their BHR. The Joint Consultative Committees in the affected public service establishments do not appear to have powers of collective bargaining.¹¹⁷

Furthermore, the provisions of the Criminal Code Act of Southern Nigeria and the Penal Code of Northern Nigeria are at variance when it comes to the regulation of certain crimes which affect business rights, and human rights too. These areas should be harmonized for sustainable development. The introduction of Sharia Criminal Law in a country that prides itself as a state where religious freedom is guaranteed,¹¹⁸ and there is a plurality of religions, needs to be re-examined by the legislature.

The colonial heritage of the nation demands that multiple laws regulate a particular transaction. This accentuates challenges of implementing UNGBHR. Hence, a law reform commission that will analyse and synthesise those conflicting laws to a single, but workable set of rules at different levels of governance to take into consideration Nigeria's complex democracy is recommended.

¹¹⁵ NAP on Business and Human Rights (Draft).

¹¹⁶ Cap T14, LFN 2004

¹¹⁷ Trade Union Act, S. 11(3).

¹¹⁸ 1999 CFRN, S. 38.