NATIONAL ACTION ON BUSINESS AND HUMAN RIGHTS IN NIGERIA TO SUPPORT THE IMPLEMENTATION OF THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

CONSULTATIVE DRAFT

FEBRUARY, 2017
Forward

Business activities in Nigeria, especially, the Multi-National Corporations (MNCs), have no doubt brought development to the country. such as Infrastructural development, employment, commerce and availability of goods and services, etc. Unfortunately, these advantages are oftentimes accompanied by negative impacts, some of which violate the human rights of people in host communities.

It is in recognition of this fact that the United Nations, in 2011, adopted the United Nations Guiding Principles on Business and Human Rights (UNGP). The aim was to get governments to address negative impacts of businesses and promote mutually beneficial relationships between these businesses and the communities where they operate. Thereafter, a Working Group was set up on Business and Human Rights and UN member States were enjoined to develop National Action Plans to operationalize the UNGPs.

Subsequently, the National Human Rights Commission, pursuant to its mandate to promote, protect and enforce human rights in Nigeria, worked with relevant partners and stakeholders to develop a National Action Plan on Business and Human Rights (NAPBHR) which will be used for a consultative process prior to presentation to the government for adoption and implementation. NAPBHR is an integrated national strategy to implement the UNGP and ensure that both businesses and communities co-exist harmoniously and gain maximum benefits from the presence and operations of businesses in Nigeria. Government is expected to provide regulatory environment for business operations, in fulfilment of its role as the primary duty bearer for the protection of human rights.

I acknowledge efforts made so far in developing this draft NAPBHR and invite all stakeholders and all Nigerians to engage with the consultations around this NAPBHR and contribute all they can to ensure it is finalised and adopted in good time by the federal government.

Mrs. Oti Ovrawah
Acting Executive Secretary
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Various persons, Ministries, Departments and Agencies, Civil Society Groups, community leaders, representatives of businesses, the academia and the media were involved in one way or the other in the production of the draft NAPBHR. We acknowledge their contributions to the process.

Finally, we appreciate the contribution of the in-house project team of the Commission for their hard work and relentless efforts at producing the finalised consultative draft NAPBHR.
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forward</td>
<td>i</td>
</tr>
<tr>
<td>Acknowledgment</td>
<td>ii</td>
</tr>
<tr>
<td>Table of Content</td>
<td>iii</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>4</td>
</tr>
<tr>
<td>Overview</td>
<td>8</td>
</tr>
<tr>
<td>Philosophy NAPBHR</td>
<td>9</td>
</tr>
<tr>
<td>Methodology</td>
<td>12</td>
</tr>
<tr>
<td><strong>Pillar 1: State Duty to Protect Human Rights</strong></td>
<td>15</td>
</tr>
<tr>
<td>State Duty to Protect</td>
<td>16</td>
</tr>
<tr>
<td>Commitments and Obligations of the State to Protect Human Rights</td>
<td>18</td>
</tr>
<tr>
<td>Free, Prior and Informed Consent</td>
<td>19</td>
</tr>
<tr>
<td>Stakeholder Identification and Analysis</td>
<td>20</td>
</tr>
<tr>
<td>Employment</td>
<td>20</td>
</tr>
<tr>
<td>Casualization and Contract Employment</td>
<td>20</td>
</tr>
<tr>
<td>Land Acquisition</td>
<td>21</td>
</tr>
<tr>
<td>Environment</td>
<td>21</td>
</tr>
<tr>
<td>Gender</td>
<td>22</td>
</tr>
<tr>
<td>Mobilization, Sensitization and Awareness-creation</td>
<td>22</td>
</tr>
<tr>
<td>Capacity building</td>
<td>23</td>
</tr>
<tr>
<td>Resettlement</td>
<td>24</td>
</tr>
<tr>
<td>Community Development</td>
<td>24</td>
</tr>
<tr>
<td>Community Consultation and Engagement</td>
<td>25</td>
</tr>
<tr>
<td>Security</td>
<td>26</td>
</tr>
<tr>
<td>Conflict Resolution</td>
<td>27</td>
</tr>
<tr>
<td>Reporting and Monitoring Compliance</td>
<td>27</td>
</tr>
<tr>
<td>Community Responsibility</td>
<td>28</td>
</tr>
<tr>
<td>Reward and Recognition</td>
<td>28</td>
</tr>
<tr>
<td>Exit strategy</td>
<td>29</td>
</tr>
<tr>
<td><strong>Pillar 2: Corporate Responsibility</strong> to Respect Human Rights</td>
<td>30</td>
</tr>
</tbody>
</table>
Policy 30
Human Rights Due Diligence 31
Capacity Building 32
Reporting Human Rights Compliance 32
Grievance Mechanism 32
Community Relations 33
Partnership and Collaboration 33

Pillar 3: Access to Remedy 34
State Based Judicial Mechanisms 34
State Based Non-Judicial Mechanisms 35
Non-State Based Grievance Mechanisms 36
Quality Control, Monitoring and Reporting 38
Compensation 38
Executive Summary

The National Action Plan on Business and Human Rights (NAPBHR) is aimed at building mutually beneficial relationships between communities and businesses, with government acting as the credible third party, moderating this relationship. To carry out this duty objectively and effectively, governments are enjoined by the United Nations, to develop Plans of Action, indicating their willingness and commitments in this regard. The United Nations Guiding Principles on Business and Human Rights (UNGP) is expected to form the framework for this Action Plan.

The first sections of the NAP clearly state the goal of the document and introduce the basis for its development. This is anchored on the Universal Declaration on Human Rights. It goes on to discuss the philosophy of the NAPBHR. The document further reviews the methodology through which this NAPBHR is arrived at.

The next part reviews Pillar 1 of the UNGP which is the “State Duty to Protect Human Rights.” This includes the state respecting the rights of everyone in Nigeria. Second, is ensuring that the state does all in its power to prevent activities and actions that would infringe on the rights of the people. Finally, is the state duty to make it clear to third parties especially businesses not to infringe on the rights of the people and even when this happens, that there are remedy measures to address them.

The NAP goes on to list the commitments and obligations of the state duty to protect human rights. 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,
environment. 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.

One major recommendation of the NAPBHR is the establishment of a National Working Group on Human Rights and Business (NWGBHR) to coordinate activities of agencies that are involved in dealing with human rights and business related issues.

It also recommends that the National Human Rights Commission creates a Directorate of Human Rights and Business to be headed by a Director. This new directorate shall act as the secretariat of NWGBHR. The Chairperson of the CCSR shall be the Executive Secretary of the National Human Rights Commission, while the secretary of the NWGBHR shall be the director of business and human rights at the NHRC. The NWGBHR shall work out the following:

i. The capacity needs of business and other agencies in the area of business and human rights

ii. They shall conduct capacity-building trainings for different stakeholders on human rights and business using the UNGP framework.

iii. They shall design and agree on a format for reporting human rights and business by stakeholders.

iv. They shall review the reports periodically and provide technical support for stakeholders in their area of need.

v. They shall be responsible for the review of NAP as at when the need arises.

vi. They shall act as referral and monitor all business related human rights issues that are undergoing hearing.

vii. They shall periodically assess and support the
establishment of grievance mechanisms in companies.

viii. They shall oversight companies' human rights due diligence activities and human rights impact assessments.

ix. They shall convene an Annual Business and Human Rights Forum to review developments in the field.

x. They shall support research and academic work on Business and Human Rights.

The next section of the NAPBHR deals with Pillar 2, the corporate responsibility to respect human rights. It defines relevant concepts and provides guidance in areas such as policy, human rights due diligence capacity building, reporting human rights compliance, grievance mechanisms, community relations and partnerships and collaborations. The focus of this section is that businesses must have a coherent human rights policy and this shall be made known to all their stakeholders. In addition, businesses must not infringe on peoples' rights or benefit from such infringement and where it does, there must be appropriate remedy.

The NAP concludes with Pillar 3 which deals with access to remedy. The main focus is the need for government to ensure quality control in the management of these non-judicial grievance mechanisms. This would be done in such a way as not to portray government as infringing on the rights and independence of civil society groups. The section also lists out some of the actionable items which include: Organizational capacity assessment, mapping of the mechanisms, capacity-building, streamlining their operations, reporting and sharing lessons learned. Government also has a role to ensure quality control.
Introduction

In the Universal Declaration on Human Rights of 1948, it was observed that every 'organ' of society has a duty to promote, protect and respect human rights. It therefore follows that businesses have a duty to promote, respect and protect human rights. In traditional human rights discourse, the State has the primary duty to protect and work towards the enjoyment and realization of human rights. But current thinking on Corporate Social Responsibility (CSR) is beginning to redefine the role of business in promoting human rights. Carroll (2001) has developed a framework for understanding CSR and argues that business responsibilities could be categorized into four namely; legal, economic, ethical and philanthropic. According to him legal responsibility means that the company must obey the laws of the land and carry out its operations within the boundaries established by law. Economic responsibility implies that businesses must add value to life through the production of goods and services that meet human needs. It also means that businesses must create wealth for their customers and stockholders. In other words, business must make profit. Ethical responsibility implies that businesses must behave in an ethical manner and carry out their activities in ways that are not opposed to natural justice, equity and good conscience. Business must uphold the dignity and respect of their staff.

In April, 2005, the United Nations passed resolution 2005/69 on Human Rights and Business. This resolution sought to explore and clarify the role of business, especially transnational corporations and other business enterprises in the promotion, protection and realization of human rights. The UN Secretary General appointed Prof. John Ruggie, a Special Representative (SRSG) on human Rights and Business Kennedy School of Government at Harvard University. After six years of tireless work with about 40 consultations worldwide and review of more than 10,000 submissions on June 17, 2011, he submitted his final report to the UN Human
Rights Council. Unlike the UN, his report was adopted without a vote by 28 countries and 12 cross-regional co-sponsors of the resolution.

He eventually submitted his final report to the UN Human Rights Council in 2011. In that report he developed the “Protect, Respect and Remedy” Framework for businesses. This report also enunciated the 31 Guiding Principles on human rights and business which is also known as the “Ruggie Principles” or UN Guiding Principles on Human Rights and Business (UNGP).

The UNGP gives a framework on how businesses are to promote, respect and protect human rights, what mechanisms they need to promote the realization of human rights, who monitors that their activities, how violations are reported and who takes responsibility for the promotion, protection and respect of human rights in the company. This plan of action therefore seeks to operationalize these principles.

One major area of consideration is gender concerns. In most company operations, the gender dimension is overlooked. This is because of male dominance of the corporate world and the specialized nature of some business activities. Businesses are expected to mainstream gender into their operations. More specifically is the recognition, respect and promotion of women's rights in employment, training, sharing of benefits of company operations, etc.

Looking at all of the above, it is a little too generalized and generic. There is the need to be more practical, real and specific in how businesses could promote human rights in their business operations. This therefore calls for a practical guide to assist businesses in advancing the human rights agenda. It is in response to these questions and need that in 2005, the UN passed resolution 2005/69 on 20th April 2005
Human Rights and Business.

Still the UNGPs have been criticized for not creating a role for civil society and for simply focusing on government, companies and communities. Even the role of communities in the UNGP is not very clear. Second, the constitution of each country lays out the broad outlines of human rights and creates the institutions that would be used to bring them to life. This is not the same with the UNGPs. It is with the above in mind that the UN Working Group on Human Rights and Business at the UN Forum on Human Rights and Business in 2013 called for the development of a National Action Plan (NAP) for the implementation of the human rights and business agenda.

The challenge therefore lies in advancing the UNGP especially with government since it is the primary duty bearer for the protection of human rights. Second, government provides the regulatory environment for business operations. And third, most human rights issue prevalent in business operations are traceable to extractive industries which governments are the principal partners.

The second challenge is to identify those institutions that deal with business and human rights issues and bring them on board on the potentials of the UNGP in fulfilling their mandate. To meet this challenge, in 2014 the UN Working Group on Human Rights and Business passed a Resolution requesting states to develop a National Action Plan (NAP) for advancing and implementing the UNGPs.

This document therefore is aimed at looking at the strategy for implementing a human rights and business agenda in Nigeria through the development of a NAP using the framework of the UNGP. Generically, a NAP is a document that provides a systematic and easy roadmap for the implementation of a policy, programme or an agenda in order to maximize the
benefits of such policies or agenda. The whole essence of NAPs is to provide clear benchmarks for measuring progress and achievements in the implementation process.

The main objective of developing a NAP for Nigeria for the implementation of the UNGP is to have a multi-stakeholder forum that builds on the momentum already gathered from the other human rights activities in order to deepen and sustain the achievements so far. It is also meant to demystify the misconception that human right is political while businesses are supposed to remain apolitical. The NAP will also clearly allocate roles and responsibilities for each stakeholder group on the best way to advance the human rights and business agenda in Nigeria. Finally, the NAP will also provide some kind of strategic guidance on the best way to integrate human and business into policies and existing legislations with a view to achieving optimal results. It will also provide timelines that will assist to ensure that set targets are met.
Overview of National Action Plans (NAP)

A National Action Plan is an official document developed through baseline research, multi-stakeholder dialogue and consultation, which provides strategic guidance for, and sets priorities and actions that will be adopted and used to support the implementation of an international, regional or national policy, program, guideline, principle or resolution.

The development of a NAP is a step by step process which includes the identification of a program, mobilization of support for the implementation of the program, the building of consensus on the development of NAP as a strategy for implementation, conduct a baseline assessment or research of the issue which the program seeks to address, conduct stakeholder identification and analysis, engage in extensive stakeholder consultation and dialogue, validation of the baseline assessment findings and stakeholder consultation, development of draft NAP, public presentation, adoption and endorsement of the draft NAP, review of the draft NAP, implementation of NAP and finally the evaluation of the implementation of the NAP using the program as framework.

There are many challenges in developing a NAP. Perhaps the first major challenge is that NAPs because of their policy implications are usually government-led and this could be bogged down by bureaucratic lethargy. The development of NAP is an expensive exercise and requires substantial commitment of resources. During the development of the NAP document, reaching consensus on some critical areas may be daunting. On the other hand, prioritization of issues and areas may be an issue because each stakeholder group wants to privilege their area of interest. Another key challenge is that there is almost always the likelihood that some stakeholders may want to sabotage the process especially when it is against their interest. Because NAPs do not have the force of law, its implementation may be a little bit
demanding. Finally, a key challenge of NAP is that the process could provide an avenue for the blame game on the issue being addressed.

With the above overview, the key question is what is the NAP on the UNGP expected to do? First, it is supposed to give a snapshot of the findings from the baseline. Second, NAP shall create awareness of human rights issues especially as it relates to business among different stakeholders. Third, the NAP shall mobilize stakeholders in support of the UNGP. Four, the NAP shall propose realistic activities for the implementation of the UNGP. Five, NAP shall also set realistic and achievable targets for the implementation of NAP. Six, NAP is supposed to provide linkages with other areas of Nigeria's national life. Seven, the NAP is supposed to elicit stakeholders' commitment to act using the UNGP framework. Eight, NAP shall articulate reporting and evaluation mechanisms and allocate roles and responsibilities to the various stakeholder groups.

The use of NAP to support the implementation of an initiative has many benefits. First, the use of NAP aids consistency and coordination across different stakeholder groups. The use of NAP also helps to avoid or minimize duplication. It contributes to the efficient use and management of available resources. A NAP could provide insight into a country's stand on a given policy or program. The development and implementation of NAP provides a great opportunity for collaborative problem-solving. It may also help to identify best practices and lessons learned. Finally, through effective and extensive stakeholder consultation, NAP can help in the mobilization of resources for the implementation of a given program or policy. NAP could also be used to identify capacity needs and in the provision of technical assistance.
Philosophy of NAP

Many other nations of the world have developed their NAP. For instance, by June 2014, 24 out of the 28 EU member states have developed their NAPs. These ones provided sources of learning for the development of this draft NAP for Nigeria. However, going through the NAP of especially EU Member states, the focus was on the activities of their multinational corporations operating abroad. In other words, the NAP of these nations were like guidelines on how these companies should behave abroad in order not to embarrass their home countries and government. In South Africa they just released a National Baseline Assessment which reviews what the government is doing in the area of human rights and business. During the consultations, stakeholders observed that the Nigeria government is yet to adopt and endorse the UNGP.

But in the case of Nigeria there are no multinationals of Nigerian origin except for GLO, DANGOTE Group and a few banks. Instead there are the same multinational that have their home countries regulating them. The implication of this, is that this draft NAP shall pay attention to both foreign multinationals and indigenous Nigerian firms. This means there is a lot of balancing because of the delicate nature of some of these relationships. The UNGP is for all kinds of businesses no matter their size and location.

Second, the main plank of this draft NAP is to support the establishment of effective grievance mechanism by companies to address human rights issues. This is so because, the judicial system has not been able to provide satisfactory and sustainable resolution of issues arising from company operations. Moreover, there is a conspiratorial mind-set among some stakeholder groups that the judicial system is almost always manipulated in favour of the powerful and privileged.
Finally, this NAP emphasizes the building of mutually beneficial relationships with government as credible third party. The essence of this is that businesses create goods and services that add value to human life and civilization, but in doing that, they must do all in their power to minimize the negative impacts and maximize the positive. This is the essence of this draft NAP. And this must be borne in mind in developing any kind of activity to support the implementation of the UNGP and in addressing business-related human rights abuses.
Methodology

In developing this draft NAP to support the implementation of the UNGP in Nigeria, we adopted the method which Prof. Ruggie used in carrying out his mandate. This draft NAP is a product of research and consultation. It is also knowledge-based. The research and consultations were validated in different stakeholder forums.

Part of the work on this draft NAP started in 2012, when the research on “the state and status of business and human rights” was conducted. The findings of this research led to the report with the same title. The findings from this research were also validated by different groups in 2012. This included the private sector, civil society, government and community members and leaders. A separate consultation to ascertain the state and status of human rights and business was also held in 2012 for the media.

In gathering inputs for the development of this draft NAP we also consulted, National Action Plans on Business and Human Rights: A toolkit for the development, implementation and review of state commitments to business and human rights frameworks by DIHR and ICAR, 2014 and Assessment of existing National Action Plans (NAPs) on Business and Human Rights (2014) by International Corporate Accountability Roundtable (ICAR) and European Coalition for Corporate Justice (ECCJ).

These series of consultations and research was to ascertain the state and status of business and human rights in Nigeria. One of the major findings was the low level of awareness not only of the UNGP but of human rights in general.

The first consultation to gather inputs that would form the content of this draft NAP was held with community members
who are hosts to companies, institutions of higher learning and sundry organizations in 2015. There were some civil society representatives and staff of some academic institutions.

The second consultation to gather inputs for the content of this draft NAP was held with civil society members and leaders working in and around human rights issues. The essence of this was that many of them work in these communities and their inputs in the draft NAP were valuable.

The next consultation was held with the private sector in Lagos. In this consultation Manufacturers Association of Nigeria (MAN), National Association of Chambers of Commerce. Industry, Mines and Agriculture (NACCIMA), Lagos Chambers of Commerce and Industry (LCCI) were in attendance. Academics from business schools were also represented. Representatives from Lagos State Ministry of Justice, Consumer Protection Council, and National Human Rights Commission were also in attendance.

A special consultation was held for journalists in Lagos. Many media houses were represented including ThisDay, Vanguard, The Guardian, Daily Independent, Ray Power, Radio Lagos and the deputy provost of NIJ. The first day of the meeting was used to gather the inputs into the content of the draft NAP. The remaining two days was used to train the reporters on reporting CSR using the UNGP framework.

The next consultation was held in Lokoja with government officials. In attendance were officials from the National Human Rights Commission, Public Complaints Commission, NESREA, NOSDRA, IPCR, Weights and Measures department of Federal Ministry of Trade and Industries, Federal University, Lokoja, Salem University. The General Manager of NTA, Lokoja personally attended the consultation. There were also officers of Kogi State Ministry of Agriculture,
Ministry of Land and Ministry of Commerce and Industry.

Another multi-stakeholder consultation was held in Kaduna. The main reason for this was the significance of Kaduna in the politics of northern Nigeria in particular and Nigeria in general. In attendance were representatives of the Bank of Agriculture, National Human Rights Commission, National Oil Spill Detection and Response Agency, Kaduna State University, Radio Nigeria and two private FM Stations.. The Justice, Development and Peace Commission of the Catholic Church and The Kukah Center were also in attendance.

Another multi-stakeholder consultation was held in Katsina with representatives from Sokoto University, Zamfara, Kano, the director of public prosecution in Katsina, two lecturers from Federal University Katsina, and many others.

Two other important steps taken were:

- The Human Rights Impact Assessment at Umuechem in Rivers State. This was a week-long event which included interviews, focus group meetings and general plenary.

- An assessment of the grievance mechanism of the Integrated Oil and Gas Project at Gbarain. This was also a week long activity involving key informant interviews, focus group discussion and town hall meetings.

Basically the inputs that form the content of the draft NAP are mainly drawn from the above consultations, events and activities.
Pillar 1: The State Duty to Protect Human Rights

As mentioned earlier, the Nigerian state is the primary duty bearer for the protection and progressive realization of human rights. As part of this duty, the state has endorsed most international instruments and conventions on human rights such as CEDAW, the Convention on the Rights of the Child and most ILO conventions. The state has also gone very far in the domestication of some of the international treaty and conventions.

Further, the state also established many agencies that have cross-cutting mandate on human rights and business issues. Weights and Measures Department of Federal Ministry of Trade and Investment. The Institute for Peace and Conflict Resolution also deals with business related conflicts. The Central Bank of Nigeria has a robust and very active Consumer Protection Unit so also is the National Communications Commission. Most of these agencies have presence nationwide and many states have also replicated the agencies in their various areas of jurisdiction.

Apart from the above, the various state legislatures have committees on public petitions, human rights and justice and other sundry issues. These also exist at the Federal level as well. There are also mechanisms at the local government level. In the area of judicial mechanisms, the Nigerian state has also made good progress. There is the Investment Tribunal, the National Industrial Court and many others. All these are attempts by the Federal Government of Nigeria to live up to its duty of protecting human rights.

However, there are challenges with the above. The functions of many of these agencies overlap. There is little coordination of the activities for speed and efficiency. There is also the issue of resource constraints and capacity deficits. First, is
that many Nigerians are not aware of the existence of these mechanisms. Second, where they are aware of the existence they do not know what they do. And many do not know how to use them. And finally, many do not trust these agencies for one reason or the other.

During the consultation, and findings from the baseline assessment many issues were identified as being related to human rights and business. These issues came up because many stakeholders felt that the law has been inadequate in dealing with them. Second, some of them are relational issues that require dialogue and consultation. Further many of these issues are context-specific and would require some kind of strategic guidance in addressing them.

**State Duty to Protect**

**Actionable items by the Federal Government of Nigeria to address business related human rights abuses:**

Nigeria 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) Ministry of Trade and Investment  
iii) Ministry of Mines and Steel Development  
iv) Ministry of Petroleum Resources  
v) Ministry of Environment  
vi) Ministry of Labour and Employment  
vii) Ministry of Niger-Delta  
viii) National Human Rights Commission (NHRC)  
ix) Consumer Protection Council (CPC)  
x) Corporate Affairs Commission  
xii) National Environmental Standards Regulations and Enforcement Agency (NESREA)
xii) National Oil Spill Detection and Response Agency (NOSDRA)

xiii) Niger-Delta Development Commission (NDDC)

xiv) National Agency For Drug Administration and Control (NAFDAC),

xv) Standard Organization of Nigeria (SON,)

xvi) Nigerian Bar Association (NBA)

xvii) National Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA)

xviii) National Electricity Regulatory Commission (NERC)

xix) Federal Airports Authority of Nigeria (FAAN)

xx) Manufacturers Association of Nigeria (MAN)

xxi) Nigeria Labour Congress (NLC)

xxii) Non-Governmental Organization with focus on Human Rights and Business, gender, environment and development.

xxiii) Any other relevant organization.

This composition may be replicated in States.

National Human Rights Commission shall create a directorate of Business and Human Rights to be headed by a Director. This directorate shall act as the secretariat of NWGBHR. The Chairperson of the NWGBHR shall be the Executive Secretary of the National Human Rights Commission, while the Secretary of the NWGBHR shall be the director of business and human rights at the NHRC. The NWGBHR shall work out the following:

I. The capacity needs of business and other agencies in the area of business and human rights.

ii. They shall conduct capacity-building trainings for different stakeholders on human rights and business using the UNGP framework.

iii. They shall design and agree on a format for reporting human rights and business by stakeholders.

iv. They shall review the reports periodically and provide technical support for stakeholders in their area of need.
They shall be responsible for the review of NAP as at when the need arises.

vi. They shall act as referral and monitor all business related human rights issues that are undergoing hearing.

vii. They shall periodically assess and support the establishment of grievance mechanisms in companies.

viii. They shall oversight companies' human rights due diligence activities and human rights impact assessments.

ix. They shall convene an Annual Business and Human Rights Forum to review developments in the field.

They shall support research and academic work on Business and Human Rights.

Commitments and Obligations of the State to Protect Human Rights
The first state duty to protect human rights within its jurisdiction and among other third parties it has transactions with, is a strong statement of its expectation of all these stakeholders as it concerns their human rights obligations. The Nigerian state shall make its expectations on human rights very clear to all the stakeholders it does business with. And these shall include:

1. The Federal Government of Nigeria and all the state governments must include in all contracts, Memoranda of Understanding and other policy documents, a clause that clearly spells out the human rights obligations of the parties including possible sanctions for violations.

2. The Nigerian Investment Promotion Council must make it clear to all intending investors that the Nigerian government and people expect them to respect human
rights in every transaction.

3. The Central Bank of Nigeria must make it explicit to all banks, that in every loan agreement, there must be a clause that spells out that the loan receiver must as a matter of duty respect human rights in all operations.

4. Such specialized banks and other financial institutions as Bank of Agriculture, Bank of Industry, 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.

5. It must also be clearly stated by NEXIM Bank that for all imports and exports, companies must show evidence of human rights compliance and implementation of the UNGP.

**Free, Prior and Informed Consent**

'Free prior and informed consent' (FPIC), is the principle that a community has the right to give or withhold its 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. It is embedded in the right to self-determination by indigenous peoples. According to the Forest Peoples Programme, “observation of this right has now been recognized as 'best practice' or as a required policy in a number of standards including in development projects, resettlement schemes, environmental and social impact assessments, dam construction, extractive industries, logging and plantation schemes, palm oil estates, the use of indigenous peoples' intellectual property or cultural heritage, micro-finance and the establishment of protected areas.”
The Federal Government of Nigeria shall use participatory methods of stakeholder identification and analysis to ensure that before the commencement of any project, the FPIC of the host community must be secured. As many relevant members of the community as possible shall be involved in the process.

**Stakeholder Identification and Analysis**
Part of the entry of a company to a community is a detailed stakeholder identification and analysis. Before and during entry, government shall ensure that companies conduct a thorough and detailed stakeholder identification and analysis of the area of operation. This helps in understanding the community and in the design and implementation of community engagement strategy. Exclusion and marginalization constitute human rights violations. By ensuring the companies conduct stakeholder identification and analysis, government is protecting the rights of the citizenry. This is because stakeholder identification and analysis provide invaluable data for sustainable stakeholder consultation and engagement. The process helps in budgeting and tax as well as enables companies to prioritize.

**Employment**
The NWGBHR will develop Guidance Notes for companies to manage their employment processes in compliance with human rights standards. In doing so, the issues of gender, child labour and disability concerns should be taken into consideration. Relevant provisions of the Local Content Act 2010 and other relevant Labour Laws should be taken into consideration. There is need for the National Assembly to review obsolete laws in the context of business and employment in consonance with international standards.

**Casualization and Contract Employment**
Though there exists a number of Labour Laws in Nigeria that are compliant with International labour standards,
implementation of these laws have posed many challenges. The Ministry of Labour and Employment should strengthen its monitoring and implementation processes to give effect to these laws. Where the laws are not in compliance with human rights standards, they should be reviewed.

NWGBHR shall enter into negotiation with Manufacturers Association of Nigeria and others to ensure compliance with this plan.

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.

**Land Acquisition**

Nigeria has a complex land tenure system. There is individual ownership of land, family and community. When acquiring land for development or business, there is need to conduct human rights, conflict and environmental impact assessment.

**Environment**

The issue of environment is not restricted to extractive industries only but includes the manufacturing and construction sectors. For example, many companies empty their effluents into rivers and streams. Some companies pollute the underwater and environment in host communities. Therefore, communities should be effectively involved in human rights and environmental impact assessment processes. Prevention of environmental hazards should be emphasized.

There should be periodic monitoring and inspection of company premises, operations and surroundings to ascertain their compliance to environmental standards. Environmental education and awareness is critical.
Gender
In the last ten years or thereabout, some businesses have begun to take the issue of gender serious in their various community engagement strategies. However, there has not been a significant shift in the role of women in the society. For instance, in most engagements between businesses and host communities on a range of issues including negotiation and compensation, communities are reluctant to be represented by women. This is cultural but there are also issues of privilege and power in the gender narrative.

Worldwide, the issue of the marginalization and exclusion of women has been largely addressed through laws, awareness-raising, education, affirmative action and human rights advocacy.

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.

In addition, in all meetings, consultations, dialogue or negotiation, women should represent themselves.

Mobilization, Sensitization and Awareness-Creation
There is general lack of awareness of the UNGP among a large segment of the Nigerian populace. Government, through its relevant agencies and departments should engage in massive mobilization, sensitization and awareness-creation in this regard. Other stakeholders such as civil society groups and the media have roles to play in awareness creation on UNGP and the resultant NAPBHR. The awareness creation should be strategic, involving the three tiers of government.

The NWGBHR should embark on advocacy to the legislature
at the federal and state levels enjoining them to propose and adopt resolutions on NAPBHR.

It is also important to mobilize and empower community members to use the provisions of NAPBHR during interactions, negotiations and consultations with companies and government.

**Capacity Building**
The following capacity building needs have been identified:

- Training of Judges to help them when considering business related human rights cases.

- Business operators need to be trained to be able to develop a coherent, robust and implementable human rights policy; establish, maintain and monitor their grievance mechanisms. They also need help with monitoring and reporting compliance.

- 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 should 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.
Resettlement
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.

In considering resettlement:
- The Federal Government and investors shall be guided by the Principles of Resettlement as enunciated by the African Development Bank and the Asian Development Bank. And it shall be done in such a way as not to violate the rights of the people.
- Effort should be made to minimize the negative impacts of the resettlement.
- Emphasis must be on the livelihood system of communities.

Community Development
Community needs development as a matter of right, whether they host a company, project or not. Over the years, companies have used community development projects to build sustainable and mutually beneficial relationship with their stakeholders. In doing this, investors and contractors have not been sensitive to possible areas conflict, as they conceive development projects as favours to the community.

Development is a human right as recognized by the UN and other international and national organs. Therefore, in carrying out development project:
- Government should ensure that such developments do not have adverse effect on the communities.
- A needs assessment should be carried out with the full involvement of the communities to ascertain their priorities and needs.

- Community development should not be a replacement or substitute for government obligations towards development of the communities.

- Community development projects should be targeted at mitigating negative impact of business activities.

**Community Consultation and Engagement**

Stakeholder consultation and engagement are part of the entry, staying and exit behavior of corporate bodies.

Government should observe, monitor and be part of stakeholder engagement and consultation.

Stakeholder consultation should not be aimed only at solve emerging problems. It should be an integral part of the evolution of company community relations.

Government should ensure that stakeholder consultation and engagement occurs frequently.

Government should create and sustainable conducive atmosphere for stakeholder consultation and engagement. This may be done by providing security, deploying observers and making inputs through facilitation and the provision of information and the clarification of issues especially on points of law.

Government should monitor the agreements to ensure they are implemented as agreed within the timelines.
Government should act as moderates in stakeholders consultation and engagement. In doing this, they should ensure that community voices including those of women, youths, people with disability and children are heard.

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.

- Government should fulfill its obligation as the primary provider of security
- Communities must be involved in the design and management of company security.
- Government should provide human rights training for security providers, logistic support and general oversight.
- Government should monitor and ensure that human rights are protected in the provision of security.
- Security arrangement should be all inclusive, protecting: business facilities; employees; suppliers; contractors; infrastructure and the community.
- Businesses should make use of public and private security outfits.

- There should be partnership between public security and businesses.

- The Nigeria Security and Civil Defense Corps (NSCDC) which regulates and provide training to private security providers should be trained on human rights.

**Conflict Resolution**

Conflict is inevitable in any human relationship including company/community relations. In managing conflicts,

- Government should ensure that businesses develop effective grievance mechanisms for their operations. This should be regulated to ensure that they are transparent, effective and sustainable.

- Government should monitor all businesses grievance mechanisms. To do this, there should be periodic reporting from businesses on their activities in this area and that settlement and agreements are implemented to the satisfaction of all parties.

**Reporting and Monitoring Compliance**

The UNGP is a voluntary mechanism, designed to benefit businesses when implemented. It is important to monitor and report on compliance. To this end:

- The National Human Rights Commission in collaboration with the Corporate Affairs Commission should design a
reporting mechanism that is realistic and implementable. This mechanism should focus on number of cases treated and the pattern and trends of those cases.

- Businesses when filing their annual returns should report on the implementation of the NAPBHR. NWGBHR should monitor to ensure this is complied with.

**Community Responsibility**

Communities have their own responsibilities in providing conducive operating environment for businesses. To this end,

- Government should work closely with communities to ensure that they understand that business have a right to operate within the community.

- Government as a credible third party should ensure that they build trust between communities and businesses.

- Government should provide appropriate training to community members on their responsibility towards businesses, emphasizing that company operations is for the mutual benefit of all.

**Reward and Recognition**

Reward and recognition system is necessary to ensure that businesses get benefit for implementing NAPBHR. To promote this:
- Government through the NWGBHR should work out incentive packages for businesses that comply with the provisions of NAPBHR

**Exit Strategy**
The activities of businesses may cease after a period of time. When this happens, it is important to ensure that the exit of the business does not impact negatively on the community. To achieve this:

- Government should develop a clear policy and guidance note on the exit strategy of businesses when their operations come to an end.
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, not do anything to undermine state ability to protect human rights and the willingness to put in place measures to address human rights abuses when they occur. Corporations are expected to have in place early warning mechanisms that show the likely human rights impact of their actions and the ones that may happen in future. Corporations must also be aware of the “human rights history” of the area before beginning their operation. Finally, corporations must not be found to be complicity or seem to benefit from human rights infringements. In this NAP, guidance is provided in the following areas:

Policy
Companies operating in Nigeria are expected to have a clear, simple and understandable human rights policy within their value chain that reflects the principles of UNGP. This policy shall guide all operations of the business. Where they do not have, they should work with the NWGBHR to develop one. When developed the policy should be conspicuously displayed either on the website, gate or reception area of the company.

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

**Human Rights Due Diligence**

Businesses operating in Nigeria should ensure they conduct Human Rights Due Diligence from the onset, which should address possible human rights violations arising from their operations. Human Rights Due Diligence should also address negative human rights impact caused by businesses which may be linked directly or remotely to its operations, products or services.

In addition, businesses should promote values in the communities that minimize human rights abuses such as education, extended family system which support network for people during resettlement arising from business operations and recognize community rights.

Human rights due diligence shall also involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size, nature, scope and context of the business.

Human rights due diligence must also examine how the community has addressed human rights issues before the coming of the company and how they have resolved and responded to conflicts in the past. This kind of knowledge shall help the company in designing its remedy facility. It may also identify needs and resources available in the community which the company can leverage on for its operations and especially in addressing human rights issues.

The design of the methodology of human rights due diligence and how to share and respond to the findings is a critical element of the activity. Broad stakeholders' participation would add value to the exercise.
Capacity-Building
Capacity building is critical in ensuring corporate responsibility to respect human rights. Businesses need capacity in establishing compliance and grievance mechanism, carrying out human rights due diligence and implementing their human rights policy.

The NWGBHR should be available to provide the requisite expertise where necessary.

Reporting Human Rights Compliance
Businesses operating in Nigeria should report annually on their human rights compliance in Nigeria. Regulatory agencies should incorporate human rights reporting and monitoring template in their regulatory framework. The NWGBHR shall develop the template and checklist for this. The evaluation and review of the report shall take the format of the Universal Periodic Review. The essence of the review is to assist organizations improve their human rights compliance progressively.

Grievance Mechanisms
Businesses in Nigeria shall have an Operational Level Grievance Mechanism. This shall 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. The aim of this is that periodically, this report shall be reviewed with a view to identifying issues and areas that require administrative, policy or legislative intervention. The analysis of these reports shall also be used to develop training modules to deal with emerging areas of need.
Community Relations
Businesses in Nigeria should have a Community Relations Guideline. This shall 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 shall depend on the kind of business the company is involved in. For instance, if a company is engaged in construction or extractives, then it is expected that the HRIA, HRDD, PCIA shall be part of the Environmental Impact Assessment (EIA). This shall determine what the content of the community relations guide should look like.

The Community Relations Guide shall provide for such things as employment, community development, contracts, scholarships etc. The community guide may not address the issue of number, quantity or timeline but should lay out the general guideline for providing all of the above. The essence of this is to avoid conflicts when sharing the above benefits. To ensure inclusiveness, gender consideration and broad representation of all interest should be taken into account.

Partnerships and Collaborations
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 realization 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 shall focuses on the following:

1. Making stakeholders aware that the remedy mechanisms exist
2. Making them aware of the functions and powers of these mechanisms
3. Explaining to them how the mechanisms operate
4. Ensuring that they trust and use the mechanisms.
5. Ensuring that the mechanisms are “effective.”
6. Removing all barriers that prevent people from using the mechanisms
7. Using the mechanisms to prevent resort to violence

Access to effective remedy for communities or persons who are victims on human rights violations in the course of business can be sought through the following framework:

I. State-Based Judicial Mechanism
II. State-Based Non Judicial Mechanism
III. Non-State Based Judicial Mechanism

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 should also be a continuous sensitization of judges and magistrates on the UNGP.

Alternative Dispute Resolution approach should be encouraged.

State-Based Non Judicial Mechanisms
State-Based Non Judicial Mechanisms 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) National Oil Spill Detection and Response Agency (NOSDRA)
iii) Consumer Protection Council (CPC)
iv) Nigerian Communications Commission (NCC)
v) National Administration of Food and Drug Control (NAFDAC)
vi) National Bio-Safety Management Agency (NBSMA)
vii) etc.

These organizations have the statutory responsibilities to protect human rights in cases of breaches by business but often neglect to take action owing to lack of capacity, lack of political will, corruption, limited resources, unnecessary bureaucracy, overlapping mandate leading to competition instead of collaboration etc.

To address these, there should be:
- A mapping of these mechanisms to clearly identify them and properly delineate their mandates. Their operations shall be streamlined for speed and efficiency.
- There shall be an Organizational Capacity Assessment (OCA) of these state-based non-judicial mechanisms.

- Capacity-building for these agencies and some organizational change and development intervention to bring them up to speed in addressing business-related human rights abuses.

- Inter-agency collaboration and information sharing.

- Strengthening of the National Human Rights Commission to discharge its quasi-judicial responsibilities in addressing human rights violations by businesses.

- Strengthening of the Institute for Peace and Conflict Resolution (IPCR) to work with communities, state and businesses to resolve conflicts effectively.

- Advocacy and sensitisation to state actors and businesses on practices that may provoke conflict in host communities.

**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 address the shortcomings of the state based judicial mechanisms. 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.

These organizations have been visible in their actions to protect human rights and in many ways have become complementary to the State-Based Judicial and State-Based Non-Judicial mechanisms. They are more accessible and proficient in advocacy, sensitization, mobilization, provision of information and community education. Many have over the years through their work earned the confidence and trust of communities. In this regard, they are very good in providing access to communities.

However, many Non-State Based Grievance Mechanisms have not been very effective in holding businesses accountable for human rights violations due to lack of resources, corruption, poor organizational capacity to ensure enforcement, political influence, lack of sincerity of purpose etc. Many also lack the convening power and influence and are not respected and recognized.

Also, the Media has been a great source of information for Nigerians but it is plagued by problems such as, low investigative capacity, powerful corporate interests, influential media moguls, prioritization of media coverage, poor remunerations for reporters and intimidation by state actors.

To address these challenges, the Non-State Based Grievance actors need to be trained and brought in line with the vision of the NAPBHR.

Furthermore, it is necessary to design innovative ways to
mainstream the UNGP in their work in providing grievance remedial mechanisms.

The NWGBHR shall map them, assess their capacity and include them in training programmes. There is also need for the promotion of dialogue between stakeholders (government, businesses, communities, civil society groups etc) and Coordination of the activities of the civil society groups to avoid duplicity.

**Quality Control, Monitoring and Reporting**

There is the need to ensure quality assurance, monitor and regulate the operations of non-judicial mechanisms. The NWGBHR shall partner with these mechanisms. A forum should also be created for knowledge management, information sharing and learning about best practices. This will address the apprehension that government is trying to control the activities of civil society.

**Compensation**

The issue of compensation is complex. Businesses operating in Nigeria should build a culture of human rights awareness and protection which includes restitution, rehabilitation, remediation, financial and non financial compensations and punitive sanctions as well as the prevention of harm through non repetition.

In Nigeria, compensation is not paid for land but for economic trees, crops and structures on a piece of land. Where it is paid, it is inadequate. In many cases, the role of the middle men diminishes the compensation awarded. Some of the applicable laws on compensation have become obsolete.

NWGBHR should undertake a desk review of applicable laws, policies and regulations on compensation with a view to proposing suitable amendments.
. Businesses should ensure that compensation and other forms of restitution are directly linked to the victims of violations - communities or persons affected.