Introduction to the Guiding Principles on Business and Human Rights

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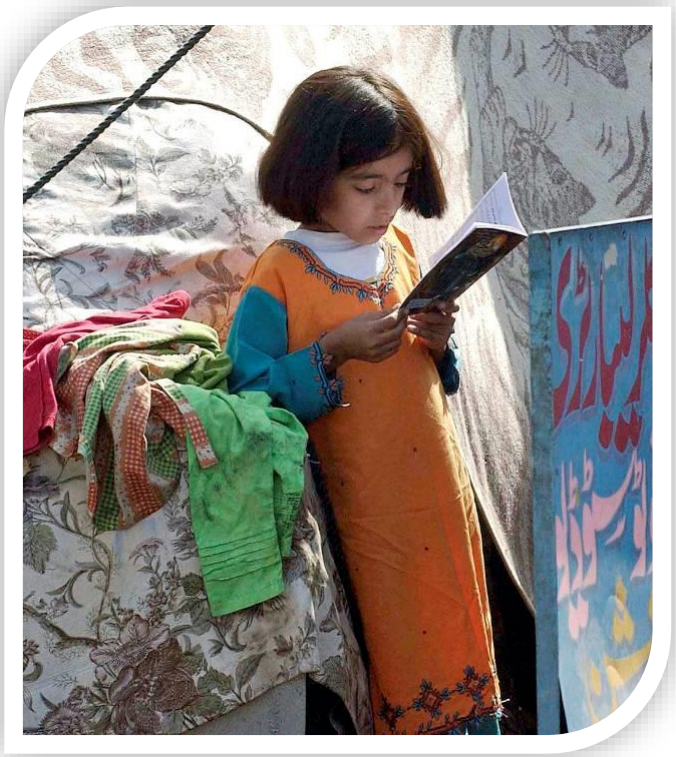
BACKGROUND

What are human rights?



- The simple idea behind human rights is that **everyone should be treated with dignity.**
- Human rights are rights that are inherent to all people, without discrimination.
- Human Rights framework founded with the Universal Declaration on Human Rights in 1948 as global response to the atrocities of two World Wars.
- Human rights are enshrined in international treaties and customary law **binding on States.**
- Traditionally, Human Rights only between States and indviduals.

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Why a ‘business and human rights’ agenda?

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WHY BUSINESS AND HUMAN RIGHTS cont?

The early business and human rights agenda (1980'ies)

- In response, emergence of initiatives on broader, industry-wide standard-setting

  → Short-comings: purely voluntary, limited in scope, and lacking effective oversight

  → No broad agreement on what standards apply to business

UN process 2005-2011

John Ruggie
Special Representative of the UN Sec-Gen (SRSG)

2005
Deadlock
SRSG appointed

2008
Breakthrough
Protect, Respect, Remedy

2011
Culmination
Guiding Principles endorsed by HRC

First Human Rights Council mandate:

- ✓ *Identify and clarify standards of Corporate Responsibility*
- ✓ *Clarify role of States*

Second Human Rights Council Mandate:

- ✓ *«Operationalize» the Project, Respect, Remedy Framework*
- Evidence-based: voluminous research, 47 multi-stakeholder consultations

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The “End of the Beginning”

- A global normative framework with a strong political foundation
- 2011: The Council unanimously endorsed the Guiding Principles for operationalizing the Protect, Respect and Remedy framework in Resolution 17/4.
- Endorsed by global business organisations, leading civil society organisations, national human rights institutions

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3 Pillar Framework

State Duty to Protect

- Policies
- Regulation
- Adjudication

Corporate Responsibility to Respect

- Act with due diligence to avoid infringement
- Address adverse impacts on human rights

Access to Remedy

- Effective access for victims
- Judicial and non-judicial

Key features of the GPs

- All States.
- All companies, of all sizes, in every sector, in any country.
- Distinct, but complementary responsibility between States and companies
- No new legal obligations – but elaborate on implications of existing obligations and practices for States and business.
- Do no preclude international or national legal developments
- Focused on preventing and addressing adverse impacts as baseline responsibility, does not preclude further responsibility of business for broader development

STATE DUTY TO PROTECT

State Duty to Protect – where does it come from?

- The Guiding Principles clarify that the State has the duty to to protect individuals within its territory or jurisdiction or against human rights abuses committed by non-state actors, including business.
  - This duty is **derived from international law** and is well established in the international human rights framework
  - It is elaborated upon by international human rights bodies - e.g. UN treaty bodies.

→ The Guiding Principles affirm this duty, but do not create new legal obligations – the obligation already exists.

The State duty to protect

- A **standard of conduct** – States are not responsible for human rights abuses by private actors, but must take the necessary steps to prevent, punish and redress.
- Concept of **policy coherence:**
  - States should ensure that all governmental departments, agencies and institutions that shape business practices observe human rights obligation, including through relevant information, training and support.

CORPORATE RESPONSIBILITY TO RESPECT

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Emerging understanding that human rights risk is also about business risk

- A human rights focus essentially means understanding and managing impacts upon individuals and communities and not infringing on basic human dignity.
- Many human rights are already reflected in almost all companies' human resources and safety policies.
- Human rights risk can lead to operational, legal and financial risk

Example 1
A 2010 report by the former Special Representative found that one extractives company may have lost more than $6.5 billion over a two year period from community-related project delays.

Example 2
IDFC, the Indian infrastructure bank, found that out 190 large infrastructure projects that were delayed, 70% had stalled due to land-related conflicts with communities.

Corporate Responsibility to Respect

Respect: Do no harm and address impacts

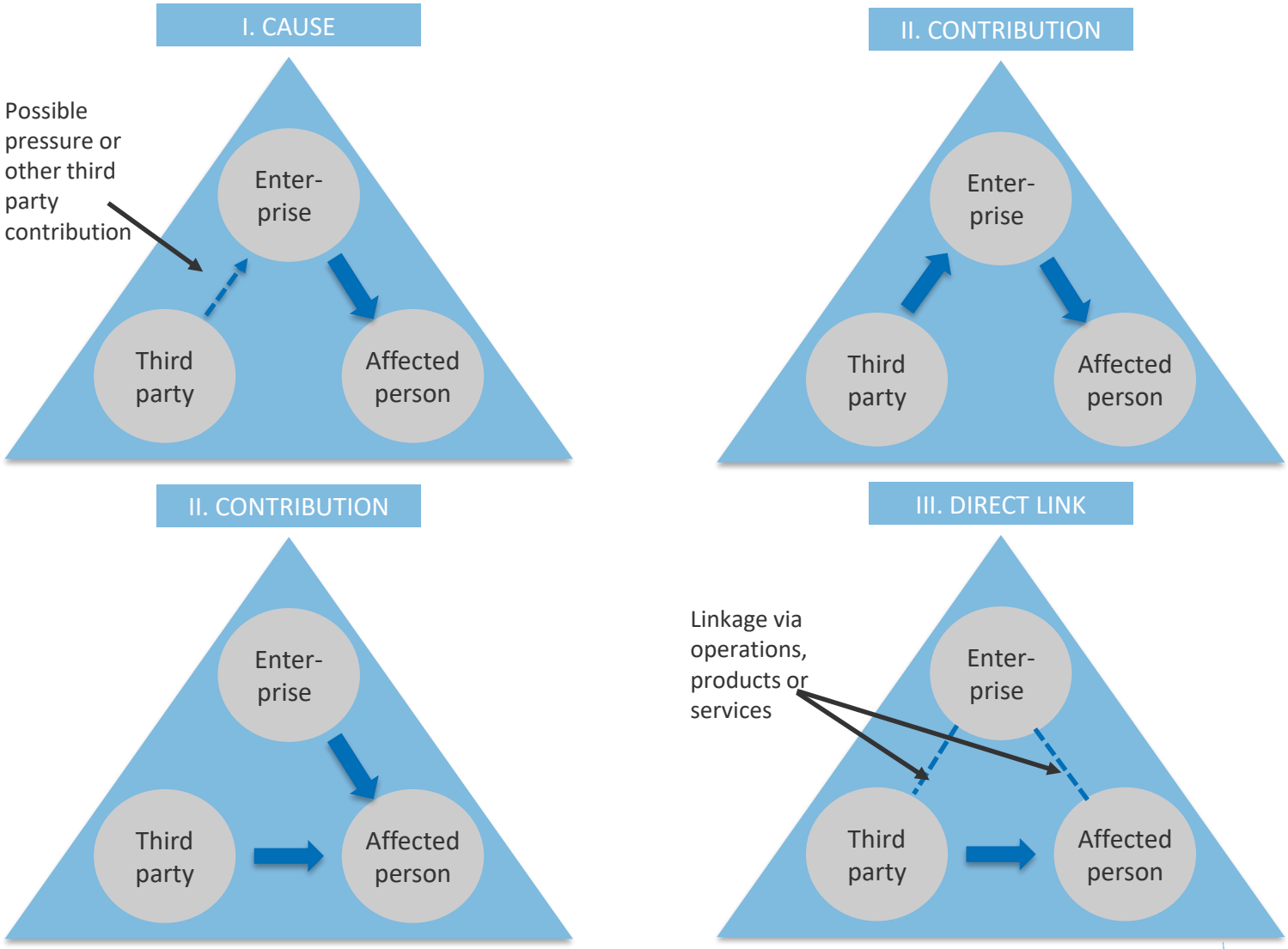
Scope: all rights

Avoid causing/contributing + prevent/mitigate negative impacts by business relationships

Apply to all companies

Implications: Policies and processes

Cause, contribute, direct linkage



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Policies and processes – 'Know & Show'

Starting Point: **Policy Commitment**

Identify and address impacts: **HR Due Diligence**

Due diligence to identify, prevent, mitigate and account for how impacts are addressed. 4 elements:

1. Assessing impacts
2. Integrating and acting on findings
3. Tracking responses
4. Communicating on impacts

- Taking all necessary and reasonable precautions to prevent harm
- Should cover impacts caused or contributed to through activities or relationships
- Varies according to size, risks, and context
- On-going

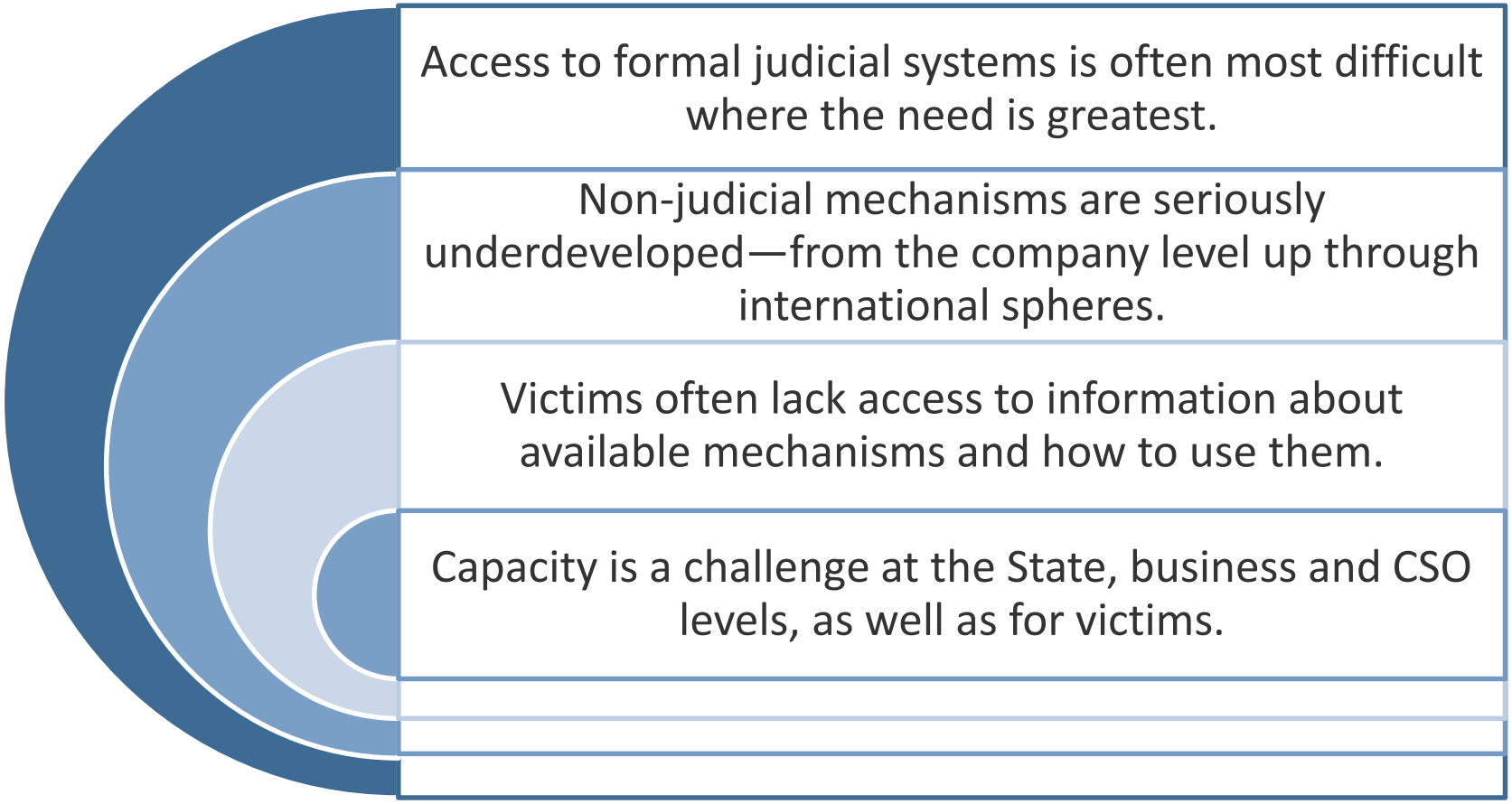
ACCESS TO REMEDY

Access to Remedy

- Effective remedies for victims of human rights abuse are a critical component of any legal system and are contemplated by all major human rights treaties
- Strongly affirmed by human rights bodies and expert recommendations
- Third pillar on UN Guiding Principles on Business and Human Rights

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

Diagnosis - what is the state of play?



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Access to Remedy in the Guiding Principles

Even where institutions operate optimally, disputes over adverse human rights impacts of company activities are likely to occur. If so, victims must be able to seek redress.

State Duty to Protect

States are required to take appropriate steps to investigate, punish and redress.

Corporate Responsibility to Respect

Mechanisms at the company level provide early warning and resolve grievances before they escalate.

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Effectiveness criteria for non-judicial grievance mechanisms

A. **Legitimate** – enabling trust from the stakeholders for whose use they are intended and being accountable for the fair conduct of the process

B. **Accessible** – being known to all affected stakeholder groups, providing assistance where relevant

C. **Predictable** – clear and known procedure with an indicative time frame, clarity on types of processes and outcomes they offer

D. **Equitable** – seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise

E. **Transparent** – keeping parties informed about progress and providing information on the mechanism's performance

F. **Rights-compatible** – outcomes and remedies accord with human rights

G. **A source of continuous learning** – identifying lessons for improving the mechanism and preventing future harms

H. **For operational-level mechanisms**: based on engagement and dialogue

Convergence in global frameworks and standards

UN Framework & GPs

IFC International Finance Corporation World Bank Group
SUSTAINABILITY FRAMEWORK

THE GLOBAL COMPACT

unicef

CFS Committee on World Food Security

UNCTAD

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Thank you

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