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THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS AND HOW THEY APPLY TO THE FISHERIES AND AQUACULTURE SECTORS IN AFRICA

INTRODUCTION

Companies can profoundly impact the human rights of workers, communities and consumers wherever they operate. These impacts can be positive, such as creating employment opportunities or providing or improving public services, but too often they are also negative, such as not paying workers an adequate salary, polluting the environment, or not consulting communities before a large-scale project is started.

For decades, local communities, national governments and international institutions have debated the responsibility of companies in managing these adverse impacts and the role of governments in preventing them.

To clarify what the responsibility of companies is with regard to their adverse impacts, in 2011, the UN Human Rights Council unanimously endorsed the **United Nations Guiding Principles on Business and Human Rights** (UNGPs).¹ The UNGPs consist of 31 principles and set out expectations of states and companies about how to prevent and address negative impacts on human rights by business.

The UNGPs apply to all states and all businesses worldwide, no matter its size and/or sector. The Principles do not create new international obligations for businesses but outline that business enterprises should respect internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of

Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

The UN Working Group on Business and Human Rights

Since the adoption of the UNGPs, the [UN Working Group on human rights and transnational corporations and other business enterprises](#) (UN Working Group), was established in 2011 and is mandated by the Human Rights Council to promote the effective and comprehensive implementation of the UNGPs. The UN Working Group consists of 5 members representing all continents. The UNWG member representing the African continent is Mr. Githu Mugai.¹

¹OHCHR, United Nations Guiding Principles on Business and Human Rights:

https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

The International Bill of Human Rights

The Universal Declaration of Human Rights (UDHR) spells out basic civil, political, economic, social and cultural rights that all human beings should enjoy. Its content has over time been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, along with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the so - called [International Bill of Human Rights](#).

The ILO Declaration on Fundamental Principles and Rights at Work

Adopted in 1998, The ILO Declaration on Fundamental Principles and Rights at Work commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.

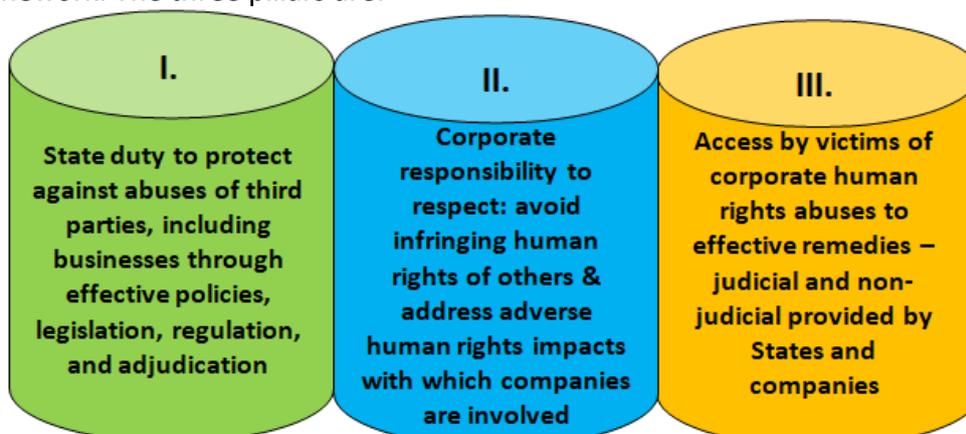
These categories are:

- freedom of association and the effective recognition of the right to collective bargaining;
- elimination of forced or compulsory labour;
- abolition of child labour; and
- elimination of discrimination in respect of employment and occupation.

Today, the UNGPs are being implemented by various companies, governments and other stakeholders globally. Moreover, they have been integrated into numerous key business and human rights frameworks and standards, for example, the OECD Guidelines for Multinational Enterprises, the Performance Standards of the International Finance Corporation (IFC) and the European Union’s 2011-2014 Corporate Social Responsibility Policy.

THE THREE PILLARS OF THE UNGPS

The UNGPs rest on three inter-related pillars, also jointly called the ‘Protect, Respect and Remedy’ framework. The three pillars are:



Pillar 1: The State Duty to Protect

The UNGPs clarify that States have the duty to protect individuals and groups within their territory or jurisdiction against human rights abuses committed by non-state actors, including businesses.

They must do so by clearly **setting out expectations** that businesses domiciled in their territory respect human rights. Moreover, while according to the UNGPs, States are not responsible for human rights abuses by private actors, they must take the necessary steps to **prevent, punish and redress** such abuses by private actors through **effective policies, legislation, regulations**

Policy on Anti-Child Labour and Trafficking in Fisheries in Ghana

An example of a government undertaking steps to address negative impacts in the fisheries sector is the development of a Policy on Anti-Child Labour and Trafficking in Fisheries by the Ghanaian Ministry of Fisheries and Aquaculture Development (MOFAD).²

Ghana has ratified a number of international conventions and treaties, including the UN Convention on the Rights of the Child, ILO Conventions 182 related to the Worst Forms of Child Labour and 138 dealing with Minimum Age to Employment. The Ghanaian government has also enacted legislations such as the Children's Act, 1998, the Human Trafficking Act, 2005, the Domestic Violence Act, 2006 as well as a Child and Family Welfare Strategy, National Social Protection Strategy and a National Action Plan against Child Labour. However, in addition, a need was identified to draft a dedicated and comprehensive strategy that focuses on elimination of child labour and trafficking in the fisheries sector due to the high prevalence, especially around Lake Volta.

and adjudication. Moreover, they should ensure that all governmental departments, agencies and institutions that shape business practices observe human rights obligations, including through relevant **information, training and support.**

What does this State duty to protect concretely mean for the fisheries and aquaculture sectors in African countries?

This means that African governments, in particular those that have a large fisheries and/or aquaculture industry, should ratify international conventions that regulate these sectors, such as the ILO Work in Fishing Convention (Convention No. 188). Further, governments should put in place national laws and policies to regulate business practices in the fisheries and aquaculture sectors, including allocating adequate resources for inspections in these sectors.

²Ghana Ministry of Fisheries and Aquaculture Development (MOFAD) (2014), Strategy on anti-child labour and trafficking in fisheries: towards the eradication of child labour and trafficking in Ghanaian fishing communities. See: https://www.crc.uri.edu/download/GH2014_POL008_MOFAD_FIN508.pdf

Ratification of ILO Work in Fishing Convention, 2007 (ILO Convention No. 188)

This Convention sets out binding requirements relating to work on board fishing vessels, including occupational safety and health, medical care at sea and ashore, rest periods, written work agreements, and social security protection. It also aims to ensure that fishing vessels provide decent living conditions for fishers on board.¹

So far, 14 countries globally have ratified ILO Convention No. 188. This includes 6 African countries, namely Angola, Congo, Morocco, Namibia, Senegal and South Africa who have thereby committed to conditions in their domestic fishing industries that meet ILO standards.

National Action Plans on Business and Human Rights (NAPs)

National Action Plans (NAPs) on business and human rights can be an important means to promote the implementation of the UNGPs.³ They are policy documents in which a government articulates priorities and actions that it will adopt to support the implementation of international, regional, or national obligations and commitments with regard to a given policy area or topic. In the African continent, no country has published a NAP on business and human rights yet, but a number of African governments are currently drafting their NAPs, namely Kenya, Liberia and Morocco.

The Kenyan government announced its intention to develop a National Action Plan on Business and Human Rights on February 9, 2016. The Department of Justice is leading the process under the Attorney General's Office and in collaboration with the Kenya National Commission on Human Rights and the Kenya Human Rights Commission. A National Steering Committee whose members come from the government, private sector, and non-governmental organizations (including the United Nations) is supporting the process. Its mandate is to provide overall strategic guidance and direction for the development of the NAP.⁴

To date, the inclusion and specific mentioning of the fisheries and aquaculture sectors in NAPs has been limited. When countries commit to the development of NAPs, it is recommended that they assess which industries in the country are most important and could potentially or actually have negative impacts on rights holders. During the development of a NAP, relevant fisheries and aquaculture stakeholders including fishing communities, businesses, workers and other stakeholders, such as local NGOs related to the fisheries and aquaculture sectors, should be consulted and involved in national dialogues so that these sectors can be adequately addressed and included in NAPs.

The **Global website on National Action Plans on Business and Human Rights** is an online "one stop shop" for information regarding the development of National Action Plans (NAPs) on Business and Human Rights. You can visit it here: <https://globalnaps.org/>

³UN Working Group on Business and Human Rights, [Guidance on business and human rights NAPs, 2016](#).

⁴ National Action Plans on Business and Human Rights, Kenya. See: <https://globalnaps.org/country/kenya/>

Pillar 2: The Corporate Responsibility to Respect

It is evident that business projects and activities can have a wide range of impacts on human rights. With the endorsement of the UNGPs, it has been firmly established that businesses have an **independent responsibility to respect human rights**, distinct from obligations from States.

The corporate responsibility to respect human rights means to avoid infringing the rights of others and addressing adverse impacts that may occur. It applies to all companies in all situations, no matter their size or where they operate. As part of this responsibility, companies should assess and address all rights infringements, including impacts they have caused, contributed to or are linked to through business relationships.

The UNGPs describe that companies should 'know and show' their negative impacts and they should do this by practicing '**human rights due diligence**'. Throughout this process, companies should engage with stakeholders, in particular with rights-holders such as those workers, communities or consumers who are negatively affected by their operations.

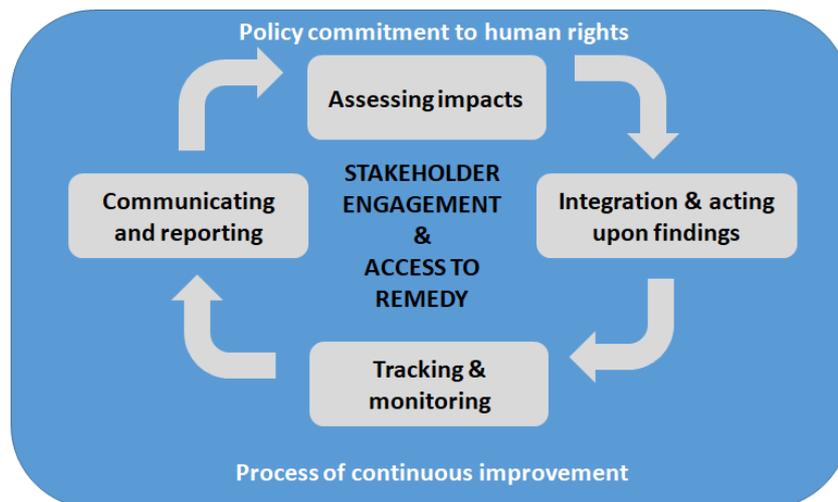


Figure 1. Human Rights Due Diligence Cycle according to the UN Guiding Principles on Business and Human Rights

What does this concretely mean for the fisheries and aquaculture sectors in Africa?

Industrial fishing companies operating in African waters, large or small, should respect the rights of their crew members. Aquaculture companies should ensure that they do not negatively affect their workers and/or communities in which they operate. Generally speaking, aquaculture activities can have adverse environmental impacts, affecting surrounding communities' and small-scale fishers' access to water and other resources. Companies should prevent such negative impacts from occurring, for example by conducting human rights impact assessments prior to starting their activities and putting in place preventative measures, such as waste water treatment systems, and consulting with potentially affected communities.

Human Rights Due Diligence steps fisheries and/or aquaculture companies should undertake

1. Companies should assess their actual and potential adverse human rights impacts, for example through conducting a human rights impact assessment (HRIA) by an independent third party. If companies are required to undertake environmental or social impact assessments by law, companies should consider integrating a human rights lens into such EIA or SIA processes. When assessing their adverse impacts, companies should meaningfully engage with affected rights-holders, in particular workers, communities and consumers.
2. Companies should integrate and act upon the findings of adverse impacts. This includes prioritizing addressing severe impacts, deciding to terminate certain business relationships and assessing where the company can exercise its leverage.⁵
3. Companies should track the effectiveness of their actions. This includes the development of company-specific indicators, tracking the performance of business partners, evaluating performance and committing to continuous improvement
4. Companies should communicate on their risks and impacts, the actions they are taking, and progress made. Such communication should be ongoing and accessible to its intended audiences. An example of a company that has reported on human rights impacts in the seafood sector is the global food company Nestlé, that commissioned the organization Verité to conduct an assessment of the labour conditions in the Thai shrimp supply chain.⁶
5. As a cross-cutting element companies should engage with stakeholders, including rights-holders. For fisheries and aquaculture companies such stakeholders could include fisheries associations, industry associations, labour rights organizations, unions, national human rights commissions, workers (fishers, crew, workers in processing plants, etc.), communities (including indigenous communities) and consumers.

Not only fisheries and aquaculture companies but other industries such as the oil and gas, mining and tourism sectors have caused negative impacts on fishing communities across the continent. For example, in Mozambique, fishers in the vicinity of islands that have been developed for tourism, have been denied their fishing rights, as guards and patrols employed by tourism businesses do not allow fishermen to fish near the islands.⁷

Various private sector initiatives have been established to ensure that companies in the fisheries and aquaculture sectors respect human and labour rights in their own operations and value chains. An example of an industry-wide initiative can be found below.

⁵ Exercising 'leverage' means that a company can use its influence to bring change. For example when a company is one of the main buyers of producer, the company can set as a condition that labour conditions need to be improved or otherwise it will terminate its contract.

⁶ Verité (2015), A Verité Assessment of Recruitment Practices and Migrant Labor Conditions in Nestlé's Thai Shrimp Supply Chain. See: https://www.verite.org/wp-content/uploads/2016/11/NestleReport-ThaiShrimp_prepared-by-Verite.pdf

⁷ International Collective in Support of Fishworkers (2006), Fishing Communities and Sustainable Development in Eastern and Southern Africa: The Role of Small-scale Fisheries. See: <http://aquaticcommons.org/17087/1/003%20ESA%20Fish%20Workshop.pdf>

The SeaBoS Initiative

Eight of the world's largest seafood companies, collectively operating in all segments of marine fisheries and aquaculture production worldwide, have set up a global initiative called the Seafood Business for Ocean Stewardship, committed to improve transparency and traceability in its own operations, and work together to share information and best practice, building on existing partnerships and collaborations, and engage in concerted efforts to eliminate any form of modern slavery including forced, bonded and child labour in their supply chains.⁸

Pillar 3: Access to Remedy

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

Article 8 - Universal Declaration of Human Rights

The last pillar of the UNGPs describes that, as part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure, that when such abuses occur within their territory and/or jurisdiction, those that are affected have access to effective remedies. Such remedies could be provided through judicial, administrative, legislative or other appropriate means, and could comprise investigation, punishment and redress. State based non-judicial mechanisms can include for example labour tribunals, National Human Rights Institutions (NHRIs), National Contact Points of the OECD, Ombudspersons and complaints offices.

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related abuse, including considering ways to address obstacles to effectiveness such as the denial of justice in host states, the exclusion of certain groups from equal legal protection, lack of legal representation, or the lack of resources, expertise and support of prosecutors.

In addition, companies should also make grievance mechanisms at company-level available, to directly remediate and address any identified impacts before they escalate or worsen. Companies should also cooperate and collaborate in good faith with other mechanisms, such as OECD National Contact Points and national human rights institutions when they are conducting an investigation or handling a case.

Various cases have been brought to court involving companies who have adversely affected fishing communities through their business operations. Below a few case examples are provided.

⁸The Seafood Business for Ocean Stewardship <https://www.stockholmresilience.org/research/research-news/2016-12-14-international-seafood-business-commits-to-stronger-sustainability-efforts.html>

Lawsuit against Shell by Bodo community in Nigeria

Members of the Bodo community in Nigeria filed a lawsuit against Shell in London High Court on 23 March 2012, seeking compensation for two oil spills, which occurred in 2008 and 2009 in the Niger Delta. The 15,000 plaintiffs asked for compensation for losses suffered to their health, livelihoods and land, and they asked for clean-up of the oil pollution.⁹ According to testimonies of affected community members, the oil spills covered everything in oil, and they could not any longer catch fish. “We were fishermen until right before the spill, but now in the river there is no fish.” After 4 years, the case was settled and 15,600 people received monetary compensations for the oil spills caused by Shell.¹⁰

Vedanta’s copper mine in Zambia affecting communities’ health and livelihoods

In a case against the UK based company Vedanta Resources Plc and its Zambian subsidiary Konkola Copper Mines (KCM), 1826 villagers sued the company for damages to their lands and water resources from copper mining effluent. The plaintiffs were four artisanal farming communities living near KCM’s Nichanga Copper Mine, which claimed that the pollution of the water, which was their primary source for drinking, washing, bathing and irrigating, had affected their health and caused illnesses and permanent injuries. Villagers who ate polluted fish from the river fell ill and had suffered permanent internal injuries.¹¹ The river also provided fish, and the pollution therefore also affected people’s earnings.¹²

In April 2019, four years after the case was brought to court, the Supreme Court ruled that the case against KCM and its parent company Vedanta could be heard by the English courts.¹³

⁹ Business and Human Rights Resource Centre, Shell lawsuit (re oil spills & Bodo community in Nigeria). See: <https://www.business-humanrights.org/en/shell-lawsuit-re-oil-spills-bodo-community-in-nigeria>

¹⁰ Ottawa Citizen, January 8, 2016, How a poor Nigerian town got Shell to pay for major oil spills. See: <https://ottawacitizen.com/news/world/beatng-big-oil-how-a-poor-nigerian-town-got-shell-to-shell-out-for-major-oil-spills>

¹¹ The Guardian, See: August 1, 2015. ‘I drank the water and ate the fish. We all did. The acid has damaged me permanently’. See: <https://www.theguardian.com/global-development/2015/aug/01/zambia-vedanta-pollution-village-copper-mine>

¹² Leigh Day, Zambian villagers are taking action against a UK based company over alleged pollution. See: <https://www.leighday.co.uk/International/Corporate-accountability/Environmental-damage/Zambia>

¹³ Leigh Day, April 10, 2019, Supreme Court rules Zambian villagers’ case against Vedanta to be heard in English courts. See: <https://www.leighday.co.uk/News/2019/April-2019/Supreme-Court-rules-Zambian-villagers-case-against>