



UN Guiding Principles on Business and Human Rights

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Commission on Human Rights

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Outline

- 1 Context and Timeline of the UNGP
- 1 State Duty to Protect Human Rights
- 1 Corporate Responsibility to Respect Human Rights
- 1 Access to Remedy
- 1 National Action Plan

UNGP What?

1 A set of 31 Principles directed at States and companies that clarify their duties and responsibilities to protect and respect human rights in the context of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities.



Why have Guiding Principles?

- 1 Globalization pushes companies into new markets
- 1 Company impacts on communities
- 1 Host-States are sometimes unwilling or unable to address company human rights impacts
- 1 Frequently, home-States don't regulate their companies abroad
- 1 No international governance framework
- 1 No clarity on the responsibility of States vs. businesses
- 1 No level playing field for businesses, 'race to the bottom' for States

Timeline

- 2005 : Special Representative appointed to ‘identify and clarify’ existing standards and practices with regard to business and human rights
- 2008 : UN Protect, Respect and Remedy Framework
- 2011 : UN Guiding Principles on Business and Human Rights articulating the corporate responsibility to respect human rights and human rights due diligence
- 2011 – 2018 : UN Working Group on Business and Human Right

UN Working Group on BHR



- 1 Established in 2011 by Human Rights Council
- 1 5 Members with regional representation
- 1 Mandate: Disseminate the UN Guiding Principles on Business and Human Rights; Identify good practices; Promote capacity-building; Domestic legislation and policies; Country visits; Enhance remedies
- 1 Annual UN Forum on Business and Human Rights, each November/December



UN Guiding Principles on Business and Human Rights

Pillar I: State duty to protect

Foundational Principles
(GPs 1-2)

Operational Principles

General regulatory and policy functions (GP 3)

State-Business nexus
(GPs 4-6)

Conflict-affected areas
(GP 7)

Policy Coherence
(GPs 8-10)

Pillar II: Corporate responsibility to respect

Foundational Principles
(GPs 11-15)

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Policy commitment (GP 16)

Human rights due diligence
(GPs 17-21)

Remediation (GP 22)

Issues of context (GPs 23-24)

Pillar III: Access to remedy

Foundational Principle
(GP 25)

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State-based judicial mechanisms (GP 26)

State-based non-judicial mechanisms (GP 27)

Non-State-based grievance mechanisms (GP 28)

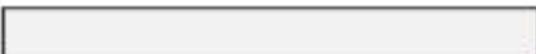
Non-State-based grievance mechanisms (GP 29)

Multistakeholder initiatives
(GP 30)

Effectiveness criteria (GP 31)

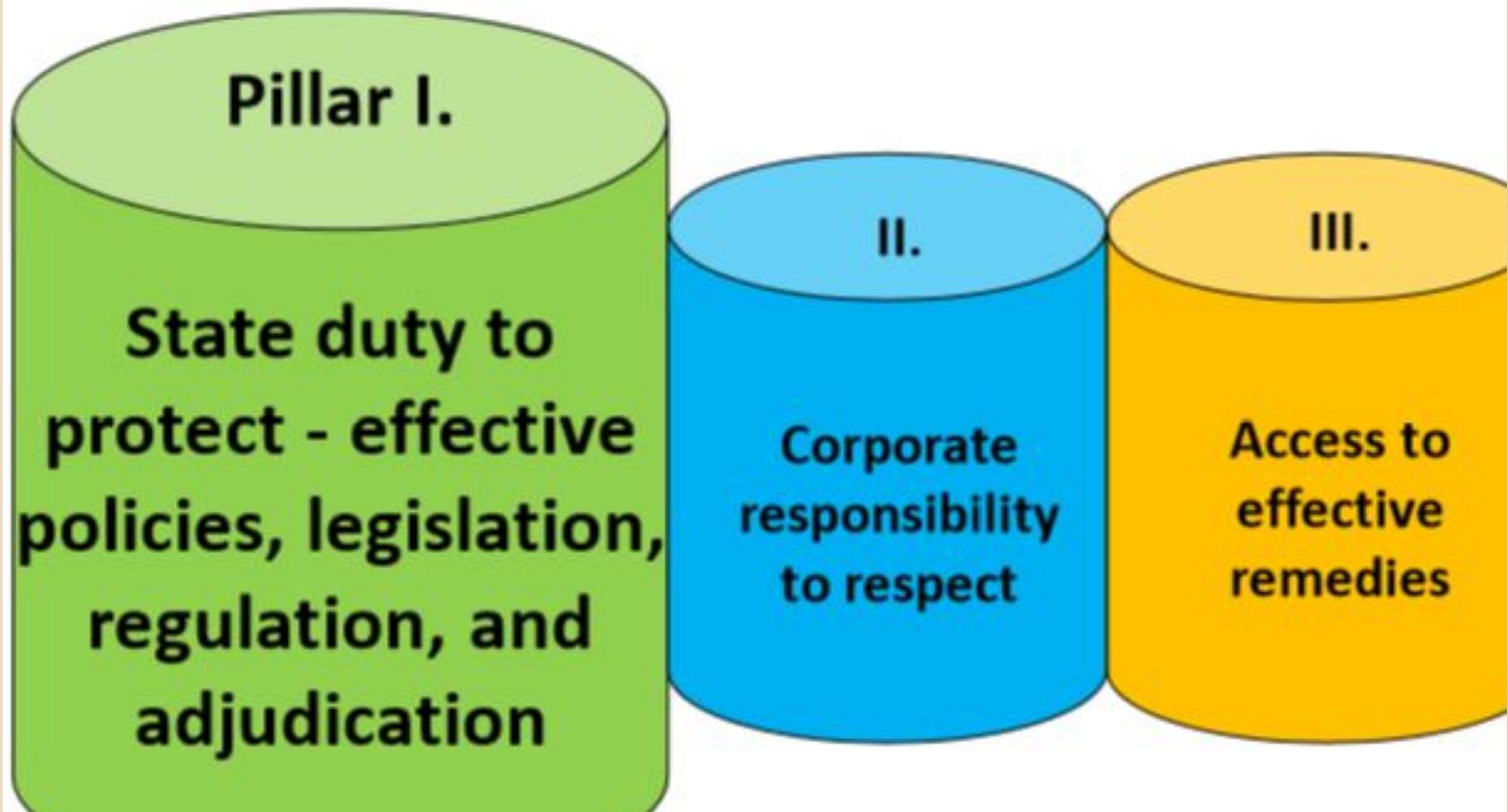


Principles directed at States*



Principles directed at business enterprises

* Principles 30 and 31 are directed at both States and business enterprises



STATE DUTY TO PROTECT: FOUNDATIONAL PRINCIPLES

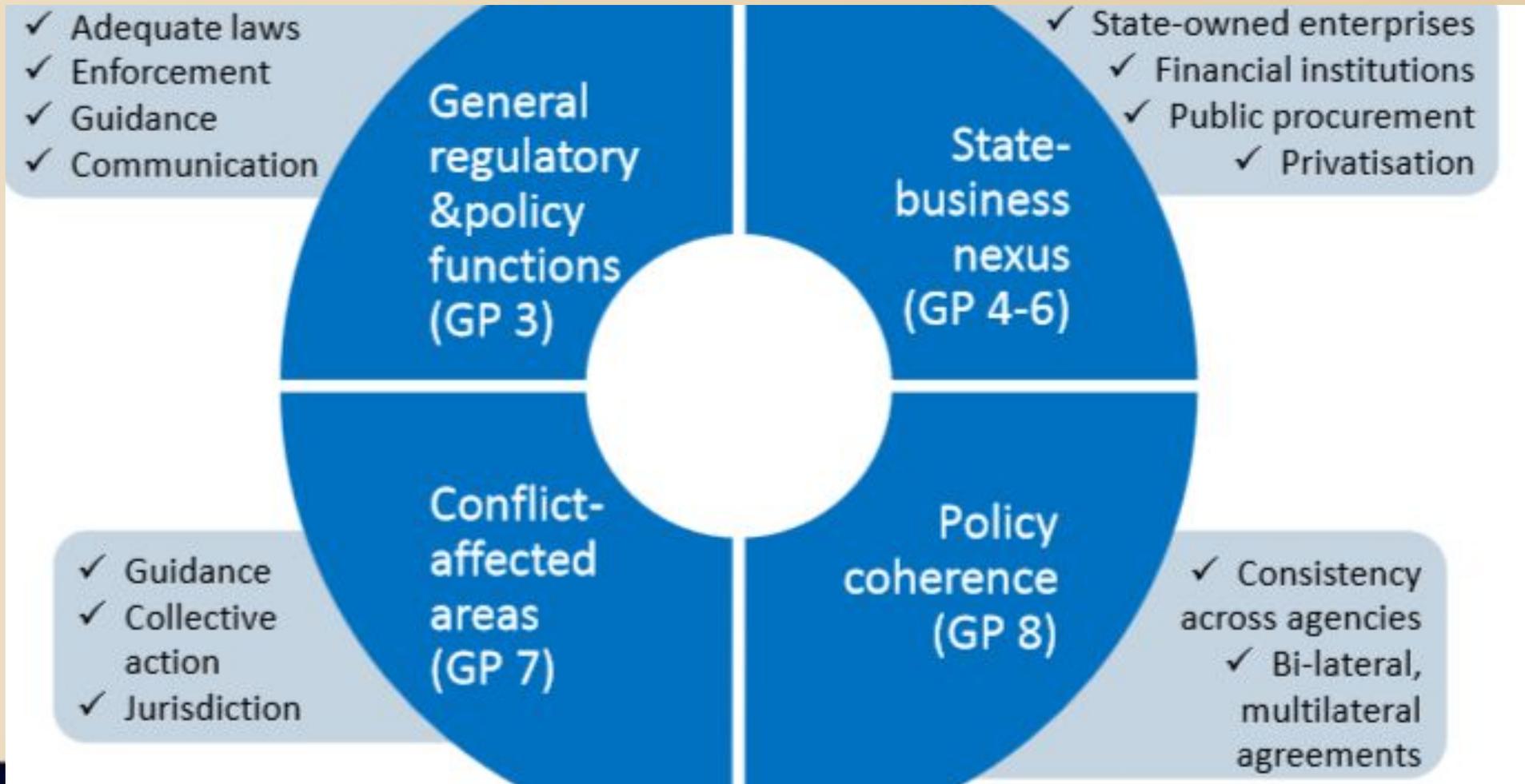
Principle 1: States must protect against business-related abuse within their territory and/or jurisdiction

✓ Prevent, mitigate and address through policies, legislation, regulation and adjudication

Principle 2: Set out expectation that businesses domiciled in their territory and/or jurisdiction respect human rights

✓ Extraterritorial jurisdiction over companies not a general requirement in international human rights law, but not prohibited

Pillar 1: Operational Principles

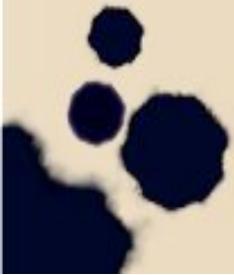


General regulatory & policy functions (GP 3)



When the State enacts laws and policies, it should:

- Enforce and review laws that require businesses to respect human rights
- Ensure laws and policies governing businesses enable respect for human rights
- Provide guidance for companies
- Encourage or require businesses to communicate how they address human rights impact



State-business nexus (GP 4-6)



When the State acts as a business or in direct relation with business, it should:

- Take additional steps where businesses owned or controlled by State, e.g. financial institutions
- Exercise adequate oversight of businesses providing services, e.g. privatization
- Promote respect for human rights by business enterprises they conduct commercial transactions with, e.g. procurement

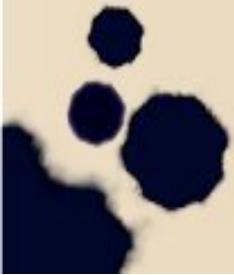


Conflict-affected areas (GP 7)



When businesses operate in conflict-affected areas, states should:

- Engage businesses early
- Provide assistance to businesses, including to prevent gender-based and sexual violence
- Deny public support for businesses involved in gross human rights abuses
- Ensure regulatory and policy measures prevent business involvement in gross human rights abuses



Policy coherence (GP 8)



When the State enacts policy or acts as a member of a multilateral institution, it should:

- Ensure that the State's human rights obligations are applied coherently
- Ensure that engagement with multilateral institutions does not violate State human rights obligations
- Seek to level the playing field through multilateral institutions



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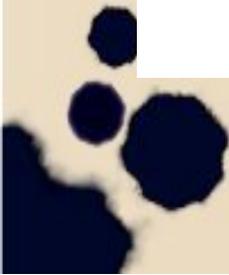
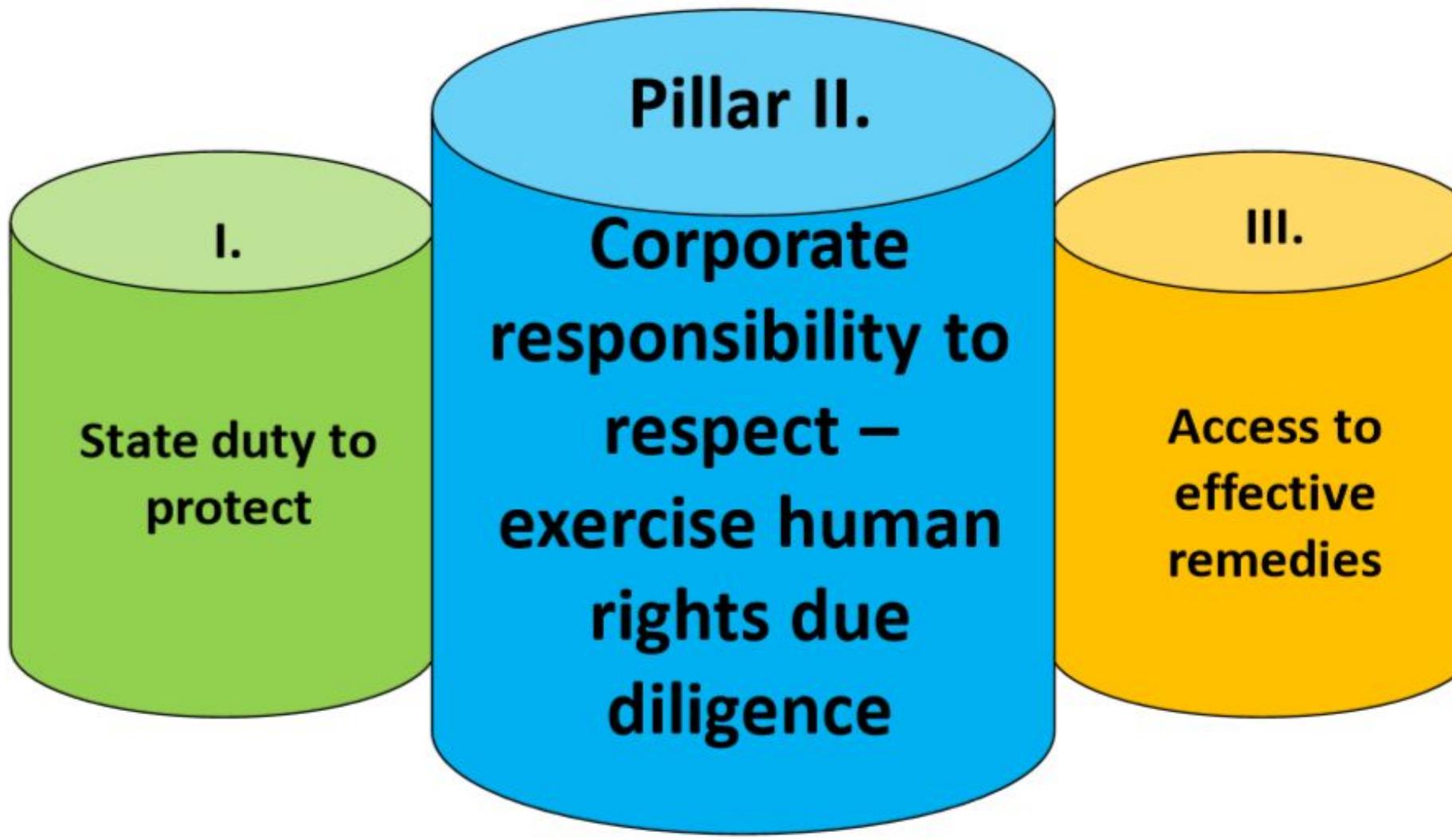
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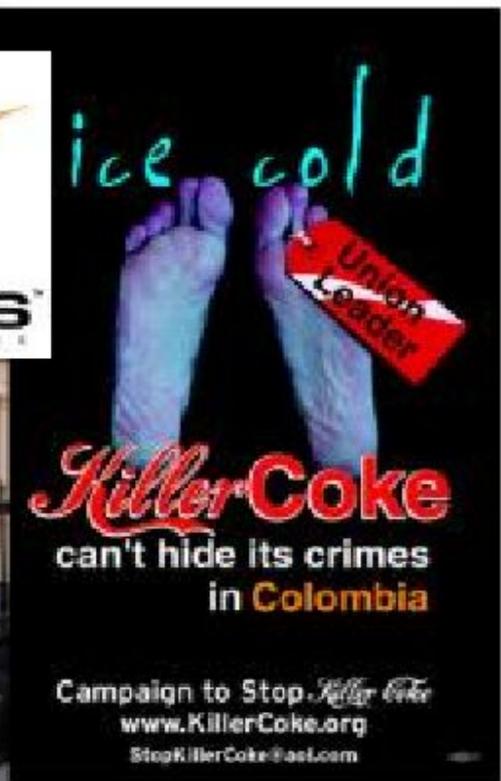
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“Business case” for Human Rights

- Reputation and brand
- Customer loyalty
- Recruitment / retention
- Attract investors
- Legal risk
- Improve security
- Reduce shutdowns / disturbances
- ‘Social license to operate’





“Business enterprises should respect human rights. This means that they should **avoid infringing on the human rights of others** and should **address adverse human rights impacts** with which they are involved.” Principle 11

II.
**Corporate
responsibility to
respect**

Companies must ‘know and show’ respect for human rights through exercising **human rights due diligence.**



Key points: Pillar 2

- | Includes all internationally recognized human rights - at minimum the international bill of human rights and the ILO's Declaration on Fundamental principles and rights at work
- | Includes adverse human rights impacts that the business enterprises may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships
- | Applies to all business enterprises
- | Applies to companies operating in countries where the State is unwilling or unable to enforce human rights laws

UNGP also mentions the 8 ILO Core Conventions

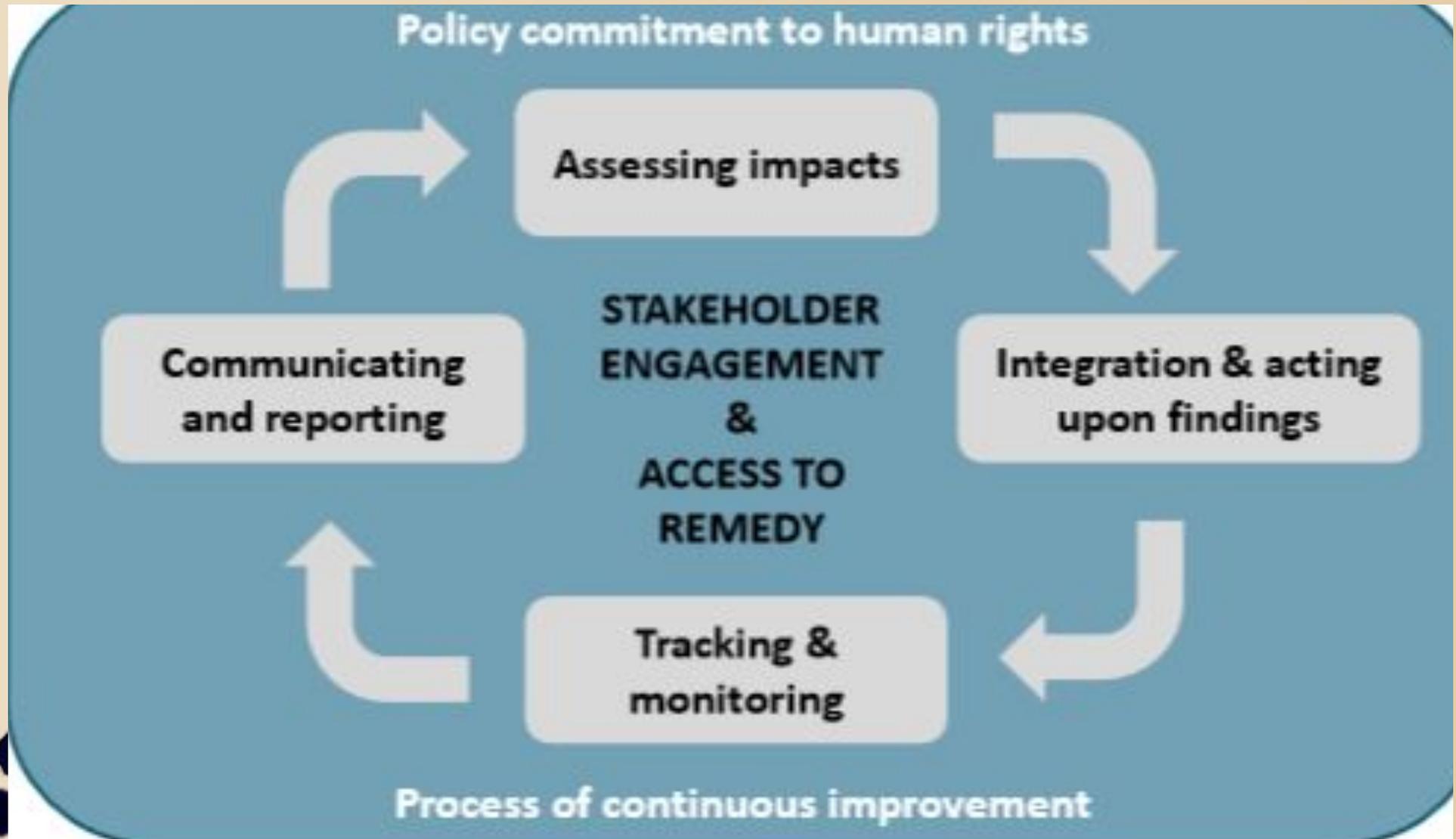


- 1 Declaration on Fundamental Principles and Rights at Work
 - 1 Forced Labor Convention, 1930 (No. 29)
 - 1 Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
 - 1 Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
 - 1 Equal Remuneration Convention, 1951 (No. 100)
- 

UNGP also mentions the 8 ILO Core Conventions (cont.)

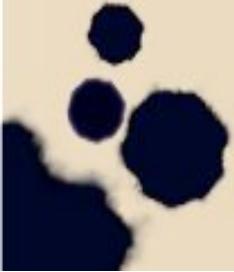
- 1 Abolition of Forced Labor Convention, 1957 (No. 105)
- 1 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- 1 Minimum Age Convention, 1973 (No. 138)
- 1 Worst Forms of Child Labor Convention, 1999 (No. 182)

Human Rights Due Diligence



Types of Impacts



- 1 Causing, e.g., company pollutes a community's drinking water.
 - 1 Contributing, e.g., company demands significant last-minute changes in product specifications from a supplier without adjusting the price or delivery dates. To fulfil the order, the supplier requires its workers to work significant overtime without pay.
 - 1 Directly linked, e.g., use of the scans by medical institutions to screen for female fetuses, facilitating their abortion in favor of boys
- 

Integrating & Acting upon Findings



- 1 Take necessary steps to prevent, cease or mitigate impacts
- 1 Remedy the impact (provide for or cooperate in)
- 1 Exercise **leverage** to prevent or mitigate impacts caused by others – e.g. joint venture partners, public authorities, suppliers etc.



Tracking & Monitoring



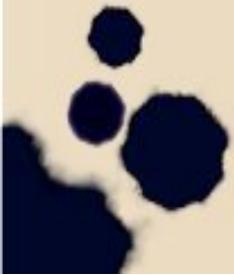
1 KPIs

1 Feedback from internal and external sources

1 Working groups

1 Independent auditing

1 Joint company-community monitoring



Communicating & Reporting

UN Guiding Principle 21:

- Communicate externally on impacts and due diligence
- Particularly when affected stakeholders raise concerns
- Where operating context poses risks of severe human rights impacts, formal reporting is expected

In all instances:

- a) Form and frequency should reflect company's human rights impacts and be accessible to intended audiences
- b) Information should be sufficient to evaluate adequacy of company response
- c) Not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality

Human Rights Due Diligence



Comparing: HRIA and SIA



HRIA	SIA
<ul style="list-style-type: none">• Process to identify, understand, assess and address adverse effects of projects or activities on human rights enjoyment of impacted rights-holders	<ul style="list-style-type: none">• Process of identifying, assessing and managing social issues of a project• Focus on both adverse impacts and project benefits
<ul style="list-style-type: none">• Uses international human rights as benchmark• Human rights-based, paying attention to human rights principles such as non-discrimination, participation, empowerment and transparency	<ul style="list-style-type: none">• Uses a range of different benchmarks dependent on the context
<ul style="list-style-type: none">• Assessment of process and content• Emphasizes accountability, including internal mechanisms that assign accountability	<ul style="list-style-type: none">• Is based on regulatory requirements and on established internal and external company mechanisms that assign accountability

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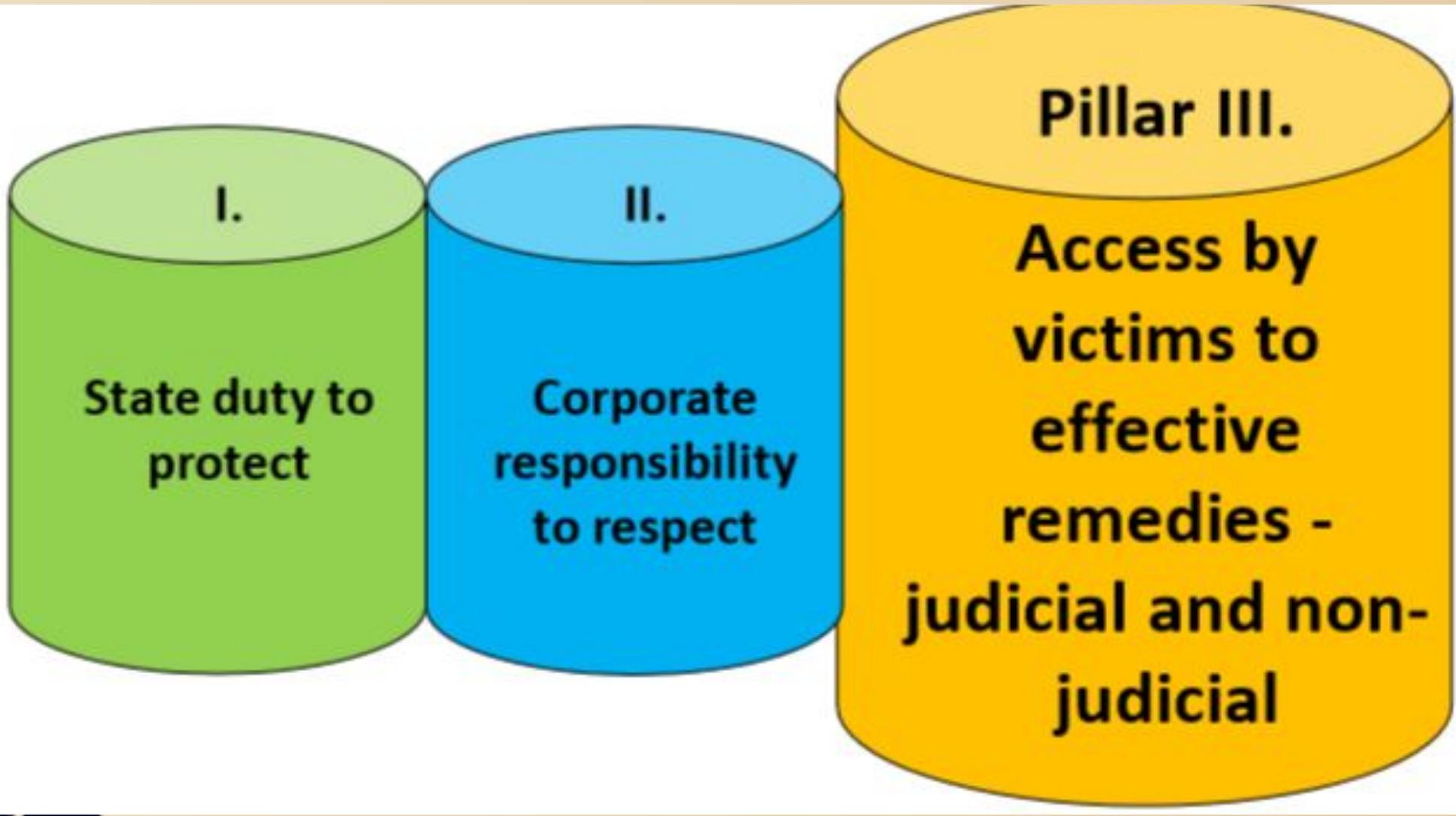
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I.

State duty to
protect

II.

Corporate
responsibility
to respect

Pillar III.

**Access by
victims to
effective
remedies -
judicial and non-
judicial**

Key points: Pillar 3

- 1 Pillar I and II are only meaningful if combined -
With access to remedy
- 1 Essential part of the State duty to protect - Judicial
and non-judicial remedies; Reduce barriers to
access to justice
- 1 Essential component of the corporate
responsibility to respect - Establish or participate
in effective operational-level grievance
mechanisms

Remedy & Grievance Mechanisms



ACCESS TO REMEDY IS ITSELF A HUMAN RIGHT:

- Everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted by the constitution or by law – UDHR Article 8

A GRIEVANCE IS:

- Any perceived injustice evoking an individual or group's sense of entitlement based on law, contract, explicit or implicit promises, customary practice or general notions of fairness – Guiding Principle 25 commentary

REMEDY MAY INCLUDE:

- Apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions, prevention of harm through injunctions or guarantees of non-repetition – Guiding Principle 25 commentary

Remedy can be provided thru:

- 1 State-based judicial mechanisms
- 1 State-based non-judicial mechanisms
- 1 Non-state based grievance mechanisms; consider two (2) basic modes: external and internal to the company

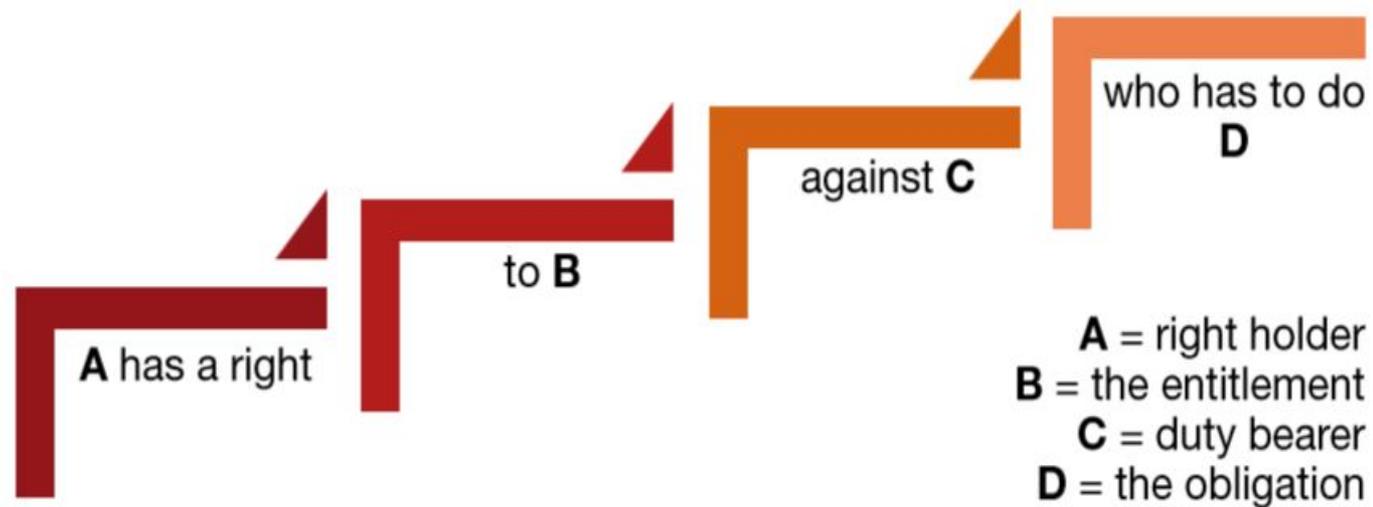


NHRI Approaches to Monitoring...

1. **Events-based monitoring**: This is often associated with **seeking redress** for individuals who have suffered a human rights violation which is attributable to **specific incidents or events**. It focuses on gathering and corroborating primary evidence from victims and witnesses.

2. **Policy monitoring**: This is often associated with **advocacy** to address chronic human rights violations that result from **systemic policy failures** and that affect a range of individuals or groups. It commonly uses a **“macro” – or “big picture” – approach** in its analysis.

WHERE THERE IS A RIGHT, THERE IS A DUTY ...



EVENTS-BASED APPROACH

STANDARD POLICY ASSESSMENT

GOAL
Education for all

INPUTS
e.g. expenditure on
public education

OUTPUTS
e.g. number of schools built

OUTCOMES
e.g. increase in enrolment

IMPACTS
e.g. increase in literacy

HUMAN RIGHTS ASSESSMENT

COMMITMENTS
Right to education

EFFORTS
Adequacy of policies (AAAQ)

Adequacy of expenditures
(maximum available resources)

Adequacy of process
(participation, accountability etc.)

RESULTS
Increase in literacy rates
(disaggregated)

POLICY-BASED APPROACH

Non-judicial remedy; non-state



Principle 28:

States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

Ex: financial institutions, export credit agencies, sector and multi-stakeholder mechanisms, Global Reporting Initiative (GRI)

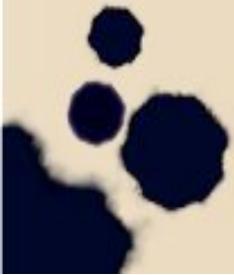


Non-judicial remedy; non-state

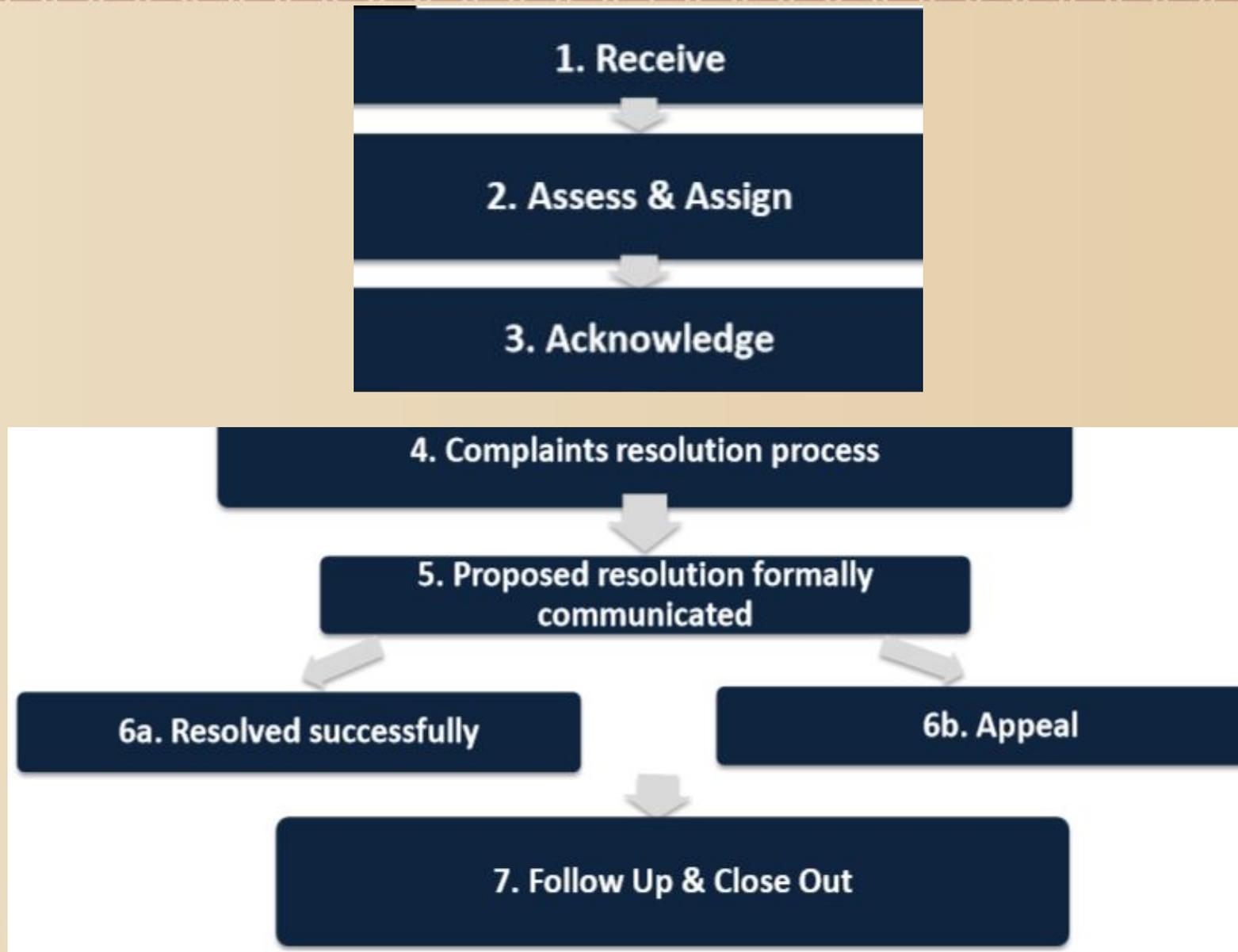


Principle 29:

To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.



Grievance mechanism steps



Criteria: Principle 31



- 1 Legitimate- enabling trust/fair conduct
- 1 Accessible- known/assistance in case of barriers
- 1 Predictable- clear procedure/time frame/ outcome
- 1 Equitable- access of the mechanism
- 1 Transparent- informed about the status
- 1 Rights-compatible
- 1 A source of continuous learning- lessons for improvement
- 1 Based on engagement and dialogue



What UNGP say about women and children?

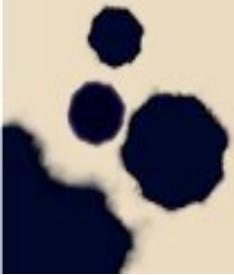
- 1 General principles: implemented in a non-discriminatory manner; particular attention to the rights and needs of individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized; with due regard to the different risks that may be faced by women and men.
- 1 Pillar 1 – The State duty to protect: States should provide guidance to business on considering issues of vulnerability, including the specific challenges faced by women and children.

What UNGP say about women and children?

1 Pillar 2 – Business responsibility to respect:
Businesses should respect human rights of specific groups or populations requiring particular attention – including women and children; the due diligence process should account for this e.g. heightened attention in impact assessment.

National Action Plan on BHR

evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs)

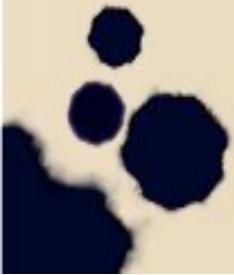


National Action Plan

Essential Criteria



- 1 Founded on the UNGP
- 1 Context-specific, comprehensive and transparent in presenting the country's human rights situation and adverse impacts of business activities, if any
- 1 Inclusive to all stakeholders, even with the most diverse views
- 1 Regular review and update, thus indicators should be set

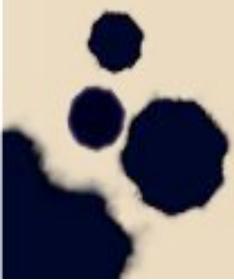


National Action Plan - Process of Developing



Phase 1 - Initiation

- 1 Seek and publish a formal Government commitment
- 1 Create a format for cross-departmental collaboration and designate leadership
- 1 Create a format for engagement with non-governmental stakeholders
- 1 Develop and publish a work plan and allocate adequate resources



National Action Plan - Process of Developing



Phase 2 – Assessment and Consultation

- 1 Get an understanding of adverse business-related human rights impacts
- 1 Identify gaps in State and business implementation of the UNGPs
- 1 Consult stakeholders and identify priority areas



National Action Plan - Process of Developing



Phase 3 – Drafting of Initial Plan

- 1 Draft the initial NAP
- 1 Consult on the draft with interested stakeholders
- 1 Finalize and launch the initial NAP

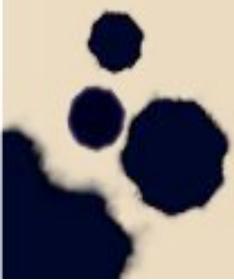


National Action Plan - Process of Developing



Phase 4 – Implementation

- 1 Implement actions and continue cross-departmental collaboration
- 1 Ensure multi-stakeholder monitoring



National Action Plan - Process of Developing



Phase 5 – Update

- 1 Evaluate impacts of the previous NAP and identify gaps
- 1 Consult stakeholders and identify priority areas
- 1 Draft updated NAP, consult on, finalize, and launch it





Maraming Salamat Po!

