IRSHAD International Journal of Law and Policy | Volume: 3, Issue: 12
2025

Africa at the Table: Reshaping Global Corporate Accountability through Treaty Law

Philippa Osim Inyang
Nigerian Institute of International Affairs

Abstract

This article offers a novel contribution to the literature on global constitutionalism by reinterpreting Africa's engagement with the proposed UN treaty on business and human rights as a constitutional intervention rather than a peripheral policy role. While existing analyses often depict African participation as fragmented or reactive, this paper argues that African states are advancing a distinct normative agenda grounded in regional legal traditions, particularly the African Charter on Human and Peoples' Rights, and rooted in principles of solidarity, collective responsibility, and the right to development. Drawing on Third World Approaches to International Law and postcolonial constitutional theory, the article demonstrates that Africa's regional jurisprudence articulates an alternative constitutional vision of global economic governance, one that challenges the dominance of liberal individualism and the legal insulation of transnational corporations. Through doctrinal analysis of treaty drafts, African legal instruments, and recent developments in the intergovernmental negotiations, the article reveals how African actors are reshaping global legal norms from the margins. In doing so, it repositions Africa not as a recipient of global constitutionalism, but as a site of its transformation, an original and under-recognised force in rethinking corporate accountability in international law.

Keywords: Global Constitutionalism, Africa, Business and Human Rights Treaty, TWAIL, Corporate Accountability, Postcolonial Law

APA Citation:

Inyang, P. O. (2025). Africa at the Table: Reshaping Global Corporate Accountability through Treaty Law. *International Journal of Law and Policy, 3* (12), 1-26. https://doi.org/10.59022/ijlp.462

I. Introduction

The negotiation of a binding international treaty on business and human rights marks a pivotal moment in the evolution of global legal governance (Deva, 2021). While much scholarly and policy attention has focused on the institutional dynamics of the process, particularly the North–South divide and the tension between voluntary and binding frameworks, this article offers a distinct perspective: it argues that African engagement in the treaty process constitutes a constitutional intervention that both challenges and reconfigures the normative foundations of global economic ordering (Gathii, 2020). Far from being marginal or merely reactive, African states are articulating alternative constitutional values rooted in regional legal instruments and postcolonial jurisprudence (Atabongawung, 2021). These include solidarity, collective rights, and state duties to regulate corporate conduct, principles enshrined in the African Charter on Human and Peoples' Rights and reflected in emerging continental jurisprudence.

Existing scholarship often frames Africa's role in the treaty negotiations as one of fragmentation, limited capacity, or geopolitical vulnerability (Murray, 2019). While these diagnoses are not inaccurate, they obscure the deeper normative significance of Africa's engagement. Drawing on Third World Approaches to International Law (TWAIL), this article reinterprets Africa's participation not simply as a response to structural exclusion, but as an effort to reshape the constitutional terrain of international law itself (De Schutter, 2016). It contends that Africa's treaty positioning reflects a pluralistic vision of global constitutionalism, one that foregrounds development justice, transnational accountability, and the right of communities to live free from exploitation.

This argument unfolds against the backdrop of longstanding asymmetries in global economic governance. Transnational corporations (TNCs), often domiciled in the Global North, continue to benefit from a fragmented legal regime that enables them to externalise human rights harms while remaining legally insulated (Muchlinski, 2007). The proposed Legally Binding Instrument (LBI), mandated by United Nations Human Rights Council Resolution 26/9, seeks to correct this imbalance by imposing enforceable obligations on states to regulate corporate actors and ensure access to remedy. African states were central to the treaty's initiation, South Africa co-sponsored the resolution, but have since been characterised as playing a limited or inconsistent role in the drafting process (Luthango, 2024).

II. Methodology

This article contests that reading and argues instead that African interventions, particularly during the 9th and 10th sessions of the Intergovernmental Working Group, reflect a maturing legal strategy anchored in regional constitutional norms. The article proceeds in five parts. Part I provides a doctrinal overview of the treaty process and Africa's normative stake in it, situating the LBI within broader debates on global

constitutionalism and legal pluralism. Part II critically examines Africa's historical engagement in the treaty negotiations, highlighting recent developments that signal a strategic shift. Part III analyses the legal architecture of the treaty, especially its provisions on extraterritorial obligations and corporate liability, through the lens of African regional law and postcolonial legal theory.

Part IV explores the normative contribution of African legal traditions to global constitutionalism, drawing on principles enshrined in the African Charter and the jurisprudence of the African Commission. Part V outlines concrete strategies through which African states can institutionalise their normative leadership and reshape the treaty's final content. Ultimately, this article advances an original claim: that Africa's participation in the business and human rights treaty process is not merely about closing legal gaps but about redefining the normative order of international economic law. By foregrounding regional constitutional values and engaging critically with global legal hierarchies, African states are not just asserting their voice, they are reimagining the rules of global corporate accountability.

The call for a binding international treaty on business and human rights emerges from a longstanding structural lacuna in global economic governance: while corporations operate transnationally, legal accountability remains territorially fragmented and jurisdictionally constrained. The adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011 was heralded as a normative breakthrough, but its reliance on voluntary compliance and soft law mechanisms ultimately reaffirmed the very asymmetries it sought to mitigate (Ruggie, 2011). Recognising the limitations of this framework, a coalition of Global South states, led by Ecuador and South Africa, sponsored Human Rights Council Resolution 26/9 in 2014, initiating negotiations for a LBI to regulate TNCs and other business enterprises with respect to human rights.

III. Results

For African states, the proposed treaty intersects directly with the continent's historical and ongoing experiences of corporate-related harm. Africa remains a primary site for large-scale extractive and infrastructural ventures, oil, gas, mining, agribusiness, and textiles, often dominated by foreign investors. These ventures, though framed as development opportunities, have been routinely associated with environmental degradation, labour exploitation, forced displacement, and resource dispossession. From oil pollution in the Niger Delta to toxic waste dumping in Côte d'Ivoire and precarious working conditions in East African manufacturing zones, the lived realities of affected communities expose the profound governance failures of both host states and the international legal order. As early as 2007, the UN Special Representative on Business and Human Rights warned that corporate abuses in certain contexts could rival or exceed those perpetrated by states.

The African Charter on Human and Peoples' Rights (ACHPR) provides a

unique constitutional grounding for Africa's engagement in the LBI process. Unlike other regional human rights instruments, the ACHPR integrates both individual and collective rights, including the right to development (Article 22), the right to a satisfactory environment (Article 24), and the right of peoples to freely dispose of their natural resources (Article 21). These provisions impose not only defensive obligations on states to protect against rights violations, but affirmative duties to regulate transnational economic activity in ways that preserve communal dignity and environmental justice. This framework positions African legal traditions within a broader counter-constitutionalism: one that privileges duties, communal entitlements, and developmental equity over the procedural formalism and market-driven minimalism of dominant global norms.

However, African host states continue to face substantial barriers in enforcing corporate accountability. The imperative to attract foreign investment often deters the enactment of robust regulatory regimes, while institutional limitations, ranging from under-resourced judiciaries to opaque governance structures, undermine enforcement even where laws exist. As a result, affected communities frequently resort to transnational litigation in foreign jurisdictions, such as in *Kiobel v Royal Dutch Petroleum* in the United States or *Okpabi v Shell* in the United Kingdom, with mixed and often inaccessible outcomes (Enneking, 2012). These cases underscore both the promise and the precarity of extraterritorial legal strategies for securing redress.

In this context, the proposed LBI is not merely an institutional fix, it is a constitutional moment. By codifying home-state obligations to regulate corporate conduct abroad, mandating access to effective remedies, and harmonising standards of corporate liability, the treaty aspires to reconfigure the normative architecture of international economic law. For African states, such a treaty holds particular salience. It offers a legal framework through which regional constitutional commitments, such as those articulated in the African Charter, can be elevated to the global plane. Moreover, it provides a vehicle for advancing a pluralistic conception of legal authority, one that recognises the legitimacy of non-Western constitutional traditions in shaping the contours of transnational regulation (Backer, 2011).

Thus, African engagement in the LBI process is not simply an act of international solidarity with the Global South, but a strategic and normative imperative. Yet, as the next section explores, this engagement has historically been fragmented and reactive, raising critical questions about Africa's agency in shaping the emergent global constitutional order of corporate accountability. Although African states played a foundational role in launching the business and human rights treaty process, their engagement has been marked by strategic inconsistency and structural underperformance. The initial momentum, catalysed by South Africa's co-sponsorship of Human Rights Council Resolution 26/9, signalled a strong Global South coalition committed to shifting the regulatory paradigm away from voluntary corporate social responsibility toward binding obligations in international law (Luthango, 2024).

During the early sessions of the Open-Ended Intergovernmental Working Group (OEIGWG) between 2015 and 2017, African states, particularly South Africa, Namibia, and Egypt, were vocal in demanding a treaty that addressed the transnational character of corporate impunity and reflected the asymmetries between powerful corporate actors and vulnerable host states.

However, by the 6th to 8th sessions (2019–2022), this assertiveness had largely receded. African participation became sporadic, fragmented, and reactive. Key regional powers such as Nigeria and Ethiopia were either absent or silent during major deliberations, and the African Group failed to articulate coordinated positions on core treaty provisions, including jurisdiction, scope, and liability. This regression has often been described as a form of 'absence,' though such framing may obscure the deeper institutional, political, and epistemic factors shaping Africa's uneven engagement.

The reasons behind this fragmentation are multidimensional and rooted in enduring postcolonial asymmetries. First, capacity constraints continue to hinder sustained diplomatic engagement. Many African missions in Geneva lack dedicated legal experts with treaty negotiation experience. Unlike the European Union, which dispatches well-resourced legal teams and arrives with consolidated mandates, most African delegations cover multiple thematic issues simultaneously, often without the benefit of preparatory meetings or technical briefings. This institutional deficit leads to reactive participation: African states respond to texts drafted by others rather than shaping the normative content themselves.

Second, the African Group has not institutionalised a unified negotiation mechanism akin to the EU's coordinated structure. While informal consultations occur, they lack procedural regularity, designated issue leads, and consolidated draft proposals. This structural deficiency means that Africa's contributions are often fragmented or delivered bilaterally, lacking the cumulative weight needed to shift the negotiation trajectory. Moreover, the absence of a standing African legal secretariat or treaty coordination hub has made it difficult to ensure institutional memory and strategic consistency across sessions.

Third, geopolitical constraints remain significant. African states often navigate a delicate balance between asserting regulatory authority and preserving investor confidence. The threat of capital flight or reduced FDI, especially in resource-dependent economies, creates disincentives for endorsing binding corporate obligations that may be perceived as deterrents to investment. Several African negotiators have reported direct or indirect pressure from Global North states, particularly those home to large TNCs, to either disengage from the treaty process or adopt minimalist positions that would dilute key provisions such as extraterritorial jurisdiction and parent company liability (Seitz, 2023). This geopolitical intimidation reinforces a regulatory chill that aligns with what Baxi describes as the 'de-formalisation of human rights', where formal participation masks the erosion of substantive influence.

Fragmentation is further compounded by divergent national contexts. States such as South Africa and Kenya, which possess comparatively stronger legal institutions and active civil society sectors, have shown a greater willingness to support progressive treaty language. By contrast, smaller or more politically constrained states, especially those heavily reliant on extractive industries, have adopted a more passive stance, either abstaining from participation or confining their contributions to general statements of support. The absence of a unified African negotiating position has weakened the continent's ability to embed context-specific concerns, such as community land rights, intergenerational environmental reparations, and historical redress, into treaty drafts.

Nonetheless, recent developments suggest a nascent but significant pivot. In 2023, the African Union endorsed the first continent-wide consultative meeting on the treaty, held in Accra and jointly convened by Ghana and Cameroon. The meeting, which included representatives from member states, civil society, and regional institutions, produced a joint communiqué urging African states to reaffirm the treaty's focus on transnational corporations and resist textual expansions that would dilute its transformative potential. This marked the first formal attempt to consolidate an African voice around the treaty process and was accompanied by Resolution 550 of the African Commission on Human and Peoples' Rights, which called for finalising the AU's long-pending Policy Framework on Business and Human Rights and aligning it with the LBI negotiations.

The 9th OEIGWG session, held in October 2023, represented a turning point in both participation and posture. Nineteen African states were in attendance, a record number, and Côte d'Ivoire delivered a statement on behalf of all 55 AU member states, asserting regional unity for the first time in the process. The African Group collectively rejected the Chairperson's 'Updated Draft' of July 2023, arguing that it had been produced without their input and that its expanded scope, covering domestic as well as transnational corporations, risked imposing disproportionate regulatory burdens on developing countries. The Group demanded a return to the 2021 Third Revised Draft, which it considered more aligned with Africa's core interests, including corporate liability, access to remedy, and extraterritorial enforcement obligations.

Importantly, this collective engagement extended beyond procedural concerns to substantive legal claims. African states including Algeria, Nigeria, Kenya, and South Africa endorsed robust treaty language on extraterritorial obligations, judicial cooperation, and liability for parent companies. Algeria, in particular, underscored those countries disproportionately impacted by extractive industries must be granted greater weight in treaty deliberations, an argument that resonates with the distributive justice dimensions of TWAIL and the ACHPR's vision of collective responsibility. Nigeria's return to the table, after years of conspicuous silence, was symbolically powerful, given its centrality in global corporate litigation and its exposure to transnational harms.

The momentum was sustained into 2024. The AU's Department of Political Affairs supported regional pre-negotiation dialogues and capacity-building workshops, coordinated through the African Working Group on Business and Human Rights. By the time of the 10th OEIGWG session in December 2024, African delegations arrived with clearer mandates, shared legal arguments, and enhanced technical fluency. While formal outcomes are still pending, early reports suggest that African negotiators advocated forcefully for treaty text that retains enforceable home-state obligations, strengthens access to remedy, and avoids vague language that could reintroduce voluntarism through interpretive ambiguity.

Yet despite these positive developments, serious limitations persist. Intra-African coordination remains ad hoc and over-reliant on the initiative of individual states rather than institutional mechanisms. Most African countries still lack National Action Plans on business and human rights, domestic legal frameworks for cross-border corporate liability, or integrated treaty engagement strategies. As a result, engagement remains largely defensive, focused on protecting hard-fought provisions, rather than normative or agenda-setting in character. TWAIL scholars have long argued that true influence in international law emerges not from presence alone, but from the ability to set the terms of debate and define legal priorities.

If the African Group is to move beyond rhetorical inclusion to normative leadership, it must consolidate and institutionalise the gains made between 2023 and 2024. This includes the establishment of a permanent AU-level treaty coordination body, formalised legal drafting processes, and structured dialogue between state and non-state actors. The strategic alignment of African legal norms, particularly those embedded in the ACHPR, with treaty provisions must be made explicit and assertively defended. Without this, Africa risks remaining on the margins of a treaty whose success or failure will be deeply felt on the continent.

The next section examines the legal heart of the treaty process: the contentious debates around extraterritorial obligations and corporate liability. These debates are not only doctrinal but constitutional in nature, implicating core questions about sovereignty, legal pluralism, and the balance between capital mobility and human dignity in the evolving global legal order.

A. Rethinking Extraterritorial Obligations in the Global Business and Human Rights Regime

At the core of the business and human rights treaty negotiations lies a fundamental legal and constitutional question: do states bear obligations to regulate the extraterritorial conduct of corporations domiciled in their jurisdictions? Traditional international human rights law, grounded in the Westphalian conception of sovereignty, has long confined state obligations to conduct occurring within a state's own territory or under its effective control. This territorial orthodoxy is reflected in key treaty texts such as Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the European Convention on Human Rights

(ECHR), both of which limit state duties to situations within their jurisdiction or effective control.

This doctrinal architecture has enabled home states of TNCs to disclaim legal responsibility for human rights violations committed by their corporate nationals abroad. Host states, especially in the Global South, are often left to absorb the economic, environmental, and social harm inflicted by powerful corporate actors, while lacking both regulatory leverage and access to transnational legal recourse.

This status quo is increasingly being challenged. Critical legal movements and Global South scholars have argued for an expansive interpretation of jurisdiction and state responsibility in the face of globalised corporate activity. In particular, the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011) have articulated those states not only can but should regulate corporate conduct that has transboundary impacts where there is a reasonable link, such as domicile or economic control. Though non-binding, these principles have become persuasive in litigation, treaty drafting, and normative advocacy.

African states have emerged as consistent proponents of embedding extraterritorial obligations into the proposed LBI. This advocacy is grounded in both pragmatic realities and regional normative traditions. On a practical level, African host states frequently lack the economic leverage or institutional capacity to hold foreign TNCs accountable for harms committed on their territory. Victims are often forced to seek remedy in the courts of the TNC's home state, frequently in Europe or North America, where doctrines such as *forum non conveniens*, corporate separateness, and onerous evidentiary thresholds frustrate justice.

The case of *Okpabi v Shell* exemplifies these barriers. In that case, Nigerian plaintiffs alleged environmental devastation caused by Shell's subsidiary in the Niger Delta. After years of jurisdictional challenges, the UK Supreme Court finally ruled that the claim could proceed, acknowledging the arguable control of the parent company. Similarly, in *Lungowe v Vedanta*, the UK Supreme Court accepted jurisdiction over claims brought by Zambian villagers against a UK-domiciled parent company, signalling a limited but significant opening for transnational corporate accountability based on parent-subsidiary relationships.

However, these victories are exceptional and resource-intensive, and most affected communities do not reach this threshold of access. Moreover, legal avenues under statutes like the Alien Tort Statute (ATS) in the United States have been sharply curtailed in cases such as *Jesner v Arab Bank*, where the Supreme Court held that foreign corporations could not be sued under the ATS for human rights violations abroad. The narrowing of such venues underscores the urgency of codifying home-state obligations in international law.

African states have responded by championing clear and enforceable provisions in the LBI. In the 2021 Third Revised Draft, Articles 9 and 10 affirmatively provided for adjudicative jurisdiction and mutual legal assistance, including the possibility of holding companies liable in their home state for violations committed abroad. These provisions echoed the Maastricht Principles and offered a doctrinally coherent path to dismantling jurisdictional shields.

However, the 2023 'Updated Draft' weakened these commitments. By reintroducing discretionary language such as 'may adopt measures' and 'as appropriate,' the revised text significantly diluted the mandatory character of extraterritorial obligations, raising concerns about enforcement and coherence. At the 9th OEIGWG session, African states rejected the Updated Draft and advocated for a return to the stronger 2021 version. This was not merely a procedural objection, it was a constitutional one, aimed at defending transnational legal accountability as essential to the integrity of the African Charter and global justice.

From a normative standpoint, African human rights law already accommodates extraterritorial reasoning in ways that diverge from dominant Western legal doctrines. The ACHPR contains provisions that, while not explicitly extraterritorial, logically entail such responsibilities when interpreted in light of their collective and interdependent character. Article 21 guarantees the right of peoples to freely dispose of their natural wealth and resources, Article 22 recognises the right to development, and Article 24 affirms the right to a general satisfactory environment favourable to development. These rights are not confined to national borders and cannot be fully realised if states fail to regulate the external activities of corporations domiciled within their jurisdiction that undermine these rights elsewhere.

As Rachel Murray and other scholars argue, the African Charter reflects a communitarian legal philosophy, one that embraces duties alongside rights and does not strictly adhere to a territorial understanding of jurisdiction. This framing allows for outward-facing obligations, particularly where foreign conduct impairs collective rights, such as community land use or environmental health. In cases such as *SERAC v Nigeria*, the African Commission has held states accountable for failing to regulate non-state actors, including corporations, whose activities caused large-scale harm to communities, even though the doctrine of horizontal obligations was not yet well developed at the time.

From a TWAIL perspective, the resistance of Global North states to codifying extraterritorial duties reveals deeper structural asymmetries. TWAIL scholars such as B.S. Chimni and Upendra Baxi have long contended that the international legal order has evolved to protect transnational capital, prioritising investment flows, corporate personhood, and sovereign discretion over people-centred accountability frameworks. The failure to impose legally binding home-state obligations on corporations is thus not an oversight but a design feature of a system calibrated to deflect responsibility and preserve impunity.

In this light, the demand for extraterritorial obligations should be framed not merely as legal reform but as a constitutional correction, one that challenges the doctrinal insulation of TNCs and affirms the state's duty to regulate in the public interest, beyond its borders. This includes:

- Enacting mandatory human rights due diligence legislation applicable to all companies domiciled in or operating from a state's territory;
- Facilitating judicial access for foreign victims, including through procedural innovations such as collective redress mechanisms and presumptions of control in complex supply chains;
- Participating in transnational legal cooperation, including evidence-sharing, asset tracing, and enforcement of foreign judgments.

The principle of forum necessitatis could also be integrated into the LBI to support these obligations. Recognised in several civil law jurisdictions and increasingly cited in soft law and academic literature, forum necessitatis allows a court to assume jurisdiction when no other effective forum is available to the claimant (Ryngaert, 2015). This would be particularly relevant for African victims who face legal or political barriers in home-state jurisdictions or when access to justice is frustrated by procedural tactics and power asymmetries.

Ultimately, the African position at the OEIGWG sessions has reflected a sophisticated understanding of these dynamics. By rejecting diluted provisions and calling for enforceable home-state duties, African states have demonstrated that extraterritoriality is not a marginal issue, but a normative cornerstone of the proposed treaty. As Atabongawung argues, codifying extraterritorial obligations is not just about institutional reform, it is about realising the right to development, a right which presupposes mutual accountability and the equitable governance of global corporate activity.

In sum, the codification of extraterritorial obligations in the business and human rights treaty process is not simply a matter of legal technicality, it represents a paradigmatic shift in the structure of international responsibility. For African states, this shift is both doctrinally defensible under the African Charter and strategically necessary to ensure justice for communities historically excluded from effective redress. The failure to regulate outward-facing corporate conduct has contributed to entrenched asymmetries in global economic governance, and any treaty that aspires to be transformative must confront this legacy head-on.

The position advocated by African states at the OEIGWG, mandating home-state duties to regulate, remedy, and cooperate in transnational cases, should be seen not as overreach but as a constitutionally grounded corrective to a regime that has long favoured capital mobility over human dignity. As the LBI enters its critical stages of negotiation, the inclusion of clear, binding, and enforceable extraterritorial provisions will serve as a litmus test for the treaty's legitimacy and efficacy. Without

them, the instrument risks reinforcing the very impunity it was designed to dismantle.

B. Corporate Liability: From Soft Law to Constitutional Obligation

If the question of extraterritoriality speaks to the responsibilities of states, the issue of corporate liability confronts the deeper challenge of whether international law should hold corporations themselves accountable. Historically, international legal frameworks have imposed binding obligations only on states. Corporations have operated in the shadow of this state-centrism, granted legal personhood, yet shielded from direct accountability for transnational harms (Besson, 2012). The UNGPs, despite recognising a corporate 'responsibility to respect' human rights, reaffirmed this asymmetry by failing to impose enforceable legal duties. Instead, they promoted a soft law regime premised on self-regulation and reputational risk, a model that, as Deva and Bilchitz note, has proven insufficient in contexts of entrenched power imbalance and institutional weakness.

The LBI process, by contrast, represents a doctrinal rupture. Its core ambition is to transform voluntary norms into binding state obligations to regulate, monitor, and hold business enterprises legally liable for human rights violations. In doing so, it indirectly constitutionalises corporate obligations, requiring states to close domestic legal loopholes that have historically enabled parent companies to escape liability for abuses committed by their subsidiaries or supply chains.

For African states, corporate liability is not an abstract legal principle but a structural imperative. The continent has witnessed repeated patterns of corporate impunity, especially in resource-rich and institutionally fragile environments. In the Niger Delta, for instance, transnational oil companies have been implicated in environmental degradation, forced displacement, and health crises, while simultaneously distancing themselves from legal accountability by hiding behind complex corporate structures. Victims typically face Nigerian subsidiaries with limited assets and no effective remedy, while parent entities domiciled in Europe or North America disavow control and responsibility (Ryerson, 2024). As Muchlinski observes, this dynamic reflects a systemic 'accountability gap' built into the global legal order, a gap the LBI seeks to address.

The 2021 Third Revised Draft of the LBI included several important provisions aimed at bridging this gap. Article 8 proposed the imposition of civil, criminal, or administrative liability on business enterprises for human rights abuses. It also introduced key legal innovations: the reversal of the burden of proof in cases where corporate control is evident, the extension of liability across a company's value chain, and the obligation to ensure that legal remedies are accessible and effective. For African states, these provisions are not only doctrinally sound, they are practically indispensable. They address specific evidentiary and procedural barriers commonly faced by affected communities, including the opacity of corporate ownership, the difficulty of accessing internal records, and the excessive cost and complexity of

litigation.

International legal developments have further bolstered the legitimacy of such reforms. France's 2017 Duty of Vigilance Law requires large French companies to implement human rights due diligence across their global operations and provides for civil liability in domestic courts if they fail to do so (Maheandiran, 2019). Germany has adopted similar legislation, and the European Union is advancing its Corporate Sustainability Due Diligence Directive. These developments underscore that mandatory corporate accountability is both feasible and politically viable. African negotiators have rightly cited these laws in support of robust treaty language, arguing that legal harmonisation should extend global best practices rather than accommodate corporate resistance.

Nevertheless, geopolitical opposition remains fierce. During the 9th OEIGWG session, the United States and European Union voiced concerns about the legal and economic implications of binding liability provisions. They argued that such mechanisms were vague, potentially incompatible with domestic legal systems, and overly burdensome for businesses. These objections echo longstanding resistance to corporate accountability in international law and reveal a persistent double standard: while corporations are empowered to initiate investor-state claims under international investment treaties, they remain shielded from reciprocal obligations in the realm of human rights.

From the perspective of African legal systems, strong liability provisions are essential not only for justice but for legal coherence. Many African jurisdictions still operate under common or civil law systems imported through colonialism, which tend to prioritise formal doctrines of corporate separateness and limit avenues for collective redress. These systems rarely account for the structural inequality between transnational firms and vulnerable communities. The ACHPR, however, offers an alternative constitutional vision. Its provisions on collective rights, environmental justice, and the right to development implicitly demand legal reforms that facilitate corporate accountability and redistribute legal agency to those harmed.

Moreover, treaty provisions on corporate liability must be integrated with access to justice safeguards. These include the removal of prohibitive statutes of limitation, mandatory disclosure of relevant corporate documents, and the mutual recognition and enforcement of foreign judgments. African delegations have consistently insisted that without these enabling mechanisms, liability clauses are symbolic at best. Indeed, the Chair's 2023 Updated Draft significantly weakened key enforcement provisions, triggering unified opposition from African states and civil society groups. Their insistence on returning to the 2021 draft reflects a growing awareness that enforceability, not rhetorical ambition, is the true test of the treaty's transformative potential.

From a TWAIL-informed lens, corporate liability must be understood not merely as a legal technicality but as a constitutional question: who bears the duty to

repair transnational harm, and how is that duty distributed across the global legal order? Baxi argues that the privileging of capital over people is a central failure of contemporary international law. Correcting that failure requires nothing less than the 'constitutionalisation of corporate obligations', embedding within international legal architecture the principle that corporations, like states, must be accountable to rights-bearing subjects.

African states are well-positioned to articulate and advance this vision. Their lived experiences of extractive harm, coupled with the normative depth of the ACHPR and the political momentum of Agenda 2063, enable a compelling legal narrative that links corporate liability to postcolonial justice and sustainable development. Their support for civil, criminal, and administrative liability, including for parent companies and across value chains, reflects a determination to recalibrate legal doctrine in ways that reflect both historical responsibility and future-oriented protection.

C. Critical Perspectives and the African Normative Project

The ongoing negotiations of the LBI on business and human rights constitute more than a legal drafting exercise. They are a battleground for the constitutional soul of international law, a space in which the foundational norms of global economic governance are contested, rearticulated, and, potentially, transformed. Critical legal scholars, particularly those within the TWAIL tradition, have long argued that the international legal order has been historically designed to protect capital, formal sovereignty, and property rights, often at the expense of distributive justice, people's dignity, and postcolonial self-determination. The business and human rights treaty process, though fraught, offers a rare opportunity to recalibrate that order and to insert long-silenced voices into the fabric of international norm-making.

TWAIL scholarship has rigorously documented how legal regimes governing trade, investment, and development have created expansive rights for foreign investors, frequently enforceable through binding international arbitration, while denying commensurate remedies to communities harmed by corporate conduct. In this light, the absence of binding international human rights obligations for corporations is not an oversight, it is structural design. It reflects the genealogy of a system that has long insulated capital from responsibility and transformed sovereignty into a shield against transnational claims for justice.

Africa's intervention in the treaty process challenges this design. Far from being reactive or peripheral, African states have begun to articulate a constitutional counter-narrative rooted in regional jurisprudence and postcolonial legal thought. The African Charter on Human and Peoples' Rights is central to this intervention. Unlike many Western human rights instruments, which emphasise individual civil and political rights, the ACHPR enshrines collective rights, duties to the community, and an intergenerational conception of justice. Article 21 affirms the right of peoples to control their natural resources; Article 22 guarantees the right to development; and Article 24 establishes the right to a satisfactory environment. These provisions signal a

distinctive constitutional worldview, one that centres solidarity, environmental justice, and communal well-being as essential elements of legal order.

This communitarian orientation is further underscored by African philosophical and legal traditions, such as those embedded in notions of *ubuntu*, 'I am because we are', which, although not cited directly in the treaty, inform African approaches to justice, responsibility, and legal personhood. These traditions support an expanded vision of accountability that transcends the formalist constraints of Western legal doctrine and instead seeks a relational, ethically grounded, and restorative model of justice. The LBI process thus presents an opportunity not merely to adopt new treaty language but to inject the international legal order with alternative normative vocabularies grounded in Africa's legal and moral traditions.

The right to development, in particular, provides a critical normative anchor for Africa's treaty engagement. As a legally binding right under the ACHPR and the subject of multiple African Union declarations, it asserts that international cooperation, equitable benefit-sharing and remedial justice is not discretionary ideals but enforceable obligations. From this perspective, the LBI must not only include provisions on corporate liability and extraterritorial regulation, it must also institutionalise mechanisms to guarantee that these tools serve the broader aim of development justice.

Africa's approach to the treaty has already reflected this ambition. The African Commission's 2019 Advisory Note called explicitly for African states to participate actively in treaty negotiations and to defend provisions addressing the structural conditions that enable corporate abuse, particularly in relation to land rights, Indigenous communities, and environmental degradation. Furthermore, African states have introduced innovative proposals, including heightened due diligence requirements in conflict-affected zones, stronger reparations frameworks, and enhanced protection of community tenure systems. These interventions, though not always adopted, demonstrate that African actors are not simply defending existing drafts, they are engaged in the co-production of international legal norms.

Yet significant tensions remain. A central point of contention has been whether the treaty should impose direct obligations on corporations, thereby elevating them to subjects of international law. Many Global South states and civil society actors have argued in favour of this model, citing the need to close legal gaps and bypass state inertia. However, powerful states, particularly from the Global North, have resisted this move, arguing that obligations must remain state-centred. The current compromise maintains the focus on state regulation of corporate conduct, rather than direct corporate responsibility under international law.

African negotiators have largely accepted this framework, but not passively. Their strategy has been to ensure that state obligations are enforceable, coordinated, and supported by strong international cooperation mechanisms. By focusing on home-state duties, mutual legal assistance, and access to transnational remedies, African

states are using the state-centric model to advance a constitutionalist project that embeds accountability, redistributes legal agency, and rebalances international legal responsibility. In doing so, they reveal the potential for treaty design to be a site of resistance rather than resignation, a space where marginalised actors can redefine global legal norms from the inside out.

This vision of treaty-making, as constitutional struggle, recalls Chimni's assertion that the purpose of international law is not merely to manage power but to resist and transform it. Africa's participation in the LBI negotiations is, in this sense, a juridical intervention of profound consequence. It affirms that normative pluralism, historical memory, and global justice must inform the future of transnational legal governance. Whether that future materialises will depend not only on textual outcomes but on the ability of African states to consolidate their leadership, institutionalise their proposals, and defend a legal vision grounded not in sovereignty alone, but in solidarity, structural equity, and postcolonial emancipation.

IV. Discussion

To shift from peripheral involvement to meaningful leadership in the business and human rights treaty process, African states must pursue a set of coordinated, realistic, and normatively grounded strategies. These pathways, rooted in institutional pragmatism and legal necessity, do not presume ideal conditions. Rather, they offer achievable mechanisms for strengthening Africa's treaty posture, enhancing its influence, and embedding its legal traditions in the evolving global accountability architecture.

A. Operationalize a Common African Position through the AU Legal Bureau

While much has been said about developing a Common African Position, its success hinges not only on adoption by the AU Assembly but on operational capacity. Africa should move beyond political declarations and establish a Legal Bureau for Business and Human Rights within the AU Commission, modelled on the AU's existing climate negotiation team. This unit could support the Department of Political Affairs, Peace and Security in consolidating positions, coordinating pre-session briefings, and providing legal review of treaty drafts. To ensure legitimacy, the Common Position must be grounded in intergovernmental deliberations and validated through the Executive Council, thereby committing member states at the ministerial level. It should not only reiterate support for binding obligations but specify Africa's red lines (e.g., the retention of TNC focus, strong liability standards, and access to transnational remedies). Drawing on the precedent of Africa's unified stance in WTO TRIPS and UNFCCC negotiations, this approach can elevate African coherence from aspiration to institutional habit.

B. Advance a Regional Treaty with Complementarity Clauses

The African Commission's 2023 endorsement of a regional legally binding instrument on business and human rights should not be viewed as a fall back, but as a strategic complement to the on-going LBI process at the UN. A regional treaty, grounded in African legal traditions and political realities, could offer normative specificity, institutional accessibility, and contextual legitimacy. Rather than duplicating global norms, the African instrument should address distinctive patterns of harm that have emerged on the continent, such as land dispossession linked to agricultural concessions, informal extractive sector abuses in artisanal mining communities, and the growing use of AI-powered surveillance technologies to monitor and suppress labour organising.

To prevent fragmentation and uphold coherence with the global business and human rights regime, the African treaty could incorporate complementarity clauses. These would defer to the LBI where global standards exist, but assert priority where regional courts or commissions have jurisdiction or where African states have codified more ambitious protections. The Inter-American Court of Human Rights, for instance, has repeatedly interpreted the American Convention on Human Rights in ways that reinforce and enrich international standards without generating legal conflict (Nash Rojas, 2022). The EU Charter of Fundamental Rights also complements international human rights law while reflecting regional priorities, such as data protection and labour rights. These models show that legal pluralism, when structured with care, can foster rather than hinder coherence. Importantly, the African treaty should avoid overreach and maintain procedural and institutional simplicity. A phased structure could be adopted:

- Phase I: Codify existing ACHPR jurisprudence and norms on environmental justice, development rights, and community participation (e.g., *SERAC* v *Nigeria, Endorois* v *Kenya*).
- Phase II: Introduce limited binding obligations on corporations for due diligence and reparations in high-risk sectors (mining, agribusiness, digital surveillance), enforceable through national courts.
- Phase III (optional): Establish a soft-monitoring body, akin to the African Peer Review Mechanism or the Voluntary Principles on Security and Human Rights, with civil society and state reporting tracks.

To guide national implementation, the treaty could include a model laws annex, offering sample language on:

- Human rights due diligence obligations for companies operating in extractives, agriculture, and digital platforms;
- Judicial standing for affected communities and NGOs;
- Evidentiary standards (e.g., presumption of control by parent companies based on reporting lines or internal audits);

- Procedural support, such as legal aid or victims' assistance funds.

Rather than creating an entirely new institution, the treaty could temporarily anchor its interpretation and compliance review in the African Commission on Human and Peoples' Rights and eventually transition to a dedicated Protocol within the African Court's framework. This approach would minimise bureaucratic duplication while leveraging existing institutions with a human rights mandate.

This dual-track strategy affirms Africa's commitment to multilateralism while asserting its regional constitutional identity. It operationalizes the principle of subsidiarity, enabling African institutions to take the lead where local conditions and legal cultures warrant distinct approaches. As seen in the Inter-American and European human rights systems, regional treaties can generate jurisprudential density and influence international law 'from below' without undermining coherence (Helfer, 2008).

Given the African Union's experience with coordinating regional legal instruments such as the Maputo Protocol on women's rights and the Malabo Protocol on criminal justice, a regional business and human rights treaty is not only feasible but institutionally familiar. Moreover, the African Charter's Articles 60 and 61 already authorise the African Commission to draw inspiration from international instruments and practices in its interpretation, providing a clear legal foundation for treaty complementarity. It would echo the Inter-American and European systems, which have generated jurisprudential density and influenced international law from below.

C. Institutionalise Treaty Coordination within the African Group in Geneva

African engagement in Geneva often suffers from informality, ad hocism, and over-reliance on a small number of vocal states, particularly during sessions of the OEIGWG on the LBI (Seitz, 2023). These results in inconsistent participation, limited institutional memory, and fragmented legal positions on treaty provisions. To overcome these structural weaknesses, the African Group should institutionalise a Treaty Coordination Mechanism (TCM) embedded within the AU Permanent Mission to the United Nations in Geneva. This Treaty Coordination Mechanism would serve as a semi-permanent infrastructure for synchronising African engagement and would build upon lessons learned from other successful coordination models such as the African Group on Trade-related Aspects of Intellectual Property Rights (TRIPS) and the African Group in UNFCCC negotiations.

The mechanism could comprise the following operational elements: Rotating issue-area leads, selected based on comparative national expertise, would be tasked with drafting interventions and building consensus around specific treaty areas. For instance, South Africa could lead on corporate liability (drawing on its domestic jurisprudence and vocal UN positions), Ghana on remedies (given its strong legal aid

framework), and Nigeria on enforcement and jurisdictional reach. A Geneva-based legal liaison officer would be permanently embedded in the AU Permanent Mission, tasked with:

- Coordinating communications between African capitals, the AU Commission in Addis Ababa, and Geneva-based missions;
- Drafting consolidated African statements based on member state inputs;
- Maintaining a treaty document archive and memory of negotiation history.

Pre- and post-session treaty briefings would be conducted to:

- Prepare African delegates with legal and technical updates before OEIGWG meetings;
- Debrief national ministries and regional bodies after each session, enabling feedback loops and refining positions over time.

These briefings should also be open to African civil society organisations, Geneva-based policy analysts, and academic experts to enhance transparency, technical sophistication, and regional buy-in. financial sustainability is critical for long-term success. To reduce dependency on Northern donors and build genuine ownership, the TCM should be co-funded through:

- Member state contributions, potentially assessed through the AU Peace and Security Council's funding model;
- The African Development Bank (AfDB), particularly its Governance and Public Financial Management Coordination Office;
- Targeted grants from trusted African foundations or multilateral partners aligned with regional ownership and treaty development (e.g., TrustAfrica, Open Society Foundations Africa).

This type of mechanism would not require the creation of a new bureaucracy but would instead institutionalise coordination functions that already occur informally, thereby improving coherence, bargaining power, and institutional memory. It would also align with existing AU strategic commitments under Agenda 2063, which call for enhanced legal harmonisation and African leadership in international norm-setting. As shown by the Geneva-based coordination platform for the African Group on Climate Change, such mechanisms are not only feasible but have demonstrably improved Africa's negotiating strength in other UN processes. In the context of business and human rights treaty negotiations, a TCM would allow African states to shift from reactive participation to proactive norm entrepreneurship, consolidating the region's normative contributions and defending its strategic interests more effectively.

D. Build Legal Capacity Through Regional Centres of Excellence

Rather than over-relying on scattered donor-funded trainings, African states should support the establishment of Regional Centres of Legal Expertise on Business

and Human Rights, hosted by institutions with a track record in treaty negotiation, legal reform, or human rights litigation. Priority could be given to locations with established infrastructure and academic leadership, such as the Centre for Human Rights at the University of Pretoria (South Africa), Strathmore Law School (Kenya), and the African Centre for International Criminal Justice at the University of Cape Coast (Ghana). These Centres could provide the following services:

- Treaty drafting and interpretation fellowships for junior officers in ministries of justice, foreign affairs, and national human rights institutions;
- Online and hybrid legal modules focusing on the LBI process, comparative corporate liability models, and African legal approaches (e.g., ACHPR jurisprudence on corporate harm);
- Annual simulation exercises or moot courts focused on transnational litigation and treaty negotiations to build technical competence and advocacy skills.

Crucially, these Centres should partner with the African Union Law School (AULS) and the African Commission on Human and Peoples' Rights, to ensure that curriculum and research outputs feed directly into regional treaty coordination efforts. By rooting capacity-building within African institutions, this model would help close the epistemic gap that currently disadvantages African negotiators and scholars. It would also generate Africa-based peer-reviewed research to counter the dominance of Global North scholarship in shaping treaty norms and legitimacy (Deva & Bilchitz, 2013).

E. Institutionalise Civil Society Co-Production in Treaty Engagement

African civil society has played a crucial role in documenting corporate abuse, translating community grievances into treaty proposals, and facilitating victim participation in international forums. Yet, despite this contribution, it remains structurally marginalised in formal treaty processes, often relegated to side events or last-minute consultations. To reverse this pattern, African states should institutionalise civil society co-production through the creation of National Consultative Platforms on Business and Human Rights, housed within ministries of justice or national human rights commissions. These platforms should:

- Include legal aid clinics, labour unions, Indigenous rights organisations, and women's advocacy groups;
- Hold pre-treaty dialogue sessions before each OEIGWG meeting to solicit community-led recommendations;
- Provide stipends or legal support for grassroots organisations to contribute meaningfully, not symbolically.

At the regional level, the African Union Commission should formalise collaboration with the African Coalition for Corporate Accountability (ACCA) by co-hosting biennial preparatory forums. These events could be modelled after the African

Business and Human Rights Forum and used to:

- Vet and integrate civil society proposals;
- Nominate regional experts to shadow treaty negotiations;
- Prepare joint advocacy documents co-signed by states and civil society actors.

This approach would enhance the participatory legitimacy of Africa's treaty position and ensure legal arguments are informed by lived experience, not just doctrinal abstractions. Importantly, it would also reduce the risk of state capture of treaty narratives and promote transparency, consistency, and accountability in Africa's international engagement.

F. Submit Coordinated African Draft Text Proposals

To shift from a defensive posture to norm-shaping influence, African states must proactively submit jointly prepared, legally precise draft treaty language on selected articles where Africa has both empirical experience and normative weight. Rather than attempting to revise the treaty wholesale, efforts should target core provisions with high strategic value and strong regional consensus. Key articles where Africa can lead include:

- Article 9 (Jurisdiction): African proposals could codify forum necessitatis, allowing victims to sue in African courts when no other forum is available, a principle recognised in South African, Belgian, and Swiss jurisprudence (Enneking, 2017).
- Article 8 (Corporate Liability): Draft text should mandate civil or criminal liability across supply chains and allow for reversal of the burden of proof when parent-subsidiary relationships are established. This reflects African advocacy during the 9th and 10th OEIGWG sessions.
- Article 4 (Access to Remedy): States could propose the creation of a regional victims' support fund, co-administered with civil society actors, drawing lessons from African transitional justice trust funds.
- Article 3 (Scope): African text could support retaining the TNC focus in the main treaty, with flexibility for future expansion through protocols. This addresses African development realities and avoids regulatory overload on SMEs.

To implement this, the AU Commission, through the Department of Political Affairs, Peace and Security, should establish a Technical Drafting Group composed of:

- Regional legal scholars and negotiators with experience in UN treaty processes;
- Representatives of ministries of justice from three to five pilot states (e.g., South Africa, Ghana, Kenya, and Cameroon);
- Experts from the African Court and African Commission.

The group's mandate should be clear: to produce legally robust and politically feasible draft language by mid-2025 aligned with both LBI negotiations and regional jurisprudence under the ACHPR. These drafts should be co-signed by multiple AU member states and submitted in a coordinated manner to maximise their influence during OEIGWG deliberations.

G. Embed Treaty Language within Africa's Economic Governance Frameworks

One of the most politically pragmatic pathways to secure treaty buy-in is to mainstream its provisions into Africa's economic architecture. By framing the LBI not merely as a human rights tool, but as an economic governance instrument, African states can neutralise resistance from trade ministries and investor-facing agencies. The African Continental Free Trade Area (AfCFTA), the Africa Mining Vision (AMV), and Agenda 2063 all contain principles, such as sustainable development, inclusive growth, and equitable resource use, that align with business and human rights goals. Integrating treaty norms into these frameworks could involve:

- Requiring human rights impact assessments (HRIAs) as part of AfCFTA investment screening procedures;
- Incorporating corporate due diligence obligations into AMV-aligned national mining codes, especially in zones prone to extractive conflicts (e.g., DRC, Niger, Tanzania);
- Conditioning regional tax incentives or trade access on corporate human rights records, thereby creating non-legal but powerful forms of treaty compliance.

The AU's High-Level Panel on Illicit Financial Flows, led by Thabo Mbeki, has already acknowledged the role of corporate opacity in draining African resources. It could be tasked with issuing guidelines on linking treaty ratification to anti-corruption and economic sovereignty agendas. Moreover, Ministries of Trade, Finance, and Economic Planning must be integrated into treaty delegations and national implementation committees, alongside human rights ministries. This whole-of-government approach ensures that business and human rights obligations are not marginalised in legal silos but treated as foundational to sustainable investment and fiscal integrity. Such integration is both feasible and consistent with Africa's development vision, and would significantly increase the political legitimacy and enforceability of the treaty's provisions across the continent.

H. Implement Treaty-Aligned Reforms to Build Domestic Readiness

African states do not need to wait for the formal adoption of the LBI to begin domestic alignment. Undertaking treaty-aligned reforms now would serve two critical purposes: first, it would demonstrate Africa's regulatory leadership; second, it would equip national systems to absorb and implement future treaty obligations. These reforms need not be comprehensive at the outset but should target high-impact areas of

legal harmonisation. Recommended measures include:

- Updating National Action Plans (NAPs): As of 2024, only a handful of African states, Kenya, Ghana, and Uganda, have published draft or adopted NAPs on business and human rights. These should be updated to include enforceable provisions such as mandatory disclosure obligations, grievance mechanisms, and access-to-remedy protocols. The African Commission could offer technical assistance and coordinate peer reviews to promote consistency and accountability.
- Introducing mandatory corporate due diligence legislation: States can take inspiration from France's Duty of Vigilance Law, which requires large companies to identify and prevent adverse human rights and environmental impacts across their global supply chains. A simplified model adapted for African economies could be introduced first in pilot countries with established legal frameworks (e.g., Kenya, South Africa, Ghana).
- Enacting procedural safeguards: Reforms should include whistleblower protections, reversal of the burden of proof where company control is evident and expanded standing for civil society organisations in public interest litigation. Countries like Nigeria (through the Freedom of Information Act) and Uganda (in environmental justice cases) have already established basic frameworks that could be strengthened through treaty-aligned reforms.

These reforms should be presented at OEIGWG sessions and regional forums to showcase Africa's commitment to proactive treaty implementation. Demonstrating this kind of regulatory foresight could also increase Africa's credibility in pushing for binding global standards and reduce concerns from skeptical states about the feasibility of enforcement.

I. Activate Africa's Diplomatic Leverage Across UN Platforms

With 54 member states, Africa constitutes the largest regional bloc in both the UN Human Rights Council and the General Assembly. Yet, its influence is often diluted by fragmented diplomacy and underutilised procedural opportunities. To shift from numerical strength to normative influence, African states must escalate treaty diplomacy beyond Geneva and embed it in broader multilateral forums. Three concrete steps are proposed:

- Request a General Assembly debate on business and human rights, linking the LBI process to the Sustainable Development Goals (SDGs), particularly Goals 8 (decent work), 10 (reduced inequalities), 12 (responsible production), and 16 (access to justice). This would elevate treaty discussions to the political level and widen support beyond legal constituencies.
- Mobilise Regional Economic Communities (RECs), such as ECOWAS, SADC, and EAC, to issue joint communiqués or declarations endorsing key treaty

principles. RECs already serve as political and legal drivers of integration and can be instrumental in building African consensus outside formal AU processes.

- Appoint a Special Envoy on Business and Human Rights at the AU level. The envoy's role would include: Coordinating inter-regional alliances, particularly with the G77 and Non-Aligned Movement; Representing African positions in high-level panels and ministerial debates; Engaging the private sector and development banks to ensure treaty alignment with investment and trade agendas.

This approach would not only enhance African visibility but also frame treaty engagement as part of Africa's wider governance and development strategy, not a marginal legal effort. It would also model a type of norm entrepreneurship, whereby Africa shapes international law from a position of coordinated leadership, rather than fragmented participation.

Conclusion

The negotiations toward a binding international treaty on business and human rights represent not only a pivotal moment in transnational legal reform but a constitutional opportunity to redress the embedded asymmetries of global economic governance. For African states, this treaty process is far more than a legal instrument, it is a vehicle to reassert normative agency, advance developmental justice, and reclaim a voice historically muted in the formation of international legal norms.

This article has argued that Africa's engagement in the LBI process must be reimagined not as one of marginal absence, but as a site of unrealised constitutional agency. Through a detailed examination of Africa's evolving participation in the OEIGWG, the doctrinal debates surrounding extraterritorial obligations and corporate liability, and the continent's regional legal architecture, the article has demonstrated that African states are not merely responding to legal proposals, they are increasingly positioned to co-author them. Grounded in the African Charter on Human and Peoples' Rights, Africa's normative framework offers a distinct vision of accountability, one that prioritises collective rights, solidarity, and sustainable development over the narrow confines of territorial sovereignty and corporate autonomy.

The analysis has shown that African states have both a pragmatic imperative and a normative obligation to pursue robust engagement with the treaty process. The absence of binding corporate accountability mechanisms has left African communities exposed to extractive harms with little recourse, while the failure of voluntary regimes such as the UNGPs has confirmed the need for enforceable obligations on home states and transnational corporations. At the same time, Africa's legal traditions, especially the ACHPR's collective and developmental rights, provide a doctrinal basis for treaty language that reflects not only international best practices but regionally embedded values.

Recent developments, such as Africa's coordinated rejection of the 2023 'Updated Draft,' the emergence of continental consultations, and growing African presence at the 9th and 10th OEIGWG sessions, signal an inflection point. Yet presence alone is insufficient. If Africa is to move from participation to norm entrepreneurship, it must consolidate institutional coordination, invest in technical capacity, and activate the full spectrum of its legal, civil society, and diplomatic resources.

The pathways proposed in this article, ranging from the operationalisation of a Common African Position, to the pursuit of parallel domestic reforms, to the embedding of treaty norms in Africa's broader development agenda, are designed not as aspirational wish lists but as practically achievable strategies rooted in political feasibility and legal realism. Together, they offer a roadmap through which African states can translate latent normative potential into strategic influence.

More broadly, Africa's engagement in the LBI negotiations reflects a deeper struggle over the constitutional future of international law. As TWAIL scholars have long insisted, international law is not a neutral arena, it is shaped by historical power imbalances and economic asymmetries. The LBI process provides an opportunity to reverse some of these distortions, embedding a new legal order grounded in accountability, equity, and solidarity. Africa's leadership in this process is thus not only desirable; it is indispensable to the legitimacy and success of the treaty itself.

As the 11th session of the OEIGWG approaches in 2025, marking a decade since Resolution 26/9, African states must seize the opportunity to define, rather than merely defend, the contours of corporate accountability in international law. The question is no longer whether Africa will be at the negotiating table, but whether it will shape the table itself. The future of the treaty, and the global business and human rights regime it seeks to inaugurate, may well depend on it.

Bibliography

Atabongawung, T. (2021). A legally-binding instrument on business and human rights: Implications for the right to development in Africa. *African Human Rights Law Journal, 21*(1), 262–289.

Backer, L. C. (2011). On the evolution of the United Nations "Protect-Respect-Remedy" project: The state, the corporation and human rights in a global governance context. *Santa Clara Journal of International Law, 9*(1) https://digitalcommons.law.scu.edu/scujil/vol9/iss1/2

Baxi, U. (2020). *The future of human rights* (3rd ed.). Oxford University Press India.

Besson, S. (2012). The bearers of human rights' duties and responsibilities for human rights: A quiet (r)evolution? *Human Rights Quarterly*, 25(3), 569–594.

De Schutter, O. (2016). Towards a new treaty on business and human rights. *Business and Human Rights Journal, 1*(1), 41–67. https://doi.org/10.1017/bhj.2015.5

Deva, S. (2021). Treaty-based solutions for corporate accountability in a globalised world. In J.

Deva, S., & Bilchitz, D. (Eds.). (2013). *Human rights obligations of business: Beyond the corporate responsibility to respect?* Cambridge University Press.

Enneking, L. (2012). *Foreign direct liability and beyond: Exploring the role of tort law in promoting international corporate social responsibility and accountability*. Eleven International Publishing.

Enneking, L. (2017). Judicial remedies: The promise and perils of transnational tort litigation. In S. Deva & D. Bilchitz (Eds.), *Building a treaty on business and human rights* (pp. 172–174). Cambridge University Press.

Gathii, J. T. (2020). Africa and the radical origins of the right to development. *TWAIL Review, 1*, 28–50.

Helfer, L. R. (2008). Redesigning the European Court of Human Rights: Embeddedness as a deep structural principle of the European human rights regime. *European Journal of International Law*, 19(1), 125–159. https://doi.org/10.1093/ejil/chn004

Luthango, S. (2024). *Binding business to human rights*. Rosa-Luxemburg-Stiftung. https://www.rosalux.de/en/news/id/52295/binding-business-to-human-rights

Maheandiran, B. (2019). France's duty of vigilance law: The emergence of a new legal paradigm for corporate accountability. *Business and Human Rights Journal*, 4(1), 153.

Muchlinski, P. T. (2007). *Multinational enterprises and the law* (2nd ed.). Oxford University Press.

Nash Rojas, C. (2022). The Inter-American human rights system and international human rights law: The need for a holistic approach. *Human Rights Law Review*, 22(4), Article ngac022. https://doi.org/10.1093/hrlr/ngac022

Ruggie, J. G. (2011). *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (UN Doc. No. A/HRC/17/31). United Nations Human Rights Council. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

Ryerson, C. (2024). *Shell to face constitutional claims for violating the right to a clean environment*. Corporate Accountability Lab. https://corpaccountabilitylab.org/calblog/2024/1/3/shell-to-face-constitutional-claims-for-violating-the-right-to-a-clean-environment

Ryngaert, C. (2015). *Jurisdiction in international law* (2nd ed.). Oxford University Press.

Seitz, K. (2023). *Report on the ninth session of the open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights ("treaty")*. Global Policy Forum Europe; Rosa Luxemburg Stiftung. https://www.globalpolicy.org/en/publication/report-ninth-session-open-ended-intergovernmental-working-group-legally-binding