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## Difference between duties of states and responsibilities of businesses with respect to human rights



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**BEYOND BORDERS**

1

## UNGPs on Business and Human Rights

1. State Duty to Protect Human Rights;
2. Corporate Responsibility to Respect Human Rights;
3. Access to Remedy.

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2

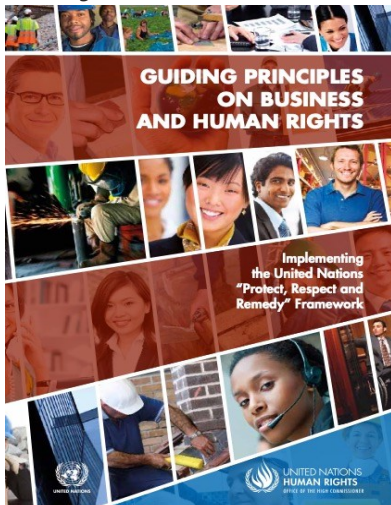
## UNGPs on Business and Human Rights

- ⑩ Soft law with hard law contents?
- ⑩ Formal source of international law?
- ⑩ Material source of international law?
- ⑩ Binding or non—binding?



3

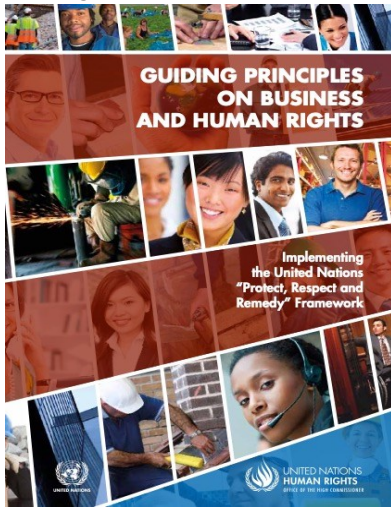
## UNGPs on Business and Human Rights: State Duty to Protect



- **Principle 1** (state duty to protect human rights);
- **Principle 2** (state expectations of business enterprises to respect human rights);
- **Principle 3** (general state regulatory and policy functions);
- **Principle 4** (state-business nexus, state-owned enterprises);
- **Principle 5** (state oversight over businesses);
- **Principle 6** (human rights promotion in business operations).

4

## UNGPs on Business and Human Rights: State Duty to Protect



- **Principle 7** (state duty to protect human rights and heightened due diligence in conflict-affected areas);
- **Principle 8** (policy coherence within state institutions);
- **Principle 9** (policy coherence in relations with foreign investors);
- **Principle 10** (policy coherence in international organizations).



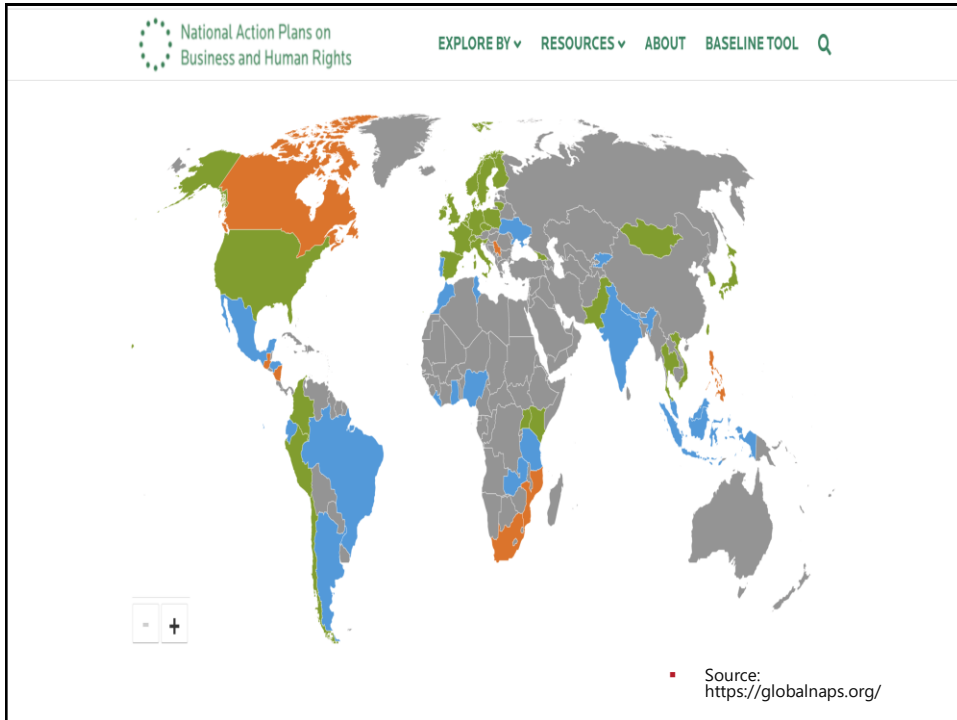
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## UNGPs on Business and Human Rights: State Duty to Protect

- Negative and positive human rights obligations;
- Territorial human rights obligations, Extraterritorial?;
- Obligation to respect, protect, and fulfill human rights?
- The role and responsibilities of State-owned Enterprises (“leading by example”),
- Obligations of executive, legislative, and judicial branches of government;
- Supervising and measuring business and human rights.



6



7

## Potential Impacts of NAPs under UNGPs on Business and Human Rights

- ⑩ Normative impacts;
- ⑩ clarification of state and corporate human rights obligations;
- ⑩ advancement of public policies;
- ⑩ Building capacity in state institutions and beyond;
- ⑩ Awareness-raising;
- ⑩ Remedial dimension;

8

## Strengths of NAPs

- Clarification of state obligations in business and human rights: The obligation of the result or the obligation to conduct?
- Adoption of domestic due diligence legislation (France, Germany, Norway, UK);
- due diligence guides (Slovenia, Czech Republic);
- access to remedy (Belgium, France, Netherlands);
- measurable indicators (Luxemburg, Slovenia, Switzerland).



9

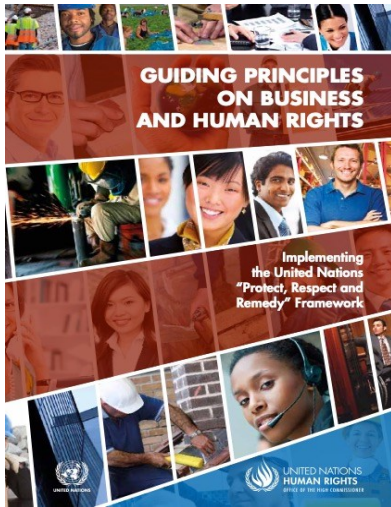
## Weaknesses of NAPs

- ⌘ Lack of commitment;
- ⌘ Lack of supervision;
- ⌘ Lack of measuring business and human rights through indicators;
- ⌘ Limited awareness in the business sector;
- ⌘ Lack of accountability?



10

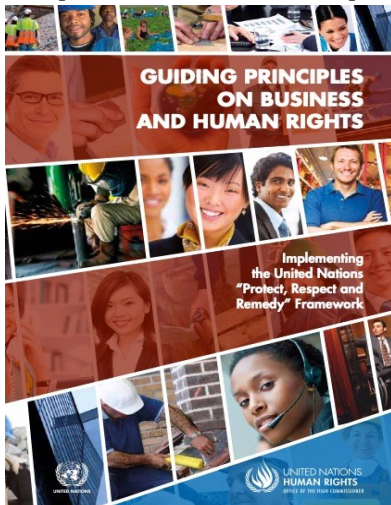
## Corporate Responsibility to Respect Human Rights (Foundational Principles)



- **Principle 11** (corporate responsibility to respect);
- **Principle 12** (corporate responsibility to respect internationally recognized human rights);
- **Principle 13** (nature of corporate responsibility);
- **Principle 14** (corporate responsibility applies to all enterprises);
- **Principle 15** (human rights policies and processes).

11

## Corporate Responsibility to Respect Human Rights (Operational Principles)



- **Principle 16** (policy commitments and statements);
- **Principle 17** (human rights due diligence);
- **Principle 18** (human rights impact assessment);
- **Principle 19** (Integration of data into business processes and policies);
- **Principle 20** (supervision of impacts);
- **Principle 21** (communication of results to external stakeholders);
- **Principle 22** (remediation);
- **Principle 23-24** (contextual issues);

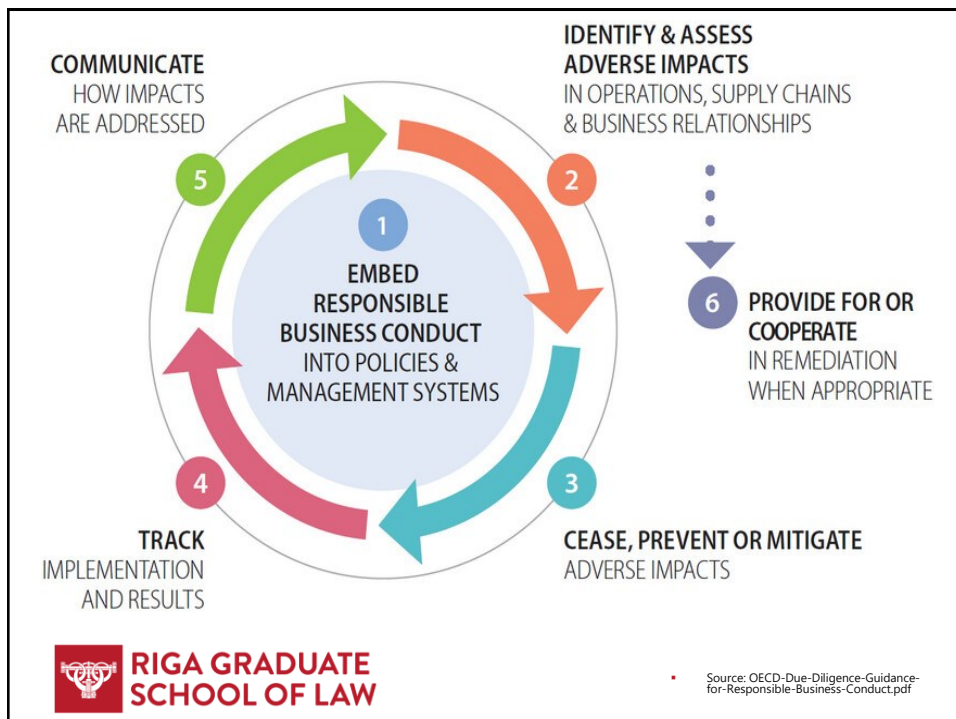
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## Due diligence, UNGPs, principle 17

- “In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”



13



14

## The nature and scope of state and corporate human rights obligations

- Corporate obligations to respect, protect, and fulfill the right to human rights?
- Obligations to respect: corporations are to refrain from
- Obligations to protect: corporations are to adopt regulations and other measures
- Obligations to fulfill: corporations are to take active measures to ensure the availability of:



15

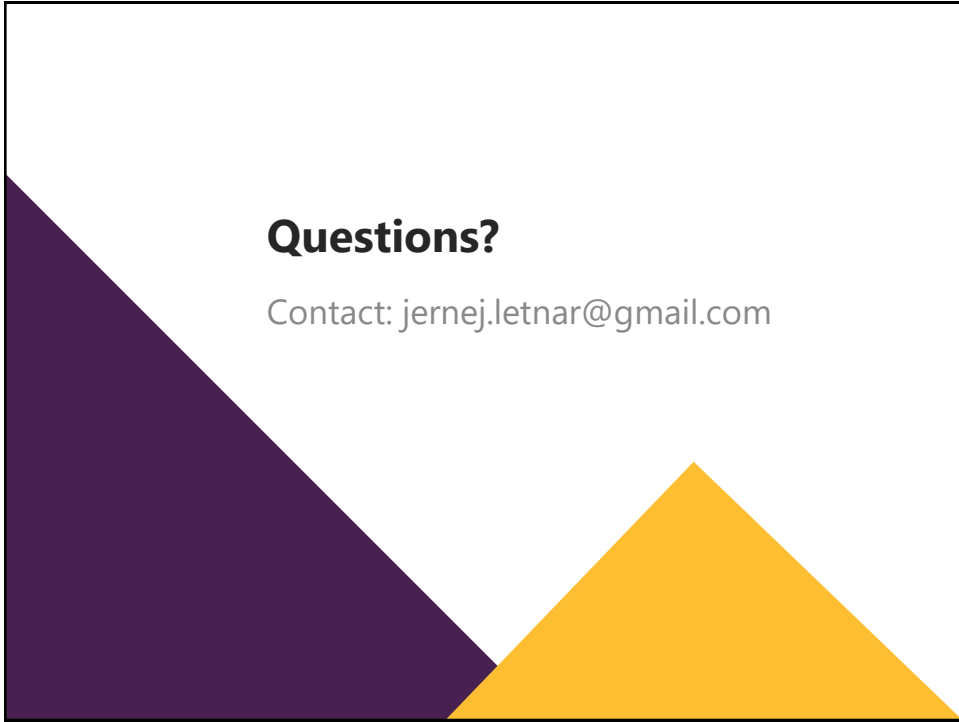
## Lessons for development of NAP

1. Engage different stakeholders to build capacity before the adoption of NAP and supervision after that;
2. Ensure clear structure and content;
3. Define actions and expected results;
4. Ensure the responsibility of different actors;
5. Include measurable indicators in the implementation of NAP;
6. National, regional, and global peer review.



16





17