Building transregional standards: the African Commission's Resolution 550, the Inter-American Court of Human Rights, and the future of business and human rights

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ABSTRACT: The growing economic and political influence of transnational corporations (TNCs) has exposed the limitations of existing state-centred frameworks in addressing corporate-related human rights violations. The United Nations Guiding Principles on Business and Human Rights (UNGPs) have emerged as the global normative anchor for closing this protection gap. In 2023, the African Commission on Human and Peoples' Rights adopted Resolution 550, signalling a significant shift by integrating the UNGPs into the regional human rights framework and committing to the elaboration of a binding legal instrument on business and human rights. This article investigates how the African system is internalising and advancing the UNGPs and explores to what extent the Inter-American human rights system – through its jurisprudence, thematic reports, and interpretative practices – can inform the normative consolidation of Resolution 550. The article thus pursues a dual objective: first, it provides a critical doctrinal analysis of the legal innovations embedded in the Resolution; and second, it examines the potential for cross-regional fertilisation between the African and Inter-American systems. The methodology combines a doctrinal and comparative approach with a critical lens, relying on primary sources including human rights instruments, regional jurisprudence, state reporting guidelines, and outputs from special procedures. The article finds that Resolution 550 represents a decisive move beyond voluntary corporate responsibility by recognising binding state duties. It concludes that cross-systemic engagement contributes not only to mutual institutional strengthening but also to the formation of an emerging transregional normative ecology capable of supporting the evolution of customary international law on business and human rights.

TITRE ET RÉSUMÉ EN FRANÇAIS

Construction de normes transrégionales: la Résolution 550, la Cour interaméricaine des droits de l'homme et l'avenir des entreprises et des droits humains

RÉSUMÉ: L'influence économique et politique croissante des entreprises transnationales (ETN) a mis en évidence les limites des cadres étatiques existants pour faire face aux violations des droits de l'homme liées aux activités des entreprises.

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Les Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'homme (PDNU) se sont imposés comme le principal référentiel normatif mondial visant à combler ce déficit de protection. En 2023, la Commission africaine des droits de l'homme et des peuples a adopté la Résolution 550, marquant un tournant significatif par l'intégration des PDNU dans le cadre régional de protection des droits de l'homme et par l'engagement en faveur de l'élaboration d'un instrument juridique contraignant en matière d'entreprises et de droits de l'homme. Cet article examine la manière dont le système africain internalise et développe les PDNU et analyse dans quelle mesure le système interaméricain des droits de l'homme — à travers sa jurisprudence, ses rapports thématiques et ses pratiques interprétatives — peut contribuer à la consolidation normative de la Résolution 550. L'article poursuit ainsi un double objectif: d'une part, proposer une analyse doctrinale critique des innovations juridiques contenues dans la Résolution; d'autre part, évaluer le potentiel de fertilisation croisée entre les systèmes africain et interaméricain. La méthodologie adoptée combine une approche doctrinale et comparative avec une perspective critique, fondée sur l'analyse de sources primaires, notamment les instruments relatifs aux droits de l'homme, la jurisprudence régionale, les lignes directrices en matière de rapports étatiques et les travaux issus des procédures spéciales. L'article conclut que la Résolution 550 constitue une avancée décisive au-delà de la responsabilité volontaire des entreprises, en consacrant des obligations étatiques contraignantes. Il soutient enfin que l'engagement intersystémique contribue non seulement au renforcement institutionnel mutuel, mais aussi à l'émergence d'une écologie normative transrégionale susceptible de favoriser l'évolution du droit international coutumier en matière d'entreprises et de droits de l'homme.

TÍTULO E RESUMO EM PORTUGUÊS

Construção de padrões transregionais: a Resolução 550, a Corte Interamericana de Direitos Humanos e o futuro das empresas e dos direitos humanos

RESUMO: A crescente influência econômica e política das corporações transnacionais (CTNs) tem exposto as limitações dos marcos normativos centrados no Estado para lidar com violações de direitos humanos relacionadas às atividades empresariais. Os Princípios Orientadores das Nações Unidas sobre Empresas e Direitos Humanos (UNGPs) emergiram como o principal referencial normativo global para suprir essa lacuna de proteção. Em 2023, a Comissão Africana de Direitos Humanos e dos Povos adotou a Resolução 550, sinalizando uma mudança significativa ao integrar os UNGPs ao marco regional de direitos humanos e ao assumir o compromisso de elaborar um instrumento jurídico vinculante sobre empresas e direitos humanos. Este artigo investiga como o sistema africano vem internalizando e aprofundando os UNGPs e analisa em que medida o sistema interamericano de direitos humanos – por meio de sua jurisprudência, relatórios temáticos e práticas interpretativas – pode contribuir para a consolidação normativa da Resolução 550. O artigo persegue, assim, um duplo objetivo: em primeiro lugar, oferece uma análise doutrinária crítica das inovações jurídicas incorporadas na Resolução; e, em segundo, examina o potencial de fertilização cruzada entre os sistemas africano e interamericano. A metodologia combina uma abordagem doutrinária e comparativa com uma perspectiva crítica, apoiando-se em fontes primárias, incluindo instrumentos internacionais de direitos humanos, jurisprudência regional, diretrizes de elaboração de relatórios estatais e produtos dos procedimentos especiais. O artigo conclui que a Resolução 550 representa um avanço decisivo para além da responsabilidade corporativa voluntária, ao reconhecer deveres estatais de natureza vinculante. Sustenta-se, por fim, que o engajamento entre sistemas contribui não apenas para o fortalecimento institucional mútuo, mas também para a formação de uma ecologia normativa transregional emergente, capaz de sustentar a evolução do direito internacional consuetudinário em matéria de empresas e direitos humanos.

KEY WORDS: business and human rights; African Commission on Human and Peoples' Rights; Inter-American Court of Human Rights; United Nations Guiding Principles; Resolution 550; corporate accountability

CONTENT:

1 INTRODUCTION

In the current global landscape, transnational corporations (TNCs) have become dominant economic actors, often surpassing the financial capabilities of sovereign states. According to a ranking by the NGO Global Justice Now, 69 of the world's 100 largest economic entities are corporations, and some of the most profitable companies generate revenues greater than the GDP of entire countries.[1] This concentration of power is a defining feature of the prevailing capitalist model, in which business enterprises pursue profit while wielding significant influence over labour, environmental, and regulatory standards.[2]

The process of globalisation, intensified by technological advances and economic integration, has enabled corporations to fragment their operations across borders, strategically locating themselves in jurisdictions with weaker labour protections and environmental safeguards.[3] This dynamic has contributed to a power imbalance between states and corporations, resulting in weakened state sovereignty and a growing inability to ensure effective human rights protection.[4] The structural complexity of corporate networks and the lack of binding international instruments create what scholars have aptly termed a 'global architecture of impunity'.[5]

Against this backdrop, international human rights law has progressively developed normative frameworks aimed at addressing

1 C Galindo 'Quando as empresas são mais poderosas que os países' *El País* (São Paulo, 7 November 2017) https://brasil.elpais.com/brasil/2017/11/03/economia/1509714366_037336.html (accessed 1 July 2025).

2 E Vasconcelos & RM Maciel 'A devida diligência como ferramenta de respeito aos direitos humanos pelas empresas' (2023) 22(1) *Prisma Jurídico* 153 https://doi.org/10.5585/2023.23104 (accessed 1 July 2025).

3 V de Assis & DA Pamplona 'Princípios orientadores das Nações Unidas e a complexidade de proteção e respeito aos direitos humanos no combate ao trabalho escravo no Brasil' (2019) 14(1) *Revista Eletrônica Direito e Política* 1, 3 https://doi.org/10.14210/rdp.v14n1.p1-29 (accessed 1 July 2025); Homa – Human Rights and Business Centre 'Devida diligência em matéria de direitos humanos: uma perspectiva crítica sobre histórico e efetividade face à arquitetura global da impunidade e a vanguarda legislativa no âmbito da União Europeia' (2023) 3 *Teoria e Sociedade* https://periodicos.ufjf.br/index.php/TeoriaeSociedade/article/download/39713/21013 (accessed 1 July 2025).

4 De Assis & Pamplona (n 3) 4; AC Olsen & DA Pamplona 'Violações a direitos humanos por empresas transnacionais na América Latina: perspectivas de responsabilização' (2019) 7(13) *Revista Direitos Humanos e Democracia* 129, 4 https://doi.org/10.21527/2317-5389.2019.13.129-151 (accessed 1 July 2025).

5 Homa – Human Rights and Business Centre (n 3) 17.

the accountability gap of business actors. Among these, the United Nations Guiding Principles on Business and Human Rights (UNGPs) have gained significant traction as a global reference for preventing and remedying corporate-related human rights abuses.

Notably, regional human rights systems are increasingly adopting and adapting these principles to their specific contexts. A key milestone in this regard is the adoption of Resolution 550 by the African Commission on Human and Peoples' Rights (African Commission) on 7 March 2023.[6] The resolution explicitly incorporates the UNGPs and outlines the Commission's commitment to elaborating a legally binding regional instrument on business and human rights. This development marks a significant shift from voluntary corporate compliance to enforceable state obligations and regional oversight.

However, while the normative importance of Resolution 550 is evident, its full potential depends on its integration with broader regional experiences and enforcement mechanisms. In this regard, the Inter-American human rights system offers valuable insights. The system has progressively interpreted the UNGPs in light of regional realities, including indigenous rights, environmental degradation, and corporate due diligence obligations.

Drawing from this comparative perspective, the present article addresses the following research problem: to what extent can the Inter-American system's normative developments inform and strengthen the African Commission's evolving framework on business and human rights? The article pursues a dual objective. First, it critically examines the normative content and institutional strategies embedded in Resolution 550. Second, it investigates the potential for substantive dialogue between the African and Inter-American systems by identifying convergences, asymmetries, and opportunities for cross-regional fertilisation concerning the implementation of the UNGPs.

This research problem is addressed through a doctrinal and comparative methodology grounded in the analysis of primary sources, including regional human rights treaties, institutional resolutions, general comments, state reporting guidelines, special procedure outputs, and case law. The analysis privileges a critical lens that foregrounds implementation challenges, the material asymmetries between corporations and states, and the risks of norm fragmentation in transregional contexts.

By placing the African and Inter-American systems in theoretical and institutional dialogue, this article seeks to contribute to the ongoing construction of a coherent, enforceable, and rights-centred framework of transnational corporate accountability. It argues that such comparative engagement is not merely instrumental for mutual learning but constitutive of an emergent normative ecology in which

6 African Commission on Human and Peoples' Rights, 'Resolution on Business and Human Rights in Africa – ACHPR/Res.550 (LXXIV)' https://achpr.au.int/en/adopted-resolutions/550-resolution-business-and-human-rights-africa-achprres550-lxxiv-2023 (accessed 1 July 2025) (Res 550).

regional systems co-produce the conditions for the evolution of customary international law on business and human rights.

Ultimately, this article seeks to demonstrate that cross-regional dialogues on business and human rights are not merely academic exercises but essential tools for building coherent and enforceable frameworks of accountability. By placing the African and Inter-American systems in conversation, the analysis sheds light on shared principles, contextual specificities, and the collective momentum toward bridging the protection gap in corporate-related human rights violations.

2 THE AFRICAN COMMISSION'S DOCUMENT: INNOVATION AND REGIONAL CONSOLIDATION

The African Commission has played a central role in constructing a distinct regional human rights framework rooted in Africa's socio-political realities. Rather than replicating global standards, the Commission articulates an African-centred normative model that integrates sovereignty, environmental justice, and social equity. Grounded in the African Charter on Human and Peoples' Rights (African Charter), this framework emphasises the indivisibility of civil, political, economic, social, cultural, and collective rights. It prioritises the rights of peoples — especially in relation to natural resources and development — while establishing obligations for States and responsibilities for corporate actors.

This section examines the African Commission's legal evolution through key resolutions, guidelines, and working group outputs that address the intersection between human rights and corporate conduct. It demonstrates how the Commission fosters a cohesive and innovative African legal paradigm with growing normative authority.

The African Commission has established itself as a legal and political benchmark in constructing a regional human rights protection system rooted in an African-centred perspective. Over the decades, its normative instruments reveal a trajectory of institutional innovation, strongly grounded in the socio-economic realities of the African continent, especially regarding the interrelationship between human rights, environmental governance, and corporate accountability.[7]

The African Charter is the foundational text of this normative construction. The Charter proposes a holistic conception of human rights that transcends the classical dichotomy of civil and political rights by incorporating economic, social, cultural, and collective rights,

7 African Commission, Report of the Working Group on Extractive Industries, Environment and Human Rights Violations https://achpr.au.int/en/intersession-activity-reports/extractive-industries-environment-and-human-rights-violations (accessed 1 July 2025).

particularly those of peoples.[8] Of special importance are articles 21, 22 and 24, which enshrine, respectively, the right to freely dispose of natural wealth and resources, the right to development, and the right to a satisfactory environment favourable to development.[9] These provisions form the legal pillars upon which the African Commission's most recent and sophisticated instruments are grounded.

Resolution 550 marks the culmination of this normative process by explicitly linking the principles of the African Charter to the contemporary dynamics of corporate operations in Africa, especially in the extractive industries of oil, gas and mining. The Resolution reaffirms the urgent need for binding legal instruments with clear obligations for both states and companies to prevent human rights violations and ensure effective reparations for impacted communities.[10]

Resolution 550 has been preceded by several foundational texts that support the African Commission's legal structure on business and human rights. Among these is Resolution 364, which raises concern over the lack of specific guidelines to assist states in reporting on the human rights impacts of extractive industries.[11]

This gap, according to the Commission, hinders not only transparency but also the state's capacity for accountability regarding abuses committed by corporations on African soil.[12] In response, the African Commission tasked its Working Group on Extractive Industries, Environment and Human Rights Violations (Working Group on Extractive Industries) with developing technical guidelines to be incorporated into the periodic reports submitted by states under article 62 of the Charter.[13]

This normative push culminated in Resolution 367, which endorses the Niamey Declaration.[14] This innovative document reinforces the collective and popular dimension of the rights over natural resources, expressly invoking article 21 of the Charter. Resolution 367 requires that states reform their domestic legislation to establish civil, administrative and criminal sanctions for companies that violate human rights or cause environmental harm, while also establishing

8 African Charter arts 21-24 https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf (accessed 1 July 2025).

9 African Charter (n 8) arts 21-22, 24.

10 Res 550 (n 6).

11 African Commission, 'Resolution on Developing Reporting Guidelines with Respect to the Extractive Industries – ACHPR/Res.?364 (LIX)' https://achpr.au.int/en/adopted-resolutions/364-resolution-developing-reporting-guidelines-respect-extractive-ind (accessed 1 July 2025) (Res 364).

12 Res 364 (n 11).

13 Res 364 (n 11).

14 African Commission, 'Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector – ACHPR/Res.367 (LX) 2017' (22 May 2017) https://achpr.au.int/en/adopted-resolutions/367-resolution-niamey-declaration-ensuring-upholding-african-ch (accessed 1 July 2025). (Res 367)

judicial and extrajudicial mechanisms to compensate affected communities.[15] The document asserts that the continent's natural resources must be exploited to benefit local populations, in line with principles of distributive justice and intergenerational equity.

Along the same lines, the Resolution 633 calls for the drafting of a General Comment on article 24 of the Charter, reaffirming environmental justice as an essential dimension of collective human rights.[16] This represents an effort to consolidate an authoritative normative interpretation of environmental rights as rights belonging to peoples, not merely individuals.

The institutionalisation of monitoring and accountability mechanisms has been another major feature of the African Commission's work. The Working Group on Extractive Industries, led by Commissioner Dersso, plays a crucial role in documenting systematic rights violations committed by foreign companies, especially concerning forced displacements, environmental degradation, tax evasion, and absence of reparations.[17] The empirical material produced by this group supports not only the aforementioned resolutions, but also operational instruments such as the State Reporting Guidelines on articles 21 and 24 of the Charter, aimed at standardising state compliance with collective rights.

In the realm of economic, social and cultural rights (ESCRs), the African Commission in 2011 adopted the Principles and Guidelines on the Implementation of the ESCRs under the African Charter, offering an authoritative and comprehensive interpretation of articles 15 to 18 and 22. The document asserts that the right to development (article 22) is a full and collective human right, requiring states to adopt positive action, redistributive policies and participatory mechanisms.[18] The guidelines also emphasise the need for affirmative action for women, indigenous peoples and communities impacted by extractive projects, reinforcing the principle of substantive equality.[19]

This legal framework is enriched by the technical report of the Commission's Working Group on Economic, Social and Cultural Rights in Africa (ESCR Working Group), which further develops the operationalisation of these rights through monitoring indicators, disaggregated data by gender, income and location, as well as

15 Res 367 (n 14) para 1(h), 1(i), 2(c).

16 African Commission, 'Resolution on Developing General Comment on the Protection and Promotion of the Right to Environment in Africa – ACHPR/ Res.633 (LXXXIII) 2025' (3 June 2025) para 3 https://achpr.au.int/en/adopted-resolutions/633-achprres633-lxxxiii2025 (accessed 1 July 2025) (Res 633).

17 African Commission, Report of the Working Group on Extractive Industries, Environment and Human Rights Violations (ACHPR) para 5 https://achpr.au.int/en/intersession-activity-reports/extractive-industries-environment-and-human-rights-violations (accessed 1 July 2025).

18 African Commission, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (ACHPR) para 15 https://achpr.au.int/index.php/en/node/871 (accessed 1 July 2025).

19 Res 364 (n 11).

methodologies for evaluating the social impact of macroeconomic policies. Among its recommendations, the ESCR Working Group advocates for the integration of African regional legal instruments with the African Union's Agenda 2063, to ensure that the continent's development occurs in a fair, sustainable and rights-compliant manner.[20]

Such normative evolution cannot be understood in isolation. The volume *Desafios Globais – África* (*Global Challenges – Africa*), edited by Saliba, Lopes and Alexandre, provides crucial geopolitical context to the African Commission's advancements.[21] The authors highlight the paradox of a continent that is extremely resource-rich, yet faces low industrialisation, technological dependence, deep inequality and external interference in its economic sovereignty. The work argues that continental policies such as the African Continental Free Trade Area (AfCFTA) and Agenda 2063 will only succeed if underpinned by robust regional human rights norms, such as those developed by the African Commission.

The African Commission has established itself as a key normative actor in the African human rights landscape. Its progressive body of work reflects a deliberate and structured effort to respond to the continent's legal, political, and socio-economic challenges through a rights-based framework that is both principled and pragmatic.

At the core of this evolution lies a unique architecture of governance that blends legal rigour with political relevance. The Commission's approach rests on four interrelated structural pillars: (i) a foundational legal base in the African Charter, which recognises civil, political, economic, social, cultural and collective rights; (ii) resolutions that articulate political commitments and normative advances on pressing issues such as corporate accountability and environmental justice; (iii) specialised working groups that provide technical and empirical inputs, transforming abstract norms into actionable knowledge; and (iv) operational instruments — including reporting guidelines and thematic manuals — that facilitate implementation and monitoring at state level.[22]

This layered framework reflects a coherent and articulate normative process that centres the African peoples not merely as beneficiaries of rights but as active subjects of sovereignty, development and justice. It reinforces the collective dimension of rights and affirms the connection between natural resource governance and human dignity — areas often marginalised in global discourse.

20 African Commission, *Report of the Working Group on Economic, Social and Cultural Rights* para 4-7 https://achpr.au.int/en/documents/2022-12-09/report-working-group-economic-social-and-cultural-rights (accessed 1 July 2025).

21 AT Saliba, DB Lopes & MA Alexandre (eds) *Coleção desafios globais, Volume 1: África* (Editora UFMG 2021) 18-21 https://www.ufmg.br/dri/desafiosglobais/wp-content/uploads/2021/03/Volume1_Africa.pdf (accessed 1 July 2025).

22 Res 550 (n 6).

Importantly, the African Commission does not merely reproduce global human rights templates such as the UNGPs. Instead, it advances a context-sensitive normative model that is deeply embedded in African epistemologies and post-colonial realities. In this framework, community values, equitable resource redistribution, sustainable development, and environmental protection are not peripheral concerns but organising principles of regional justice.

This communitarian orientation is underpinned by ethical and philosophical traditions that inform African conceptions of justice and rights, often articulated through the notion of *ubuntu*. Rooted in Nguni-Bantu linguistic and philosophical frameworks, *ubuntu* expresses an understanding of personhood and dignity as inherently relational, shaped by social bonds, mutual recognition, and responsibility towards others. Rather than privileging individual success detached from collective well-being, this perspective emphasises solidarity, reciprocity, and shared responsibility as foundational elements of social order.[23] Within this normative horizon, harm is not assessed solely by reference to individual loss, but by its capacity to disrupt communal life, shared resources, and the conditions necessary for collective development.[24]

Read alongside the African Charter's distinctive recognition of collective rights and peoples' entitlements over natural resources, development, and a satisfactory environment, *Ubuntu* offers a conceptual lens through which the African Commission's approach to business and human rights can be better understood.[25]

Resolution 550 operationalises this normative sensibility by situating corporate accountability within a broader architecture of community protection, environmental integrity, and distributive justice. In doing so, the Resolution reinforces a regional model in which economic activity is evaluated not merely through its compliance with formal standards, but through its impact on communities, peoples, and the shared conditions of human dignity.

23 JS Dennis 'What is Ubuntu? exploring the philosophy of interconnectedness and humanity' (Becoming Institute, 29 January 2025) https://becominginstitute.ca/blog/what-is-ubuntu (accessed 12 December 2025).

24 BD Ajitoni 'Ubuntu and the philosophy of community in African thought: an exploration of collective identity and social harmony' (2024) 7(3) *Journal of African Studies and Sustainable Development*https://acjol.org/index.php/jassd/article/view/5672 (accessed 12 December 2025).

25 'Ubuntu in the African Charter on Human and Peoples' Rights' (Africa Social Work and Development Network, 25 July 2025) https://africasocialwork.net/ubuntu-in-the-african-charter-on-human-and-peoples-rights-achpr/ (accessed 12 December 2025).

3 RESOLUTION 550 AND THE REGIONAL CODIFICATION OF THE UNGPS IN THE AFRICAN HUMAN RIGHTS SYSTEM

The adoption of Resolution 550 by the African Commission marks a pivotal moment in the consolidation of business and human rights norms within the African regional system. What distinguishes this development is not merely the affirmation of state duties in relation to corporate accountability, but the explicit incorporation of the UNGPs as a normative compass.

This section examines the UNGPs as the global reference framework that underpins Resolution 550 and argues that the Resolution not only reflects but extends the UNGPs' architecture by embedding them in a regional legal context that aspires to move beyond soft law voluntarism.

The UNGPs are widely regarded as the central normative framework for addressing the relationship between corporate activity and the protection of human rights.[26] Developed by John Ruggie in his capacity as the Special Representative of the UN Secretary-General, the UNGPs were unanimously endorsed by the UN Human Rights Council in 2011.[27] They emerged from the foundational 'Protect, Respect and Remedy' framework proposed in 2008,[28] and were designed to address the regulatory and accountability gaps that had become increasingly evident in a globalised economy marked by the transnational reach of corporate power.[29]

The UNGPs are structured around three complementary pillars: the state duty to protect human rights; the corporate responsibility to respect human rights; and the need for access to effective remedies.[30]

The first pillar affirms that states must take appropriate steps – including legislative, judicial and administrative measures – to prevent, investigate, punish and redress human rights abuses by third parties,

26 MM de Souza 'Direitos humanos e empresas: paradigmas atuais' (2022) 3(2) *Revista da Defensoria Pública do Estado de São Paulo* 105 https://ojs.defensoria.sp.def.br/index.php/RDPSP/article/view/96 (accessed 1 July 2025).

27 Vasconcelos & Maciel (n 2).

28 LP de Souza, MEM Oliveira & MS Wünsch 'Debida diligencia en materia de derechos humanos: una mirada crítica sobre la historia y la efectividad frente a la arquitectura global de la impunidad y la vanguardia legislativa en el ámbito de la Unión Europea' (2022) 6(1) *Homa Publica – Revista Internacional de Derechos Humanos y Empresas* e096 https://periodicos.ufjf.br/index.php/HOMA/article/view/37726 (accessed 1 July 2025).

29 CA Trida 'Os Princípios Orientadores sobre Empresas e Direitos Humanos da ONU e sua aplicação como nova ferramenta para a efetivação dos direitos dos trabalhadores' (2022) 8(8) *DIGE – Direito Internacional e Globalização Econômica* https://doi.org/10.23925/2526-6284/2021.v8n8.56680 (accessed 1 July 2025).

30 O Martin-Ortega 'Human rights due diligence for corporations: from voluntary standards to hard law at last?' (2014) 32(1) *Netherlands Quarterly of Human Rights* 44 https://doi.org/10.1177/016934411403200104 (accessed 1 July 2025).

including businesses.[31] They must also clearly communicate the expectation that companies domiciled in their territory respect human rights in all their activities.[32]

The second pillar underscores that all business enterprises, regardless of size or sector, have a responsibility to respect human rights by avoiding infringement and addressing adverse impacts with which they are involved, directly or through their business relationships.[33] To meet this responsibility, companies are expected to adopt a human rights policy approved at the highest level of the organisation and to implement a human rights due diligence process to identify, prevent, mitigate and account for their impacts on human rights.[34]

The third pillar addresses the right of victims to effective remedy. States must ensure that judicial and non-judicial grievance mechanisms are available, accessible, and effective.[35] Companies, in turn, are encouraged to establish operational-level grievance mechanisms that adhere to the effectiveness criteria outlined in Principle 31 of the UNGPs: legitimacy, accessibility, predictability, equitability, transparency, compatibility with rights, and a source of continuous learning.[36]

Although the UNGPs do not create new obligations under international law and are considered soft law, their normative influence is significant.[37] Their widespread endorsement by states, international organisations and businesses has facilitated the emergence of binding domestic and regional instruments on corporate human rights due diligence.[38] As scholarship and practice have shown, the UNGPs play a catalytic role in bridging the gap between soft and hard law, advancing an integrated and evolving framework of corporate accountability.[39]

Resolution 550 explicitly acknowledges the UNGPs as a foundational normative instrument. This reference appears not only in the preamble but also in operative paragraphs urging member states to implement policies aligned with the UNGPs. The Resolution further recommends that the African Union (AU), in updating its continental policy framework on business and human rights, should consider all

31 O De Schutter & others, *Human Rights Due Diligence: The Role of States* (2012) 55 https://humanrightsinbusiness.eu/wp-content/uploads/2015/05/De-Schutter-et-al.-Human-Rights-Due-Diligence-The-Role-of-States.pdf accessed 1 July 2025; SG Silva & DA Pamplona 'Devida diligência em direitos humanos: entre esforços externos e medidas *interna corporis* de combate às violações causadas por empresas' (2022) *Revista de Direito Internacional* https://www.rel.uniceub.br/rdi/article/view/9807/pdf_1 (accessed 1 July 2025).

32 De Assis & Pamplona (n 3).

33 Olsen & Pamplona (n 4) 129; Vasconcelos & Maciel (n 2) 153.

34 Vasconcelos & Maciel (n 2) 10; Martin-Ortega (n 30) 56.

35 De Schutter & others (n 31) 55; Silva & Pamplona (n 31).

36 Vasconcelos & Maciel (n 2) 11.

37 De Assis & Pamplona (n 3).

38 Souza, Oliveira & Wünsch (n 28).

39 Olsen & Pamplona (n 4) 8.

relevant soft law instruments of the African Commission—among which the UNGPs are prominently included.[40]

This explicit recognition is not merely rhetorical. Civil society organisations, such as the Consortium for Human Rights and Media in Sub-Saharan Africa (CHARM), have praised the Resolution as a 'critical step' towards the regional implementation of the UNGPs and the advancement of the business and human rights agenda in Africa.[41] The Resolution not only endorses the UNGPs but also positions them as an operational framework for the development of future legal and policy instruments in the region. This is evident in the Commission's stated intention to elaborate a legally binding regional instrument to regulate the activities of transnational corporations and other business enterprises – an instrument expected to integrate the normative content of the UNGPs and, crucially, establish mechanisms for accountability and remedy.[42]

The Commission's normative approach echoes the interpretative practices of the Inter-American human rights system. Both the Inter-American Commission of Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) have invoked the UNGPs as interpretative guidance when articulating state obligations in relation to corporate conduct, particularly with respect to prevention, regulation, and access to effective remedy. In Advisory Opinion OC-23/17,[43] the IACtHR established that states must adopt preventive frameworks to regulate the activities of private actors whose operations may affect human rights, especially in environmentally sensitive or indigenous territories.[44] This reasoning is fully compatible with the logic of the UNGPs, even when not cited explicitly.

What is particularly salient in Resolution 550 is its explicit departure from a voluntarist conception of corporate responsibility. Rather than framing business and human rights as a matter of corporate discretion or goodwill, the Resolution articulates these concerns as falling squarely within the domain of state obligation. It calls upon states to establish robust regulatory, oversight, and enforcement mechanisms capable of monitoring corporate conduct, imposing sanctions, and ensuring access to effective remedies for affected individuals and communities.[45]

40 Res 550 (n 6).

41 RJ Kabré, 'Business and Human Rights in Africa in the era of the African Continental Free Trade Area (AfCFTA)' *Business and Human Rights Journal Blog* (18 June 2024) https://bhrj.blog/2024/06/18/business-and-human-rights-in-africa-in-the-era-of-the-african-continental-free-trade-area-afcfta (accessed 1 July 2025).

42 Kabré (n 41).

43 IACtHR, *Advisory Opinion OC-23/17 requested by the Republic of Colombia: The environment and human rights* (15 November 2017) Series A No 23, para 29 https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf (accessed 20 July 2025).

44 De Souza, Oliveira & Wünsch (n 28).

45 Res 550 (n 8).

In so doing, the Resolution signals an evolution towards a more prescriptive and enforceable regional legal architecture – one that draws normative legitimacy from the UNGPs, yet also transcends their non-binding nature through a regional commitment to legal codification and accountability. In conclusion, the normative dialogue between the UNGPs and Resolution 550 reflects a growing convergence between global soft law instruments and regionally specific legal developments in the field of business and human rights.

While the UNGPs offer a globally recognised and widely endorsed normative framework, the African Commission's Resolution both reaffirms and extends their applicability by embedding them within institutional and political mechanisms tailored to the African context.

This complementarity not only underscores the UNGPs' role as a universal normative reference point, but also demonstrates the capacity of regional human rights systems to internalise, adapt, and elaborate global standards in ways that enhance their legal precision, institutional enforceability, and contextual legitimacy.

4 CONNECTIONS WITH THE INTER-AMERICAN SYSTEM AND IMPACTS ON THE AFRICAN SYSTEM

The strengthening of regional systems for the protection of human rights has proven to be essential in the face of business activities that impact vulnerable communities, especially Indigenous peoples, traditional communities, and the environment.

In this context, as part of a broader transregional dialogue, the IACtHR has progressively incorporated significant advances in recognising state responsibility for omissions in the face of violations of the rights of Indigenous peoples and environmental harm that result in human rights violations, associated with the duty to protect under the UNGPs. In this regard, the following landmark cases stand out: *Kaliña and Lokono v Suriname* (2015);[46] *Workers of the Brazil Verde Farm v Brazil* (2016);[47] *Employees of the Fireworks Factory of Santo Antônio de Jesus and their Families v Brazil* (2020);[48] and *La Oroya v Peru* (2024).[49]

46 IACtHR, *Case of the Kaliña and Lokono Peoples v Suriname* (Judgment of 25 November 2015) Series C No 309 https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf (accessed 20 July 2025).

47 IACtHR, *Case of Hacienda Brasil Verde Workers v Brazil* (Judgment of 20 October 2016) Series C No 318 https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf (accessed 20 July 2025).

48 IACtHR, *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v Brazil* (Judgment of 15 July 2020) Series C No 407 https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_ing.pdf (accessed 20 July 2025).

49 IACtHR, *Case of the Inhabitants of La Oroya v Peru* (Judgment of 22 November 2023) Series C No 511 https://www.corteidh.or.cr/docs/casos/articulos/seriec_511_ing.pdf (accessed 20 July 2025).

The IACtHR has progressively, through its legal rulings, given concrete effect to the state's due diligence obligation to protect the human rights of its populations in the context of business activities, particularly by operationalising preventive, regulatory and supervisory duties than merely affirming abstract obligations, in relation to private economic actors.

In the case of *La Oroya v Peru*, the Court found the Peruvian state responsible for failing to adopt sufficient measures to prevent and remedy the health and environmental impacts arising from corporate metal smelting activities. The judgment emphasised the state's obligation to ensure a healthy environment and underscored the importance of environmental due diligence as a state duty, based on articles 4 and 5 of the American Convention on Human Rights.[50] Furthermore, in the *Brazil Verde* case,[51] the IACtHR recognised the state's failure to combat modern slavery on a private farm, establishing that the state must not neglect its duty to inspect labour relations and business enterprises. The *Fireworks Factory* case gained significant prominence due to the public authorities' negligence in carrying out proper inspections regarding the unsafe, informal, and degrading working conditions experienced by employees within the company.[52]

All these precedents demonstrate that the IACtHR affirms that states must not only be held accountable for their own actions but also for failing to prevent abuses committed by business enterprises. These findings, while respecting the specificities of each case, are substantially aligned with the pillars of the UNGPs, particularly the duty to protect.

In addition to judicial decisions, the IACHR has contributed through official documents, such as the thematic report *Business and human rights: Inter-American standards*.[53] This report emphasises the obligation of states to prevent and remedy harm caused by corporations within their territories, as well as the need to adopt legal frameworks compatible with the principles of human rights due diligence — including standards for prior consultation, impact assessment, and full reparation.

Resolution 550 proposes the creation of a regionally binding instrument to regulate corporate obligations in the protection of human rights, providing for appropriate mechanisms of accountability and reparation. This normative development must be understood as

50 Organization of American States, *American Convention on Human Rights "Pact of San José, Costa Rica"* (adopted 22 November 1969, entered into force 18 July 1978) https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf (accessed 20 July 2025).

51 IACtHR, *Case of Hacienda Brasil Verde Workers v Brazil* (Judgment of 20 October 2016) Series C No 318 https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf (accessed 20 July 2025).

52 IACtHR, *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v Brazil* (Judgment of 15 July 2020) Series C No 407 https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_ing.pdf (accessed 20 July 2025).

53 IACtHR, *Empresas e Direitos Humanos: Padrões Interamericanos* (2019) https://www.oas.org/pt/cidh/relatorios/pdfs/empresas%20e%20direitos.pdf (accessed 20 July 2025).

part of an autonomous African trajectory and not as a derivative or receptive process, but rather within a regional system that has already produced a substantial body of jurisprudence of corporate-related human rights harms.

Concepts such as: (i) the obligation of states to carry out environmental and social due diligence; (ii) the attribution of responsibility for regulatory omissions by the State; and (iii) the emphasis on effective access to justice for groups in situations of social, political, and economic vulnerability, have been progressively consolidated within the jurisprudence of IACtHR.[54] These principles derive from Court's interpretation of state's duties to respect, protect and ensure human rights protection in contexts involving business activities, particularly where corporate conduct poses risks to the environment and to affected communities[55].

Through landmark advisory opinions and contentious cases, the IACtHR has clarified that states are not only responsible for direct violations, but also for failures to regulate, supervise and prevent harm caused by private actors, as well as for ensuring that vulnerable groups have access to effective remedies when violations occur.

Importantly, these principles are not external to the African context, as similar standards have long been articulated and enforced within the African human rights system itself. In *Social and Economic Rights Action Center (SERAC) and Another v Nigeria* (*Ogoni* case),[56] the African Commission held Nigeria internationally responsible for environmental degradation, health impacts and violation of collective rights resulting from its failure to regulate and supervise oil exploitation activities carried out by private companies.[57]

This jurisprudential line was further developed in cases such as *SERAP v Nigeria & UBEC,*[58] in which the African Commission reaffirmed the state responsibility for socio-economic rights violations linked to extractive and public-private arrangements. In the *Endorois*

54 IACtHP, *Advisory Opinion OC-23/17,* requested by the Republic of Colombia. (15 July 2017) https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf (accessed 12 December 2025).

55 IACtHR, *Lhaka Honhat (Indigenous Communities) v Argentina,* Judgment of 6 February 2020 (Series C No. 400) https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf (accessed 12 December 2025).

56 African Commission, *Communication 227/99 – Constitutional Rights Project and Civil Liberties Organisation v Nigeria* (27 October 2001) https://africanlii.org/en/akn/aa-au/judgment/achpr/2001/35/eng@2001-10-27 (accessed 12 December 2025)

57 JS Pires & DA Pamplona 'Perspectivas da litigância climática em face de empresas: o caso *Milieudefensie et al v Royal Dutch Shell*' (2022) 19(1) *Revista de Direito Internacional* https://www.publicacoes.uniceub.br/rdi/article/download/7949/pdf (accessed 1 June 2024).

58 African Commission, S*ocio-Economic Rights and Accountability Project (SERAP) v Nigeria* (30 November 2010) https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/national_case_law/SERAP%20v%20Nigeria.pdf (accessed 12 December 2025).

case,[59] and *Ogiek* case,[60] both against Kenya, the African Commission and the African Court, respectively, emphasised the protection of indigenous and community land rights, prior consultation, environmental preservation and access to effective remedies in contexts closely connected to economic development and natural resource exploitation.

Although the concepts articulated by IACtHR must be adapted to the African social, political and economic context, Inter-American jurisprudence operates as a complementary comparative reference rather than a normative blueprint. Together with pre-existing African jurisprudence and domestic regulatory practices, these precedents contribute to the solid development of the African system in protecting human rights in the face of business activities taking place within the continent.

In this direction, Resolution 550 reflects that the African Commission has already been paving its own path, acknowledging existing legal gaps in the region, the power imbalances, and the pressure exerted by investors, which often hinder the accountability of companies that violate human rights. It also recognises the importance of normative and institutional strengthening to ensure transnational justice.

Additionally, the Resolution highlights the need to establish permanent institutional spaces dedicated to the topic of business and human rights, such as the African Coalition for Corporate Accountability,[61] promoting the exchange of standards and experiences among professionals and institutions.

Such initiatives, contextualised within regional social, political, and economic realities, pave the way for the African system to develop instruments that go beyond soft law, drawing inspiration from experiences such as those of the IACtHR, while remaining grounded in African jurisprudence, values and institutional priorities, without compromising the centrality of African legal concepts, collective rights and peoples' sovereignty over natural resources.

This exchange between systems is characterised as a process of 'cross-fertilisation', understood as a horizontal and bidirectional dynamic, in which different regions of the world, by sharing similar structural challenges, learn from one another's advances and

59 African Commission, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (4 February 2010) https://www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_0.pdf (accessed 12 December 2025) (*Endorois* case).

60 *African Court, African Commission v Kenya* (15 August 2017) https://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf (accessed 12 December 2025).

61 African Coalition for Corporate Accountability (ACCA), *Official Website* https://accahumanrights.org/en/ (accessed 20 July 2025).

setbacks.[62] The decisions of the IACtHR, for instance, may offer interpretative guidance to the African Charter, while African case law on collective rights and natural resource governance enriches transregional debates on business and human rights. Likewise, Resolution 550 and future instruments of the African Commission may, in time, incorporate these precedents to strengthen both State and corporate accountability, contributing to a transregional harmonisation of standards on business and human rights.

In this way, the African system is presented with a strategic opportunity to expand its engagement with the issue and to innovate institutionally. Resolution 550 represents a first and decisive step towards recognising the structural challenges faced by African states and proposing concrete normative responses. The strategic application of the principle of cross-fertilisation, through a consistent dialogue with the Inter-American system, may position the African continent as a key actor in the development of a transnational justice regime capable of holding companies accountable for human rights violations.

5 CONCLUSION

Resolution 550 constitutes a significant normative milestone in the maturation of the African human rights system's approach to business and human rights. By expressly incorporating the UNGPs, the Resolution not only reaffirms existing international obligations but innovatively adapts them to the continent's unique socio-political dynamics. This alignment reflects a deliberate regional effort to internalise global standards while addressing structural asymmetries inherited from colonial legacies and deepened by global economic hierarchies.

What sets Resolution 550 apart is its departure from a merely voluntarist framework. By explicitly calling for the development of a legally binding instrument, it signals the African Commission's intention to overcome the normative gap that has long characterised corporate accountability. This move resonates with the interpretative advances consolidated within the jurisprudence of the IACtHR, particularly regarding State duties to regulate, supervise and prevent human rights abuses arising from business activities. This shift affirms the right of affected communities not only to protection but also to effective remedies — a central pillar of international human rights law. In doing so, the African system asserts a proactive stance in transforming soft law commitments into enforceable obligations, potentially redefining the architecture of corporate responsibility on the continent.

62 HR Fabri, 'The Procedural Cross-Fertilization Pull' (2022) https://www.researchgate.net/profile/Helene-Ruiz-Fabri/publication/363049506_The_Procedural_Cross-Fertilization_Pull/links/66c09470145f4d3553603a02/The-Procedural-Cross-Fertilization-Pull.pdf DOI: 10.1017/9781009118002.004 (accessed 20 July 2025).

Moreover, Resolution 550 should not be interpreted as a passive response to global movements. Rather, it embodies a conscious act of normative agency – a regional appropriation of international standards reoriented to serve the priorities and realities of African peoples. In this process, the African human rights system selectively draws from comparative experiences, including the IACtHR's case law on regulatory omissions, environmental harm and access to justice for vulnerable groups, while recalibrating these principles to its own institutional and socio-economic context. This endogenous normative development reinforces the legitimacy of the African system and positions it as an emerging leader in the field of business and human rights.

Importantly, the African model exerts a catalytic influence beyond its borders. By articulating progressive jurisprudence and institutional mechanisms, it enriches global debates and contributes to the evolving ecosystem of transnational human rights governance. The dialogical interaction between the African and Inter-American systems illustrates a dynamic process of South-South normative cross-fertilisation, where jurisprudential innovations developed in the IACtHR, particularly in relation to State responsibility for private actors, inform and are reinterpreted within the African framework. This mutual learning enhances the coherence and effectiveness of regional responses to corporate-related human rights violations.

In conclusion, Resolution 550 exemplifies a transformative turn in the regionalisation of business and human rights norms. It embodies not only a response to external global trends but also a projection of African legal imagination. By engaging critically with Inter-American jurisprudence while asserting it owns normative autonomy, the African Commission consolidates a distinctive and context-sensitive model of corporate accountability. Through it, the African Commission sets a precedent for other regions and strengthens the global struggle for a fairer and more accountable transnational economic order.