

# National baseline assessment on business & human rights

*Intermediate findings*

29 Oct 2020, SDG Forum, Brussels



**Law and Development**  
University of Antwerp



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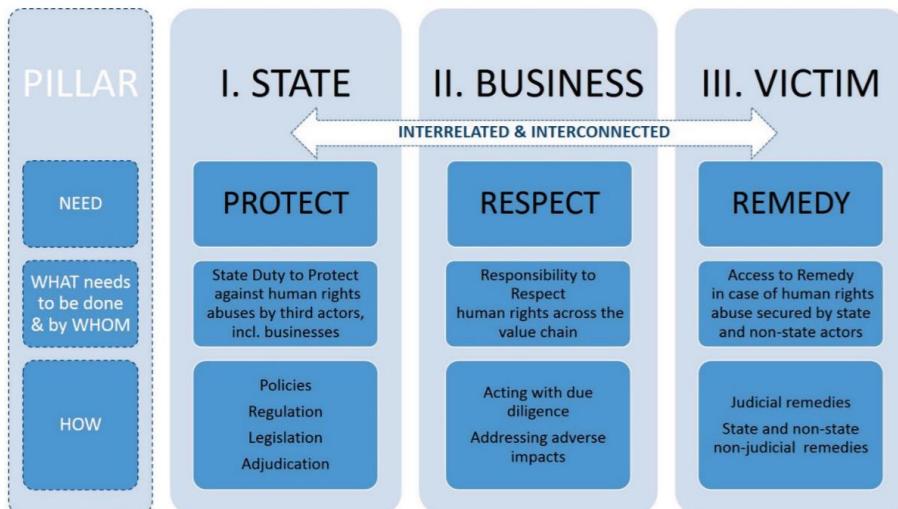
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## Agenda

- Introduction (FIDO, HIVA-KU Leuven)
- Pillar I - the state (UAntwerpen)
- Pillar II - business (HIVA-KU Leuven)
- Pillar III – access to remedy (UAntwerpen)
- Conflict-affected and high risk areas (IPIS)
- Q&A
- Conclusions & way forward

UNGPs: “represent a broad consensus across different societal actors”



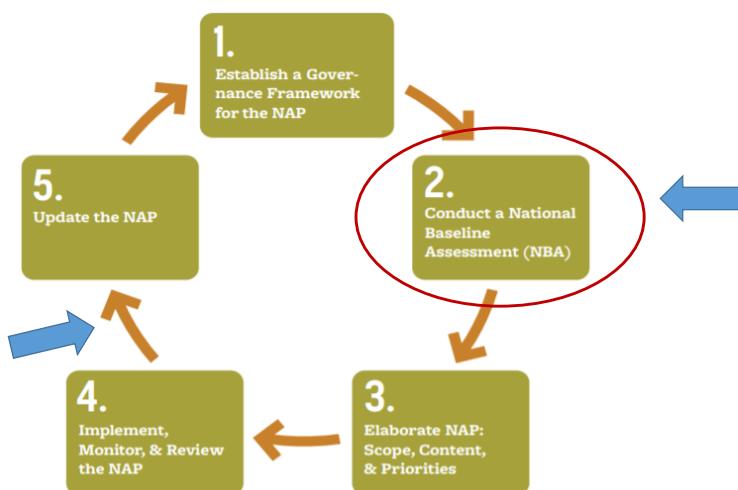
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Source: European Parliament, 2017

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## National Action Plans: the process



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Source: DIHR 2017

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## National baseline assessment (NBA)

Current level of implementation of UNGPs in Belgium

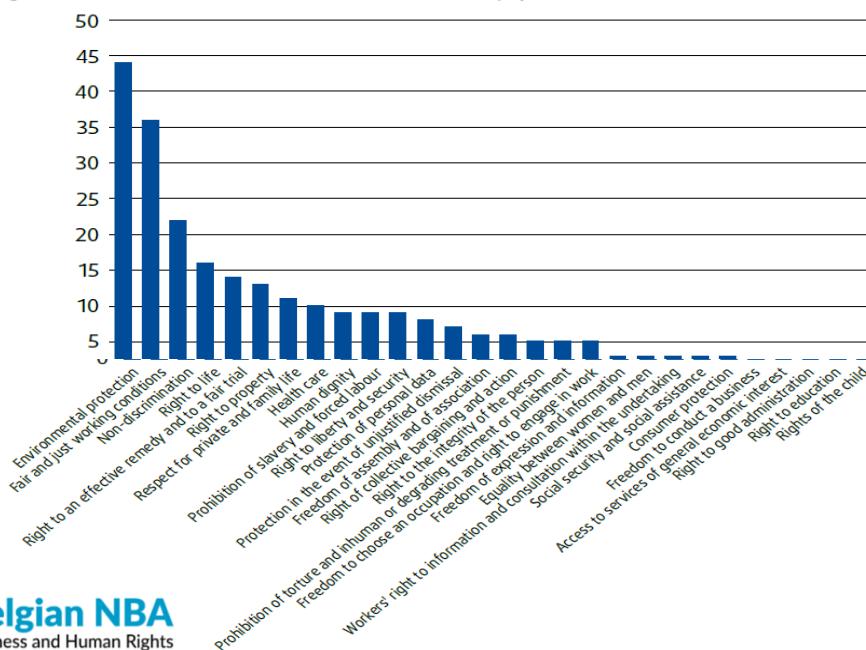
- Balanced assessment of existing regulatory frameworks, policies, structures and actions
- Formulation and prioritization of actions for a second NAP

### **Belgian NBA** Business and Human Rights

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The graphic features a light blue background with white circular cutouts. In the center, the text "Belgian NBA" and "Business and Human Rights" is displayed above a collage of various images. The collage includes photos of diverse people, a globe, and text related to the UN Guiding Principles and the "Protect, Respect and Remedy" framework.

**Pillar I -**  
**States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms**

**Figure 1: Total number of incidents identified in the research, by Charter article**

**What are the human rights at stake?**

**UNGPs: International human rights law.**

**Which are the incidents identified where EU companies are involved?**

**The classical issues of CSR:**

- Environmental issues
- Labour issues
- Discrimination

**Then,**

- **Right to life**
- **Access to remedy**
- **Right to property**

Source: FRA, 2019

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### Crucial areas for the UNGPs

- Corporate accountability/liability
- Corporate structures, governance and partnership
- Labour and O.H. protection
- Environmental protection
- Tax evasion and tax avoidance
- Trade and investment (related land grabbing and protection of vulnerable communities)
- Anti-bribery and corruption measures
- Anti-discriminatory measures
- Consumer protection
- Trafficking of human beings and modern slavery

### Salient economic sectors for Belgium

- Construction
- Mining
- Retail /Food / Agrobusiness
- Textiles
- Electronics
- Chemistry and pharma
- Transport

### State-Business Nexus

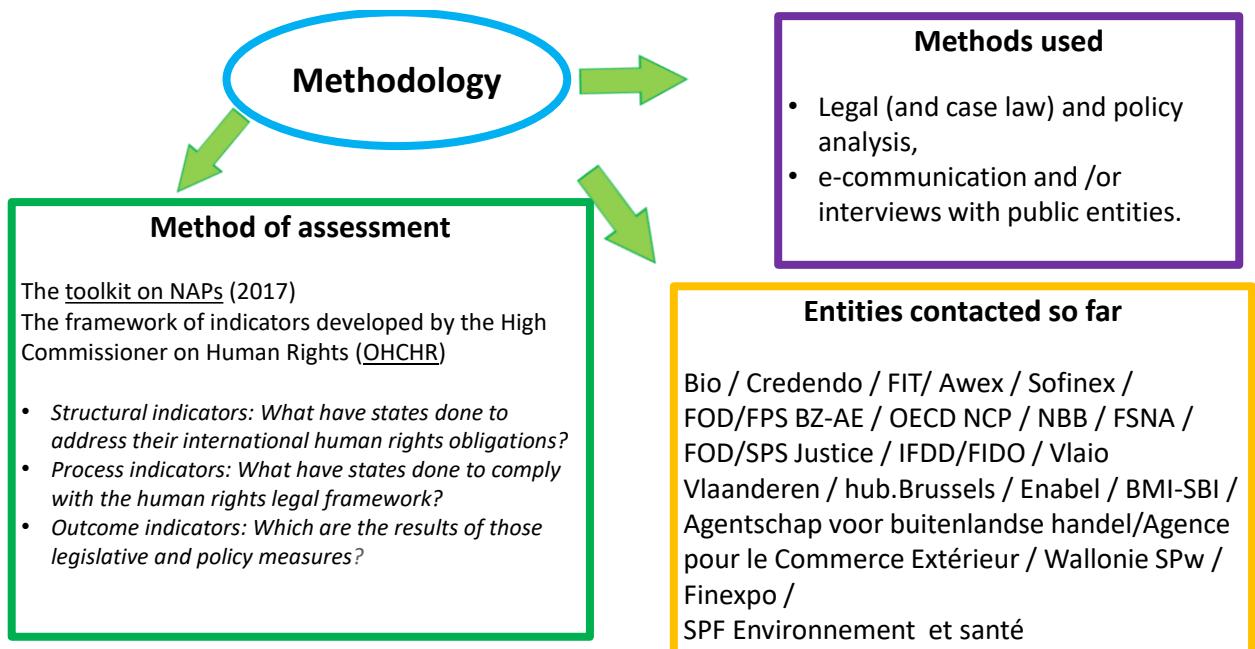
- Sustainable public procurement
- Public-private partnerships (PPP) and State-owned companies (SOC)
- Businesses providing public and social services (Public Utilities)
- Belgian public bodies that support businesses
  - Economic incentives
  - Development cooperation mechanisms involving businesses.

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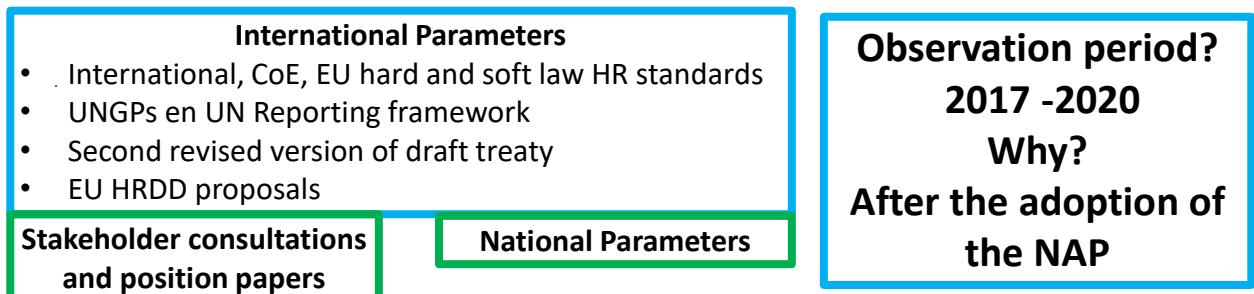
**Progress of Belgian governments in the following areas**



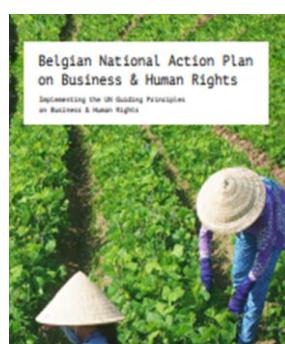
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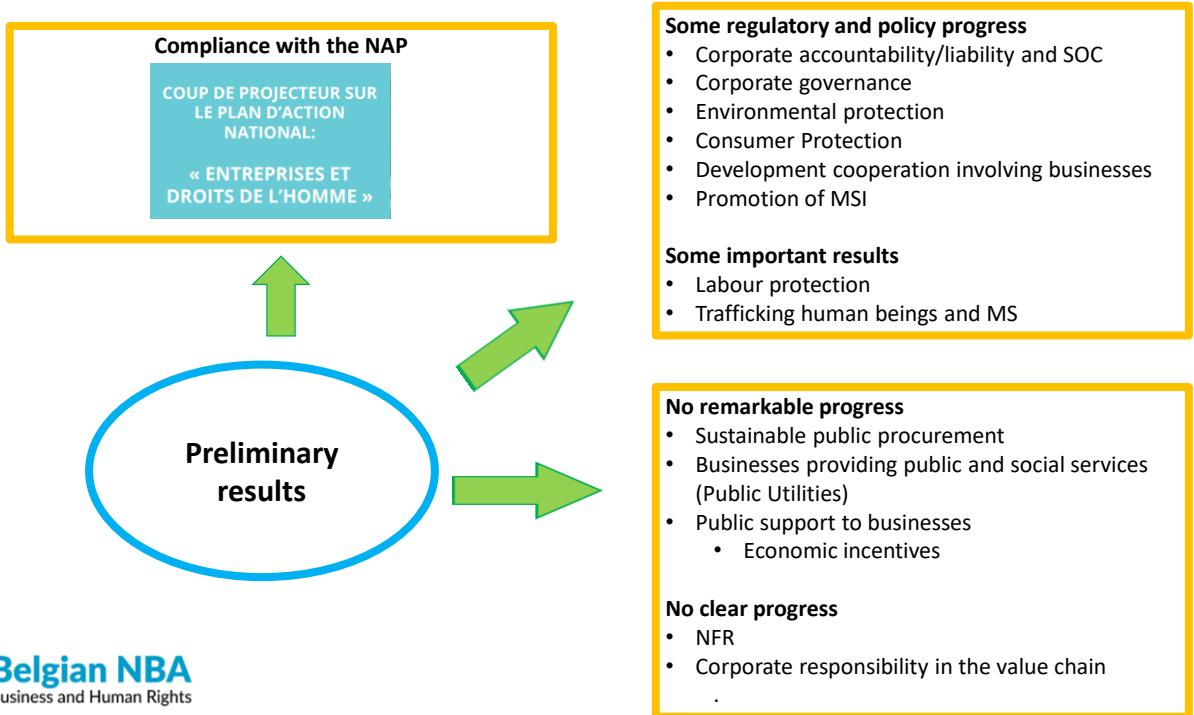
The following chart shows the number of open infringement cases by Member State at the end of 2019:



UNGPs ON BUSINESS AND HUMAN RIGHTS IN BELGIUM  
STATE-BASED JUDICIAL MECHANISMS AND STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS, WITH SPECIAL EMPHASIS ON THE BARRIERS TO ACCESS TO REMEDY MEASURES.

[Fido Project MP-00/FIDO/2016/5](#)

Recommendations and Conclusions



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## Pillar II: Corporate responsibility to respect HR

### Guiding principle 15:

- 1) A *policy commitment to meet their responsibility to respect human rights;*
- 2) A *human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;*
- 3) *Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”*

## Pillar II: methodological approach

- 1) Screening of policies and processes of 30 Belgian companies
- 2) Stakeholder consultation
- 3) Mapping of cases of HR-violations involving Belgian companies

# Corporate Human Rights Benchmark (CHRB) Core Indicator Assessment



- Measures **compliance with UNGPs**
- **3 measurement themes**
  - Policy commitments;
  - HRDD-process;
  - Remedy- and grievance mechanisms
- **13 indicators (0-2)**

## A.1.1 Commitment to respect human rights

Source: UNGP 11 and 12; UNGPRF A1; GRI 103-2

The Company publicly commits to respecting human rights across its activities. It must be clear the commitment relates to all internationally recognised human rights, rather than to only one or more selected human rights. This only considers commitments to avoid adverse human rights impacts and does not include philanthropic commitments.

Score 1	Score 2
The Company has a publicly available statement of policy committing it to respect human rights <b>OR</b> the ten principles of the UN Global Compact (as principles 1 and 2 include a commitment to respect human rights) <b>OR</b> the rights under the Universal Declaration of Human Rights (UDHR) <b>OR</b> the International Bill of Human Rights.	The Company's publicly available statement of policy also commits it to: the UN Guiding Principles on Business and Human Rights <b>OR</b> the OECD Guidelines for Multinational Enterprises.

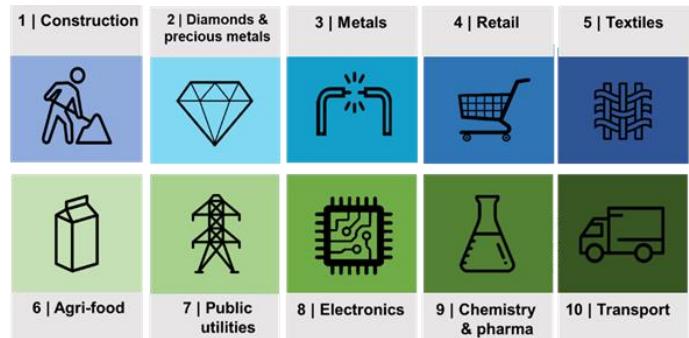
**Points Available: 0, 0.5, 1, 1.5, 2\***

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## CHRB Core Indicator Assessment

- **Publicly available information (website, reports, ...)**
- Focus on **formal systems and procedures; not** actual human rights performance
- **30 companies** from 10 high-risk sectors



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## CHRB assessment process

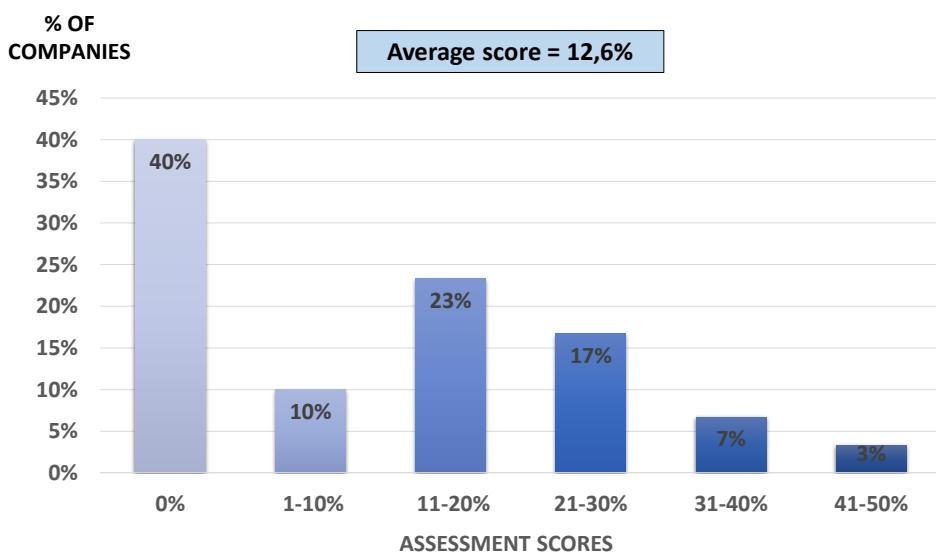


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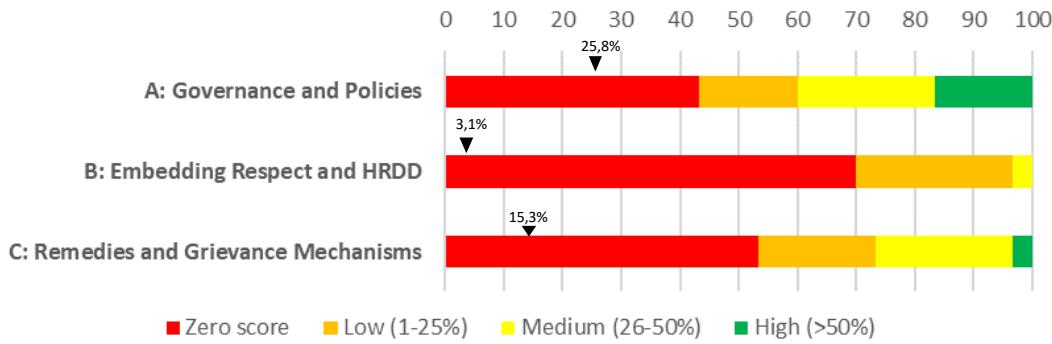
## CHRB assessment results



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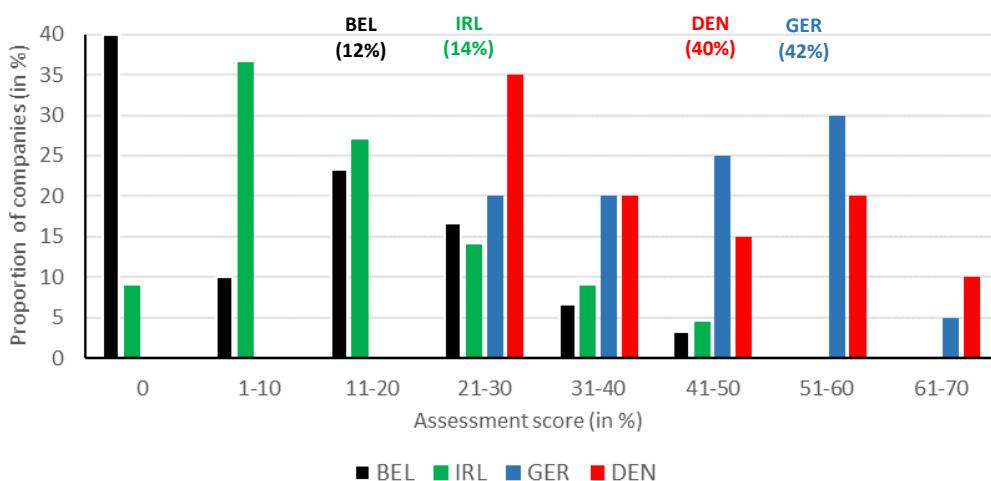
## CHRB assessment results: per theme



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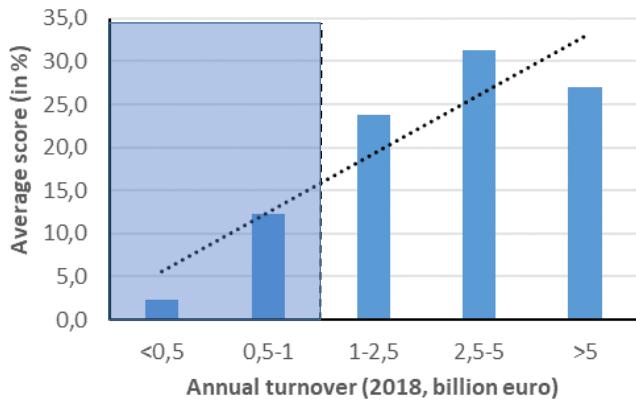
## CHRB assessment results: comparison



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## CHRB assessment: interpretation

- **Size** matters (to a certain extent)
- **Institutional context** matters
- **Sectoral background:** inconclusive



## Small & medium enterprises: HRDD

- **UNGP 14:**

*“The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size” (...)*

*“the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.”*
- **Challenges:** size, position in GVC, informal management styles, ...
- **Opportunities:** proximity (with workers and suppliers), role of owner-manager, ...
- What role for **collective action?**

# MSIs and social audits: UNGP compliance



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## Conclusions - pillar II Human rights policy commitment

<i>1. Human rights policy commitments</i>	
<i>2. Management commitment and embedding of human rights into the company</i>	
Status	Gaps
<ul style="list-style-type: none"> <li>• HR commitment sufficient for most large companies (turnover &gt; €750m)</li> <li>• Much lower % for companies in 'middle segment' (turnover of €50m-€750m)</li> <li>• Not on 'radar' of most SMEs</li> </ul>	<ul style="list-style-type: none"> <li>• Visibility of HR commitments</li> <li>• Commitments to engage with stakeholders and access to remedy</li> <li>• Awareness &amp; support for SMEs and 'middle segment'</li> </ul>

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# Conclusions - pillar II

## Human rights due diligence

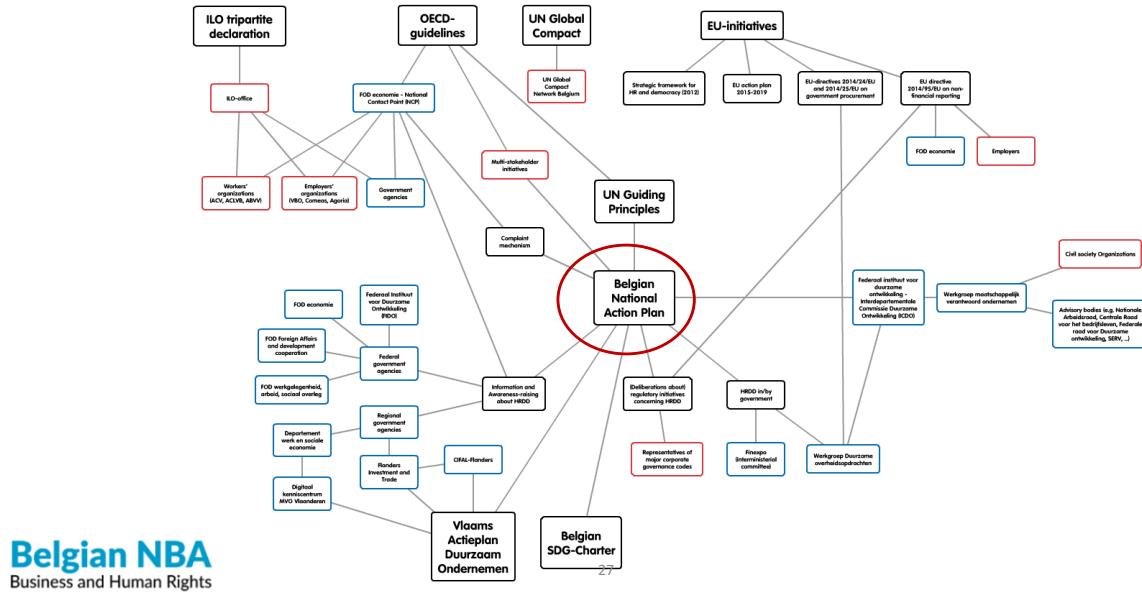
<i>1. Assessment of adverse human rights impacts</i>	
<i>2. Integrating and acting upon findings and prioritising responses</i>	
<i>3. Tracking and communicating</i>	
<i>4. Reported adverse impacts on human rights</i>	
Status	Gaps
<ul style="list-style-type: none"> <li>• HRDD is blind spot (with a few exceptions)</li> <li>• If present, mostly restricted to risk identification (30%)</li> <li>• Stuck in audit mode</li> </ul>	<ul style="list-style-type: none"> <li>• Systematic supply chain HR risk assessments and follow-up</li> <li>• HRDD integration in structures &amp; activities</li> <li>• Transparency and communication on HRDD implementation</li> </ul>

# Conclusions - pillar III (business)

## Remediation

<i>1. Mechanisms for effective remediation of adverse human rights impacts</i>	
Status	Gaps
<ul style="list-style-type: none"> <li>• &lt; 50% of 30 companies have basic whistleblower procedures</li> <li>• Mostly oriented towards company's own workforce</li> </ul>	<ul style="list-style-type: none"> <li>• Comprehensive whistleblower systems: independent &amp; accessible to all stakeholders</li> <li>• Articulated procedures for remedial action in case of adverse impacts</li> </ul>

# Policy coherence: institutional landscape



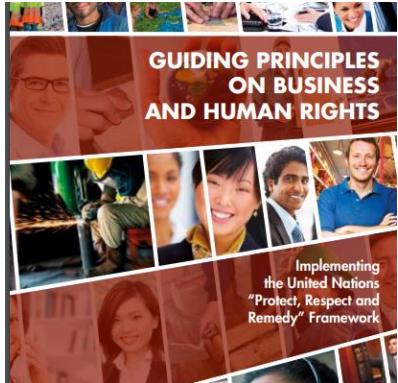
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## Policy coherence: comparing NAP structures



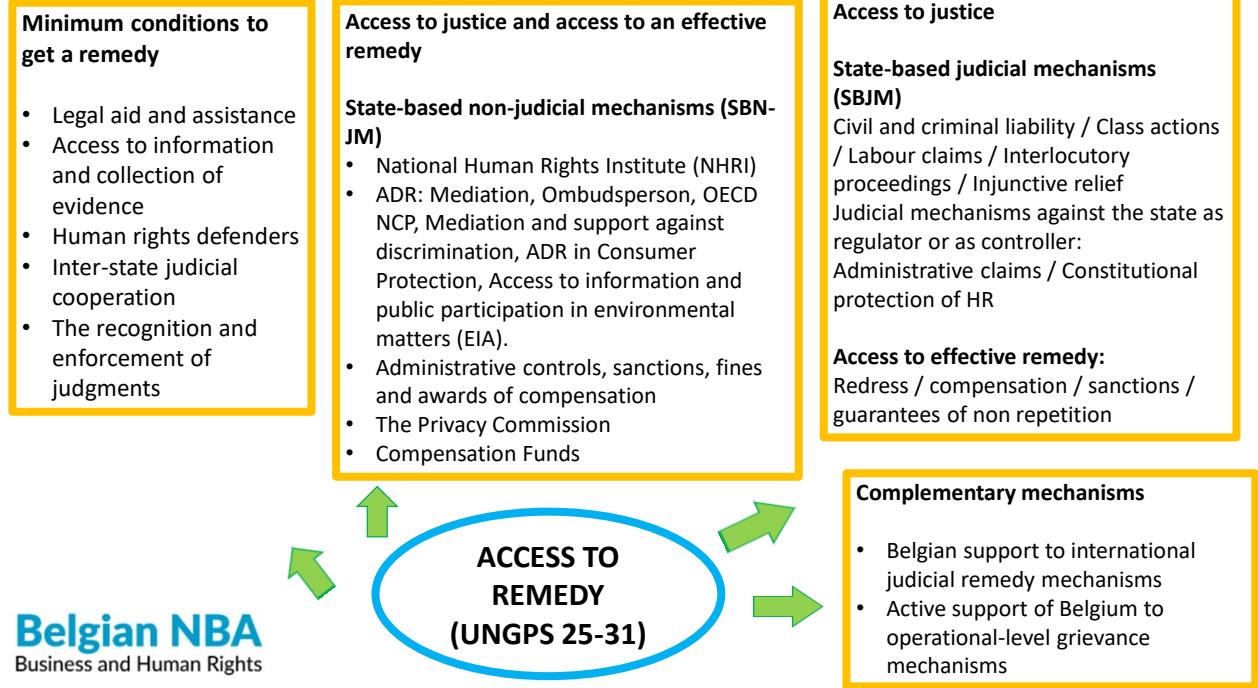
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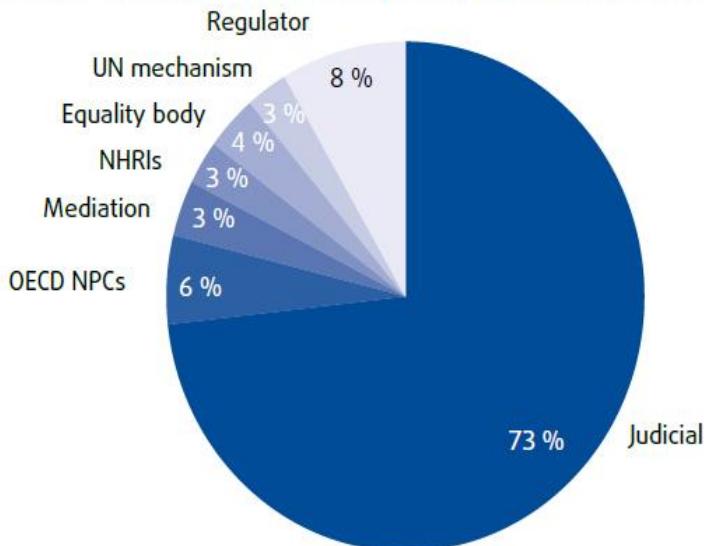


## Pillar III – The need for rights and obligations to be matched by appropriate and effective remedies when breached

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**Figure 3: Distribution of incidents identified in the research, by type of complaint mechanism used**



Source: FRA, 2019

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### Methodology

#### Method of assessment

The [toolkit on NAPs](#) (2017)  
The framework of indicators developed by the High Commissioner on Human Rights (OHCHR)

- *Structural indicators: What have states done to address their international human rights obligations?*
- *Process indicators: What have states done to comply with the human rights legal framework?*
- *Outcome indicators: Which are the results of those legislative and policy measures?*

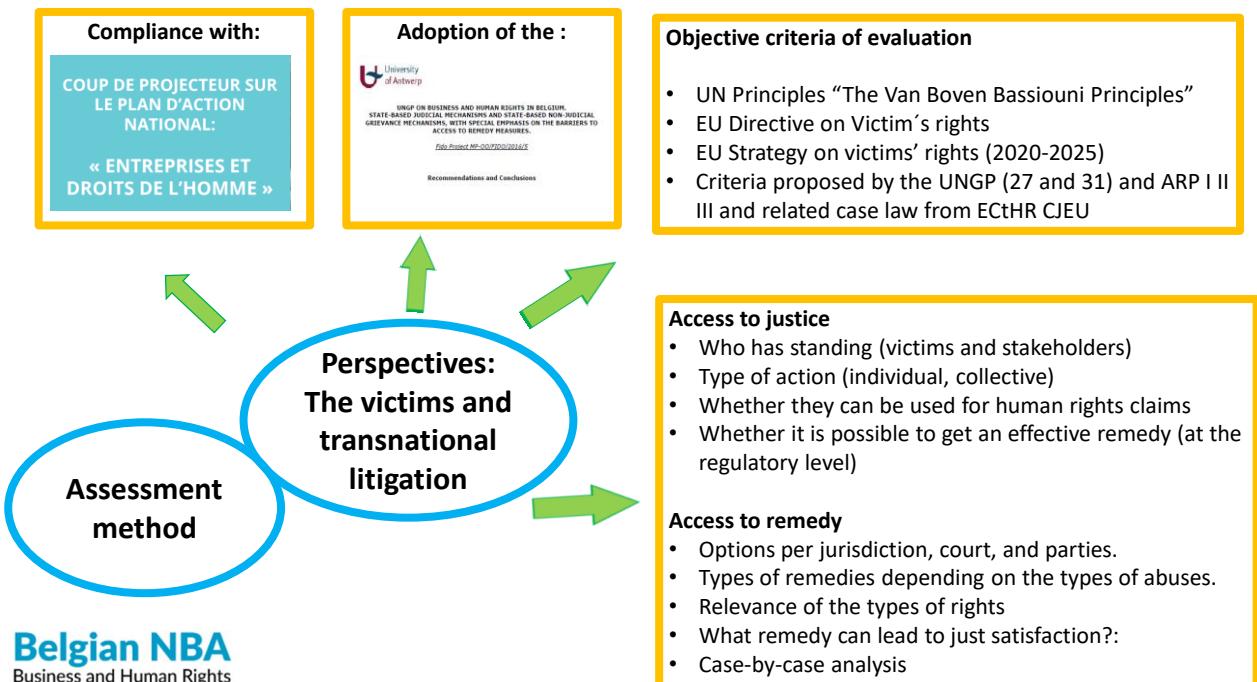
#### Methods used

- Legal and policy analysis,
- National and int. case law
- Country reports UNU CoE UE
- Reports from NGOs and other stakeholders
- Academic literature

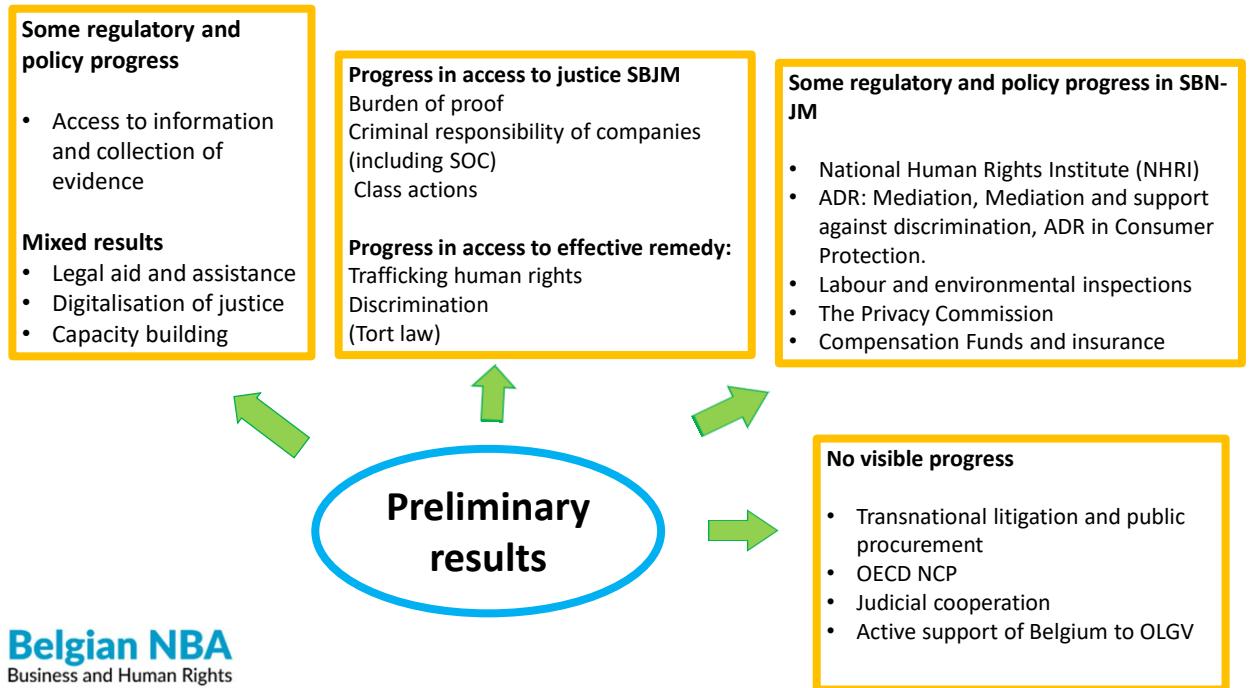
#### International Guiding Standards

UNGPs and the UNGPs Reporting Framework / UN HRC Accountability and Remedy Project: ARP I SBJM, ARP II SBN-JM, ARP III OLGM / CoE CM/Rec(2016)3 on access to remedy / EU FRA (2017) A. Opinion on "Improving access to remedy in BHR at the EU level". B. Business-related HR abuse reported in the EU and available remedies (2019)? EU Policy documents on access to remedy / The revised version of the draft treaty (2020) / Commission Notice on access to justice in environmental matters (2017/C 275/01)

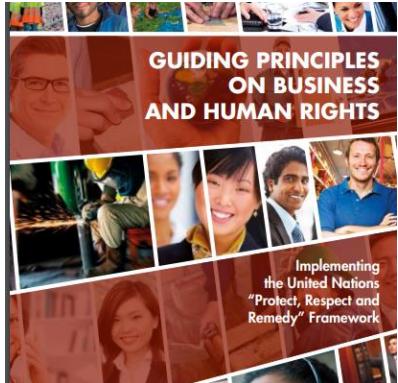
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## Pillar I – II Human rights in conflict- affected and high risk areas

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## Human rights in conflict-affected and high risk areas

**Pillar I** – Assessing the role of the Belgian state to ensure that companies operating in CAHRAs are not involved with human rights abuses

*Methodology: review of laws, policies, guidelines, initiatives at the sectoral level and interviews*

**Pillar II** – Assessing the efforts of Belgian companies to comply with the UNGPs in CAHRAs

*Methodology: Selection of relevant sectors (6) and companies (19). Review of public documents published by companies, sector federations and media reports on Belgian companies operating in CAHRAs and interviews*

## Preliminary conclusions - pillar I

<b>Human rights and CAHRAs</b>	
<i>Belgium signature to relevant international and regional treaties</i>	
<i>Relevant policies and regulations applicable to Belgian businesses to ensure enhanced DD from CAHRAs</i>	
<i>Public procurement and HR respect in CAHRAs</i>	
<i>Participating in relevant initiatives</i>	
<i>Efforts to address risk of business involvement in HR abuses in CAHRAs</i>	
Status	Gaps
<ul style="list-style-type: none"> <li>Relevant treaties and regulations ratified</li> <li>Raising awareness on the OECD due diligence guidelines, only for the minerals sector a focus on heightened risks in CAHRAs</li> <li>An activity on the theme BHR is organized during MoFA trade missions (NAP Action 7). Not yet focus on HR risks in CAHRAs</li> <li>Application Council Common Position 2008/944/CFSP on control of exports of military technology and equipment</li> <li>Mandatory registration arms brokers</li> </ul>	<ul style="list-style-type: none"> <li>Systematic promotion of OECD Guidelines and UNGPs to Belgian embassies in CAHRAs</li> <li>Support from the State to sector federations and companies on the issue of HR risks in CAHRAs</li> <li>Enforcement of arms brokering regulations is lacking</li> </ul>

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## Preliminary conclusions - pillar II

<b>Human rights and CAHRAs</b>	
<i>Specific policies on HR respect in CAHRAs</i>	
<i>Resources, guidance, training on HR respect in CAHRAs</i>	
<i>Cooperation with experts and stakeholders (including MSIs, CSOs, industry bodies etc.)</i>	
<i>Reporting on HR respect in CAHRAs</i>	
Status	Gaps
<ul style="list-style-type: none"> <li>Majority of companies and sector federations have not a specific policy in place to ensure the respect of human rights in CAHRAs</li> <li>Enhanced due diligence in CAHRAs is on the agenda in the metal and mineral sectors</li> <li>In these sectors there seems to be a narrow definition of CAHRAs and companies seem to be risk-avoiding</li> <li>Arms sector: HR and ethics policies are focused on employees (labour laws...) and operation company (anti-corruption...)</li> </ul>	<ul style="list-style-type: none"> <li>Specific policies and/or processes on HR respect in CAHRAs</li> <li>Risk mitigation instead of risk avoidance</li> <li>Enhanced due diligence in CAHRAs on the agenda of other sectors</li> </ul>

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## Questions and answers

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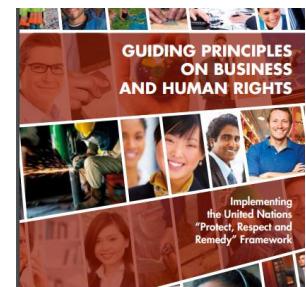


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## Concluding remarks



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## Tentative conclusions Pillar I and III

- Progressive **greening of BHR**.
- HRDD as a binding rule: Besides CSR reporting, **UNGP reporting framework; OLGM**.
- **A better understanding of GVCs** (geographical and sectoral characteristics, upgrading etc.)
- **Further improvement of SBJM:**
  - Public interest litigation , burden of the proof, criminal liability of all companies, class actions.
  - The Brussels business court?
- **Further development of SBN-JM**
  - Administrative sanctions, public procurement (control, value chain clauses etc.)
  - Increasing relevance of mediation (and of OECD NCP)
  - further support to NIHR
- **Better promotion of victim's rights** (EU Directive infringement)
- **Judicial training** in human rights and administrative and **judicial cooperation**.    
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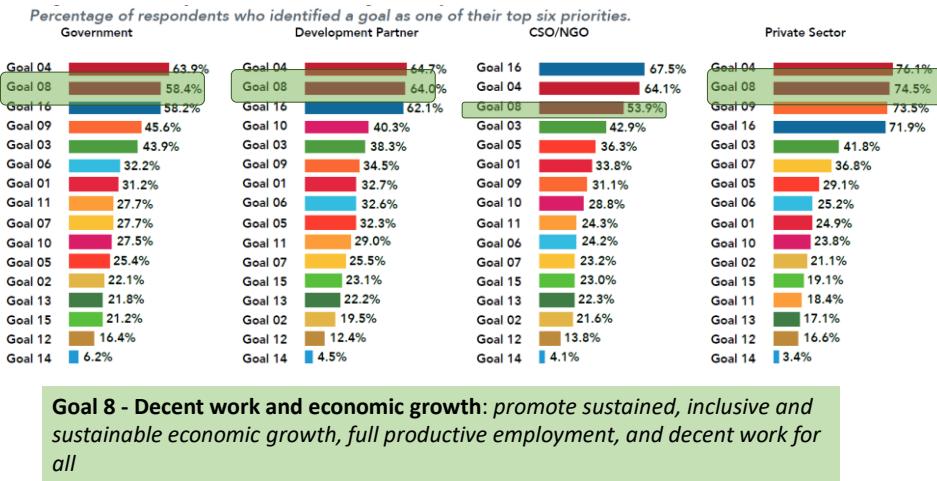
## Tentative conclusions – Pillar II

- UNGP-awareness growing, but compliance by Belgian companies limited
- Companies taking action, but stuck in ‘front-runner mode’ and ‘audit mode’
- No systematic HRDD
- Size matters → pay attention to SMEs and ‘middle segment’ of companies
- What role for institutional/regulatory environment (pillar I and III)?

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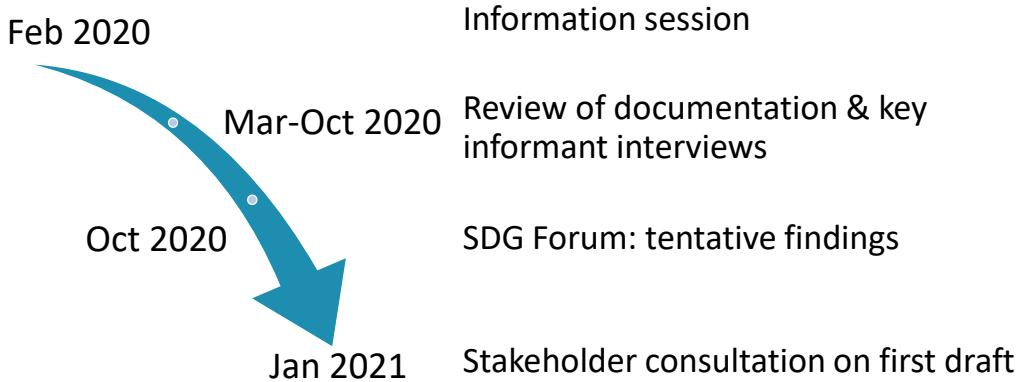
## Views from the Global South? SDG 8 in top 3 of priority SDGs



Based on scoring of 2435 leaders from low-income & middle-income countries (AidData, May 2018)

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## NBA process



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Thank you!

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