

DRAFT NATIONAL ACTION PLAN
UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS
FEDERAL REPUBLIC OF NIGERIA
PREPARED BY NHRC AND GLOBAL RIGHTS NIGERIA, NOVEMBER 2018
REVIEWED AND UPDATED BY IN-CSR, AUGUST 2019
INPUTS FROM CSOs, MDAs AND OPS
FACILITATED BY THE NHRC



GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS



Implementing
the United Nations
"Protect, Respect and
Remedy" Framework



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BACKGROUND

In June 2011, the United Nations Human Rights Council (UNHRC) unanimously endorsed a global standard on the relationship between businesses and human rights, known as the United Nations Guiding Principles on Business and Human Rights (UNGP/Guiding Principles). The UNGP is founded on the three pillars of **“Protect, Respect and Remedy”**, with the primary actors forming the focus of these pillars being States and business enterprises.

Specifically, the UNGP provides for the duty of States to protect against adverse human rights impacts by business enterprises; the responsibility of business enterprises to respect human rights during the course of their activities as well as in their business relationships; and the duty of both States and business enterprises to provide effective redress in the event of any human right infringement in this context.

The Guiding Principles provide that the minimum reference points for business enterprises to understand the human rights that are to be respected in the course of their transactions, are the International Bill of Human Rights (which encompasses the Universal Declaration of Human Rights of 1948 codified through the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights); and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

NATIONAL ACTION PLAN (NAP)

The UN Working Group on Business and Human Rights (UNWG), a body mandated by the UNHRC to promote the implementation of the UNGP has defined a NAP for the purposes of the UNGP to be an “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs)”.

Although, the UNGP, which contains a total of thirty-one (31) foundational and operational principles, is not a legally binding document, in 2014 the UNHRC, urged all member states to develop National Action Plans to facilitate its implementation.

In 2016, the UNWG released a Guidance on National Action Plans for Business and Human Rights (Guidance of the UNWG) which gives a comprehensive guide on the process that should lead to the development of the NAP, with a very strong emphasis on stakeholder involvement and a transparent process; the structure and the content of the NAP; the strategy for the implementation of the NAP; and reviewing and updating the NAP.

In relation to the content of the NAP, the Guidance of the UNWG emphasizes that the NAP should be founded on the principles of the UNGP and should be context specific enough to identify and address the business human rights abuse challenges in the country. It also provides that the NAP must be underpinned by the core human rights principles of non-discrimination and equality, with particular regard for the human rights challenges faced by vulnerable and marginalized groups, as well as differential gender related impacts.

As at the time of putting together this document, about 53 countries have either developed or are in the process of developing a NAP. 21 states (mostly European Countries) of the 47 currently have a NAP in place, while the remaining 26 states are either still in the process of developing their NAPs (for instance Kenya), or they have NAPs developed through non-state initiatives in place. Nigeria is currently one of the states with a draft NAP that has been developed through a non-state initiative, particularly by the country's National Human Rights Commission (NHRC). This National Action Plan will improve on and will endeavor to address some of the gaps identified by stakeholders in the NHRC's draft NAP.

In keeping with the recommendation of the UNWG that the NAP be context-specific and should address the existing adverse human rights impacts in the country, this NAP would focus significantly around actual and potential human rights abuse challenges in the extractive, telecommunications, agricultural, banking and finance, health, internet technology and manufacturing sectors, but shall not exclude other sectors of the Nigerian economy. This document will also discuss plans around implementing actions on the part of the state that will prevent, mitigate, and remedy existing and potential adverse human rights impact.

METHODOLOGY

Although, it is recognized, as pointed out under the Guidance of the UNWG, that the most effective NAPs are the ones that are contextual, inclusive and transparent in the process leading up to their development as well as in their review and update, the content of this draft NAP will be derived largely from stakeholders' consultation and other research methods. Getting the input of relevant stakeholders and ascertaining the views and needs of individuals and groups who may be impacted by this draft NAP, will in itself form an action plan in this document.

Some of the research documents consulted for the purpose of developing this draft include:

- 2015 edition of the Draft National Action Plan on Business and Human Rights in Nigeria, by the National Human Rights Commission;
- Assessment of Existing National Action Plans on Business and Human Rights (2017) by ICAR, European Coalition for Corporate Justice (ECCJ), and the Centre for the Study of Law, Justice, and Society (Dejusticia);
- Draft National Action Plan on Business and Human Rights (Kenya)
- Extractives and National Action Plans on Business and Human Rights (2017) by the Due Process of Law Foundation (DPLF) and ICAR;
- Frequently Asked Questions About the Guiding Principles on Business and Human Rights (2014), UN Human Rights Office of the High Commissioner
- Guidance on National Action Plans on Business and Human Rights (2016) by the UNWG;
- Lessons Learned on Building Better National Action Plans on Business and Human Rights in Kenya (2016), by the Institute for Human Rights and Business;
- National Action Plans on Business and Human Rights Toolkit (2017 Edition), by the Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable (ICAR);
- Social Construction of the UN Guiding Principles on Business and Human Rights (June 2017) by John Gerard Ruggie;
- Telecommunications and Human Rights: An Export Credit Perspective (February 2017), Institute for Human Rights and Business;
- UN Guiding Principles on Business and Human Rights (2011), UN Human Rights Council (UNHRC).
- Stakeholder meetings organised by Global Rights, Nigeria – 2019
- The Maritime Industry of Nigeria, Challenges and Sustainable Prospects - AlariEmomoemi FAITH
- Conference Papers and Communiqués, 2015 – 2018, African Conferences on Business and Human Rights by IN-CSR;
- Corporate and State Responsibilities in Conflict-Affected Areas, Radu Mares, Nordic Journal of International Law, Volume 83, Number 3 (2014) pp. 293-345;
- Email consultations with all listed companies in Nigeria conducted by the Nigerian Stock Exchange in partnership with IN-CSR;
- Consultations with practitioners, workers, professional organisations and labour unions in Nigeria conducted by IN-CSR
- The 1999 Constitution of the Federal Republic of Nigeria (as amended)
- The National Industrial Court Act 2006
- Nigerian Disability Law (Discrimination Against Persons with Disabilities (Prohibition) Act, 2018,)
- UN Disability Document in fulfilment of Sustainable Development Goals (SDGs) - 4, 8, 10, 11 and 17
- UN CRPD 2006 (Convention on the Rights of Persons with Disabilities)

NATIONAL ACTION PLAN BASED ON THE GUIDING PRINCIPLES

The Duty of the State to Protect Human Rights

Pillar 1 of the Guiding Principles sets out the foundational principle of the State to protect against human rights abuses within its territory/jurisdiction by third parties including businesses through the following channels:

1. Using effective legal instruments such as policies and legislations to give force to this duty in the following manner:
 - i. enforcing and reviewing existing laws that require businesses to respect human rights in their operations
 - ii. ensuring that general laws regulating businesses and their operations enable businesses to respect human rights
 - iii. providing effective guide for businesses on how to respect human rights in their operations
 - iv. encouraging and requiring businesses enterprises to communicate how they address human right impacts
2. Clearly setting out its expectation that all business enterprises within its territory/jurisdiction respect human rights throughout their operations
3. Protecting against human rights abuses by business entities who benefit from a state business nexus
4. Exercising adequate oversight over the operations of business enterprises who provide services that might impact upon the enjoyment of human rights.
5. Promoting respect for human rights among businesses that the State conducts commercial transactions with.
6. Ensuring that businesses operating in conflict-affected areas respect human rights and are not involved in human rights abuses in such areas.
7. Ensuring that relevant state Ministries, Departments and Agencies (MDAs) are aware of and observe the State's duty to protect human rights while exercising their respective mandates.
8. Economic agreements concluded with other States or business enterprises should reflect the obligation of the State to protect human rights.
9. Empowering NHRC to develop mechanism/framework for effectively monitoring and enforcing compliance with, and implementation of relevant human rights laws.

10. Achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value
11. The realisation for reasonable accommodation and creating more inclusive mainstream initiatives to promote full and productive employment for persons with disabilities

Existing Legislative Frameworks in Nigeria on Human Rights

There are a significant number of existing legal instruments, both international and domestic that impose human rights obligations on Nigeria, and specifically establish the duty of Nigeria to protect the human rights of its citizens.

Cardinal international legal instruments, signed and ratified by Nigeria include the Universal Declaration of Human Rights (UNDHR), codified through the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Other international instruments include the Convention on the Elimination of All Forms of Discrimination (CERD); International Convention on the Elimination of all Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the United Nations Convention on the Rights of a Child (CRC); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The African Charter of Human and Peoples' Rights is a regional instrument which imposes an obligation on the member States of the African Union, including Nigeria, to protect, fulfil and respect civil, political as well as environmental, social and cultural human rights.

The primary domestic instrument in Nigeria that imposes an obligation on the State to protect against human right abuses is the 1999 Constitution of the Federal Republic of Nigeria as amended (the 1999 Constitution). Chapter 2 of the Constitution, entitled the Fundamental Objectives and Directive Principles of State Policy, provides for a number of economic, social and cultural rights. It is important to note that the Constitution clearly provides that these rights are not enforceable against the State in any Court of law. However, a good number of these rights are contained in the African Charter of Human and Peoples' Rights which following its domestication in Nigeria, has become a part of the local laws in Nigeria and is enforceable in any Nigerian Court of law.

Furthermore, the 1999 Constitution provides for civil and political rights under chapter 4 of the Constitution and unlike the rights provided under Chapter 2, these rights are enforceable. The Child Rights Act is another human right related legal instrument in place in Nigeria, but as its name suggests, it is specifically targeted at protecting and promoting the rights of children. The Violence Against Persons (Prohibition) Act 2015 and the Anti Torture Act 2017 are also two domestic human rights legislations in Nigeria, but they are specifically

created to guard against violence as well as torture, cruel, inhuman and degrading treatments respectively.

On the case of the enforcement of Chapter 2 of the 1999 Constitution of Nigeria (as amended), specifically Section 17(3) (a)-(h) which focuses on labour, jobs and the condition of work. The 3rd Alteration to the 1999 constitution in Section 254C (1) (a) gives the National Industrial Court (NIC) an exclusive jurisdiction over matters relating to labour and employment. In furtherance of this, Section 7(6) of the National Industrial Court Act 2006, provides to the effect that the NIC shall, in exercising its jurisdiction or any of the powers conferred upon it, have due regard to good or international best practice in law or industrial relations.

The key regulatory frameworks governing the corporate sector in Nigeria are the Corporate and Allied Matters Act (CAMA) CAP C20 LFN 2004, the Investment and Securities Act, 2007, and the Banks and Other Financial Institutions Act (BOFIA) 2004. Nigeria has taken further steps towards ensuring the protection of human rights within the business sector by introducing important regulatory frameworks. Some of these include the Nigerian Sustainable Banking Principles, 2012; Sustainability Disclosure Guidelines, 2018; Nigeria Data Protection Regulation, 2019; Environmental Impact Assessment Act CAP E12 LFN 2004; Harmful Waste (Special Criminal Provisions) Act CAP H1 LFN 2004; Oil Pipelines Act; amongst others.

As highlighted above, Nigeria has quite an extensive body of legislative frameworks that establish the duty of the state to protect, fulfil and respect the human rights of persons within its territories. However, specifically in relation to the duty of the State to protect against adverse human rights abuses within its territory/jurisdiction, particularly in line with the requirements of the Guiding Principles, there is still room for improvements. These areas for improvement are captured in the action plan provided below:

Reviewing Existing Laws

Issues:

- Despite the fact that the 1999 Constitution, particularly section 42 guarantees the right to freedom from discrimination on a number of grounds including sex, and the fact that Nigeria is a signatory to and has ratified CEDAW, which in Article 11 requires all member States to eliminate all forms of discrimination in the field of employment, some specific provisions of the Labour Act of Nigeria remain in direct contradiction to the provisions of the aforementioned legal instruments.
- Specifically, except in very limited circumstances, the Labour Act expressly prohibits the employment of women for any form of 'night work'. 'Night work' in this case typically means working hours between 10pm and 5am. This clearly denies women

the right of free choice of any profession or employment and is a clear violation of Article 11 of CEDAW.

- Also, the Act prohibits women from getting employed in underground work in any mine. This provision can be traced back to the International Labour Organisation (ILO) Convention 54 of 1935, which was signed and ratified by Nigeria that did not allow mining companies to employ women to work in underground mine operations. However, in 1995, an improved version of Convention 54, in the form of Convention 176 (Safety and Health in Mines 1995), which covers the rights of all workers in mine operations, regardless of their gender, was introduced. Sadly, Nigeria is yet to ratify. Though Section 56(2) provides exceptions such as: women holding positions of management who do not perform manual labour; women employed in health and welfare services; women who in the course of their studying spend a period of training in underground parts of a mine; women who may occasionally have to enter the underground part of a mine for the purposes of a non-manual labour.
- Also, although the Nigerian Labour Act (Section 54) provides for the right of all employed pregnant women who have been working for a minimum of six months prior to the commencement of their maternity leave, whether married or not, to be paid maternity leave, it is believed, many single mothers are often granted leave without pay simply because of their unmarried status.

Action Plan:

- a) The Federal Ministry of Labour and Productivity and the Federal Ministry of Justice are to prepare Convention 176 (Safety and Health in Mines 1995) for ratification by the Federal Executive Council (FEC).
- b) The Federal Ministry of Labour and Productivity, with the support of the NHRC and the Nigerian Law Reform Commission, is to conduct an overhaul of the existing Labour Act, and to draft a new Labour Bill which repeals the existing Labour Act, and is in accordance with all the relevant legal human rights instruments that are applicable in Nigeria, with particular regard to the provisions of CEDAW and Convention 176. Specifically, the existing provisions that women are prohibited to undertake night work or underground work in a mine are to be removed. The Bill is also to emphatically clarify that there should be no discrimination between married and unmarried mothers on the issue of paid maternity leave.
- c) The overhaul process of the existing Labour Act should be inclusive of a call for recommendations from relevant Civil Society Organisations (CSOs) such as the Nigeria Labour Congress, the International Federation of Women Lawyers (FIDA), Nigeria, the Nigerian Bar Association (NBA) and the Trade Union Congress of Nigeria Women Commission, and due consideration should be given to such recommendations.

- d) The Labour Bill should be presented for passage and should be passed by the National Assembly into Law.

Other Laws:

- The Nigerian Code of Corporate Governance, 2018 encourages companies to pay adequate attention to sustainability issues by disclosing their environmental, social and governance (ESG) activities in their annual reports. It also encourages an independent review of that ESG reports to be carried out.
- Corporate Responsibility to Respect Human Rights and ‘Severity’ of Impacts - The UN Special Representative of the Secretary-General mandate clarified that businesses are under a ‘responsibility to respect’ human rights (RtR) which operationally requires ‘human rights due diligence’ understood as the steps a company must take to become aware of, prevent and address adverse human rights impacts. In terms of how companies should deal responsibly with severe adverse impacts, including when operating in conflict-affected areas, Pillar 2 in the UNGPs is fully applicable to all organisations operating in conflict areas. It clarifies the types of business involvement with the abuse. Thus Principle 13 explains that a company has a responsibility to respect when it causes, it contributes to or is directly linked through its business relationships to an abuse. In other words, the company can be the direct perpetrator, the accomplice or a business partner with the perpetrator. All three scenarios are readily identifiable in Nigeria.
- Nigerian Disability Law (Discrimination Against Persons with Disabilities (Prohibition) Act, 2018,)

Action Plan:

- The Financial Reporting Council of Nigeria and Securities and Exchange Commission is to review the Nigerian Code of Corporate Governance, 2018 to include mandatory **annual reports by listed business enterprises communicating the impact of their operations on human rights and steps taken to curb, respect and remedy such impacts.**
- Human rights due diligence as will be required by listed companies and in line with Principle 13, 17, 19 and 22 as part of their annual sustainability reports should comprise the four main steps of: Human rights impact assessment, taking “appropriate action” to deal with the impacts, tracking performance, and communicating it publicly.
- All such sustainability reports by listed companies must be independently audited and, validated by a competent Sustainability Practitioner and benchmarked on one of the globally recognized certification or auditing standards depending on the nature of the impact such as ISO 26000 Social Responsibility, ISO 14001

Environmental Management and/or ISO 45001 Occupational Health and Safety, Social Accounting SA 8000, International Association for Impact Assessment or any other globally accepted standard as may be identified by the NHRC

- Any such reports by listed companies must also be in line with known global reporting standards such as Global Reporting Initiative (GRI) and International Integrated Reporting Council (IIRC)
- All such reports should be in line with global best practices which requires that the auditing or certification firm must not directly or indirectly be associated with the firm providing assurance or consulting on sustainability and business-related human rights reports for same organisation
- All listed companies should be required make available both on their websites and on the premises a Prohibition of Discrimination and Awareness Policy document in fulfilment of the 2018 Disability Act.

Timelines:

- a) Ratification of Convention 176 – October 2019
- b) Production of draft of new Labour Bill and presentation of bill for passage by the National Assembly – January 2020
- c) Passage of Labour Bill into law - September 2020
- d) Review Nigerian Code of Corporate Governance, 2018 - November 2019

Guide for Businesses on Respecting Human Rights and Report on Human Rights Due Diligence

Action Plan:

- a) The NHRC is to develop a general guide for all business enterprises on how to respect human rights throughout the course of their operations. The guide is to:
 - identify all the existing legal human rights instruments and contain a brief summary on each instrument and their relevance to the field of business.
 - include step by step practical guidance on how businesses can conduct human rights due diligence of their activities with particular regard for the special rights accorded to women, children and other groups that may be exposed to business-related human rights abuse;
 - any other guidance that will aid businesses to meet their responsibility of respecting human rights during the course of their operations.

b) The NHRC, in collaboration with the relevant MDAs overseeing the relevant sectors, is also to produce another guide similar to the above but specifically targeted at and not limited to:

- business enterprises operating in the telecommunications industry;
- business enterprises operating in the banking and finance sector of the economy;
- business enterprises operating in the agricultural industry;
- business enterprises operating in the manufacturing industry;
- business enterprises operating in the extractive industry Nigeria, including the oil and gas and the mining industry of the economy;
- business enterprises operating in the information and communications technology industry;
- business enterprises operating in the transport sector;
- business enterprises operating in the healthcare sector;
- business enterprises operating in the construction Industry
- business enterprises operating in conflict affected areas of Nigeria.

c) The above-mentioned guides should equally include a basic reporting template that all businesses can adopt to meet the human rights due diligence reporting requirements.

d) For the purposes of producing the sector and area specific guide for businesses, the NHRC is to make calls for inputs from all relevant stakeholders in the relevant sectors and areas, and the guide is only to be produced after due consideration to the inputs made by relevant stakeholders.

Timeline:

All guides, whether general or specific, are to be produced and publicised on or before December 2019.

Human Rights Expectations of Business Enterprises

Issue:

- There is currently no form of policy document or legislation in Nigeria that clearly sets out the general expectation that all business enterprises respect human rights throughout the course of their operations in Nigeria.

Action Plan:

- a) The Ministry of Industry, Trade and Investment is to work alongside the National Human Rights Commission (NHRC) and the Corporate Affairs Commission to issue a policy document stipulating that all businesses should, at the point of registration with the Corporate Affairs Commission (CAC), be made to clearly understand, through all appropriate mediums, that they are expected to respect human rights provisions (specifically in relation to the principles provided under Pillar 2 of the Guiding Principles) throughout their operations in Nigeria.
- b) The referenced policy document is to specifically outline and explain all the human rights expectations of business enterprises in line with Pillar 2 of the UNGP.
- c) Business enterprises are to be required to submit a “respect for human rights” undertaking as part of the forms to be submitted prior to official registration at the Corporate Affairs Commission. To this effect, there should be a regulation to compliment the Companies and Allied Matters Act CAP C20 LFN 2004 and to reflect this undertaking as a mandatory requirement for registration under Part A, B and C of the Act.
- d) The policy document is to contain the requirement that all registered business enterprises are to include a written report on all human rights issues encountered and how they addressed human rights impacts during each relevant financial year, as one of the documents to be submitted to CAC when filing annual returns.
- e) The policy document is to contain the requirement that all registered business enterprises should have a human rights policy statement to guide their operations.
- f) CAC is to incorporate the requirements of the policy document in its Companies Regulations by means of an amendment.
- g) The policy document is to be publicised and circulated among existing businesses through the websites of all the relevant MDAs, and physical copies should be made available at offices of the CAC nationwide.
- h) Adopt a unified and holistic human rights policy document/framework/standard as the stand code of ethics for businesses on human rights.

Timeline:

This policy document is to be drafted, finalised and publicised on or before December 2019.

Protecting Against Human Rights Abuses Where There is a State-Business Nexus**Issues:**

As stated above, Nigeria has a significant number of legislative instruments establishing the duty of the State to protect the human rights of all persons. However, there has hardly been any clear policy or legislation that establishes that specifically, public enterprises, including commercialised enterprises, are to respect human rights through the course of their operations and fulfilling their mandates.

Action Plan:

- a) The Presidency is to produce a policy document expressly stating that all existing public enterprises are under the obligation to respect human rights, in accordance with the provisions of Pillar 2 of the UNGP, during the course of implementing their respective mandates.
- b) The content of the policy document should include the following:
 - i. That all public enterprises conduct human rights due diligence of their activities;
 - ii. A clear statement as to the reporting and oversight mechanism for ensuring that public enterprises actually respect human rights in their operations;
 - iii. That public enterprises are required to keep a record on issues relating to human rights and track how these issues have been managed, lessons learnt, and measures put in place to prevent future abuse/violation.
 - iv. That a special department be created within each public enterprise to ensure that they comply with their obligation to respect human rights in the course of their dealings.
 - v. That the NHRC collaborates with CSOs such as the Standing National Roundtable on Business and Human Rights, and the International Network for Business and Human Rights to train designated members of the special departments to be created in each public enterprise mentioned in paragraph "iv". Each public enterprise is to sponsor the trainings for its members.
 - vi. That the general public, particularly employees, be encouraged to report human rights violations by a public enterprise to appropriate offices within

each such enterprise, and escalate, if necessary, steps are not taken to address such violations after continuous reporting.

- vii. Clearly define steps to be taken when reporting human rights violations and abuses
- c) A policy document similar to the above mentioned one is to be produced by the National Council on Privatisation (NCP) in respect of existing and potential commercialised public enterprises, as well as public enterprises that have been singled out for privatisation.
- d) The Bureau of Public Enterprises, with adequate support from the NHRC, is to facilitate the implementation of the policy document.
- e) The Federal Ministry of Justice is to work with the NHRC to prepare a Bill to amend the Public Enterprises (Privatisation and Commercialisation) Act to reflect the requirement that all public enterprises to be commercialised or privatised are to respect human rights throughout their operations. The Bill is also to spell out adequate monitoring mechanisms to ensure compliance with this requirement.
- f) The amendment Bill is to be passed into law by the National Assembly.

Timelines:

- a) Policy Document by the Presidency – November 2019.
- b) Policy Document by the NCP – November 2019.
- c) Implementation of Policy Document - To commence at most one week after the policy document is issued.
- d) Passage of Amendment bill – July 2020

Promoting Respect for Human Rights by Businesses that Conduct Commercial Transactions with the Government

Action Plan:

- a) The Presidency is to issue a policy document stipulating that:
 - i. The Bureau of Public Procurement (BPP) is to make the submission of reports on human rights due diligence a requirement to participate in the bidding process for Government contracts.
 - ii. The Guide prepared by the NHRC should be uploaded on the website of the BPP to assist potential bidders with meeting the reporting requirements on human rights due diligence.

- iii. All bidders are to be required, by the BPP, to submit as part of their proposals, an assessment of the risks of adverse business human rights impacts associated with the services they propose to render and how they plan to eliminate or prevent/reduce it. The BPP, in selecting successful bidders is to ensure that the lesser the risk of adverse business human rights associated with the proposed service, the greater the chance of a bidder being successfully selected. Also, the higher the chances of eliminating/preventing/mitigating potentially identified negative human rights impacts associated with their service with clearly identified action step the greater the chance of a bidder being successfully selected.

Timelines:

- b) Issuance of the Policy Document on the Procurement Process and Respect for Human Rights - September 2019
- c) Implementation of policy – At most four weeks from the issuance of the Policy Document.

Ministries, Departments and Agencies (MDAs) and the State's Duty to Protect Human Rights

Issue:

- Although Nigeria has a significant number of domestic and international instruments in place reinforcing the duty of the State to protect against human rights abuses, whether the various MDAs through which the government functions are aware of the obligations that come with these legal instruments, and whether they observe their provisions in the execution of their respective mandates, is another matter altogether.

Action Plan:

- a) The Presidency is to issue a policy document mandating that:
 - i. all MDAs be trained by the NHRC or appointed Consultant on the observance of the provisions of the existing business-related human rights instruments;
 - ii. the Office of the Secretary to the Government of the Federation and the Office of the Head of the Civil Service of the Federation are to facilitate the trainings of MDAs to be conducted by the NHRC;
 - iii. all MDAs ensure that due respect is made for human rights, in accordance with the training received, during the course of the execution of their mandates;

- iv. Officers of the NHRC be assigned to MDAs to monitor and evaluate compliance with the policy document.
 - v. Civil Society Organisations like the International Network for Corporate Social Responsibility (IN-CSR) and the Standing National Roundtable on Business and Human Rights should be encouraged to support the NHRC with the trainings.
- b) Adequate resources are to be allocated, in a timely manner, to the NHRC to facilitate the implementation of the above-mentioned policy.

Timelines:

- a) Issuance of policy document: January 2020
- b) Implementation of policy: To commence at most one month after the issuance of the policy.

Economic Agreements and the Duty of the State to Protect Human Rights

Action Plan:

- a) The Honourable Minister of Industry, Trade and Investment, with the support of the NHRC, is to issue a policy document stipulating the following:
 - i. That the Nigeria Office for Trade Negotiations (Trade Office), with the support of the NHRC (or appointed independent Consultant), conducts an assessment of the potential adverse human rights impacts of any trade agreement it contemplates with any State, and the riskiness of the adverse human right impacts of the agreement measured against its proposed benefits, should be a strong consideration in determining whether to enter into such agreement; and
 - ii. That the Trade Office, with the Support of the NHRC, is to review and monitor the ongoing human rights impacts of ongoing trade agreements and address any existing adverse human rights impacts.
- b) The Presidency, with the support of the NHRC, is to issue another policy document stipulating the following:
 - i. That the Nigerian Investment Promotion Commission (NIPC) is to inform potential multinational and foreign investors of the expectation that all businesses in Nigeria are to respect human rights in their operations;

- ii. That before concluding contracts with multinational/foreign investors, all MDAs are to conduct an assessment of the adverse human rights impacts of the contracts in question, and the riskiness of the adverse human right impacts of the contracts measured against its proposed benefits, should be a strong consideration in determining whether to conclude such contracts;
- iii. That the human rights records of such businesses in other countries/regions/areas where they have operated or are presently operating be reviewed to determine such business' commitment to respecting human rights. This would guide NIPC, NHRC and other relevant MDAs and agencies on how best to relate with potential foreign investors;
 - i. that clauses be included in investment contracts that require companies to respect human rights and implement human rights due diligence processes.
 - ii. that NIPC, the NHRC and relevant civil society organisations should work together to provide a guide that potential multinational and foreign investors can refer to, in order to understand their responsibility to respect human rights in the course of their activities, and that provides practical guidance on how to conduct human rights due diligence.
 - iii. Civil Society Organisations like the Standing National Roundtable on Business and Human Rights and the International Network for Corporate Social Responsibility (IN-CSR) should be encouraged to support the NHRC and NIPC with Human Rights due diligence global best practices and capacity building.

Timelines:

Both policy documents are to be issued on or before December 2019

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Pillar 2 of the UNGP establishes the responsibility of all business enterprises, regardless of their size and structure among other factors, to respect human rights. It states that this responsibility exists independently of the duty of the State to protect human rights within its territory/jurisdiction.

The UNGP further explains that the responsibility of businesses to respect human rights means that businesses are to avoid infringing upon human rights through their activities and or their business relationships, to mitigate against adverse human rights impacts of their activities, and to provide adequate redress in the event that infringements of human rights occur through their activities.

Furthermore, for the purpose of meeting their responsibility to respect human rights, businesses are to ensure that they:

- have a policy commitment on their responsibility to respect human rights;
- ensure full implementation of human rights policy in all their operations;
- policy document should state how it will address human rights issues in the business supply chain;
- have a human rights due diligence process in place that aids businesses with identifying, preventing, mitigating and addressing adverse human rights risks of their activities; and
- establish processes for the remediation of adverse human rights impacts they caused or contributed to.

ISSUES ON BUSINESSES AND THEIR RESPECT FOR HUMAN RIGHTS IN THE NIGERIAN CONTEXT

- The UNGP provides that the provisions of Pillar 2 apply to all businesses including Small and Medium Scale Businesses (SMEs). SMEs are very critical to the success of the Nigerian economy particularly since they are the major employers of its labour force. However, it is highly doubtful whether SMEs in Nigeria are aware of their responsibility to respect human rights or if they are so aware, whether they know how to go about fulfilling this responsibility.
- Despite efforts of the Nigerian government to diversify the Nigerian economy away from oil, by accounting for over 90% of its foreign exchange earnings, over 90% of its export, and about 70% of its Government revenue, the oil and gas industry remains the major driver of the Nigerian economy. The oil industry in Nigeria operates mostly out of the oil rich communities of the Niger Delta where oil corporations carry out oil exploration and extraction activities. The adverse effects of the discharge of these activities, such as oil spills and gas flaring by oil corporations have had huge negative impacts on the environment, shelter, livelihood, health and even the lives of most of the inhabitants of the region. Although there are regulations such as Nigeria Data Protection Regulation, 2019; Environmental Impact Assessment Act CAP E12 LFN 2004; Harmful Waste (Special Criminal Provisions) Act CAP H1 LFN 2004; Oil Pipelines Act which some oil corporations appear to have benchmarked their policy commitments on the responsibility to respect human rights, often times these policies are not effectively implemented and the affected communities are unaware of their existence of such regulations and policies.
- Not only is Nigeria rich in oil and gas resources, but it is also well endowed with vast mineral wealth including gold, bitumen, coal, iron ore, limestone, lead/zinc ores, limestone and barites. Unlike the oil and gas sector of the economy, the mining sector has not witnessed as much development in the country. However, with the

renewed efforts of the government to diversify the Nigerian economy away from oil dependency, the mining sector has garnered more attention as a potential major contributor to the Nigerian economy. Historically, the mining sector all over the world has mostly been fraught with human abuses, and it is one sector in which Nigeria cannot afford to encourage activities without putting in place a structure that ensures that participating businesses/investors respect human rights in their operations.

- Since its deregulation in 2001, the Nigerian telecommunications sector has experienced immense growth and become a significant contributor to the Nigerian economy. Recently released data by the Nigerian Communications Commission (NCC) shows that as at December 2018, Nigeria had active phone subscribers of over 172 million, internet subscribers of over 111 million, and a tele density of 123.48%. A 2017 paper by the Institute for Human Rights and Business identifies the following as some of the human rights benefits of the telecommunications sector: increased access to health and education, economic inclusion and job creation as well as freedom of expression. However, operators in the Nigerian telecommunications sector are notorious for practices that amount to an abuse of consumer rights. Some of these practices include service issues such as call masking, unsolicited subscriptions, service quality, difficulty with unsubscribing to billed value added services.
- The agricultural sector has consistently remained the second largest contributor to the Nigerian real GDP, and according to the Nigerian Bureau of Statistics (NBS), it contributed 25.13% to the real GDP in the year 2018. Although it is cited by the NBS as the largest employer of labour in Nigeria, with only 42% of arable land currently cultivated, the Nigerian agricultural sector is regarded as undeveloped. Besides this challenge, the Nigerian agricultural sector is fraught with numerous other challenges that have kept its level of productivity very low. These challenges include low level of irrigation development, high cost of farm inputs, inadequate storage facilities, poor access to markets and climate change. As a result of the myriad of challenges facing the agricultural sector in Nigeria, the focus has been on its development while very little attention has been placed on some of the human rights issues, including child labour, excessive hours and low wages, and health risks such as exposure to pesticides, that arise or might potentially arise in the sector.
- Since the policy-induced consolidation of Nigerian banks in 2004, and the introduction of policies aimed at strengthening the Nigerian financial sector in the aftermath of the 2008 global financial crisis, the Nigerian Banking and Finance sector has continued to thrive and has experienced a massive explosion in the use of technological innovation in the delivery of its services. Recently, some banks have been accused of vicious dismissal policies, unrealistic, unreasonable and unattainable targets given to banking staff which exposes them to different types of

risks and inhuman treatment. However, with the introduction of the NSBP, some banks now have policies that recognise their responsibility to respect human rights, it is doubtful whether many of them recognise this responsibility within the context of the UN Guiding Principles and other national and international legislations.

- One of the consequences of Nigeria's overreliance on crude oil has been the neglect of its manufacturing sector. Poor infrastructural facilities, limited access to credit, an import dependency culture, and unreliable power supply are some of the challenges faced in the sector as result of the neglect it has suffered. Fortunately, a key focus of Economic Growth and Recovery Plan is the diversification of the economy away from oil, and the manufacturing sector is one of priority areas identified as necessary to make diversification a reality. With the introduction of the African Continental Free Trade Area Agreement (AfCFTA) and as policies that would stimulate the manufacturing sector are being put in place, it is equally important that attention be paid to putting policies in place that address the adverse human rights impacts that arise or could potentially arise from the sector. Some of those human rights issues include child labour, unfavourable working conditions including poor health and safety standards, unethical sourcing of materials, and the environmental impact of manufacturing processes on host communities.
- Air Transportation which is the transportation of passengers and cargo by aircraft and helicopters presently suffers from poor reputation for operational efficiency and safety. This is as a result of absence of coherent air transport policy, decaying facilities, bad management, high costs of air transport, inadequate funding and resources, insufficient skilled manpower, lack of transparency and effective consumer protection framework, and poor health and safety standards – all contributory factors to the abuse of rights by airline operators in Nigeria. These challenges require the government to enhance regulation of aerospace management, consumer protection and safety of airlines, passengers and employees.
- The Maritime Domain remains the dominant medium for global shipping and commerce and it holds the key for unlocking the streams of opportunities in the industry in such areas as: renewable energy, fisheries, maritime transport, tourism, and marine biodiversity. With a total annual freight cost estimated at between \$5 billion and \$6 billion annually, according to the Ministry of Transport, the maritime component of Nigeria's oil and gas industry is reportedly worth an estimated \$8 billion, further reflecting the prominence of the sector to the country's overall economy. These activities also attract business-related human rights abuses and violations especially in the oil producing communities which cuts across the entire spectrum of rights. The abuses come in different forms and could be direct or indirect. The inhabitants of the Niger Delta region and other main seaports such as Apapa Sea Ports in Lagos State are subjected to regular rights abuses and violations by business operators. The perpetrators of rights violations are hardly or never held accountable or brought to justice due to the myriad of problems besetting the prosecution and judicial institutions. Some of the rights typically violated in the oil-producing communities include the right to life, the right to health, the right to freedom from discrimination, the right to freedom of association and peaceful assembly, the right to equal protection of the law, right to the

dignity of human person, right to work, means of livelihood or employment and the right to development.

- The World Health Organisation (WHO) in 1946 defined the right to health as “the enjoyment of the highest attainable standard of health” that should be available, physically and economically accessible, acceptable by medical ethics standards and of quality to all; regardless of race, religion, political belief, economic or social condition.” The subject of rights in healthcare are relevant today as they align with the global movement towards Universal Health Coverage (UHC). The UHC requires that health services are available for all. In July 2018, Vice President Yemi Osinbajo launched the Patients’ Bill of Rights (PBoR). It is an aggregation of patients’ rights that exist in other instruments including the 1999 Constitution, Consumer Protection Act, Child Rights Act, Freedom of Information Act, National Health Act, and other sundry regulations. PBoR was developed by the Consumer Protection Council (CPC) and other stakeholders including the Federal Ministry of Health for the protection of consumers. A 2016 study by Price Waterhouse revealed that 90 per cent of respondents associate healthcare in Nigeria with low quality, while over 80 per cent and over 70 per cent respectively, associate it with words like ‘rude’ and ‘fear’. Conversely, less than 20 per cent felt that the healthcare provided in Nigeria gave value for money, and less than 10 per cent felt that it was transparent.” Run-down health facilities staffed by rude and often times negligent health workers are a violation of the right of citizens to health.
- Nigeria construction industry has experienced various methods of construction project finance from Traditional (Direct Labour, Open Tendering and Selective Tendering) to Modern Methods (Design and Build, Turnkey Project, Contract Management, Public-Private Partnership etc). Approximately 1.4% of the GDP according to the research by Westgate is accrued from the construction industry and the dominant contractors are medium sized, operating locally and executing mostly residential projects. However, these building projects have been characterized by shortfalls ranging from poor quality of works, poor health and safety records to project cost and time overruns, which are consequences of poor planning, lack of detailed construction documents variations, poor site management, unethical behaviour of professionals and waste generation resulting from bureaucracy. The issue of low productivity with regards to time, quality and cost of delivering building projects is a worrisome problem in the building industry which according to inputs from the National Industrial Court of Nigeria has resulted in the violation of rights of both workers and host communities. Additionally, the construction industry has a high number of child labour incidents, abuse of workers’ rights and exploitations. Lack of robust impact assessments, noise pollution and high numbers of abandoned projects are also directly linked to the abuse of rights of different stakeholders according to inputs from stakeholders. These may be as a result of lack of mandatory continuing professional development programmes to equip professionals on the technical skills and benefits lean construction practice offers and global best practices in occupational health and safety standards towards achieving prompt building project delivery and reduction of workplace related injuries, waste and pollution generated on such projects.
- In line with stakeholders’ inputs and the Nordic Journal of International law, some of the emblematic cases of corporate-related infringements of human rights have appeared in unstable and violence-ridden zones, including armed conflict and other contexts with lower levels of conflict, internal disturbances, widespread violence and latent tensions. Businesses

have been involved in different ways, as direct perpetrators, accomplices or mere trading partners. The issue of conflict was a theme of high priority during John Ruggie's UN mandate as highlighted in Principle 7. This is not merely an operational, context-specific principle limited to conflict-affected zones where the host state is incapacitated by conflict; rather Principle 7 should be seen as a foundational principle about gross abuses, about the responsibilities of home states to act preventively and reactively when 'their' companies are involved in gross abuses in conflict-affected areas and beyond. Some of the earlier corporate social responsibility (CSR) initiatives have aimed to safeguard human rights in conflict-affected areas: the Kimberley Process (2000) aimed to stem the flow of 'blood diamonds' and the Voluntary Principles for Security and Human Rights (2000) were designed to protect local communities from abusive conduct of security forces guarding extractive industry facilities. The latest newcomer among the multi-stakeholder CSR initiatives is a Code dealing with military and security companies, the International Code of Conduct for Private Security Service Providers (ICoC) (2010). A great number of industry initiatives aim to ensure responsible sourcing of minerals by requiring the tracking of minerals throughout the supply chains and joint action of different participants in the chain; the Organisation for Economic Co-operation and Development (OECD) has a range of guiding documents culminating with the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Area (2011). The development-retarding and conflict-inducing effects of the vast revenues that the extractive industries generate for unaccountable governments were the object of the Extractive Industry Transparency Initiative (2002). Inputs from practitioners in this sector suggests that businesses can be directly or remotely involved in human rights abuses, appear as the direct perpetrator, the accomplice or the beneficiary of abuse, be physically present in a conflict area or not. In all such situations, business operations are linked to human rights abuses, some of them reaching thresholds of egregious violations, such as genocide, slavery, summary executions, torture, enforced disappearances, arbitrary detention and other grave and systematic violations of human rights. The seriousness of the issues ensures that corporate responsibilities in conflict zones remain at the forefront of business-related human rights discussions and reports.

- Records show that the worst forms of child labour in the country included: commercial agriculture and hazardous farm work; street hawking; exploitative cottage industries such as iron and other metal works; hazardous mechanical workshops; exploitative and hazardous domestic work; commercial fishing; exploitative and hazardous pastoral and herding activities; construction; transportation; mining and quarrying; prostitution and pornography; forced and compulsory labour. By law, age 12 is the general minimum age for employment. Persons younger than age 14 may be employed only on a daily basis, must receive the day's wages at the end of each workday, and must be able to return each night to their parents' or guardian's residence. By law these regulations do not apply to domestic service. The law also provides exceptions for light work in agriculture and horticulture if the employer is a family member. No person younger than age 16 may work underground, in machine work, or on a public holiday. No "young person," defined as a person under age 18 by the Labour Act, may be employed in any job that is injurious to health, dangerous, or immoral. For industrial work and work on vessels where a family member is not employed, the minimum work age is 15, consistent with the age for completing educational requirements. The law states children may not be employed in agricultural or domestic work for more than eight hours per day. Apprenticeship of youths older than age 12 is allowed in skilled trades or as domestic servants.

Action Plan:

- a) The Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) is to work with the NHRC (or appointed Consultant) to develop a simplified guide of the UNGP detailing all the expectations that businesses are expected to meet, as provided for under pillar 2, to fulfil their responsibility to respect human rights.
- b) To be included in the guide is the provision that in line with fulfilling their responsibility to respect human rights in the course of their operations, all SMEs are encouraged to have the following structures in place:
 - i. A policy commitment on their responsibility to respect human rights;
 - ii. Human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
 - iii. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.
- c) SMEDAN, with the support of NHRC, is to ensure that adequate engagements including stakeholder's forums, capacity building workshops, awareness campaigns are conducted with all relevant MSMEs associations in Nigeria such as the Nigerian Association of Small & Medium Enterprises (NASME) to ensure that MSMEs have sufficient understanding of their responsibility to respect human rights.
- d) The Federal Ministry of Petroleum Resources, with the support of the NHRC, should review relevant policies such as Nigeria Data Protection Regulation, 2019; Environmental Impact Assessment Act CAP E12 LFN 2004; Harmful Waste (Special Criminal Provisions) Act CAP H1 LFN 2004; Oil Pipelines Act to ensure that the policies mandate all operators in the petroleum sector respect human rights throughout their operations in Nigeria. In particular, that they should sign on to and operationalize Voluntary Principles for Security and Human Rights in all of their activities. Also, a provision similar to paragraph 'b' if not in existence should be included as a mandatory requirement. Prior to the issuance of the reviewed policy document, inputs from all relevant stakeholders such as host communities, CSOs, businesses enterprises and MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the oil and gas sector.
- e) The Federal Ministry of Mines and Steel Development, with the support of the NHRC, is to issue a policy document which sets out the expectation that all investors and current businesses operating in the mining sector respect human rights throughout the course of their operations. In particular, that they should sign on to

and operationalize Voluntary Principles for Security and Human Rights in all of their activities. The requirements outlined in paragraph 'b' should also be included in the policy document. Prior to the issuance of the policy document, inputs from all relevant stakeholders such as host communities, CSOs, businesses enterprises and other relevant MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the mining sector.

- f) The Nigerian Communications Commission (NCC) with the support of the NHRC, is to issue a policy document which sets out the expectation that all investors and current businesses operating in the communications sector respect human rights throughout the course of their operations and relationships. The requirements outlined in paragraph 'b' should also be included in the policy document. Prior to the issuance of the policy document, inputs from all relevant stakeholders such as CSOs, businesses enterprises and other relevant MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the communications sector.
- g) The Central Bank of Nigeria (CBN) with the support of the NHRC and relevant CSOs, is to review the Nigerian Sustainable Banking Principles (NSBP) with the aim of ensuring that all operators in the Banking and Finance sector are meeting their expectations in respecting human rights throughout the course of their operations and relationships. That all sustainability reports are in line with known global standards and should include a section to report on business-related human rights activities. The sustainability section of all banks and other financial institutions should have at least two designated and competent human rights officers with their corporate sustainability and responsibility team. The requirements outlined in paragraph 'b' should also be included in the reviewed policy document. Prior to the issuance of the policy document, inputs from all relevant stakeholders including CSOs, business enterprises, and other relevant MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the banking and finance sector.
- h) The Federal Ministry of Agriculture and Rural Development with the support of the NHRC and relevant CSOs, is to issue a policy document which sets out the expectation that all operators in agricultural sector respect human rights throughout the course of their operations. The requirements outlined in paragraph 'b' should also be included in the policy document. Prior to the issuance of the policy document, inputs from all relevant stakeholders including host communities, CSOs, business enterprises, associations of farmers, and other relevant MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the agricultural sector.

- i) The Federal Ministry of Industry, Trade and Investment with the support of the NHRC and relevant CSOs, is to issue a policy document which sets out the expectation that all operators in manufacturing sector respect human rights throughout the course of their operations. The requirements outlined in paragraph 'b' should also be included in the policy document. Prior to the issuance of the policy document, inputs from all relevant stakeholders including host communities, CSOs, business enterprises, and other relevant MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the manufacturing sector.
- j) The Federal Ministry of Transport with the support of the NHRC and relevant CSOs is to issue a policy document which sets out the expectations of all transport operators – land, air and water throughout their operations and business relationships. The requirements outlined in paragraph 'b' should also be included in the policy document. Prior to the issuance of the policy document, inputs from all relevant stakeholders including host communities, CSOs, business enterprises, and other relevant MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the transport sector.
- k) The Federal Ministry of Health with the support of the NHRC and relevant CSOs is to issue a policy document which sets out the expectations of all healthcare facilities including pharmaceuticals in their healthcare delivery operations and business relationships. The requirements outlined in paragraph 'b' should also be included in the policy document. Prior to the issuance of the policy document, inputs from all relevant stakeholders including host communities, CSOs, business enterprises, and other relevant MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the healthcare sector.
- l) The Federal Ministry of Works with the support of the NHRC and relevant CSOs is to issue a policy document which sets out the expectations of all construction companies and throughout their business relationships including a requirement for continuing professional development and, a robust and independent project impact assessment to be submitted as part of the building plan application. Health and Safety regulations in the construction industry should also be reviewed to include a requirement for occupational health and safety training for all project managers working on public buildings and public roads. The requirements outlined in paragraph 'b' should also be included in the policy document. Prior to the issuance of the policy document, inputs from all relevant stakeholders including host communities, CSOs, business enterprises, and other relevant MDAs should be considered in conducting a baseline assessment of all the human rights issues that are peculiar to the healthcare sector.
- m) The Nigerian Human Rights Commission should issue a generic policy document as part of the Business and Human Rights Guide to businesses operating in all conflict

zones including localized conflicts as they all generate higher risks of severe abuses. Conflict areas where the government lost control over territory and is thus incapacitated in discharging its duty to protect, or conflicts where all parties disregard human rights and severe abuses ensue – the policy document should place the responsibility to respect human rights and of any such abuse by an organisation on their corporate countries of origin including local businesses. Such contexts should automatically raise red flags and trigger high level human rights due diligence processes that are finely tuned and sensitive to this higher level of risk.

- The generic policy document should clearly make it a requirement for all listed companies to publish both on their websites and on the premises a Prohibition of Discrimination and Awareness Policy document in fulfilment of the 2018 Disability Act.
- n) Following the issuance of the policy documents, a sensitization campaign of all the relevant stakeholders is to be embarked upon by the relevant ministry or MDA with the support of the NHRC and relevant CSOs, to ensure that businesses in all key sectors highlighted have sufficient understanding of what is expected of them. When there is more than one ministry or MDA involved in issuance of a policy document, joint committees should be formed to issue a combined policy document to avoid unnecessary repetition and paperwork.
- o) All policy documents shall take into consideration the protection of child rights. Therefore, child labour shall be prohibited in all businesses, while making provision for child engagement in line with the law.

Timelines:

- a) UNGP Guide for SMEs – November 2019
- b) Sensitization on UNGP Guide for SMEs – To commence at most one month after the release of Guide.
- c) Conduct of Baseline Assessment of Human Rights Issues in Oil and Gas Sector – December 2019
- d) Business and Human Rights Policy in the Oil and Gas Sector – February 2020
- e) Sensitization exercise by the Federal Ministry of Petroleum Resources – To commence at most one month after issuance of the policy.
- f) Conduct of Baseline Assessment of Human Rights Issues in Mining Sector – November 2019
- g) Business and Human Rights Policy in the Mining Sector – January 2020.

- h) Sensitization exercise by the Federal Ministry of Mines and Steel Development – To commence at most one month after issuance of the policy.
- i) The Federal Ministry of Foreign Affairs commences procedure for signing on to the Voluntary Principles for Security and Human Rights.
- j) Conduct of Baseline Assessment of Human Rights Issues in the Communications Sector – November 2019
- k) Business and Human Rights Policy in the Communications Sector – December, 2019.
- l) Sensitization exercise by the Nigerian Communications Commission – To commence at most one month after issuance of the policy.
- m) Conduct of Baseline Assessment of Human Rights Issues in the Banking and Finance sector – November 2019
- n) Business and Human Rights Review of NSBP for the Banking and Finance sector – December 2019.
- o) Sensitization exercise by the Central Bank of Nigeria – To commence at most one month after issuance of the policy.
- p) Conduct of Baseline Assessment of Human Rights Issues in the Agricultural sector – December 2019
- q) Business and Human Rights Policy in the Agricultural sector – December 2019.
- r) Sensitization exercise by the Federal Ministry of Agriculture and Rural Development – To commence at most one month after issuance of the policy.
- s) Conduct of Baseline Assessment of Human Rights Issues in the Manufacturing sector – November 2019
- t) Business and Human Rights Policy in the Agricultural sector – February 2020.
- u) Sensitization exercise by the Federal Ministry of Industry, Trade and Investment – To commence at most one month after issuance of the policy.

DATA PROTECTION AND INFORMATION TECHNOLOGY

The following regulations shall apply in respect to data protection and Information technology:

- a) Government and businesses holding any private data or information must provide clear procedures and privacy policies by which these data may be accessed.
- b) Government should ensure to follow legally stipulated procedures in requesting for private data from private or public entities.
- c) Government should ensure to follow legally stipulated procedures in requesting for the removal or blockage of online content
- d) Businesses, in line with best practices, should publish publicly accessible transparency reports on government request of private data.
- e) Businesses should communicate, within 72 hours of discovery of any data breach with data owners.

Discrimination

- Businesses should ensure that all of their service delivery systems do not occasion discrimination and inequality against any person whether based on their gender, age, marital status, disability or otherwise.
- Businesses involved in internet or network service provision, must ensure that all data traffic are treated neutrally, equally and fairly, not favouring any network or internet traffic above another for any reason or justification.
- Telecommunication companies should be prohibited from requesting for unnecessary personal information such as “place of birth” as a precondition for rendering services to customers. Everyone should be entitled to receive and enjoy the services of these businesses irrespective of their tribe or place of birth in Nigeria.

Free Expression

- Government will ensure to promote and safeguard the freedom to express opinions online and offline
- Government will specially train security operatives on the observance and respect of the freedom of expression online and offline in carrying out their duties.
- Government and Business entities will not be involved in online distortion of information or disinformation tactics.
- Government will consider the act of disrupting or shutting down the internet as a gross violation of the freedom of expression and as such, will not engage in or cause such act to be done.

ACCESS TO REMEDY

Pillar 3 of the UNGP sets out principles that seek to ensure the rights of victims of business’ adverse human rights impacts to effective remedy. It establishes both State based, and non-

State based grievance mechanisms as channels through which access to remedy for business human rights abuses can be guaranteed.

In relation to State based grievance mechanisms, pillar 3 of the UNGP makes it clear that inherent in the duty of States to protect against adverse business human rights impacts, is the duty to ensure that victims of such adverse impacts have access to effective remedy through judicial, administrative, legislative and other legal means.

Also, the UNGP encourages States to consider ways to facilitate access to effective non-State based grievance mechanisms for adverse human rights abuses including such as those administered by the defaulting business enterprise, by an industry association, or by a multi-stakeholder group.

STATE GRIEVANCE MECHANISMS

The UNGP divides State grievance mechanisms into the Judicial and Non-Judicial Grievance Mechanisms, and it states that there are substantive and procedural aspects to them. The actual remedies necessary to counteract the adverse business human rights such as apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions as well as injunctions form the substantive aspect, and ensuring that the process that leads to the eventual remediation or otherwise is not fraught with barriers majorly encompasses the procedural aspect of the mechanisms.

State-based Judicial Grievance Mechanism

The UNGP stipulates that judicial grievance mechanisms, i.e., access to courts is at the core of ensuring access to effective remedy, and that impartiality, integrity, and ability to accord due process are critical for its reliability in addressing adverse business human right impacts.

Issues:

- Although section 36(1) of the 1999 Constitution guarantees the right to fair hearing within a reasonable time during the process of determining the civil rights of a person in court, administration of justice in Nigerian courts is more often than not characterised by inordinate delays. The phrase 'reasonable time' in itself has contributed significantly to the problem of delay since what amounts to a reasonable time is mostly a matter of discretion of the court. Also contributory to this problem, is the habitual practice of some lawyers who frustrate the progress of court proceedings on issues of technicality. The actual reality is human rights matters often take years and, in some instances, even decades to be determined in Nigeria.
- The cost of litigation is also more often than not another major impediment to access to remedy for victims of business human rights abuses. Included in this is the cost of professional fees for engaging the services of a lawyer, which would typically

include the cost of transportation of the lawyer, cost of filing, and which considering the amount of time it takes to conclude matters in court, might become too burdensome for victims to bear.

- Another issue that successful litigants face in Nigerian courts is the problem of enforcement of judgments, so much so that some believe that getting court judgments is easier than enforcing them. Some of the factors identified as responsible for this problem include the lack of political will on the part of the executive arm of the various levels of government in Nigeria to honour court judgments ordered against them; sharp practices by administrative court officers; requiring the judgment creditor to cover the cost of enforcing the judgment.

Action Plan:

- a) The Office of the Chief Justice of the Federation, Office of the President of the Court of Appeal, Office of the President of the National Industrial Court, and the Office of the Chief Judge of the Federal High Court, with the support of the NHRC are to organise a workshop for Judicial Officers at the Federal Level on addressing the problem of delay in resolving business related human rights cases. Potential Options to adopt could be dedicating special courts (including the Alternative Dispute Resolution (ADR) centres within the National Industrial Court) or designating special judges to hear business related human rights issues and issuing Practice Directions on the shorter timelines within which business-related human rights issues are to be tried.
- b) The action above is also to include the training of judges to equip them with skills and knowledge to properly handle and decide business related human rights cases, including cases involving the use of Information and Communications Technology.
- c) Also, the Vice President should through the National Executive Council (NEC), encourage State Governors to set into motion a similar strategy as stated in paragraph 'a' within their respective state judiciary bodies.
- d) The NHRC is to collaborate with the Legal Aid Council (LAC) on designating special legal officers to represent indigent victims of adverse business human rights impacts.
- e) The Presidency is to work towards creating a pool of resources potentially gathered from members of the private sector involved in high risk business activities, who should be encouraged or required to contribute a specified sum as part of their CSR obligations to fund the work of the NHRC and the LAC, stated above in paragraph 'c'
- f) Civil Society Law Organisations (CSO), and Commercial Law Firms should be encouraged by the NHRC to offer pro bono services or contingent fee based services to indigent victims of business human rights abuses.

- g) Both Federal and State Judiciary bodies in conjunction with federal and state executive arms of the government respectively, are to carry out a review of the role and capacity of court administrative officers, as well as security officers, responsible for investigation and enforcement of business-related human rights abuses in order to identify ways in which they can be better supported and resourced. This process is to be facilitated by the Federal Ministry of Justice, with the support of the NHRC.

Timelines-

- a) Federal Judicial Officers Workshop on Resolving Court Delays - January 2010
- b) NEC Meeting on Resolving Court Delays – November 2019
- c) Initiation of Collaboration between NHRC and LAC – September 2019
- d) Creation of Fund to Fund Legal Representation by NHRC and LAC – May 2019
- e) Training and Capacity Building for Law Enforcement Agencies – November 2019
- f) Engaging Private Sector to Take on Pro Bono Services – January 2020
- g) Review of Role or Conduct of Officers Involved in the Enforcement of Judgment – February 2020

State-based Non-Judicial Grievance Mechanism

The UNGP recognising that judicial grievance mechanisms alone cannot bear the burden of addressing all business human rights abuses, states that judicial mechanisms are to be complemented and supplemented by other administrative and legislative grievance mechanisms.

Issue:

Quite a number of government agencies have included in the statutory framework establishing them, the mandate to address human rights grievances against businesses operating in areas covered by their general mandate. Examples of such agencies include the National Oil Spill Detection and Response Agency (NOSDRA) and the Consumer Protection Council (CPC). However, whether victims of adverse business human rights impacts are confident in these systems to address their grievances, and whether they are aware of their existence, is another matter altogether.

Also, the NHRC runs a human rights complaint treatment mechanism which is located at its headquarters and all six of its zonal offices. More so, on the authority of the NHRC (Amendment) Act, 2010, the NHRC can enforce its own decisions and its decisions are registrable as decisions of the High Court. However, it appears that very few members of the public are aware of this platform.

Action Plan:

- a) The NHRC is to map out all existing administrative and legislative grievance mechanisms in existence in Nigeria such as the ones mentioned above, and collaborate with them to generate sufficient awareness over their existence, as well as confidence in their capacities to address their grievances.
- b) Likewise, the NHRC is to conduct a sensitization campaign to educate members of the public on its own compliant treatment mechanism.
- c) The NHRC is to establish a section designated solely for business and human rights issues.

Timelines:

- a) Mapping Exercise and Sensitization campaigns in Collaboration with Relevant Agencies – October 2019
- b) NHRC Sensitization Campaign – 2019- 2020

NON – STATE BASED GRIEVANCE MECHANISMS

The UNGP also requires States to consider ways to facilitate effective non-State based Grievance Mechanisms such as supporting businesses in their responsibility to provide effective remediation for adverse business human rights they have caused or contributed to, supporting access to regional and international human rights bodies, and by supporting the creation of multi-stakeholder initiatives as an alternate form of grievance mechanism.

Action Plan:

- a) The NHRC is to develop a best practice guide on the establishment of effective business-based grievance mechanisms for business enterprises that can act as a source of reference for businesses.
- b) The Presidency is to through its quarterly business forums conduct a special forum for business and human rights related issues where business associations such as the Manufacturers Association of Nigeria (MAN), the National Economic Summit Group

(NESG), are, among other things, encouraged to develop business human rights grievance mechanisms.

- c) The Presidency should also use the Quarterly Business Forum as a medium to encourage multi-stakeholder initiative grievance mechanisms specifically for sectors with high risk business human right impacts.
- d) The NHRC should create **enough/more** awareness to the members of the public on the available regional and international human rights bodies, for example the ECOWAS Court of Justice and the African Court on Human and Peoples' Rights and **guide them on the** ways in which they can be accessed.

Timelines:

- a) NHRC Best Practice Guide Effective Business-based Grievance Mechanisms – November 2019
- b) Presidential Quarterly Business Forum on Business and Human Rights – 2019
- c) NHRC Awareness Campaigns on Regional and International Human Rights Bodies – November 2019

STAKEHOLDER MAPPING

This section comprises a non-exhaustive outline of the relevant stakeholders necessary to be involved, and or consulted in the process of the implementation of this NAP. These stakeholders will be outlined according to the action plans stated in the various pillars identified above:

Duty of the State to Protect Human Rights: Relevant Stakeholders

- 1. Ratification of Convention 176 (Safety and Health in Mines 1995)**
 - Federal Ministry of Labour and Productivity
 - Federal Ministry of Foreign Affairs
 - Federal Ministry of Justice
 - Federal Executive Council
- 2. Review of the existing Labour Act and the passage of a new Labour Bill**
 - Federal Ministry of Labour and Productivity
 - Federal Ministry of Women Affairs
 - National Human Rights Commission
 - Nigerian Law Reform Commission

- Nigeria Labour Congress
- Houses of the National Assembly
- International Federation of Women Lawyers, (FIDA) Nigeria
- The Women’s Forum of the Nigerian Bar Association
- International Network for Corporate Social Responsibility (IN-CSR)
- Standing National Roundtable on Business and Human Rights
- Global Rights
- Women in Mining Nigeria
- Other relevant civil society organizations
- Trade Union Congress of Nigeria Women Commission
- Such other entities as may be considered necessary by the Federal Ministry of Labour and Productivity and the NHRC

3. Business and Human Rights Guide for Businesses

a) General Guide:

- National Human Rights Commission

b) Oil and Gas Sector

- Federal Ministry of Petroleum Resources
- Federal Ministry of Environment
- Nigeria National Petroleum Corporation
- Department of Petroleum Resources
- Petroleum Training Institute
- National Environmental Standards Regulatory and Enforcement Agency
- National Oil Spill Detection and Response Agency
- National Human Rights Commission
- National Union of Petroleum and Natural Gas Workers
- Independent Petroleum Marketers Association of Nigeria
- Petroleum and Natural Gas Senior Staff Association of Nigeria
- Oil Producers Trade Section
- Representatives of relevant communities in oil producing states
- Civil Society Organisations
- Environmental/Social Activists
- Business/investors’ association in the sector
- Nigerian Economic Summit Group
- Such other association/group that might be considered necessary by the NHRC and the Federal Ministry of Petroleum Resources

c) Mining Sector:

- Federal Ministry of Mines and Steel Development

- Federal Ministry of Environment
- National Environmental Standards Regulatory and Enforcement Agency
- National Human Rights Commission
- MIREMCOs
- Miners Association of Nigeria
- Global Rights
- Women in Mining, Nigeria
- Other relevant civil society organisations
- Environmental/Social Activists
- International Network for Corporate Social Responsibility (IN-CSR)
- Business/investors' association in the sector
- Voluntary Principles for Security and Human Rights Association
- Nigerian Economic Summit Group
- Standing Roundtable on Business and Human Rights
- Such other association/group that might be considered necessary by the NHRC and the Federal Ministry of Mines and Steel Development

d) Communications Sector:

- Federal Ministry of Communications Technology
- National Communications Commission
- National Human Rights Commission
- Consumer Protection Council
- Association of Communications Companies of Nigeria
- Standing Roundtable on Business and Human Rights
- Nigerian Economic Summit Group
- International Network for Corporate Social Responsibility (IN-CSR)
- Such other association or group that may be considered necessary by the by the National Communications Commission and the NHRC

e) Banking and Finance Sector

- Central Bank of Nigeria
- Nigerian Deposit Insurance Corporation
- The Financial Reporting Council
- Bank Directors Association of Nigeria
- Bank Customers Association of Nigeria
- Bankers' Committee
- Nigerian Economic Summit Group
- International Network for Corporate Social Responsibility (IN-CSR)
- Standing Roundtable on Business and Human Rights
- Such other association or group that may be considered necessary by the Central Bank of Nigeria and the NHRC

f) Agricultural Sector

- Federal Ministry of Agriculture and Rural Development
- National Human Rights Commission
- Civil Society Organisations
- Nigerian Economic Summit Group
- International Network for Corporate Social Responsibility (IN-CSR)
- Standing Roundtable on Business and Human Rights
- Such other associations or groups that may be considered necessary by the Central Bank of Nigeria and the NHRC

g) Manufacturing, Foods and Drugs Sector:

- Federal Ministry of Industry, Trade and Investment
- National Agency for Foods and Drugs Administration and Control
- Standard Organization of Nigeria
- Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture
- Consumer Protection Council
- Business/investors' association in the sector
- Manufacturers Association of Nigeria
- Standing Roundtable on Business and Human Rights
- International Network for Corporate Social Responsibility (IN-CSR)
- Nigerian Economic Summit Group
- Such other association/group that might be considered necessary by the NHRC and the Federal Ministries of Health, and Industry, Trade and Association

4. Human Rights Expectation of Businesses

- Federal Ministry of Industry, Trade and Investment
- Corporate Affairs Commission
- National Human Rights Commission
- Standing National Roundtable on Business and Human Rights
- International Network for Corporate Social Responsibility (IN-CSR)

5. State-Business Nexus and the Responsibility to Respect Human Rights

- Office of the Presidency of the Federal Republic of Nigeria
- National Council on Privatisation
- Bureau of Public Enterprises
- National Human Rights Commission
- Civil Society Organisations
- Federal Ministry of Justice
- Houses of the National Assembly

6. Business that Conduct Commercial Transactions with Government and their Responsibility to Respect Human Rights

- Office of the Presidency of the Federal Republic of Nigeria
- Bureau of Public Procurement
- National Human Rights Commission

7. MDAs and the Duty of States to Protect Human Rights

- Office of the President of the Federal Republic of Nigeria
- Office of the Secretary to the Government of the Federation
- Office of the Head of the Civil Service of the Federation
- National Human Rights Commission

8. Economic Agreement and the Duty of the State of Protect Human Rights

a) Trade Agreement

- Federal Ministry of Industry, Trade and Investment
- Nigeria Office for Trade Negotiations (Trade Office)
- National Human Rights Commission

b) Investment Agreement

- Office of the President of the Federal Republic of Nigeria
- Nigerian Investment Promotion Council (NIPC)
- National Human Rights Commission

Corporate Responsibility of Businesses to Respect Human Rights

9. Small and Medium Scale Enterprises (SMEs)

- Small and Medium Enterprises Development Agency of Nigeria
- National Human Rights Commission
- Nigeria Association of Small and Medium Enterprises
- International Network for Corporate Social Responsibility (IN-CSR)
- Joint Association of Persons with Disabilities (JONAPWD)

10. Oil and Gas Sector

- Federal Ministry of Petroleum Resources
- Nigeria National Petroleum Corporation
- Department of Petroleum Resources
- Petroleum Training Institute
- National Human Rights Commission
- Independent Petroleum Marketers Association of Nigeria
- Petroleum and Natural Gas Senior Staff Association of Nigeria
- Oil Producers Trade Section
- International Network for Corporate Social Responsibility (IN-CSR)

11. Mining Sector

- Federal Ministry of Mines and Steel Development
- National Human Rights Commission
- Miners Association of Nigeria
- Global Rights
- International Network for Corporate Social Responsibility (IN-CSR)

12. Manufacturing, Foods and Drugs Sector:

- Manufacturers Association of Nigeria
- Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture
- Consumer Protection Council
- National Agency for Foods and Drugs Administration and Control
- Standard Organization of Nigeria
- International Network for Corporate Social Responsibility (IN-CSR)

13. Agricultural Sector

- Federal Ministry of Agriculture and Rural Development
- International Network for Corporate Social Responsibility (IN-CSR)

14. Banking and Finance Sector

- Central Bank of Nigeria
- Bank Directors Association of Nigeria
- Bank Customers Association of Nigeria
- International Network for Corporate Social Responsibility (IN-CSR)

15. Communications Sector

- Federal Ministry of Communications Technology
- National Communications Commission
- Association of Communications Companies of Nigeria
- International Network for Corporate Social Responsibility (IN-CSR)

Access to Remedy

16. State-Based Judicial Grievance Mechanisms

a) Federal Level

- Office of the Chief Justice of the Federation
- Office of the President of the Court of Appeal
- Office of the President of the National Industrial Court
- Office of the Chief Judge of the Federal High Court
- National Human Rights Commission

b) State Level

- State Governments
- Commissioner of Justice

- Office of the Chief Judge State High Courts

c) Accessible Legal Representation

- Legal Aid Council
- National Human Rights Commission
- Civil Society Organisations
- Commercial Law Firms

17. State-based Non-Judicial Grievance Mechanism

- National Human Rights Commission
- Other agencies identified by the NHRC

18. Non – State Based Grievance Mechanisms

- National Human Rights Commission
- Office of the President of the Federal Republic of Nigeria
- MDAs, relevant CSOs and associations identified

COMMUNICATIONS STRATEGY

The requisite communications strategy necessary to generate awareness for this NAP, and the MDAs responsible for their implementation are provided below:

1. NAP Website: The Presidency is to facilitate the development of a website for the National Action Plan. The website should be used to encourage the participation of all stakeholders, and the NHRC is to largely contribute to its content. The website's content should include:
 - the finalized version of this NAP;
 - a periodic report on the implementation of the NAP;
 - any document, article, write up, videos, links, and so on, that would be useful in sensitizing members of the public on the requirements of the UNGP and the provisions of the NAP;
 - relevant links to the websites of all MDAs responsible for implementing this NAP should also be included on the NAP website.
2. Websites of All Responsible MDAs: Provision should be made by all responsible MDAs, on their respective websites, for the implementation of their assigned responsibilities under this NAP. This should be used to generate publicity on the NAP activities of responsible MDAs and a link to this part of their websites is to be provided on the general NAP website.
3. Use of Traditional Media: Awareness for the NAP should also be generated using television, radio and newspaper platforms and this is to be facilitated by the Federal Ministry of Information and Culture.

4. Use of New Media: New media platforms such as Facebook, Twitter and Instagram should be leveraged on to foster continued engagement with all stakeholders and to publicise the NAP itself, as well as any progress on its implementation.
5. Stakeholder Forums: These should be utilized by all participating MDAs and is to be organized at regular intervals to gather contributions from all relevant stakeholders and to get a more practical understanding of the business and human rights issues that are peculiar to their respective sectors.

RECOMMENDATION ON THE IMPLEMENTATION OF THE DRAFT NAP

In order to garner the necessary buy-in for this NAP and to facilitate its implementation, it is important that a Business and Human rights NAP team consisting of a cross section of key ministries, as well as the Executive Secretary of the NHRC, is set up. More so, it is equally important that the team reports directly to and is coordinated by another team within the Presidency.

The following are some of the key MDAs that should be represented in the suggested inter-ministerial team:

- Federal Ministry of Justice
- Federal Ministry of Labour and Productivity
- Federal Ministry of Health
- Federal Ministry of Environment
- Federal Ministry of Mines and Steel Development
- Federal Ministry of Petroleum Resources
- Federal Ministry of Industry, Trade and Investment
- Federal Ministry of Transport
- Federal Ministry of Information
- Federal Ministry of Power, Works and Housing

It is important that the representatives of these Ministries and the NHRC are very senior officials who can push through the necessary reforms needed to implement this draft NAP.

In addition, where convenient, all the policy documents that have been assigned to be created by the Presidency should be incorporated into a single document.

It is also recommended that the final NAP document be subject to a rigorous review by the NHRC every two years and the reviewed version should be presented to the inter-ministerial council suggested above.

In conclusion, prior to final amendments of this Draft NAP, further inputs from all stakeholders within the Organised Private Sector (OPS) was scheduled for 23rd August 2019 at the Nigerian Stock Exchange House, Lagos. The draft NAP now has inputs from that workshop and another consultation session with stakeholders working with the physically challenged members of our society.