

PEOPLE BEFORE PROFIT:

How Ghana can step up its commitments to ensure businesses are held accountable for human rights violations

A Policy Brief





Esther Yakpeba, Oti region.
PHOTO: SAMUEL LAMPTEY

1. Economic growth and investment in Ghana and its impact on human rights

>> Background

Ghana's economy had been expanding at a rate of 0.7% per year since 2017 until the Covid-19 pandemic, reduced growth to 0.4%. However, the IMF expected this to rebound to 4.7% in 2021 and 6.2% in 2022.

Agriculture remains key to the overall economic growth and development of Ghana contributing to an estimated 19% of GDP in 2016 and employing about 46% of Ghana's labour force (most of whom are small scale subsistence farmers). Mining is also a major driver of economic growth in Ghana, accounting for 5% of GDP and 37% of total exports. Rich in a variety of minerals, Ghana is the 2nd largest gold producer in Africa with gold making up 90% of mineral exports. Other noteworthy sectors include oil, which has expanded considerably since 2007, as well as manufacturing, services, and banking.ⁱ

However, because the economy remains highly dependent on the export of primary commodities such as gold, cocoa, and oil this makes it vulnerable to commodity price shocks. As such, the Government of Ghana has sought to diversify and industrialise through agro-processing, mining and manufacturing and has also made Foreign Direct Investment a priority to support its industrialisation plans.ⁱⁱ

Against this context, in 2022, Ghana's Commission for Human Rights and Justice commissioned a National Baseline Assessment on Business & Human Rights in Ghana. The purpose of this Baseline was to evaluate the Government of Ghana's progress in achieving its obligations to respect, protect and fulfil human rights and fundamental freedoms, the compliance level of businesses in respecting applicable laws and upholding human rights in the performance of their functions and the existence of appropriate and effective judicial and non-judicial remedies accessible to victims when their human rights and obligations are breached.

Whilst the report notes that some government policies, laws, treaties, and institutions meet the standards set by the UN Guiding Principles for Business & Human Rights, gaps remain that require urgent attention to enhance government's and businesses' protection of and respect for human rights, and remedy to human rights abuses in Ghana, and cites specific gaps within the mining and agribusiness sectors.

2. Towards a UN Binding Treaty on Business & Human Rights

The operations of businesses can have a profound impact on human rights, including those of employees but also consumers, and communities where they operate. Whilst some of these impacts may be positive, such as increasing access to employment, others may be negative and include forcibly evicting or re-locating communities, child labour (including especially hazardous forms) and forced labour.ⁱⁱⁱ

This situation has created a pressing need to establish international norms regulating business operations in relation to human rights.^{iv} After many years of debate, in 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, that operationalize the United Nations 'Protect, Respect and Remedy' framework for business & human rights, and further define the key duties and responsibilities of States and business enterprises regarding business-related human rights abuses.

The Guiding Principles affirm that:

- under existing international human rights law, States have the duty to protect against human rights abuses by all actors in society, including businesses.
- States must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations.
- States are to set clear expectations that companies domiciled in their territory/jurisdiction respect human rights in every country and context in which they operate.

The UN Guiding Principles, which currently enjoy quasi-universal recognition impose commitments on both states and businesses and put special emphasis on remedies for human rights abuses committed by corporations. However, although much progress has been achieved since 2011, human rights abuses by corporations persist. A legally binding international treaty could provide the necessary remedy for this.^v

In 2014, the Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights was established in response to Human Rights Council resolution 26/9. It has a mandate to elaborate an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises.

According to the UN Office of the High Commissioner for Human Rights (OHCHR), the Binding Treaty and the Guiding Principles on Business & Human Rights can and should be mutually reinforcing and complementary. The Guiding Principles call for action at the international, regional and national levels that can effectively protect against business related human rights abuses.

However, unlike the Guiding Principles, the Treaty would be legally binding in nature and, as such engagement in the negotiation process represents an opportunity to increase business respect for human rights, paving the way for more principled, responsible and accountable business operations.

In addition, acknowledging that women the world over are most likely to be employed in the most precarious working environments with least labour protection, earn the lowest wages and shoulder the vast majority of the world's unpaid care work, engaging in the treaty negotiation process presents a critical opportunity for States to demonstrate political will to put gender justice above corporate interests.^{vi}

*Women are most likely to be employed in the **most precarious working environments with least labour protection, earn the lowest wages and shoulder the vast majority of the world's unpaid care work.** By engaging in the UN Binding Treaty negotiation process, States have the opportunity to put gender justice above corporate interests.*

3. Progress on business & human rights at the continental level

The 2022 [Baseline Assessment on Business & Human Rights in Africa](#) notes that Africa has lagged behind other regions in efforts to implement the UNGPs and advance the business and human rights agenda; as the continent's economic activity continues to increase with the recently launched African Continental Free Trade Area (AfCFTA), businesses have come under scrutiny for their impact on human rights.^{vii}

Nevertheless, progress is being made. In March 2023, the African Commission on Human and People's Rights adopted a resolution on Business & Human Rights in Africa,^{viii} which amongst other things highlights the adverse impacts of business activities on the rights of peoples and communities; the need for an effective regional framework to prevent and address such abuses and ensure access to effective remedy for those affected. It further calls on the African Union to appropriately reflect relevant soft-law instruments (such as the UN GP) of the African Commission in updating and finalizing the African Union Policy Framework on Business and Human Rights, as well as the new context of the operationalization of the AfCFTA.



Grassroots campaign, Ghana.
PHOTO: MISPER APAWU



Esther Dzotefe, a farmer from Jasikan district, Oti Region, sieves rice with her children. PHOTO: SAMUEL LAMPTEY

4. Progress on business & human rights in Ghana

Chapter 5 of the 1992 Constitution vastly improved the supply of rights in Ghana. It guarantees, amongst other things, the protection of the rights to life, personal liberty, protection from slavery and forced labour, protection from inhumane treatment, the unlawful deprivation of property, privacy rights, of movement, association, assembly, and speech. It also guarantees a right to information.

Ghana is one of 170 States that have ratified the UN Guiding Principles^x and, in 2014 was one of eight African Union member states voting in favour of the establishment of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights to draft a legally binding instrument.^x

In 2017, Ghana was also one of 37 States that endorsed the Call to Action^{xi} to end forced labour, modern slavery and human trafficking at a roundtable convened by then UK Prime Minister and launched at the 72nd meeting of the UN General Assembly. This included provisions to:

Eradicate forced labour, modern slavery, human trafficking, and the worst forms of child labour from our economies (both formal and informal) by developing regulatory or policy frameworks, as appropriate, and working with business to eliminate such practices from global supply chains; whilst addressing government procurement practices and building a culture of consumer awareness which supports such action and promotes decent work.

In 2022 and 2023, the Government of Ghana has continued to take positive strides, which include the commissioning of a [National Baseline Assessment on Business & Human Rights](#) and, the organisation of 16 Regional Consultations on Business & Human Rights under the leadership of the Commission for Human Rights & Administrative Justice (CHRAJ).

These consultations, which ActionAid Ghana has actively supported aimed at gathering first-hand information from a wide range of stakeholders (including community members, businesses and government agencies) to inform the development of its Voluntary National Action Plan on Business & Human Rights. Once the plan is concluded Ghana will join Kenya and Uganda as the only 3 countries in Africa to have so far completed this process.

However, to better implement the Protect, Respect and Remedy framework embedded in the UN Guiding Principles, and ensure decent work for all, several gaps need to be addressed. The National Baseline Assessment in particular notes gaps in the mining and agricultural sectors.

Mining: currently, there are about 23 large-scale companies in the gold mining industry, including AngloGold Ashanti, Newmont Ghana, Gold Fields Ghana, Chirano Goldmines and Golden Star Resources Limited, which continue to invest in the Ghanaian mining industry. There are also over 300 registered small-scale mining groups and 90 mining support services companies.

Whilst some of these companies have developed strong statements about their commitments to social and environmental responsibility, including respect for human rights and tackling modern slavery, there is still work to be done.

The National Baseline Assessment notes the Minerals and Mining Act of 2006 does not provide for free, prior and informed consent, or community dialogue in times of disputes between mining companies and communities, which can constitute a significant challenge.

Moreover, whilst the Act includes provisions for resettlement of mining affected communities, stipulating that they are to be furnished with appropriate housing of a similar standard as that which the community members had prior to resettlement and that resettled communities should not be worse off economically.^{xii}

In addition, the same Act provides that due compensation should be given for the loss of land use as well as that of crops and immovable property. However, these provisions are not always complied with in practice, as illustrated by the testimonial below.

Teni Titaad^{xiii} is a 45-year-old single mother of six from the Biung community in the Talensi district of the Upper East region. The Biung community is an indigenous community living on vast lands that accommodate their homes and farms. In 2022, the community was resettled by a large international mining company operating in the area. The new community is named Accra-new site.

Teni, who lost her husband a few years ago is one of the residents who were resettled in 2022 by the mining company, which in her view has deprived the Biung community of their livelihood.

***“Because of the resettlement, I do not have any regular source of income. In the past I used to work with some small-scale miners but now I cannot go to the place because all the people have been sent away. At the current settlement we lack access to water. This has placed a huge burden on most women as we now walk long distances back to our old area to access water.*”**

According to reports from community activists and media sources there is a pending disagreement between people of Dokyikrom, community in the Asutifi North district of Ghana’s Ahafo Region and Newmont mining corporation after Newmont took a unilateral decision to divide and relocate a community to two separate locations. The community members are of the view that, for them to maintain their family bonds, they need to be at one location. This issue has been officially reported to the regional office of CHRAJ in Sunyani for redress.

The new buildings being described as “Accra-New site” are not spacious enough to accommodate a family. I have 6 children so you can imagine how stressful it is for us to live in these cubicles called houses. Life was alright at our old place, but the situation now is a bit harsh. To support our livelihood and my children’s education, I now pick fuel woods to sell to other nearby communities. It is my wish that our current condition is addressed so we can confidently work to see my children gain better education and get jobs to support me.”

The National Baseline Assessment also notes that although local communities in and around the mining areas may indirectly influence environmental policy through their respective local politicians and authorities, Ghanaian legislation does not provide specific avenues for communities to formally seek redress for violations of their rights.^{xiv} It further adds that there are no legal provisions on women’s rights and young people-specific issues in relation to resettlement and compensation under the Minerals and Mining Act, 2006, Act 703.

Agriculture as noted above, the agriculture sector a huge contributor to Ghana’s economy. Cocoa production is especially important, bringing in around 15% of the country’s GDP and supplying around 20% of the world’s cocoa.^{xv} Nevertheless, despite government commitments to eliminate child labour , concerns around child trafficking and child labour in the agricultural sector persist.^{xvi}

In 2022, a baseline study conducted as part of ActionAid’s, Norad-funded Combatting Modern Slavery project revealed that 30% of respondents in the sampled intervention areas reported the ongoing presence of child labour in agribusiness sectors such as cashew, maize, shea and cocoa farming as well as fishing.

A further study commissioned by the project team, which aimed to explore the nature and prevalence of modern slavery across 8 districts also revealed ample cases and testimonies of human trafficking including child trafficking for agricultural labour. In 5 out of the 8 survey districts, children were reportedly working with adults on farms for long hours without rest and food and in 3 out of the 8 districts children of tenants were forced to work on landlords’ farms at the expense of their schooling.



Smallholder Farmers, Moin District, Northern Region
PHOTO: PETERCLAVER YABEPONE

Some of these children were reported to be involved in particularly hazardous forms of labour including transporting farm-produce on motorbikes without protective crash-helmets and spraying agro-chemicals without any protective equipment.^{xvii}

In addition to these findings, the National Baseline Assessment commissioned by CHRAJ, also notes two incidents of child labour in cocoa production where there are key players like the Cocoa Processing Company and the Ghana Cocoa Board.

Finally, despite the strides made towards the implementation of the UN Guiding Principles, Government engagement in the development of a UN Binding Treaty could be strengthened.

For example, although Government of Ghana representatives participated in the first 6 negotiation sessions of the Open-Ended Inter-Governmental Working Group on Transnational Corporations and other business enterprises with respect to human rights, there are no records in the session reports^{xviii} of any textual recommendations or oral statements by the representatives. For example, although the Government of Ghana representatives participated in the first 6 negotiation sessions of the Open-Ended Inter-Governmental Working Group on Transnational Corporations and other business enterprises with respect to human rights, there are no records in the session reports^{xix} of any textual recommendations or oral statements by the representatives.

However, the addendum to the report of the 4th session^{xx} does specifically refer to Ghana's active engagement as a member of the core group on Business & Human Rights noting that:

“We heard this week a reaffirmation of the global consensus on the UN Guiding Principles on Business and Human Rights as the existing authoritative framework for all States and stakeholders to make immediate and tangible progress to better prevent business-related abuses and ensure access of victims to remedy. States must implement their existing obligations, and companies need to fulfil their responsibility to respect human rights. We also have a collective responsibility to make full use of the findings and recommendations of the OHCHR-led Accountability and Remedy Project on judicial mechanisms in cases of business-related human rights abuse and State-based non-judicial mechanisms. We are pleased with the continuation of this project with a focus on non-State-based grievance mechanisms thanks to the leadership of the core group on Business and Human Rights (Argentina, Ghana, Norway, Russian Federation) and the adoption by the Human Rights Council in July 2018 of resolution 38/13. We also need to fully use the tools developed or being developed by the UN Working Group on Business and Human Rights, including its forthcoming guidance for States and business on action to safeguard and support human rights defenders in line with the UN Guiding Principles on Business and Human Rights.”

This statement would appear to reflect the current high level of engagement of the Government of Ghana with the UN Guiding Principles, which, as mentioned above, has included the commissioning of a Baseline on Business & Human Rights and subsequent organisation of Regional Stakeholder consultations aimed at developing Ghana's Voluntary National Action Plan on Business & Human Rights.

With regards to women in particular, the study commissioned by ActionAid noted that the acquisition of land for agricultural purposes can be exploitative in nature and often to the disadvantage of small holder farmers especially women, who in most cultural settings in Ghana do not own land. Due to these constraining facts some women are subjected to forced labour, as a pre-requisite for accessing land for farming.

5. Conclusion

The Government of Ghana has many commitments aimed at ensuring fundamental human rights and freedoms (including those set out in the Constitution) and tackling the prevalence of human rights abuses by businesses.

Ghana has also ratified the UN Guiding Principles on Business & Human Rights and is one of a very small number of African States to have so far taken concrete steps to put the UN Guiding Principles' Protect, Respect and Remedy framework into action at national level by a) commissioning a National Assessment on Business & Human Rights in Ghana, and b) conducting public stakeholder consultations across all 16 regions in the country with a view to developing a Voluntary National Action Plan on Business & Human Rights.

Nevertheless, there is still much to be done to tackle ongoing abuses of human rights within some of the country's most significant economic sectors (especially mining and agriculture), including human trafficking, child labour, forced labour, compensation for loss of land and livelihoods, avenues for legal redress and legal provisions on women's and young people's rights and young people-specific issues in relation to resettlement and compensation.



Grassroots Campaign, Ghana.
PHOTO: MISPER APAWU

6. Recommendations

The research findings summarised in this brief are evidence that it is critical for the Government of Ghana to continue actively demonstrating its commitments to business and human rights. Central to this is continuing to actively participate in the negotiations for a UN legally binding treaty on business and human rights, to hold corporations accountable for their impact on human rights and prioritise people over profits. In addition, we recommend that the Government work closely with all relevant stakeholders, including Civil Society and the Business sector to:

1. **Play a more active role during the negotiation sessions** of the Open-Ended Inter-Governmental Working Group on Transnational Corporations and other business enterprises with respect to human rights in general and the rights of women and indigenous people in particular.
2. **Ensure the final draft Voluntary National Action Plan on Business & Human Rights, takes into account the testimonials** of community members (especially women) in order to generate a truly feminist, gender-sensitive plan that puts the rights of women at the centre.
3. **Consider reviewing legislation** to enable communities to seek redress for violations of their rights when it comes to issues related to environmental protection.
4. **Ensure commitments to child protection and ending forced labour, trafficking and child labour** (e.g., as set out in the 1992 Constitution, the Children's Act of 1998 (Act 560), the Labour Act of 2003 (Act 651) are adequately resourced and implemented.
5. **Ensure that the Minerals and Mining Act of 2006 (Act 703) is revised** to ensure that the Act:
 - provides for free, prior, and informed consent for mining, or community dialogue in times of disputes between mining company and communities.
 - honours commitments aimed at ensuring re-settled communities be furnished with appropriate housing of a similar standard as what they had previously and that resettled communities are not worse off economically.
 - provides due compensation for the loss of land use as well as that of crops and immoveable property.
 - includes legal provisions on women's rights and young people-specific issues in relation to resettlement and compensation.

Jumai Abdul-Rahim, trader from
Nkwanta South, Oti Region
PHOTO: SAMUEL LAMPTEY



Acknowledgements

Authors: Asmara Figue.

Contributors: Wangari Kinoti, Laurette Abuya, Eugenia Ayagiba, Samuel Sabuli, Esther Brown and Kwame Afram Denkyira.

Endnotes

- i. <https://chraj.gov.gh/wp-content/uploads/2022/07/Baseline-Assessment-of-Business-and-Human-Rights.pdf>
- ii. https://www.state.gov/reports/2022-investment-climate-statements/ghana__trashed/
- iii. https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf
- iv. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/620229/EPRS_BRI\(2018\)620229_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/620229/EPRS_BRI(2018)620229_EN.pdf)
- v. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/620229/EPRS_BRI\(2018\)620229_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/620229/EPRS_BRI(2018)620229_EN.pdf)
- vi. <https://www.womenalliance.org/feminists-4-binding-treaty/>
- vii. <https://www.undp.org/africa/publications/baseline-assessment-business-and-human-rights-africa-first-decade-next>
- viii. <https://achpr.au.int/en/adopted-resolutions/550-resolution-business-and-human-rights-africa-achpres550-lxxiv-2023>
- ix. <https://sdg.humanrights.dk/en/instrument/signees/16>
- x. <https://www.undp.org/africa/publications/baseline-assessment-business-and-human-rights-africa-first-decade-next>
- xi. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759332/End-Forced-Labour-Modern-Slavery1.pdf
- xii. <https://chraj.gov.gh/wp-content/uploads/2022/07/Baseline-Assessment-of-Business-and-Human-Rights.pdf>
- xiii. To protect identities, pseudonyms have been used.
- xiv. <https://chraj.gov.gh/wp-content/uploads/2022/07/Baseline-Assessment-of-Business-and-Human-Rights.pdf>
- xv. <https://www.undp.org/sites/g/files/zskgke326/files/migration/gcp/GHANA-COCOA.pdf>
- xvi. <https://chraj.gov.gh/wp-content/uploads/2022/07/Baseline-Assessment-of-Business-and-Human-Rights.pdf>
- xvii. ActionAid – Study on the Nature and Scale of Modern Slavery (yet to be published).
- xviii. <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>
- xix. <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>
- xx. <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/igwg-4th-statement-compilation-addendum.pdf>

Cover photo: Wunmi Mosaku - Visit to Ghana Access to Justice.

PHOTO: ABBIE TRAYLER SMITH/ACTIONAID

actionaid

ActionAid is a global movement of people working together to achieve greater human rights for all and defeat poverty. We believe people in poverty have the power within them to create change for themselves, their families and communities. ActionAid is a catalyst for that change.

ActionAid Ghana

Address: Oko Kotey Link, East Legon. P. O. Box AN 19083, Accra-North. Ghana

Tel: +233 (0) 302544714/5 Fax: +233 (0) 302764930

Website: <https://ghana.actionaid.org/>

Email: aaghana@actionaid.org

