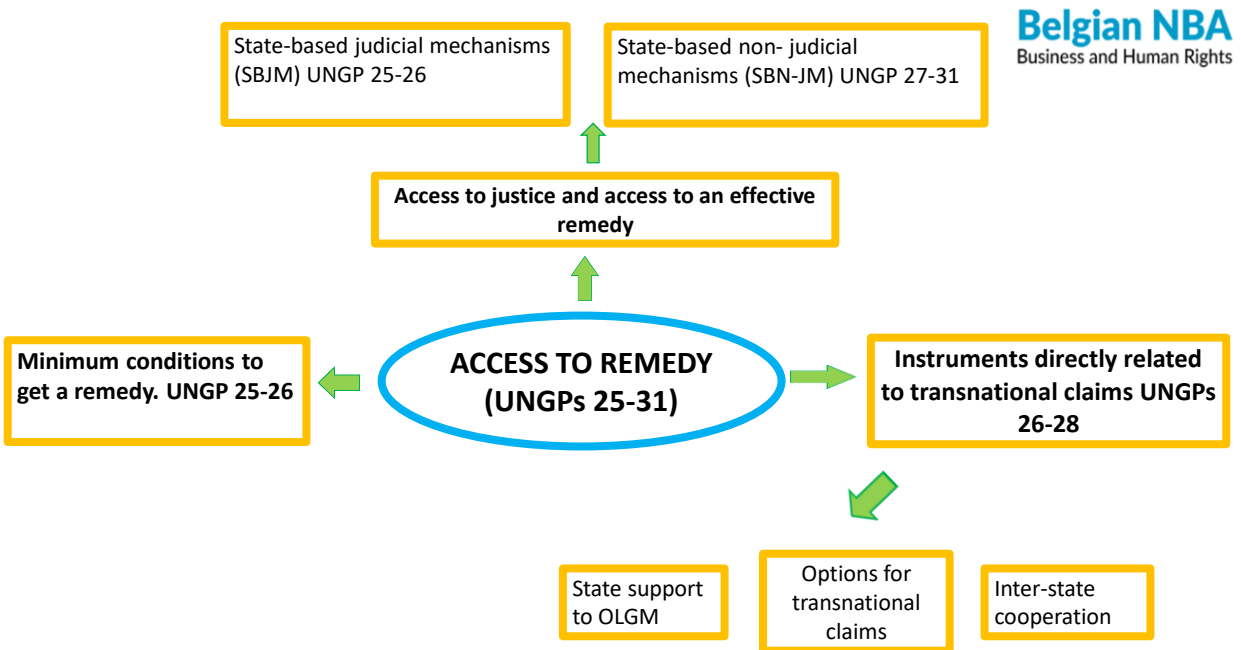


Pillar III – The need for appropriate and effective remedies

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Compliance with:
COUP DE PROJECTEUR SUR
LE PLAN D'ACTION
NATIONAL:
« ENTREPRISES ET
DROITS DE L'HOMME »

Recommendations
University
of Antwerp
UNGP ON BUSINESS AND HUMAN RIGHTS IN BELGIUM,
STATE-BASED JUDICIAL MECHANISMS AND STATE-BASED NON-JUDICIAL
ALTERNATIVE MECHANISMS, WITH SPECIAL EMPHASIS ON THE BARRIERS TO
ACCESS TO REMEDY MEASURES.
[File:Pracod-NG-UNGP2020141](#)
Recommendations and Conclusions

Access to justice

- Who has standing (victims and stakeholders)
- Type of action (individual, collective)
- Whether they can be used for human rights claims
- Whether it is possible to get an effective remedy (at the regulatory level).

Access to remedy

- Options per jurisdiction, court, and parties.
- Types of remedies depending on the types of abuses.
- Relevance of the types of rights
- Case-by-case analysis

Assessment method
Perspectives: The rightsholder
(victim) and transnational
litigation

Objective criteria of evaluation

- UN Principles “The Van Boven Bassiouni Principles”
- EU Directive on Victim’s rights
- EU Strategy on victims’ rights (2020-2025)
- Criteria proposed by the UNGP (27 and 31) and related case law from ECtHR CJEU

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Guiding international standards

Table 28: International guiding standards to assess Pillar III

Document	Date
UNGPs Reporting Framework	2016
UN HRC Accountability and Remedy Project: ARP I SBJM ²⁷⁵	2016
UN HRC Accountability and Remedy Project:, ARP II SBN-JM ²⁷⁶	2018
UN HRC Accountability and Remedy Project: ARP III OLG ²⁷⁷	2020
Recommendation CoE CM/Rec(2016)3 on access to remedy	2016
EU FRA Opinion on "Improving access to remedy in BHR at the EU level".	2017
The GC 24 on state obligations under the (ICESCR) in the context of business activities	2017
EU FRA Business-related human rights abuse reported in the EU and available remedies	2019
EP Study Implementation of the UNGPs	2017
Commission Notice on access to justice in environmental matters (2017/C 275/01)	2017
The second revised version of the draft treaty	2020

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Table 26: Actions in line with UNGPs -Summary

Area	Indicator	New binding rules are in place	New policies and processes have been adopted	NAP actions implemented	Actions to protect vulnerable communities have been taken	Actions to increase leverage on the <u>GVCs</u> have been done
	Minimum conditions to get a remedy					
	Legal aid and assistance	Yes	Yes	No action	Yes	No
	Access to information	No	No	No action	No	No
	Collection of evidence	Yes	No	No action	Yes	No
	Human rights defenders	No	Partially	No action	Partially	No

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Table 26: Actions in line with UNGPs -Summary

Area	Indicator	New binding rules are in place	New policies and processes have been adopted	NAP actions implemented	Actions to protect vulnerable communities have been taken	Actions to increase leverage on the <u>GVCs</u> have been done
	State-based non-judicial mechanisms (<u>SBN-JM</u>)					
	National Human Rights Institute (<u>NHRI</u>)	Yes	Yes	Partially	Yes	No
	Mediation of the OECD NCP	No	Yes	Partially	No	Partially
	Alternative dispute resolution (<u>ADR</u>): Mediation	Yes	No	No action	No	No
	Consumer Protection Claims	Yes	Yes	No action	Yes	No
	<u>SBN-JM</u> to fight discrimination	No	Yes	No action	Yes	No
	Inspections					
	Environmental protection	Partially	No	No action	Yes	Partially
	Protection of personal data	Yes	Yes	No action	Yes	No
	Labour and occupational health protection	No	No	No action	Yes	Partially

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Table 26: Actions in line with UNGPs -Summary

Area	Indicator	New binding rules are in place	New policies and processes have been adopted	NAP actions implemented	Actions to protect vulnerable communities have been taken	Actions to increase leverage on the <u>GVCs</u> have been done
State-based judicial mechanisms (SBJM)						
	Civil tort disputes	Partially	No	No action	No	Partially
	Class Actions	Yes	No	No action	Yes	Partially
	Criminal Claims	Yes	Yes	No action	Yes	No
	Labour claims	No	No	No action	Yes	No
	Injunctions and interlocutory proceedings	No	No	No action	No	No
SBJM addressed against the state						
	Council of State	No	No	No action	Yes	Partially
	Constitutional mechanisms	No	No	No action	Yes	Partially

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Table 26: Actions in line with UNGPs -Summary

Area	Indicator	New binding rules are in place	New policies and processes have been adopted	NAP actions implemented	Actions to protect vulnerable communities have been taken	Actions to increase leverage on the <u>GVCs</u> have been done
Transnational claims						
	Transnational litigation	No	yes	No action	No	NO
	Interstate cooperation	Partially	yes	No action	No	Partially
	Active support of Belgium for <u>OLGM</u>	No	Partially	No action	No	Partially

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Preliminary recommendations

Minimum conditions to obtain a remedy. UNGP 25-26

- To enlarge the coverage of legal aid and assistance to allow vulnerable populations to claim their rights, including access to services of interpreters and social support during the process.
- To improve access to information and to require businesses to report on the risks their activities may cause.
- To adopt regulatory and policy measures to protect human rights defenders that support victims in the EU and in third countries.

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Preliminary recommendations

State-based non-judicial mechanisms (SBN-JM) UNGP 27-31

- Progressive enlargement of the competences of the NHRI and provide for a human rights complaint mechanism.
- Reinforce the capacity of the OECD NCP as crucial forum to deal with transnational claims and, allow it to apply the ILO Tripartite Declaration and the UNGPs.
- Allow other SBN-JM to hear complaints from victims from third countries to lodge complaints in Belgium against Belgian companies operating directly or via commercial partners in third countries.

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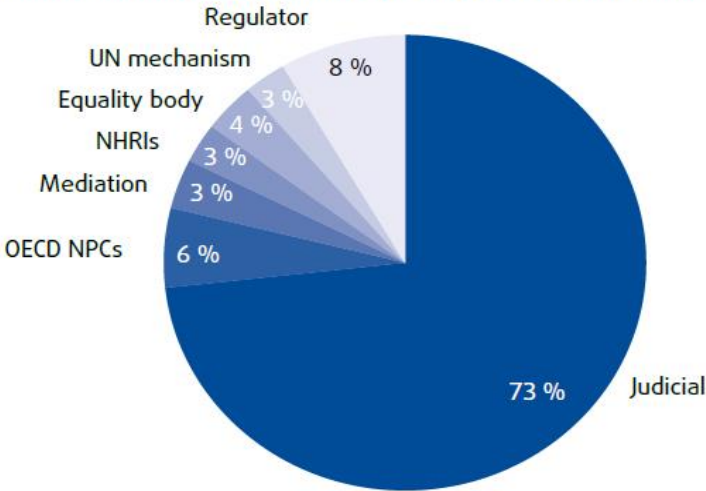
Preliminary recommendations

State-based Judicial mechanisms (SBJM) UNGP 25-26

- Continue the improvement of the institutional capacity of the judiciary, but it still needs further reforms and policies to facilitate the use of the judiciary by victims of business-related human rights abuses (actions framed in human rights terms, expansion of collective claims etc.).
- Continue efforts to fully implement the EU Directive on victims’ rights.
- Enlarge the possibilities in public interest litigation to allow victims to lodge complaints against businesses responsible for human rights harms or environmental damage, and to claim redress or compensation.

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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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Preliminary recommendations

Instruments directly related to transnational claims. UNGPs 26-28

- Assessment of the suitability that transnational business-related human rights claims could be heard by the Brussels International Business Court (when it is created).
- Assessment of the best way to allow victims from third countries to lodge lawsuits before Belgian courts when Belgian value chains are involved in human rights harms.
- Systematic reforms and policies to support the implementation of OLG M by business associations, SOCs, credit and export promotion agencies.

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Policy recommendations Pillar III

- The implementation of Pillar III of the UNGPs in the political agenda, particularly the reinforcement of the judiciary as an important actor in the realization of human rights.
- Access to information, including systematic access to case law and to statistics on court activities.
- Assessment of how to adopt structural reforms and policies to allow transnational claims in the framework of the UNGPs, to promote and support the implementation of OLG M by companies, and to reinforce cooperation between judiciaries and the diplomatic service.
- Permanent capacity building of diplomatic, judicial and administrative officers in terms of UNGPs.

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Questions and answers

- Please raise your hand if you have a question or remark
- Be as concise as possible
- Questions / remarks can be asked in your language of preference.

see list of participants ->

