

## USING BUSINESS AND HUMAN RIGHTS LAW TO PROMOTE PUBLIC SERVICE ACCOUNTABILITY IN NIGERIA

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### Abstract

*The inter-relatedness of business activities and human right law cannot be over emphasized. Public service delivery in Nigeria is frequently compromised by corruption, poor governance, and widespread human rights violations. Businesses play a growing role in this sector through public-private partnerships and procurement contracts but their actions are often not held to clear human rights standards. This creates significant accountability gaps and risks for citizens who depend on essential services. This paper aims to explore how Business and Human Rights Law (BHRL), an emerging legal framework can be used to enhance public service accountability in Nigeria. The objective is to assess how international norms, particularly the UN Guiding Principles on Business and Human Rights (UNGPs), can be integrated into Nigeria's domestic legal and institutional systems to protect citizens' rights and improve transparency. Using a doctrinal research approach, the study examines international legal instruments, national legislation, and judicial decisions to evaluate the extent to which businesses involved in public service are subject to human rights obligations. The study reveals a disconnect between Nigeria's international human rights commitments and their implementation at the national level due to Weak institutions, poor regulatory enforcement, and a lack of mandatory human rights due diligence for companies persist. However, the paper also identifies emerging developments such as progressive court rulings, new policy proposals, and increased awareness of corporate responsibility. The paper calls for the establishment of mandatory human rights due diligence obligations for companies in public service sectors, and enhanced enforcement capabilities for regulatory and judicial institutions. It advocates for a shared accountability model that includes both state and private actors to achieve a transparent, equitable, and rights-based public service system in Nigeria.*

**Keywords: Accountability, Business Practices, Due Diligence, Good Governance, Human Rights, Public Service.**

### 1. Introduction

Public service accountability in Nigeria is ensnared in a complex web of institutional inertia, corruption, politicisation, and weak enforcement regimes. The nation's public institutions, charged with the delivery of fundamental social and economic services often fail to fulfil their mandates, leaving millions without access to clean water, education, healthcare, or social welfare. According to Transparency International's Corruption Perceptions Index, Nigeria has consistently ranked among countries with pervasive public sector corruption, undermining trust in state institutions and impeding socio-economic development.<sup>1</sup>

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While policy discussions on reform often center around anti-corruption strategies, these tend to overlook the broader normative architecture necessary for meaningful accountability, particularly the role of businesses as co-actors in public service delivery.<sup>2</sup> Whether in public-private partnerships, contracted procurements, or infrastructural development projects, businesses have become indispensable to the functioning of the state. This evolving dynamic necessitates a shift from state-centric frameworks of accountability to a shared responsibility model, one that incorporates Business and Human Rights Law (BHRL) as a critical axis of reform.<sup>3</sup>

The moral urgency of this approach is underscored by the lived realities of Nigerian citizens. When public hospitals are built with substandard materials, or when roads collapse due to corrupt dealings between state officials and private contractors, it is not merely a failure of procurement compliance but a direct violation of the right to health, mobility, and dignity. Therefore, the nexus between business conduct and public sector governance cannot be regarded as an ancillary legal concern; it is central to achieving a just and rights-based social order.

Business and Human Rights Law has matured from a fringe concept into a doctrinal and institutional framework with wide-ranging influence on corporate governance, public policy, and international human rights enforcement. Anchored in the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>4</sup> and complemented by regional and national frameworks such as the OECD Guidelines for Multinational Enterprises<sup>5</sup> and the African Charter on Human and Peoples' Rights,<sup>6</sup> BHRL crystallises the recognition that businesses have a duty to respect human rights, particularly when operating in governance-sensitive sectors.<sup>7</sup>

The UNGPs articulate three foundational pillars: (i) the state duty to protect human rights, (ii) the corporate responsibility to respect human rights, and (iii) access to effective remedies. Together, these pillars outline an operational paradigm where both state and business entities are held to overlapping, yet distinct, standards of accountability. While the UNGPs are not binding treaties, their normative force is undeniable.<sup>8</sup> They have influenced national

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<sup>1</sup>The 2024 Corruption Perceptions Index (CPI) by Transparency International, Nigeria was ranked 140th out of 180 countries, with a score of 26 out of 100. This marks a slight improvement from its 2023 position of 145th, where it scored 25. See Transparency International. (2025). *Corruption Perceptions Index 2024*. Transparency International. Retrieved from <https://www.transparency.org/en/cpi/2024>

<sup>2</sup> Olaniyan, K. (2015). *Corruption and Human Rights Law in Africa*. Hart Publishing. [DOI placeholder]

<sup>3</sup> John Ruggie, *Just Business: Multinational Corporations and Human Rights* (W.W. Norton & Company 2013).

<sup>4</sup> UN Human Rights Council. (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*. United Nations.

<sup>5</sup> OECD. (2011). *OECD Guidelines for Multinational Enterprises*. Organisation for Economic Co-operation and Development.

<sup>6</sup> Organisation of African Unity, *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982).

<sup>7</sup> UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (United Nations 2011) UN Doc A/HRC/17/31; Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises* (OECD Publishing 2011) <https://www.oecd.org/daf/inv/mne/48004323.pdf> accessed 21 May 2025.

<sup>8</sup> P Muchlinski, 'Implementing the New UN Corporate Human Rights Framework' (2012) 22 *Business Ethics Quarterly* 145.

legislations such as France's Duty of Vigilance Law,<sup>9</sup> Germany's Supply Chain Act,<sup>10</sup> and the EU's forthcoming Directive on Corporate Sustainability Due Diligence.<sup>11</sup>

These legal evolutions mark a significant shift from voluntary corporate social responsibility (CSR) frameworks to legal human rights obligations, thereby transforming how businesses are regulated within domestic jurisdictions. For Nigeria, a country with a fraught regulatory history and a dependency on private sector partnerships in public delivery, this shift is especially significant.

Nigeria's domestic legal and institutional landscape provides a mixed picture of engagement with international BHRL principles. On one hand, the 1999 Constitution (as amended) guarantees fundamental human rights under Chapter IV and mandates that the state uphold the principles of social justice and public interest. Nigeria is also a signatory to major international human rights conventions, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Labour Organization's core conventions.

However, the translation of these commitments into enforceable domestic laws and regulatory practices remains elusive. The regulatory frameworks governing public procurement, business conduct, and service delivery such as the Public Procurement Act<sup>12</sup> and Fiscal Responsibility Act<sup>13</sup> lack the explicit integration of human rights due diligence requirements. Similarly, institutions such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) are structurally more inclined toward anti-corruption enforcement than human rights protection. This regulatory fragmentation creates a compliance gap: businesses engaged in public service can legally meet procurement obligations while ignoring their impacts on human rights.<sup>14</sup> The absence of mandatory human rights due diligence frameworks and the under utilisation of judicial remedies further aggravate this gap, making Nigeria's public service delivery landscape ripe for abuse, impunity, and rights violations.

In the last two decades, there has been a global reconfiguration of the public-private divide. In Nigeria, this shift is reflected in the rise of PPPs across sectors such as electricity,<sup>15</sup> transportation,<sup>16</sup> healthcare,<sup>17</sup> and education.<sup>18</sup> These arrangements blur the lines between state and private roles in governance, creating new forms of shared responsibility but also diffused liability.

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<sup>9</sup>Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Law No. 2017-399 of 27 March 2017 on the Duty of Vigilance of Parent Companies and Ordering Companies] (France) Journal Officiel de la République Française (28 March 2017).

<sup>10</sup>Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten [Act on Corporate Due Diligence Obligations in Supply Chains] (Germany) BGBl I 2021, 2959.

<sup>11</sup>European Union, *Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence*, OJ L 176, 13.6.2024, p. 1.

<sup>12</sup>Public Procurement Act 2007, Cap P44, Laws of the Federation of Nigeria 2004 (as amended).

<sup>13</sup>Fiscal Responsibility Act 2007, Cap F30, Laws of the Federation of Nigeria 2004.

<sup>14</sup>P Alston and R Goodman, *International Human Rights: The Successor to International Human Rights in Context* (Oxford University Press 2012).

<sup>15</sup>Electric Power Sector Reform Act 2005, Cap E7, Laws of the Federation of Nigeria 2004.

<sup>16</sup>Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005, Cap I25, Laws of the Federation of Nigeria 2004.

<sup>17</sup>National Health Act 2014, Cap N55, Laws of the Federation of Nigeria 2004.

<sup>18</sup>Universal Basic Education Act 2004, Cap U2, Laws of the Federation of Nigeria 2004.

While private sector involvement theoretically improves efficiency and innovation, its unchecked expansion in Nigeria often results in governance voids. Contracts are frequently awarded without transparency, and there is little oversight over corporate actors once public funds are disbursed. Cases of failed infrastructure projects, exploitative toll arrangements, and human rights violations by security subcontractors point to a glaring accountability vacuum in these hybrid governance arrangements.<sup>19</sup> In the absence of clear normative frameworks like BHRL, such arrangements threaten to transform the Nigerian state into a ‘risk outsourcing’ mechanism, one that delegates service delivery but also deflects responsibility. Here, BHRL serves as both a diagnostic tool and a normative solution. By mandating human rights impact assessments, participatory stakeholder consultations, and grievance mechanisms, it offers a robust framework for holding both public and private actors accountable.

Central to BHRL is the principle of Human Rights Due Diligence (HRDD) which is a proactive process through which businesses identify, prevent, mitigate, and account for how they address human rights impacts. Unlike traditional compliance models that focus on legal risk, HRDD centres on human risk, generating the potential for business operations to cause or contribute to adverse human rights outcomes.<sup>20</sup>

Globally, HRDD is transitioning from soft law to hard law. Countries like France and Germany have already enacted binding HRDD legislation, while the European Union is on the verge of passing comprehensive due diligence directives. These legal instruments compel businesses to adopt internal systems for rights compliance, backed by penalties for non-compliance.<sup>21</sup> Nigeria, however, has yet to formalise any such obligation in domestic law. The absence of HRDD in Nigeria’s regulatory frameworks means that companies involved in public service delivery whether constructing roads, managing hospitals, or distributing utilities are not legally obligated to assess or mitigate their rights impacts.<sup>22</sup> This is a fundamental deficiency that perpetuates rights violations in public service contexts.

One of the most persistent challenges in aligning Nigeria’s governance systems with international BHRL standards is what may be termed the “implementation paradox” where the state is normatively committed to human rights but structurally incapable or politically unwilling to enforce them. This paradox is compounded by institutional weaknesses, elite capture, and low public awareness of BHRL norms.

However, there are nascent developments that signal the beginning of a normative migration. Judicial decisions such as *SERAP v. Federal Government* have started invoking international human rights norms in domestic litigation,<sup>23</sup> while civil society organisations like the Socio-

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<sup>19</sup> I I Okechukwu and A C Diala, ‘Reconceptualising State Responsibility in the Age of Private Governance’ (2019) 27 *African Journal of International and Comparative Law* 1.

<sup>20</sup> S Deva and D Bilchitz (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2013).

<sup>21</sup> European Union, *Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence*, OJ L 176, 13.6.2024, p. 1.

<sup>22</sup> See generally Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005, Cap I25, Laws of the Federation of Nigeria 2004; National Health Act 2014, Cap N55, Laws of the Federation of Nigeria 2004; Public Procurement Act 2007, Cap P44, Laws of the Federation of Nigeria 2004 (as amended). For the absence of explicit HRDD requirements, see Okechukwu and Diala, ‘Reconceptualising State Responsibility in the Age of Private Governance’ (n 17).

<sup>23</sup> *Socio-Economic Rights and Accountability Project (SERAP) v. Federal Government of Nigeria* (2010) FHC/ABJ/CS/569/2009 (Federal High Court, Abuja).

Economic Rights and Accountability Project (SERAP)<sup>24</sup> and BudgIT<sup>25</sup> are actively campaigning for corporate accountability in public governance. These efforts point to a slow but perceptible trend towards the localisation of BHRL in Nigerian jurisprudence and policy advocacy.

Ultimately, bridging the divide between global norms and domestic practice requires more than doctrinal harmonization, it demands a reengineering of the legal consciousness of both the state and society. Human rights must cease to be seen as abstract entitlements and instead be recognised as operational standards for evaluating the quality and equity of public service delivery.

## 2. History, Nature and Scope of Business and Human Rights Law

Business and Human Rights Law (BHRL) is a fresh way of thinking about how companies relate to human rights, moving beyond the old idea of Corporate Social Responsibility (CSR). While CSR is mostly about companies doing good voluntarily like charity work or boosting their public image BHRL demands more. It sets clear legal expectations that businesses must respect human rights, especially when their actions affect people and communities<sup>1</sup>. This shift means businesses, especially those operating across countries or in public-private partnerships, are now seen as key players in governance, not just economic actors. Their role comes with real duties to protect human rights, not just pursue profit. This change was driven by tragedies like the Bhopal disaster in India, the Ogoni environmental crisis in Nigeria, and the Rana Plaza collapse in Bangladesh. These disasters showed how national laws often fail to stop harm caused by companies, highlighting the need for stronger, enforceable human rights rules for businesses<sup>2</sup>.

The journey of BHRL has faced challenges. Early efforts to create international laws holding companies accountable failed because states and businesses resisted<sup>3</sup>. Things changed in 2005 when Professor John Ruggie became the UN Special Representative on business and human rights. He developed the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011. These principles, though not legally binding, set the global standard with a “Protect, Respect, and Remedy” framework, clarifying what states and companies must do. A key idea here is Human Rights Due Diligence (HRDD), which requires companies to actively identify and address human rights risks, moving beyond the old reactive CSR approach.<sup>26</sup>

The UNGPs inspired related rules like the OECD Guidelines for Multinational Enterprises, the ILO’s Tripartite Declaration, and laws such as France’s Duty of Vigilance and Germany’s Supply Chain Act.<sup>27</sup> In Europe, the proposed Corporate Sustainability Due Diligence Directive plans to make HRDD legally binding in supply chains.<sup>28</sup> Together, these developments show

<sup>24</sup> Socio-Economic Rights and Accountability Project (SERAP), *About Us* <https://serap-nigeria.org/about-us/> accessed 21 May 2025.

<sup>25</sup> Budget Transparency Initiative (BudgIT), *About BudgIT* <https://yourbudgit.com/about-us/> accessed 21 May 2025.

<sup>26</sup> John Ruggie, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011) UN Doc A/HRC/17/31, paras 1–25.

<sup>27</sup> OECD, *OECD Guidelines for Multinational Enterprises* (2011); International Labour Organization (ILO), *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (2017); Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (France); Lieferkettengesetz (Supply Chain Act) (Germany) 2021.

<sup>28</sup> European Commission, ‘Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence’ COM (2022) 71 final

that BHRL is an evolving legal area, shaped by law, policy, and increasing demands for accountability.

At the core of BHRL are important documents that guide both states and businesses. The UNGPs are the foundation, supported by the International Bill of Human Rights which includes the Universal Declaration of Human Rights, the ICCPR, and the ICESCR all outlining the basic rights businesses must respect.<sup>29</sup> The OECD Guidelines provide sector-specific rules for responsible business conduct, while the African Charter on Human and Peoples' Rights is especially relevant for Nigeria and other African countries.<sup>30</sup> The ILO Core Labour Standards protect workers' rights on matters like equality, association, and eliminating forced or child labour.<sup>31</sup> Together, these laws form a complex system mixing soft and hard law, what scholars call a "polycentric legal order".<sup>32</sup> Here, states must protect people by enforcing laws and stopping corporate abuses, while companies must respect rights everywhere they operate. Both have to ensure victims can access remedies through courts or other means.<sup>33</sup> HRDD is central to this system, pushing companies to integrate human rights into their policies and operations. However, in Nigeria, HRDD is still not clearly defined or widely adopted in business governance, showing a big gap between global expectations and local practice.<sup>34</sup>

### 3. The Central Role of Human Rights Due Diligence (HRDD)

Human Rights Due Diligence (HRDD) is one of the most important developments in BHRL. Unlike compliance systems that focus mainly on legal risks to the company, HRDD shifts attention to risks faced by people and communities.<sup>35</sup> It requires companies to constantly identify, assess, and manage how their actions might harm human rights. This approach is proactive. It aims to prevent harm before it happens, unlike traditional legal systems that respond only after damage occurs. This shift follows principles from environmental and human rights law and is becoming widely accepted in global corporate governance.<sup>36</sup> HRDD brings a new process to business accountability, demanding ongoing care rather than occasional checks.

The HRDD process includes several steps companies must adopt. First, they must spot and evaluate any real or potential harm to human rights in their supply chains and partnerships. Next, they must use this information in their internal decisions and governance. Then, companies should monitor how well their responses work. Finally, transparency is vital companies need to report publicly or engage directly with those affected.<sup>37</sup> HRDD is not a one-time checklist but a continuous, adaptable process that involves everyone from legal teams to procurement and top management. This comprehensive approach is reflected in new laws in

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<sup>29</sup>United Nations, Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (ICCPR) (1966); International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).

<sup>30</sup>African Charter on Human and Peoples' Rights (1981).

<sup>31</sup>International Labour Organization, ILO Core Labour Standards (1998).

<sup>32</sup>John Ruggie, *Just Business* (n 1) 40; Andrew Clapham, 'Human Rights Obligations of Non-State Actors' (2006) 6 *European Journal of International Law* 387, 393.

<sup>33</sup>John Ruggie, 'Guiding Principles on Business and Human Rights' (n 4) paras 40–45.

<sup>34</sup>N. Okonkwo, 'The Legal Challenges of Human Rights Due Diligence in Nigeria' (2020) 12 *Nigerian Journal of Business Law* 83, 87–90.

<sup>35</sup>J. G. Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York, W.W. Norton 2013) 99.

<sup>36</sup>Dinah Shelton, *Environmental Protection and Human Rights* (Cambridge University Press 2009) 23–45.

<sup>37</sup>Organisation for Economic Co-operation and Development (OECD), *OECD Due Diligence Guidance for Responsible Business Conduct* (OECD Publishing 2018) 25–30.

Europe, like France's Duty of Vigilance Law and Germany's Supply Chain Act, which make HRDD legally binding and enforceable.<sup>38</sup>

Despite global progress, HRDD is still weak or missing in many countries, including Nigeria. Nigerian companies are increasingly active in international trade and public contracts, but there is no legal requirement for HRDD nor effective mechanisms to enforce it locally. This gap allows companies, especially in risky sectors like oil, construction, and infrastructure, to operate without clear human rights standards or oversight. As a result, issues like environmental damage and labour abuses often go unchecked. For HRDD to work well in Nigeria, it must be included in laws like the Public Procurement Act, Companies and Allied Matters Act, and regulations covering public-private partnerships. Courts should also begin applying HRDD principles when handling cases of corporate harm. Without these changes, HRDD remains just an idea rather than a real tool for holding companies accountable in Nigeria.<sup>39</sup>

#### 4. Legal Framework of BHR

Nigeria's domestic legal framework reveals significant gaps that create a "rights-free zone" for business operations within public service delivery. The 1999 Constitution of Nigeria incorporates civil and political rights within Chapter IV, granting them justiciability and enforceability. However, economic, social, and cultural rights, which are crucial for ensuring adequate public services such as health, education, and housing, are relegated to Chapter II and expressly declared non-justiciable. This constitutional doctrine effectively renders these socio-economic rights unenforceable as legal claims, thereby weakening the possibility of holding public or private actors accountable for failing to uphold these essential rights.<sup>40</sup>

Moreover, critical business-related legislation, including the Public Procurement Act 2007, the Companies and Allied Matters Act (CAMA) 2020, and the Infrastructure Concession Regulatory Commission Act, do not incorporate human rights obligations or due diligence requirements for businesses engaged in public service. Although CAMA 2020 mentions Corporate Social Responsibility (CSR) under Section 305, this remains a voluntary provision without binding enforcement mechanisms or standards for human rights protection.<sup>41</sup>

Institutional weaknesses further exacerbate this rights gap. Agencies like the National Human Rights Commission (NHRC), the Bureau of Public Procurement (BPP), and the Corporate Affairs Commission (CAC) are hamstrung by structural dysfunctions and limited mandates. The NHRC, for instance, operates without prosecutorial powers and depends heavily on executive goodwill, impairing its ability to enforce human rights protections effectively. The BPP, while empowered to oversee the technicalities of public procurement, lacks authority to investigate or address human rights concerns arising from procurement contracts.<sup>42</sup> The

<sup>38</sup>Sandra Cossart, Jérôme Chaplier and Tiphaine Beau de Loménie, 'The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All' (2017) 2(2) *Business and Human Rights Journal* 317–323.

<sup>39</sup>Samuel O. Okeke and Chinyere Okoro, 'Corporate Human Rights Due Diligence in Nigeria: Challenges and Prospects' (2021) 39 *Nigerian Journal of Commercial Law* 45–67.

<sup>40</sup>Constitution of the Federal Republic of Nigeria 1999, Chapters II and IV; A. Obi, 'Socio-economic Rights in Nigeria: Challenges of Justiciability' (2019) 12 *Journal of African Law* 45

<sup>41</sup>Public Procurement Act 2007; Companies and Allied Matters Act (CAMA) 2020, s 305; Infrastructure Concession Regulatory Commission Act; T. Eze, 'Corporate Social Responsibility in Nigeria: The Law and Practice' (2020) 15 *Nigerian Law Review* 99

<sup>42</sup>National Human Rights Commission Act 1995; Bureau of Public Procurement Act 2007; Corporate Affairs Commission Act; J. Okoye, 'Institutional Challenges in Nigeria's Public

judiciary, despite constitutional guarantees of independence, struggles with inefficiencies such as delays, corruption, and inconsistent rulings. Consequently, cases involving business-related human rights violations are few, poorly documented, and seldom result in meaningful remedies or sanctions.<sup>43</sup>

The reality of business-related human rights abuses in Nigeria is illustrated through several high-profile cases which expose systemic issues of state complicity and regulatory failure. One notable example is the Giwa Barracks demolition in Lagos in 2013, where over 10,000 residents of Badia East were forcibly evicted and their homes demolished in a joint operation involving the Lagos State Government and private developers. The eviction was executed without prior notice or compensation, allegedly linked to a World Bank-funded slum redevelopment project. Despite Nigeria's ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which prohibits forced evictions without adequate safeguards, no judicial inquiry or remedy was forthcoming. Civil society organizations such as the Socio-Economic Rights and Accountability Project (SERAP) petitioned the NHRC, yet neither the private developers nor state officials faced sanctions.<sup>44</sup> This incident typifies how urban regeneration initiatives, often pursued through public-private partnerships (PPPs), facilitate widespread human rights violations with impunity, largely due to the absence of Human Rights Due Diligence (HRDD) or effective regulatory oversight.

Similarly, the controversy surrounding the Lekki Toll Gate and the concession arrangement with the Lekki Concession Company (LCC) underscores the risks inherent in private sector involvement in public infrastructure. Following the October 2020 #EndSARS protests, during which Nigerian soldiers opened fire on peaceful protesters at the toll gate, public scrutiny intensified around the opaque contractual terms and financial dealings between the Lagos State Government and LCC. The company failed to disclose critical information on profit margins, public subsidies, or safety protocols, raising serious concerns about corporate complicity in state violence.<sup>45</sup> This case highlights how private enterprises operating in public service sectors can become entangled in grave human rights violations when governance is marked by secrecy and regulatory gaps.

In the Niger Delta, the epicenter of Nigeria's extractive industry, the nexus of corporate harm and state failure is most stark. Oil companies such as Shell and Eni operate not only extraction activities but also public infrastructure projects including water, education, and electricity provision under joint ventures or CSR schemes. Litigation such as *Gbemre v. Shell & NNPC* brought to light the human rights consequences of environmental damage caused by gas flaring, which the court recognized as violating the constitutional rights to life and dignity. However, enforcement of this landmark ruling remains elusive, reflecting the state's inability or unwillingness to hold corporations accountable and protect affected communities.<sup>46</sup> This case demonstrates that business-related abuses are not isolated incidents but rather systemic issues aggravated by judicial and administrative inertia.

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<sup>43</sup>O. Ajayi, 'Judicial Independence and Business-Related Human Rights Cases in Nigeria' (2021) 18 Nigerian Journal of Legal Studies 120.

<sup>44</sup>SERAP Petition to NHRC (2013) on Giwa Barracks Eviction; Human Rights Watch, Nigeria: Forced Evictions Without Remedies (2014).

<sup>45</sup>Amnesty International, 'Lekki Toll Gate Incident: Private Sector and State Violence' (2021) <https://www.amnesty.org/en/latest/news/2021/10/nigeria-lekki-tollgate/> accessed 20 May 2025.

<sup>46</sup>*Gbemre v Shell & NNPC* (2005) Suit No FHC/CS/53/05; Environmental Rights Action/Friends of the Earth Nigeria, 'Shell and Niger Delta Litigation' (2019).

## 5. Emerging Jurisprudence and Incidental Policies

Nigeria's ongoing reliance on public-private partnerships for delivering essential services, without embedding binding human rights safeguards, risks exacerbating inequality and violating both constitutional and international legal norms. To align domestic law with global standards, Nigeria must domesticate the UN Guiding Principles on Business and Human Rights (UNGPs), impose enforceable HRDD obligations, and amend procurement and corporate laws to include mandatory human rights standards. Strengthening accountability mechanisms requires empowering independent oversight bodies, enhancing judicial responsiveness, and fostering partnerships with civil society to promote legal awareness and citizen participation. Without such reforms, the proclaimed convergence between international BHRL norms and Nigerian practice will remain a precarious legal fiction, allowing corporate harms to persist unchecked.<sup>47</sup>

As businesses expand their role in Nigeria's public service, especially through public-private partnerships (PPPs), the risk of human rights violations rises sharply.<sup>48</sup> These companies often benefit from state contracts, protections, or even statutory immunities, making it harder for affected individuals or communities to hold them accountable.<sup>49</sup> It is no longer enough to have ethical rules or due diligence policies sitting on paper. The real test is whether people can meaningfully use the legal system to defend their rights.<sup>50</sup> Despite Nigeria's formal commitments under international law and its own Constitution, the practical enforcement of corporate accountability remains fraught with gaps.<sup>51</sup> This chapter critically explores the legal principles, enforcement mechanisms, and judicial pathways available and where they fall short—in holding companies answerable when they operate with or on behalf of the state.

The 1999 Nigerian Constitution enshrines fundamental rights such as the right to life (Section 33), dignity (Section 34), personal liberty (Section 35), and fair hearing (Section 36).<sup>52</sup> These rights were historically understood as vertical, applying between the state and individuals. However, recent developments in business and human rights law advocate for the horizontal application of these rights, extending constitutional standards to private entities.<sup>53</sup> Under Section 46(1) of the Constitution, any person who alleges that their rights have been, are being, or are likely to be violated may approach the High Court for redress.<sup>54</sup> The Fundamental Rights

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<sup>47</sup>E. Nwankwo, 'Towards Effective Business and Human Rights Regulation in Nigeria' (2024) 35 *Nigerian Law and Policy Review* 55.

<sup>48</sup>Arimoro AE, "Public-private partnership and the right to property in Nigeria" (2019) 19(2) *African Human Rights Law Journal* 546 <https://www.ahrlj.up.ac.za/arimoro-a> accessed 24 May 2025.

<sup>49</sup>Corporate Accountability and Public Participation Africa (CAPPA), "Advocating for Justice and Equality" <https://cappafrica.org/> accessed 24 May 2025.

<sup>50</sup>Deva S, Bilchitz D (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2013).

<sup>51</sup>Oloka-Onyango J, "Reinforcing Marginalized Rights in an Age of Globalization: International Mechanisms, Non-State Actors, and the Struggle for Peoples' Rights in Africa" (2003) 18 *American University International Law Review* 851.

<sup>52</sup>Federal Republic of Nigeria, *Constitution of the Federal Republic of Nigeria* (1999) ss 33–36.

<sup>53</sup>W Khobe, 'The Horizontal Application of the Bill of Rights and the Development of the Law to Give Effect to Rights and Fundamental Freedoms' (2014) 1 *Journal of Law and Ethics* 77.

<sup>54</sup>Constitution of Nigeria (n 1) s 46(1).

(Enforcement Procedure) Rules 2009 further lower procedural barriers by permitting NGOs, legal practitioners, and interest groups to litigate on behalf of affected populations.<sup>55</sup>

Despite these constitutional guarantees, suing corporations especially those operating under public mandates remains legally complex.<sup>56</sup> The central issue is whether such companies, although private in form, perform functions so public in nature that they must comply with constitutional and human rights obligations. While Nigerian courts have been cautious in embracing this broader accountability, comparative jurisprudence from South Africa, India, and Latin America points to a progressive expansion of constitutional obligations to private actors delivering public services.<sup>57</sup>

In *Gbemre v. Shell Petroleum Development Company*, the Federal High Court ruled that gas flaring by Shell in the Niger Delta violated constitutional rights to life and dignity.<sup>58</sup> However, implementation collapsed because Shell's joint-venture partner, the state-owned Nigerian National Petroleum Corporation (NNPC), was itself a shield against enforcement. The case underscores that court victories on paper often fail without strong enforcement mechanisms, especially where corporate-state alliances blunt accountability. In *Bodo Community v. Shell Petroleum Development Company (UK)*, over 15,000 Nigerian claimants secured £55 million in compensation for oil spill damage.<sup>59</sup> This settlement: £35 million to individuals and £20 million for community projects marked a rare transnational victory, setting the stage for later claims like *Okpabi v. Royal Dutch Shell* (2021), where the UK Supreme Court allowed Nigerian villagers to sue Shell's parent company.<sup>60</sup> Such cross-border successes highlight the value of piercing corporate veils when local remedies fail.

Regionally, in *SERAP v. Federal Republic of Nigeria* (ECOWAS Court, 2012), the court held that Nigeria's failure to regulate the oil sector violated citizens' rights to a healthy environment, health, and livelihood.<sup>61</sup> Though framed as a state obligation, the ruling sharpened the argument that state inaction makes it complicit in corporate abuses. Nigerian courts remain reluctant to extend constitutional duties to private firms unless they are visibly acting under government orders. This narrow reading of horizontal accountability makes it difficult to sue PPP actors, concessionaires, or contractors who straddle public and private lines.<sup>62</sup> Compounding the legal barriers are practical hurdles: many victims lack access to affordable legal representation; court processes are notoriously slow, expensive, and vulnerable to elite capture; and companies routinely challenge jurisdiction, especially in cases against foreign parent firms. Without clear

<sup>55</sup>Federal Republic of Nigeria, *Fundamental Rights (Enforcement Procedure) Rules* (2009) <https://gazettes.africa/akn/ng/officialGazette/government-gazette/2009-11-17/74/eng@2009-11-17/source> accessed 24 May 2025.

<sup>56</sup>Nolan J, "Mapping the Movement: The Business and Human Rights Regulatory Framework" (2013) 36(4) UNSW Law Journal 859.

<sup>57</sup>DM Brinks and W Forbath, 'Social and Economic Rights in Latin America: Constitutional Courts and the Prospects for Pro-poor Interventions' (2011) 89(7) Texas Law Review 1943.

<sup>58</sup>*Gbemre v. Shell Petroleum Development Company Nigeria Ltd & Ors*, Suit No. FHC/B/CS/53/05 (Federal High Court, Benin Judicial Division, 14 November 2005). Business & Human Rights Resource Centre

<sup>59</sup>*Bodo Community & Ors v. Shell Petroleum Development Company of Nigeria Ltd*, [2015] EWHC (TCC), settlement reported in John Vidal, "Shell announces £55m payout for Nigeria oil spills," *The Guardian* (7 January 2015). *The Guardian*+1 *The Ecologist*+1

<sup>60</sup>*Okpabi and others v. Royal Dutch Shell Plc and another*, [2021] UKSC 3. White & Case+7 *Human Rights Law Centre*+7 *Supreme Court UK*+7

<sup>61</sup>*SERAP v. Federal Republic of Nigeria*, ECW/CCJ/JUD/18/12 (ECOWAS Court of Justice, 14 December 2012). *Centre for High Performance Computing*+3 *caselaw.ihrda.org*+3 *caselaw.ihrda.org*+3

<sup>62</sup>Nwapi C, "Corporate Social Responsibility and Oil in the Niger Delta: Solution or Part of the Problem?" (2011) 30(1) *Journal of African Law* 45.

doctrines on human rights due diligence (HRDD) or judicial willingness to lift the corporate veil, victims often find themselves locked out of meaningful remedies.

## 6. Comparative Analysis of Selected Jurisdictions:

Nigeria's lag in implementing binding Business and Human Rights Law (BHRL) norms stands in contrast to several jurisdictions that offer instructive examples. France's Duty of Vigilance Law imposes legally binding HRDD requirements on large companies, mandating the publication of due diligence plans and exposing firms to liability for failures. French courts have actively enforced this law, notably holding Total accountable for its operations in Uganda.<sup>63</sup> South Africa offers another model through its Constitution, which recognizes socio-economic rights as justiciable and empowers courts to compel both public and private actors to deliver services that uphold dignity and equality.<sup>64</sup> In India, the Supreme Court's decision in *MC Mehta v. Union of India* established the principle of absolute liability for hazardous industries, affirming that the state cannot delegate its fundamental duty to protect human rights to private entities.<sup>65</sup> These cases collectively illustrate that bridging the international-domestic divide in BHRL implementation is both feasible and essential for ensuring democratic governance that respects human rights.

In South Africa, *Khosa v. Minister of Social Development* (2004) saw the Constitutional Court hold that private actors delivering public services must comply with constitutional rights.<sup>66</sup> This opened new avenues for litigation against both government and private actors in sectors like social security, healthcare, and housing. Similarly, in India, the Supreme Court in *Zee Telefilms Ltd. v. Union of India* recognised that private entities carrying out public functions could be treated as state actors for constitutional accountability.<sup>67</sup> Such progressive jurisprudence demonstrates that Nigerian law can evolve to meet international standards by recognising that private delivery of public services demands public-law responsibilities.

Despite Nigeria's international commitments, multiple entrenched barriers prevent the localisation of BHRL norms. Chief among these is the constitutional limitation imposed by the non-justiciability of socio-economic rights, which renders violations linked to public services legally unenforceable. Political capture further complicates matters, as corporate actors with ties to political elites or military interests enjoy protection from accountability. Additionally, the lack of public awareness and legal empowerment among victims of business-related rights violations undermines demand for redress and reform. Reform efforts remain fragmented and piecemeal, with institutions like the NHRC and scattered legislative proposals lacking coherence or effective implementation.<sup>68</sup>

<sup>63</sup>Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre; French Cour de Cassation, Total case, 2020; M. Dubois, 'Human Rights Due Diligence in French Law' (2022) 29 European Business Law Review 88.

<sup>64</sup>Constitution of the Republic of South Africa 1996, s 26; Government of the Republic of South Africa v Grootboom (2000) 11 BCLR 1169 (CC); L. Smith, 'Justiciability of Socio-Economic Rights in South Africa' (2017) 33 South African Journal on Human Rights 62.

<sup>65</sup>MC Mehta v Union of India AIR 1987 SC 1086; S. Rao, 'Absolute Liability and Environmental Protection in India' (2019) 14 Environmental Law Review 140

<sup>66</sup>*Khosa and Others v Minister of Social Development and Others*, CCT12/03, [2004] ZACC 12; 2004 (6) SA 505 (CC); 2004 (11) BCLR 1125 (CC) (Constitutional Court of South Africa, 21 July 2004).

<sup>67</sup>*Zee Telefilms Ltd v Union of India*, AIR 2005 SC 4289 (Supreme Court of India, 1 September 2005).

<sup>68</sup>A. Musa, 'Barriers to Human Rights Due Diligence in Nigeria' (2023) 27 African Human Rights Law Journal 190.

For Nigeria to strengthen its BHRL framework, courts and lawmakers must embrace the concept of business publicity recognising that private companies involved in public service delivery bear public duties. This would impose clear legal obligations of care, transparency, and fairness on corporate actors and create pathways for direct enforcement of constitutional rights against them. Moreover, it would introduce joint liability regimes, ensuring that both the state and its corporate partners share accountability. Such reforms would bring Nigerian practice in line with international BHRL expectations, offering affected communities more robust tools for justice, regardless of political or corporate shielding.

### Doctrinal Comparative Matrix: Human Rights Enforcement Against Businesses

Doctrine/Feature	Nigeria	South Africa	India
Constitutional Justiciability of Socio-Economic Rights	✗ Not justiciable (Chapter II) – aspirational only <sup>69</sup>	✓ Fully justiciable – Section 27 & 28 of the 1996 Constitution <sup>70</sup>	✓ Partially justiciable under Article 21 (Right to Life with dignity) <sup>71</sup>
Applicability of Fundamental Rights to Private Entities	✗ Vertical application only (state vs individual) <sup>72</sup>	✓ Horizontal application in public interest contexts <sup>73</sup>	✓ Public function doctrine allows horizontal application <sup>74</sup>
Recognition of Business as Quasi-State Actor in Public Service	✗ Unclear or unrecognised	✓ Recognised when performing public functions (housing, education, etc.) <sup>75</sup>	✓ Recognised in cases like <i>Zee Telefilms</i> and <i>Pradeep Kumar Biswas</i> <sup>76</sup>
Legal Duty for Human Rights Due Diligence (HRDD)	✗ Absent in law; no statutory obligation <sup>77</sup>	Emerging through National Action Plans and litigation <sup>78</sup>	No statute, but courts enforce proactive duty via PILs <sup>79</sup>
Judicial Remedies Against Private Business Abuse	Limited to tort, contract, or indirect liability <sup>80</sup>	✓ Enforceable via constitutional litigation (e.g., <i>Grootboom</i> case) <sup>81</sup>	✓ Enforceable via PILs under Article

<sup>69</sup>Constitution of the Federal Republic of Nigeria 1999, Chapter II (Fundamental Objectives and Directive Principles of State Policy), not justiciable by courts.

<sup>70</sup>Constitution of the Republic of South Africa 1996, sections 27 and 28 (justiciability of socio-economic rights).

<sup>71</sup>Constitution of India 1950, Article 21 (Right to Life with dignity) as interpreted by the Supreme Court.

<sup>72</sup>See *FRN v. Adefarasin* (2001) on vertical application of rights in Nigeria.

<sup>73</sup>*Affordable Medicines Trust and Others v. Minister of Health and Others* 2006 (3) SA 247 (CC).

<sup>74</sup>*Zee Telefilms Ltd v. Union of India*, AIR 2005 SC 4289.

<sup>75</sup>*Khosa and Others v Minister of Social Development and Others*, CCT12/03, [2004] ZACC 12.

<sup>76</sup>*Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* (2002) 5 SCC 111.

<sup>77</sup>No specific statutory provisions for corporate human rights due diligence exist in Nigeria.

<sup>78</sup>National Action Plan on Business and Human Rights, South Africa, 2020; *NUMSA v. Bader Bop* 2003 (3) SA 513

<sup>79</sup>Public Interest Litigation (PIL) and judicial activism in India enforce HRDD-like duties, e.g., *Vellore Citizens Welfare Forum v. Union of India* AIR 1996 SC 2715

<sup>80</sup>Nigerian courts largely restrict remedies against private businesses to tort or contract claims, e.g., *Ibrahim v. Nigerian National Petroleum Corporation* (2004).

<sup>81</sup>*Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

			32/226 of the Constitution <sup>82</sup>
Use of Regional/Transnational Litigation to Enforce Rights	✓ ECOWAS Court, UK courts (Shell cases) <sup>83</sup>	Rare, but recognised under SADC regional jurisprudence	✗ Domestic courts preferred; regional forums not applicable
Key Judicial Precedents	Gbemre v. Shell (2005); SERAP v. Nigeria (ECOWAS) <sup>84</sup>	Grootboom v. Government (2000); Khosa v. Minister of Social Development <sup>85</sup>	Zee Telefilms v. Union of India (2005); MC Mehta v. Union of India (1987) <sup>86</sup>

INTERPRETIVE NOTES

1. **Nigeria:**

- Rights are enforceable only when explicitly listed in Chapter IV.
- Private entities performing public services (e.g., electricity, toll roads, health) are not automatically recognised as rights-bound under Nigerian constitutional law.
- Major rights victories (e.g., *Gbemre*) often go unenforced due to state-business collusion.

2. **South Africa:**

- Enshrines socio-economic rights and holds both state and non-state actors accountable.
- Courts apply rights horizontally when private parties perform public functions or affect fundamental dignity.

3. **India:**

- Uses **Public Interest Litigation (PIL)** under Articles 32 and 226 to hold private and public actors accountable.
- Courts adopt a “**transformative constitutionalism**” approach expanding rights interpretation to include corporate obligations.

7. **Discussions Involving Case Law:**

The idea that businesses, especially those closely linked with the government, can be held responsible for human rights abuses is well established in international law. But in Nigeria, this

<sup>82</sup>Supreme Court of India PIL jurisdiction under Articles 32 and 226; e.g., *MC Mehta v. Union of India* AIR 1987 SC 1086.

<sup>83</sup>ECOWAS Community Court of Justice cases including *SERAP v. Nigeria* (2012); *UK courts in Okpabi v Royal Dutch Shell* (2021).

<sup>84</sup> *Gbemre v. Shell Petroleum Development Company* (2005) FHC/CS/53/05; Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria (ECOWAS Court, 2012).

<sup>85</sup> *Government of the Republic of South Africa v Grootboom* (2000); *Khosa v. Minister of Social Development* (2004).

<sup>86</sup>*Zee Telefilms Ltd v Union of India* (2005); *MC Mehta v Union of India* (1987).

concept is still struggling to gain strong acceptance within local courts and policymaking. As global standards around Business and Human Rights (BHR) develop especially through frameworks like the UN Guiding Principles (UNGPs), Nigeria faces a key choice: continue to treat businesses as untouchable partners or begin aligning its laws and practices with emerging international expectations. This chapter looks at how court rulings, policies, and civil society actions are slowly but meaningfully reshaping Nigeria's approach to corporate accountability, particularly in sectors where the government's close ties with companies have historically left rights unprotected.

One important area of progress is Nigeria's judiciary. Courts have traditionally avoided holding businesses accountable, often because they see companies as private actors. However, there is a growing willingness to interpret laws in ways that indirectly hold corporations responsible. For example, in *Centre for Oil Pollution Watch v. NNPC*, the Supreme Court made a notable decision by easing the strict rules about who can bring a case. This allowed a non-governmental organisation to sue a state-owned oil company over environmental harm, opening the door for public interest lawsuits where the line between public and private responsibility is unclear.<sup>87</sup> Although this case focused on the environment, it hints at how courts might handle broader business-related rights abuses, especially when the government is involved.

The ECOWAS Court of Justice has also played a vital role in pushing corporate accountability. In *SERAP v. Federal Republic of Nigeria*, the Court found Nigeria violated human rights by failing to regulate oil companies' environmental damage in the Niger Delta.<sup>88</sup> While Nigerian courts are not legally bound by this ruling, it strengthens the argument that government inaction in the face of business abuse breaches international obligations. Nigerian lawyers increasingly cite ECOWAS rulings, pressuring courts to bring local law closer to regional and international standards. On the private law side, tort law is quietly becoming a space where human rights issues are addressed. The UK Supreme Court's decision in *Okpabi v. Royal Dutch Shell* gave new hope for holding parent companies accountable for their subsidiaries abroad.<sup>89</sup> Nigerian courts are starting to look to such cases to support extending liability to multinational corporations. Using ideas like negligence and duty of care, especially in oil and gas disputes, shows a growing interest in recognizing harm and providing remedies even if "human rights" aren't explicitly mentioned, the effect is similar.

Despite these encouraging signs, Nigeria still lacks a clear legal framework dedicated to corporate human rights duties. There is no specific BHR law, and regulations remain scattered across environmental, labour, and procurement laws. A hopeful development is the draft National Action Plan (NAP) on Business and Human Rights released by the Ministry of Justice in 2022. This draft seeks to localise the UNGPs by proposing mandatory human rights due diligence for companies, reforming enforcement agencies, and improving victims' access to justice.<sup>90</sup> Though still just a draft, it signals growing government awareness of the need for rights-focused business practices. The draft NAP also suggests changes to laws like the Public Procurement Act and Companies and Allied Matters Act (CAMA). It recommends making corporate social responsibility disclosures compulsory instead of optional, activating Section

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<sup>87</sup>Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation, Supreme Court of Nigeria (2018).

<sup>88</sup>Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria, ECOWAS Court of Justice (2012).

<sup>89</sup>*Okpabi v. Royal Dutch Shell plc* [2021] UKSC 3.

<sup>90</sup>Federal Ministry of Justice, Draft National Action Plan on Business and Human Rights (2022).

305 of CAMA.<sup>91</sup> These changes reflect a recognition that public-private partnerships must include human rights protections. In a country where public services are often outsourced, these reforms are crucial to ensuring profit doesn't override dignity and safety.

Civil society remains a key driver where the government hesitates. NGOs such as SERAP, Environmental Rights Action (ERA), and HURILAWS have used lawsuits, campaigns, and education to challenge corporate impunity. They have supported communities fighting powerful companies like Shell and Chevron, both locally and in international courts.<sup>92</sup> Beyond legal battles, these groups mobilise communities, explain legal issues in accessible ways, and shape public conversations about corporate ethics and responsibility. As grassroots advocates, they push Nigeria closer to a culture that respects rights.

Technology also helps strengthen accountability. Groups like BudgIT, Follow the Money, and the Public and Private Development Centre (PPDC) use data to monitor government spending, track contracts, and expose fraud. By combining data with human rights analysis, they help citizens spot corruption, poor services, and corporate wrongdoing.<sup>93</sup> This shows accountability is no longer just for lawyers or judges but involves tech experts and activists too.

Regionally, Nigeria is tentatively moving towards continental BHR initiatives. In 2021, the African Commission on Human and Peoples' Rights adopted a Policy Framework on Business and Human Rights in Africa, which urges member states to protect citizens from corporate abuses.<sup>94</sup> As a leading economy and African Union member, Nigeria is expected to implement this framework, though progress remains uncertain. Still, it sets important expectations that civil society and courts can use to push for change.

International partners also play a role, offering technical support and sometimes conditioning aid on reforms. The UNDP, for example, has helped Nigeria assess gaps, train officials, and open dialogues with businesses<sup>9</sup>. The World Bank and OECD have also launched projects promoting responsible business and labour rights. While sometimes criticised as donor-driven, these efforts provide useful leverage for local advocates. Yet, many challenges remain. Progressive court rulings often have limited reach or go unenforced due to weak institutions. The draft NAP has not become law, so its goals remain hopeful ideas. Political elites frequently resist reforms because they have stakes in the current system owning or controlling companies that benefit from weak oversight.<sup>95</sup>

Institutional coordination is also lacking. Agencies like the Corporate Affairs Commission, National Human Rights Commission, EFCC, and Bureau of Public Procurement work separately, with overlapping duties, little funding, and political interference. This means violations by state-backed companies often go unpunished, leaving communities without remedies. In vital sectors like power and health, poor regulation leads to daily violations of rights to health, livelihood, and clean environment. Still, the changes described here point to a

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<sup>91</sup>Draft National Action Plan on Business and Human Rights, proposals for reforming CAMA and Public Procurement Act (2022).

<sup>92</sup>See SERAP, Environmental Rights Action (ERA), and HURILAWS litigation and advocacy reports (2010–2023).

<sup>93</sup>BudgIT, Follow the Money, and Public and Private Development Centre (PPDC) project summaries (2020–2024).

<sup>94</sup>African Commission on Human and Peoples' Rights, Policy Framework on Business and Human Rights in Africa (2021).

<sup>95</sup>Analysis of political economy and corporate governance challenges in Nigeria's reform process, various reports (2020–2024).

quiet but meaningful shift in Nigeria's laws and policies. The idea that businesses, especially those tied to government, must respect human rights is no longer a distant dream. Nigeria now faces a crucial choice: turn these advances into real laws and practices or let them fade away under political inertia. True reform requires a combined effort of laws, active courts, strong institutions, and engaged communities. Only then can Nigeria build a genuinely rights-respecting economy.

## 8. Conclusion

This study critically examined the persistent gap between Nigeria's formal commitments to international business and human rights (BHR) standards and the realities of enforcement within its public sector. Despite Nigeria's ratification of key global and regional human rights instruments including the UN Guiding Principles on Business and Human Rights (UNGPs), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples' Rights (ACHPR). These commitments have largely remained aspirational rather than practical.<sup>96</sup> The investigation revealed a fragmented regulatory landscape marked by institutional weaknesses and lack of coordination. Sectoral agencies function in silos without a unified framework to enforce human rights due diligence in public contracts.

Critical institutions like the National Human Rights Commission suffer from underfunding and limited authority, while Nigerian courts display doctrinal conservatism that restricts constitutional protections to state actions alone, often sidestepping accountability for private actors delivering public services.<sup>97</sup> The study also highlighted the political economy's role in undermining human rights enforcement. Elite capture of regulatory bodies fosters impunity and policy incoherence, as seen in landmark cases like *Gbemre v. Shell*, where court rulings remain unenforced due to political and corporate interests.<sup>98</sup> Victims face compounded barriers such as low legal awareness, procedural challenges, intimidation, and a glaring absence of whistleblower protections, making access to justice elusive.<sup>99</sup> Furthermore, the absence of market-based incentives or penalties enables corporations with poor human rights records to operate unchecked, as procurement laws and corporate social responsibility frameworks fail to incorporate binding human rights criteria. Comparisons with progressive jurisdictions such as France's Duty of Vigilance Law, South Africa's judicial recognition of horizontal rights enforcement, and India's use of Public Interest Litigation offer valuable lessons on bridging normative commitments and lived realities.<sup>100</sup>

The normative ambitions of business and human rights law in Nigeria remain largely aspirational due to institutional weaknesses, political economy dynamics, socio-legal barriers,

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<sup>96</sup>United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011); United Nations, International Covenant on Economic, Social and Cultural Rights, 1966, United Nations Treaty Series, vol. 993, p. 3; African Union, African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 1981.

<sup>97</sup>National Human Rights Commission Act (Cap N42, Laws of the Federation of Nigeria 2004); Nigerian Constitution 1999 (as amended).

<sup>98</sup>*Gbemre v. Shell Petroleum Development Company of Nigeria Ltd* (2005) Suit No. FHC/B/CS/53/05 (Federal High Court, Nigeria).

<sup>99</sup>Amnesty International, *Niger Delta: Impunity for Corporate Abuses* (2017); Human Rights Watch, *Nigeria: End Corporate Abuses in Oil Delta* (2018).

<sup>100</sup>France, *Duty of Vigilance Law* (2017); South Africa, *Constitution of the Republic of South Africa, 1996*, Section 8(2); India, *Public Interest Litigation principles*, various Supreme Court rulings (e.g., *MC Mehta v Union of India* AIR 1987 SC 1086).

and doctrinal resistance. Without deliberate reforms that align judicial interpretation, regulatory frameworks, and market incentives with human rights principles, the gulf between legal norms and practical enforcement will persist. Bridging this gap demands a convergence of rights rhetoric and state practice that repositions citizens, not corporations or political elites as the ultimate beneficiaries of governance. Only through sustained political will, coordinated institutional action, and innovative legal thinking can Nigeria transform its human rights commitments from symbolic declarations into tangible protections that safeguard vulnerable communities and promote accountable, rights-respecting public service delivery.

## 9. Recommendations

- i. Establish a Comprehensive Regulatory Framework: The Nigerian government should enact clear statutory mandates requiring human rights due diligence in all public contracts, supported by a central coordinating body empowered to oversee compliance across sectors. This framework must foster inter-agency cooperation to prevent regulatory fragmentation.<sup>101</sup>
- ii. Strengthen Institutional Capacity and Enforcement Powers: Adequate funding and expanded prosecutorial authority for the National Human Rights Commission are vital to enable effective investigation and sanctioning of rights violations. Judicial training should be enhanced to encourage progressive interpretation of constitutional rights that encompass private actors delivering public services.<sup>102</sup>
- iii. Promote Judicial Innovation and Doctrinal Reform: Courts must be encouraged to move beyond rigid public-private distinctions and recognise the horizontal application of constitutional rights, drawing on comparative jurisprudence. This shift will empower communities affected by corporate abuses to seek redress more effectively.<sup>103</sup>
- iv. Enhance Access to Justice and Legal Awareness: Strengthening legal aid, simplifying procedures, and launching widespread legal literacy campaigns will help bridge the knowledge gap among vulnerable populations. Robust whistleblower protection legislation is urgently needed to safeguard those exposing corporate misconduct.<sup>104</sup>
- v. Incentivise Corporate Compliance through Market Mechanisms: The Bureau of Public Procurement should integrate human rights screening into procurement processes, and sustainability reporting should be mandated with enforceable standards. Investor and consumer awareness initiatives can also foster market pressure on companies to uphold human rights.<sup>105</sup>
- vi. Foster Political Will and Policy Coherence: Effective implementation of the National Action Plan on Business and Human Rights requires cross-ministerial coordination and

<sup>101</sup>Bureau of Public Procurement Act, 2007 (Nigeria).

<sup>102</sup>National Human Rights Commission Act (Cap N42, Laws of the Federation of Nigeria 2004).

<sup>103</sup>See for comparative jurisprudence: *Grootboom v Government of the Republic of South Africa* 2000 (11) BCLR 1169 (CC); *Minister of Health v Treatment Action Campaign* (2002) 5 SA 721 (CC).

<sup>104</sup>Fundamental Rights (Enforcement Procedure) Rules 2009 (Nigeria); proposed whistleblower protection legislation under consideration in Nigeria.

<sup>105</sup>Nigerian Stock Exchange, Sustainability Disclosure Guidelines, 2020.

political commitment to prioritise human rights in public governance. Transparent monitoring and accountability mechanisms should be established to track progress.<sup>106</sup>

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<sup>106</sup>Draft National Action Plan on Business and Human Rights (2022) (Nigeria, Federal Ministry of Justice).