



UGANDA CONSORTIUM ON  
CORPORATE ACCOUNTABILITY

U C C A

## THREE PILLARS of the UN GUIDING PRINCIPLES

### HUMAN RIGHTS

#### PROTECT

**STATE**  
duty to  
protect

#### RESPECT

**CORPORATE**  
responsibility  
to respect

#### REMEDY

**VICTIMS**  
access to  
effective remedy

## *A Brief Overview of the UN Guiding Principles on Business and Human Rights*

*June 2018*

## *A Brief Overview of the UN Guiding Principles on Business and Human Rights*

The UN Guiding Principles on Business and Human Rights (**UNGPs**) are a set of global standards on business and human rights. They were unanimously endorsed by the UN Human Rights Council in 2011—introducing a three pillar framework of Protect, Respect and Remedy, reinforcing the **STATE** duty to Protect human rights, the **CORPORATE** responsibility to Respect human rights and access by **VICTIMS** of corporate abuse and violations to an effective Remedy.

1

### **PROTECT**

The **STATE's** duty to *protect* against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, investigation, enforcement and adjudication

2

### **RESPECT**

The **CORPORATE** responsibility to *respect* human rights,-to act with due diligence to avoid infringing on the rights of others and to address adverse impacts of activities in which they are involved.

3

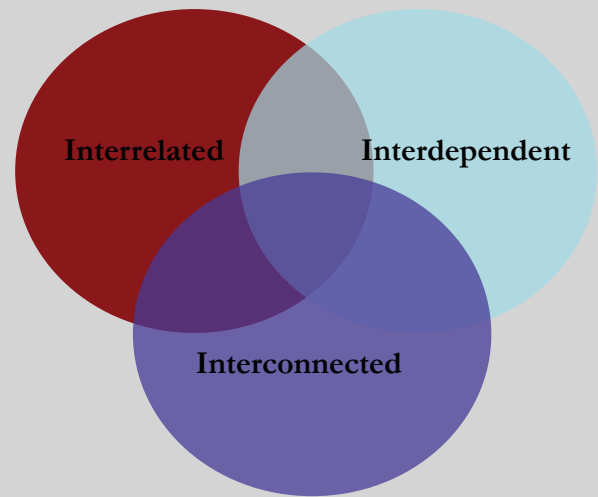
### **REMEDY**

The need for greater access for **VICTIMS** to effective *remedy*, both judicial and non-judicial. These need to be developed and reinforced in order to improve defence against human rights infringements.

## *3 Pillars of the UNGPs*

## Interrelated, Interdependent and Interconnected

The three pillars of the UNGPs are interrelated, interdependent and interconnected and thus cannot stand alone as independent pillars but must be promoted by both state and company collectively.

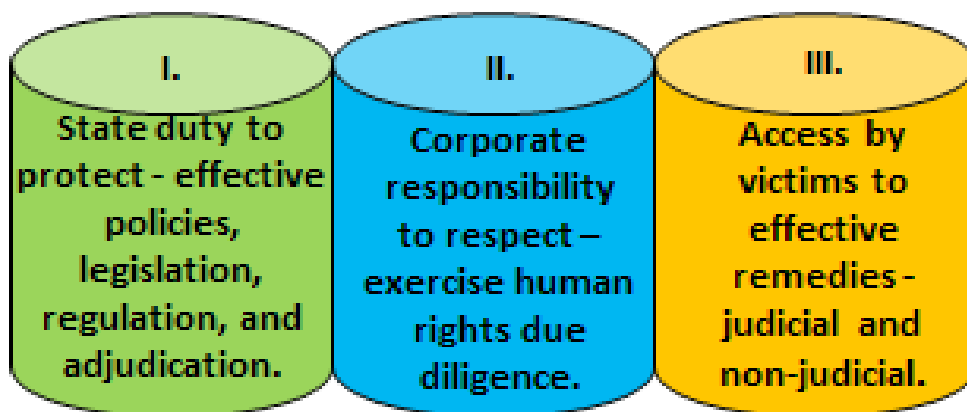


Each pillar is an essential component in an inter-related and dynamic system of preventative and remedial measures:

- The State duty to protect because it lies at the very core of the international human rights regime;
  - The corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and
  - Access to remedy because even the most concerted efforts cannot prevent all abuse.
- (A/HRC/17/31, Par.6)

### The Protect, Respect & Remedy Framework

“Each pillar is an essential component in an inter-related and dynamic system”



# 31

Principles  
of the UNGPs

## *Do Not Impose New Legal Obligations*

- They do not impose new legal obligations on business, or change the nature of existing human rights instruments.
- The Principles only aim to articulate what these established human rights instruments and standards mean, for both States and Business Enterprises, and to address the gap between law and practice.
- The Principles under the UNGPs set expectations of States and Companies about how to prevent and address negative impacts on human rights by business activities.

The Guiding Principles' normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved. Each Principle is accompanied by a commentary, further clarifying its meaning and implications. (A/HRC/17/31, Par.14)

## *No One Size Fits All*

The UNGPs are not intended as a tool kit, simply to be taken off the shelf and plugged in. The Principles are cognizant of the fact that we live in a world of 192 UN Member States, 80,000 transnational enterprises, 10 times as many subsidiaries and countless millions of national firms, most of which are small and medium-sized enterprises. While the Principles themselves are universally applicable, the means by which they are realized will have to be reflective of this fact and thus individual states are left with the authority to implement them in context of their prevailing circumstances. (A/HRC/17/31, Par.15)

## *1. The UNGPs General Principles*

The UNGPs apply to all STATES and to all BUSINESS ENTERPRISES, both transnational and others, regardless of their size, sector, location, ownership and structure. Because of their broad consultative process, they are currently being implemented by companies, governments and other stakeholders on every continent.

In 2011, the Human Rights Council established a UN Working Group on Business and Human Rights with the mandate; To promote the effective and comprehensive dissemination and **implementation of the UNGPs**. The UN Working Group set up a mechanism for States to develop National Action Plans on Business and Human Rights (NAP). It strongly encourages all States to develop, enact and update a NAP as part of the State responsibility to disseminate and implement the UNGPs.

**The UNGPs are grounded in recognition of:**

- I. States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- II. The role of business enterprises as specialized organs of society performing specialized functions,  
required to comply with all applicable laws and to respect human rights;
- III. The need for rights and obligations to be matched to appropriate and effective remedies when breached.

## ***2. The State Duty to Protect Human Rights (Principles 1-10)***

- i. **The State duty to protect is a standard of conduct.** *As per the international human rights legal framework;*
  - States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.
  - States are not per se responsible for human rights abuse by private actors. However, they may breach their international human rights obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse through effective policies, legislation, regulations and adjudication.
  - States should ensure that all business enterprises within their jurisdiction respect human rights throughout their operations and where abuses occur, effective remedies must be provided.

ii. In meeting their duty to protect, States should;

- Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, do not constrain but *enable business respect for human rights*;
- Provide *effective guidance* to business enterprises on how to respect human rights throughout their operations;
- Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts. (*Internal operational mechanisms*)

Article 20 (2) of the 1995 Constitution of Uganda as amended, enjoins the State, its agencies and organs and all persons (including corporate entities) to ensure that the rights and freedoms of the individual and groups enshrined in the Bill of Rights shall be respected, upheld and promoted.

*State  
Owned  
Businesses  
(Principle 4)*

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies.

**For Example:** In Uganda, government must actively regulate and ensure that human rights standards are observed in all businesses where they have a stake, such as Public Private Partnerships in Education and Health. They must ensure total compliance with national, regional and international human rights standards and undertake effective supervision to ensure that companies they do business with are respecting human rights in all their operations. (ISER 2016, A Threat or Opportunity: Public Private Partnerships in Education in Uganda)

# 3. *The Corporate Responsibility to Respect Human Rights* (Principles 11-16)

**For Example:** This can be through disposal and management of waste. A sugar production or oil producing company must desist disposing its waste products in water sources or near residential and community areas. This is harzadous to the lives of the people. To protect the environment such companies manage waste in a manner that is not a health hazard. Secondly, companies should interest themselves with the operations of suppliers like sugarcane outgrowers who supply the cane to the company for sugar production. Human rights abuses like child labour, exploitation and land conflicts among others by the sugarcane outgrowers, can be attributed to the company. The company has power, control and influence to ensure that the raw materials they need for sugar production are not produced through violations and abuses of human rights.

## Foundational Principles: Avoid Infringing on Human Rights of Others

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)

*(Companies should ensure that both its activities direct and indirect do not violate human rights.)*

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

## Businesses should;

- Comply with all applicable laws (even if enforcement is weak)
- Premise of “do no harm”: Have to look from the view of rights holders–bottom-up approach
- Transition in expectation: From broad policy/CSR-Statements of intent to “Knowing and showing”
- Framework is “guidance”, not a “standard”. No “one-size-fits-all” within or between companies / regions, etc.



ii. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

**For Example:** Uganda is experiencing an increase in both foreign and local investments—mainly in natural resource exploitation (minerals, oil and gas), infrastructure development, manufacturing and processing (Chinese developments and investments). The issues of economic exploitation and dwindling labour standards, environment degradation, massive land evictions and grabbing among others have become a daily concern in these sectors (The UCCA 2016 State of Corporate Accountability Report). The employment laws in Uganda offer little protection to workers within the informal sector. There is no meaningful minimum wage to address economic exploitation and so major protective measures for most workers in these sectors is from international human rights standards. The UNGPs enjoin companies, that even in instances where domestic laws are weak and enforcement poor, the corporate responsibility to respect human rights should be a core in all their engagements.

## *International Human Rights Standards*





### *iii. The responsibility to respect human rights requires that business enterprises:*

- a. **AVOID** causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- b. **SEEK TO** prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

In the UNGPs, “activities” are understood to include both actions and omissions; and “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

## *Do No Harm*

- Avoid causing or contributing to adverse impacts through own activities; and
- Seek to prevent or mitigate adverse impacts directly linked to company through business relationships - Even if they have not contributed to those impacts

**“Avoid” = control**  
(you are responsible for impacts)

**“Seek to” = leverage**  
(supplier is responsible for impacts)

### *Businesses Should Clearly Stipulate Human Rights Expectations of Personnel and Other Partners*

## *Policy Commitment*

Businesses should have a policy commitment that is approved at the most senior level of business enterprise which is informed by relevant internal and /or external expertise. The policy commitment should be publically known and communicated and it should reflect respect of human rights

**For Example:** TOTAL Plc, in their Human Rights Internal Guide, make reference to the UNGPs, ILO Conventions and the Voluntary Principles on Security and Human Rights. As stated in their Code of Conduct, respect for human rights standards is one of their three priority business principles. The Company identifies three important human rights issues related to the risks and impacts of their operations everywhere that is, Human Rights in the workplace, Human Rights and Security and Human Rights and Communities.

## *Human Rights Due Diligence (Principles 17-21)*

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.

- Human rights due diligence should cover adverse human rights impacts that the business enterprise may cause or contribute to,
- Must vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations and lastly,
- Should be a continuous process, recognizing that the human rights risks may change over time.

- Use due diligence as a “tool” to help a company identify, prevent, mitigate and account for any adverse human rights impacts. (Principle 17)
- Due diligence can help answer the question “how does a business know that it is doing no harm?”
- Due Diligence should include assessing actual or potential human rights impacts, integrating and acting upon its findings, tracking responses and communicating any actions.
- The company needs to not only look at its own operations, but also those created by any business relationships.

**For Example:** Comprehensive people focused Environmental Impact Assessments, Human Rights Impact Assessments and Social Impact Assessments can assist in identifying, preventing and mitigating adverse human rights impacts in any nature of business activity. These once done comprehensively as a continuous process—before, during and after project implementation, it answers the major questions of whether a company is abusing human rights in its activities.

**Remediation** - Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. (*Principle 22*)

*Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.*

## Principle 23: ISSUES OF CONTEXT

In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

## 4. Access to Remedy (Principles 25-31)

Foundational Principle: - The state has a duty to put in place, legislative, administrative, judicial and non-judicial mechanisms to enable victims of corporate abuses and violations to obtain effective remedies. For example through legislation, functional judicial systems both civil and criminal, Tribunals, functional government agencies and departments like Ombudsmen.

- Access to effective remedy has both procedural and substantive aspects.
- Remedies provided by the grievance mechanisms may take a range of substantive forms with the aim of making good any human rights harms that have occurred.
- Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

Overtime, it has been noted that even where states and business do their best to protect and respect human rights, negative human rights impacts may still result from a company's operations. It is for this realization, that effected measures must be put in place to ensure that affected people seek redress through effective judicial and non-judicial grievance mechanisms. However, Access to remedy still remains the weakest and most challenging among the 3 pillars. It has often proved elusive to hold powerful corporate actors accountable for abuses of human rights mainly due to financial muscle and state complicit in these violations.

## Operational Principles

**i. State Based Judicial Mechanism:** Under this mechanism, the state is supposed to ensure effective domestic judicial mechanisms when dealing with business related abuses to facilitate access to remedy. Among these are also quasi-judicial mechanism such as National human rights institutions e.g Uganda Human Rights Commission and Equal Opportunities Commission which play a key role in remedying human rights abuses by business enterprises.

Effective judicial and quasi-judicial mechanisms are at the core of ensuring access to remedy. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process.

## **ii. State Based Non-Judicial Grievance Mechanism**

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

These non-judicial grievance mechanisms could be mediation based, Administrative, legislative mechanisms that complement judicial mechanisms.

## **iii. Non-State-Based Grievance Mechanisms.**

States should facilitate access to remedy to non-state based mechanisms like use of trade unions, multi stakeholder groups to speed up access to remediation and operational grievance mechanisms.

Another category comprises regional and international human rights bodies. These have dealt most often with alleged violations by States of their obligations to respect human rights.

- Business enterprises should engage communities and individuals for every remediation or grievance.
- Industrial bodies and other collaborative multi stakeholder initiatives should ensure grievance mechanism for example through their codes of conduct and performance standards.

For the purpose of the UNGPs, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.

## *Community Sensitization and Awareness*

Ensuring access to remedy for business-related human rights abuses requires also that States facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support (financial or expert) for doing so.

## *Operational Grievance Mechanisms*

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.

**Operational-level grievance mechanisms perform two key functions regarding the responsibility of business enterprises to respect human rights.**

- Support the identification of adverse human rights impacts as a part of an enterprise's on-going human rights due diligence.
- Mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.

**Operational-level mechanisms should also be based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.**

**However, it's important to note that these cannot be a bar to further judicial engagements. Where a victim is not agreeable to the process and outcome, they are free to pursue the matter with other relevant judicial mechanism.**

### ***Effective Criteria for Non- Judicial Grievance Mechanisms by State and non- State Actors (Principle 31)***

**A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.**

In order to ensure effectiveness, the non-judicial grievance mechanisms should be;

- a. Legitimate: Build trust from the aggrieved parties about the process and being accountable for the fair conduct of the grievance mechanism.
- b. Accessible: Known by all persons who want to rely on it.
- c. Predictable: Clear and known procedure with an indicative timeframe and clarity on process and outcome.
- d. Equitable: It allows for aggrieved parties to apply necessary information and expertise for fairness
- e. Transparent: Keep parties to a complaint informed about its progress and sufficient information about the mechanism.
- f. Rights compatible: The outcome conforms to set international human rights standards.
- g. A source of continuous learning: Drawing on relevant measures to identify lessons to improve on mechanism and prevent similar occurrences.
- h. Based on engagement and dialogue: Involves engagement and consultation of all affected stakeholders.

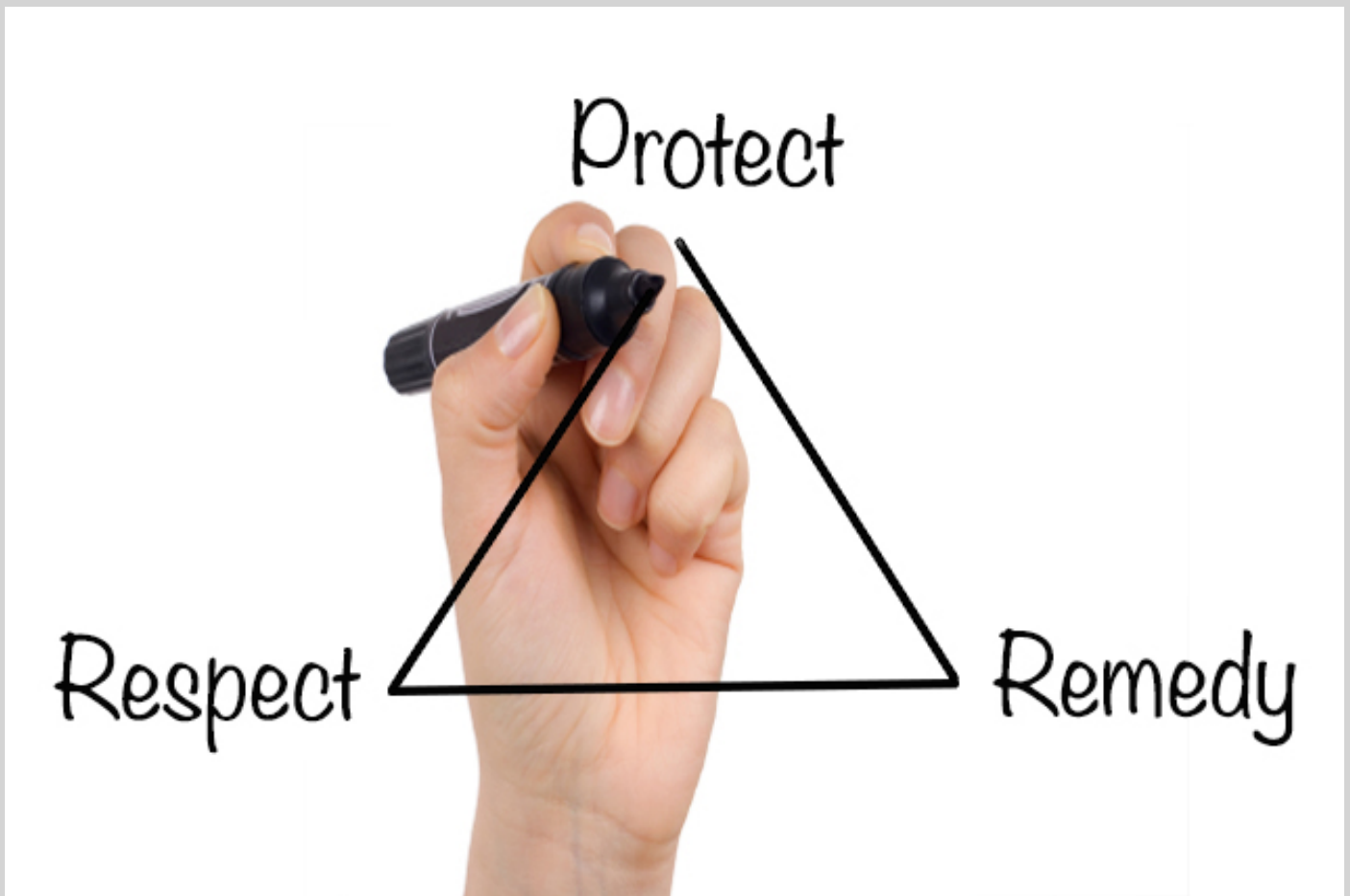
## **About UCCA**

The Uganda Consortium on Corporate Accountability (UCCA) is a Civil Society Consortium on corporate accountability aimed at enhancing accountability by corporations, states, international finance institutions and development partners for violations or abuses of Economic, Social and Cultural Rights (ESCRs).

Currently, the UCCA has a founding membership of four organizations specializing in different areas of rights protection, including the Initiative for Social and Economic Rights (ISER), the Public Interest Law Clinic at Makerere University Law School (PILAC), Legal Brains Trust (LBT) and the Center for Health Human Rights and Development (CEHURD).

Other UCCA members are Twerwanaho Listeners Club (TLC), Karamoja Development Forum (KDF), the Southern and Eastern Africa Trade Information and Negotiation Institute (SEATINI), the Centre for Economic Social and Cultural Rights in Africa (CESCRA), Buliisa Initiative for Rural Development Organisation (BIRUDO), Navigators for Development Association (NAVODA), Ecological Christian Organisation (ECO), World Voices Uganda (WVU), Rural Initiative for Community Empowerment West Nile (RICE WN), Teso Karamoja Women Initiative for Peace (TEKWIP), Action Aid International Uganda, International Accountability Project (IAP) and Lake Albert Children Women Advocacy and Development Organisation (LACWADO).





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