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**NATIONAL ACTION PLAN (NAP) ON  
BUSINESS AND HUMAN RIGHTS**

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# BUSINESS AND HUMAN RIGHTS

## Background

The United Nations Guiding Principles on Business and Human Rights (UNGPs) gives a framework on how government and businesses are to protect and respect human rights, including what mechanisms are to be put in place to reduce, mitigate and redress business-related violations. This Action Plan seeks to operationalise these principles in practical, real and specific terms, exploring how government discharges the ***Duty to Protect*** in the context of business and how businesses operationalize the ***Duty to Respect*** and more importantly how to ensure ***Access to Remedy*** for individuals or communities adversely affected by business operations. It also encourages adoption of effective grievance mechanism by companies to address human rights issues.

The plan provides clear benchmarks for measuring progress and achievements in the implementation process by allocating roles and responsibilities for each stakeholder group in order to advance human rights and business in Nigeria. It therefore seeks to develop strategies for implementing human rights and business imperatives in Nigeria. It reinforces the three Pillars of the UNGPs which are:

- 1) The State duty to protect human rights
- 2) The corporate duty to respect human rights
- 3) Access to Remedy

The Plan is therefore developed along these three pillars. It outlines actionable items by the Federal Government of Nigeria to address business-related human rights abuses, focusing on institutional backing of appropriate agencies, ensuring FPIC, stakeholder identification and analysis, employment, casualization and contract employment, land acquisition, compensation, gender, mobilization,

sensitization and awareness creation, capacity building, resettlement, community development, community consultation and engagement, security, conflict resolution, reporting and monitoring compliance, community responsibility, reward and recognition and exit strategy.

## **Constitutional Obligations**

*S.17(3) - the State directs its policy towards ensuring that-*

- (a) All citizens without discrimination on any group whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;*
- (b) Conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;*
- (c) The health, safety and welfare of all person in employment are safeguarded and not endangered or abused;*
- (d) There are adequate medical and health facilities for all person;*
- (e) There is equal pay for equal work without discrimination on account of sex, or no any other ground whatsoever;*
- (f) Children; young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect;*
- (g) Provision is made for public assistance in deserving cases or other conditions of need; and*
- (h) The evolution and promotion of family life is encouraged.*

## **Domestic Legislation**

- National Industrial Court Act 2006
- The Companies and Allied Matters Act (CAMA) CAP C20 LFN 2004
- The Investment and Securities Act, 2007

- The Banks and Other Financial Institutions Act (BOFIA) 2004
- the Nigerian Sustainable Banking Principles, 2012
- Sustainability Disclosure Guidelines, 2018
- Nigeria Data Protection Regulation, 2019
- Environmental Impact Assessment Act CAP E12 LFN 2004;
- Nigeria Labour Law Act 2004
- Harmful Waste (Special Criminal Provisions) Act CAP H1 LFN 2004
- Oil Pipelines Act 2004
- Nigerian Communications Commission Act 2003
- Federal Competition & Consumer Protection Act 2019
- National Health Act 2014
- Nigeria Extractive Industries Transparency Initiative 2007
- National Environmental Standards & Regulations Enforcement Agency 2018

### **International Obligations**

- The African Charter of Human and Peoples' Rights
- The Universal Declaration of Human Rights (UNDHR),
- The International Covenant on Civil and Political Rights (ICCPR),
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The Convention on the Elimination of All Forms of Discrimination (CERD);
- The 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);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The International Labour Organisation (ILO) Convention 54 of 1935

## **Policies and Administrative Steps**

- Nigerian Code of Corporate Governance, 2018
- Nigeria Data Protection Regulation, 2019
- Establishment of Committees on public petition, human rights and justice in the National and State Houses of Assembly
- Establishment of Investment Tribunal and National Industrial Court

## **Challenges**

- Casualisation of employment, especially in the oil and gas sector, as well as the telecommunications, banking and financial services sectors.
- Contradictions in the provisions of Nigerian Labour Act with regards to freedom from discrimination on basis of sex at place of employment as provided by Section 42 of the Nigerian Constitution.
- Cost of litigation is a major impediment to access to remedy for victims of business human rights abuses.
- Enforcement of judgment of court for successful litigants.
- Ratification of convention 176(safety and health in mines 1995).
- Non-review of the existing Labour Act
- Non-ratification of Convention 176 (Safety and Health in Mines 1995).
- Ignorance and lack of awareness of rights by communities
- Challenges regarding Freedom of Association under the Trade Union (Amendment) Act, 2005.
- Limitation of Freedom of Information Act, 2011 to only public institutions, including lack of Whistleblower Protection Law.
- Lack of adequate human rights, conflict and environmental impact assessment when land is being acquired for development or business purposes.
- Lack of government involvement in observing stakeholder's engagement and consultation to the detriment of the host communities.

- The increasing reliance on businesses by the government to develop communities.
- Lack of effective, transparent, sustainable grievance mechanisms for businesses to address conflicts with communities including documenting and reporting of activities of settlement.
- Businesses not taking the Local Content Act 2010 into consideration in their employment process.
- Certain laws on business and employment being obsolete and not aligned to international standards.
- Lack of involvement and inclusion of the community in the design and management of security architecture and operations of businesses that they host.
- Lack of human rights training for security providers in their logistic support and general oversight, including the Nigeria Security and Civil Defense Corps (NSCDC).
- Lack of inclusive security coverage for every entity in the business value chain including business facilities, employees, suppliers, contractors, infrastructure and the community
- Inability of Government to adequately monitor and ensure human rights are protected in the provision of security.
- Lack of partnership between businesses and public security
- Lack of a realistic, implementable business and human rights reporting mechanism for businesses to report on their business and human rights situation.
- Lack of incentives developed by Government for businesses to comply with business and human rights provisions.
- Lack of a clear policy and guidance note developed by Government on the exit strategy of businesses when their operations come to an end.
- Violation of right to fair hearing by the courts.

## **Pillar 1**

### **State Duty to Protect Human Rights**

The Nigerian government is the primary duty bearer for the protection and progressive realisation of human rights in Nigeria. As part of this duty, government is obligated to regulate business practices and activities within its territory, as well as prevent, mitigate and address adverse impacts of business operations through policies, legislation, regulation, adjudication or other measures. In line with State Duty to Protect, there should be legislative and policy coherence to ensure that state human rights obligations are complied with and applied effectively.

#### **Actionable items**

##### **A. Establishment of a National Working Group on Business and Human Rights (NWGBHR)**

The government shall establish a National Working Group on Business and Human Rights (NWGBHR) to coordinate all activities of agencies that are involved in dealing with human rights and business-related issues. Membership of the Working Group shall include the following:

- i) Ministry of Justice
- ii) National Human Rights Commission (NHRC)
- iii) Ministry of Trade, Industry and Investment
- iv) Ministry of Mines and Power
- v) Ministry of Petroleum Resources
- vi) Ministry of Environment
- vii) Ministry of Labor and Productivity
- viii) Ministry of Niger-Delta
- ix) Ministry of Environment
- x) Consumer Protection Council (CPC)
- xi) Corporate Affairs Commission (CAC)



- xii) National Environmental Standards Regulatory and Enforcement Agency (NESREA)
- xiii) National Oil Spill Detection and Response Agency (NOSDRA)
  - i) Niger-Delta Development Commission (NDDC)
  - ii) National Agency for Drug Administration and Control (NAFDAC)
  - iii) Standard Organization of Nigeria (SON)
  - iv) Nigerian Investment Promotion Council (NIPC)
  - v) Nigerian Bar Association (NBA)
  - vi) National Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA)
  - vii) National Electricity Regulatory Commission (NERC)
  - viii) Federal Airports Authority of Nigeria (FAAN)
  - ix) Manufacturers Association of Nigeria (MAN)
  - x) Nigeria Labour Congress (NLC)
  - xi) Non-Governmental Organization with focus on Human Rights and Business, gender, environment and development.
  - xii) Any other relevant organization.

This composition will be replicated in the states. The Working Group will have the following responsibilities, among others:

- i. To determine the capacity needs of businesses and other agencies in the area of business and human rights.
- ii. Conduct capacity-building trainings for different stakeholders on human rights and business using the UNGP framework.
- iii. Design and agree on a format for reporting human rights and business by stakeholders.
- iv. Review the reports periodically and provide technical support for stakeholders in their area of need.

- v. Drive the process of reviewing the NAP periodically
- vi. Periodically assess and support the establishment of grievance mechanisms in companies.
- vii. Oversight companies' human rights Due Diligence activities and Human Rights Impact Assessment.
- viii. Convene an Annual Business and Human Rights Forum to review developments in the field.
- ix. Support research and academic work on Business and Human Rights.

## **B. Legislation and Policies**

Government shall improve human rights protection in business through legislation, policy initiatives, programmes and similar interventions in the following ways:

- Enforce and review existing laws or enact new legislation that require businesses to respect human rights in their operations.
- Ensure that all businesses carry out Human Rights Impact Assessment before commencement of business while those already in business should do so within 2 years.
- Mandate businesses to communicate how they address human rights impact of their operations.
- Review the Trade Union Act (2005) to address the challenges of freedom of association, the right to collective bargaining and the right to strike actions.
- Enact Whistleblower Protection Laws at the Federal and State levels to protect whistleblowers from any form of victimization or retaliation and encourage employees of both public and private sectors to report cases of human rights abuses and violations without fear of losing their jobs.

The Federal Government of Nigeria and all the state governments to

include in all contracts, Memoranda of Understanding and other business-related policy documents, a clause that clearly spells out the human rights obligations of the parties including possible sanctions for violations. Lead Agencies to realize this include the Ministry of Trade, Industry and Investment, Ministry of Finance, Ministry of Budget and National Planning, Corporate Affairs Commission, Nigerian Investment Promotion Council.

### **C. Human Rights Due Diligence**

Regulatory bodies and agencies shall ensure the conduct of Human Rights Due Diligence and Human Rights Impact Assessment in all business operations.

The Central Bank of Nigeria shall ensure that in every loan agreement in all banks, as part of the conditions for the loan facility, there is a clause that spells out that the loan receiver for business is under obligation to respect human rights in all operations.

Similarly, specialized banks and other financial institutions such as Bank of Agriculture, Bank of Industry, and Nigerian Agricultural Insurance Corporation etc. must ensure that as part of their risk assessment and due diligence the client must show that it has a human rights policy and that it has taken measures to conduct human rights due diligence and human rights impact assessment.

### **D. Free, Prior and Informed Consent**

Free, Prior and Informed Consent (FPIC) of the host community must be ensured to enable a community have the right to give or withhold consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. FPIC is recognized by the jurisprudence of international treaty bodies. To do this, government will use participatory methods of stakeholder identification and analysis to ensure that before the

commencement of any project. In this regard, it is necessary to build the capacity of community leaders and decision makers to negotiate with businesses and ensure that their rights are protected at all times.

### **E. Stakeholder Identification and Analysis**

Government shall ensure that companies conduct a thorough and detailed Stakeholder Identification and Analysis (SIA) in their area of operation to provide invaluable data for sustainable stakeholder consultation and engagement. This enables companies to be aware of the operational environment and sensibilities and helps operational decision-making, as well as implementation of community engagement strategy and prioritizing.

### **F. Environment**

When acquiring land for development or business, government must ensure the conduct of human rights conflict and environmental impact assessment.

In respect of environmental hazards and workplace safety, there will be periodic monitoring and inspection of company premises, operations and surroundings of manufacturing, construction, and extractive industries among others to ascertain their compliance with environmental standards.

### **G. Employment**

In relation to employment, the National Working Group on Business and Human Rights will develop Guidance Notes for companies to manage their employment processes in compliance with human rights standards to ensure nondiscrimination and prevent child labor. In doing so, the issues of gender, and disability concerns will be taken into consideration pursuant to relevant provisions of extant Labor Laws.

## **H. Casualisation and Contract Employment**

The Ministry of Labour and Employment should take steps to curb the incidence of Casualisation in labour as well as hazardous workplace practices. Accordingly, it should strengthen its monitoring and implementation processes to give effect to applicable laws. Where the laws are not in compliance with human rights standards, they should be reviewed. Adequate education of the public should be carried out to empower them to demand for a letter of contract/engagement from employers irrespective of the nature or duration of the engagement.

## **I. Gender**

There will be deliberate measures to mainstream Gender Considerations in Business and Human Rights. Government and businesses should ensure that in the award of scholarship or other benefits, employment, contracts and compensation, special consideration should be taken to cater for the interest of women. Accordingly, in all meetings, consultations, dialogue or negotiation, women should represent themselves.

In addition, labour practices that are discriminatory to women with respect to employment, promotion and incentives, will be addressed and eliminated.

## **J. Resettlement**

Efforts will be made to minimize the negative impact of resettlement. Emphasis must be on the livelihood system of affected communities. Under business and human rights, Nigeria's handling of the resettlement of Bonny and Finima during the construction of the Nigeria Liquefied Natural Gas Project has been acknowledged as a best practice case study.

Where resettlement for business becomes necessary, government and investors will be guided by best practices such

as the Principles of Resettlement enunciated by the African Development Bank and the Asian Development Bank.

### **K. Mobilisation, Sensitisation and Awareness Creation**

Government, through its agencies, will engage in massive mobilization, sensitisation and awareness creation on the NAPBHR. The awareness creation will be strategic and involve the three tiers of government.

The National Working Group on Business and Human Rights will enter into negotiation with Manufacturers Association of Nigeria and related bodies to ensure compliance with this plan. It will also carry out robust sensitization of the public to empower them to demand for a letter of contract/engagement from employers irrespective of the nature or duration of the engagement.

Considering the importance of education in Human Rights Protection, government at all levels will develop policies that advance Business and Human Rights Education. This may include introduction of courses on Business and Human Rights in tertiary institutions and the introduction of scholarships, fellowships, research grants, to contribute to knowledge in the area of human rights and business. The National Working Group on Business and Human Rights is responsible to liaise with Ministry of Education and relevant parastatals to realise advancement of Human Rights Education as a channel to enhance government protection obligation.

### **L. Reward and Recognition as Incentive**

Reward and recognition system is necessary to ensure that businesses get benefits for implementing the Business and Human Rights Action Plan. To promote this, government

through the National Working Group on Business and Human Rights is urged to work out incentive packages for businesses that comply with the provisions of NAPBHR.

### **M. Capacity Building**

The following capacity building needs have been identified:

- Training of Judges to mainstream the norms and tenets of human in their decisions when considering business related human rights cases.
- Training business operators to be able to develop a coherent, robust and implementable human rights policy; establish, maintain and monitor their grievance mechanisms. Also, build their capacity on monitoring and reporting compliance with the UNGPs.
- Regulatory agencies should be strengthened to enable them monitor and evaluate the implementation of NAPBHR and also provide remedies when violations occur.
- Community leaders and decision makers should be capacitated to negotiate with businesses and ensure that their rights are protected at all times.

Governments at all levels will develop policies that will meet these needs. This may include introduction of courses on Business and Human Rights in tertiary institutions and the introduction of scholarships, fellowships, research grants, to contribute to knowledge in the area of human rights and business.

### **N. Security**

When businesses conduct risk assessment, the focus is mainly on the risk posed to their operation within the community without

considering the risk their operations pose to communities. This makes them design their security apparatus without community input and consultation.

In addressing the issue of security and human rights in business operations, the Voluntary Principles on Security and Human Rights provides a useful guide. To this end;

- Government shall fulfill its obligation as the primary provider of security.
- Communities will be involved in the design and management of company security.
- Government shall provide human rights training for security providers, logistic support and general oversight.
- Government shall monitor and ensure that human rights are protected in the provision of security.
- Security arrangement will be all inclusive and offer protection to business facilities as well as employees, suppliers, contractors and the community.



## **PILLAR 2**

### **CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS**

The Corporate Responsibility to Respect human rights implies that companies must avoid infringing on the rights of individuals and communities but ensure that they do not undermine State ability to protect human rights. They must show willingness to put in place measures to address human rights abuses when they occur. This responsibility obligates compliance of Corporations or other business entities with human rights principles and norms in the course of business as well as prevention or mitigation of adverse impact of their operations. It is different from Corporate Social Responsibility (CSR) which is voluntary. Failure to respect human rights should attract sanctions.

#### **Actionable Items**

##### **A. Policy**

Every company will have a clear, simple and understandable human rights policy within their value chain that reflects their commitment to promote human rights in their operations. This policy shall guide all operations of the business and should be conspicuously displayed either on the website, gate or reception area of the company.

In the Policy, the rights of staff should be made clear as it relates to respect for human rights. Staff should also be trained on various aspects of human rights especially as it pertains to company operations. It is expected that the policy will clearly allocate roles and responsibilities and state the department(s) in the company that has responsibility for human right issues. This will be applicable to all companies in relation to size, scope of operations and type of business

## **B. Human Rights Due Diligence**

Businesses operating in Nigeria will ensure that they conduct Human Rights Due Diligence from onset, which should identify possible human rights violations arising from their operations. Human Rights Due Diligence should address negative human rights impact which may be linked directly or remotely to business operations, products or services. Where a state directly engages in business, government assumes dual roles- i.e. the International Human Rights obligation to Protect is retained; and having delved into business, it also has additional obligation to Respect Human Rights from a corporate perspective.

## **C. Reporting Human Rights Compliance**

Businesses operating in Nigeria will be obligated to report on their human rights compliance, annually. The National Working Group on Business and Human Rights will work closely with various regulatory agencies to incorporate human rights reporting and monitoring template in their regulatory framework. Appropriate sector specific template and checklist will be developed for this with input from relevant stakeholders in respective sectors.

## **D. Capacity Building**

Capacity building is critical in ensuring corporate responsibility to respect human rights. Businesses will build the capacity of their staff in carrying out human rights due diligence and implementing their human rights policy. The NWGBHR will be available to provide the requisite expertise where necessary.

## **E. Grievance Mechanisms**

Businesses are obligated to have an Operational Level Grievance Mechanism. A system shall be put in place for the monitoring and reporting of the activities of the grievance mechanism. This will be

established in line with the Eight Effectiveness Criteria of the UNGP and in consultation with the target group. A system shall also be put in place for the monitoring and reporting of the activities of the grievance mechanism to identify issues and areas that require administrative, policy or legislative intervention.

## **F. Community Relations**

Businesses must have a Community Relations Guideline. This will be developed in conjunction with the community stakeholders. The Community Relations Guideline shall draw from the report of the Human Rights Due Diligence (HRDD) and Human Rights Impact Assessment (HRIA). The company is also expected to conduct Peace and Conflict Impact Assessment (PCIA) as part of their entry strategy. The extent of these assessments will depend on the kind of business the company is involved in.

The Community Relations Guide shall provide for such things as employment, community development, contracts, scholarships etc. To ensure inclusiveness, gender consideration and broad representation of all interest shall be taken into account.

## **G. Partnerships**

Businesses are encouraged to forge strong and sustainable partnerships and collaborations with any agency, individual or organization that will provide the needed support for the progressive realisation of human rights in their area of operations. Part of this partnership and collaboration include the use of the media and engagement with different government agencies.

## **PILLAR 3**

### **ACCESS TO REMEDY**

Access to remedy for communities or persons who are victims of adverse impact of business operations can be through the following framework;

- i. State-Based Judicial Mechanism
- ii. State-Based Non-Judicial Mechanism
- iii. Non State-Based Grievance

Access to remedy includes legal, administrative, judicial and non-judicial remedy.

#### **State Based-Judicial Mechanisms**

State-Based Judicial Mechanisms are faced with a number of challenges associated with general justice delivery in Nigeria. These challenges include, delay in the judicial process, overbearing political interference, lack of judicial independence, judicial corruption, low level of judicial awareness of the UNGPs etc.

To address these challenges, the NWGBHR shall carry out intensive advocacy to the Judiciary in order to effect the issuance of 'Practice Directions' that will facilitate speedy resolution of cases of human rights violations by businesses. There will also be a continuous sensitisation of judges and magistrates on the Action Plan. In addition, Alternative Dispute Resolution approach will be encouraged.

The NWGBHR shall organise Consultative Engagement Sessions for Judicial Officers at various levels on addressing the problem of delay in resolving business related human rights cases.

The NWGBHR shall encourage Strategic Litigation, not just municipally where these businesses are carried out, but also in the

home countries of the respective multinational companies in instances where the violation is caused by transnational corporations. Such litigation would raise awareness on corporate liability for human rights abuses. The Working Group will liaise with the Nigerian Bar Association to explore possibilities of Legal Aid to indigent persons or communities who are adversely affected by business operations but unable to pursue remedy due to cost.

### **State-Based Non-Judicial Mechanism**

These consist of State Agencies which, though non judicial, exercise statutory powers and regulatory functions pertaining to Business and Human Rights. They have the potential of addressing the greatest number of human rights violations by businesses because they exercise statutory powers and regulatory functions.

They include the following:

- i. National Human Rights Commission (NHRC)
- ii. Public Complaints Commission (PCC)
- iii. National Oil Spill Detection and Response Agency (NOSDRA)
- iv. Consumer Protection Council (CPC)
- v. Nigerian Communications Commission (NCC)
- vi. National Administration of Food and Drug Control (NAFDAC)
- vii. National Bio-Safety Management Agency
- viii. National Environmental Standard and Regulatory Enforcement Agency (NESREA)
- ix. Standards Organisation of Nigeria (SON)
- x. Central Bank of Nigeria (CBN)
- xi. Corporate Affairs Commission (CAC)
- xii. Nigerian National Petroleum Corporation (NNPC)
- xiii. Department of Petroleum Resources (DPR)

In order to improve the effectiveness of State Based non-judicial

mechanism, the following plan of action will be implemented:

- Capacity-building for these agencies to enable them appreciate the human rights component of their mandate and enhance their ability to offer remedy pursuant to their statutory functions
- Strengthening of the Institute for Peace and Conflict Resolution (IPCR) through capacity building and close partnership to enable the organization to work more effectively with communities, state and businesses to resolve conflicts efficiently.
- Strengthening of the National Human Rights Commission to discharge its quasi-judicial responsibilities in addressing human rights violations by businesses; and rendering of effective remedy
- Convening of periodic meeting of regulatory bodies whose functions are relevant.
- Mapping of these bodies to clearly identify them and properly delineate their mandates so that their operations may be streamlined for speed and efficiency in relation to business and human rights related remedy.
- Scale up of Community Sensitization on the functions of various agencies.
- Collation of reports and feedback on progress made by State Based non Judicial

### **Non-State Based Grievance Mechanism**

The law cannot take care of all the complexities of the relationship between the community, the state and corporations. This therefore necessitates the adoption of some non-state-based grievance mechanisms to fill the gaps. These include all the centres and agencies established by companies, NGOs, Media, CSOs, Labour

Unions, Faith-Based Organisations, communities and other sundry agencies. Some of them are formal and some are informal in their operations. Some specialize in advisory services and the provision of information, while others are mainly concerned with referral and monitoring.

## **IMPLEMENTATION STRATEGY**

Specific activities will be designed from the Initiatives contemplated in this plan by the National Working Group on Business and Human Rights in consultation with respective sectors, business operators, relevant agencies of government, Civil Society Organizations and Development Partners in realization of each of the three Pillars.

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