Accelerating a Smart-mix Regulatory Approach: Why the African Union Must Urgently Pursue its Business and Human Rights Agenda

By:

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1. Introduction

Since the UN Human Rights Council adopted the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011, various regional regulatory initiatives have emerged. Ranging from National Action Plans (NAPs) to mandatory human rights due diligence (mHRDD) legislation, Europe has led the way in turning the UNGPs policy blueprint into action. This blog examines where Africa, as a region, stands amid these regulatory developments. It asks what role the African Union (AU) is playing in implementing the UNGPs. It argues that the AU has been slow in pursuing initiatives that shape BHR

discourse. Although it has introduced some initiatives, the AU has not pursued them with the vigor needed in an increasingly complex governance space. As global geopolitical rivalries and the rush for critical minerals continue to make African states primary destinations for foreign direct investment, this essay calls for an urgent, unified continental framework that protects African Peoples from corporate abuse.

This blog is divided into 4 sections. Section 2 briefly introduces the Draft AU Principles & Guidelines on Business & Human Rights (AUPG-BHR). It argues that while this proposal initially drew praise, the AU's slow, non-transparent development process leaves the continent trailing rapid global regulatory developments. Section 3 recommends that the AU accelerate the adoption of the AUPG-BHR and, more importantly, address implementation by complementing the policy document with a BHR treaty. Failing to pursue this smart mix of voluntary and hard laws urgently will lead to policy fragmentation among African states and the adoption of extraterritorial norms that do not reflect African realities. Section 4 concludes that the AU must embody its acceleration theme in pursuing its business and human rights agenda.

2. The Draft AU Principles & Guidelines on Business & Human Rights

The AU began developing the AUPG-BHR in December 2016. At that time, it was called the African Union Policy on Business and Human Rights in Africa. The policy document is expected to foster a culture of corporate respect for human rights and to support states in developing National Action Plans on business and human rights in Africa. Through the AUPG-BHR, the AU aims to address the realities of business operations and conduct in Africa. Since 2016, the policy document has undergone four stakeholder meetings that brought together over 50 participants, including representatives of AU member states, regional economic communities (RECs), national human rights commissions, businesses, the media, and civil society.

However, despite the AU's efforts to ensure inclusivity, the AUPG-BHR development process remains opaque. The consultation process is difficult to follow because no dedicated online repository tracks stakeholder interventions or provides access to the latest draft. The drafting process relies on vetted "expert" consultations and selected stakeholders mentioned above. Although

AU representatives continue to describe the draft policy as a homegrown initiative, the lack of transparency about the policy's content, the consultation process, and finalization timelines makes this assertion difficult to believe. One could argue that the AU's decision to keep the draft AUPG-BHR an internal, confidential document is not new, as it used a similar strategy in developing the African Continental Free Trade Area (AfCFTA) and its Protocols. This strategy could also be justified on the grounds that it would reduce external capture of the process.

My response to these arguments is two-fold. First, comparing the AfCFTA process to the AUPG-BHR is like comparing apples and oranges. AfCFTA is a binding legal instrument on trade, while the AUPG-BHR is a human rights policy document. Trade negotiations require confidentiality to protect state bargaining positions on tariffs and market access. In contrast, human rights policies derive their legitimacy from public support through local participation. The AU has already shown it can operate transparently when it chooses. For example, in October 2026, the ACHPR published the 3rd draft of the Draft Guidelines on Public Interest Content in the Digital Era and invited public comments. The document was published in English, French, and Portuguese to broaden its continental reach and enhance local participation. Given the AU's decision to keep the AUPG-BHR an internal working document without public access, it may be more accurately described as bureaucrat-grown than homegrown.

Second, if the reason for keeping the draft document confidential is to reduce external capture, that conflicts with the history of the drafting process. The policy document's development has relied on technical and financial support from the European Union and various non-African intergovernmental entities, including specialized bodies backed by European development agencies and international human rights institutes. In 2017, the African Union Commission's Department of Political Affairs (AUC, DPA) and the EU jointly held a Stakeholders Validation Workshop to develop the AUPG-BHR. This exposes a troubling double standard: while foreign development partners and institutional consultants have access to the document and actively shape its contours, African Peoples, scholars, and affected communities are shut out behind closed doors. This again calls into question whether the AUPG-BHR is home-grown.

Beyond transparency issues, the AU draft policy process is extremely slow. Although the process began in 2016, an AU representative stated in October 2025 that the draft policy is still “undergoing continental consultations.” On 25 September 2026, the African Union Political Affairs, Peace and Security announced on X (formerly Twitter) that, at a validation meeting held in Addis Ababa, states have validated the draft AUPG-BHR, subject to agreed amendments and written comments. Only state representatives, RECs, accredited NHRIs, and pre-approved foreign development consultants attended the meeting. The validated text is expected to be sent to the AU Executive Council at the Ordinary Session for state adoption. In effect, the AUPG-BHR appears to be nearing the end of a process that has taken over a decade.

Although the policy document's slow pace is difficult to justify, it raises some concerns. First, if the AUPG-BHR is adopted in 2027, it will be lagging behind rapid global regulatory development since the UNGPs' adoption in 2011. Globally, the governance paradigm is shifting; jurisdictions across Europe and Latin America are increasingly pivoting away from purely voluntary, soft-law policy frameworks. Instead, enforceable mHRDD legislation is gaining traction in implementing the UNGPs through hard law. Consequently, the AU risks trailing a far more robust global legislative standard, leaving its long-awaited continental framework as another soft-law document rather than a legally binding, innovative catalyst. This critique is not meant to diminish the AUPG-BHR's inherent normative value—regardless of its delayed arrival—but to show how the AU's slow pace threatens to dilute the framework's broader transformative significance.

Parallel to this global shift, at home, although the AUPG-BHR was intended to support the development of NAPs, some states have forged ahead independently to develop their own NAPs. To date, five states—Kenya, Uganda, Liberia, Nigeria, and Ghana—have implemented distinct NAPs. Although NAPs allow states to tailor their BHR agenda to the unique nuances of their national contexts, African states face some common problems, including protecting human rights defenders, the environment and climate, and human rights due diligence. I have argued elsewhere that these states have not addressed the challenges uniformly in their NAPs. For example, Nigeria completely omitted reference to the protection of human rights defenders in its NAP, despite the chequered history of human rights defenders’ persecution in the country.

Therefore, by the time the AU finally adopts the AUPG-BHR, it may find itself trailing a fragmented landscape of domestic policy precedents.

While the critique of the AUPG-BHR's development process paints a sobering picture of procedural gaps and institutional inertia, it does not mean the BHR agenda in Africa is a failed project. In contrast, the next section argues that the AU can still get ahead of the regulatory curve and lead in Africa by accelerating the implementation of a smart-mix regulatory approach.

3. Accelerating A Smart Mix Approach

The first step toward acceleration is completing the formal adoption process for the AUPG-BHR, enabling member states to quickly translate this continental guidance into domestic action. Although policy implementation is the next hurdle, the AU can address it by combining the anticipated soft law with hard law, providing continental leadership around which future domestic and sub-regional initiatives can coalesce. To help African states navigate the transition effectively, the AU must consolidate its normative progress by shifting its focus to a BHR treaty. Crucially, the groundwork for this transition already exists.

In 2023, the African Commission on Human and Peoples' Rights (ACHPR) proposed a regional BHR treaty—*the African Regional Legally Binding Instrument to Regulate the Activities of Transnational Corporations and Other Business Enterprises*. The treaty is expected to ensure 'accountability and access to remedy for business-related human rights violations in Africa, with particular focus on marginalized and vulnerable populations.' The ACHPR charged the Working Group on Extractive Industries, Environment and Human Rights in Africa (WGEI) and its Working Group on Economic, Social and Cultural Rights (WG-ECOSOC) to lead the treaty project. Although there is optimism that the proposed treaty will provide localized justice for victims of corporate abuse, there has been no significant progress since the Commission's proposal.

To truly get ahead of the regulatory curve, the AU must now treat this proposal with political urgency and provide binding continental guidance on key issues, especially human rights due diligence and access to remedy. For example, what would human rights due diligence and effective remedy look like from an African perspective? I have argued elsewhere that Articles 27–29 of the African Charter on Human and Peoples' Rights prescribe obligations and duties for

corporations operating in Africa that are broader than Pillar II of the UNGPs. Similarly, the proposed treaty can develop restorative and transitional justice, as well as culturally appropriate remedies for African Peoples, in detail.

A smart mix approach is necessary to avoid policy fragmentation among states. Beyond the state-level NAPs discussed above, African states are already developing localized, voluntary tools without centralized coordination. For instance, in 2026, the Kenya National Commission on Human Rights developed two national voluntary tools—Kenya's Human Rights Due Diligence (HRDD) Framework for Businesses and the Model Operational-Level Grievance Mechanism. Similarly, the International Labour Organization (ILO) is developing a practical Human Rights Due Diligence (HRDD) toolkit for Uganda's hospitality sector to support responsible employment practices. In sum, absent a centralized AU treaty framework around which these interventions coalesce, African states and sub-regions will continue to operate in isolation, diminishing any hope for a unified continental response to corporate accountability. Policy fragmentation will pose additional problems for Africa, as it can drive a regulatory race to the bottom in which African states compete for foreign investment by lowering human rights and environmental standards to boost competitiveness in the African market. This creates a governance gap that corporate actors may exploit, as powerful multinational corporations hold leverage over individual states.

Second, in supply chain governance, the absence of an African treaty would magnify the EU Corporate Sustainability Due Diligence Directive (CSDDD)'s extraterritorial effect in Africa. Through supply chain contracts and codes of conduct, parent companies enforce EU norms on business partners and suppliers in Africa. While I have criticized the EU for seeking to unilaterally regulate its corporations' extraterritorial activities, such pushback falters against the reality that Africa offers no viable alternative framework. Therefore, despite the adverse economic and sovereignty implications of external regulation, the absence of a homegrown initiative creates a tragic paradox: it transforms what should be criticized as regulatory imperialism into a seemingly welcome rescue mission.

Operationalizing a homegrown BHR policy and treaty framework has far-reaching implications beyond Africa's shores and into global governance. It

strengthens African states' position in the ongoing treaty discussions in the Open-ended Intergovernmental Working Group (OEIGWG). Amid criticism that global treaty discussions marginalize African voices, a homegrown treaty and policy document would strengthen Africa's stance on corporate accountability. Indeed, shortly after the EU adopted the CSDDD, Germany noted at the 9th OEIGWG session that the Directive could be a "source of inspiration" to the draft LBI treaty. This signals some EU states' intent to potentially multilateralize the CSDDD. Without an alternative instrument in Africa, it is difficult to counter such proposals. If European states point to the CSDDD in global treaty discussions to advance their agenda, what document or treaty would African states reference in the African BHR space, even though they sponsored Resolution 26/9? In effect, Africa needs a localized policy and treaty instrument not just for regional governance, but to serve as a geopolitical counterweight in global treaty discussions.

4. Conclusion

Africa is at a critical geopolitical juncture. As global rivalries intensify and developed economies seek new supply chains, the global rush for critical minerals continues to make African states primary destinations for foreign direct investment. However, without a uniform normative direction from the AU on corporate accountability and states' duty to protect human rights, individual states are left to navigate these pressures in isolation. This vulnerability may lead states to capitulate to foreign investors' demands for fear of losing investment to neighbors with lower business and human rights standards. To prevent policy fragmentation and the resulting race to the bottom, the AU must urgently pursue a smart-mix regulatory approach by finalizing the AUPG-BHR, facilitating its adoption, and developing a BHR treaty. Having officially designated 2024 through 2033 as the "Decade of Acceleration" to realize Agenda 2063, the AU must now embody its own theme. Now is the time to accelerate the adoption of comprehensive business and human rights normative frameworks in an open, transparent manner.

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