

GOVERNMENT OF MALAWI

NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

2026 - 2031

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ADR	Alternative Dispute Resolution
AfCFTA	African Continental Free Trade Area
BA	Baseline Assessment
BHR	Business and Human Rights
CDA	Community Development Agreement
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
CSO	Civil Society Organisation
CSDDD	Corporate Sustainability Due Diligence Directive (European Union)
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
EMA	Environmental Management Act
ESCRs	Economic, Social and Cultural Rights
ESIA	Environmental and Social Impact Assessment
FDI	Foreign Direct Investment
FGD	Focus Group Discussion
FPIC	Free, Prior and Informed Consent
GDP	Gross Domestic Product
HRC	Human Rights Council (United Nations)
HRDD	Human Rights Due Diligence
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MSC-BHR	Multi-Stakeholder Committee on Business and Human Rights
KNCHR	Kenya National Commission on Human Rights
MDAs	Ministries, Departments and Agencies
MEPA	Malaŵi Environmental Protection Authority
MHRC	Malaŵi Human Rights Commission
MMRA	Mining and Minerals Regulatory Authority
MoJCA	Ministry of Justice and Constitutional Affairs
MNC	Multinational Corporation
NAP	National Action Plan
NAP-BHR	National Action Plan on Business and Human Rights
NBA	National Baseline Assessment
NBA-BHR	National Baseline Assessment on Business and Human Rights
NGO	Non-Governmental Organisation

NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
OEIGWG	Open-Ended Intergovernmental Working Group (Business and Human Rights)
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPC	Office of the President and Cabinet
PFMA	Public Finance Management Act
PPP	Public-Private Partnership
PPPC	Public-Private Partnership Commission
RTD	Right to Development
SDGs	Sustainable Development Goals
SLAPPs	Strategic Litigation Against Public Participation
SMEs	Small and Medium-Sized Enterprises
SOE	State-Owned Enterprise
TNC	Transnational Corporation
TPBR	Third-Party Beneficiary Rule
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights
UPR	Universal Periodic Review

FOREWORD

The adoption of Malaŵi's **National Action Plan on Business and Human Rights (NAP-BHR)** marks an important milestone in the country's continuing efforts to harmonise economic development with constitutionalism, the rule of law, and the protection of fundamental human rights. The NAP-BHR, reflects the Government of the Republic of Malaŵi's (the Government's) recognition that business activity, while essential to economic growth, employment creation, and national development, must be conducted in a manner that respects human dignity, promotes social justice, safeguards the environment, and ensures accountability.

The NAP-BHR is firmly anchored in the Constitution of the Republic of Malaŵi, which affirms human dignity, equality, accountability, and the right to development as foundational principles of governance. It also draws upon Malaŵi's international and regional human rights obligations, as well as globally accepted standards on responsible business conduct, most notably the **United Nations Guiding Principles on Business and Human Rights** (UNGPs). Together, these normative foundations provide a coherent and authoritative basis for advancing a preventive and rights-respecting approach to business regulation and governance.

The formulation of this NAP-BHR has been informed by a comprehensive **National Baseline Assessment on Business and Human Rights** that was conducted in 2025 (NBA-BHR, 2025), which offers an evidence-based appraisal of how business activities across Malaŵi's economy intersect with the enjoyment of human rights. The NBA-BHR, 2025 demonstrates that, notwithstanding Malaŵi's comparatively strong constitutional and legal framework, business-related human rights risks persist in practice. These risks are often structural in nature, arising from fragmented regulation, uneven enforcement, limited institutional capacity, power imbalances between businesses and affected communities, and barriers to access to effective remedies. The NAP-BHR responds to these challenges by articulating a coordinated, forward-looking framework for reform.

The NAP-BHR is structured around the three interdependent pillars of the UNGPs: (a) the State duty to protect human rights; (b) the corporate responsibility to respect human rights; and (c) access to effective remedy. It adopts a Whole-of-Government and Whole-of-Society approach, recognising that effective implementation requires policy coherence, institutional coordination, meaningful participation of affected persons and communities, and sustained engagement with the private sector, civil society, and development partners. Particular attention is given to sectors identified as presenting heightened human rights risks, including extractive industries, agriculture, manufacturing, public procurement, state-owned enterprises and the informal economy.

Importantly, the NAP-BHR is not conceived as a static document. It is intended to function as a living policy instrument, capable of responding to evolving economic conditions, emerging business models, and new human rights challenges, including those associated with digitalisation, environmental change, and global value chains. Its effectiveness will therefore depend on continuous monitoring, periodic review, and a shared commitment by all stakeholders to its objectives.

On behalf of the Government, I wish to commend all institutions and individuals who contributed to the development of this NAP-BHR. Their expertise, dedication and constructive engagement have been instrumental in shaping a framework that is both principled and pragmatic.

It is my sincere hope that this NAP-BHR will serve as a catalyst for more responsible business conduct, stronger governance, and improved human rights outcomes for all people in Malaŵi, thereby reinforcing the mutually reinforcing relationship between sustainable development and respect for human rights.



Honourable Charles Chigondongo Mhango,
Minister of Justice and Constitutional Affairs
REPUBLIC OF MALAŴI

ACKNOWLEDGMENTS

The **Ministry of Justice and Constitutional Affairs** (MoJCA) extends its sincere appreciation to all institutions and individuals whose commitment, expertise and cooperation have made the development of Malaŵi's **National Action Plan on Business and Human Rights** (NAP-BHR), and the underlying 2025 **National Baseline Assessment on Business and Human Rights Report** (NBA-BHR, 2025), possible.

The MOJCA expresses its profound gratitude to the **United Nations Development Programme** (UNDP) for its technical, financial and strategic support throughout the Business and Human Rights process in Malaŵi. UNDP's partnership has been instrumental in ensuring that the NBA-BHR, 2025 and the NAP-BHR were undertaken in accordance with international best practice and in line with the **United Nations Guiding Principles on Business and Human Rights** (UNGPs).

The MOJCA also acknowledges, with deep appreciation, the **Malaŵi Human Rights Commission** (MHRC) for its collaboration and technical contributions and support. The MHRC's earlier preliminary baseline work and its institutional experience provided an essential foundation upon which the present Assessment and National Action Plan were developed.

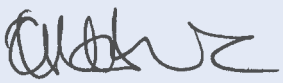
Special recognition is accorded to Honourable Justice Prof. Redson Edward Kapindu, PhD, Consultant for the NBA-BHR, 2025 and the NAP-BHR. His professional diligence, analytical rigour and deep understanding of Malaŵi's constitutional, legal and institutional landscape, and general expertise, were critical in ensuring that the NBA-BHR, 2025 and the NAP-BHR are both intellectually robust, contextually grounded and pragmatic.

The MOJCA further thanks all Government Ministries, Departments and Agencies that participated in consultations, provided documentation, and engaged constructively in discussions on regulatory frameworks, enforcement challenges, and policy coherence. Their cooperation was essential in mapping the State's duty to protect human rights in the context of business activity.

The MOJCA is equally grateful to the wide range of stakeholders from the private sector, state-owned enterprises, civil society organisations, trade unions, professional bodies, traditional authorities, community representatives, women's organisations, and organisations of persons with disabilities, among others, who participated in regional consultations and field research. Their perspectives and lived experiences significantly enriched the evidence base and ensured that the NBA-BHR, 2025 and this NAP-BHR, reflect realities across sectors and regions.

Appreciation is also extended to all individuals who contributed to the organisation of consultations, field research, and administrative coordination, and whose efforts ensured the smooth execution of the assessment process.

The MOJCA recognises and acknowledges that the development of the NAP-BHR has been a collective endeavour, and that there are many others who have not been specifically mentioned here, but whose contributions were also very important and are greatly appreciated. All the contributions recognised herein exemplify the collaborative spirit that is required to advance responsible business conduct, strengthen governance, and promote human rights in Malaŵi.



Gertrude Lynn Hiwa, SC
Solicitor General and Secretary for Justice
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DEFINITION OF CONCEPTS

Affirmative action means deliberate temporary measures, including policies and targeted interventions, aimed at remedying historical or structural disadvantage suffered by particular groups (including on the basis of sex, disability, age, or other status), to ensure substantive equality.

Affected persons and communities means individuals, groups, or communities whose human rights have been or may be negatively impacted by business activities, including workers, consumers, human rights defenders, surrounding communities, and vulnerable or marginalised groups.

Business/business enterprise means any entity or person engaged in economic activity, including but not limited to commercial, industrial, agricultural, extractive, financial, manufacturing, service-delivery, digital/technology, informal, or other productive activity, whether public or private, domestic or foreign, formal or informal.

Business and human rights (BHR) refers to the application of international human rights standards and Malaŵi's domestic human rights guarantees to the conduct and impacts of business activity, and the measures required to prevent, mitigate, and remedy business-related human rights harm.

Child labour means work that deprives children of their childhood, potential or dignity, is harmful to physical or mental development, and/or interferes with schooling; including work performed by children below the minimum legal age or hazardous work prohibited for persons under the age of 18.

Corporate responsibility to respect human rights means the responsibility of business enterprises to avoid infringing the human rights of others and to address adverse human rights impacts with which they are involved, consistent with the UN Guiding Principles on Business and Human Rights (UNGPs) and this National Action Plan.

Corporate social responsibility (CSR), means voluntary practices by business actors or entities aimed at contributing to community welfare (including in health, education and infrastructure). CSR does not replace the corporate responsibility to respect human rights.

Duty-bearers, means State institutions and other actors, including business enterprises, who have human rights obligations, including the obligations to respect, protect, promote, and fulfil human rights, and to ensure access to effective remedy for violations. While the State is the primary duty-bearer in respect of the protection and fulfilment of human rights, business enterprises are direct duty-bearers regarding the responsibility to respect human rights. This responsibility requires businesses to conduct human rights due diligence (HRDD) and ensure that their activities do not cause or contribute to human rights violations.

Effective remedy refers to a process and a resulting outcome that corrects a business-related human rights harm, places the victim as close as possible to the position they were in before the violation occurred and prevents future harm. According to the UNGPs, an effective remedy is one that is:

a. **accessible**, that is to say known to, and easily used by, victims without fear of reprisal;
b. **affordable,** meaning that it should be accessible without excessive costs;
c. **adequate**, in that it should address the full range of harms, including future needs, and not solely focused on financial compensation; and
d. **timely**, meaning that it should be available within a reasonable period, particularly for urgent or ongoing harm.

Empowerment refers to measures designed to increase the autonomy and capacity of people and communities to participate meaningfully in decisions affecting them, to represent their interests, and hold duty-bearers, whether the State or private Business, accountable for human rights impacts.

Free, prior and informed consent (FPIC) means consent that duty-bearers, whether the State or private business, are required to obtain from affected communities, particularly but not limited to those uniquely dependent on land and natural resources, through their own chosen representatives or representative institutions, prior to the approval of any project that affects or is likely to affect their lands, territories, or livelihoods. The consent must be given freely, without coercion, and based on full disclosure of all relevant information, including potential impacts, which information must be accessible in local languages.

Grievance mechanism means any process through which complaints about business-related human rights harm may be raised, assessed and resolved, including judicial mechanisms, State-based non-judicial mechanisms, and business-level grievance mechanisms. The UNGP effectiveness criteria apply to non-judicial grievance mechanisms. All non-judicial mechanisms must satisfy the UNGP effectiveness criteria, namely: being legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue.

Human rights due diligence (HRDD), means an ongoing proactive risk-management process through which a business enterprise identifies, prevents, mitigates, tracks, and accounts for how it addresses its adverse human rights impacts, across an enterprise's own operations, its supply chains, and its broader business relationships. To be effective, HRDD must be grounded in meaningful stakeholder engagement, requiring duty-bearers to consult in a timely and transparent manner with the rights-holders and communities whose lives and livelihoods are potentially affected.

Local private enterprise, means any non-State business entity operating in Malawi, whether formally registered or part of the informal economy.

Participation, means inclusive and meaningful involvement of stakeholders, especially affected persons and communities - including workers in the informal sector and supply chains - in identifying concerns, shaping decisions, and monitoring outcomes, including through access to timely and understandable information.

Public-private partnership (PPP), means a contractual arrangement between a public authority and a private party for delivery of public infrastructure and/or services, with shared risks and responsibilities.

Remedy, means both the process and the outcome of addressing business-related human rights harm, including restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition, and other appropriate forms of redress.

Rights-holders, means individuals and groups who hold human rights entitlements under the Constitution and other applicable law, and who are entitled to claim and access protection and remedy.

Environmental and Social Impact Assessment (ESIA) means a process for identifying and assessing the social and human rights implications of proposed business activities for affected persons and communities, including implications for displacement, compensation, resettlement, livelihoods, and community cohesion. To be effective, an ESIA must include explicit human rights risk analysis and be conducted via meaningful stakeholder engagement prior to the issuance of licenses. It covers impacts on land rights, displacement, resettlement, livelihoods, and the specific risks faced by vulnerable groups.

State duty to protect, means the duty of the State to prevent, investigate, punish, and redress human rights abuses committed by third parties, including all business enterprises. This duty requires the State to implement a smart mix of mandatory and voluntary measures, including legislation, meaningful enforcement, and extraterritorial oversight, to ensure that business conduct is rights-compatible and that rights-holders have access to effective remedy.

State-owned enterprise (SOE), means an enterprise created or controlled by Government through legal means to undertake commercial activities on behalf of the State, whether wholly or partially owned.

Transnational corporation (TNC), means an enterprise that owns or controls production or service facilities outside the country in which it is based, with integrated cross-border operations and distribution systems.

UN Guiding Principles on Business and Human Rights (UNGPs), means the global framework endorsed by the UN Human Rights Council in 2011, structured around the three pillars: (i) State duty to protect; (ii) corporate responsibility to respect; and (iii) access to remedy.

Vulnerability refers to the condition of individuals or groups who are at a disproportionate risk of experiencing human rights harm due to business activities. This state is often caused by structural inequalities, historical marginalisation, or legal exclusion. In the context of this NAP-BHR, vulnerability imposes a heightened duty of care on duty-bearers (State and Businesses) to conduct inclusive assessments and ensure that their operations do not exploit or exacerbate the fragility of rights-holder's livelihoods, health, or security. To effectively fulfill this duty, duty-bearers must implement affirmative actions to ensure that these groups can participate in and benefit from business activities on an equal basis.

Vulnerable or marginalised groups means categories of persons predisposed to deprivation, poverty, or social exclusion by virtue of age, sex, disability, ethnicity, geographic location, social or economic status, migration or refugee status or other attributes, and includes (as relevant) women, children, persons with disabilities, older persons, informal workers and affected rural communities.

EXECUTIVE SUMMARY

The National Action Plan on Business and Human Rights (2026-2031) for Malaŵi (NAP-BHR) constitutes Malaŵi's first comprehensive, whole-of-Government framework for the domestic implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs). It represents a significant policy milestone through which the Government of Malaŵi seeks to align economic governance, business regulation and development planning with constitutional principles and values, international human rights obligations and emerging global standards on responsible business conduct.

The NAP-BHR is situated within Malaŵi's broader constitutional, legal and developmental context. It draws normative authority from the Constitution, particularly its commitment to human dignity, equality, accountability, environmental stewardship and the right to development, among others, and is further informed by Malaŵi's obligations under international and regional human rights instruments.

At the policy level, the NAP-BHR complements national development strategies, including the Malaŵi 2063, which emphasise private-sector-led growth, investment, industrialisation and public-private partnerships as key drivers of socio-economic transformation. It also takes cognisance of global policy frameworks such as the Sustainable Development Goals, 2030 (SDGs).

The NAP-BHR responds to the contemporary reality that business enterprises and actors, ranging from multinational corporations (MNCs), state-owned enterprises (SOEs) to domestic firms, small and medium-sized enterprises and informal economic actors, play an increasingly central role in shaping social, economic and environmental outcomes in Malaŵi.

Business activities contribute substantially to employment creation, infrastructure development, service delivery and economic growth. At the same time, where business activity is inadequately regulated, insufficiently supervised or weakly held to account, it may give rise to adverse human rights impacts, particularly in relation to labour conditions, land and natural resource governance, environmental protection, access to livelihoods and the rights of vulnerable or marginalised groups.

The NAP-BHR is grounded in the findings of a National Baseline Assessment on Business and Human Rights conducted in 2025 (NBA-BHR, 2025). The NBA-BHR provides a systematic, evidence-based assessment of Malaŵi's existing legal, policy, and institutional framework as it relates to business and human rights. It identifies that, notwithstanding Malaŵi's relatively strong constitutional and legislative foundations for human rights protection, significant challenges persist in practice. These include: fragmented and sector-specific regulation, uneven enforcement capacity, limited integration of human rights considerations into economic and investment policy, power imbalances between business actors and affected communities and substantial barriers to accessing effective judicial and non-judicial remedies. The Assessment demonstrates that these challenges are structural and substantive rather than incidental, and that they require coordinated, preventive and governance-oriented responses.

In response, the NAP-BHR adopts a preventive and implementation-focused approach, structured around the three interdependent pillars of the UNGPs. Recognising that human rights risks are often interconnected, the NAP-BHR identifies four cross-cutting thematic areas, namely: Informal Economy, Land Governance, Labor Standards and the State-Business Nexus. These serve as the focal points for action under each pillar:

a. Pillar I - State Duty to Protect Human Rights, which focuses on strengthening policy coherence, regulatory frameworks, institutional capacity, enforcement mechanisms, and the strategic use of State leverage in state-business relationships, including through public procurement, state-owned enterprises, licensing, concessions and public-private partnerships (PPPs);
b. Pillar II - Corporate Responsibility to Respect Human Rights, which clarifies expectations placed upon business enterprises to avoid causing or contributing to human rights harm, to address adverse impacts with which they are involved, and to integrate human rights due diligence (HRDD) within corporate governance, risk management and business operations; and

c. Pillar III - Access to Effective Remedy, which seeks to enhance the availability, accessibility, effectiveness and credibility of judicial and non-judicial grievance mechanisms for individuals and communities affected by business-related human rights harm.

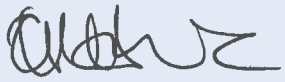
The NAP-BHR applies across all sectors of the economy and to all business enterprises operating in Malaŵi, while recognising that certain sectors, such as extractives, large-scale agriculture, manufacturing, infrastructure development, hospitality, public procurement and the informal economy, present heightened human rights risks requiring particular attention.

The NAP-BHR is guided by a human rights-based approach that emphasises prevention of harm, meaningful participation of affected persons and communities, gender equality and non-discrimination, protection of vulnerable and marginalised groups, transparency, accountability and continuous learning.

Implementation of the NAP-BHR is supported by a clearly articulated institutional governance and coordination framework. Overall leadership and coordination are vested in the Ministry of Justice and Constitutional Affairs (MoJCA), supported by a Multi-Stakeholder Committee on Business and Human Rights (MSC-BHR). The framework is designed to promote horizontal and vertical policy coherence, integrate NAP-BHR actions into existing planning and budgeting systems, strengthen decentralised implementation, and ensure independent oversight, monitoring and evaluation. The NAP-BHR is conceived as a living document, subject to periodic review and revision in light of monitoring results, stakeholder feedback and evolving national and international developments.

Through the adoption and implementation of this NAP-BHR, Malaŵi affirms its commitment to ensuring that economic development proceeds in a manner that respects and promotes human rights, safeguards the environment, advances an inclusive and sustainable growth, and strengthens accountability and access to justice.

This NAP-BHR provides a practical and coherent framework for translating constitutional principles and international commitments into concrete measures, thereby contributing to more responsible business conduct and improved human rights outcomes for individuals and communities across Malaŵi.



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PART I

BUSINESS AND HUMAN RIGHTS IN MALAŴI: FOUNDATIONAL FRAMEWORK, NATIONAL CONTEXT AND NORMATIVE ORIENTATION



Representatives of government, business, civil society and development partners gather in Lilongwe to validate Malawi's first National Action Plan on Business and Human Rights.

1.1 Introduction

Malaŵi is pursuing a long-term national transformation agenda that aims to change the country into an inclusively wealthy and self-reliant industrialised upper-middle-income country by the year 2063, as articulated in the **Malaŵi Vision 2063 (Malaŵi 2063)**.[1] The **Malaŵi 2063** serves as the country's overarching national development framework which represents a decisive shift from a development paradigm centred on poverty reduction and aid dependence, towards one anchored in inclusive wealth creation, self-reliance and structural economic transformation.[2] The *Malaŵi 2063* is underpinned by three mutually reinforcing pillars, namely: (a) Agricultural Productivity and Commercialisation; (b) Industrialisation; and (c) Urbanisation, and is supported by a set of governance, institutional and socio-economic enablers that are designed to catalyse sustainable and inclusive growth.[3]

Implementation of the **Malaŵi 2063** is undertaken through successive medium-term development plans, supported by sectoral policies, investment frameworks and public-private partnerships (PPPs).[4] These planning instruments are in line with Malaŵi's international development and human rights commitments, including the **2030 UN Agenda for Sustainable Development and the Sustainable Development Goals (SDGs)**. The Malaŵi 2063 recognises that sustainable development is inseparable from effective governance, the rule of law, environmental sustainability and respect for human rights and that national development efforts must be coherently linked to global and regional development frameworks.

[1] Page 3.
[2] Ibid, page 1.
[3] Ibid, page 2.
[4] Ibid, page 10.

The SDGs provide a comprehensive and integrated global framework for advancing economic, social and environmental objectives, while allowing flexibility for national prioritisation and contextual adaptation.

Human rights norms and standards underpin the SDGs, with a substantial proportion of SDG targets directly reflecting internationally recognised human rights obligations. Under Goal 1, and specifically under Goal 1.4, the SDGs requires States:

> "By 2030, to ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance."

In this regard, Malawi's development agenda explicitly acknowledges that the realisation of the SDGs requires active and responsible engagement by the private sector, including through innovation, responsible investment, mobilisation of resources, inclusive economic participation, non-discrimination and the adoption of sustainable business practices.

Business enterprises, ranging from multinational corporations and state-owned enterprises to domestic firms, small and medium-sized enterprises and individual actors within the informal economy, play a central role in Malawi's development trajectory. Their activities significantly influence employment creation, land use, natural resource governance, environmental management, service delivery and access to livelihoods.
At the same time, without adequate regulation, oversight, and accountability, business activity may contribute to adverse human rights impacts, particularly for vulnerable and marginalised groups.

It is within this context that this NAP-BHR situates business respect for human rights as a critical enabling condition for the successful implementation of the **Malawi 2063** and the attainment of the SDGs. Respect for human rights by business enterprises is not only a legal and ethical imperative but also a practical means of ensuring that economic growth translates into equitable outcomes, social cohesion, environmental sustainability, and long-term national resilience. By integrating the principles of the UNGPs within Malawi's development planning and governance framework, this NAP- BHR seeks to ensure that progress towards achieving the **Malawi 2063** and the SDGs is realised in a manner that advances human dignity, equality and access to justice for all.

This NAP-BHR constitutes a foundational policy instrument through which the Malawi Government articulates its commitment to ensuring that business activity in the country is conducted in a manner that is consistent with human dignity, constitutionalism, the rule of law, social justice and equity, environmental sustainability and the right to development generally.

This NAP-BHR is Malawi's first comprehensive national framework dedicated to the implementation of the UNGPs. It is informed by, and responds directly to, the findings of the NBA-BHR, 2025, which provides an evidence-based diagnosis of the interaction between business activity and human rights enjoyment in Malawi.

This NAP-BHR recognises that business and human rights (BHR) is not a peripheral regulatory concern, nor a purely technical compliance matter. Rather, it is a central governance issue that lies at the intersection of economic policy, constitutional and legal accountability, human dignity, equality, environmental stewardship, labour protection, land governance and access to justice, among other critical governance considerations.

The manner in which business is regulated, incentivised and held accountable has direct and profound implications for the lived realities of Malawians across all regions and sectors of and in the country.

1.2. Historical, Political and Human Rights Context

Malawi's contemporary human rights and governance framework is best understood against the backdrop of its historical, political and socio-economic development. Malawi's Statehood, as understood under contemporary international law, dates back to 1891, when it was declared a British Protectorate under the name **British Central Africa Protectorate**, which later became **Nyasaland**.[5] During the colonial period, governance structures were characterised by racial discrimination, political exclusion and economic arrangements that marginalised indigenous populations. Land alienation, exploitative labour practices such as the much-documented Thangata system, and unequal access to productive resources entrenched structural inequalities whose effects continue to be felt in present-day Malawi.

Following the attainment of independence from Britain in 1964, Malawi experienced a prolonged period of one-party authoritarian rule, which lasted from 1964 up to 1994. The adoption of the 1966 Constitution in particular, which removed the Bill of Rights previously entrenched under the 1964 Constitution, operated as a legal warrant for widespread violations of civil, political, economic, social and cultural rights with impunity. During this period, the separation of powers among; the Executive, Legislative and Judicial organs of the State was a mere façade. There were no meaningful checks on executive power. Accountability mechanisms were weak, and there was limited protection for the rights and freedoms of individuals and communities.

Economic governance during this era was highly centralised and non-transparent. State-owned or State-linked enterprises as well as private business actors operated within a framework that did not prioritise transparency, participation, or accountability. This environment created conditions in which economic activity frequently proceeded without adequate regard, or indeed with no regard, for human rights considerations.

The democratic transition, which culminated in the adoption of the 1994 Constitution, marked a decisive turning point. The Constitution restored a comprehensive and justiciable Bill of Rights, entrenched judicial independence, and established independent accountability institutions, including: the Malawi Human Rights Commission, [6] the Office of the Ombudsman, [7] the Law Commission [8] and the Malawi Electoral Commission. [9] The Constitution thus represented a deliberate commitment to break with the past of repression, and to found governance on the values of human dignity, [10] the sanctity of life, [11] equality, [12] accountability, [13] openness, [14] the rule of law [15] and democracy. [16]

Importantly, the Constitution also articulated a vision of development that is inseparable from human rights. Development was no longer to be understood solely in economic terms, but as an entrenched fundamental human right under section 30 of the Constitution, which also envisioned development as a process aimed at improving the quality of life of all people, eliminating social injustices and inequalities, and ensuring the meaningful participation of citizens in decisions affecting their lives.[17]

1.3. Development Policy and the Expanding Role of Business

Since the democratic transition, Malawi has undertaken successive initiatives aimed at consolidating democracy and promoting socio-economic development. [18] The realisation of human rights in Malawi is inseparable from the country's development trajectory, levels of poverty, and the effectiveness of governance institutions.

In present-day Malawi, the country's development agenda is defined by strategies such as the long-term Malawi 2063, which emphasise private-sector-led growth, investment, industrialisation, commercial agriculture, infrastructure development, and public-private partnerships. Within this framework, business enterprises, ranging from multinational corporations (MNCs) and State-Owned Enterprises (SOEs) to domestic firms, small and medium-sized enterprises, and individual informal business actors, now occupy a central position in shaping economic, social and environmental outcomes.

[5] Nyasaland became Malawi at independence on 6th July, 1964.
[6] Section 129 of the Constitution.
[7] Section 120 of the Constitution.
[8] Section 132 of the Constitution.
[9] Section 75 of the Constitution.
[10] Section 12(1)(d) of the Constitution.
[11] 1st Preambular citation to the Constitution.
[12] Section 20 of the Constitution; Section 12(1)(d) of the Constitution.
[13] 3rd Preambular citation to the Constitution.
[14] Ibid.
[15] Section 12(1)(f) of the Constitution.
[16] Ibid.
[17] Section 30(3) of the Constitution.
[18] Some of the successive development programmes include : the Malawi Vision 2020, the Malawi Poverty Reduction Strategy Paper (MPRSP), and the Malawi Growth and Development Strategy (MGDS).

In broader terms, beyond State business actors, non-State business actors have assumed increasing influence over areas traditionally associated with the State, including employment creation, service delivery, land use, natural resource exploitation including extractives, and infrastructure development, among others.

The contemporary Business and Human Rights (BHR) agenda builds directly on this insight by recognising that decisions taken by business enterprises or actors can have direct, frequently foreseeable, and sometimes severe impacts on the enjoyment of human rights.

While business activity is indispensable to economic growth and national development, the NBA-BHR, 2025 confirms that, if inadequately regulated or governed, it may generate adverse human rights impacts, particularly for women, rural communities, informal workers, persons with disabilities and other vulnerable groups.

1.4. Human Rights Achievements and Persistent Challenges

Malawi has made notable progress in the promotion and protection of human rights since the advent of multiparty democracy in 1994. Judicial independence has been strengthened, Parliament has assumed a more active oversight role, and independent institutions such as the Malawi Human Rights Commission (MHRC) and the Office of the Ombudsman (OoO) have become increasingly important actors in the accountability arena.

Malawi has also enacted a wide range of legislation aimed at giving effect to constitutional rights, including laws governing labour relations, [19] environmental management, [20] land administration, [21] gender equality, [22] consumer protection, [23] and public finance management. [24] The country has ratified numerous international and regional human rights instruments, [25] which also inform domestic law and policy. Nevertheless, the NBA-BHR, 2025 identifies enduring and interrelated challenges. These include: poverty, inequality, limited institutional capacity, fragmented regulatory frameworks and weak enforcement. In the context of business activity these challenges manifest in unsafe and exploitative labour practices, environmental degradation, land dispossession, inadequate consultation and compensation, discrimination and barriers to access to justice. The NBA-BHR, 2025 confirms that these challenges are systemic rather than incidental or episodic. They reflect structural governance weaknesses, information gaps, and power imbalances between business enterprises and affected communities, particularly in rural areas and within the informal economy.

The NBA-BHR, 2025 demonstrates that existing legal and institutional frameworks have not been systematically oriented towards the prevention of business-related human rights harm. The NBA-BHR, 2025 shows that oversight and enforcement remain largely reactive, sector-specific and generally fragmented. In the result, human rights concerns arising from business activity are often addressed only after harm has already occurred.

[19] Employment Act (Cap. 55:02); Labour Relations Act (Cap. 54:01); Occupational Safety, Health and Welfare Act (Cap. 55:07).
[20] Environment Management Act, 2017 (No. 19 of 2017).
[21] Land Act (Cap. 57:01); Registered Land Act (Cap. 58:01), Customary Land Act (Cap. 59:01); Land Acquisition and Compensation Act (Cap. 58:04), etc.
[22] Gender Equality Act (Cap. 25:06).
[23] Consumer Protection Act (Cap. 48:10); Competition and Fair Trading Act, 2024 (No. 20 of 2024).
[24] Public Finance Management Act, 2022 (No. 4 of 2022); Public Audit Act (Cap. 37:01); Public Procurement and Disposal of Public Assets Act, 2024 (No. 7 of 2025).
[25] Charter of the United Nations, 1945, acceded to on 4 August, 1964 (Malawi was admitted to UN Membership on 1 December, 1964); International Covenant on Civil and Political Rights, 1966, acceded to on 22 December, 1993; International Covenant on Economic, Social and Cultural Rights, 1966, acceded to on 22 December, 1993; International Convention on the Elimination of All forms of Racial Discrimination, acceded to on 11 June, 1996; International Convention on the Elimination of All Forms of Discrimination Against Women, 1979, acceded to on 12 March, 1987; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, acceded to on 11 June, 1996; International Convention on the Rights of the Child, 1989, acceded to on 2 January, 1991; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified on 23 September, 2022; Convention on the Rights of Persons with Disabilities, ratified on 27 August, 2009; and various International Labour Organisation (ILO) Conventions; among many others. On the ILO Conventions, Malawi has ratified a total of 32 Conventions and 1 Protocol, including all the 10 ILO fundamental conventions. The fundamental ILO Conventions that Malawi has ratified include the Forced Labour Convention, 1930 (No. 29); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Occupational Safety and Health Convention, 1981 (No. 155); Worst Forms of Child Labour Convention, 1999 (No. 182); and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The regional instruments include the Constitutive Act of the African Union, 2000, ratified by Malawi on 3 February, 2001; African Convention on the Conservation of Nature and Natural Resources, 1968, ratified on 06 March 1973; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, acceded to on 04 November, 1987; African Charter on Human and Peoples' Rights, 1981, ratified on 17 November, 1989; African Charter on the Rights and Welfare of the Child, 1991, ratified on 16 September, 1999; Treaty Establishing the African Economic Community, ratified on 26 June, 1993; The African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty), ratified on 06 March, 2009; Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, ratified on 09 September, 2008; OAU Convention on the Prevention and Combating of Terrorism, acceded to on 23 June, 2003; Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament, ratified on 03 July, 2002; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, ratified on 20 May, 2005; African Union Convention on Preventing and Combating Corruption, ratified on 26 November, 2007; African Charter on Statistics, ratified on 15 June, 2012; African Charter on Values and Principles of Public Service and Administration, ratified on 28 December, 2014; and the Agreement Establishing the African Continental Free Trade Area, ratified on 01 November, 2020; among others. In addition to these regional instruments, Malawi is also a party to various sub-regional human rights and related instruments, such as under the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC).

1.5. The United Nations Guiding Principles on Business and Human Rights as the Normative Framework of the NAP-BHR

The UNGPs, [26] unanimously endorsed by the United Nations Human Rights Council in 2011, [27] constitute the authoritative global framework for addressing human rights impacts arising from business activity. They represent a decisive normative shift away from purely voluntary corporate social responsibility (CSR) towards structured, preventive and accountability-oriented governance of business conduct. The OHCHR Report on Corporate Responsibility to Respect Human Rights [28] which provides a comprehensive clarification of how the UNGPs are to be interpreted and implemented in law and policy, calls for a "smart mix of measures" that combines voluntary measures with mandatory HRDD, public disclosure obligations, and enhanced oversight of corporate reporting, to respect human rights. [29]

The UNGPs are built upon three mutually reinforcing pillars:

a. **the State duty to protect against human rights abuses by third parties**, including business enterprises or actors. The State must do this through appropriate policies, regulation, investigation, adjudication and enforcement;
b. **the corporate responsibility to respect human rights,** requires business enterprises or actors to avoid infringing on the rights of others and to address adverse impacts with which they are involved. It requires that businesses ensure that they have a human Rights policy and mainstream human rights in their operations. It also requires that businesses should conduct HRDD to identify, prevent, mitigate and account for how they address potential and actual adverse human rights impacts. Further, where there is conflict, businesses must refrain from exacerbating or becoming complicit in the conflict; and
c. **access to effective remedy**, ensuring that victims of business-related human rights harm have access to judicial and non-judicial grievance mechanisms.

The UNGPs are formally characterised as soft law. [30] This means that they do not create new human rights obligations as a matter of binding law. Rather, they serve to clarify how existing domestic, regional and international obligations should be operationalised in the context of modern economic activity. Their legitimacy and authority derive from broad international consensus, their grounding in existing human rights treaties and other instruments, and their subsequent incorporation into domestic legal and policy frameworks across numerous jurisdictions. [31]
Crucially, the UNGPs emphasise prevention rather than reaction. They introduce HRDD as a central operational concept. HRDD requires States and businesses alike to identify, assess, prevent, mitigate and account for human rights risks before harm occurs. This preventive logic resonates strongly with the governance concerns already identified in the NBA-BHR, 2025.

1.6. Constitutional Convergence with the UNGP Framework

The Constitution provides a particularly strong domestic foundation for the governance of business conduct in accordance with human rights principles, and indeed for the implementation of the UNGPs. The Constitution is transformative in character as it seeks to address the injustices of the past through enforceable rights and accountable governance.

Section 12 of the Constitution establishes accountability, transparency, the rule of law and the observance of human rights as fundamental constitutional principles. These principles thus also constitute the Constitution's foundational values. The section provides that:

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[26] UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc. A/HRC/17/31 (2011).
[27] UN Human Rights Council Resolution 17/4 of 16 June, 2011.
[28] OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (UN, Geneva, 2012), 5, 11, 21 https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf (Accessed on 6 February, 2026). Specifically, the Report states that "The principles on the State duty to protect call for incentives as well as sanctions, with room for guidance, support and capacity-building alongside regulatory and punitive approaches, where needed. States should use a variety of measures in combination, as relevant to ensure adequacy and effectiveness. This is what is referred to as a smart mix of measures.", p. 21.
[29] A/HRC/50/56 https://docs.un.org/en/A/HRC/50/56. See Guiding principle 3.
[30] According to Assenza, "The UNGPs fall within the loose category of so-called international 'soft law' instruments on business and human rights. The expression "international 'soft law' instruments" encompasses all written legally non-binding instruments agreed to among states – including resolutions, codes of conduct, statements, and declarations – that seek to lay down principles and non-legal norms of behavior for specific actors." See Ellena Assenza, "From International 'Soft' Law to Law in Business and Human Rights: The Role of the UNGPS in the Development of Formal Sources of International Law" in Andreas Ziegler et al (eds.), Business and Human Rights: Emerging Challenges, Issues, and Trends (Brill | Nijhoff, 2025), 14.
[31] Assenza proceeds to state that: "the UNGPs have gradually inspired a 'new regulatory dynamic' characterized by growing calls to develop a binding inter- national legal instrument on business and human rights. Even the author of the UNGPs, Professor John Ruggie, contemplated that international legalization in this area would sooner or later become a 'necessary and inevitable development.' Ibid, 15."

> (1) This Constitution is founded upon the following underlying principles—
>
> a. all legal and political authority of the State derives from the people of Malawi and shall be exercised in accordance with this Constitution solely to serve and protect their interests;
>
> b. all persons responsible for the exercise of powers of State do so on trust and shall only exercise such power to the extent of their lawful authority and in accordance with their responsibilities to the people of Malawi;
>
> c. the authority to exercise power of State is conditional upon the sustained trust of the people of Malawi and that trust can only be maintained through open, accountable and transparent Government and informed democratic choice;
>
> d. the inherent dignity and worth of each human being require that the State and all persons shall recognize and protect human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote;
>
> e. as all persons have equal status before the law, the only justifiable limitations to lawful rights are those necessary to ensure peaceful human interaction in an open and democratic society; and
>
> f. all institutions and persons shall observe and uphold this Constitution and the rule of law and no institution or person shall stand above the law.

In terms of this section, public officials are under a duty to exercise their authority or power solely to serve and protect the interests of the people. The State and all persons, including non-state actors, are under a duty to recognise and protect human rights to the fullest extent possible. Further, all institutions and persons must operate within the rule of law.

Section 13 of the Constitution, in turn, places important policy directions on the State, enjoining the State to actively promote the welfare and development of the people by adopting and implementing progressive policies and legislation. Among such policy directives are the need to promote law and order and respect for society through civic education, honest practices in Government, adequate resourcing, the humane application and enforcement of laws and policing standards, [32] ensuring a sensible balance between the creation and distribution of wealth through the nurturing of a market economy and long-term investment in health, education, economic and social development programmes, [33] ensuring gender equality, [34] implementing policies that address social issues such as domestic violence, security of the person, lack of maternity benefits, economic exploitation and rights to property, [35] enhancing the dignity and quality of life of persons with disabilities, [36] and ensuring responsible management of the environment. [37]

The principles of environmental stewardship and intergenerational equity or justice, which are articulated under section 13(d) of the Constitution, call upon the State to progressively adopt and implement policies and legislation that directly address various socioeconomic issues that are relevant to the extractive, agriculture, construction, manufacturing, digital technologies and other business sectors.

Section 30 of the Constitution proceeds to entrench the right to development. It requires that economic activity be directed towards the elimination of social injustices and inequalities in society.

[32] Section 13(m).
[33] Section 13(n).
[34] Section 13(a).
[35] Section 13(a)(iii).
[36] Section 13(g).
[37] Section 13(d).

It provides that:

> "1. All persons and peoples have a right to development Right to and therefore to the enjoyment of economic, social, cultural and political development and women, children and persons with disabilities in particular shall be given special consideration in the application of this right.
> 2. The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.
> 3. The State shall take measures to introduce reforms aimed at eradicating social injustices and inequalities.
> 4. The State has a responsibility to respect the right to development and to justify its policies in accordance with this responsibility."

The business sector is significantly and actively involved in such matters as the provision of basic resources, such as farm inputs, education, health services, housing, employment and infrastructure as articulated in section 30 (2) of the Constitution. The State is therefore obliged to take appropriate measures to deal with the HRDD implications on the conduct of business in this area.

Section 15 (1) of the Constitution is particularly key when it comes to an appreciation of the interaction between business and human rights in Malawi. It provides for both vertical and horizontal application of the Constitution in relation to the human rights guaranteed under the Bill of Rights. The section provides that:

> "(1) The human rights and freedoms enshrined in this Chapter shall be respected and upheld by the executive, legislature, judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Malawi and shall be enforceable in the manner prescribed in this Chapter."

This provision therefore makes it very clear that constitutional rights in Malawi may bind not only the State, but also, where applicable, natural and legal persons, and thus including all types of business enterprises or actors. This constitutional scheme is consonant with the UNGPs' recognition that while States remain the primary human rights duty-bearers, business enterprises also bear, in appropriate cases, independent responsibilities in respect of such rights.

The UNGP framework is therefore in tandem with Malawi's constitutional order. The Constitution provides normative expression to the human rights principles and obligations that the UNGPs advocate for in the context of business activity.

1.7. Business and Human Rights as a Governance Issue: The UNGP Lens

A central insight that emerged from the NBA-BHR, 2025 is that business-related human rights risks in Malawi are systemic and governance-driven, rather than exceptional, incidental or episodic. This diagnosis thus calls for the application of the analytical logical framework of the UNGPs in addressing BHR issues. The UNGPs recognise that human rights harm frequently arises from:

a. fragmented and poorly coordinated regulatory frameworks;
b. inadequate integration of human rights into economic and investment policy;
c. weak enforcement capacity;
d. power imbalances between businesses and affected communities; and
e. barriers to access to effective remedy.

These factors are all present within Malawi's governance framework, as documented by the NBA-BHR, 2025. This NAP-BHR therefore adopts the UNGPs not merely as an international reference point, but as a diagnostic and corrective governance tool, capable of addressing structural and normative weaknesses through coordinated, preventive reform.

1.8. International and Regional Commitments

Malawi's human rights framework is informed by international and regional obligations. Malawi is a State Party to major global and regional human rights instruments. These include: the **International Covenant on Civil and Political Rights** (ICCPR), the **International Covenant on Economic, Social and Cultural Rights** (ICESCR), various **International Labour Organisation** (ILO) conventions, the **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW), the **Convention on the Rights of Persons with Disabilities** (CRPD), the **Convention on the Rights of the Child** (CRC), the **International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families** (ICRMW) and the **African Charter on Human and Peoples' Rights** (ACHPR), among many others.

The ACHPR in particular, explicitly links human rights, development, natural resources and the environment. African jurisprudence, including decisions such as **SERAC v Nigeria** [38] lays bare the obligation of States to regulate private actors and to prevent corporate-related harm. These developments resonate with Malawi's constitutional framework and underline the significance of addressing business conduct through a human rights lens.

At the global level, the UNGPs provide an authoritative framework for clarifying State duties and corporate responsibilities. Although non-binding, the UNGPs have achieved widespread acceptance and increasingly inform domestic regulatory reforms in many countries.

With specific reference to the conduct of MNCs, the OECD Guidelines for Multinational Enterprises provide a pertinent reference point and guiding framework vis-à-vis BHR, and they are a significant complement to the UNGPs. [39] The NBA-BHR, 2025 notes that Malawi, not being an OECD member State, has not made a formal declaration committing to implementation of the OECD Guidelines for Multinational Enterprises. [40] Consequently, Malawi does not have a National Contact Point nor an equivalent institutional mechanism associated with those Guidelines. However, non-OECD countries have the liberty to voluntarily adopt relevant OECD standards. The NBA-BHR notes, in this regard, that the absence of such a voluntarily assumed commitment limits Malawi's engagement with established international responsible business conduct frameworks and associated grievance mechanisms.

1.9. Purpose and Rationale of a NAP-BHR

The UN encourages States around the world to develop National Action Plans on Business and Human Rights (NAP-BHRs) as a clear way of giving effect to the UNGPs. Further, the Nairobi Declaration on African Business and Human Rights (2024) (NDABHR) emphasises the need for African States to develop NAP-BHRs that are grounded in comprehensive National Baseline Assessments, integrate gender and environmental considerations, and strengthen access to effective remedy. [41]

[38] Social and Economic Rights Centre (SERAC) and Centre for Economic and Social Rights (CESR) vs Nigeria [2001] ACHPR 35. In the SERAC case, Nigeria was found liable for failing to regulate and hold accountable oil companies such as Shell Corporation in order to protect communities from a range of human rights violations, preventing pollution and providing remedies. The Commission further found that in some respects, the State was actually complicit in the violations.
[39] Organisation for Economic Co-operation and Development (OECD), OECD Guidelines for Multinational Enterprises (2011, updated 2023).
[40] Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, Czechia, Denmark, Estonia, Germany, Finland, France, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovenia, Slovakia, South Korea, Spain, Sweden, Switzerland, Turkey, the UK and the USA.
[41] See African Business and Human Rights Forum, Nairobi Declaration on African Business and Human Rights Forum 2024, https://www.bhrafricaforum.org/nairobi-declaration (accessed 17 February, 2026).

Additionally, in the context of Malawi, this NAP-BHR represents a continuation and deepening of Malawi's commitment to human rights since the adoption of the Constitution in 1994. It responds to the growing recognition that business activity is a central driver of both development and human rights risk.

This NAP-BHR constitutes Malawi's principal instrument for domesticating and operationalising the UNGPs in the country. This NAP-BHR responds to the contemporary reality that business activity has become one of the most significant drivers of both development and human rights risk.

This NAP-BHR complements existing legal and institutional frameworks, and gives contemporary expression to Malawi's principles, values and commitments under the Constitution and legislation as well as under international legal frameworks, and most particularly, the UNGPs.

This NAP-BHR is thus intended to operate as:

a. a policy coordination tool across Government;

b. a reference framework for policy, legislative and regulatory reforms;

c. a benchmark for business conduct and State leverage; and

d. a platform for dialogue among the State, business and society.

The NAP-BHR complements, rather than displaces, existing laws, policy frameworks and institutions, while providing a coherent lens through which their mandates are exercised.

1.10. Problem Statement

Malawi's pursuit of inclusive economic growth and sustainable development [42] has increasingly relied on the activities of business enterprises across diverse sectors, including agriculture, extractives, manufacturing, infrastructure development, financial services, tourism, and the informal economy generally. Whilst business activity has the potential to generate employment, promote innovation, and contribute to national development objectives as spelt out in the **Malawi 2063** as well as the SDGs, it has also been associated with adverse impacts on the enjoyment of human rights by individuals and communities.

Evidence emerging from national consultations, field research and stakeholder engagements conducted during the NAB-BHR, 2025 development process, reveals persistent and systemic challenges in preventing, addressing and remedying business-related human rights abuses in Malawi. These challenges arise within a broader context that is characterised by socio-economic vulnerability, high levels of informality in economic activity, limited regulatory capacity, and unequal power relations between business actors and affected communities.

Key human rights concerns that are linked to business operations in Malawi, as revealed by the NBA-BHR, 2025 include, unsafe and unfair labour practices; child labour and forced labour risks in certain sectors such as commercial agriculture; land acquisition and displacement without adequate consultation, compensation, or resettlement; environmental degradation impacting livelihoods, health, and access to natural resources; unequal access to economic opportunities; and limited protection for vulnerable or marginalised groups, including: women, children, persons with disabilities, informal workers, and rural communities.

Despite the existence of constitutional guarantees and an array of sector-specific legislation and regulatory institutions, Malawi continues to experience significant gaps in the effective implementation, coordination, and enforcement of laws and policies that are relevant to business and human rights. Regulatory oversight is often fragmented across multiple institutions with overlapping or unclear mandates, limited resources, and insufficient mechanisms for inter-agency coordination. This institutional fragmentation weakens preventive regulation, delays responses to alleged abuses, and undermines accountability for business-related human rights harm as accountability paths are often blurred.

[42] See the Malawi 2063.

Access to effective remedy also remains a critical challenge. The NAB-BHR, 2025 shows that affected individuals and communities frequently face legal, financial, procedural, and informational barriers in seeking redress through both judicial and non-judicial remedial mechanisms. These barriers include: limited awareness of rights, geographical inaccessibility of courts, delays in adjudication of disputes or issues, high costs of litigation, power imbalances between claimants and business entities leading to uneven justice dispensation, and the absence or ineffectiveness of operational-level grievance mechanisms.

At the same time, many business enterprises, particularly small and medium-sized enterprises and actors within the informal economy, lack adequate awareness, guidance, or capacity to understand and implement their responsibility to respect human rights. Where corporate social responsibility initiatives exist, they are often ad hoc or purely philanthropic in nature and are not systematically linked to HRDD or accountability for adverse impacts.

Collectively, these challenges show that existing legal and policy frameworks, while important, are insufficient on their own to ensure coherent, consistent, and effective protection of human rights in the context of business activity. There is therefore need for a clear, comprehensive, coordinated, and action-oriented National Action Plan on Business and Human Rights that translates Malaŵi's constitutional values and international human rights commitments into practical measures that are in line with the UNGPs. Such a Plan is necessary to strengthen prevention of harm, clarify responsibilities of State and business actors, enhance institutional coordination, and improve access to effective remedy for all persons affected by business-related human rights impacts.

1.11. Goal, Objectives and Guiding Principles

1.11.1 Goal

The overall goal of this NAP-BHR is to ensure that business activities in Malaŵi are conducted in a manner that respects, protects, promotes and fulfils human rights, contributes to sustainable and inclusive development, and provides effective prevention of, and remedy for, business-related human rights abuses, in accordance with the UNGPs and Malaŵi's constitutional and international obligations.

1.11.2 Objectives

The specific objectives of the Malaŵi NAP-BHR are to:

a. strengthen the State duty to protect human rights in the context of business activity by improving policy coherence, regulatory frameworks, investigative and enforcement mechanisms, and institutional coordination to prevent and address business-related human rights harm;
b. enhance the corporate responsibility to respect human rights by promoting awareness, adoption, and implementation of human rights due diligence, responsible business conduct, and accountability mechanisms among business enterprises of all sizes and sectors, including state-owned enterprises and informal economic actors;
c. improve access to effective remedy for affected persons and communities by strengthening judicial and non-judicial grievance mechanisms, reducing practical and legal barriers to redress, and ensuring remedies are accessible, affordable, timely and effective;
d. promote policy coherence and alignment across Government by integrating business and human rights considerations into national development strategies, sectoral policies, public procurement, public-private partnerships and investment frameworks;
e. protect vulnerable and marginalised groups from disproportionate harm by ensuring that laws, policies and practices addressing business activity are gender-responsive, inclusive, and sensitive to the specific risks faced by women, children, persons with disabilities, informal workers, rural communities and other at-risk groups;

f. foster multi-stakeholder participation and social dialogue by promoting meaningful engagement among Government, business, civil society, trade unions, communities, and other stakeholders in the prevention and resolution of business-related human rights impacts;

g. enhance transparency, accountability and learning by establishing mechanisms for monitoring, reporting and periodic review of the implementation of this NAP-BHR; and

h. guide legislative, regulatory and institutional reform.

1.11.3 Guiding Principles

Implementation of this NAP-BHR shall be guided by the following principles:

1. **Human rights-based approach** - All actions under this NAP-BHR shall be grounded in internationally recognised human rights standards and Malawi's Constitution, emphasising the identification of rights-holders and duty-bearers and measures for accountability, non-discrimination and access to remedy.
2. **Consistency with the UN Guiding Principles on Business and Human Rights** - This NAP-BHR is anchored in the three-pillar framework of the UNGPs. [43]
3. **Prevention and risk-based approach** - Priority shall be given to preventing business-related human rights harm through early identification and mitigation of risks, including through human rights due diligence and impact assessment.
4. **Participation and inclusiveness** - Affected persons and communities shall have opportunities for meaningful participation in decisions that affect them, including access to relevant information in a timely and understandable form.
5. **Attention to vulnerable and marginalised groups** - Implementation shall be sensitive to structural inequalities and power imbalances and shall include targeted measures to protect vulnerable groups that are at heightened risk of adverse impacts.
6. **Gender equality and non-discrimination** - Actions under this NAP-BHR shall promote gender equality and seek to eliminate discrimination in all its forms, recognising the differentiated impacts of business activities on women and men.
7. **Policy coherence and coordination** - Measures under this NAP-BHR shall promote horizontal and vertical coherence across Government institutions, laws, and policies, and between national and local levels.
8. **Transparency and accountability** - Implementation processes, monitoring and reporting shall be transparent, and duty-bearers shall be held accountable for commitments undertaken under this NAP-BHR.
9. **Progressive realisation and continuous improvement** - This NAP-BHR shall be implemented as a living document, subject to periodic review and revision based on monitoring, evaluation, and emerging evidence.

[43] As already discussed at pages 5 above (1.5)

PART II

METHODOLOGY

This NAP-BHR has been developed through a participatory, evidence-based and multi-stakeholder process designed to ensure national ownership, contextual relevance and consistency with the UNGPs and the Constitution.

The methodology has drawn substantially from international good practice on NAP-BHR development, whilst being tailored to Malawi's unique constitutional framework, institutional arrangements and socio-economic realities

2.1. Normative and analytical framework

The development of this NAP-BHR has been anchored in the UNGPs, the findings of the NBA-BHR, 2025 and the identification of priority thematic and sectoral issues through stakeholder consultation and field research. It recommends the formulation of actionable measures across Government and business actors.

2.2. National Baseline Assessment (2025)

The comprehensive NBA-BHR, 2025 that substantially supplemented an earlier exercise conducted by the MHRC in 2024, is the primary evidence base upon which this NAP-BHR has been formulated. The NBA-BHR, 2025 involved a general but systematic review and analysis of:

a. Malawi's constitutional provisions, legislation, regulations, policies and other literature relevant to business and human rights generally, and specifically in Malawi;

b. institutional mandates, co-ordination mechanisms, and enforcement practices;

c. judicial and non-judicial grievance and remedy mechanisms; and

d. reported and perceived business-related human rights risks and impacts across sectors.

The NBA-BHR, 2025 examined ten thematic domains reflecting the UNGP framework and international guidance, providing a structured diagnosis of areas of strengths, gaps and priorities for reform. [44]

2.3. Identification of priority issues and actions

The NBA-BHR, 2025 found that Malawi has generally strong constitutional foundations for business and human rights and that the country also has extensive laws on labour, environment, land, mining, consumer protection, gender and governance. However, the assessment found that significant implementation and governance gaps persist and that the regulatory frameworks tend to operate in silos, thus creating fragmentation and inconsistency in implementation.

In particular, the NBA-BHR, 2025 found that Malawi has no overarching legal framework requiring businesses to conduct HRDD, and that this results in reactive rather than preventive governance.

A further finding was that regulators in Malawi generally face resource constraints, and that the regulatory environment is generally characterised by weak coordination and limited monitoring, leading to inadequate oversight in labour, environmental protection, land governance and consumer rights, among others.

In terms of Priority Areas for Action (Strategic Priorities), the NBA-BHR, 2025 proposes a set of systemic measures that are essential for Malawi to align her business and human rights ecosystem with the UNGPs. These include:

[44] These 10 domains as addressed in the NBA-BHR, 2025 are (1) Human Rights Due Diligence (Laws and Regulations - State Duty to Protect); (2) Policies and Guidance on Business and Human Rights; (3) State-Business Nexus (SOEs, PPPs, Procurement and Incentives); (4) Access to Judicial Remedy; (5) Non-Judicial Grievance Mechanisms; (6) Labour Rights; (7) Environment and Human Rights; (8) Land, Consultation, Compensation and Resettlement; (9) Consumer Protection and Fair Trading; and (10) Cross-Cutting and Emerging Issues.

a. the need to create a coherent national BHR policy and legal framework that will address the problem of regulatory fragmentation and thus ensure that human rights are integrated across all sectors of business. The NAP-BHR, 2025 proposes that the framework legislation to be developed should introduce mandatory HRDD that will establish proportionate requirements for business to identify, prevent, and mitigate the adverse impacts of their conduct or activities on human rights;

b. the need to strengthen enforcement institutions which includes enhancing staffing, training, coordination and resources for regulators in labour, land, environment and consumer protection;

c. the need to leverage on State–Business relationships to advance human rights observance in business by integrating human rights criteria into procurement processes and instruments, the conduct of state-owned enterprises, PPPs, issuance of business licences or permits and the provision of investment incentives;

d. the need to improve access to remedy. This is to be done by capacitating the Judiciary to enhance judicial efficiency, capacitating the Legal Aid Bureau and other legal aid providers to expand legal aid, creating clear grievance pathways – both judicial and non-judicial, and ensuring the due enforcement of outcomes;

e. the need to ensure meaningful consultation, fair compensation and proper resettlement practices particularly in highly risky sectors such as the extractive sector and other land-intensive sectors such as commercial agriculture;

f. the prioritisation of vulnerable groups in the conduct of business by ensuring that gender equality and disability inclusion issues are mainstreamed in all HRDD measures, and wherever appropriate, the HRDD measures must also address relevant child protection considerations and rural community safeguards across all sectors; and

g. the strengthening of transparency and information-sharing, which will in turn help to improve public access to environmental, social and licensing data, and ensure greater public participation in decision-making.

These major findings and identified priority areas for action in the NBA-BHR, 2025 have greatly informed the formulation of areas for strategic action in this NAP-BHR.

2.4. Living document approach

Consistent with international good practice, the Malawi NAP-BHR is conceived as a living document. Its implementation will be monitored and periodically reviewed to allow for learning, adaptation, and continuous improvement in response to emerging challenges, evidence, and stakeholder feedback.

[44] These 10 domains as addressed in the NBA-BHR, 2025 are (1) Human Rights Due Diligence (Laws and Regulations - State Duty to Protect); (2) Policies and Guidance on Business and Human Rights; (3) State-Business Nexus (SOEs, PPPs, Procurement and Incentives); (4) Access to Judicial Remedy; (5) Non-Judicial Grievance Mechanisms; (6) Labour Rights; (7) Environment and Human Rights; (8) Land, Consultation, Compensation and Resettlement; (9) Consumer Protection and Fair Trading; and (10) Cross-Cutting and Emerging Issues.

PART III

INSTITUTIONAL GOVERNANCE AND COORDINATION FRAMEWORK

3.1. Introduction

Effective implementation of this NAP-BHR depends fundamentally on the strength, clarity and coherence of the institutional arrangements through which it is operationalised.

The NBA-BHR, 2025 has identified institutional fragmentation, overlapping mandates, weak coordination and limited enforcement capacity as central structural drivers of business-related human rights risks in Malaŵi.

This Part of NAP-BHR therefore establishes the governance framework for this NAP-BHR. It defines leadership responsibility, coordination mechanisms, institutional roles and accountability pathways that are necessary in order to translate legal and policy commitments into sustained practice. It is premised on the recognition that this NAP-BHR will only be effective if it is integrated within existing State institutions whilst at the same time strengthening their capacity to act in a coordinated, preventive and rights-based manner.

In practical terms, the UNGPs provide the organising framework for this NAP-BHR across:

a. the State duty to protect against human rights abuse by third parties, including business enterprises (Pillar I);

b. the corporate responsibility to respect human rights (Pillar II); and

c. access to effective remedy for victims of business-related harm (Pillar III). The NBA-BHR, 2025 findings confirm a persistent **"implementation gap"** across all three pillars, driven by legal fragmentation, under-resourced inspectorates, weak corporate uptake of human rights due diligence, and limited accessibility of grievance mechanisms.

3.2. Principles Governing Institutional Design

The institutional framework for implementing this NAP-BHR is guided by the following principles:

a. Central Leadership with Distributed Responsibility. This entails clear national leadership combined with sectoral ownership across government;

b. Policy Coherence and Horizontal Coordination. This entails alignment across Ministries, Departments and Agencies whose mandates affect business conduct;

c. Subsidiarity and Decentralisation. This entails bringing decision-making processes closer to the people and seizing appropriate involvement of local government authorities and district-level institutions;

d. Independence and Accountability. This entails respect for the constitutional independence of oversight bodies and the Judiciary;

e. Inclusivity and Participation. This entails structured engagement with non-State stakeholders; and

f. Sustainability which entails institutional arrangements that can endure beyond the lifespan of this NAP-BHR.

These principles reflect this NAP-BHR's preventive orientation, i.e. prevention over reaction, the need for coherence and integration across regulatory spheres, and the centrality of participation and access to remedy as emphasised in the NBA-BHR, 2025.

3.3. Lead Institutional Responsibility

3.3.1 Designation of the Lead Ministry

The Ministry of Justice and Constitutional Affairs (MoJCA) shall serve as the Lead Ministry for the coordination and oversight of this NAP-BHR. This designation reflects:

a. the MOJCA's core mandate to uphold the rule of law and human rights;

b. its central role in legal and policy coordination; and

c. its institutional and functional proximity to the Judiciary, the MHRC and the Ombudsman.

MOJCA shall not assume operational control over all actions under the NAP–BHR. Rather, it shall exercise a strategic coordinating and convening function, ensuring coherence, accountability and continuity.

3.3.2 Core Functions of the Lead Ministry

The MoJCA shall:

a. provide overall strategic leadership for the NAP-BHR;

b. coordinate inter-ministerial and stakeholder implementation;

c. oversee periodic review and reporting on progress;

d. serve as the principal liaison with Parliament, development partners and international mechanisms; and

e. ensure that legislative and policy reform initiatives under this NAP-BHR are legally coherent and constitutionally sound.

MoJCA, as the lead Ministry, shall also ensure that the NAP-BHR's implementation architecture remains coherently structured around the three UNGP pillars, and that cross-cutting priorities, gender responsiveness, disability inclusion, protection of vulnerable groups, transparency and meaningful participation, are mainstreamed across all sectoral actions.

3.3.3 Inter-Ministerial and Multi-Stakeholder Coordination Mechanism

3.3.3.1 Establishment of a National Multi-stakeholder Committee on Business and Human Rights

A **Multi-Stakeholder Committee on Business and Human Rights** (MSC-BHR) shall be established as the principal coordination body for this NAP–BHR. The MSC-BHR shall be chaired by MoJCA. It shall comprise senior technical representatives from the following ministries, agencies and stakeholders:

a. Office of the President and Cabinet;

b. Ministry responsible for Finance;

c. Ministry responsible for Trade and Industry;

d. Ministry responsible for Agriculture;

e. Ministry responsible for Labour;

f. Ministry responsible for Environmental Matters, Natural Resources and Climate Change;

g. Ministry responsible for Mines and Minerals;

h. Ministry responsible for Lands;

i. Ministry responsible for Local Government;

j. Ministry responsible for Gender, Children, Disability and Social Welfare;

k. National Planning Commission;

l. Public-Private Partnership Commission (PPPC)

m. relevant regulatory authorities (e.g. environmental (MEPA), mining, labour, financial services, etc);

n. a representative of the United Nations Development Programme (UNDP);

o. two representatives from established civil society organisations with national presence, that are demonstrably active in BHR matters;

p. a representative of the Malawi Congress of Trade Unions (MCTU);

q. a representative of the Malawi Confederation of Chambers of Commerce and Industry (MCCCI); and

r. a representative of the Chamber of Mines.

The composition must be sufficiently senior and authoritative to manage cross-sectoral issues and resolve issues of overlapping mandates.

In performing its functions, the MSC-BHR shall ensure the systematic mainstreaming of gender equality, children's rights and the rights of persons with disabilities across all Business and Human Rights policy and other measures.

3.3.3.2 Mandate of the Multi-Stakeholder Committee

The MSC-BHR shall:

a. ensure policy coherence across sectors affecting business and human rights;

b. coordinate implementation of sector-specific actions under the NAP–BHR;

c. resolve inter-institutional overlaps and conflicts of mandate;

d. mainstream business and human rights considerations into national development planning, budgeting, and regulatory reform; and

e. prepare consolidated annual implementation reports.

The MSC-BHR shall meet at least twice per year, with extraordinary meetings convened where necessary.

To strengthen accountability and performance, the MSC-BHR shall ensure that implementation is supported by indicators and that responsible institutions integrate relevant actions into annual plans and budgets.

3.3.4. Role of the Office of the President and Cabinet

The Office of the President and Cabinet (OPC) shall play a critical role in ensuring that this NAP-BHR is integrated into whole-of-government planning and performance management. Specifically, the OPC shall:

a. support alignment between the NAP-BHR and national development strategies, including **Malawi 2063;**

b. facilitate high-level political oversight of implementation; and

c. ensure that NAP-BHR priorities are reflected in ministerial performance frameworks and national reporting systems.

This role mirrors an approach previously used in national human rights planning, where high-level convening was viewed as necessary to ensure follow-through and cross-government discipline.

3.3.5 Participation, Social Dialogue and Multi-Stakeholder Engagement

Effective implementation of this NAP-BHR depends on meaningful participation of rights-holders and structured engagement with non-State stakeholders.

The baseline evidence shows that power imbalances, limited legal awareness, and fear of retaliation can constrain the ability of affected persons, particularly workers, rural communities, women, informal workers and persons with disabilities, to assert their rights and access remedy.

Accordingly:

a. multi-stakeholder engagement forums shall be convened periodically to review progress, identify implementation challenges, share good practices and provide feedback on emerging risks;

b. social dialogue mechanisms (including engagement with trade unions and employers' organisations) shall be utilised to advance Pillar II expectations on corporate respect for human rights and workplace-level prevention; and

c. community participation and free, meaningful consultation shall be strengthened in sectors that pose heightened risks (including extractives, large-scale agriculture, and infrastructure projects), recognising the literature and evidence on environmental harm, displacement, and weak consultation.

The ultimate success of this NAP-BHR will depend extensively on the effective collaboration, cooperation and coordination between Government and business sector actors, as well as partners from civil society, the media and the development community.

3.3.6 Decentralisation and District-Level Coordination

Given the geographic and structural barriers that affect access to inspection, information and remedy, the institutional design shall support decentralised implementation and coordination, consistent with the principle of subsidiarity. In this regard, district councils, traditional authorities, and the Ministry of Local Government and Rural Development shall play an important role in implementing this NAP-BHR, particularly in the areas of business licensing, compliance monitoring, and grievance handling.

The appropriate District Council/Local Government Authority shall develop a clear implementation plan at the local level for the NAP-BHR, and adopt specific mechanisms for compliance monitoring and grievance handling mechanism at the district and community level.

Further, District-level local Government coordination arrangements shall:

a. promote local ownership of prevention and early identification of risks;

b. support referral pathways for complaints and grievances; and

c. integrate information into national monitoring and reporting processes.

3.3.7 Independent Oversight, Monitoring and Alignment with International Reporting Standards

Independent oversight is critical to credibility and learning. The MHRC shall play a key independent monitoring role, including assessing impacts, contributing to evaluations, providing recommendations for corrective action, and engaging with communities and civil society in the context of BHR.

Implementation progress reports shall be made publicly available, subject to legitimate confidentiality considerations, and periodic reviews, including mid-term and end-of-cycle reviews, shall involve independent experts and broad stakeholder participation.

Finally, implementation of this NAP-BHR shall be consistent with Malaŵi's international reporting obligations under treaty bodies, Universal Periodic Review (UPR) processes in the UN Human Rights Council and regional mechanisms. These forums shall also serve as a platform for international cooperation and technical assistance which is requisite to ensure Malaŵi's effective implementation of the UNGPs.

PART IV

POLICY, LEGISLATIVE AND REGULATORY FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS IN MALAŴI

4.1 Introduction

This Part examines Malaŵi's existing policy, legislative and regulatory frameworks as they relate to BHR, and situates these within the context of the UNGPs. It builds directly on the findings of the NBA-BHR, 2025 which demonstrates that Malaŵi possesses a comparatively strong normative foundation for human rights protection, but that the implementation framework is characterised by fragmentation, uneven enforcement and limited preventive orientation.

It is important to emphasise that the effectiveness of human rights protection depends not merely on the existence of laws and policies, but on their coherence, accessibility, enforceability and institutional ownership. This NAP-BHR adopts this same premise, while focusing specifically on the regulation of business activity and the management of business-related human rights risks.

In accordance with the UNGPs, this Part addresses:

a. the State duty to protect through laws, policies and regulatory measures (Pillar I);
b. the expectations placed upon business enterprises within Malaŵi's legal and policy environment (Pillar II); and
c. the conditions necessary to support access to effective remedy through judicial and non-judicial mechanisms (Pillar III).

4.2 Constitutional and Policy Foundations Relevant to Business and Human Rights

Malaŵi's Constitution provides the overarching normative framework within which business activity is regulated. The Constitution is transformative in character and seeks to address historical injustices, through enforceable rights, accountable governance and people-centred development.

Key constitutional provisions that are relevant in this regard include sections 12, 13, 15(1), 30, 41 and 46.

Further, in terms of sections 11(2) and 211 of the Constitution, Malaŵi's international obligations, including relevant non-binding norms of public international law, inform the interpretation of domestic law, including the Constitution itself and public policies. The UNGPs provide authoritative guidance on the scope and content of State duties, particularly with respect to prevention of human rights violations, oversight and access to remedy.

As earlier discussed, these provisions are consistent with the UNGP framework. In particular, the Constitution's recognition under section 15(1) of the horizontal application of the Bill of Rights provides a strong domestic basis for the UNGP principle that business enterprises or actors bear responsibilities in respect of human rights, even though States remain the primary human rights duty-bearers.

National development and sectoral policies, including those linked to Malaŵi 2063, in such areas as investment promotion, industrialisation, agriculture, mining, infrastructure, and trade, further shape the operating environment for business. However, the NBA-BHR, 2025 finds that human rights considerations are not consistently mainstreamed across these policies, resulting in policy incoherence and missed opportunities for prevention.

4.3 Legislative Framework Governing Business Conduct

Malaŵi has enacted an extensive body of legislation that regulates business activity across key economic sectors. These include, among others:

a. labour and employment legislation;

b. environmental management and natural resource laws;

c. land and land administration laws;

d. mining and extractives legislation;

e. corporate registration, licensing and governance statutes;

f. public procurement and public-private partnership frameworks; and

g. consumer protection and fair-trading laws.

However, legislative proliferation does not automatically translate into effective protection. Indeed, the NBA-BHR, 2025 confirms that while a number of these laws contain provisions that are relevant to human rights protection, they operate largely in silos and are not systematically framed around the identification, prevention, mitigation and remediation of human rights risks.

From a UNGP perspective, this fragmentation weakens the State duty to protect by obscuring responsibility, diluting accountability and encouraging reactive rather than preventive regulation.

4.4 Human Rights Due Diligence and Preventive Regulation (UNGP Pillar I and Pillar II)

A central finding of the NBA-BHR, 2025 is the absence of a comprehensive legal or policy framework requiring HRDD by business enterprises operating in Malaŵi.

While sectoral laws impose compliance obligations, such as environmental impact assessments, labour inspections and licensing conditions, these mechanisms are not consistently designed to:

a. identify foreseeable human rights risks;

b. prevent or mitigate adverse impacts before harm occurs; or

c. require businesses to account for how such risks are managed.

The UNGPs identify HRDD as the core operational tool through which both States and businesses give effect to their respective human rights duties and responsibilities. HRDD is not a one-off exercise, but an ongoing process that should be proportionate to risk and context.

The NAP-BHR, 2025 recognises that strengthening HRDD, whether through legislation, policy guidance or regulatory practice, is essential to shifting Malaŵi's governance approach from reaction to prevention.

4.5 Corporate Responsibility to Respect Human Rights (UNGP Pillar II)

Under the UNGPs, business enterprises have an independent responsibility to respect human rights. This responsibility exists regardless of a State's ability or willingness to fulfil its own obligations.

The NBA-BHR, 2025 finds that awareness and implementation of this responsibility among businesses in Malaŵi remain uneven. Many enterprises continue to rely on voluntary corporate social responsibility (CSR) initiatives, which are often ad hoc, purely philanthropic and disconnected from core business operations.

As the general literature on BHR shows, reinforced by the NBA-BHR, 2025 findings, voluntarism alone has proven insufficient to address structural human rights risks, particularly in contexts characterised by power imbalances, weak enforcement, and imbalances in access to information. This NAP-BHR therefore emphasises the need for:

a. clearer policy articulation of corporate human rights responsibilities;
b. integration of human rights into corporate governance and risk management systems;
c. sector-specific guidance for high-risk industries; and
d. progressive movement towards mandatory HRDD, in line with emerging global and regional trends.

4.6 State-Business Nexus: State Leverage and Accountability (UNGP Pillar I)

A distinctive feature of Malaŵi's economy is the extensive interaction between the State and business enterprises through:

a. state-owned enterprises (SOEs);
b. public-private partnerships (PPPs);
c. public procurement;
d. licensing and concessions; and
e. fiscal and non-fiscal investment incentives.

The NBA-BHR, 2025 identifies this State-business nexus as a critical but underutilised leverage point for promoting human rights-respecting business conduct. Human rights considerations are rarely included in procurement criteria, SOE governance frameworks, concession agreements or incentive regimes.

The NAP-BHR recognises that the State bears heightened responsibility where it owns, controls, funds, or significantly supports business activity. The UNGPs require States to use this leverage proactively to prevent human rights harm. Additionally, decisions such as the *SERAC case* [45] clearly demonstrate that this requirement is a legal obligation under the regional law of the African Charter on Human and Peoples Rights.

4.7 Access to Remedy within the Regulatory Framework (UNGP Pillar III)

Access to effective remedy is an essential component of accountability and deterrence. The NBA-BHR confirms that, notwithstanding constitutional provisions that allow horizontal application of human rights, practical access to remedy for business-related harm remains constrained.

Challenges, in this regard, include:

a. cost, delay and procedural complexity in judicial processes;
b. limited geographical reach of courts and tribunals;
c. jurisdictional and evidentiary barriers in complex business cases; and
d. weak or inaccessible non-judicial grievance mechanisms.

The NAP-BHR situates access to remedy squarely within the business and human rights framework by emphasising both judicial and non-judicial avenues for remedy, in line with the UNGP effectiveness criteria.

4.8 Policy and Legislative Gaps Identified by the NBA–BHR, 2025

Drawing from the analysis above, the NBA-BHR, 2025 identifies several cross-cutting gaps within Malaŵi's policy and legislative framework, including:

a. absence of an overarching national BHR policy or framework legislation;

[45] See note. 37 above.

b. lack of mandatory HRDD requirements across sectors;

c. fragmented sectoral regulation;

d. weak coordination among regulatory bodies;

e. limited guidance to businesses on their human rights obligations; and

f. inadequate integration of human rights into economic and investment policies.

4.9 Implications for Reform under the NAP-BHR

This Part establishes the foundation for the strategic actions subsequently set out in this NAP-BHR. It confirms that the necessary reforms must be:

a. systemic, addressing normative and structural governance weaknesses rather than isolated incidents;

b. preventive, thus prioritising risk identification and mitigation;

c. coherent by ensuring that laws, policies and institutions are implemented and operate in tandem with each other;

d. inclusive, by, among other things, addressing the needs of vulnerable and marginalised groups and ensuring their active participation in making necessary decisions; and

e. consonant with the UNGP framework, ensuring consistency with international standards.

In this way, this NAP-BHR operationalises the human rights vision articulated in the Constitution and the empirical evidence of the NBA-BHR, 2025 within a unified framework for the regulation of business conduct in Malaŵi.

PART V

ACCESS TO REMEDY, ENFORCEMENT AND ACCOUNTABILITY MECHANISMS

5.1 Introduction

Access to effective remedy is a cornerstone of the BHR framework and an indispensable component of accountability, deterrence and public trust.

Under the UNGPs, States are required to ensure that individuals and communities whose rights are adversely affected by business activity have access to effective judicial and non-judicial grievance mechanisms (Pillar III).

The NBA-BHR, 2025 confirms that, notwithstanding Malawi's strong constitutional foundations and institutional design, access to remedy for business-related human rights harm remains one of the weakest elements of the current legal and governance framework.

This Part therefore examines the judicial and non-judicial mechanisms through which business-related human rights grievances may be addressed in Malawi. It identifies systemic barriers to effective remedy and outlines the reforms that are required to strengthen enforcement and accountability.

5.2 Constitutional and Legal Foundations for Access to Remedy

The Constitution provides a robust normative basis for access to remedy. Section 41(2) and (3) of the Constitution provides for the right of access to justice and effective legal remedies. Section 41(3) in particular states that: **"Every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him or her by this Constitution or any other law."**

The Constitution guarantees not only substantive rights but also procedural guarantees necessary to enforce them.

In addition to section 41 of the Constitution stated above, other key provisions include:

a. the independence of the Judiciary under section 103(1) of the Constitution;

b. the horizontal application of human rights under section 15(1); and

c. the entrenchment of administrative justice principles, including legality, reasonableness and procedural fairness, under section 43 of the Constitution.

These constitutional guarantees are directly relevant to business-related human rights claims, including disputes that involve private actors, state-owned enterprises and public-private partnerships.

However, the NBA-BHR, 2025 confirms that formal availability of remedies does not necessarily translate into effective access in practice, particularly for rural communities, informal workers, women and other vulnerable groups.

5.3 Judicial Remedies (UNGP Pillar III – Judicial Mechanisms)

5.3.1 Courts and Tribunals

Malawi's courts, [46] including the Supreme Court of Appeal, [47] the High Court [48] and specialised subordinate courts [49] such as the Industrial Relations Court (IRC) and Child Justice Courts, constitute the primary judicial avenues for addressing business-related human rights harm.

[46] Established under Chapter IX of the Constitution.
[47] Established under Section 104 of the Constitution.
[48] Established under Section 108 of the Constitution.
[49] Established under Section 110 of the Constitution and other sectoral legislation such as the Child Care, Protection and Justice Act (Cap. 26:03).

In principle, constitutional litigation, judicial review actions, civil claims, labour disputes and environmental litigation, amongst others, may all be used to seek redress against business actors.

Judicial independence is a key strength of Malaŵi's governance system. The NBA-BHR, 2025 confirms that the courts remain a key adjudicative forum for accountability. However, the Assessment also identifies significant practical barriers to effective judicial remedies. These include:

a. cost and complexity of litigation;
b. delays in case resolution;
c. limited geographical accessibility of courts;
d. corruption or perceived corruption;
e. evidentiary challenges in complex corporate and environmental cases; and
f. power imbalances between claimants and well-resourced corporate defendants.

These constraints undermine deterrence and limit the ability of courts to function as effective mechanisms of accountability for business-related human rights harm.

5.3.2 Labour and Employment Dispute Resolution

Specialised labour dispute resolution mechanisms provide comparatively more accessible remedies for certain categories of business-related harm, particularly in formal employment contexts. [50] However, the NBA-BHR, 2025 highlights persistent enforcement gaps, especially for casual workers, migrant labourers and workers in the informal economy. The NAP-BHR therefore recognises the need to strengthen labour inspection, dispute resolution and enforcement mechanisms as part of a broader access-to-remedy strategy.

5.4 Non-Judicial State-Based Grievance Mechanisms (UNGP Pillar III – Non-Judicial Mechanisms)

5.4.1 Malaŵi Human Rights Commission

The MHRC plays a central role as an independent oversight body and constitutes a key non-judicial avenue for addressing business-related human rights complaints. It is the country's National Human Rights Institution (NHRI), established under section 129 of the Constitution. The law confers on the MHRC a very broad mandate, namely to investigate human rights violations and to protect and promote human rights in Malaŵi in the broadest sense possible. [51] The MHRC's investigative, advisory and monitoring functions are essential to accountability.

However, the NBA-BHR, 2025 finds that the MHRC's capacity to address business-related grievances is constrained by resource limitations, jurisdictional complexity, and the absence of clear referral and follow-up mechanisms, in some cases.

This NAP–BHR therefore envisages a strengthened role for the MHRC in:

a. monitoring business-related human rights impacts;
b. receiving and handling complaints;
c. referring matters to appropriate enforcement bodies or courts; and
d. contributing to systemic reform through recommendations.

Establishment of an autonomous, well-resourced and well-capacitated department or unit within the MHRC dedicated to BHR compliance monitoring would be a key step towards ensuring that BHR issues are taken seriously.

[50] Chapter V of the Labour Relations Act (Cap 54:0).
[51] Section 12 of the Human Rights Commission Act (Cap. 3:08) provides that: "The Commission shall be competent in every respect to protect and promote human rights in Malaŵi in the broadest sense possible and to investigate violations of human rights on its own motion or upon complaints received from any person, class of persons or body."

5.4.2 Ombudsman and Administrative Remedies

The Office of the Ombudsman provides an important avenue for addressing maladministration and other injustices where no judicial or other practicable remedies exist, [52] including in contexts involving regulatory failure, some procurement irregularities and state–business interactions. Where business-related harm is linked to State action or omission, the Ombudsman plays a critical role in investigating, recommending and generally ensuring accountability. It is therefore a key formal but non-judicial grievance mechanism for dealing with some forms of human rights concerns related to the conduct of business, where courts or other remedial avenues may not afford effective remedies.

This NAP-BHR recognises the need to strengthen coordination between the Ombudsman, regulators, and other oversight bodies to ensure effective follow-up and remedy.

5.5 Business-Level Grievance Mechanisms (UNGP Pillar II and III)

The UNGPs emphasise the importance of business-level grievance mechanisms as a means of early identification and resolution of human rights concerns. Such mechanisms can provide accessible, timely and culturally appropriate remedies where they are designed and implemented effectively.

The NBA-BHR, 2025 finds that business-level grievance mechanisms are rare, informal and uneven in quality across Malaŵi's economy. Where they exist, they often lack transparency, independence, and general alignment with UNGP effectiveness criteria, including legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility and the capacity for learning.

This NAP-BHR, therefore promotes the development of more business-level grievance mechanisms, particularly in high-risk sectors such as extractives, agriculture, manufacturing and infrastructure that are formal and effective.

5.6 Barriers to Effective Remedy

The NBA-BHR, 2025 identifies several cross-cutting barriers that undermine access to effective remedy. These include:

a. lack of legal awareness among rights-holders;
b. fear of retaliation, especially in employment contexts;
c. language, literacy and cultural barriers;
d. limited financial and technical capacity of complainants;
e. limited geographical access to courts, especially the superior courts;
f. corruption or perceived corruption;
g. weak coordination among grievance mechanisms; and
h. absence of clear referral pathways.

5.7 Strengthening Enforcement and Accountability under the NAP–BHR

In response to the above challenges, it is recommended to adopt a multi-pronged and multi-layered approach to strengthening enforcement and accountability, including:

a. enhancing stakeholder capacity to address complex business-related cases through judicial means;
b. strengthening labour, environmental, and sectoral tribunals and/or inspectorates;
c. improving coordination among oversight institutions;
d. promoting effective business-level grievance mechanisms;
e. expanding legal aid and community-based access to justice initiatives;
f. ensuring protection of complainants, whistle-blowers, and human rights defenders;
g. making HRDD compulsory by creating statutory duties to identify, prevent, mitigate and cease human rights abuses for which businesses are directly or indirectly responsible;

[52] Section 123(1) of the Constitution of the Constitution provides that: "The office of the Ombudsman may investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practicable remedy."

h. strengthening anti-corruption and integrity mechanisms, including institutional integrity committees, in both public and private institutions; and
i. providing remedies in cases where such duties are breached.

This NAP-BHR emphasises that enforcement is not merely punitive, but also preventive and corrective, aimed at addressing systemic weaknesses and reducing future harm.

5.8 Consistency/alignment with UNGP Effectiveness Criteria

This NAP-BHR adopts the UNGP effectiveness criteria as a benchmark for evaluating and strengthening all grievance mechanisms, whether judicial or non-judicial. These criteria provide a common standard for legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility and continuous learning.

By ensuring that domestic mechanisms are in line with these criteria, Malaŵi seeks to enhance the trustworthiness, accountability and credibility of its BHR framework.

5.9 Conclusion and Implications for Implementation

This Part confirms that access to effective remedy remains a critical challenge in Malaŵi's business and human rights landscape. While constitutional and institutional foundations exist, systemic barriers continue to limit enforcement and accountability.

This NAP–BHR therefore places access to remedy at the centre of its reform agenda, recognising that effective grievance mechanisms are essential not only for redress, but also for deterrence, prevention and sustainable development.

PART VI

IMPLEMENTATION, MONITORING, EVALUATION AND REPORTING

6.1 Introduction

The effectiveness of this NAP-BHR ultimately depends on the robustness of its implementation, monitoring, evaluation and reporting framework. National action planning must go beyond aspirational commitments and be accompanied by clear implementation arrangements, with measurable indicators, and mechanisms for monitoring progress and ensuring accountability.

The NBA-BHR, 2025 confirms that Malawi's principal challenge lies not in the absence of legal or policy commitments, but in weak implementation, fragmented oversight, limited coordination and insufficient follow-through on issues. This Part therefore establishes the framework through which this NAP–BHR will be operationalised, tracked, reviewed and continuously improved.

In line with the UNGPs, this Part gives effect to the State duty to protect human rights by ensuring policy coherence and institutional accountability (Pillar I), reinforces expectations on business enterprises through transparency and reporting (Pillar II) and strengthens access to remedy through monitoring and learning (Pillar III).

6.2 Implementation Responsibilities and Action Ownership

6.2.1 Allocation of Responsibilities

Implementation of this NAP–BHR is a whole-of-government responsibility, involving all Ministries, Departments and Agencies whose mandates affect business activity and human rights. The primary responsibility for implementing this NAP-BHR lies with Government, particularly those Ministries, Departments and Agencies which have been identified in it as having a lead or cooperating role. Clearly, businesses themselves also have a critical role to play being responsible duty-bearers.

Each action under this NAP-BHR shall therefore clearly identify:

a. a lead institution responsible for implementation;

b. supporting institutions with complementary mandates; and

c. time-bound milestones for delivery.

This approach is intended to address the institutional fragmentation and diffusion of responsibility identified by the NBA-BHR, 2025.

6.2.2 Integration into Institutional Planning and Budgeting

To ensure sustainability and ownership, responsible institutions should integrate this NAP–BHR actions into their:

a. annual work plans;

b. sectoral strategies and policies;

c. performance management frameworks; and

d. budgetary processes.

Integration into existing planning and budgeting systems is also essential to avoid parallel processes and to ensure that commitments are adequately resourced. This NAP-BHR adopts this logic, recognising that unfunded mandates undermine effectiveness.

6.3 Monitoring Framework

6.3.1 Purpose and Scope of Monitoring

Monitoring under this NAP-BHR serves multiple purposes. These include:

a. tracking progress against commitments;

b. identifying implementation gaps and bottlenecks;

c. enabling corrective action; and

d. supporting transparency and public accountability.

The NBA-BHR, 2025 emphasises that monitoring must be continuous, evidence-based, and participatory if it is to contribute meaningfully to prevention and learning.

6.3.2 Indicators and Benchmarks

Each action under this NAP-BHR is accompanied by clear, measurable and time-bound indicators. Those indicators are designed to assess not only outputs (such as laws adopted, policies issued), but also outcomes, including improved prevention, enhanced access to remedy and behavioural change.

Where appropriate, indicators shall be disaggregated by gender, geography, sector and vulnerability status, in order to reflect differential impacts and risks identified by the NBA-BHR, 2025.

6.4 Role of Oversight and Independent Institutions

6.4.1 Malaŵi Human Rights Commission

As highlighted earlier in this NAP-BHR, the MHRC shall play a central role in the independent monitoring and evaluation of this NAP-BHR. In line with its constitutional and statutory mandate, the MHRC shall:

a. monitor implementation progress;

b. assess human rights impacts of business activity;

c. receive and analyse complaints and trends; and

d. provide recommendations for corrective action.

The NBA-BHR, 2025 confirms that strengthening the MHRC's role in the BHR context is essential to credibility and learning.

6.4.2 Parliamentary Oversight

Parliament, through its committee system, shall exercise oversight over implementation of this NAP-BHR. Parliamentary scrutiny contributes to democratic accountability, transparency and sustained political commitment.

Parliamentary engagement, primarily through the Legal Affairs Committee and any other relevant sectoral Parliamentary Committees, shall include review of progress reports, consideration of legislative reform proposals or challenges in UNGP implementation and engagement with stakeholders.

6.5 Reporting Framework

6.5.1 National Reporting

The MOJCA, as the Lead Ministry, shall coordinate the preparation of periodic national implementation reports on this NAP-BHR. These reports shall:

a. consolidate inputs from responsible institutions;

b. assess progress against indicators;

c. identify challenges and lessons learned; and

d. propose corrective measures where necessary.

The reports shall be submitted to the Legal Affairs Committee and the Parliamentary Committee responsible for Industry, Trade and Tourism, with ultimate responsibility resting with the Legal Affairs Committee.

The reports shall be made publicly available, subject to legitimate confidentiality considerations, in order to promote transparency and trust.

6.5.2 International and Regional Reporting

Implementation of this NAP-BHR shall be in line with Malaŵi's international and regional human rights reporting obligations, including:

a. United Nations treaty body processes;

b. UN Human Rights Council's Universal Periodic Review (UPR) processes; and

c. African human rights mechanisms.

This NAP–BHR serves as a reference framework for demonstrating Malaŵi's efforts to implement the UNGPs and to address business-related human rights risks in international forums.

6.6 Evaluation and Review

6.6.1 Mid-Term Review

The duration of this NAP-BHR is six (6) years. A mid-term review shall be conducted in the third year of implementation in order to assess progress, effectiveness and emerging challenges. The review shall involve the engagement of an independent expert or experts and broad stakeholder participation, including civil society, business representatives and affected communities.

Periodic review is essential to ensure relevance, responsiveness and continuous improvement of this NAP-BHR.

6.6.2 Final Evaluation and Renewal

At the end of the duration of the NAP-BHR implementation cycle, a comprehensive evaluation shall be undertaken to assess overall impact, sustainability and lessons learned. The results of the evaluation shall inform the development of a subsequent (succeeding) NAP-BHR.

6.7 Participation, Transparency and Learning

Effective implementation of this NAP-BHR requires ongoing dialogue, transparency and learning. Consistent with the UNGPs, this NAP-BHR seeks to promote:

a. meaningful participation of rights-holders and stakeholders;

b. access to information on implementation progress; and

c. mechanisms for feedback and learning.

The NBA-BHR, 2025 highlights that participation and transparency are critical to addressing power imbalances and to building trust among communities, businesses and State institutions.

6.8 Risk Management and Sustainability

This NAP-BHR recognises potential risks to implementation, including; resource constraints, institutional turnover and shifting political priorities. Mitigation measures include:

a. entrenching BHR responsibilities within permanent institutions;

b. integrating actions into core planning and budgeting processes; and

c. maintaining high-level political oversight.

Sustainability is further enhanced by building institutional capacity and fostering a culture of prevention and accountability.

6.9 Conclusion

This Part establishes the mechanisms through which this NAP-BHR will be translated from commitment to practice. By strengthening implementation, monitoring, evaluation and reporting, Malaŵi seeks to ensure that this NAP-BHR delivers measurable, sustained improvements in the governance of business conduct and the protection of human rights.

In doing so, this NAP-BHR gives practical effect to the constitutional vision of accountable governance.

PART VII

STRATEGIC PRIORITIES AND ACTION PLAN FOR IMPLEMENTING THE UNGPs

7.1 Introduction and Methodological Basis

This Part constitutes the operational core of this NAP-BHR. It translates the constitutional, normative and empirical foundations established in Parts I-V into specific, measurable, achievable, and relevant strategic actions, that are structured in accordance with the three pillars of the UNGPs. The strategic actions set out in this Part are intended to be:

a. grounded in Malawi's institutional and resource context;

b. integrated into existing governance frameworks; and

c. capable of producing sustained improvements in the enjoyment of human rights in the business environment.

The strategic actions herein prioritise systemic reform, prevention of harm and policy coherence, rather than isolated, episodic or ad hoc interventions.

7.2 Pillar I - State Duty to Protect Human Rights

Under Pillar I of the UNGPs, States have a duty to protect individuals and communities against human rights abuses by third parties, including business enterprises, SoEs and other actors. This duty requires the adoption of appropriate laws, policies, regulatory frameworks and enforcement mechanisms.

The NBA-BHR, 2025 confirms that Malawi possesses many of the necessary legal and institutional components to discharge this duty, but that protection is undermined by fragmentation, weak coordination, limited preventive orientation and under-utilisation of State leverage. The Strategic Objectives below respond directly to these gaps.

Strategic Objective 7.2.1

Strengthen Policy Coherence and Integration of Human Rights on Business Across Government and the Public Sector

The NBA-BHR, 2025 identifies policy incoherence as a central structural driver of business-related human rights risk in Malawi. Human rights considerations are insufficiently integrated into national development planning, sectoral policies, investment promotion frameworks and regulatory strategies.

Strategic Actions

7.2.1.1 Policy coherence on Business and Human Rights shall be strengthened in the following manner:

a. the National Planning Commission (NPC) shall update national development frameworks, including Malawi 2063 implementation plans, so that they explicitly recognise BHR as a cross-cutting governance priority;

b. all relevant MDAs and organs shall conduct a review of existing business or business-related policies, strategies and operational frameworks to identify and address inconsistencies with the UNGPs;

c. all identified policy conflicts shall be formally reported to the NPC for analysis and the MOJCA for coordination and resolution; and

d. all unresolved policy conflicts of a cross-cutting or systemic nature shall be escalated to the MSC-BHR for final determination.

7.2.1.2 Government, through MoJCA and in collaboration with OPC, shall develop a single, consolidated **Human Rights Due Diligence (HRDD) Guidance Note and Toolkit** applicable across all sectors. The Toolkit shall comprise:

a. a core section setting out minimum HRDD expectations applicable to all Ministries, Departments, Agencies and businesses; and

b. sector-specific annexes tailored to priority areas, including environmental and social impact assessment, labour inspection, public procurement and investment promotion.

All references in this NAP-BHR to guidance notes, manuals, tools or checklists shall be understood as forming part of, or being aligned with, this consolidated **HRDD Guidance Note and Toolkit.**

7.2.1.3 Human rights risk considerations shall be incorporated into investment promotion and facilitation frameworks, including incentives, concessions and licensing regimes, particularly in high-risk sectors, including mining and large-scale agribusiness, such as in the tobacco, tea and sugar industries. This action shall be implemented by ensuring that:

a. investment promotion agencies incorporate human rights risk screening into investor engagement and facilitation processes;

b. investment incentives, concessions and licensing decisions are aligned with respect for labour rights, customary land tenure rights (including the protection of inheritance for vulnerable groups), environmental protection and community interests; and

c. investment projects presenting heightened human rights risks are subject to enhanced review and coordination among relevant public authorities.

7.2.1.4 The MSC-BHR shall function primarily as an oversight, coordination and escalation body and shall not be responsible for day-to-day implementation of BHR measures. As such:

a. technical review of sector-specific policies and regulatory frameworks shall be undertaken by the relevant lead Ministries and regulatory bodies, with the MHRC exercising its independent mandate to monitor and assess consistency with human rights standards;

b. where policy incoherence or conflict arises that cannot be resolved at sector level, the matter shall be escalated to the MOJCA and, where necessary, to the MSC-BHR for resolution; and

c. outcomes of MSC-BHR deliberations shall be communicated to relevant institutions for implementation and follow-up.

Strategic Objective 7.2.2

Adopt Preventive Governance through Human Rights Due Diligence

The absence of a systematic approach to human rights due diligence (HRDD) is one of the most significant gaps identified by the NBA-BHR, 2025. Existing regulatory tools, such as licensing, inspections and environmental impact assessments, are not consistently designed to identify and mitigate human rights risks before harm occurs. The UNGPs emphasise HRDD as the central preventive mechanism under both Pillar I and Pillar II. The Government-wide national **HRDD Guidance Note on BHR** proposed under Section 7.2.1.2 above, shall play a key role in the achievement of this objective.

Strategic Actions

7.2.2.1 Further to the proposed Government-wide national **HRDD Guidance Note on BHR**, the Government shall ensure the progressive development of simplified and sector-specific HRDD tools for high-risk sectors such as extractive industries and commercial agriculture estates/farms.

7.2.2.2 HRDD requirements shall be integrated into the licensing, inspection and regulatory frameworks of priority sectors by: revising relevant licensing and inspection instruments to include HRDD screening requirements; adopting standard HRDD checklists for use by regulators in identified high-risk sectors; and applying these tools on a pilot basis during the implementation period of this NAP-BHR

7.2.2.3 Environmental and Social Impact Assessment (ESIA) frameworks shall be strengthened to incorporate explicit human rights risk analysis, including impacts on land rights, livelihoods, labour conditions, and vulnerable groups. In this regard, the Malawi Environmental Protection Authority (MEPA), in collaboration with the Ministry responsible for environmental affairs, shall ensure that the Environment Management Act (EMA) and the regulations made thereunder are reviewed in order to ensure that:

a. ESIA requirements expressly include assessment of business-related human rights impacts;

b. affected communities are meaningfully consulted throughout ESIA processes; and

c. ESIA approvals are conditional upon credible mitigation, monitoring and follow-up measures.

7.2.2.4 Capacity-building on human rights due diligence shall be provided to priority regulatory and enforcement officials, including:

a. ESIA assessors and approving authorities;

b. labour, environmental and sector-specific inspectors; and

c. licensing officers in identified high-risk sectors.

Training shall be coordinated by MoJCA in collaboration with the MHRC and relevant sector regulators, and shall be supported by practical tools, including HRDD inspection checklists, ESIA human rights screening templates, standard operating procedures and model corrective action plans.

Strategic Objective 7.2.3

Strengthen State Leverage in State-Business Relationships

The NBA-BHR, 2025 identifies public procurement, SOEs, concessions, licences and investment incentives as critical but under-utilised leverage points for promoting human rights-respecting business conduct.

Strategic Actions

7.2.3.1 HRDD shall be integrated into public procurement by:

a. reviewing and revising key public procurement policies, guidelines and standard bidding documents to incorporate human rights requirements;

b. introducing standard contractual clauses addressing human rights risks in public procurement and public-private partnerships; and

c. establishing compliance checks within existing procurement oversight mechanisms.

7.2.3.2 SOEs shall be required, through the Comptroller of Statutory Corporations, to adopt and implement human rights policy commitments through:

a. the issuance of governance directives requiring Boards of SOEs to approve policies, strategies, programmes and activities that are human rights compliant;

b. integration of Business and Human Rights requirements into performance management and reporting frameworks applicable to SOEs;

c. targeted capacity-building for Boards and senior management; and

d. developing reporting and performance oversight frameworks that include consideration of business-related human rights risks and impacts.

7.2.3.3 Human rights safeguards shall be integrated into public-private partnership frameworks, concessions, and licensing arrangements through:

a. developing or revising regulations under the Public-Private Partnership Act (Cap. 46:07) (PPPA), that require contractual and licensing frameworks to include enforceable human rights safeguards;

b. developing monitoring and oversight frameworks under PPPA regulations, so that responsibilities are clearly assigned to relevant public authorities;

c. developing regulations under the PPPA that ensure that every PPP arrangement establishes accessible channels for affected persons and communities to raise concerns; and

d. ensuring that mining concessions and agricultural leases include mandatory Community Development Agreements (CDAs) that guarantee local benefit-sharing and protect the tenure of those on customary land.

The Ministry of Finance, Economic Planning and Decentralisation shall be the lead implementing agency to ensure that these strategic actions are effected.

7.2.3.4 State support and incentives shall be conditional upon, and tied to, respect for human rights. This action shall be implemented by ensuring that:

a. access to State incentives, guarantees, or other forms of support is linked to demonstrable respect for human rights;

b. procedures are established to assess compliance with such conditions; and

c. proportionate corrective measures are applied in cases of non-compliance, including the suspension or revocation of fiscal incentives, tax exemptions, and export licenses for repeat offenders.

Strategic Objective 7.2.4

Enhance Institutional Capacity, Coordination and Enforcement

Weak enforcement capacity and fragmented institutional mandates were repeatedly identified in the NBA-BHR, 2025 as barriers to effective protection. Effective discharge of the State duty to protect requires adequately resourced, trained and coordinated institutions.

Strategic Actions

7.2.4.1 Institutional capacity for enforcement of business-related human rights obligations shall be strengthened by:

a. conducting targeted assessments to identify enforcement gaps in priority sectors such as commercial agriculture, mining, heavy-duty manufacturing and public procurement;

b. revising enforcement protocols and manuals to incorporate a preventive and risk-based approach to human rights impacts;

c. enhancing coordination among enforcement agencies in high-risk sectors; and

d. mobilising resources for enforcement capacity-building during the implementation period of this NAP-BHR.

MoJCA shall be the lead implementing agency to ensure that these strategic actions are effected.

7.2.4.2 Inter-agency coordination on enforcement of business-related human rights obligations shall be improved. This action shall be implemented by ensuring that:

a. formal cooperation arrangements are established among relevant regulatory bodies, specifically between the Ministries responsible for Mining, Labour, Agriculture and Lands to harmonise licensing and inspection protocols;

b. information-sharing mechanisms support coordinated oversight and enforcement; and

c. periodic joint reviews identify systemic enforcement gaps.

7.2.4.3 Data collection and analysis on business-related human rights risks and violations shall be strengthened. This action shall be implemented by ensuring that:

a. enforcement institutions collect and analyse disaggregated data on complaints, inspections, and outcomes;

b. trends are used to inform policy reform and preventive measures; and

c. findings are reported through national coordination mechanisms, including the MSC-BHR.

7.3 Pillar II – Corporate Responsibility to Respect Human Rights Normative Basis and Rationale

Under Pillar II of the UNGPs, business enterprises have an independent responsibility to respect human rights. This responsibility exists regardless of the State's ability or willingness to fulfil its own human rights obligations and applies to all business enterprises and actors, irrespective of size, sector, ownership or operational context.

The responsibility to respect human rights requires businesses to:

a. avoid causing or contributing to adverse human rights impacts through their own activities; and

b. seek to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services through business relationships.

The NBA-BHR, 2025 confirms that, in Malawi, corporate engagement with human rights remains uneven, informal and largely voluntary. Where human rights considerations are addressed, they are often framed as philanthropic CSR initiatives rather than as core governance, risk management and accountability obligations.

Pillar II therefore represents a critical shift, from discretionary CSR to systematic, risk-based and accountability-oriented corporate conduct, that is consistent with international standards and Malawi's constitutional principles and values.

Strategic Objective 7.3.1

Clarify and Communicate Corporate Human Rights Responsibilities

The NBA-BHR, 2025 identifies low awareness and inconsistent understanding of corporate human rights responsibilities among businesses operating in Malawi, particularly small and medium-sized enterprises (SMEs) and other domestic firms. Many enterprises lack clarity on what respecting human rights entails in practice, beyond compliance with discrete regulatory requirements.

The UNGPs emphasise that States should clearly communicate expectations to business enterprises regarding respect for human rights. This expectation-building function is essential in contexts where legal obligations are fragmented and enforcement capacity is limited.

Strategic Actions

7.3.1.1 The Government shall clarify and communicate corporate human rights responsibilities consistent with the UNGPs. This action shall be implemented by ensuring that:

a. official guidance articulating corporate responsibility to respect human rights is developed and disseminated;

b. such guidance is tailored to different categories of enterprises, including informal sector actors, SMEs, SOEs, large domestic firms and local subsidiaries of transnational corporations to ensure they apply the same human rights standards in Malawi as they do in their home jurisdictions; and

c. outreach and awareness-raising initiatives are conducted in collaboration with business associations and sector regulators.

Strategic Objective 7.3.2

Promote Human Rights Due Diligence within Business Enterprises

The NBA-BHR, 2025 finds that HRDD is not widely understood or practised in Malawi, particularly outside multinational enterprises. Where risk assessments are conducted, they often focus narrowly on environmental or occupational safety compliance rather than broader human rights risks.

Strategic Actions

7.3.2.1 Businesses operating in high-risk sectors shall be encouraged to adopt proportionate HRDD processes. This action shall be implemented by ensuring that:

a. guidance is provided to businesses on proportionate and risk-based HRDD that is in line with the UNGPs;
b. priority engagement is directed at enterprises operating in sectors presenting heightened human rights risks; and
c. HRDD is promoted as an ongoing process integrated into core business decision-making.

7.3.2.2 Sector-specific HRDD guidance shall be developed for extractives, agriculture, manufacturing and procurement-related supply chains. This action shall be implemented by ensuring that:

a. sector-specific HRDD Guidance Notes that reflect the distinct human rights risks associated with each sector are developed;
b. such guidance is developed in consultation with relevant regulators, businesses, workers' organisations and civil society;
c. guidance materials are disseminated through sectoral platforms and regulatory engagement processes; and
d. a **simplified HRDD Toolkit** specifically designed for Small and Medium Enterprises (SMEs) and informal business actors is developed and piloted.

Strategic Objective 7.3.3

Strengthen Corporate Governance and Internal Accountability for Human Rights

The NBA-BHR, 2025 identifies weak integration of human rights considerations into corporate governance structures as a key gap. The UNGPs emphasise that responsibility for respecting human rights should be embedded at the highest levels of corporate governance.

Strategic Actions

7.3.3.1 Businesses shall be encouraged to integrate human rights oversight at Board or Board equivalent and senior management level. This action shall be implemented by ensuring that:

a. businesses adopt human rights policy commitments approved at Board or Board equivalent governance level;
a. senior management oversight of human rights risks is clearly defined within corporate structures; and
b. governance frameworks support accountability for human rights performance.

7.3.3.2 Internal accountability mechanisms for human rights risks shall be promoted.

This action shall be implemented by ensuring that;

a. workplace policies, including sexual harassment policies and the prevention of sexual exploitation and abuse are developed with clear grievance resolution pathways;
b. businesses are encouraged to assign internal responsibility for identifying and managing human rights risks;
c. internal reporting and escalation mechanisms for human rights concerns are established; and
d. corrective actions are taken where adverse human rights impacts are identified.

Strategic Objective 7.3.4

Address Human Rights Risks in Business Relationships and Supply Chains

The NBA-BHR, 2025 highlights that many adverse human rights impacts arise through business relationships, including contractors, suppliers, labour recruiters and intermediaries.

Strategic Actions

7.3.4.1 Enterprises shall be encouraged to assess and manage human rights risks arising through contractors, suppliers, and intermediaries. This action shall be implemented by ensuring that:

a. businesses identify human rights risks linked to their business relationships;

b. contractual and operational arrangements incorporate measures to prevent or mitigate such risks, with a priority focus on ensuring living wage parity for subcontracted workers and providing gender-sensitive safeguards for women working in estate supply chains and construction sites; and

c. ongoing monitoring of supply-chain risks is undertaken proportionate to risk.

7.3.4.2 Public procurement systems shall support responsible supply-chain practices. This action shall be implemented by ensuring that:

a. procurement requirements promote responsible business conduct across supply chains;

b. suppliers are encouraged to adopt human rights-respecting practices; and

c. procurement processes reinforce alignment with the UNGPs.

Strategic Objective 7.3.5

Promote Effective Business-Level Grievance Mechanisms

The NBA-BHR, 2025 finds that business-level grievance mechanisms are underdeveloped or ineffective in many enterprises operating in Malaŵi. The UNGPs emphasise that such mechanisms must complement, not replace, State-based remedies.

The NBA-BHR, 2025 finds that business-level grievance mechanisms are underdeveloped or ineffective in many enterprises operating in Malaŵi. The UNGPs emphasise that such mechanisms must complement, not replace, State-based remedies.

Strategic Actions

7.3.5.1 Businesses shall be encouraged to establish grievance mechanisms consistent with UNGP effectiveness criteria. This action shall be implemented by ensuring that:

a. guidance is provided on the UNGP effectiveness criteria for grievance mechanisms;

b. businesses are encouraged to design mechanisms that are accessible, predictable, transparent, and rights-compatible, impartial, including through the use of independent third-party mediators or ombudspersons to ensure the process is not controlled solely by the enterprise;

c. grievance mechanisms are integrated into broader human rights risk management processes; and

d. all grievance mechanisms include explicit Non-Retaliation Policies that legally protect workers and community members from dismissal, harassment or intimidation following the filing of a complaint.

7.3.5.2 Guidance Notes shall be developed on accessible grievance mechanisms for workers and communities. This action shall be implemented by ensuring that:

a. the guidance addresses barriers for workers and affected communities to access such grievance mechanisms;

b. grievance mechanisms are communicated in Chichewa and other relevant local languages, using formats accessible to rights-holders with low literacy levels, such as radio broadcasts, community theatre, and oral storytelling; and

c. mechanisms allow for escalation to State-based grievance mechanisms for remedies where issues are not internally resolved.

Strategic Objective 7.3.6

Encourage Transparency and Public Reporting on Human Rights Performance

Transparency and disclosure are essential to accountability and informed stakeholder engagement. The NBA-BHR, 2025 identifies limited public reporting by businesses on human rights risks and impacts.

Strategic Actions

7.3.6.1 Voluntary public reporting on business-related human rights performance shall be encouraged. This action shall be implemented by ensuring that:

a. businesses disclose information on human rights risks and mitigation measures;
b. reporting practices are aligned with emerging international standards;
c. reporting supports informed engagement by stakeholders;
d. local subsidiaries of transnational corporations publish Malawi-specific human rights disclosures rather than relying solely on global parent-company reports, ensuring transparency regarding local land acquisition and labor practices; and
e. collaborate with the Stock Exchange (MSE) to integrate human rights disclosure requirements into the listing rules for publicly traded companies.

7.3.6.2 Transparency on human rights performance shall be promoted among SOEs and large enterprises. This action shall be implemented by ensuring that:

a. SOEs integrate human rights considerations into existing reporting obligations;
b. large enterprises publish human rights-related information as part of sustainability or governance reporting, and ensure that summaries of these reports are made accessible to affected communities in local languages (e.g. Chichewa and Tumbuka) and through non-digital channels like community radios and
c. reporting contributes to learning and continuous improvement.

7.4 Pillar III – Access to Effective Remedy Normative Basis and Rationale

Under Pillar III of the UNGPs, States must take appropriate steps to ensure that when business-related human rights abuses occur, those affected have access to effective remedy through judicial, administrative or other appropriate means. Remedy is essential not only for redress, but also for deterrence, prevention and public confidence in governance systems.

The Constitution provides a strong normative foundation for access to remedy, including justiciable rights, judicial independence, administrative justice and the horizontal application of rights. Rights are rendered illusory where effective remedies are inaccessible or ineffective.

The NBA-BHR, 2025 confirms that, despite this normative strength, practical access to remedy for business-related human rights harm remains limited, particularly for rural communities, informal workers, women and other structurally vulnerable groups. Pillar III of the UNGPs therefore represents a critical area for strategic reform under the NAP-BHR.

Strategic Objective 7.4.1

Strengthen Judicial Capacity to Address Business-Related Human Rights Harm

Courts play a central role in providing authoritative remedies and shaping legal standards. The NBA-BHR, 2025 confirms that Malawi's Judiciary is independent and constitutionally robust, but that litigants often face challenges in handling complex business-related cases involving environmental harm, labour exploitation, land disputes and corporate accountability.

These challenges include cost, delay, evidentiary complexity and limited specialised capacity.

Strategic Actions

7.4.1.1 Judicial capacity to adjudicate business-related human rights claims shall be strengthened. This action shall be implemented by ensuring that:

a. continuing professional development programmes for legal practitioners and judicial officers include dedicated modules on BHR;
b. legal practitioners are capacitated to appropriately invoke constitutional, statutory and international human rights standards in cases involving business conduct;

c. judicial officers are supported and/or capacitated to apply constitutional, statutory and international human rights standards in cases involving business conduct; and

d. institutional platforms are utilised to promote consistency and learning in the adjudication of business-related human rights matters.

Strategic Objective 7.4.2

Enhance Access to Legal Aid and Representation for Affected Persons

The NBA-BHR, 2025 identifies lack of legal representation and limited access to legal services as significant barriers to effective remedy, particularly for workers, rural communities and other vulnerable groups affected by business activity.

Strategic Actions

7.4.2.1 Legal aid services shall be strengthened for victims of business-related human rights harm. This action shall be implemented by ensuring that:

a. Legal Aid Bureau (LAB) services are progressively extended to all districts in Malaŵi, prioritising the establishment of Mobile Legal Aid Clinics in remote mining areas (such as Karonga and Chikwawa) and agricultural estate zones;

b. each LAB office designates an officer or officers responsible for handling BHR matters;

c. the designated officers receive appropriate training on labour, land, environmental and other business-related human rights claims;

d. referral and coordination mechanisms are strengthened between the LAB, the Malaŵi Law Society (MLS), the MHRC, the Judiciary and relevant civil society organisations so that community activists are protected from SLAPP lawsuits; and

e. the establishment of a Human Rights Litigation Fund to provide financial support for rights-holders bringing complex public interest cases against large business duty-bearers is explored.

7.4.2.2 Legal awareness and access to information on remedies shall be enhanced among affected communities. This action shall be implemented by ensuring that:

a. public legal education initiatives target communities affected by business activities, particularly in high-risk sectors;

b. information on rights and available remedies is disseminated in accessible formats and in Chichewa and other local languages through community radios and oral formats suitable for the 89% of workers in the informal sector; and

c. partnerships with local authorities, traditional leaders and civil society organisations support outreach and awareness-raising.

Strategic Objective 7.4.3

Strengthen State-Based Non-Judicial Grievance Mechanisms

State-based non-judicial mechanisms provide accessible and flexible avenues for remedy, particularly where judicial processes are costly or slow. The NBA-BHR, 2025 highlights capacity and follow-up challenges affecting institutions such as the MHRC and the Office of the Ombudsman.

Strategic Actions

7.4.3.1 The capacity and effectiveness of State-based non-judicial grievance mechanisms shall be strengthened. This action shall be implemented by ensuring that:

a. State-based grievance mechanisms receive targeted institutional and technical support to address business-related complaints;

b. procedures are strengthened to improve timeliness, follow-up, and implementation of recommendations, including a requirement that the MSC-BHR reviews non-compliance with MHRC recommendations and links such failure to the suspension of Government contracts or investment incentives;

c. the operations of such mechanisms are progressively consistent or compliant with the UNGP effectiveness criteria, prioritising accessibility for informal sector actors and ensuring that the MHRC can conduct on-site investigations in remote mining and agricultural zones without requiring the victim to travel to urban centres; and

d. there is recognition that the constitutional limits on traditional authorities' jurisdiction, traditional dispute resolution shall be used but only for small civil claims arising from business activities, and that such mechanisms shall not bar access to formal judicial or state-based remedies for serious human rights violations.

7.4.3.2 Coordination between judicial and non-judicial grievance mechanisms shall be enhanced. This action shall be implemented by ensuring that:

a. referral pathways between judicial and non-judicial mechanisms are clarified and strengthened

b. information-sharing protocols support complementarity rather than duplication; and

c. affected persons are guided towards appropriate remedial avenues based on the nature of their claims.

Strategic Objective 7.4.4

Promote Effective Business-Level Grievance Mechanisms

Business-level grievance mechanisms enable early identification and resolution of human rights concerns and reduce escalation. The NBA-BHR, 2025 finds that such mechanisms are largely absent or ineffective in many enterprises operating in Malaŵi.

Strategic Actions

7.4.4.1 Business-level grievance mechanisms shall be promoted as a complement to State-based remedies. This action shall be implemented by ensuring that:

a. guidance is provided to businesses on establishing grievance mechanisms consistent with UNGP effectiveness criteria;

b. such mechanisms are designed to be accessible to workers and affected communities including the use of independent third-party mediators or local community-led oversight;

c. business-level mechanisms do not preclude access to judicial or State-based remedies; and

d. large-scale estates and mines provide grievance channels in Chichewa and other local languages, utilising oral and non-digital formats accessible to rights-holders with low literacy levels.

Strategic Objective 7.4.5

Protect Complainants, Whistle-Blowers and Human Rights Defenders

Fear of retaliation is a significant barrier to access to remedy. The NBA-BHR, 2025 identifies intimidation, job insecurity and social pressure as deterrents to reporting business-related human rights harm.

Strategic Actions

7.4.5.1 Measures shall be taken to protect complainants, whistle-blowers and human rights defenders from retaliation. This action shall be implemented by ensuring that:

a. existing legal and institutional protections against retaliation are strengthened and effectively applied, specifically protecting rights-holders from Strategic Litigation Against Public Participation (SLAPP) lawsuits used by well-resourced corporations to silence community advocacy;

b. reporting mechanisms allow for confidentiality and protection of complainants where appropriate; and

c. awareness is raised among businesses and public authorities regarding the prohibition of retaliation.

Strategic Objective 7.4.6

Promote Learning, Systemic Reform and Continuous Improvement

The UNGPs emphasise that grievance mechanisms should contribute to learning and prevention, not merely dispute resolution. The NBA-BHR, 2025 highlights the absence of systematic analysis of complaints and trends to inform reform.

Strategic Actions

7.4.6.1 Learning from complaints and remedial processes shall be used to inform systemic reform and prevention. This action shall be implemented by ensuring that:

a. data on complaints and outcomes is systematically collected and analysed;

b. lessons learned inform policy, regulatory and institutional reform; and

c. findings are communicated through national coordination mechanisms to support continuous improvement.

8. Concluding Note



Judges, magistrates, registrars and other judicial personnel gather in Lilongwe for training to strengthen their capacity to address environmental harm and uphold environmental rights.

As shown in Part VII, this NAP-BHR has set out the Strategic Priorities and Strategic Actions through which the Government of Malaŵi commits to implementing the UNGPs in a coherent, systematic and context-appropriate manner. By translating constitutional obligations, international standards and the empirical findings of the NBA-BHR, 2025 into concrete and implementable measures, Part VI constitutes the operational core of this NAP-BHR.

The Strategic Actions under Pillars I, II, and III collectively reflect a shift from reactive responses to business-related human rights harm towards a preventive, risk-based and accountability-oriented approach. They emphasise policy coherence, early identification and mitigation of risks, effective use of State leverage, strengthened corporate governance and due diligence, and improved access to effective remedy. In doing so, this Part recognises that sustainable economic development and respect for human rights are mutually reinforcing and must be pursued in an integrated manner.

Implementation of the Strategic Actions will be progressive and proportionate, taking into account Malaŵi's institutional capacities and resource constraints, while maintaining a clear trajectory towards full alignment with the UNGPs. The Government affirms that responsibility for implementation rests primarily with existing institutions and governance frameworks, and that this NAP-BHR intends to strengthen, coordinate and enhance these systems rather than to create parallel structures.

The effectiveness of this NAP-BHR depends on sustained political commitment, inter-institutional coordination, meaningful engagement with business enterprises and other actors, including business individuals, workers, civil society, affected communities, and the availability of reliable data to inform decision-making.

Accordingly, the Strategic Actions set out in this Part are complemented by the Implementation and Monitoring Framework in Annex I, which assigns responsibilities, identifies timeframes, and establishes indicators to support accountability and continuous improvement.

Through the adoption and implementation of the Strategic Actions herein, Malaŵi affirms its commitment to giving practical effect to the UNGPs, strengthening the governance of business conduct, and ensuring that business and general economic activity contributes to the realisation of human rights and the constitutional vision of accountable and inclusive, human rights-based development.

Through the Strategic Objectives and the corresponding Strategic Actions in this NAP-BHR, Malaŵi commits to strengthening human rights protection from violation of rights by business actors, respect for human rights by such actors, and access to effective remedy where violations occur, as integral components of its broad framework for the guarantee of human rights in the country.

Finally, mindful that successful implementation of this NAP-BHR requires financial resources, a separate Working Group shall be set up by the Steering Committee for the development of this NAP-BHR, to develop a comprehensive phased and costed implementation plan (i.e. an implementation plan with a detailed budget).

ANNEX I: IMPLEMENTATION AND MONITORING MATRIX
PILLAR I – STATE DUTY TO PROTECT HUMAN RIGHTS

Strategic Objective 7.2.1: Strengthen policy coherence and integration of human rights in economic governance

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.2.1.1 Integrate business and human rights considerations into national development strategies, including Malawi 2063 implementation frameworks and sectoral policies	• Review Malawi 2063 implementation instruments; • Conduct inter-ministerial policy audits (Inter-ministerial policy audits shall be undertaken only after the adoption of the consolidated HRDD Guidance Note and Toolkit, and shall be guided by the standards and criteria contained therein. Piloting shall be done in the 2nd year of implementation of this NAP-BHR in the Commercial Agriculture and Mining Sectors, following the adopting of the HRDD Guidance Note and Toolkit); • Integrate BHR benchmarks into sector policies; • Validate revisions through stakeholder consultation.	Ministry of Finance, Economic Planning and Decentralisation (MoFEPD); National Planning Commission (NPC)	UNDP	Office of the President and Cabinet (OPC); Ministry of Justice and Constitutional Affairs (MoJCA); Parliament (relevant Committees); Malawi Human Rights Commission (MHRC); Malawi Economic Justice Network (MEJN); Centre for Democracy and Economic Development Initiatives (CDEDI); Human Rights Defenders Coalition (HRDC); Academia; Malawi Confederation of Chambers of Commerce and Industry (MCCCI)	Short-Medium (2026-2028)	BHR considerations reflected in revised national and sectoral policy instruments

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.2.1.2 Develop and adopt a Government-wide Business and Human Rights Policy Framework that aligns with the UNGPs	• Draft national BHR Policy Framework, e.g. National Human Rights Action Plan (NAP-BHR); • Undertake public and stakeholder consultations; • Secure Cabinet approval; • Disseminate and operationalise across MDAs and Private (Business) Sector.	MoJCA	UNDP; OHCHR	MHRC; Malawi Law Society; Parliament; Government MDAs; CSOs (MEJN, CCJP, CEDEP, Other Sectoral CSOs)	Short term (2026)	Government-wide BHR Policy Framework (E.g. NAP-BHR) approved and disseminated
7.2.1.3 Mainstream BHR considerations into public procurement, public-private partnerships and investment promotion frameworks	• Review the Public Procurement Regulations and the Public-Private Partnership Regulations, 2023; • Develop standard BHR clauses; • Train procurement and investment officers; • Monitor application of clauses.	Ministry of Finance, Economic Planning and Decentralisationn Public-Private Partnership Commission (PPPC) OPC MoJCA	UNDP GIZ EU World Bank	Ministry of Industrialisation, Business, Trade and Tourism; MCCCI; Business Associations; MEJN/Other sectoral CSOs; Media	Medium term (2027–2029)	BHR clauses incorporated into procurement, PPP and investment instruments

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.2.1.4 Strengthen whole-of-government coordination on BHR through the MSC-BHR	• Formalise MSC-BHR mandate by developing Terms of Reference specifying its functions, composition, meeting frequency, decision-making procedures, reporting obligations and escalation mechanisms; • Convene regular coordination meetings; • Establish reporting protocols; • Produce annual coordination reports.	• MoJCA; • OPC	UNDP World Bank	Sector Ministries MHRC; NICE; CSOs	Ongoing	Functional MSC-BHR with regular meetings and annual coordination and progress reports

Strategic Objective 7.2.2: Embed preventive governance through Human Rights Due Diligence (HRDD)

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.2.2.1 Develop national HRDD Guidance Note/Tools for State institutions and regulators	• Draft HRDD Guidance tools; • Align with UNGPs and OECD standards; • Validate with regulators/ stakeholders; • Issue and disseminate Guidance Note/Tool.	• MoJCA • MHRC	UNDP; OHCHR	Mining and Minerals Regulatory Authority; National Environmental Planning Authority; Academia	Short-term (2026-2027)	HRDD guidance developed, adopted, issued and disseminated.

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.2.2.2 Integrate HRDD requirements into licensing, permitting and regulatory oversight in business sectors industries or enterprises, with priority on high risk sectors	• Amend licensing regulations; • Develop a consolidated multi-sectoral *Human Rights Due Diligence (HRDD) Guidance Note and Toolkit;* • Train regulators; • Integrate HRDD into inspection regimes.	Sector Regulators	UNDP World Bank	MoJCA; Industrialisation, Business, Trade and Tourism MHRC; Human Rights CSOs; District Councils; Traditional Authorities.	Medium term (2026-2029)	HRDD requirements formally included in licensing and regulatory frameworks
7.2.2.3 Build capacity of inspectors and regulators to assess HRDD compliance	• Design and deliver training programmes; • Develop inspection manuals (Where inspection manuals and procedures already exist, this action shall focus on reviewing and upgrading such instruments to incorporate HRDD and preventive, risk-based approaches, informed by the baseline findings in the NBA-BHR, 2025 on enforcement gaps); • Conduct pilot HRDD inspections.	MoJCA; Ministry responsible for Labour; Ministry responsible for Trade and Industry	UNDP; ILO	Trade Unions (MCTU); CSOs	Medium term (2026-2029)	Trained inspectors and documented HRDD compliance assessments

Strategic Objective 7.2.3: Strengthen State leverage in State–business relationships

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.2.3.1 Integrate BHR standards into State-Owned Enterprise governance frameworks	• Review SOE governance instruments; • Introduce BHR performance requirements; • Train SOE boards and management.	OPC Department of/ Comptroller of/ Statutory Corporations.	UNDP World Bank	Ministry of Finance, Economic Planning and Decentralisation MoJCA; SOEs; MHRC	Medium term (2026-2029)	SOE governance instruments revised to include BHR standards
7.2.3.2 Strengthen monitoring of State-supported business activities	• Establish monitoring framework; • Conduct periodic compliance reviews; • Publish findings.	MoJCA	UNDP EU	MHRC MEJN; CSOs; Media	Ongoing	Annual monitoring and compliance reports produced
7.2.3.3 Integrate BHR clauses into concessions, PPPs and investment agreements	• Develop model BHR clauses; • Revise concession templates; • Provide negotiation guidance to MDAs.	MoJCA Ministry of Finance, Economic Planning and Decentralisation PPPC	UNDP World Bank	MoJCA; Ministry of Industrialisation, Business, Trade and Tourism. Business Associations; Malaŵi Law Society; Human Rights CSOs; Economic Justice CSOs.	Medium term (2027-2029)	Model contracts and agreements revised

Strategic Objective 7.2.4: Enhance institutional capacity, coordination and enforcement

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.2.4.1 Strengthen inter-agency coordination and enforcement on business-related human rights issues	• Establish joint task teams; • Conduct coordinated inspection; • Share enforcement data.	MoJCA MHRC	UNDP EU	OPC; Sector Regulators; MHRC; Malawi Police Service; National Intelligence Service	Ongoing	Joint inspections and enforcement actions undertaken
7.2.4.2 Strengthen district-level implementation and referral pathways for BHR issues	• Design district referral protocols; • Train district officers; • Link districts to national mechanisms.	Ministry of Local Government and Rural Development	UNDP	District Councils; Traditional Authorities; Local CSOs.	Medium term (2027–2029)	Functional district-level coordination and referral mechanisms
7.2.4.3 Improve collection, analysis and reporting of data on business-related human rights risks	• Develop national BHR data framework; • Collect and analyse data; • Publish annual reports.	MHRC	UNDP OHCHR EU	MoJCA; Academia; MEJN; Sectoral CSOs.	Ongoing	Annual national BHR data and monitoring reports

PILLAR II – CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Strategic Objective 7.3.1: Clarify and communicate corporate human rights responsibilities

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.3.1.1 Clarify corporate responsibility to respect human rights	• Develop national guidance for businesses; • Conduct awareness workshops; • Integrate BHR expectations into business registration and licensing processes.	MoJCA MHRC	UNDP	Ministry of Industrialisation, Business, Trade and Tourism; MCCCI; SMEDI; Business Associations; CSOs	Short term (2026-2027)	Guidance issued and dissemination activities conducted

Strategic Objective 7.3.2: Promote human rights due diligence within business enterprises

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.3.2.1 Promote HRDD adoption among businesses	• Develop sector-specific HRDD tools; • Provide technical assistance to enterprises; • Pilot HRDD implementation in high-risk sectors.	• MoJCA • Sector regulatory/ permitting/ licencing/ registration authorities.	UNDP OHCHR	MHRC; MCCCI; Sector Associations; Trade Unions	Medium term (2027–2029)	Increased HRDD adoption by enterprises

Strategic Objective 7.3.3: Strengthen corporate governance and internal accountability

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.3.3.1 Integrate human rights in oversight mechanisms at Board or Board equivalent and senior management levels	• Promote board-level BHR oversight; • Develop corporate governance guidance; • Engage professional bodies.	• Ministry responsible for Industry, Trade and Tourism; • Registrar of Companies; • Sector regulatory/ permitting/licencing/ authorities;	UNDP	MoJCA; MHRC; Professional Bodies;	• Medium term (on developing corporate governance guidance) (2027–2029) • Ongoing	• Corporate governance guidance developed. • Boards demonstrate oversight of human rights risks
7.3.3.2 Strengthen internal corporate accountability mechanisms	• Develop safety and fairness workplace policies, including sexual harassment prevention policies and policies on the prevention of sexual exploitation/abuse and child abuse, with clear grievance resolution pathways. • Require businesses to assign internal responsibility for identifying and managing human rights risks; • Establish internal reporting and escalation mechanisms for human rights concerns; and • Identify corrective actions are taken where adverse human rights impacts.	• Sector regulatory/ permitting / licencing/registration authorities; • Businesses	UNDP; UNICEF; UN Women; Government Bilateral partners; Other agencies, e.g ILO, World Bank, etc.	MoJCA; MHRC; Ministry Responsible for trade, industry and tourism	Medium term (2026-2029)	• Safety and fairness workplace policies, with clear grievance resolution pathways developed. • Desk officers for BHR risk management appointed in applicable businesses. • Internal reporting and escalation mechanisms for human rights concerns established in relevant businesses.

Strategic Objective 7.3.4: Address human rights risks in business relationships and supply chains

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.3.4.1 Promote responsible business relationships and supply chains	• Develop responsible sourcing guidance; • Engage exports and investors; • Intergrate HRDD into standard form supply chain contracts	Ministry responsible for Trade and Industry	UNDP World Bank	MoJCA; MCCCI; Exporters; Business Associations; CSOs	Medium term (2027–2029)	Responsible sourcing practices adopted

Strategic Objective 7.3.5: Promote effective business-level grievance mechanisms

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.3.5.1 Strengthen business-level grievance mechanisms	• Develop grievance mechanism guidelines; • Provide technical support; • Promote alignment with UNGP effectiveness criteria. • (Refer to 7.4.4.1 below)	MoJCA MHRC	UNDP World Bank ILO	Businesses; Trade Unions; Community Leaders	Medium term (2027–2029)	Operational grievance mechanisms aligned to UNGP criteria

Strategic Objective 7.3.6: Encourage transparency and public reporting on human rights performance

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.3.6.1 Promote transparency and reporting on BHR	• Develop guidance note on BHR reporting; • Promote voluntary disclosures; • Engage media and civil society.	MoJCA MHRC	UNDP World Bank	Media; CSOs; Academia Ministry responsible for public Information.	• Short-term (development of guidance note) (2026-2027) • Ongoing	Public BHR disclosures by enterprises

PILLAR III – ACCESS TO EFFECTIVE REMEDY

Strategic Objective 7.4.1: Strengthen judicial capacity to address business-related human rights harm

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.4.1.1 Strengthen judicial capacity on BHR	• Design and deliver specialised and separate training for judicial officers and legal practitioners; • Develop bench books and reference materials.	Judiciary Malawi Law Society (MLS)	UNDP EU	MoJCA; MHRC; Judicial Training Institutions; MLS; Academia.	Medium (2027–2029)	Judicial officers and legal practitioners trained and BHR jurisprudence strengthened.

Strategic Objective 7.4.2: Enhance access to legal aid and representation for affected persons

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.4.2.1 Expand access to legal aid for BHR matters	• Strengthen Legal Aid Bureau capacity; • Establish BHR desks; • Partner with CSOs.	Legal Aid Bureau (LAB) MLS	UNDP EU	MoJCA; MHRC; WLA; CSOs; Community-Based Organisations	Medium (2027–2029)	Increased access to legal aid in BHR cases

Strategic Objective 7.4.3: Strengthen State-based non-judicial grievance mechanisms

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.4.3.1 Strengthen non-judicial grievance mechanisms	• Enhance capacity of MHRC; Ombudsman and other sectoral tribunals/ dispute resolution mechanisms; • Improve referral systems; • Raise public awareness.	• MHRC • Office of the Ombudsman; • Malawi Environmental Protection Authority (MEPA), • Other Sectoral regulators/tribunals.	UNDP EU	MoJCA; NICE; CSOs; Media	Medium term (2027 -2029)	Improved accessibility and effectiveness of non-judicial mechanisms

Strategic Objective 7.4.4: Promote effective business-level grievance mechanisms

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.4.4.1 Promote business-level grievance mechanisms	• Encourage development of enterprise grievance systems; • Integrate lessons from complaints; • Promote trust and accessibility. • Review business permit/licencing and regulatory laws to include requirement of business level grievance mechanisms.	MoJCA MHRC Law Commission	UNDP World Bank ILO	Businesses; Trade Unions; Community Leaders	Medium term (2027–2029)	Functioning grievance mechanisms at enterprise level This will be demonstrated by the number of enterprises with operational grievance mechanisms aligned with the UNGP effectiveness criteria; utilisation rates; average resolution time; and evidence of remedial outcomes.

Strategic Objective 7.4.5: Protect complainants, whistle-blowers and human rights defenders

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.4.5.1 Strengthen protection of complainants and defenders	• Review legal protections to curb workplace retaliation; • Develop safeguards against retaliation; • Train law enforcement.	MoJCA Law Commission	UNDP EU	MHRC; MPS; CSOs; Media	Medium term (2026–2029)	Reduced reports of workplace retaliation and improved protection

Strategic Objective 7.4.6: Promote learning, systemic reform and continuous improvement

Strategic Action	Key Activities	Lead Institution(s)	Co-operating Partners	Supporting Institutions / Stakeholders	Timeframe	Performance Indicators
7.4.6.1 Promote learning and systemic reform	• Analyse grievance data; • Feed lessons into policy reform; • Conduct periodic reviews of the NAP.	MHRC MoJCA	UNDP World Bank	Academia; CSOs	Ongoing	Evidence of systemic reforms and societal learning/awareness of BHR

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