

Business and Human Rights in Ethiopia: The Status of the Law and the Practice

Bantayehu Demlie Gezahegn *

Abstract

Business activities in Ethiopia by both multinational and national companies are under growing scrutiny. Ongoing court cases in Kenya against Meta (formerly Facebook) for allegedly helping fuel the two-year deadly conflict in northern Ethiopia, increased reports of alleged poor labour conditions in apparel factories in industrial parks, and allegations of land grabbing by commercial agribusiness are some examples. The existing research and practice approaches the issue of private sector accountability predominantly from corporate social responsibility (CSR) perspective. The CSR landscape itself is regulated in a fragmented manner. In contexts lacking well-developed CSR frameworks, a growing body of research examines the promise of a newly evolving Business and Human Rights (BHR) paradigm. To date, there is a dearth of scholarly and policy discussion employing the term ‘business and human rights’ in Ethiopia, attesting the status of the field in academic and public discourse. This article presents a modest attempt at exploring the status of business and human rights law and practice in Ethiopia. By analysing relevant laws and reviewing selected practical cases, the article identifies salient issues, opportunities, and challenges toward developing and enforcing business and human rights standards.

Key terms:

Business and human rights · Corporate social responsibility · Ethiopia · Soft law · Due diligence

DOI <http://dx.doi.org/10.4314/mlr.v17i1.1>

This article is licensed under a Creative Commons Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)

Received: 31 March 2023

Accepted: 24 July 2023

Suggested citation:

Bantayehu Demlie Gezahegn (2023). “Business and Human Rights in Ethiopia: The Status of the Law and the Practice”, 17(1) *Mizan Law Review*: 1-42.

* Bantayehu Demlie Gezahegn: Research Fellow and PhD Candidate at the International Doctorate Program on Business and Human Rights (University of Erlangen-Nuremberg). LL.B., B.A. (Addis Ababa University), and LL.M. (American University Washington College of Law). I thank the two anonymous reviewers for their constructive feedback on the draft manuscript.

E-mail: ban.demlie@gmail.com or bantayehu.d.gezahegn@fau.de

ORCID ID: <https://orcid.org/0000-0002-2214-748X>

Contents

Abstract

1. Introduction
2. Business and Human Rights vs. Corporate Social Responsibility
3. International Business and Human Rights Framework
4. Business and Human Rights in Africa
5. Business and Human Rights in Ethiopia's Constitution
6. Business and Human Rights in Various Ethiopian Laws
7. Business and Human Rights in Practice
8. Salient Issues pertaining to BHR in Ethiopia: Challenges and Opportunities
9. Conclusion

1. Introduction

Ethiopia is on a path to continued economic liberalization. Advancing economic and social development is one of the objectives of the Ethiopian State.¹ Attracting foreign direct investment (FDI), creating a vibrant private sector that generates jobs and other opportunities to the country's youthful population, integrating the economy to the global market are high on the national agenda. Meanwhile, in Ethiopia and elsewhere, expectations are growing for business and economic interests to be balanced with other social interests such as the environment and human rights. These expectations are generally framed in terms of *corporate social responsibility* (CSR). There are also related paradigms such as *environmental, social, and corporate governance*, otherwise known as environmental, social, and governance (ESG).

In Ethiopia, the dominant discourse is CSR. The relevant literature shows that the development of CSR is at "an infancy stage" and that CSR is largely

Frequently used acronyms:

BHR	Business and human rights
CSR	Corporate social responsibility
UNGPs	United Nations Guiding Principles on Business and Human Rights
UN	United Nations
AU	African Union

¹ Constitution of the Federal Democratic Republic of Ethiopia (1994) [FDRE Constitution], Preamble, Para 1.

“unregulated” or “under regulated.”² Others argue that the CSR practice manifests priorities different from the global trend.³ Observations further indicate a tendency to “synonymize CSR with philanthropy,”⁴ which fails to view business activity in the broader environmental and social context.⁵ Related to this is thus another tendency to view CSR as a tool for brand management –which in turn feeds to the profitability mindset– rather than viewing CSR as an act of responsibility.⁶ Finally, yet importantly, there is a lack of comprehensive legal and policy framework on CSR. Ethiopia does not have a self-contained legislation or policy on CSR. The existing legal scholarship that explores the potential of existing laws observes that such laws in general govern CSR impliedly or incidentally.⁷

In the past decade, a discourse on *business and human rights* (BHR) is emerging, from and/or alongside the CSR framework. This article attempts to assess the status of BHR law and practice in Ethiopia. In contexts with fragmented CSR landscape, BHR could help consolidate the regulatory framework. This is because human rights are moral claims that are supposed to be “binding and pre-existing, whether or not they are protected by States or respected by businesses.”⁸ Another important justification is that BHR aims to govern the activities of transnational companies, which may at times be

² Tasew Abitew (2021). “Approaches to Regulating Corporate Social Responsibility in Ethiopia: The Case of Manufacturing Companies” (LL.M. thesis, Addis Ababa University).

³ Sumeyye Kusakci and Ibrahim Bushera (2023). “Corporate social responsibility pyramid in Ethiopia: A mixed study on approaches and practices,” *International Journal of Business Ecosystem & Strategy*, Vol. 5 No. 1, pp. 37-48.

⁴ Tasew Abitew, *supra* note 2.

⁵ Berihu Gereziher and Yohannes Shiferaw (2020). “Corporate Social Responsibility Practice of Multinational Companies in Ethiopia: A Case Study of Heineken Brewery S.C.,” *British Journal of Arts and Humanities* Vol. 2 No. 2, pp. 36-55.

⁶ Dakito Alemu Kesto (2017). “Corporate Social Responsibility Practices and Stakeholders’ Awareness: Case of Ethiopia,” *Global Journal of Management and Business Research: D Accounting and Auditing*, Vol. 17, No. 1 (1).

⁷ See for example, Bereket Alemayehu Hagos (2022), “Legal Aspects of Corporate Social Responsibility in Ethiopia: A Sustainable Development Perspective,” *The Journal of Sustainable Development Law and Policy*, Vol. 13 No. 2.

See also Alemayehu Yismaw Demamu (2020), “Towards Effective Models and Enforcement of Corporate Social Responsibility in Ethiopia,” *Mizan Law Review*, Vol. 14 No. 2, pp. 276-309.

⁸ Judith Schrempf-Stirling, Harry J. Van Buren, and Florian Wettstein (2022). “Human Rights: A Promising Perspective for Business & Society,” *Business and Society*, Vol. 61 No. 5, p. 14.

beyond the ambit of domestic laws or the regulation capacity of the State.⁹ This applies equally to multinational companies of Ethiopian origin, which would come under increased expectations based on BHR norms elsewhere with Ethiopia's integration to the global economy.

The following section discusses CSR and BHR in comparison to each other. Section 3 deals with the evolution of the international BHR framework. Given its potential applicability in the Ethiopian context, the fourth section discusses BHR developments in Africa. Sections 5 and 6 examine the BHR law in Ethiopia followed by the seventh section that highlights the practice. Section 8 identifies salient issues, opportunities, and challenges.

2. Business and Human Rights vs. Corporate Social Responsibility

BHR is a relatively new field.¹⁰ At the center of this new field's discourse is how businesses in general and multinational companies in particular can be held responsible (and/or can take responsibility) for the impact of their activities on human rights. The traditional discourse on human rights is centered on the idea of the State. In a nutshell, it is the State that has the obligation to *respect* human rights, *protect* human rights (from being violated by third parties such as companies or other non-State actors), to *fulfill* and *promote* human rights. Human rights are thus claims against the State. According to the traditional discourse, if companies impact human rights, it is the State that is responsible for failing to protect the victims from their rights being violated by third parties.

Based on unfolding realities, BHR is seeking to redefine this traditional understanding of human rights by asking the question: Can companies – especially multinational corporations (some more powerful than some States) – be directly held responsible for human rights violations? That is not to negate the primary obligation of the State to protect –but to concurrently hold companies responsible for the violations. One may envisage it as a framework of “allocation of tasks” between States and companies, in the words of Oyeniyi Abe and Damilola S. Olawuyi.¹¹ With this overall mission

⁹ Mizanie Abate Tadesse (2016). “Transnational Corporate Liability for Human Rights Abuses: A cursory Review of the Ethiopian Legal Framework,” *Mekelle University Law Journal*, Vol. 4, p. 34.

¹⁰ Surya Deva (2022). “Treaty tantrums: Past, present and future of a business and human rights treat,” *Netherlands Quarterly of Human Rights*, Vol. 40(3), p. 211.

¹¹ Oyeniyi Abe and Damilola S. Olawuyi, “Introduction – Business, human rights, and the United Nations Guiding Principles: The search for good-fit approaches in Africa,”

of ensuring *responsible* business activity, BHR shares “common foundations” with CSR.¹² Judith Schrempf-Stirling, Harry J. Van Buren, and Florian Wettstein analyzed BHR and CSR as tools for the ‘social control of business’¹³ –i.e. “in terms of why and how society makes business act responsibly and channels business behaviors toward socially desirable ends.”¹⁴

In spite of overlaps, BHR and CSR do have important differences too. Firstly, BHR is a new discourse compared to CSR.¹⁵ Responsibility of businesses towards society has for long been addressed through the CSR framework. BHR was born as an outgrowth of CSR –in particular as a reaction to the “perceived failure” of CSR in regulating the behavior of multinational corporations.¹⁶

Secondly, CSR encourages businesses to “do good” while BHR requires them to do “no harm.”¹⁷ As such, CSR is an inherently voluntary approach (through internal self-regulation of businesses), while BHR could entail regulation by the State through a mix of incentives and disincentives (such as binding laws and non-binding guidelines). As a result, BHR takes CSR “out of the private, voluntary sphere into the public sphere,” as Schrempf-Stirling *et al* rightly put it.¹⁸ Thirdly, corollary to the second key difference is how BHR and CSR view the contribution of businesses to human rights. While CSR highlights the “positive” role of businesses in “fulfilling rights” (such as by creating jobs), BHR focuses on how businesses should “respect” rights by not doing harm.¹⁹

Overall, while some observe increasing “divergence”²⁰ between BHR and CSR, others underline the “significant promise” of human rights for CSR.²¹

in Damilola S. Olawuyi and Oyeniyi Abe (eds.), *Business and Human Rights Law and Practice in Africa* (Edward Elgar Publishing, 2022), p. 11.

¹² Judith Schrempf-Stirling, Harry J. Van Buren, and Florian Wettstein, *supra* note 8.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Nojeem Amodu (2021). “Business and human rights versus corporate social responsibility: Integration for victim remedies,” *African Human Rights Law Journal*, Vol. 21 No. 2, p. 855

¹⁶ Anita Ramasastry (2015). “Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap between Responsibility and Accountability,” *Journal of Human Rights*, Vol. 14.

¹⁷ Judith Schrempf-Stirling, Harry J. Van Buren, and Florian Wettstein, *supra* note 8.

¹⁸ *Id.*, p. 16.

¹⁹ Anita Ramasastry, *supra* note 16, p. 250.

²⁰ *Ibid.*

²¹ Judith Schrempf-Stirling, Harry J. Van Buren, and Florian Wettstein, *supra* note 8.

This article can be seen as a further examination of the potential to bridge between BHR and CSR as it seeks to search for a comprehensive BHR framework that builds on existing CSR practices in Ethiopia.

3. International Business and Human Rights Framework

The global BHR framework currently encompasses the UN Global Compact (2000) and the UN Guiding Principles on Business and Human Rights (2011). Both instruments are non-binding. With no agreement yet reached in ongoing negotiations for a binding instrument, the system is still based on voluntary commitment by businesses.

The UN Global Compact is a voluntary membership scheme encouraging businesses to follow a set of 10 principles in the areas of human rights, labor, environment, and anti-corruption. The principles are compiled from norms already set out in relevant human rights instruments and International Labour Organization (ILO) standards. Principles 1 and 2 pertain to *human rights*. According to these principles, businesses are required to “support and respect the protection of internationally proclaimed human rights” and to be “not complicit in human rights abuses.”²²

Principles 3 to 6 are about *labour* standards. Accordingly, businesses should uphold “freedom of association” and the “right to collective bargaining;” eliminate “all forms of forced and compulsory labour;” abolish “child labour;” and eliminate “discrimination” pertaining to employment.²³ The next three principles (Principles 7 to 9) are related to the *environment*. They require business to “support a precautionary approach to environmental challenges;” “promote greater environmental responsibility;” and “encourage the development and diffusion of environmentally friendly technologies.”²⁴ The last (and the tenth) principle prohibits “*corruption* in all its forms, including extortion and bribery.”²⁵

The UN Guiding Principles on Business and Human Rights (UNGPs) were adopted in June 2011 by the UN Human Rights Council through resolution 17/4. On the enduring question of whether businesses can be directly held responsible for their impact on human rights, the UNGPs settle for a “Protect, Respect, Remedy” framework and stand on these three pillars. Pillar I is the State *duty to protect* against human rights by third parties including

²² UN Global Compact (2000), Principles 1 and 2.

²³ UN Global Compact (2000), Principles 3 to 6.

²⁴ *Id.*, Principles 7 to 9.

²⁵ *Id.*, Principle 10.

businesses. Pillar II is the corporate *responsibility to respect* human rights. Pillar III is about ensuring effective *access to remedy* (by both States and businesses). It is to be noted that the UNGPs uses the word “duty” (for States) and “responsibility” (for businesses). Legally speaking, this is intended not to imply new obligations on businesses, yet responsibility can arise from ethical, social, and other grounds short of requirements by law. Thus in the language of UNGPs, one can speak of “obligations” of States but not of businesses. The non-binding nature of UNGPs is emphasized in the very opening (General Principles section) of the document which reads: “Nothing in these Guiding Principles should be read as creating new international law obligations.”²⁶

The UNGPs elaborate both general and operational principles for States and businesses to follow under each of the three pillars. After underscoring the State *duty to protect* in Pillar I, Principle 11 (under Pillar II) elaborates the business *responsibility to respect* human rights. In a nutshell, the responsibility entails that businesses “should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”²⁷ The UNGPs underline that there should be no confusion about what the business *responsibility to respect* human rights entails with regard to the State’s *duty to protect*. It can neither be used as an excuse to shift nor to imply reduced obligations on the part of States. The responsibility to respect human rights by businesses “exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations.”²⁸

Business activities have the potential to affect virtually all rights. The UNGPs expect businesses to respect at least internationally recognized human rights. Paragraph 12 of the UNGPs provides that the “responsibility of business enterprises to respect human rights refers to internationally recognized human rights –understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.”²⁹ With regard to

²⁶ UN Guiding Principles on Business and Human Rights (UNGPs) (2011), General Principles section, Para 4.

²⁷ UNGPs, Principle 11.

²⁸ See UNGPs, Commentary on Principle 11.

²⁹ The international bill of human rights consists of the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 covenants [the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)].

scope, the UNGPs apply to all types of businesses (both transnational and others, irrespective of size, sector, location, ownership, and structure).³⁰

The UNGPs require businesses to adhere to the standard of “human rights due diligence.” The exercise is meant to “identify, prevent, mitigate and account for how they address their adverse human rights impacts,” and entails “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”³¹ If and once harm materializes, Pillar III outlines mechanisms to ensure effective remedy through State-based judicial and non-judicial mechanisms, and non-State-based grievance mechanisms.

Coming to the UN draft BHR treaty, the ongoing negotiation process –for a binding instrument– is one of at least three such attempts. A draft Code of Conduct³² (1990) and draft norms (2003)³³ did not lead to binding instruments. Both businesses and several States resisted the 2003 draft norms in particular for their own respective reasons. The norms (if operational) would have provided for direct human rights obligations on corporations, which would also amount to bestowing legal personality for corporations under international law. Corporations resisted the possibility of bearing direct obligations. States were also not sure about the precedent the norms would set in upgrading the status of transnational corporations as legal persons in the eyes of international law. Developed States also preferred a non-binding framework. The process was replaced by a procedure that ultimately led to the drafting and the final adoption of the non-binding UNGPs in 2011.

The effort to come up with a binding UN BHR treaty still endures. In 2014, the UN Human Rights Council established an open-ended intergovernmental working group (OEIGWG) to work on an international legally binding instrument.³⁴ As of 2023, the OEIGWG held its 9th session³⁵ and a third

³⁰ UNGPs, *supra* note 26, Principle 14.

³¹ *Id.*, Principle 17.

³² United Nations Code of Conduct on Transnational Corporations (1990). Available at: <https://digitallibrary.un.org/record/105591?ln=en>, last accessed August 2023.

³³ UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003). Available at: <https://digitallibrary.un.org/record/498842?ln=en>, last accessed August 2023.

³⁴ Human Rights Council Resolution 26/9 (2014) [A/HRC/RES/26/9].

³⁵ For more, see <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>, last accessed August 2023.

revised draft is available from its 8th session (2022).³⁶

Surya Deva, who served as a member of the UN Working Group on Business and Human Rights (2016-2022),³⁷ summarizes *sticking points* that continue to dominate the current negotiations.³⁸ First –*scope of the treaty*– in particular on whether the proposed instrument would apply to only multinational corporations *or* all business enterprises. And on whether the treaty would cover only serious violations or all kinds of human rights abuses.³⁹ Second –*relation with the UNGPs*– whether the treaty would replace or rather complement the UNGPs.⁴⁰ Third –*direct corporate obligations*– whether the treaty should impose direct human rights obligations on corporations.⁴¹ Fourth –*the treaty’s relation with trade and investment agreements*– whether the treaty should prevail over trade and investment agreements, including bilateral investment treaties.⁴² Last but not least –*form of the treaty*– with recent proposal by newly joining U.S. delegation for a flexible framework convention with a menu of options combining soft law and hard law.⁴³

Faultlines across the above sticking points vary between Global North and Global South States, and between human rights CSOs and businesses. For example, the recorded votes in the Human Rights Council for the adoption of resolution 26/9 (2014) –that initiated the ongoing binding treaty process– show that those who voted *against* the resolution are predominantly States from the Global North.⁴⁴ As for non-State stakeholders, while businesses

³⁶ See latest draft at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/268/13/PDF/G2226813.pdf?OpenElement>, last accessed August 2023.

³⁷ The UN Working Group on Business and Human Rights is not to be confused with the open-ended intergovernmental working group (OEIGWG). The UN Working Group on BHR was established in 2011 through resolution 17/4. It consists of five independent experts from different geographical regions for a term of three years. The core mandate of the Working Group is “to promote the effective and comprehensive dissemination and implementation” of the UN Guiding Principles on Business and Human Rights. See Human Rights Council resolution 17/4 (Human rights and transnational corporations and other business enterprises) A/HRC/RES/17/4, Para 6.

³⁸ Surya Deva, *supra* note 10.

³⁹ *Id.*, p. 216.

⁴⁰ *Id.*, p. 217.

⁴¹ *Id.*, p. 218.

⁴² *Id.*, p. 219.

⁴³ *Id.*, p. 220.

⁴⁴ Human Rights Council Resolution 26/9 (2014) [A/HRC/RES/26/9].

would view even voluntary frameworks such as UNGPs as taking them out of their comfort zone (of mainly self-regulation CSR), some criticize the UNGPs (and the BHR framework to date) for failing to give precedence to human rights over business interests (e.g. on trade and investment agreements) and for failing to achieve consensus on a legally binding international framework on business and human rights.⁴⁵

Outside the UN system, BHR norms continue to develop in national and regional contexts, especially in the Global North. Some European countries – namely the United Kingdom, France, the Netherlands, Switzerland, Norway, and Germany – have issued their own national mandatory due diligence laws, with varying nomenclature and scope.⁴⁶ At the level of the European Union, a draft Corporate Sustainability Due Diligence Directive (CSDDD) is currently under negotiation by EU institutions such as the Commission, Council, and Parliament.⁴⁷ The CSDDD, being a directive, is considered as secondary law under EU law (adopted by EU institutions by virtue of existing treaty mandates, and binding while the form and methods of implementation are left to Member States).⁴⁸

States that voted against the resolution are Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Montenegro, Republic of Korea, Romania, the former Yugoslav Republic of Macedonia, the UK, and USA. Those that voted *in favour* are Algeria, Benin, Burkina Faso, China, Congo, Côte d'Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Philippines, Russian Federation, South Africa, Venezuela, and Viet Nam. And *abstaining* votes are from Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, the Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone, and the United Arab Emirates.

⁴⁵ See for example, Flávia do Amaral Vieira (2021), “The Implementation of the Guiding Principles on Business and Human Rights in Brazil: A Critical Perspective,” *Revista Internacional de Derechos Humanos*, Vol. 11, No. 2, p 333 *et seq.*

⁴⁶ Surya Deva (2023). “Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?,” *Leiden Journal of International Law*, Vol. 36 Issue 2, pp. 389- 414.

⁴⁷ See Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF, last accessed July 2023.

⁴⁸ Article 288, Treaty on the Functioning of the European Union (as amended).

For a comparative analysis of UN and EU draft BHR instruments, see Nadia Bernaz, Markus Krajewski, Kinda Mohamadieh, and Virginie Rouas (2022) “The UN Legally-Binding Instrument and the EU Proposal for a Corporate Sustainability Due Diligence Directive: competences, comparison and complementarity.” Available at: <https://friendsoftheearth.eu/wp-content/uploads/2022/10/Complementarity-study-on-EU-CSDDD-and-UN-LBI-October-2022.pdf>, last accessed July 2023.

Another important instrument is the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (also known as *OECD Guidelines*). It embodies a set of recommendations on responsible business conduct that are not legally binding. The guidelines were adopted in 1976 by the Organisation for Economic Cooperation and Development (OECD) and are recently revised in June 2023.⁴⁹

4. Business and Human Rights in Africa

Despite a long recorded history of exploitation of Africa's human and natural resources by foreign and multinational companies,⁵⁰ BHR is gaining momentum in the continent only recently. The African Union (AU) organized the first African BHR Forum in October 2022. The AU is also working on a draft Policy Framework on BHR. In March 2023, the African Commission on Human and Peoples' Rights (hereinafter the African Commission) –passed a resolution on “Business and Human Rights in Africa.”⁵¹ Most notably, the resolution tasks its relevant working groups to draft an African regional legally binding BHR instrument.⁵²

Until gathering momentum in recent years, the African system's focus on BHR issues developed incrementally, like in the UN system and elsewhere. A notable example is the African Commission's initial focus on the *extractive sector*. In 2009, the African Commission established (as one of its subsidiary mechanisms) the Working Group on Extractive Industries, Environment and Human Rights Violations (WGEI).⁵³ Among the mandates of the Working Group are examining the impact of extractive industries in Africa, studying violations of human and peoples' rights by non-state actors, and advising the Commission on the possibility of holding non-state actors liable.⁵⁴

⁴⁹ See OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, <https://www.oecd.org/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct-81f92357-en.htm>, last accessed August 2023.

⁵⁰ Wubeshet Tiruneh (2022). “Holding corporations liable for human rights abuses committed in Africa: the need for strengthening domestic remedies,” *African Human Rights Yearbook*, Vol. 6, pp. 227-246

⁵¹ Resolution on Business and Human Rights in Africa- ACHPR/Res.550 (LXXIV) 2023. Para. 1(c).

⁵² *Ibid.*

⁵³ Resolution on the Establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa - ACHPR/Res.148(XLVI)09

⁵⁴ *Ibid.*

In further consolidating BHR norms under the African system, at least three “favorable conditions” are noteworthy. *Firstly*, the African system offers a unique potential for establishing a strong legal basis for a comprehensive BHR regime. The African Charter on Human and Peoples’ Rights requires “State Parties to eliminate all forms of foreign exploitation particularly practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.”⁵⁵ The Charter further provides the right of peoples to “freely dispose of their wealth and natural resources,”⁵⁶ the right to “economic, social and cultural development,”⁵⁷ and the right to “a generally satisfactory environment favorable to their development.”⁵⁸

There is also uniqueness in the African human rights system in being the only international/regional instrument to codify the right to development as a binding norm and to affirm the justiciability of economic, social, and cultural rights. All this is highly relevant given the implications on addressing BHR issues in more holistic manner, including when ensuring effective remedies (for example, justiciability of all rights expanding the potential for judicial remedies).

Secondly, there is a legal basis in the African system for going to the extent of “direct obligations” on businesses. This is based on the notion that the African Charter is the only binding human rights instrument to embed “duties” besides rights. Article 27(1) stipulates: “Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.” Articles 28 and 29 elaborate these duties. From the text of the Charter, duties are apparently stipulated only for the “individual.” The Charter does not make reference to “business enterprises” or “peoples” or other non-State entities in the “Duties” section. Yet the African Commission on Human and Peoples’ Rights has interpreted the relevance of Article 27 of the Charter in the context of BHR, as follows:

“Under the African Charter, obligations of business enterprises towards rights holders have a clear legislative basis. Article 27 of the African Charter provides for the duties of individuals and its sub-provision 2 lays down the obligation to exercise rights ‘with due regard to the rights of others.’ Clearly, if this obligation can be

⁵⁵ African Charter on Human and Peoples’ Rights (1981), Article 21.

⁵⁶ *Ibid.*

⁵⁷ *Id.*, Article 22.

⁵⁸ *Id.*, Article 24.

imposed on individuals, there is an even stronger moral and legal basis for attributing these obligations to corporations and companies.”⁵⁹

The concept of individual duties was present in the early days of the international human rights discourse but did not feature in subsequent binding instruments, except in the African Charter. For instance, the 1948 Universal Declaration of Human Rights (UDHR) too has a provision on duties. Article 29(1) provides: “Everyone has duties to the community in which alone the free and full development of his personality is possible.” However, unlike the African Charter, the UDHR is not legally binding. Moreover, binding conventions that followed the UDHR do not carry similar provisions on individual duties.

The African Charter’s provisions on individual duties are not necessarily seen in a positive light. While many would consider the language of individual duties in the African Charter as an unusual undertaking for a human rights instrument to speak of duties, some appreciate the unique framing of both rights and duties in one document. Mumba Malila (incumbent chief justice of the Supreme Court of Zambia) makes a case for a nuanced understanding of the African Charter’s concept of individual duties (with some duties implying legal effect and others having only moral appeal). Although the manner of inclusion of duties in the Charter can be considered as somewhat problematic, he argues, it also “can be regarded as an opportunity for the African continent and, by extension, for the global human rights framework to redefine itself.”⁶⁰

The *third* favorable condition is that, without prejudice to differences among individual States, the African position favors a binding instrument at the global level.⁶¹ The UN treaty proposal was tabled by South Africa (along with Ecuador). Voting patterns of African States to pass the resolution that

⁵⁹ See African Commission on Human and Peoples’ Rights (2019), Advisory Note to the African Group in Geneva on the Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (Legally Binding Instrument). Available at: <https://achpr.au.int/en/news/communiqués/2019-11-04/advisory-note-african-group-geneva-legally-binding-instrument>, last accessed July 2023.

⁶⁰ Mumba Malila (2017). “Individuals’ Duties in the African Human Rights Protection System: Challenges and Prospects,” in Stephan Parmentier *et al* (eds.), *Between Rights and Responsibilities: A Fundamental Debate* (Cambridge University Press), pp. 187-228.

⁶¹ See African Commission Advisory Note, *supra* note 59.

sets the UN treaty process in 2014 supports the argument.⁶² This is further confirmed by the explicit position of the African Commission. In 2019, the Commission prepared an advisory note to the African Group in Geneva on the UN binding BHR treaty process. The Commission notes that current inadequacies in the BHR regime globally “can only be rectified through a binding international framework, which is applicable across jurisdictions, and taking into account the interests of the most vulnerable.”⁶³

The promises and favorable conditions at the level of the continental human rights system are however yet to translate in the regulatory frameworks and practices in the individual African States. Many African States are expressing their commitment to attract foreign direct investment and achieve development objectives. However, a host of factors makes it difficult to ensure the observance of environmental, social, and human rights standards by corporations.⁶⁴ Some of the challenges relate to the capacity and behavior of States such as limited State capacity, imbalance in the bargaining powers of multinational corporations and States, and at times collusion between States and corporations. Other factors relate to the regulatory and policy framework such as lack of policy coherence and lack of “good-fit” approaches for contextualizing global standards including the UNGPs into local and national realities.⁶⁵ The subsequent sections discuss the Ethiopian example.

5. Business and Human Rights in Ethiopia’s Constitution

Ethiopia does not have a self-contained legislation on BHR. However, this does not mean that the human rights dimensions of business activities are left unregulated. In fact, there is a broad range of laws related either to the regulation of business or the protection of human rights that are directly or indirectly relevant to BHR. This section and Section 6 deal with an illustrative overview of generic laws and sector-specific laws. The selection and discussion of the laws and their relevant provisions are by no means exhaustive. The approach is based on their applicability to any one or more of the three pillars of BHR as provided in the UNGPs. Consideration is also made

⁶² See United Nations Development Programme (UNDP) (2022), “A Baseline Assessment on Business and Human Rights in Africa: From the First Decade to the Next,” <https://www.undp.org/africa/publications/baseline-assessment-business-and-human-rights-africa-first-decade-next>, last accessed March 2023.

⁶³ African Commission Advisory Note, *supra* note 59.

⁶⁴ See Oyeniyi Abe and Damilola S. Olawuyi, *supra* note 11, p. 4.

⁶⁵ *Ibid.*

to align the legal analysis in Sections 5 and 6 to the selection of case studies in Section 7 so that they can be read together.

The Ethiopian Constitution holds considerable relevance to BHR at least in two respects. *The first aspect* is in its *overall emphasis* and *substantive content on human rights*. Beginning from the preamble, Paragraph 2 provides that “full respect of individual and people’s fundamental freedoms and rights” is required to achieve the objective of advancing “economic and social development” under Paragraph 1. In Chapter 2, “human and democratic rights” form one of the five fundamental pillars of the Constitution.⁶⁶ Under Article 55(14), the Constitution mandates the House of Peoples’ Representatives to establish a Human Rights Commission and determine by law the Commission’s powers and functions.

Further into the substantive provisions, the whole chapter three is an extensive catalogue of individual and collective human rights and freedoms. The chapter is also considered as the Constitution’s *bill of rights* section. Given the indivisibility and interdependence of human rights, no right is irrelevant for BHR. Thus, without implying any hierarchy or priority whatsoever, to highlight some of the provisions, Articles 14-17 provide for the right to life, security of the person, and liberty. Article 18 prohibits inhuman treatment –which includes protection against cruel, inhuman or degrading treatment or punishment; prohibition of slavery or servitude; and prohibition of forced or compulsory labour. Article 25 is the non-discrimination clause. Articles 29, 30, and 31 guarantee freedoms of expression, assembly, and association, respectively. Article 37 on the *right of access to justice* is particularly relevant to the *remedy* pillar of BHR (the third pillar in the UNGPs).

Article 40 on the “right to property” guarantees the right of Ethiopians to the ownership of private property, including immovable property (note the citizenship requirement as well). The provision stipulates that ownership of land and natural resources is “exclusively vested in the State and in the peoples of Ethiopia.” Thus there is no private ownership of land. While Ethiopian peasants and pastoralists have the right to use land for their own respective purposes for free, private investors have the right to land use (not ownership) on the basis of payment.

⁶⁶ FDRE Constitution, Article 10. The remaining four fundamental principles of the Constitution are Sovereignty of the People (Article 8), Supremacy of the Constitution (Article 9), Separation of State and Religion (Article 11), and Conduct and Accountability of Government (Article 12).

Article 41 enshrines a set of economic, social, and cultural rights, including the right of Ethiopian farmers and pastoralists to “to *receive fair prices for their products*, that would lead to improvement in their conditions of life and to enable them to obtain an equitable share of the national wealth commensurate with their contribution”⁶⁷ [emphasis added]. Article 42 stipulates *labour rights* including the right to collective bargaining, right to strike, right of women to equal pay for equal work, and the right to a healthy and safe work environment. Article 43 embodies the *right to development*. This includes the right of nationals to participate in national development and “to be consulted with respect to policies and projects affecting their community.” The State is duty bound to protect and ensure sustainable development in “all international agreements and relations concluded, established or conducted.”⁶⁸ The right to a clean and healthy environment is enshrined under Article 44.

There are also relevant provisions in Chapter 10 on “national policy principles and objectives.” As policy principles, these provisions are not as such justiciable before courts of law but guide the Government in implementing the Constitution and other subsidiary laws and policies.⁶⁹ An example that stands out for the purpose of BHR is Article 92, which outlines *environmental objectives*. Notably, the provision stipulates that the design and implementation of development programmes and projects “shall not damage or destroy the environment.”⁷⁰ It reiterates the right of people to “full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.”⁷¹ It also imposes upon the Government and citizens the “duty to protect the environment.”

The *second aspect* in the FDRE Constitution’s promise to BHR lies in *its incorporation of treaties ratified by Ethiopia into domestic law*. According to Article 9(4), international agreements ratified by Ethiopia are “part and parcel of the law of the land.” Moreover, human rights provisions of the Constitution are to be interpreted “in a manner conforming to” treaties adopted by Ethiopia.⁷² The cumulative reading of these two provisions (Articles 9(4) and 13(2)) means that all treaties ratified by Ethiopia (under the UN, African

⁶⁷ FDRE Constitution, Article 41 (8).

⁶⁸ *Id.*, Article 42 (3).

⁶⁹ *Id.*, Article 85 (1).

⁷⁰ *Id.*, Article 92 (2).

⁷¹ *Id.*, Article 92 (3).

⁷² *Id.*, Article 13 (2).

Union, or other frameworks) are considered as part of domestic law. This includes not only human rights instruments but also treaties related to business and the economy such as bilateral investment treaties. It also means that human rights principles enshrined in instruments adopted by Ethiopia hold higher interpretive authority.

Ethiopia already subscribes to the minimum set of human rights that the UNGPs for instance under Paragraph 12 require businesses to respect. These are the international bill of human rights (consisting of the UDHR, ICCPR, and ICESCR) and ILO's Declaration on Fundamental Principles and Rights at Work. Ethiopia acceded to both ICCPR and ICESCR in 1993.⁷³ Ethiopia being a member of the UN and ILO respectively, the UDHR and the ILO Declaration apply as well. Moreover, Ethiopia has ratified a number of other conventions, including the African Charter on Human and Peoples' Rights, which as discussed earlier enshrines norms (such as duties) that serve as a strong normative basis for BHR.

At this point, it is important to note that a strong constitutional basis for human rights is an essential aspect, and yet only a piece of the puzzle in a BHR framework. This is because as discussed at the beginning of this article, the nature of the 'obligations' of businesses towards human rights remains a critical question to answer. It remains a question in international human rights law, even in the existence of a number of binding instruments. That is why in the current non-legally binding international BHR framework, the term 'responsibilities' is preferred to conceptualize the status of the norm.

In the context of the Ethiopian Constitution, the question leads to discussion of the apparent gap this article identifies. The above strengths of the Constitution (more or less) fall within two of the three pillars the UNGPs framework: substantive provisions on the State duty to protect (and ensure respect) and provisions on access to justice (remedies). The *business responsibility to respect human rights* is (arguably) not explicitly stated in the Constitution. On this critical question, it is possible to read potentially relevant provisions in two approaches.

The *first approach* starts with Article 9(2), which provides: "All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey

⁷³ For complete overview of Ethiopia's ratification of UN treaties, see UN Treaty Body Database at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN, last accessed August 2023.

it.” This is a provision from the supremacy clause of the Constitution. Based on this provision, one line of argument interprets the term “other associations” to include business organizations and corporations and thus holds that the Constitution requires companies to respect all relevant provisions related to human rights, environmental, and social issues. According to this interpretation, the Constitution provides a normative basis even for mandatory human rights due diligence.⁷⁴

A *second approach* of reading the Constitution (to which this article contributes) argues that at least as far as the human rights are concerned the Constitution enshrines the conventional approach of centering the State. Article 13(2) which defines the scope of application of the third chapter on fundamental rights and freedoms states: “All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter.” Accordingly, it is the State and its agencies that have the duty to respect and ensure respect of the human rights enshrined in the Constitution. This provision defines the scope of obligations for human rights in the Constitution.

The only explicit exception when private actors come into the picture is under Article 36(2) on the rights of children. The provision states: “In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child.” The reference to “private welfare institutions” departs from Article 13(2) because it imposes an obligation on non-state actors (in addition to State institutions). One could still argue that this is far from implicating businesses proper, which would reaffirm the second line of interpretation that companies are outside the intent and ambit of the Constitution’s allocation of human rights obligations.

A closer reading of a few other provisions supports the second stream of thought. For instance, the other provision with explicit mention of private actors is Article 40(6), which stipulates the right of private investors to the use of land on the basis of payment of fees. But again this is about the right not the obligation of private investors. Furthermore, in the “environmental rights” clause, Article 44(2) states: “All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have

⁷⁴ See Yehualashet Tamiru Tegegn (2022), “The missed opportunity for effective CSR regulation in Ethiopia,” Addis Fortune, <https://addisfortune.news/the-missed-opportunity-for-effective-csr-regulation-in-ethiopia/>, last accessed March 2023. The discussion is in the context of CSR but the argument can hold for BHR as well.

the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.”

An issue arises with regard to those displaced as a result of private sector investment. Although one can find the answer in relevant subsidiary laws including treaties ratified by Ethiopia,⁷⁵ the Constitution is silent on this. Moreover, in the tenth chapter that embodies national policy principles and objectives, Article 89(4) provides: “Government and citizens shall have the duty to protect the environment.” The duty to protect the environment is upon the Government and citizens, while private actors are, once more, not expressly mentioned.

6. Business and Human Rights in Various Ethiopian Laws

6.1 The Commercial Code of 2021

The 1960 Commercial Code of Ethiopia was revised in 2021.⁷⁶ The previous Commercial Code came to effect as part of massive codification of laws to aid Emperor Haile Selassie’s modernization project. After sixty years, its revision comes as part of a reform of several legislations following political changes in 2018. The Preamble of the Code recognizes the many changes that transpired in the area of commerce over the last six decades and the gaps felt in the Code especially after Ethiopia started to pursue “market-led economic system” in early 1990s.⁷⁷ One of the justifications for the revision is the need to “strike the right balance between the interests of investors, traders and other stakeholders that are directly affected by [the law].” Balancing such interests is considered necessary “to bolster commerce and improve the standard of living of citizens.”⁷⁸

Relevant to the discussion at hand, there is no explicit mention of human rights or any other reference to corporate human rights responsibility. The

⁷⁵ For instance, Article 10(1) of the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention) – which Ethiopia acceded to in 2020 – provides that “States Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors.”

⁷⁶ For background information about the several attempts of revising the Code, see Bantayehu Demlie (2016), “Private Sector’s Concerns for Ethiopia’s Commercial Code Revision,” *Ethiopian Business Review*, 4th Year, No. 38. (April 16 2016 – May 15 2016) Available at: <https://ethiopianbusinessreview.net/private-sectors-concerns-for-ethiopias-commercial-code-revsion/>. Last accessed August 2023.

⁷⁷ Commercial Code of Ethiopia, (Proclamation 1243/2021), Preamble Para 2.

⁷⁸ *Id.*, Preamble Para 3.

closest notion is what one may arguably consider as the Code's introduction of a *voluntary CSR* regime. In relation to management of companies, the Code provides for the establishment of a Board of Directors as one of the actors. Shareholders elect between three and thirteen directors to the Board.⁷⁹ One of the duties of directors is the duty of loyalty as enshrined under Article 316. The provision states: "Directors shall act in the way they consider, in good faith, would be most likely to promote the success of the company;" and "they shall act for the benefit of shareholders of the company as a whole." In discharging this duty, "a director shall have regard to the long-term interests of the company, the interests of the company's employees, the interest of company's creditors and *the impact of the company's operations on the community and the environment.*"⁸⁰

Although this is a significant move compared to the previous Code, it is interpreted as reflective of a shareholder primacy approach that renders social and environmental considerations merely discretionary.⁸¹ As the two sub-articles of Article 316 are linked and are to be read together, directors make those considerations (including regard to impact on community and the environment) in order to discharge their duty of loyalty and in the interest of the success of the company and for the benefit of shareholders.

When it comes to BHR, Article 316 is open to interpretation and in fact could be the starting point, particularly if read together with other provisions in the Code or even other laws such as the human rights provisions of the Constitution. Article 315 of the Code for instance provides that directors shall be responsible for exercising duties imposed on them "by law, memorandum of association, and resolutions of general meetings of shareholders." Duties of directors may thus arise from laws other than the Code such as human rights law. In addition, Article 330 reserves the right of third parties "to bring legal action for damages where they have been personally injured directly owing to the fault or fraud of the directors." Hence, although there is no explicit human rights language, the impact of a company's operations on the community and the environment may manifest as an impact on human rights.

For example, polluting the environment in the locality of a certain community may affect access to clean water and food and thus impair the health of community members. In this case, directors even acting within the bounds of their duty of loyalty may make the case that it is not in the long-term interest of the company to infringe upon human rights. Or, it may be

⁷⁹ Id., Article 296

⁸⁰ Id., Article 316 (2) [emphasis added].

⁸¹ See for example, Yehualashet Tamiru Tegegn, *supra* note 74.

argued (for example based on the supremacy clause of the Constitution) that human rights are not discretionary and thus the voluntary component of Article 316 becomes mandatory when the impacts of company operations manifest as human rights harms. Overall, the apparent silence of the Code on human rights may rather provide a room for a dynamic BHR framework that ultimately depends on two important factors: (i) how directors integrate human rights in their management and (ii) the nature of duties arising from other existing or future laws.

6.2 Investment law

Investment law is another area of Ethiopian law that underwent recent overhaul. The revised laws include the *Investment Proclamation No. 1180/2020* (the primary legislation enacted by the Parliament) and the accompanying regulations: *Investment Regulation No. 474/2020* and *Investment Incentives Regulation No. 517/2022*. The Investment Proclamation and the two regulations amend previous legislations. The Investment Proclamation applies to “all investments carried out in Ethiopia except to investments in the prospecting, exploration and development of minerals and petroleum.”⁸² Article 5 of the Proclamation lists out Ethiopia’s investment objectives. The overall objective is “to improve the living standard of the peoples of Ethiopia by realizing a rapid, inclusive and sustainable economic and social development.” One of the Proclamation’s objectives is to encourage “*socially and environmentally responsible investments*.”⁸³

As for BHR, there is no explicit reference to human rights. However, Article 54 –which imposes on all investors “a duty to observe other laws and social and environmental sustainability values”– could potentially be relevant to BHR. Sub-article 1 states: “All investors shall carry out their investment activities in compliance with the laws of the country.” The second sub-provision reads: “All investors shall give due regard to social and environmental sustainability values including environmental protection standards and social inclusion objectives in carrying out their investment projects.” This provision has already been interpreted as an imposition of *mandatory CSR* on investors.⁸⁴

⁸² Investment Proclamation No. 1180/2020, Article 3.

⁸³ *Id.*, Article 3 (8).

⁸⁴ See, for example, Bereket Alemayehu Hagos (2022), “Major features of Ethiopia’s new investment law: an appraisal of their policy implications,” *Transnational Corporations Journal*, Vol. 29, No. 1, p 138.

Under Article 13(1)(f) of the Proclamation, one of the grounds for suspension of investment permit is violating provisions of the Proclamation, or regulations or directives issued to implement the Proclamation, or other pertinent laws. The wording of Article 54 (the use of “shall”) coupled with sanctions for violating any provisions of the Proclamation indeed supports the interpretation about the “mandatory” nature of CSR. To the extent mandatory CSR overlaps with BHR, Article 54 remains relevant. However, the duty to respect other laws is even more directly relevant since it implies laws such as the Constitution, human rights-related legislations and even international human rights treaties ratified by Ethiopia. This is obviously an argument based on interpretation, and the absence of direct reference adversely affects its practical implementation.

Another important theme in Ethiopia’s investment law regime relates to *bilateral investment treaties* (BITs). According to the United Nations Conference on Trade and Development (UNCTAD) database, there are 22 BITs currently in effect between Ethiopia and other countries.⁸⁵ There are also BITs that are either terminated or signed but awaiting ratification to be binding. As a general observation, some of the most recent BITs (which are signed but not ratified) have a CSR clause with only few of them making specific reference to human rights while most of the BITs currently in force do not employ language on social or human rights responsibility.

The Brazil-Ethiopia BIT (signed in 2018 but not yet in force) has a dedicated clause on CSR with specific elements that include human rights as one of them. Article 14 makes reference to the OECD Guidelines as may be applicable and requires investors to “respect the *internationally recognized human rights* of those involved in the investors’ activities”⁸⁶ and “refrain from seeking or accepting exemptions that are not established in the legal or regulatory framework relating to *human rights*, environment, health, security, work, tax system, financial incentives, or other issues.”⁸⁷

The BIT between Ethiopia and Qatar (signed in 2017 but not yet in force) does not explicitly mention human rights. However, it refers to “sustainable development” (Preamble paragraphs 1 and 2), “corporate responsibilities and rights” (Preamble paragraph 3), and includes an obligation for investors to comply with the “labor and environment laws and regulations” of the Host

⁸⁵ See United Nations Conference on Trade and Development (UNCTAD) database, <https://investmentpolicy.unctad.org/international-investment-agreements/countries/67/ethiopia>, last accessed August 2023.

⁸⁶ Brazil-Ethiopia BIT (2018), Article 14 (2) (b) [Emphasis added].

⁸⁷ Id., Article 14 (2) (e) [Emphasis added].

State (Article 14). Similarly, the BIT between the Belgium-Luxembourg Economic Union (BLEU) and Ethiopia (signed in 2006, yet not in force) does not have explicit reference to human rights but employs detailed provisions on labour and environmental standards.⁸⁸

Among the BITs currently in force, the BITs with UAE (effective since 2021) and Finland (in force from 2007) are the only ones that explicitly refer to labour and environmental standards (albeit no express language on human rights). All other BITs currently in force do not make any reference to human rights, sustainable development, labour or environmental standards.⁸⁹

6.3 Labour law

Labour law is another important area of law where *business* and *human rights* intersect. Ethiopia's labour law regime consists of relevant provisions of the Constitution, treaties ratified by Ethiopia including ILO conventions, the *Labour Proclamation No.1156/2019*, and the *Overseas Employment Proclamation* of 2016 (with its amendments in 2021). As discussed earlier, the Ethiopian Constitution enshrines directly applicable provisions on issues such as the prohibition of slavery or servitude and of forced or compulsory labour (Article 18), and labour rights (Article 42).

Furthermore, Article 35 on the *rights of women* guarantees –among others– “the right to maternity leave with full pay” and “the right to equality in employment, promotion, pay, and the transfer of pension entitlements.” Article 36 on the rights of children stipulates the right of every child not to “be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being.” In addition to generic human rights treaties, Ethiopia is a party to 9 of the 11 ILO core conventions on labour standards. The two fundamental conventions Ethiopia has not yet ratified are *the 2014 Protocol to the 1930 Forced Labour Convention* and *the 2006 Promotional Framework for Occupational Safety and Health Convention (No. 187)*.⁹⁰

⁸⁸ BLEU (Belgium-Luxembourg Economic Union) - Ethiopia BIT (2006), Article 1 (5) & (6), Article 5 & Article 6.

⁸⁹ See Ethiopia's BITs with (in reverse chronological order of year of signature): Sweden, Egypt, Austria, Libya, Germany, Israel, Islamic Republic of Iran, France, the Netherlands, Algeria, Denmark, Tunisia, Turkey, Sudan, Yemen, Malaysia, Switzerland, China, Kuwait, Italy.

⁹⁰ See the ratification status of the core ILO conventions at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:::NO:10011:P10011>

In domestic subsidiary legislation, the most important piece of law is the *Labour Proclamation 1156/2019*, which has substituted the previous proclamation enacted in 2003. The new labour law has, *inter alia*, changed the working age from 14 to 15 (Article 89(2)). The law does not set a minimum wage; but paves the way for the Council of Ministers to set up a Wage Board. Composed of representatives from the Government, employees, trade unions, and other stakeholders, the Board “will periodically revise minimum wages based on studies which take into account the country’s economic development, labour market and other considerations.”⁹¹ The Proclamation also stipulates specific provisions related to the working conditions of women (Article 87), young workers aged 15-18 (Article 89), employer obligations to safeguard occupational safety and health (Article 92), and the right of workers to strike and the right of employers to lock-out (Article 158).⁹²

To reframe the discussion in light of BHR, the labor law’s relevance is inherently direct as it mainly applies to private employers and attempts to set minimum standards of labour rights in labour relations.⁹³ The regulation of private employment agencies in the labour law regime is another example where private actors are involved in labour relations. Article 174 of the Labour Proclamation stipulates the legal basis for private employment agencies to participate in the provision of local employment service. *The Overseas Employment Proclamation No. 923/2016* and its amendment *Proclamation No. 1246/2021* apply for overseas employment.

According to Article 3 of Proclamation No. 923/2016, the law applies on employment relations facilitated by either public or private employment agencies or through direct employment. Failure by employment agencies or their members to provide remedies for complaints related to violations of “the *rights, safety and dignity* of workers” is one of the grounds for refusing to issue a license to such agency under Article 23 or for suspending license of

_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F last accessed August 2023.

⁹¹ Labour Proclamation 1156/2019, Article 55(2).

⁹² According to Article 158(3) *cum* Article 137(2) of the Labor Proclamation: The right of workers to strike and the right of employers to lock-out do not apply to “essential public service undertakings” – defined as services “which shall be rendered without interruption to the general public and are the following undertakings.” These include: air transport services; electric power supply; water supply and city cleaning and sanitation services; urban light rail transport service; hospitals, clinics, dispensaries and pharmacies; fire brigade services; and telecommunication services.

⁹³ See Article 3 of the Labour Proclamation for its scope of applications.

the agency under Article 42 of the Overseas Employment Proclamation No. 923/2016.

The term “human rights” is not used in the Overseas Employment Law (and that is the case for the Labour Proclamation as well). One may thus contend that the “rights” in this context may have a narrow connotation to mean rights arising from the employment contract only. Despite this potential ambiguity, the Overseas Employment Law’s stipulation of *direct responsibility of private actors* to remedy rights violations and sanctions (such as suspension of licenses) for failing to do so is an important step from the perspective of BHR.

6.4 Other relevant laws

Further analysis can be made across a range of other substantive and procedural laws, including Regional State legislations and customary laws compatible with the provisions of the Federal Constitution. In the *mining* sector, the main legislation is the *Mining Operations Proclamation No. 678/2010*, which has to be read together with amendments from 2013 and 2020, as well as the relevant regulations.⁹⁴ The law applies to all mining operations in Ethiopia.⁹⁵ Article 34 of the Proclamation requires mining license holders to conduct mining operations “in accordance with appropriate laws” and to ensure the “health and safety of agents, employees and other persons.” One of the grounds of suspending and revoking mining licenses is breach of the terms of an approved environmental impact assessment, and safety and health standards.⁹⁶ Article 60 of the Proclamation requires the approval of an environmental impact assessment prior to awarding mineral licenses, except for reconnaissance, retention and artisanal mining.

In the realm of *environmental law*, an important piece of legislation is the *Environmental Impact Assessment Proclamation No. 299/2002*. The law requires the responsible government authority to “make any environmental impact study report accessible to the public and solicit comments,” and to “ensure that the comments made by the public and in particular by the communities likely to be affected by the implementation of a project are incorporated into the environmental impact study report as well as in its evaluation.”⁹⁷

⁹⁴ These are the Mining Operations (amendment) Proclamation No. 816/2013, the Mining Operations (amendment) Proclamation No. 1213/2020 and the Mining Operations Council of Ministers Regulation No. 423/2018.

⁹⁵ See Mining Operations Proclamation No. 678/2010, Article 3.

⁹⁶ See *Id.*, Article 44.

⁹⁷ Environmental Impact Assessment Proclamation No. 299/2002, Article 15.

Laws, procedures, and mechanisms related to access to justice are also relevant. The *Criminal Code of 2004* (which replaces the Penal Code of 1957) introduces the notion of *corporate criminal liability* into the Ethiopian criminal justice system. Article 34 of the Code provides that juridical persons (except State bodies) may be liable as principal criminal, instigator or accomplice if the law expressly provides so. Furthermore, corporate criminal liability arises “where one of its officials or employees commits a crime” and “in connection with the activity of the juridical person with the intent of promoting its interest by an unlawful means or by violating its legal duty or by unduly using the juridical person as a means.”⁹⁸

Penal provisions for corporate entities are further stipulated in few specific laws. The *Corruption Crimes Proclamation No. 881/2015* provides for the criminal liability of juridical persons (Article 5) and penalties (Article 25 (6)). The *Computer Crimes Proclamation No. 958/2016* specifies penalties imposed on a juridical person under Article 20. The *Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020* stipulates the punishment of a juridical person –including fine, dissolution of the juridical person or confiscation of its property, and the individual liability of employees or officials of the juridical person (Article 17). Penal provisions are also included in tax laws. The *Value Added Tax Proclamation No. 285/2002* (as amended by Proclamation No. 1157/2019) specifies tax offences committed by entities (Article 56).

Civil liability is another avenue (particularly in view of the limited scope of criminal liability arising from its requirements of higher standard of proof and express provision of the law). Both substantive and procedural codes and laws are pertinent, including tort law and civil procedure law. For instance, civil procedure law determines the question of whether or not public interest litigation may be lodged against corporations. Article 33(2) of the *Civil Procedure Code of 1965* requires one to have “vested interest” to be a plaintiff in a civil case. The Constitutional provision on access to justice (Article 37) has been interpreted to “relax” the requirement in the Civil Procedure Code but remains debatable.⁹⁹ The only area where the law explicitly introduces public interest litigation is environmental law under Article 11 of the *Pollution Control Proclamation No. 300/2002*.

⁹⁸ Criminal Code of Ethiopia (2004), Article 34(1).

⁹⁹ Yenehun Birlie (2017). “Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features,” *Mizan Law Review*, Vol. 11, No. 2, p 320.

7. Business and Human Rights in Practice

Ethiopia is considered as “one of the last remaining unindustrialized frontiers.”¹⁰⁰ For over a decade until the recent two-year armed conflict (2020-2022),¹⁰¹ Ethiopia’s economy witnessed fast growth.¹⁰² An important face of this phenomenon is the inflow of foreign companies –attributable to factors such as government incentives to attract foreign direct investment (FDI), large population (second in Africa), and natural resources.¹⁰³

Ethiopia’s economic growth is largely state-driven. However, in recent years hitherto government-owned sectors are opening up for private and foreign investment. As investment by the private sector (both national and multinational) expands, regulatory issues that may not be necessarily resolved by the existing framework are already surfacing. Multiple studies have flagged the social, environmental, and human rights impacts of business activity in sectors such as horticulture, commercial agribusiness, textile, and mining –to name a few. A discussion of three examples follows.

7.1 Textile and garment: *the case of Hawassa Industrial Park*

Ethiopia’s garment and textile sector is one of the sectors witnessing growing scrutiny from the perspective of BHR. A 2019 report by New York University (NYU) Stern Center for Business and Human Rights outlines the challenges in balancing between the government’s ambition of establishing Ethiopia as the latest global apparel and textile hub (and thereby achieve goals such as increased employment and foreign investment) on the one hand *and* the conditions for garment workers such as being paid the lowest wage anywhere

¹⁰⁰ Marie Durane (2015). “Made in Ethiopia: The New Norm in the Garment Industry,” *Sustainable Development Law & Policy*, Vol. 15, p. 24.

¹⁰¹ The full range of human and economic costs of the recent conflict in Ethiopia has yet to be comprehensively investigated and disclosed. Some estimates are emerging. In June 2023, a government-led loss and damage assessment for the first year of the two-year conflict estimates an economic loss of USD 28.7 billion. See Metasebia Teshome, “Ethiopia still nursing 28.7 billion USD in conflict wounds, study shows,” *Capital (19 June 2023)*, <https://www.capitalethiopia.com/2023/06/19/ethiopia-still-nursing-28-7-billion-usd-in-conflict-wounds-study-shows/>, last accessed July 2023.

¹⁰² See for example, Deloitte & Touche (2014), “Ethiopia: A Growth Miracle,” <https://www2.deloitte.com/za/en/pages/strategy/articles/ethiopia-growth-miracle.html>, last accessed July 2023.

¹⁰³ *Ibid.*

in the world (with all its wider implications) on the other hand.¹⁰⁴ The NYU Stern report focuses on the Hawassa Industrial Park as a case study. The Hawassa Industrial Park is located in Hawassa, capital of the Sidama Regional State. By the time NYU conducted the study, the park employed about 25,000 workers (a number which can double when the park operates in full capacity).¹⁰⁵ The park is one of at least ten such parks in other locations across the country.

Globally known brands in the garment sector have opened factories in Hawassa Industrial Park. They shifted focus to Ethiopia and other African countries for a number of reasons including rising costs in Asia and following growing scrutiny after the Rana Plaza factory collapse in 2013 in Bangladesh (considered to be “the deadliest garment industry disaster in history”¹⁰⁶). The Ethiopian government promised widely available supply of raw materials, low cost labor, and low cost energy.¹⁰⁷ Most of the garment workers in Hawassa Industrial Park are young women from low-income rural families and receive the lowest wage in the global garment supply chain at USD 26 a month.¹⁰⁸ This is compared to for instance USD 95 in Bangladesh and Myanmar, USD 180 in Vietnam, USD 207 in Kenya, USD 326 in China, and USD 340 in Turkey.¹⁰⁹

The NYU Stern report finds that the wage being non-livable coupled with other local and contextual factors (including conflict and insecurity, cultural issues) results in high level of “worker disillusionment and attrition”¹¹⁰ with implications on expected productivity. The situation led to an outcome that in the end is undesirable to workers, manufacturers, and the government. From the perspective of manufacturers, for instance, “Ethiopian labor turned out to be considerably more costly than the government had initially advertised.”¹¹¹

¹⁰⁴ Paul M. Barrett and Dorothée Baumann-Pauly (2019), “Made in Ethiopia: Challenges in the Garment Industry’s New Frontier” (New York University Stern Center for Business and Human Rights) https://issuu.com/nyusterncenterforbusinessandhumanri/docs/nyu_ethiopia_final_online?e=31640827/69644612, last accessed March 2023.

¹⁰⁵ *Ibid.*, p. 3.

¹⁰⁶ Business and Human Rights Resource Centre (2018), “The deadliest garment industry disaster in history, five years later,” <https://www.business-humanrights.org/en/latest-news/the-deadliest-garment-industry-disaster-in-history-five-years-later/>, last accessed July 2023.

¹⁰⁷ Paul M. Barrett and Dorothée Baumann-Pauly, *supra* note 104, p.3.

¹⁰⁸ *Ibid.*, p.1.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Id.*, p. 13.

The government also finds the garment sector at “crossroads” –between what the NYU Stern report observes as the “Bangladesh example” and the “China example.” Bangladesh despite being a garment hub remains unable to develop a supply chain that substitutes imports, creates many jobs, and enhances quality of jobs for workers. China’s apparel and textile sector served as springboard to transition to diversified manufacturing. Ethiopia can follow the China path and match it with human rights standards, the report concludes.¹¹²

Based on findings from the NYU Stern study and other assessments, a recent *policy brief* by ActionAid Ethiopia (May 2023) argues that Ethiopia’s economic growth and investment should not come at the cost of workers’ rights. In addition to low wages, the *policy brief* documents further instances of wage deductions as disciplinary measures, discrimination towards pregnant women, routine verbal abuses by managers, uncompensated overtime labour, and so on. The *policy brief* further observes that “in several sectors including in the production of hand-woven textiles where children, mostly boys as young as seven years old and some of them victims of trafficking, are working under conditions of forced labour.”¹¹³

One of the recommendations from observations on recent developments in the textile and garment sector is the establishment of a minimum wage system. The Ethiopian Human Rights Commission took up the issue and called for prioritizing the establishment of the Wage Board as envisaged under the Labour Proclamation.¹¹⁴ The Commission notes that “while minimum wage is not a panacea to all the problems that workers are facing in Ethiopia, it is a crucial step that can ensure decent living for the workers and their families, in particular, if it is coupled with other necessary socio-economic measures.”¹¹⁵ The Commission frames minimum wage as a way to realize several other rights such as the right an adequate standard of living, the right to work, and the protection of the family.¹¹⁶

¹¹² Id., p. 2

¹¹³ ActionAid Ethiopia (May 2023), “People before Profit: Why Urgent Action is needed to hold Businesses Accountable for Respecting Human Rights (A Policy Brief),” <https://ethiopia.actionaid.org/ethiopia-policy-brief>, last accessed July 2023.

¹¹⁴ Ethiopian Human Rights Commission (April 2022), “Call to Prioritize the Establishment of a Minimum Wage System” (Public Statement), <https://ehrc.org/call-to-prioritize-the-establishment-of-a-minimum-wage-system/>.

¹¹⁵ Ethiopian Human Rights Commission, *ibid.*

¹¹⁶ *Ibid*

For investors in the sector, on the other hand, raising minimum wage should be accompanied by addressing challenges in the textile sector particularly political unrest and conflict that remains unabated particularly since 2018. A 2020 case study of French company Decathlon's partnership model in Ethiopia observes: In an industry where wages are "the only major flexible element" –and in a context where political uncertainty and conflict push companies to "a point where they question the wisdom of continuing to source from Ethiopia at all"¹¹⁷– wage levels can indeed be the decisive factor. The case study summarizes the dilemma: "[w]hile public pressure from a growing community of business and human rights advocates may encourage fashion brands to assess their human rights impact, it may also deter them from considering Ethiopia as a sourcing destination."¹¹⁸

7.2 Mining: the case of Lega Dembi goldmine

According to the Ministry of Mines, mining is expected to be part of Ethiopia's development ambitions through –*inter alia*– encouraging private sector investment.¹¹⁹ Considered as "virtually untapped, diverse and vast," Ethiopia's mineral resources include gold, tantalum, potash, gemstones, iron ore and various industrial, energy and construction minerals.¹²⁰ The mining sector's current contribution to the economy remains marginal, accounting only for 1% of the total gross domestic product (GDP) despite the potential and the goal to increase its contribution to the GDP to 10% by 2025.¹²¹ According to the latest available report of the Ethiopia Extractive Industries Transparency Initiative (EITI), Ethiopia's mining exports are dominated by gold.¹²² Gold mining is also the sector where concerns relevant to the discussion at hand have already been raised.

¹¹⁷ Dorothee Baumann-Pauly, Lorenzo Massa, & Natasja Sheriff (2020). "Manufacturing in Ethiopia: Decathlon's Partnership Model (Case Study)," p. 8, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3724583, last accessed August 2023.

¹¹⁸ Ibid

¹¹⁹ Ministry of Mines of Ethiopia, Overview of Ethiopia's mining sector, <http://www.mom.gov.et/index.php/mining/learn-more-about-ethiopias-mining-sector/>, last accessed August 2023.

¹²⁰ Ibid

¹²¹ Ibid

¹²² See report of the Ethiopia Extractive Industries Transparency Initiative (EITI) (published August 2019), https://eiti.org/sites/default/files/attachments/ethiopia_eiti_report_2016-17.pdf, last accessed August 2023.

In one particular case, various reports by media and rights groups indicated that residents near Lega Dembi gold mining site in Guji zone of Oromia regional state reported health impacts such as disabilities in newborn children.¹²³ Following protests, the Government suspended the mining license of the MIDROC Investment Group in May 2018. After three years of halt, MIDROC resumed operations in March 2021. Concerns remain on whether the necessary steps have been followed to ensure that there are no more health risks.¹²⁴ A report by the Rift Valley Institute indicates that the government has also transferred one of MIDROC's mines to a newly established local mining company in an attempt to "co-opt local elites and businessmen."¹²⁵ The report states: "[t]he socio-economic and environmental impacts of newly established companies such as GODU are not yet clear due to a lack of transparent environmental impact assessments and the relatively recent commencement of mineral extraction."¹²⁶

The case exemplifies the human rights dimensions of environmental and health effects of corporate activities, not limited to the site under consideration but manifesting in the extractive sector more broadly.¹²⁷ The case also evokes underlying governance issues such as transparency. In this connection, it is worth highlighting Ethiopia's membership and participation in the Extractive Industries Transparency Initiative (EITI).

Established in 2003, the EITI is a multi-stakeholder initiative to strengthen transparency and accountability in the extractive sector (mining, oil and gas). Its secretariat is based in the Norwegian capital, Oslo. By committing to EITI standard, countries agree "to disclose information along the extractive

¹²³ See for instance, Human Rights Watch (April 2023), "Ethiopia: Companies Long Ignored Gold Mine Pollution," <https://www.hrw.org/news/2023/04/26/ethiopia-companies-long-ignored-gold-mine-pollution#:~:text=People%20living%20near%20Lega%20Dembi,%2C%20inhuman%2C%20and%20degrading%20treatment>, last accessed August 2023. See also BBC Amharic (11 December 2017), "አዲ ሸኪሶ-ወርቅ 'መርዝ' የሆነባት ምድር" <https://www.bbc.com/amharic/news-42266025>, last accessed August 2023.

¹²⁴ Asebe Regassa and Damena Abebe (2023). "Gold Glitters, Grievances Grow: Contestation and Uncertainty around MIDROC and GODU Gold Mines in Guji, Oromia," (Rift Valley Institute/Ethiopia Peace Research Facility). Available at: https://riftvalley.net/sites/default/files/publication-documents/RVI%202023.06.23%20Gold%20Glitters%2C%20Grievances%20Grow_FINAL_compressed.pdf, last accessed August 2023.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ ActionAid Ethiopia policy brief, *supra* note 113.

industry value chain –from how extraction rights are awarded, to how revenues make their way through government and how they benefit the public.”¹²⁸ In addition to government commitment, countries have to ensure a multi-stakeholder engagement such as companies and civil society.

Ethiopia’s EITI membership and participation presents a mixed picture. The EITI database shows that Ethiopia is currently “suspended for missing deadline.” Ethiopia was admitted to the EITI in March 2014. The latest available report is for 2018/2019, based on data from 2017.¹²⁹ Ethiopia was also suspended between September 2017 and January 2018, for not meeting the publication deadline of the report for 2014/2015. In fact, the issue with Ethiopia’s EITI membership seems to go beyond missing deadlines.

There were some critical voices that opposed the admission of Ethiopia in the EITI in the first place, the main concern relating to the space for civil society in the context of the former controversial Charities and Societies Law from 2009.¹³⁰ For the same reason, the EITI Board had declined Ethiopia’s earlier application for membership in 2010. The law was revised after a decade in 2019 as “Organizations of Civil Societies Proclamation No. 1113/2019.” After admitting Ethiopia as a member, the EITI Board in its validation decision observed that Ethiopia made “meaningful progress” in implementing the EITI Standard, and stated that “[t]he strong country ownership on the part of the government has not been matched by an equivalent engagement from industry or civil society.”¹³¹

7.3 Technology and human rights: the case of Meta

In December 2022, two Ethiopians and a Kenyan rights group filed a lawsuit against Meta (formerly Facebook) before a Kenyan court alleging that the company’s content moderation policies helped fuel the conflict in the northern Ethiopian region of Tigray.¹³² Meta’s sub-Saharan Africa operations are based in Nairobi. In April 2023, the court paved the way for petitioners to serve

¹²⁸ See Extractive Industries Transparency Initiative (EITI) Standard, <https://eiti.org/collections/eiti-standard>, last accessed July 2023.

¹²⁹ See Ethiopia’s EITI report, *supra* note 122.

¹³⁰ Carey L. Biron (2014). “In Accepting Ethiopia, Transparency Group ‘Sacrifices Credibility’,” Available at: <https://www.globalissues.org/news/2014/03/20/18403> Last accessed July 2023.

¹³¹ See EITI Board decision, <https://eiti.org/board-decision/2019-21>, last accessed July 2023.

¹³² Annie Njanja (28 April 2023), “Kenyan court paves way for lawsuit alleging Facebook played role in fueling Ethiopia’s Tigray conflict, *Tech Crunch*, <https://twitter.com/TechCrunch/status/1652026672571465728>

Meta's headquarters in California after establishing that Meta does not have a physical presence in Nairobi with employees working only remotely. One of the petitioners alleges that his father was killed after violent viral Facebook posts which the social media platform failed to remove. The petitioners requested the court to render a decision that would "compel Meta to stop viral hate on Facebook, ramp up content review at the moderation hub in Kenya, and to create a USD 1.6 billion compensation fund."¹³³ This is a pending case and much may not be said at this stage.

The case highlights an important dimension of BHR involving technology (and social media platforms in particular). There were other instances of allegations of Facebook's role in fanning violence in Ethiopia and other conflict situations such as Myanmar, according to a testimony by a whistleblower before the U.S. Congress and several other reports.¹³⁴ In the case of Ethiopia, the company's Oversight Board in 2021 in its resolution to a case entitled "Alleged Crimes in Raya Kobo" recommended that Meta "commission an independent human rights due diligence assessment on how Facebook and Instagram have been used to spread hate speech and unverified rumors that heighten the risk of violence in Ethiopia."¹³⁵ In a November 2021 update, Meta recognized that Ethiopia is "an especially challenging environment" partly due to the many languages spoken, even if only less than 10% of the population uses Facebook.¹³⁶

Ethiopia's Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185/2020 imposes duties on social media service providers to "endeavor to suppress and prevent the dissemination of disinformation and hate speech" through their platforms.¹³⁷ In particular, it requires the providers to "act within twenty four hours to remove or take out of circulation disinformation or hate speech upon receiving notifications about such communication or post," and to put in place policies and procedures to

¹³³ Ibid.

¹³⁴ See for example npr (11 October 2021), "Facebook is under new scrutiny for its role in Ethiopia's conflict," <https://www.npr.org/2021/10/11/1045084676/facebook-is-under-new-scrutiny-for-its-role-in-ethiopias-conflict> last accessed August 2023.

¹³⁵ Meta Oversight Board decision, 2021-014-FB-UA, "Alleged crimes in Raya Kobo," <https://www.oversightboard.com/decision/FB-MP4ZC4CC> last accessed August 2023.

¹³⁶ Meta (2021). "An Update on Our Longstanding Work to Protect People in Ethiopia," <https://about.fb.com/news/2021/11/update-on-ethiopia/> last accessed August 2023

¹³⁷ Article 8, Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185 /2020.

discharge their duties. The law's direct stipulation of duties for social media companies is highly relevant from BHR angle. Yet as the case of Meta before the Kenyan court shows, its implementation will be challenged by the extent to which the law can be enforced extraterritorially as major social media platforms do not have presence in Ethiopia.

8. Salient Issues pertaining to BHR in Ethiopia: Challenges and Opportunities

From the forgoing discussion of relevant laws and selected cases, it is possible to identify some salient BHR issues (highlighted below) that are particularly noteworthy in the Ethiopian context and which indicate challenges in developing and implementing BHR standards.

8.1 Business and human rights in conflict

Conflict is a recurring theme in almost all of the cases highlighted above. Since conflict transforms the context for human rights, it is important to understand the relationship between business and conflict in contemporary Ethiopia. While the nexus between the two is complex, at least two dimensions deserve consideration. The *first aspect* is the impact of conflict on businesses and the conditions for their compliance with human rights standards. Continuous political unrest and conflict in Ethiopia since around 2016 has undeniably complicated the environment for businesses. In addition to costs and destruction related to generalized violence, some firms (including foreign investors) were either specifically targeted or felt the pressure to meet expectations to adjust their hiring practices in line with local autonomy demands.

The NYU Stern study, for example, documents how the Sidama people's demands for a regional statehood status was also accompanied by demands by a local youth group that the factories in Hawassa Industrial Park employ only Sidama workers. As companies resisted, the confrontation distracted employees from other backgrounds and slowed productivity, according to the report.¹³⁸ To cite another example, some estimates are also starting to reveal the impacts of the two-year armed conflict in northern Ethiopia. For instance, a *research brief* (2022) by the Center for Private International Enterprise (CIPE) about the war's impact on micro, small and medium-sized enterprises

¹³⁸ Paul M. Barrett and Dorothee Baumann-Pauly, *supra* note 104, p. 15.

(MSMEs) and marginal economic actors (MEAs) estimates a total loss of about 600,000 industrial jobs (coupled with COVID-19).¹³⁹

The *other dimension* is the impact of businesses in local and national conflict dynamics. While the allegation about Meta's role could be a direct example, the role of the private sector in conflict may manifest in more subtle ways. In the Ethiopian context, private businesses are often expected to contribute to fundraising to support pro-government forces during conflict.¹⁴⁰ While businesses may loosely try to view their contribution as part of their social responsibilities, this can be problematic if it is not in harmony with conflict sensitivity and BHR standards. In fact, even well-intentioned social responsibility initiatives in the form of community development projects may be a source of conflict if, for instance, they are used to offset negative impacts on communities.¹⁴¹

Charity may not be a substitute for the business responsibility to respect human rights. A commentary on Principle 11 of UNGPs reads: "Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations."¹⁴²

According to a May 2020 *guidance note* by International Alert, in the context of Ethiopia, foreign direct investment may fuel community tension and conflict for reasons related to land acquisition, unmet expectations of economic benefits (including low wages), hiring practices, lack of adequate community consultation, and environmental impacts.¹⁴³ The note adds that

¹³⁹ Center for International Private Enterprise (CIPE) (December 2022), "The Impact of the War in Northern Ethiopia on Micro, Small and Medium-Sized Enterprises (MSMEs) and Marginal Economic Actors (MEAs)," (Research Brief). Available at: <https://www.cipe.org/resources/the-impact-of-the-war-in-northern-ethiopia-on-micro-small-and-medium-sized-enterprises-msmes-and-marginal-economic-actors-meas/>, last accessed August 2023.

¹⁴⁰ Lydia Tesfaye (2022). "The Business of Peace," *Ethiopian Business Review*, 11th Year, Dec 2022, No. 113, <https://ethiopianbusinessreview.net/the-business-of-peace/>, last accessed July 2023.

¹⁴¹ International Alert (May 2020). "Conflict-sensitive business practice for foreign direct investment in Ethiopia," (Guidance note), 2020, <https://www.agroberichtenbuitenland.nl/documenten/publicaties/2021/01/26/conflict-analysis-of-ethiopia-and-assessment-of-the-implications-for-fdi> last accessed July 2023.

¹⁴² UNGPs, *supra* note 26, Commentary on Principle 11.

¹⁴³ International Alert, *supra* note 141.

such sources of grievance may easily be politicized, and “foreign investments represent a considerable resource to the government” thereby becoming “targets for those seeking to leverage and highlight their political agenda.”¹⁴⁴

8.2 The space for independent media and civil society

Another feature of the BHR practice in Ethiopia relates to the hitherto limited space for independent institutions such as media and civil society. Alongside the active involvement of businesses themselves, civil society and media play a critical role in the development and effective implementation of BHR standards. This is because BHR is ultimately about promoting governance values such as accountability and transparency. In practice, the engagement of such actors is limited.¹⁴⁵ The limited participation of non-state stakeholders in Ethiopia’s EITI membership discussed above is one example.

Another example is the limited involvement of Ethiopian businesses and other stakeholders in UN Global Compact. Based on the latest information on the database of the Global Compact, only five entities from Ethiopia are active members. Of these, two are companies (private sector), two local NGOs, and one local business association. Another company is delisted (“expelled due to failure to communicate progress”) and one local NGO is not communicating.¹⁴⁶ To put this into perspective, neighboring Kenya has 291 participant entities (business and non-business), South Africa and Egypt 94 each, Germany 1019, and France 1879 participants.¹⁴⁷ The comparison is certainly without prejudice to a number of important factors such as national regulatory environment for business activity, level of economic development, the environment for civil society actors, and so on.

8.3 A legacy of state economic monopoly

Another contextual factor is the historical legacy of the State being the key economic force (even to date despite gradual privatization since 1991) while the private sector’s role is widening only recently.¹⁴⁸ This has its own

¹⁴⁴ Ibid.

¹⁴⁵ Mathias Nigatu Bimir (2015). “Corporate Social Responsibility Learning in the Ethiopian Leather and Footwear Industry” (Master’s thesis, International Institute of Social Studies, The Hague).

¹⁴⁶ UN Global Compact database, <https://unglobalcompact.org/what-is-gc/participants/> last accessed March 2023.

¹⁴⁷ Ibid.

¹⁴⁸ See Solomon Abay Yimer (2015), “Market Development and Human Rights Protection: Enforcing the UN Guiding Principles on Business and Human Rights in Ethiopia”, in: Eva Brems, Christophe Van der Beken and Solomon Abay Yimer (eds.),

implication on the level of development of private sector standards such as BHR. Another manifestation of this legacy is the hitherto dominance of State-owned enterprises in the economy. A plan to open-up major State-owned enterprises for private and foreign investment was announced in 2018. The first private telecom operator license was awarded in 2021 to a global consortium led by Kenya's Safaricom. The momentum of privatization plan in other sectors is yet to materialize.

Meanwhile, the State is expected to continue to be a key economic actor. State-owned enterprises present a unique challenge to implement BHR standards, which should not be perceived to be applicable to private sector businesses alone. In fact, more is expected from State-owned enterprises. The UNGPs provide: "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies."¹⁴⁹ States are directly responsible for violating international law obligations for human rights abuses by State-owned businesses.¹⁵⁰

8.4 Opportunities and the way forward

Despite the above challenges, there are opportunities for consolidating the BHR framework in Ethiopia. Firstly, the existing legal framework particularly the Constitution can serve as a starting point. As discussed above, the Constitution already has pertinent provisions in relation to pillars of the *State duty to protect* and *remedies*, while the key element of the *business responsibility to respect* human rights needs further elaboration. Recent legislations are also paying attention to the social and environmental dimensions of business activity. This trend can serve as a basis to consider human rights dimensions as well.

Secondly, Ethiopia's international commitments related to BHR can help strengthen the required political will. A quick look at Ethiopia's positioning in international and regional processes shows a relatively clear commitment towards better regulation of BHR issues. Ethiopia voted in favor of establishing the Working Group tasked to draft the UN binding treaty and continues to engage in the process, for example, by commenting in the draft treaty.¹⁵¹

Human Rights and Development: Legal Perspectives from and for Ethiopia, *International Studies in Human Rights* Vol. 111.

¹⁴⁹ UNGPs, *supra* note 26, Principle 4.

¹⁵⁰ *Ibid.*

¹⁵¹ UNDP Baseline Study, *supra* note 62.

Ethiopia is one of the 12 Sub-Saharan African States targeted by a UNDP baseline study and considered to have “the potential political will” for BHR.¹⁵² The selection is based on criteria such as willingness to rollout the UNGPs in-country, to promote BHR in universal periodic reviews (UPR) and other treaty review procedures, and having “business activities with material human rights impacts and/or have an active stakeholder community promoting business and human rights (e.g. [national human rights institutions], CSOs and international organizations).”¹⁵³ In Ethiopia’s latest and third cycle Universal Periodic Review (UPR) finalized in 2019, developing a national action plan for the implementation of the UNGPs is one of the recommendations (made by Norway). Ethiopia has accepted the recommendation, which shows a public commitment.¹⁵⁴ In Africa, only Kenya and Uganda have adopted national action plans on BHR.¹⁵⁵

Looking forward, a clearer and more comprehensive BHR framework could streamline already existing standards and regulatory practices. While many laws and constitutional provisions are relevant, they are not self-evident. As such, their operationalization through policy and practice becomes problematic. As a next step, developing a policy framework on BHR including a national action plan to implement the UNGPs could serve as a vehicle to diagnose problems such as existing challenges, inconsistencies within the laws and gaps in practice. In this regard, the Ethiopian Human Rights Commission’s recent uptake of BHR issues in Ethiopia is promising. The Commission, among others, co-organized the first multi-stakeholder dialogue on BHR in Ethiopia and highlighted the need for a national strategy and action plan on BHR (March 2023),¹⁵⁶ and published a report on health and safety standards in the construction sector (July 2023).¹⁵⁷

The evolution of the BHR agenda and the practice of several States show that there is no “one-size-fits-all” approach for an effective regulatory framework. At the UN level, the UNGPs (soft law) and the draft treaty (binding if successful) are growingly seen in complementarity to each other.

¹⁵² Ibid.

¹⁵³ Ibid. Other African States include Kenya, Tanzania and Uganda from East Africa; Côte d’Ivoire, Ghana, Liberia, Nigeria and Sierra Leone from West Africa; and Mozambique, Zambia and Zimbabwe from Southern Africa.

¹⁵⁴ See Recommendations part, Ethiopia UPR 3rd Cycle 2019.

¹⁵⁵ Wubeshet Tiruneh, *supra* note 50.

¹⁵⁶ See report at: https://ehrc.org/wp-content/uploads/2023/03/Multi-stakeholder-Dialogue-on-Business-and-Human-Rights-in-Ethiopia_March-2023.pdf, last accessed August 2023.

¹⁵⁷ Report available at: <http://ehrc.org/?p=23709>, last accessed August 2023.

States also continue to rely on a mix of regulatory approaches (private sector self-regulation, co-regulation through voluntary and/or mandatory due diligence). For Ethiopia, the path ahead can be charted out by taking into consideration the salient features that underpin the national context identified above. An effective BHR framework is indeed a function of viable institutions, as it requires the concerted efforts of a vibrant business and CSO environment, and independent institutions such as courts and national human rights institutions. There is thus the need to follow a genuinely participatory approach that includes a wide range of actors.

Some other issues to consider are (i) how a potential national action plan on BHR is positioned alongside or within a spectrum of other strategic documents such as the National Human Rights Action Plan; (ii) how a BHR framework can be developed to consolidate existing CSR mechanisms and good practices; (iii) on striking the right balance between detail and generality in a potential policy/legislative framework, i.e., whether to adopt an overarching framework first and leave details for further sector-specific articulation and regulation; (iv) institutional set up for the implementation of a potential BHR framework (relying on existing bodies and remedy mechanisms or introducing special entities); and (v) settling on feasible policy choices such as whether to balance between human rights and business (development, trade, investment) or to establish priority for one over another.

9. Conclusion

In this article attempt has been made to assess the status of the law and the practice relevant to business and human rights in Ethiopia. While the State duty to protect and remedy pillars are evident in the Constitution and in recently revised or introduced subsidiary legislations, the key question of the nature and extent of responsibilities of businesses remains either unclear or addressed only incidentally. The reality of conflict and socio-political unrest, the legacy of a State monopoly and the slow pace of private sector empowerment in the economy, and limited space for independent institutions (such as media, CSO, and courts) underpin the challenges in the practice of developing and enforcing BHR standards. To maximize existing opportunities such as the potential and recent trends in the legal framework, a comprehensive and participatory process to develop a policy or strategic framework including but not limited to developing a national action plan on BHR is recommended as a way forward. ■

Cited References

- Abe, Oyeniyi and S. Olawuyi, Damilola (2022). "Introduction – Business, human rights, and the United Nations Guiding Principles: The search for good-fit approaches in Africa," in Damilola S. Olawuyi and Oyeniyi Abe (eds.), *Business and Human Rights Law and Practice in Africa* (Edward Elgar Publishing).
- ActionAid Ethiopia (2023). "People before Profit: Why Urgent Action is needed to hold Businesses Accountable for Respecting Human Rights (A Policy Brief)."
- African Commission on Human and Peoples' Rights (2019). *Advisory Note to the African Group in Geneva on the Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (Legally Binding Instrument)*.
- Alemayehu Yismaw Demamu (2020). "Towards Effective Models and Enforcement of Corporate Social Responsibility in Ethiopia," *Mizan Law Review* Vol. 14 No. 2, pp. 276-309.
- Amodu, Nojeem (2021). "Business and human rights versus corporate social responsibility: Integration for victim remedies," *African Human Rights Law Journal* Vol. 21 No. 2.
- Asebe Regassa & Damena Abebe (2023). "Gold Glitters, Grievances Grow: Contestation and Uncertainty around MIDROC and GODU Gold Mines in Guji, Oromia," (Rift Valley Institute/Ethiopia Peace Research Facility).
- Bantayehu Demlie (2016). "Private Sector's Concerns for Ethiopia's Commercial Code Revision," *Ethiopian Business Review*, 4th Year, April 16 2016 - May 15 2016, No. 38.
- Barrett, Paul M. and Baumann-Pauly, Dorothée (2019). "Made in Ethiopia: Challenges in the Garment Industry's New Frontier" (New York University Stern Center for Business and Human Rights)
- Baumann-Pauly, Dorothée; Massa, Lorenzo; and Sheriff, Natasja (2020). "Manufacturing in Ethiopia: Decathlon's Partnership Model (Case Study)."
- Bereket Alemayehu Hagos (2022). "Legal Aspects of Corporate Social Responsibility in Ethiopia: A Sustainable Development Perspective," *The Journal of Sustainable Development Law and Policy*, Vol. 13 No. 2.
- Bereket Alemayehu Hagos (2022). "Major features of Ethiopia's new investment law: an appraisal of their policy implications," *Transnational Corporations Journal*, Vol. 29, No. 1, 2022.
- Berihu Gereziher and Yohannes Shiferaw (2020). "Corporate Social Responsibility Practice of Multinational Companies in Ethiopia: A Case Study of Heineken Brewery S.C.," *British Journal of Arts and Humanities* Vol. 2 No. 2, pp. 36-55.
- Bernaz, N *et al* (2022). "The UN Legally-Binding Instrument and the EU Proposal for a Corporate Sustainability Due Diligence Directive: competences, comparison and complementarity."
- Center for International Private Enterprise (2022). "The Impact of the War in Northern Ethiopia on Micro, Small and Medium-Sized Enterprises (MSMEs) and Marginal Economic Actors (MEAs) (Research Brief).
-

- Dakito Alemu Kesto (2017). "Corporate Social Responsibility Practices and Stakeholders' Awareness: Case of Ethiopia," *Global Journal of Management and Business Research: D Accounting and Auditing*, Vol. 17, No. 1 (1).
- Deva, Surya (2022). "Treaty tantrums: Past, present and future of a business and human rights treat," *Netherlands Quarterly of Human Rights*, Vol. 40(3).
- Deva, Surya (2023). "Mandatory human rights due diligence laws in Europe: A mirage for rights-holders?" *Leiden Journal of International Law*, Vol. 36 Issue 2, pp. 389 – 414.
- Do Amaral Vieira, Flávia (2021), "The Implementation of the Guiding Principles on Business and Human Rights in Brazil: A Critical Perspective," *Revista Internacional de Derechos Humanos*, Vol. 11, No. 2.
- Durane, Marie (2015). "Made in Ethiopia: The New Norm in the Garment Industry," *Sustainable Development Law & Policy*, Vol. 15.
- Ethiopian Human Rights Commission (2022). "Call to Prioritize the Establishment of a Minimum Wage System (Public Statement)"
- International Alert (May 2020). "Conflict-sensitive business practice for foreign direct investment in Ethiopia (Guidance note)."
- Irana Boki (2020). "The Role of Investment Laws in Strengthening Corporate Social Responsibility: Ethiopia's Investment Regime in Focus," *Journal of Law, Policy and Globalization*, Vol. 100.
- Lydia Tesfaye (2022). "The Business of Peace," *Ethiopian Business Review*, 11th Year, Dec. 2022, No. 113.
- Malila, Mumba (2017). "Individuals' Duties in the African Human Rights Protection System: Challenges and Prospects," in Stephan Parmentier *et al* (eds.), *Between Rights and Responsibilities: A Fundamental Debate* (Cambridge University Press).
- Mathias Nigatu Bimir (2015). "Corporate Social Responsibility Learning in the Ethiopian Leather and Footwear Industry" (Master's thesis, International Institute of Social Studies, The Hague).
- Meseret Mamo (2015). "Corporate Social Responsibility: Altruism or a Marketing Scheme in Disguise?" *Ethiopian Business Review*, 4th Year • December 16 2015 – January 15 2016, No. 34.
- Mizanie Abate Tadesse (2016). "Transnational Corporate Liability for Human Rights Abuses: A cursory Review of the Ethiopian Legal Framework," *Mekelle University Law Journal* Vol. 4.
- Ramasastri, Anita (2015). "Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap between Responsibility and Accountability," *Journal of Human Rights* Vol. 14.
- Schrempf-Stirling, Judith *et al* (2022). "Human Rights: A Promising Perspective for Business & Society," *Business and Society*, Vol. 61 No. 5.
- Solomon Abay Yimer (2015). "Market Development and Human Rights Protection: Enforcing the UN Guiding Principles on Business and Human Rights in Ethiopia", in: Eva Brems, Christophe Van der Beken and Solomon Abay Yimer (eds.), *Human Rights and Development: Legal Perspectives from and for Ethiopia*, *International Studies in Human Rights* Vol. 111.
-

- Sumeyye Kusakci and Ibrahim Bushera (2023), “Corporate social responsibility pyramid in Ethiopia: A mixed study on approaches and practices,” *International Journal of Business Ecosystem & Strategy*, Vol. 5 No. 1.
- Tasew Abitew (2021). Approaches to Regulating Corporate Social Responsibility in Ethiopia: The Case of Manufacturing Companies (LL.M. thesis, Addis Ababa University).
- Wubeshet Tiruneh (2022), “Holding corporations liable for human rights abuses committed in Africa: the need for strengthening domestic remedies,” *African Human Rights Yearbook*, Vol. 6.
- Yehualashet Tamiru Tegegn (2022). “The missed opportunity for effective CSR regulation in Ethiopia, Addis Fortune, <https://addisfortune.news/the-missed-opportunity-for-effective-csr-regulation-in-ethiopia/>
- Yenehun Birlie (2017). “Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features,” *Mizan Law Review*, Vol. 11, No. 2.
-