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# THE GLOBAL TRADE LAW JOURNAL

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Volume 1, Number 1

January–February 2024

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# African Forum on Business and Human Rights: Here's What Companies Need to Know

Daniel Feldman, Mosa Mkhize, and Hannah Edmonds-Camara\*

*In this article, the authors distill several considerations for businesses operating in Africa following the second regional African Forum on Business and Human Rights.*

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Ethiopia recently hosted the second regional African Forum on Business and Human Rights.<sup>1</sup> The Forum focused on local perspectives and solutions to implementing the UN Guiding Principles on Business and Human Rights (UNGPs), including in the context of operationalizing the African Continental Free Trade Area (AfCFTA). Participants included a range of stakeholders, including business enterprises and associations, governments, civil society, Indigenous Peoples groups, labor organizations, international and regional organizations, and national human rights institutions. Dialogue touched on critical issues, including the intersection between environmental and social impacts and the importance of developing and implementing business and human rights (BHR) frameworks that are appropriate for Africa.

This article distills several considerations for businesses operating in Africa.

## **Stakeholders Are Committed to Establishing BHR Frameworks Tailored to Africa**

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An underlying theme of the Forum—“For Africa, From Africa”—was the implementation of the UNGPs through African perspectives. Participants discussed the extra-territorial reach of the European Union’s proposed Corporate Sustainability Due Diligence Directive (CSDDD), through which the European Union seeks to play a critical role in global standard setting on human rights due diligence. There was a clear recognition that the CSDDD and a plethora of other EU ESG laws are likely to apply directly or

indirectly to businesses and significantly impact many businesses in the region. The European Union is currently piloting projects in several African states to develop frameworks to assist states and businesses in preparing for CSDDD implementation and mitigate the risk of the law negatively impacting value chains.

Despite this, there was some criticism regarding a perceived limited engagement with stakeholders in the Global South in the CSDDD drafting process and the potential risks and implications that could flow from that, including for example, a concern that costs of meeting due diligence standards could ultimately be pushed down to small-holding farmers and small and medium-sized enterprises within the value chain.

## **Regional and National BHR Initiatives Are Gaining Momentum**

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The protection of human rights has emerged as an imperative concern for states, businesses, and institutions in Africa. Building on well-established global and regional frameworks—including the UNGPs and the African Charter on Human and Peoples' Rights—there are a number of regional and national-level initiatives that are likely to shape the BHR regulatory environment.

At the regional level, the African Union is expected to adopt its Business and Human Rights Policy Framework (the AU Policy Framework on Business and Human Rights), which has been in the pipeline since 2016 and backed by the African Commission on Human and Peoples' Rights in a Resolution on BHR<sup>2</sup> in early 2023. The AU Policy Framework on Business and Human Rights is designed to act as a road map for regulating the impact of business conduct on human rights in Africa and to encourage cohesive implementation of the UNGPs by African states.

At the state level, several Member States are developing National Action Plans (NAPs) on BHR to articulate their priorities, implementation strategies, and commitments. Kenya was the first country in Africa to develop a NAP in 2019, followed by Uganda in 2021. Other states, including Ghana, Mozambique, Nigeria, and Senegal, are reportedly either developing or conducting national baseline assessments (NBAs, the precursor to a NAP). These NAPs could ultimately pave the way for increased policy and regulatory focus by states. For example, Kenya's NAP introduced a NAP Steering



Committee (overseen by the Department of Justice and the Kenya National Commission on Human Rights) and sets forth specific commitments to laws implementing human rights due diligence requirements, including mandatory human rights impact assessments prior to commencing operations, which would include meaningful consultation with potentially affected groups.

This said, while the importance of mandatory human rights due diligence was a focus of discussions, it was acknowledged that these laws alone will not effectively address human rights risks in Africa, and the continent needs to implement a range of policies and actions to ensure respect for human rights.

## **Integration of Human Rights Considerations into the AfCFTA**

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The AfCFTA,<sup>3</sup> operationalized in 2021 and so far ratified by 47 states, is part of the AU's long-term development strategy to boost intra-African trade. The Forum highlighted the importance of mainstreaming human rights into trade under the AfCFTA and ensuring that the implementation of the AfCFTA does not have an adverse effect on human rights. The UN Economic Commission for Africa's (among other stakeholders) human rights impact assessment on the AfCFTA included a series of recommendations about potential negative impacts (and means of mitigating impacts) of the AfCFTA. There are various initiatives in motion to expressly integrate human rights considerations. For example, the negotiations of the AfCFTA Protocol on Women and Youth is expected to be completed by the end of this year. BHR considerations and principles are a key component of the ongoing negotiations.

## **Stakeholder Engagement Is Key**

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In line with the theme of the Forum, there was considerable focus on the need to engage a broad range of stakeholders in the development of BHR initiatives on the continent. Participants emphasized the need to canvas a broad range of perspectives in the development of NAPs to ensure that marginalized and indigenous communities understand the policies and protections available to them.

Participants emphasized the importance of engagement with rights-holders impacted by businesses operating in Africa, including, for example consultation with indigenous communities at the outset of projects. Businesses were also encouraged to integrate the perspective of less obvious rights-holders. For example, one session focused on the importance of assessing impacts through the lens of a child to address indirect human rights impacts of business operations (e.g., potential child neglect where parent workers are working excessive hours, or the complex myriad of impacted rights in some agricultural supply chains, where child labor rates remain high).

## **Augmenting Effective Access to Remedy**

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African courts, including the African Court on Human and Peoples' Rights and the Court of Justice of the Economic Community of West African States along with other regional courts, continue to make far-reaching decisions on BHR. Key regional non-judicial grievance mechanisms are also developing as forums for resolution of BHR-related disputes. For example, the African Development Bank's Independent Resource Mechanism is designed to provide fair, independent recourse without retribution for individuals and communities who believe that they have been adversely impacted by Bank-financed projects.

There was also a focus on addressing the challenges in ensuring that victims of adverse human rights impacts have access to effective remedies under "Pillar 3" of the UNGPs. For example, despite the plethora of mechanisms available, communities are still unaware of the existence of many of them and challenges remain in increasing awareness among communities and reducing logistical, technical, and language barriers. Africa continues to take steps to develop and strengthen its ecosystem of grievance mechanisms, judicial, non-judicial, state, and non-state based, to advance access to justice.

In a speech, given on behalf of the AU representative, it was noted: "This forum is the Testament to our collective resolve, shared vision and unbreakable commitment to fostering responsible business conduct in the continent bustling with potential." The Forum demonstrated the increasing focus on BHR in the region and businesses operating in Africa should continue to track developments in the region.

## Notes

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