**SURVEY ON THE IMPLEMENTATION OF THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: THE ROLE OF STATES AS ECONOMIC ACTORS**

1. **DOES THE GOVERNMENT HAVE POLICIES AND/OR REGULATIONS AND/OR GUIDANCE IN PLACE THAT ADDRESS THE NEED FOR ENTERPRISES THAT ARE OWNED OR CONTROLLED BY THE STATE TO IMPLEMENT RESPECT FOR HUMAN RIGHTS THROUGHOUT THEIR OPERATIONS? IF YES, DO THESE INCLUDE:**
2. **Requirements or expectations for State-owned enterprises to undertake human rights due diligence?**
3. **Provisions for human rights due diligence relating to activities in other countries/abroad?**
4. **Requirements to report on human rights risks and/or impacts, and if so on what issues?**

There are no known specific government policies, regulations or guidance directing State owned enterprises (SOEs) to specifically implement respect for human rights throughout their operations. However, SOEs are expected to respect and protect fundamental human rights and freedoms as they operate under the 1992 Constitution of Ghana that has prioritised fundamental freedoms and human rights of all persons in the country. Ghana has also signed all nine of the core international human rights treaties and ratified eight of them.[[1]](#footnote-1)

An opportunity exists for implementation of specific steps to ensure that businesses including SOEs respect human rights and protect human rights including safeguarding the environment in their operations. Indeed some tentative steps have been taken to increase awareness among the stakeholders including local businesses about human rights and responsibilities of businesses as defined in the Guiding Principles.

In July, 2014 the Commission on Human Rights and Administrative Justice (CHRAJ) in collaboration with Shift and SOMO, both international NGOs, organized three (3) sensitization workshops on the theme: “UN Guiding Principles on Business and Human Rights; Practical Approaches for Civil Society Organisations (CSOs), Businesses and government Institutions in Ghana”.

The three-workshops, held at the Institute of Economic Affairs (IEA), Alisa Hotel and Central Hotel, all in Accra were organized in response to the report issued by the UN Working Group in charge of issues on Human Rights and Trans-National Corporations and other business enterprises during a working visit to Ghana from the 8th to 17th July, 2013.

The workshops were a remarkable success. They sought to highlight the importance of the Guiding Principles on Businesses and Human Rights to Ghana. Over 100 participants from government institutions/ regulatory bodies, non-governmental organisations (NGOs) and businesses in the mining sector took part in the workshop.

It became evident that the UNGPs cannot be implemented without effective stakeholder engagement. Between July 7th - 11th July 2014, CHRAJ, Shift and SOMO jointly held three workshops; the first workshop was organized for CSOs on July 7 and 8, the 2nd was targeted at businesses across Ghana, especially those involved in the mining industry on July 9, 2014; and the third workshop was directed at relevant government institutions and regulatory bodies and ministries on July 11, 2015. These workshops were aimed at informing and explaining to the various stakeholders the UNGPs, their implications and relevance within Ghana. The stakeholders had the opportunity to provide and share practical experiences and lay a foundation for implementing the UNGPs. They were also concerned about the environmental impact of businesses, child labour and illegal mining.

Another workshop is planned to further the achievements made in the prior three. The planned workshop will include participants from all sectors to help develop a strong cross-section of relations and propose a strategy for implementation of the UNGPs in Ghana and also streamline the Voluntary Principles on Security and Human Rights (VPs) with the UNGPs.

Ghanaian SOEs operate under the country’s labour laws and they are expected to observe the international instruments that Ghana has ratified. Ghanaian

Business enterprises controlled by the State are to comply with provisions for human rights due diligence relating to their activities in other jurisdictions where they operate.

SOEs like any other businesses in the country are required to follow all legal requirements including environmental impact assessment. It was not part of the objectives of the State Enterprises Commission Law (PNDC law 170) to get SOEs to report on human rights risks or impact.

Based on the 1992 Constitution of Ghana, and particularly in line with the Directive Principles of State Policy (Chapter Six of the Constitution of Ghana, 1992) the State is obliged to, among other things, take all necessary steps to establish a sound and healthy economy by undertaking even and balanced development of all regions and every part of each region of Ghana. Therefore, SOEs in Ghana cannot undertake activities that violate fundamental freedoms and human rights notwithstanding the absence of specific requirements for them to report on their human rights risks and/or impacts.

2. **Does the government have any policies and/or regulations and/or guidance with regard to joint ventures involving the government (e.g. in the extractive sector). If yes, do these also apply to joint venture partners?**

Contracts with regard to joint ventures involving government must not infringe the countries labour laws and Companies Code, 1963 (Act 179). The guiding principles are yet to be integrated into relevant policies regulating public-private partnerships in the country. The principal law regulating investment in minerals and mining is the Minerals and Mining Act, 2006 (Act 703). Mining companies are required to operate under the law and pay relevant taxes mainly employee income taxes, corporate taxes as well as royalties. Export earnings from minerals averaged 35% of contribution of government revenues. The Mining industry in Ghana accounted for 6% of the country’s GDP in 2011.[[2]](#footnote-2)

The GNPC Law of 1983 (PNDC Law 64), the Petroleum (Exploration and Production) law of 1984 (PNDC Law 84) are some of the laws regulating the petroleum sector. These laws have no requirements to report on human rights risks.

The companies Code 1963 (Act 179) is the law that regulates the formation of companies in Ghana. Under this Act, investors are allowed to establish and register a place of business in Ghana. The Government of Ghana (GoG) recognizes that attracting foreign direct investment requires an enabling legal environment, and has passed laws that encourage foreign investments and replaced some that previously stifled it. One of such laws is the Ghana Investment Promotion Centre (GIPS) Act, 1994 (Act 478). Under this Act, investors are free to set up investment projects in all sectors of the Ghanaian economy, without prior approval by the GIPC, with the exception of the mining, petroleum, and free zones sectors, as well as portfolio investments. Investments in the mining and petroleum sectors require approval or licensing by the Minerals commission and the Ministry of Mines and Energy respectively. Free Zones (Export Processing Zones) investments must be approved by the Ghana Free Zones Board, while portfolio investments are handled by the Ghana Stock Exchange; Sector-specific laws further regulate banking, non-banking financial institutions, insurance, fishing, securities and real estate.

Foreign investors are required to satisfy the provisions of the investment act as well as the provisions of sector-specific laws.

Since steps have been taken to mainstream Corporate Social Responsibility (CSR) in public policy in Ghana, majority of companies now implement CSR projects in communities across the country.[[3]](#footnote-3)

**3.** **Are publicly owned funds (e.g. pension or sovereign wealth funds) required or expected to include human rights risks in fund management criteria?**

The new Pensions Act was passed in 2008 but implementation started in 2010. It is a requirement of the law that 5% of the workers’ salary is deducted into the tier two component of the new scheme whilst the employer contributes 13% to SSNIT as the tier one component.

The law seeks, among other things, to ensure social protection for the working population for various contingencies including old age, invalidity and death. There is no direct human rights risk in the fund management criteria. Pensions are generally low making it difficult for the aged in particular to have inadequate standard of living.

The Petroleum Holding Fund and the Ghana Petroleum Funds (GPFs) were established by the Petroleum Revenue Management Act (2011) (Act 815) as funds for future generations of Ghanaians. These funds are to be prudently managed to ensure sustainable living standards for Ghanaians.

The Petroleum (Local content and local participation) Regulation, 2013 (L.I. 2204) aims to put Ghanaians at the forefront of all petroleum activities and ensure that they benefit from the country’s new resource.

The Petroleum Commission Act, 2011, Ghana-Oil and Gas Regulation 2015; Ghana Oil and Gas Laws and Regulations do not generally include human rights risks in fund management criteria.

**4. Do publicly owned or controlled financial institutions (e.g. export credit agencies, official investment insurance agencies or development finance institutions) have safeguard policies that refer to human rights? If yes, do they have human rights due diligence requirements for clients that benefit from financial or advisory support?**

A national policy on Public Private Partnerships (PPP) adopted in June 2011could benefit all citizens. In developing the policy framework extensive consultations were held with identified stakeholders such as financial institutions, industry, professional associations, Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies.[[4]](#footnote-4)

**5. Please indicate any other practices or lessons learned that the Government would like to share in relation to the human rights responsibilities of business or controlled by the State.**

1. See Report of the Working Group on the issue of human rights and transnational corporations and other business enterprise, UN General Assembly, 6 May 2014 (A/HRC/26/Add.5 p4 [↑](#footnote-ref-1)
2. See article: Contribution of the Minerals and Mining Sector to National Development: Ghana’s Experiment: Ghana’s Experiment by Ben Aryee in Afroeuro.org/magazine/?p=7139. Also see Ghana Chamber of Mines, 2006. [↑](#footnote-ref-2)
3. See lecture by Kweku Rockson at Trade Fair 2009, a forum organized by the Junior Chamber International (JCI), Ghana [↑](#footnote-ref-3)
4. See National Policy on Public, Private, Partnerships (PPP) Government of Ghana, Ministry of Finance and Economic Planning, June,2011 [↑](#footnote-ref-4)