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# BUSINESS AND HUMAN RIGHTS

## A GUIDEBOOK FOR NATIONAL HUMAN RIGHTS INSTITUTIONS

### REGIONAL SUPPLEMENT 1: AFRICAN REGIONAL FRAMEWORKS AND STANDARDS ON BUSINESS AND HUMAN RIGHTS



INTERNATIONAL COORDINATING COMMITTEE  
OF NATIONAL INSTITUTIONS FOR THE PROMOTION  
AND PROTECTION OF HUMAN RIGHTS

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AND STANDARDS ON BUSINESS AND HUMAN RIGHTS

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Layout concept: Hedda Bank  
Photo: courtesy of the Human Rights Commission of Sierra Leone

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ICC: <http://nhri.ohchr.org/EN/Pages/default.aspx>  
ICC Working Group on Business and Human Rights: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>  
DIHR: <http://www.humanrights.dk/>

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## AFRICAN REGIONAL FRAMEWORKS AND STANDARDS ON BUSINESS AND HUMAN RIGHTS

This regional supplement to *Business and Human Rights – A Guidebook for National Human Rights Institutions* introduces African regional frameworks and standards relevant to business and human rights, such as key human rights conventions and governance institutions of the African Union, the Action Plan for Implementing the Africa Mining Vision, and regional financial institutions. The chapter also outlines business and human rights activities of the Network of African National Human Rights Institutions (NANHRI) and NANHRI's Yaoundé Action Plan on Business and Human Rights. The chapter concludes with some NHRI practice examples in the area of business and human rights.



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AFTER WORKING THROUGH THIS CHAPTER YOU SHOULD BE ABLE TO ANSWER THE FOLLOWING KEY QUESTIONS:

- How do key human rights conventions and governance institutions of the African Union relate to business and human rights?
- What is the Action Plan for Implementing the Africa Mining Vision?
- How do the regional financial institutions and communities relate to business and human rights?
- What are the NANHRI priority areas and activities outlined in the Yaoundé Action Plan on Business and Human Rights?

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### 1. BUSINESS AND HUMAN RIGHTS IN THE AFRICAN UNION

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#### 1.1 THE AFRICAN UNION

The African regional human rights framework is centred around the African Union (AU). The AU's human rights instruments include the [African Charter on Human and People's Rights \(1987\)](#), which has been ratified by all Member States, and the [African Charter on the Rights and Welfare of the Child \(1999\)](#), which has been ratified by the majority of Member States.

A number of provisions of these human rights instruments are relevant to business and human rights. For example, the right to economic, social and cultural development in the African Charter on Human and People's Rights, and the references to child labour and the standards of the International Labour Organisation in the African Charter on the Rights and Welfare of the Child.

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## 1.2 THE AFRICAN COMMISSION ON HUMAN RIGHTS

The African Commission on Human Rights, established pursuant to the African Charter on Human and Peoples' Rights, has the mandate to promote and protect human and peoples' rights, in particular: <sup>1</sup>

- To collect documents, undertake studies and research on African problems in the field of human and peoples' rights; organise seminars, symposia and conferences; disseminate information; encourage national and local institutions concerned with human and peoples' rights; and give its views or make recommendations to Governments;
- To formulate principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation; and
- To cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

States can communicate to the Commission whenever they believe another Member State has violated provisions of the African Charter on Human and Peoples' Rights or the Charter on the Rights and Welfare of the Child, with the aim of the Commission acting as mediator to find an amicable solution. Individuals or groups can also submit written communications to the Commission in cases of human rights violations by a State. The Commission then investigates the case and makes recommendations to the parties concerned. The Commission's recommendations are non-binding and the Commission cannot initiate investigations of its own accord. When handling communications, whether from individuals or Member States, the Commission can only step in once local remedies have been exhausted.<sup>2</sup>

The Commission has further put in place a certain number of special mechanisms, such as working groups and rapporteurs, each dedicated to examining and addressing a specific issue of importance with regard to the African Charter on Human and Peoples' Rights (see further Box 1, below). The working groups report to the Commission.

### BOX 1. AFRICAN COMMISSION WORKING GROUPS CLOSELY RELATED TO BUSINESS AND HUMAN RIGHTS

The [Working Group on Extractive Industries, Environment and Human Rights Violations](#) was created in 2009 and is dedicated to research, communication and documentation on the impact of the extractive industries on human rights.<sup>3</sup>

The [Working Group on Economic, Social and Cultural Rights](#) was established in 2004 to develop [Draft Principles and Guidelines on Economic, Social and Cultural Rights](#), which were finalised in 2011.<sup>4</sup>

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### 1.3 THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The Commission is complemented in its work by the African Court on Human and Peoples' Rights, which was established in 2004. The Court has jurisdiction to handle all cases alleging violations of the African Charter on Human and Peoples' Rights, as well as any other relevant human rights instrument ratified by its Member States.<sup>5</sup>

The Court also has advisory jurisdiction, meaning that the Court may, at the request of a Member State or any African organisation recognised by the African Union, provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments.

Complaints and applications to the Court can be submitted either by the African Commission on Human and Peoples' Rights, State parties, or African inter-governmental organisations. Non-governmental organisations with observer status before the African Commission on Human and Peoples' Rights and individuals from States that have made a declaration accepting the jurisdiction of the Court can also bring cases directly before the Court (as of October 2012 only five countries had made such a declaration: Burkina Faso, Ghana, Malawi, Mali and Tanzania).

The seat of the Court is in Arusha, Tanzania, and applications can be submitted by post, email, fax or courier to the Registrar.

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### 1.4 ACTION PLAN FOR IMPLEMENTING THE AFRICA MINING VISION

Under the auspices of the African Union, the African Development Bank and the United Nations Economic Commission for Africa, an [Action Plan for Implementing the Africa Mining Vision](#) (Action Plan) was adopted in December 2011.<sup>6</sup> The aim of the [Africa Mining Vision](#) is to improve human rights in Africa's mineral sector at national, regional and sub-regional levels through specific activities and monitoring.<sup>7</sup>

The parties involved in the Africa Mining Vision include: African Union Member States, Regional Economic Communities, non-governmental organisations, civil society organisations, the UN Economic Commission for Africa, the World Bank and the UN Conference on Trade and Development.

The Action Plan focuses on nine intervention areas. Human rights are implicitly and explicitly mentioned in a number of these. For example, in the Mineral Sector Governance cluster, the Action Plan goal focuses on creating sustainable and inclusive governance of the mining sector by strengthening access to information and public participation through the formulation of national policies, laws and regulations based on international conventions; and developing instruments to

implement free prior informed consent with respect to communities affected by mining (see also Box 2, page 8). In the Environment and Social Issues Programme cluster, activities include mainstreaming the principles of environmental, social and health impact assessment into national mining policies, laws and regulations; and developing and implementing impact benefit agreements with communities in mining areas. A monitoring indicator in this cluster includes tracking the number of companies with established conflict resolution mechanisms. It was also agreed upon that signatory parties should “assist member countries in the implementation of human rights frameworks related to mining”.<sup>8</sup>

The Action Plan has been conceived as a multi-year, multi-partner rolling plan. Partners include the Member States of the African Union, multilateral development partners, the private sector, and others. The implementation of the Action Plan will be coordinated by the African Minerals Development Centre.<sup>9</sup> The Centre will be supported by a steering committee comprising the Bureau of the Ministerial Conference, the African Union Commission, the NEPAD Planning and Coordination Agency, the Regional Economic Communities, the African Development Bank and the UN Economic Commission for Africa. The Centre will be tasked with providing technical support for the implementation of the Action Plan’s activities, undertake and coordinate policy research, undertake monitoring and evaluation activities, and more.



BOX 2. ACTION PLAN FOR IMPLEMENTING THE AFRICA MINING VISION:  
PROGRAMME CLUSTER 5 – MINERAL SECTOR GOVERNANCE SECTION ON  
IMPROVED HUMAN RIGHTS IN AFRICA’S MINERAL SECTOR<sup>10</sup>

<p>ACTIVITIES AT NATIONAL LEVEL</p> <ul style="list-style-type: none"> <li>• Ratify and implement the human rights conventions and instruments relevant to the mineral sector;</li> <li>• Develop and implement guidelines for companies to comply with human rights standards;</li> <li>• Empower public human rights institutions to monitor enforcement of human rights standards with respect to mining;</li> <li>• Provide resources to human rights organisations to monitor and enforce human rights standards in relation to mining operations; and</li> <li>• Develop methodologies and tools for mainstreaming health and human rights issues into impact assessment procedures and policy planning frameworks.</li> </ul>	<p>MONITORING INDICATORS AT NATIONAL LEVEL</p> <ul style="list-style-type: none"> <li>• Degree to which human rights institutions are independent;</li> <li>• Extent of reduction in human rights violations;</li> <li>• Levels to which human rights tools and methodologies are applied; and</li> <li>• Increase in resource levels of human rights organisations.</li> </ul>
<p>ACTIVITIES AT SUB-REGIONAL AND REGIONAL LEVEL</p> <ul style="list-style-type: none"> <li>• Establish common human rights norms and procedures for the mining sector and embed these into the African Peer Review Mechanism and African Charter for Human and Peoples’ Rights; and</li> <li>• Promote joint and collaborative implementation of human rights standards.</li> </ul>	<p>MONITORING INDICATORS AT SUB-REGIONAL AND REGIONAL LEVEL</p> <ul style="list-style-type: none"> <li>• Extent to which human rights are applied as part of the African Peer Review Mechanism and African Charter for Human and Peoples’ Rights; and</li> <li>• Number of human rights collaborative initiatives.</li> </ul>



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## 2. REGIONAL FRAMEWORKS AND BUSINESS AND HUMAN RIGHTS

There are a number of regional frameworks in the African context that have a direct bearing on business and human rights related issues, including development banks and Regional Economic Communities, and the New Partnership for Africa's Development programme (NEPAD) of the African Union.

The African Union recognises economy and trade as critical integration factors, including the possibility of Member States to form Regional Economic Communities. These Communities act mainly as free trade zones, but they also consider local context and seek to address regional challenges that have a bearing on shaping the business and human rights context, for example with regard to the environment or conflict-affected areas.

As such, both regional investment banks and Economic Communities are significant players when it comes to bridging business interests and the protection and respect of human rights as they set some of the rules for doing business in their geographical area (see also Table 1, below).

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TABLE 1. EXAMPLES OF AFRICAN REGIONAL FRAMEWORKS RELEVANT TO BUSINESS AND HUMAN RIGHTS

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New Partnership for Africa's Development (NEPAD) <a href="http://www.nepad.org/">http://www.nepad.org/</a>	NEPAD is a programme of the African Union, adopted in 2001 in Zambia. The objective of NEPAD is to enhance Africa's growth, development and participation in the global economy. In 2012, the 14th African Union Assembly established the NEPAD Planning and Coordinating Agency as a technical body of the African Union. NEPAD manages a number of programmes and projects in six theme areas, these are: <ul data-bbox="558 1456 1260 1680" style="list-style-type: none"><li>• Agriculture and food security;</li><li>• Climate change and natural resource management;</li><li>• Regional integration and infrastructure;</li><li>• Human development;</li><li>• Economic and corporate governance; and</li><li>• Crosscutting issues (gender and capacity development).</li></ul>
African Development Bank Group (AfDBG) <a href="http://www.afdb.org/en/">http://www.afdb.org/en/</a>	The African Development Bank Group is a regional investment bank. Various AfDBG policies address business and human rights related issues: <ul data-bbox="558 1870 1287 2016" style="list-style-type: none"><li>• The Policy on Environment (2004) considers environmental protection and refers to the need for a diversified economy, environmental management tools, community involvement, preservation and "the value of traditional knowledge";</li></ul>

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- The Policy on Involuntary Resettlement (2003) addresses the need to minimise, mitigate and compensate any relocated persons for disruption of their livelihoods;
- The Policy on Gender Discrimination (2001); and
- The Policy on Water (2000) aims to balance social, environmental and economic needs.

AfDBG has a Human and Social Development branch, which deals with funded projects in the areas of education, health and social protection. AfDBG also states that it seeks to contribute to the Millennium Development Goals (MDGs). AfDBG also has an Independent Review Mechanism, which allows people who are adversely affected by a project that receives financial support from the Bank to raise complaints and grievances.

Economic Community of West African States (ECOWAS)  
<http://www.ecowas.int/>

The Economic Community Of West African States is a Regional Economic Community recognised by the African Union and grouping 15 countries. ECOWAS' primary aim is to promote economic integration between its Members. However, Member States have also undertaken commitments to supporting vulnerable communities, especially in rural areas in the agricultural sector and in relation to access to safe drinking water.

Economic Community of Central African States (ECCAS)  
<http://www.ceeac-eccas.org/>

ECCAS is a Regional Economic Community, recognised by the African Union, with the aim of promoting economic and social development through trade for its ten Member States. Given that most of its Member States currently face social and political issues as well as armed conflicts, it further places a major emphasis on promoting peace, stability and democracy. For example, Article 3 of the Founding Treaty (1991) states the aim of: "(g) Recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights".

Southern Africa Development Community (SADC)  
<http://www.sadc.int/>

SADC is a Regional Economic Community recognised by the African Union with the aim of "economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the people of Southern Africa". In this frame, it has taken several initiatives in favour of Indigenous Peoples and their intellectual property rights and has made a certain number of specific policy commitment towards, e.g., environmental protection and law enforcement, mining and the protection of vulnerable groups, as well as education and training.

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### 3. NETWORK OF AFRICAN NATIONAL HUMAN RIGHTS INSTITUTIONS (NANHRI)

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#### 3.1 NANHRI AND BUSINESS AND HUMAN RIGHTS

The Network of African National Human Rights Institutions (NANHRI) is a regional network of national human rights institutions (NHRIs). It is one of four regional networks of NHRIs that are part of the [International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights \(ICC\)](#).

The ICC has established a [Working Group on Business and Human Rights](#), which seeks to support NHRIs in developing their capacity to address business and human rights related issues in light of their Paris Principles mandate (see also, *Business and Human Rights – A Guidebook for National Human Rights Institutions*, Chapter 3). The ICC Working Group members are appointed on rotation and include members from NANHRI. Other NANHRI members are committed to working in this area independently.<sup>11</sup>



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## 3.2 NANHRI ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

In follow up to the ICC's [Edinburgh Declaration](#) of 2010, the Network of African National Human Rights Institutions (NANHRI) held a Regional Workshop on Business and Human Rights in October 2011 in Yaoundé, Cameroon.<sup>12</sup>

The Workshop led to the adoption of the [Recommendations on the Plan of Action on Business and Human Rights](#), also referred to as the Yaoundé Declaration (see Box 3, below). The Yaoundé Declaration outlines responsibilities and future steps that NANHRI Members should implement in the field of business and human rights.<sup>13</sup>

As a first step towards implementing the Yaoundé Declaration, NANHRI decided to undertake a mapping survey of needs, activities and priorities of African NHRIs on business and human rights. The survey was conducted in 2012-2013 and highlights existing actions, needs, issues and challenges that African NHRIs face in relation to business and human rights.<sup>14</sup>

### BOX 3. NANHRI RECOMMENDATIONS ON THE PLAN OF ACTION ON BUSINESS AND HUMAN RIGHTS - THE YAOUNDÉ DECLARATION

The Yaoundé Declaration has identified three priority themes in the scope of business and human rights:

- Labour rights and working conditions;
- Land-related human rights; and
- Environment-related human rights.

In these three areas, the African National Human Rights Institutions have agreed they should undertake three priority actions that include capacity building, education and awareness-raising, as well as strategic planning and effective implementation.

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## 4. BUSINESS AND HUMAN RIGHTS NHRI PRACTICE EXAMPLES

The following are some examples of NHRI actions and activities on business and human rights in the African region.

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### CAMEROON NATIONAL COMMISSION ON HUMAN RIGHTS AND FREEDOMS: INVESTIGATIONS OF BUSINESS AND HUMAN RIGHTS-RELATED COMPLAINTS

The Cameroon National Commission on Human Rights and Freedoms applies its complaint handling and investigatory mandate functions to business and human rights related issues in several different ways. For example, a significant number of the complaints received by the Commission relate to labour rights abuses resulting from the activities of corporations, including issues such as: workplace health and safety, non-payment of wages, excessive working hours and overtime without compensation, and unlawful curtailment of the right to freedom of association. In investigating and addressing such complaints, the Commission undertakes field verification, in some cases in conjunction with CSO representatives or members of the judiciary, and may summon parties for mediation or conciliation, provide oral advice to complainants or encourage remediation by writing directly to the corporation concerned or the relevant regulatory body. The Commission also has legal power to conduct investigations on its own motion, which it has used with regard to business and human rights issues, such as environmental pollution, in a number of instances.

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### NATIONAL COUNCIL ON HUMAN RIGHTS OF MOROCCO: NATIONAL FORUM ON BUSINESS AND HUMAN RIGHTS

In 2013, the National Council on Human Rights of Morocco and the General Confederation of Enterprises of Morocco jointly organised a seminar on Human Rights and Business in Morocco. The seminar aimed to open a dialogue amongst all stakeholders on the integration of business respect for human rights into the economy, taking the UN Guiding Principles as its framework. Participants comprised over two hundred participants from different stakeholder groups, including government, national governance institutions, public and private enterprises social partners and civil society. Discussion at the seminar addressed a number of themes, including: the relationship between international instruments on business and human rights, Morocco's commitments under international human rights laws, the foundations provided by national legislation and the effectiveness of the remedies available for violations of human rights connected to business. The seminar allowed stakeholders to identify areas of co-operation with regard to the development of a coordinated plan of action in line with international standards.

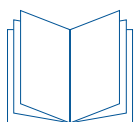
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## HUMAN RIGHTS COMMISSION OF ZAMBIA: BUSINESS AND HUMAN RIGHTS AND THE ENVIRONMENT

The 2010 State of Human Rights Report of the Human Rights Commission of Zambia focused on human rights and the environment. The Report notes that in the context of increased economic activity in a number of business sectors, including mining, agriculture and tourism, a number of environment-development linked problems have emerged as critical. For example: the pollution legacy of mining, the high rate of deforestation, vulnerability to climate variability and threats to biodiversity. In its conclusions and recommendations, the Commission identified a number of areas for more effective mainstreaming of human rights standards in environmental governance frameworks.

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## 5. FURTHER RESOURCES



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### RESOURCES ON AFRICAN REGIONAL FRAMEWORKS AND STANDARDS RELEVANT TO BUSINESS AND HUMAN RIGHTS

Website of the African Union: <http://www.au.int/en/>

Website of the African Commission on Human and Peoples' Rights: <http://www.achpr.org/>

Website of the African Court on Human and Peoples' Rights: <http://www.african-court.org/>

Website of the Network of African National Human Rights Institutions (NANHRI): <http://www.nanhri.org/index.php?lang=en>

Network of African National Human Rights Institutions (2011), [Recommendations on the Plan of Action on Business and Human Rights](#) (also referred to as the Yaoundé Declaration)

Website of the International Coordinating Committee of NHRIs (ICC) on Business and Human Rights: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>

Website of the United Nations Economic Commission for Africa on the African Minerals Development Centre (see for details regarding the Africa Mining Vision and Action Plan for Implementing the Africa Mining Vision): <http://www.uneca.org/amdc-0/pages/about-amdc>

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## ENDNOTES

- 1 African Commission on Human and Peoples' Rights website: <http://www.achpr.org/instruments/achpr/>.
- 2 African Commission on Human and Peoples' Rights website: <http://www.achpr.org/instruments/achpr/>.
- 3 African Commission on Human and Peoples' Rights website, 'Working Group on Extractive Industries, Environment and Human Rights Violations': <http://www.achpr.org/mechanisms/extractive-industries/>.
- 4 African Commission on Human and Peoples' Rights website, 'Working Group on Economic, Social and Cultural Rights': <http://www.achpr.org/mechanisms/escr/>; African Commission on Human and Peoples' Rights (2011), *Draft Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*: [http://www.achpr.org/files/instruments/economic-social-cultural/achpr\\_instr\\_guide\\_draft\\_esc\\_rights\\_eng.pdf](http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf).
- 5 African Court on Human and Peoples' Rights website: <http://www.african-court.org/>.
- 6 African Union (2011), *Action Plan for Implementing the Africa Mining Vision*: <http://www.uneca.org/amdc-0/pages/about-amdc>.
- 7 African Union (2009), *Africa Mining Vision*: <http://vi.unctad.org/files/wksp/oilgaswksptanz10/docs/Background%20readings/Africa%20Mining%20Vision.doc>.
- 8 African Union (2011), *Action Plan for Implementing the Africa Mining Vision*, p. 33: <http://www.uneca.org/amdc-0/pages/about-amdc>.
- 9 United Nations Economic Commission for Africa website, 'African Minerals Development Centre': <http://www.uneca.org/amdc-0/pages/about-amdc>.
- 10 African Union (2011), *Action Plan for Implementing the Africa Mining Vision*, p. 26: <http://www.uneca.org/amdc-0/pages/about-amdc>.
- 11 International Coordinating Committee of NHRIs (ICC) website on the ICC Working Group on Business and Human Rights: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>.
- 12 International Coordinating Committee of NHRIs (ICC) website on the ICC Working Group on Business and Human Rights: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>.
- 13 Network of African National Human Rights Institutions (2011), *Recommendations on the Plan of Action on Business and Human Rights*: [http://nhri.ohchr.org/EN/Themes/BusinessHR/ICC%20Regional%20Workshops/NANHRI%20Recommendations%20on%20the%20Plan%20of%20Action%20on%20Business%20and%20Human%20Rights%20\(E\).DOC](http://nhri.ohchr.org/EN/Themes/BusinessHR/ICC%20Regional%20Workshops/NANHRI%20Recommendations%20on%20the%20Plan%20of%20Action%20on%20Business%20and%20Human%20Rights%20(E).DOC).
- 14 Network of African National Human Rights Institutions (NANHRI) website: <http://www.nanhri.org/index.php?lang=en>.

