

ACCESS TO REMEDY IN BELGIUM



**THE UNITED NATIONS GUIDING
PRINCIPLES ON BUSINESS AND
HUMAN RIGHTS (UNGPR) IN BELGIUM:**

**State-based judicial and
non-judicial mechanisms that
provide access to a remedy**





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PREAMBLE:

This brochure is a product of the "Business and Human Rights" Belgian National Action Plan, which is based on the "United Nations' Guiding Principles on Business and Human Rights". Belgium intends to implement these guiding principles, especially pillar III, the foundational principle of which is:

"As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy."

This principle reconfirms that authorities have a duty to guarantee recourse to effective remedial measures for victims of Human Rights violations by enterprises. This should be through judicial, administrative, legislative or other appropriate means.

Different state procedures exist on a Belgian and international level. However, many of these complaint mechanisms are not sufficiently well-known and/or too difficult to implement, which may have a negative impact on victims and enterprises.

In the absence of sufficiently clear information on this subject, an enterprise's activities may have a negative effect on Human Rights. Without necessarily intending to or being able to prevent it, a company may find itself responsible for Human Rights' violations. Also, victims may feel discouraged/powerless when faced with what needs to be done to protect their human rights.

The lack of clarity on this subject gives rise to judicial uncertainty which is neither in the interest of victims or enterprises. In order to overcome this, the Institut Fédéral pour le Développement Durable - Federal Institute for Sustainable Development (IFDD) commissioned an exhaustive study*, carried out by the Faculty of Law of the University of Antwerp, concerning the remediation mechanisms which exist and which are the competence of the State for presentation in this brochure.

The aim of this brochure is to provide as much information as possible about the rights and duties of all and the means available for complying with them and for ensuring that they are complied with.

How to obtain effective access to justice? Where to find legal aid or assistance in order to assert your rights? Who are the key stakeholders with a competence in this field? What is the most appropriate procedure? This brochure aims to provide pragmatic and complete answers to these questions in order to ensure effective access to the remediation mechanisms provided for victims of human rights violations.

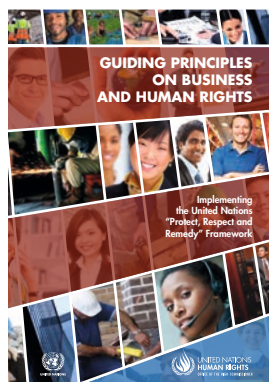
* the full study is available on: <http://www.developpementdurable.be/fr>

Dieter Vander Beke,
Director FISD

INTRODUCTION

The United Nations Guiding Principles on Business and Human Rights (UNGPs) provide a comprehensive framework for states to regulate business conduct affecting human rights. These guidelines are built on three pillars:

- (i)** States have a legal obligation to protect against human rights abuses by businesses. As a result, the State must regulate how corporations can be held accountable for respecting, protecting, and - in some cases - fulfilling human rights.
- (ii)** Businesses should pursue Corporate Social Responsibility (CSR) to respect human rights. That is, they should avoid human rights abuses and address adverse impacts of their activities by applying Human Rights Due Diligence (HRDD). This is a permanent process for assessing a business's actual and potential human rights impacts, caused either directly (through its own activities) or indirectly (through its partners).
- (iii)** States should make judicial mechanisms available for victims to get access to an effective remedy. States and businesses should also set up additional non-judicial mechanisms.



Source : http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

A faded background image of a man carrying a large sack on his back. The man is wearing a striped shirt and has a determined expression. The sack is large and appears to be made of a coarse material, possibly burlap or canvas. The overall tone of the image is somber and focused.

1.

HOW TO OBTAIN EFFECTIVE ACCESS TO JUSTICE?

I. HOW TO OBTAIN EFFECTIVE ACCESS TO JUSTICE?

In this part, two key components of the right to access to effective remedy are presented. They are available in connection with all of the mechanisms listed below in sections 2 - 7.

1.1. LEGAL ASSISTANCE AND AID¹

Belgium provides legal assistance and aid to support victims and other stakeholders in seeking remedies for business-related human rights abuses.

■ Primary legal assistance

This involves providing general information about legal procedures and rights.

Conditions: it is available to any person regardless of income or legal interest in a case.

Where? Lawyers of the 'Legal Aid Commissions' organised by the bar associations, justice houses, and other institutions such as local administrations, justices of the peace, social institutions (e.g. OCMW/CPAS, Agentschap Integratie en Inburgering, or specialized human rights protection bodies such as UNIA, the Institute for Gender Discrimination, and Myria (for human trafficking and migration issues).

■ Secondary legal assistance

This involves legal assistance and representation in judicial or administrative procedures, as well as in mediation by accredited mediators.

Conditions: this assistance is available only to persons who have residence in

¹ http://ec.europa.eu/civiljustice/legal_aid/legal_aid_bel_en.htm#2

Belgium or in the EU and a legal interest in appearing before a court and have a proven lack of financial resources (except in exceptional circumstances provided by law).

Who provides this? The ‘Legal Aid Bureaus’ organised by the bar associations.

■ Legal aid

Victims without financial means to pay for judicial or non-judicial proceedings can ask for financial support (full or partial exemption) to cover costs related to:

- the intervention of the bailiff when suing the state
- stamp duties and registration charges
- the intervention of witnesses (including expert witnesses)
- mediation before an accredited mediator

■ Legal assistance and aid in cross-border disputes

Legal aid, assistance and representation can be requested to approach judicial and non-judicial mechanisms to seek a remedy for cross-border business-related human rights abuses.

Conditions: The conditions and the forms to be submitted are available here².

Translation support:

The courts themselves provide translators and interpreters. In Flanders, the Agentschap Integratie en Inburgering¹ also provides interpretation and translation services to assist victims in administrative and legal issues outside of the courts.

¹ <http://www.integratie-inburgering.be/wat-doen-we/sociaal-tolken-en-vertalen>

² https://e-justice.europa.eu/content_legal_aid_forms-157-en.do

1.2. MECHANISMS TO ACCESS RELEVANT INFORMATION

To obtain access to an effective remedy, victims may need information about their rights or to gather evidence for their claims against businesses and/or the State. There are different mechanisms for these purposes:

■ To request information from the State

Conditions: Any victim or stakeholder has the right to ask for information and to consult documents by addressing a petition or asking for a copy of a document. This right is only limited in cases specified by laws or by constitutional rules.

■ To collect evidence to file claims

Conditions: Victims, stakeholders or the judiciary may request bailiffs (Art. 519 (2) Judicial Code) to record material facts.

Where? The bailiffs of courts of first instance

Outcome: This option allows evidence and material facts to be gathered for a future procedure against a business and/or the State.

Reporting:

Some businesses must report certain non-financial information together with the yearly balance sheet on issues related to the environment, social and working conditions, respect for human rights, and the fight against corruption and bribery. These reports are useful when filing a claim for a business-related human rights abuse. In addition, an increasing number of businesses are adopting voluntary reporting systems as good business practice.

Reporting duties: The disclosure of non-financial information.

The following entities should report non-financial information in their annual report:

- Entities of public interest (defined by article 4/1 of the Belgian Corporate Code) with more than 500 employees that surpass an annual balance total of 17 million EUR or a yearly turnover (without VAT) of 34 million EUR.
- Corporate groups must submit and publish consolidated non-financial information when the parent corporation is of public interest and the group has more than 500 employees. Subsidiaries of these groups do not need to publish this declaration.

More information can be found here¹

Voluntary reporting initiatives

Standards certify that products, processes and services comply with certain requirements, specifications and guidelines.

Where?

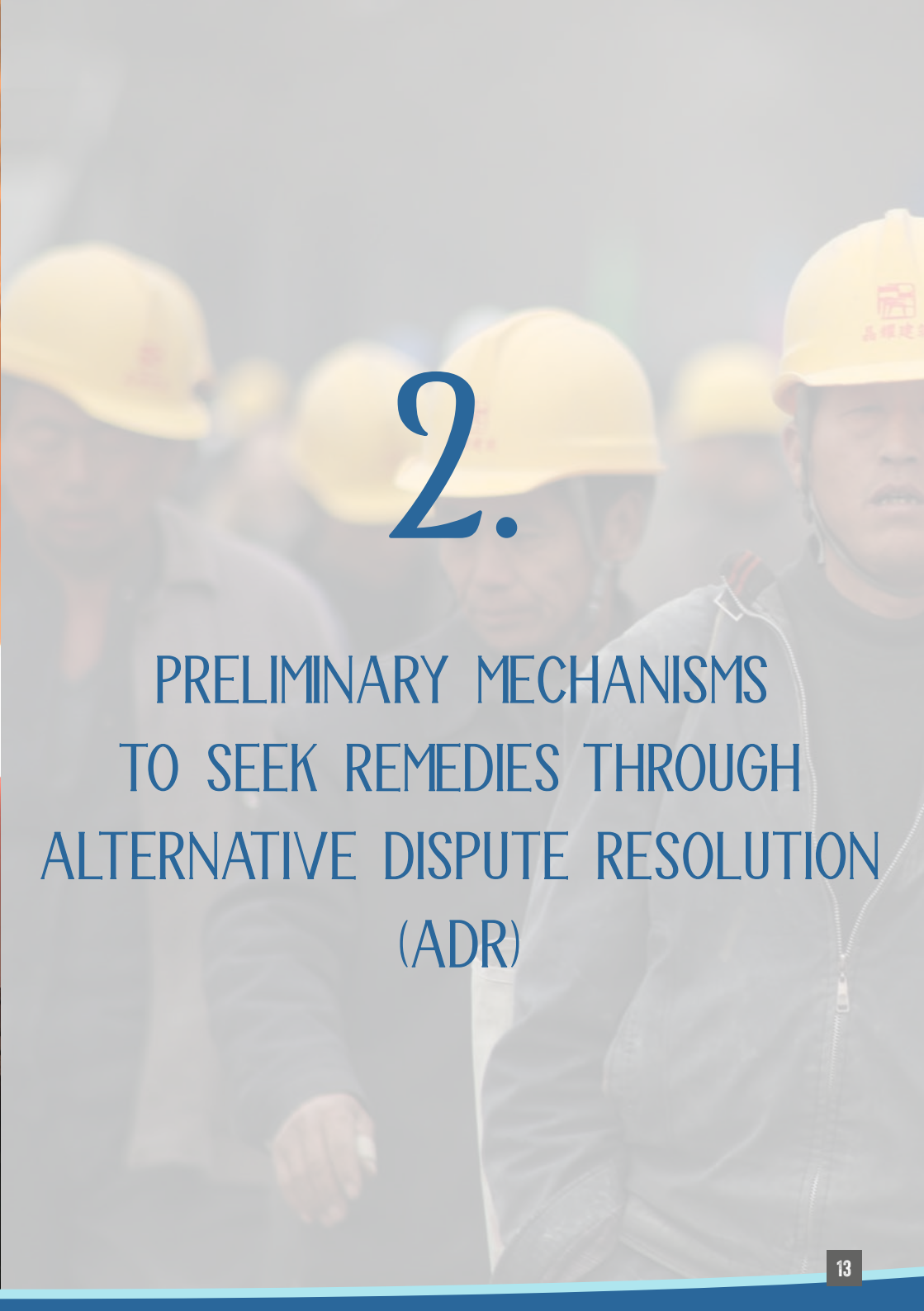
- The National Bureau for Standardisation (NBN)² provides or certifies relevant information on business activities.
- ISO International Standards³ certify that businesses sell products and services that are safe, reliable and of good quality. ISO includes an informal complaints mechanism related to the misuse of the ISO logo or false ISO certification. The most relevant standards are:
 - ISO 9000 on Quality management;
 - ISO 14000 on Environmental management,
 - ISO 26000 on Social responsibility (guidelines, not a certificate)
 - ISO 22000 on Food safety management,
 - ISO 45001 on Occupational health and safety,
 - ISO 37001 on Anti-bribery management systems.
 - ISO 20 400 on Sustainable procurement
 - ISO 31000 Risk Assessment
- The Global Reporting Initiative⁴ (GRI) sets standards for businesses on sustainability issues, including human rights.
- Social Accountability Standaard SA 8000

1 <https://economie.fgov.be/nl/themas/ondernemingen/een-onderneming-beheren-en/financiele-en-boekhoudkundige-boekhoudrecht-en-jaarrekening/belgische-bepalingen/niet-financiele-informatie> \t “_blank

2 <https://www.nbn.be/en>

3 <https://www.iso.org/about-us.html>

4 <https://www.globalreporting.org/standards/gri-standards-download-center/>



2.

PRELIMINARY MECHANISMS TO SEEK REMEDIES THROUGH ALTERNATIVE DISPUTE RESOLUTION (ADR)

2. PRELIMINARY MECHANISMS TO SEEK REMEDIES THROUGH ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR mechanisms may settle disputes without using judicial remedies, thus providing faster and less expensive solutions. They are in principle voluntary, but can lead to a binding settlement. In case of non-compliance, enforcement requires the use of judicial mechanisms.

■ In civil and commercial disputes

Mediation in civil and commercial matters is the most common ADR mechanism. This is a voluntary and confidential process which seeks to solve a dispute outside the courts. It can also be proposed by the parties or a judge in a judicial process. A mediation agreement which is reached before an accredited mediator and approved by a judge becomes a judgment with an authentic and enforceable character.

Who can use this mechanism? ADR can be used by victims or stakeholders who demonstrate an interest in representing victims, and who have standing in the corresponding judicial procedures.

General Outcomes: A settlement which orders redress for the abusive acts, financial compensation, or an end to the abuse.

Where? Mediation regulated by the Judicial Code is usually conducted by an accredited mediator³ chosen by the parties.

The Directors' and Officers' Liability Insurance Policy ("D&O") can cover risks related to legal actions for wrongful acts committed by company directors and officers in this capacity, including human rights abuses. The Policy covers civil claims, as well as criminal or regulatory investigations. Some insurers provide this insurance for parent corporations and their subsidiaries. Insurance companies may also play a role in extra-judicial settlements.

³ <http://www.juridat.be/bemiddeling/>

■ In criminal cases

Mediation can take place before the public prosecutor⁴ to seek reparation for moral and material damages.

■ Ombudsman

An ombudsman can receive justified complaints against administrative authorities and then seek to mediate with the concerned authority to correct the situation and/or prevent recurring failures.

- The Federal Ombudsman⁵ can mediate in conflicts with federal administrations.
- At the subnational level, mediation can be requested before the Flemish⁶ Ombudsperson, the Ombudsman of the Region of Wallonia⁷ and the French Community and the Ombudsperson for the German-speaking Community⁸ for issues relating to the public entities of these levels of government.
- Local communities and autonomous State-owned corporations may have their own ombudsman.

Conditions:

- The complaint must first be filed before the public administrative body in question.
- The administrative body must have totally or partially rejected the complaint, or ignored it.
- The complaint may not have already been dealt with by the ombudsman.
- The complaint cannot be anonymous or concern disputes between private persons.
- At the federal level, the complaint must be presented within one year of obtaining knowledge of the authority's act or omission. Subnational ombudsmen may have different deadlines.

4 <https://justitie.belgium.be/sites/default/files/downloads/MediationPenaleFR.pdf>

5 <https://www.ombudsman.be/fr/ombudsmans/mediateur-federal>

6 <http://www.vlaamseombudsdienst.be/ombs/index.html>

7 <http://www.le-mediateur.be/>

8 <http://www.ombudsman.be/de>

Outcome: Ombudsmen can report the complaint and make suggestions to administrative authorities to prevent the situation from recurring, but they lack the competence to offer binding solutions. This procedure suspends the deadline for appeal against an administrative decision before the Council of State or other courts, in terms of Art. 19 of the Law of the Council of State.

At the subnational level, the Flemish¹ Children's Rights Office and the General Delegate of the French Community² mediate in cases of human rights abuses affecting children.

1 <https://www.kinderrechtencommissariaat.be/en>

2 <http://www.dgde.cfwb.be/>

■ National Contact Point (NCP)⁹ for the OECD Guidelines for Multinational Corporations (MNEs)¹⁰

By means of an OECD Guidelines complaint, the NCP in Belgium provides mediation in conflicts between the business and communities/individuals affected by business activities.

Conditions:

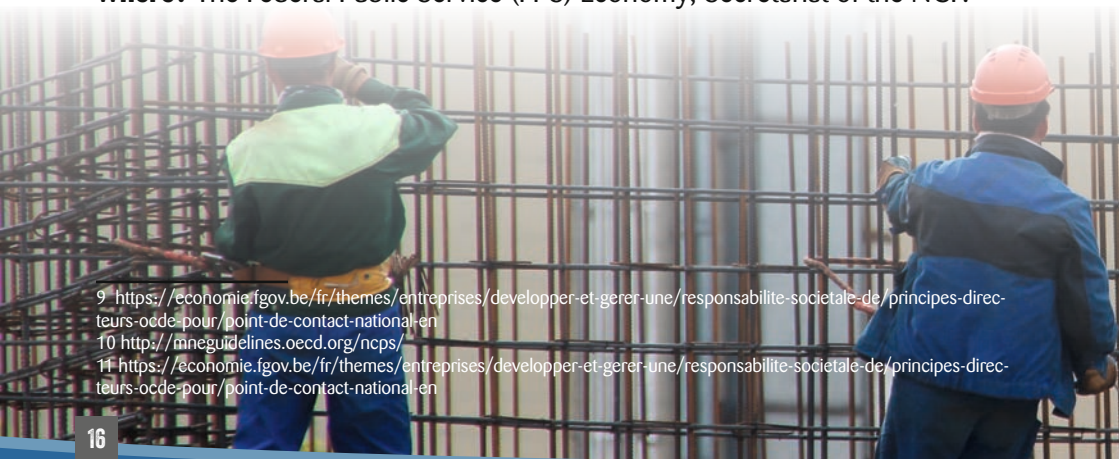
- Complaints must refer to breaches of OECD Guidelines by a business or a third party.
- The inquiry is taken up only when a complaint is filed by a stakeholder.
- The alleged abuse must have been committed in Belgium, or in a third country by a business domiciled in Belgium.

Where? The Federal Public Service (FPS) Economy, Secretariat of the NCP.¹¹

9 <https://economie.fgov.be/fr/themes/entreprises/developper-et-gerer-une/responsabilite-sociale-de/principes-directeurs-ocde-pour-point-de-contact-national-en>

10 <http://mneguidelines.oecd.org/ncps/>

11 <https://economie.fgov.be/fr/themes/entreprises/developper-et-gerer-une/responsabilite-sociale-de/principes-directeurs-ocde-pour-point-de-contact-national-en>



Outcome: The NCP mediates between the business and trade unions, NGOs or other stakeholders to settle a conflict in accordance with the law. The NCP initially evaluates the complaint which is published on its website. If the NCP decides to mediate, it also releases a final statement outlining the findings and the outcome of the mediation. This may provide for a non-State based remedy. The statement is not binding.

■ **Belgian Investment Company for Developing Countries (BIO)'s Grievance Mechanism¹²**

BIO's Grievance Mechanism seeks to provide redress to victims affected or potentially affected by investment projects, technical assistance or feasibility studies totally or partially financed by BIO. BIO's Internal Audit monitors and manages the risks and impacts of these projects in developing countries. Victims, affected local communities, stakeholders who represent affected persons or groups, and members of the board of directors or staff members of the corporation financed by BIO can lodge a complaint.

Conditions:

- Complaints must refer to social and environmental issues such as labour, environmental health, land acquisition and involuntary resettlement, biodiversity protection, rights of indigenous people and cultural heritage; or issues relating to governance and business integrity, such as money-laundering, fraud, corruption or bribery.
- The complaint can be lodged in English, Spanish, French or Dutch by using BIO's form or by sending an email or a letter.

Where?¹³ BIO's Internal Audit (IA)¹⁴

¹² <http://www.bio-invest.be/contact/grievance-mechanism.html>

¹³ <http://www.bio-invest.be/contact/grievance-mechanism.html>

¹⁴ http://economie.fgov.be/fr/entreprises/vie_entreprise/responsabilite_societale/des_entreprises/Principes_directeurs_OCDE_entreprises_multi-nationales/Portail_du_tabac_et_alcool/OCDE_Belgique/»?_af=WdNzrpul2x

Outcome: BIO mediates between the complainant and investee, and if they conclude an agreement, BIO monitors its implementation. BIO also has a compliance review mechanism to monitor BIO's compliance with its own policies and procedures in the target project. This review can establish the liability of BIO and/or supervise, monitor or implement measures to avoid or mitigate adverse impacts, or to redress the potential harm caused. BIO reports on this procedure with recommendations to the Audit Committee and can propose a corrective action plan to the investee. BIO's annual report includes the complaints received and their results, although confidential or sensitive information may be not be released.

■ Institutes that provide mediation against discrimination

In case of business-related discriminatory acts, two specialised institutions provide ADR mechanisms and legal assistance for victims. These institutions actively promote solutions to avoid future abuses through policy recommendations.

Conditions: Victims or other stakeholders who represent victims or who fight against systematic cases of discrimination can ask for support from these institutions.

Where?

- The Inter-Federal Centre for Equal Opportunities (UNIA)¹⁵
- The Gender Equality Institute (IGVM-IEFH)¹⁶

Outcome: Victims or stakeholders can reach a settlement involving redress for the violation, compensation for damage caused by the discriminatory act, and/or an end to the violation. These institutions can also promote and support judicial actions when the case is highly relevant for society as legal precedent, or when it is a serious case (e.g. flagrant hate crime). This will only take place after the ADR option has been exhausted.

¹⁵ <http://unia.be/en>

¹⁶ <http://igvm-iefh.belgium.be/en>

■ The Data Protection Authority

The Data Protection Authority protects the right to protection of personal data. It can receive complaints about public or private sector abuses of the right to privacy.

Conditions: Complaints may be filed by any person who considers that his/her right to personal data protection has been violated.

Where?¹⁷ Data Protection Authority

Outcome: The Data Protection Authority makes recommendations to the data controller. It can also report abuse to the public prosecutor or take action before the civil courts. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data enlarges the competences, tasks and powers of this Authority, which can now restrict activities that violate this right and impose fines. More information can be found here¹⁸.

■ Consumer protection¹⁹ mediation entities

Consumers may file claims individually or collectively to seek a settlement related to a violation of consumer rights.

Conditions:

- The claimant should be a consumer (or his/her representative).
- Only human rights recognized as consumer rights can be invoked.
- The specific procedure is defined in the Code of Economic Law (XVI.16.-8).
- The prescription deadline for suing the business before a court is suspended while this complaint is pending.
- The business should first be informed of the claim to try to solve the dispute.
- The complaint may not have already been filed before a court.
- The complaint may not be based on the same facts as any previous complaint which authorities found to be unsubstantiated in fact or law.

¹⁷ <https://www.privacycommission.be/nl/algemene-verordening-gegevensbescherming-0>

¹⁸ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

¹⁹ <https://economie.fgov.be/fr/themes/protection-des-consommateurs>

Where? / Outcomes:

- The Consumer Mediation Service²⁰ may ask for information, carry out inspections of businesses, request the infringement to cease and propose a settlement.
- The European Consumer Centre - Belgium²¹ mediates in a similar way for cross-border European consumer claims.
- The online mediation mechanism Belmed²² also provides mediation for consumers in the EU in claims against Belgian businesses. It is coordinated by the FPS Economy.
- If the violation of consumer rights is a criminal offence, it will be reported to office of the public prosecutor.

■ European Ombudsman

The European Ombudsman can examine and report on complaints about business-related human rights abuses linked to the conduct of EU institutions.

Conditions

- The claimant should be a citizen or resident of the EU, or a legal person with a registered office in a Member State
- The alleged abuse should be related to maladministration by EU institutions, bodies, offices or agencies, excluding the Court of Justice of the EU (CJEU)²³.

Where? The European Ombudsman²⁴

Outcome: The European Ombudsman seeks to redress situations and prevent future abuses, but cannot bring concrete relief for victims.

²⁰ <https://www.consumerombudsman.be/en>

²¹ <http://www.eccbelgium.be/your-rights/submitting-a-complaint-to-the-ec>

²² <https://economie.fgov.be/en/themes/online/belmed-online-mediation>

²³ https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en

²⁴ <https://www.ombudsman.europa.eu/en/home.faces;jsessionid=8E3EC124FA0F16C914C01D3FB6C7896B>





3.

TEMPORARY RELIEF: PRESIDING JUDGES OF COURTS OF FIRST INSTANCE

8. TEMPORARY RELIEF : PRESIDING JUDGES OF COURTS OF FIRST INSTANCE

8.1. INTERLOCUTORY PROCEEDINGS FOR URGENT INTERIM INJUNCTIONS

Courts of first instance, the commercial court and labour courts can conduct expedited procedures (Articles 584-589 Judicial Code) in urgent cases to issue interim injunctions in cases within their competence.

Outcome: These procedures mainly have a preventive character and can be effective in cases of ongoing or imminent business-related human rights abuses. This mechanism can also be used when necessary to allow relevant evidence to be collected (including assessment of the damage and its causes), and to protect the rights of persons who are incapable of defending themselves.

8.2. INJUNCTIVE CLAIMS

Where an interlocutory claim cannot be filed because of a lack of urgency, injunctive claims can be used to obtain an order to cease threats and/or damages produced by business-related human rights abuses. This procedure can be used against discriminatory acts, violations of social legislation, threats to consumers, environmental damage and data processing violations. Sometimes, injunctive relief can also be requested as a collective redress.

Conditions:

- The victim or stakeholder must demonstrate the illegality of the act and his/her interest in stopping it.

- In the case of environmental protection, the claim can also be lodged by the public prosecutor or by environmental protection NGOs.
- Administrative authorities may also file such an action when the human rights abuse falls within their area of competence.

Outcome: Injunctive claims provide temporary relief, but without solving the problem in a definitive manner, imposing any sanction or ordering compensation.



4.

CLAIMS SEEKING A
SANCTION AND/OR
COMPENSATION (AGAINST
BUSINESSES AND/OR THE STATE)

4. CLAIMS SEEKING A SANCTION AND/OR COMPENSATION (AGAINST BUSINESSES AND/OR THE STATE)

These mechanisms can be used by victims and/or stakeholders who can demonstrate a direct interest in the claim.

4.1. FIRST OPTION: APPROACH COMPETENT ADMINISTRATIVE AUTHORITIES

The administrative measures mentioned below mainly seek to protect human rights linked to the concept of sustainable development, e.g. social and labour rights, and the right to a healthy environment. In general, but not always, these options should be exhausted before seeking judicial remedies.

■ Social administrative fines

The State may send inspectors to employers and apply administrative sanctions when social legislation (i.e. on labour and social security) is violated. Inspectors seek to identify cases of undeclared work, discrimination at work, social dumping or economic exploitation.

Working in Belgium²⁵ is a federal government platform to inform workers and employers about legal duties and regulations concerning foreign workers. One of the main instruments is the Limosa²⁶ (“Landenoverschrijdend Informatiesysteem ten behoeve van Migratie Onderzoek bij de Sociale Administratie”) on-line declaration for workers temporarily posted in Belgium²⁷. Victims or stakeholders can file a complaint when these rules are violated.

²⁵ https://www.belgium.be/en/work/coming_to_work_in_belgium

²⁶ <http://www.limosa.be/>

²⁷ https://www.international.socialsecurity.be/working_in_belgium/en/home.html

Conditions:

- The complaint may be presented by any person to the competent authority
- If the complaint refers to a policy or regulatory issues, it should be presented to the Strategic Unit of the FPS Employment.
- Such a claim does not suspend the prescription term for judicial actions but can result in an inspection.

Outcome: Inspections may result in preventive or repressive actions. The auditor in labour cases must decide whether the abuses amount to an administrative or a criminal offence. The Direction of Administrative Fines of the FPS Employment can impose administrative fines²⁸. These fines can be challenged before labour courts within three months. If victims also seek compensation, they must initiate legal action before a court.

Where?

FPS Employment²⁹ and FPS Social Security; the RVA³⁰, RSZ³¹, RIZIV³² and the police supervise social laws and well-being at work.

Other social inspection services of subnational authorities include the Department of Work and Social Economy³³ (Flanders) and the Directorate of Employment, Economy and Research (Wallonia)³⁴.

28 <https://www.werk.belgie.be/defaultTab.aspx?id=4704>

29 <http://www.employment.belgium.be/home.aspx>

30 https://www.belgium.be/en/contactinfo_en_sites/fod-sociale-zekerheid

31 <https://www.rsz.fgov.be/>

32 <http://www.riziv.fgov.be/nl/Paginas/default.aspx>

33 <http://www.werk.be/>

34 <http://www.wallonie.be/fr/guide/guide-services/16217>



Trafficking in human beings (THB) includes abuses such as labour exploitation or contemporary forms of slavery.

Where?

- Reception centres: Pag-Asa¹ in Brussels, Sürya in Wallonia and Payoke² in Flanders provide administrative and legal assistance. These bodies can file a claim as civil party in their own name or on behalf of victims.
- The Federal Migration Centre (Myria)³ is an independent human rights monitoring mechanism and can also file civil actions on THB.

1 <http://www.pag-asa.be/>

2 <http://www.payoke.be/>

3 <http://www.myria.be/en/about-myria>

Outcome: EU Member States must provide victims of THB free legal assistance and aid in criminal, civil, labour or immigration/asylum proceedings. Administrative authorities in charge of social regulations should seek to cease the abuse and impose sanctions. If the abuse is a criminal offence, the complaint should be lodged before the prosecutor³⁵ and victims should receive psychological and medical support. Victims and/or NGOs supporting victims of THB cannot be criminalised.

■ Environmental protection mechanisms: licenses and impact assessments

Environmental protection mechanisms may be triggered when business-related human rights abuses are related to environmental damage. Businesses with a potential negative impact on the environment may be obliged to apply for a license before starting their activities. In some specific cases, the granting of the license may be preceded by an environmental impact assessment (EIA). When businesses cause environmental damage, they must take preventive or remedial action and bear the related costs. Environmental damage can also be a criminal offence.

Conditions:

- When an environmental license is granted, interested citizens can present

35 <https://www.om-mp.be/fr/votre-mp/parquets-procureur-roi>

observations and remarks to the authorities. The final decision should be public, to allow citizens to present an appeal before competent courts or bodies, including the Council of State.

- The claimant's interest in the case must be personal, present, certain, direct and legitimate.
- Severe damage is a condition for requesting suspension of a license after an EIA.
- As EIAs are linked to the granting of licenses, interested citizens may also appeal against them before competent environmental entities.
- A claim can also be filed before an ombudsman, as described above in section 2.
- The above procedures need not be followed before approaching a court. However, if appeals are possible, these should be exhausted first.
- When an activity in Belgium may produce negative environmental impacts in another country, cross-border EIA³⁶ procedures at the European and international levels apply, e.g. those under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)³⁷.

Where? The Belgian federal and subnational levels (Flanders, Wallonia and Brussels Capital) are competent to protect victims of human rights abuses caused by environmental damage.

At the federal level: the Directorate for the Environment³⁸ of the FPS Health, for the following issues:

- Environmental damage in the Belgian North Sea.
- Introduction of a GMO on the Belgian market.
- Misuse of the Ecolabel³⁹ for environmentally-friendly consumer products.

At the subnational level:

- Wallonia: SOS Environnement-Nature⁴⁰ (to request an injunction) ; the Directorate for Natural Resources and Environment or competent local authorities (for other claims); appeals to the Commission de Recourse⁴¹.
- Flanders: Competent local authorities; appeals to the Raad voor Vergunningsbetwistingen.

36 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l28114>

37 <http://www.unece.org/env/eia/welcome.html>

38 <http://www.health.belgium.be/nl/milieu/milieurechten/toegang-tot-milieu-informatie>

39 <http://www.ecolabel.be/fr>

40 <http://environnement.wallonie.be/sos.htm>

41 http://environnement.wallonie.be/droit_information/

- Brussels Capital Region: local authorities⁴² ; appeals to the Collège d'Environnement⁴³.

Outcome: In case of an imminent threat of damage, businesses can be ordered to take preventive measures. When the damage has occurred, businesses can be ordered to prevent additional damage and threats to human health, and provide an appropriate remedy⁴⁴. The latter may include sanctions and fines, the cancellation of permits, or the closure of activities to restore the environment or avoid future damage. If they obtain no remedy, or are seeking compensation, victims/stakeholders can sue the business and/or the State before civil courts (in tort cases) or criminal courts (if the human rights abuse amounts to a crime). They can also sue the State before the Council of State if the damage is related to an administrative act (thus making the State potentially liable).

Federal Compensatory Funds can provide compensation in specific cases, e.g.:

- Fedris¹, The Federal Agency for occupational risks, took over the competences of the Funds for occupational risks.
- The Asbestos Fund (AFA)² deals with health hazards produced by asbestos exposure in Belgium.

Outcome:

In some specific cases, compensation can be secured without going to court. However, if the compensation offered is not satisfactory, it is still possible to challenge the proposed amount before a labour court. It is unclear whether victims who are not (former) workers, e.g. in cases of environmental damage, can request this compensation.

¹ <http://fedris.be/nl/home>

² <http://www.fedris.be/afa/faqfr.html>

⁴² <https://environnement.brussels/bruxelles-environnement/acces-linformation-environnementale/acceder-linformation-environnementale>

⁴³ <https://environnement.brussels/>

⁴⁴ <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-204-EN-F1-1.PDF>

■ Sustainable public procurement mechanisms

The Law of 17 June 2016 defines the three pillars of sustainable public procurement processes: environmental protection in public services, protection of dignified working conditions and green jobs, and promotion of competition rules. Public entities should exclude economic actors that violate these principles if the violation is also a criminal offence, or if they have received a final conviction for child labour, THB, or employment of persons with irregular immigration status. The responsibilities of economic actors vis-à-vis their subcontractors must still be defined by Royal Decree.

Conditions:

Stakeholders with a demonstrated interest, i.e. any person affected by a public procurement adjudication process, may ask for suspension or annulment of the awarding of the contract on several grounds. These include the criteria for awarding the contract, and violation of applicable EU or national laws or general principles regulating public procurement processes.

Where? The contracting government entity and/or the competent ombudsman.

Outcome: Public entities may suspend or annul the awarding of the contract.

If the non-judicial mechanisms listed above do not provide an effective remedy, victims can present a complaint to the competent ombudsman under the conditions of the Council of State Law.

4.2. SECOND OPTION: JUDICIAL MECHANISMS

When victims or stakeholders with a demonstrated interest in the claim do not obtain an effective remedy through the non-judicial mechanisms mentioned above, they may sue the business that perpetrated the human rights abuse and/or the State (if the latter can be held liable for the abuse or the damage caused). Victims or stakeholders should first identify the competent court that can hear the case, i.e. the court with material and territorial jurisdiction (Art. 624 Judicial Code).

■ Material jurisdiction

The nature of the claim and its value define the competent court. The court of first instance has ‘full jurisdiction’, i.e. it can hear all cases, including those that could be filed before other courts (except for cases within the exclusive jurisdiction of the Court of Appeal and the Court of Cassation).

■ Territorial jurisdiction

- Generally, victims are free to choose a court, but the most common choice is the court of the defendant’s place of residence.
- A corporation’s domicile is where its head office is situated, or where it has its “administrative seat”.
- Another possibility is the court with jurisdiction over the place where the obligations or the conflict originated.
- If the abuse is related to a contractual relationship, the court where the obligations were (or should have been) executed has jurisdiction, unless another place has been selected by the parties.
- If the defendant is not domiciled in Belgium, the place where the bailiff found him/her may determine the choice of court.
- The exceptions to the principle of freedom of choice are defined by the Judicial Code (Arts. 627 to 629). Some cases include: social administrative sanctions; some particularities of corporate law such as mergers and dissolutions; interlocutory matters (where jurisdiction is determined by the place where the judgment should be enforced).
- There is also exclusive territorial jurisdiction (Art. 631-3 Judicial Code) for human rights abuses involving bankruptcy, for some measures requested during the execution of judgments, etc.

The choice of forum and applicable law in cross-border cases is relevant because:

- it may determine the outcome of the claim;
- it may provide an alternative to victims when they cannot sue a business in the State where the harm occurred, or when no remedy is possible;
- parent corporations may be held liable (secondary liability) for human rights abuses committed by their subsidiaries and/or partners (primary liability) in third countries.

Under certain conditions, Belgian courts may have jurisdiction over human rights abuses perpetrated by Belgian corporate groups in third countries, or when the consequences occurred abroad, or when the victims or defendants when the consequences occurred abroad, or when the victims or defendants are foreigners:

- The EU Regulation known as “Brussels I bis”¹ defines competent courts (jurisdiction) and regulates the recognition and enforcement of judgments in civil and commercial matters, including labour claims. If this EU regulation does not apply, it is necessary to check whether other international conventions apply, e.g. the Lugano Convention², conventions of the Hague Conference³ on Private International Law or other related conventions⁴. If none of these agreements apply, then the Belgian Code of International Private Law applies.
- If the defendant is not domiciled in the EU, courts of Member States may accept cases against parent corporations, but the CJEU⁵ has established two conditions for this:
 - the claimant should not have as her/his only purpose “to bring the case of the foreign subsidiary into European jurisdiction”; and
 - “a prior relationship amongst the defendants” should be demonstrated.
- However, the ***forum non conveniens*** doctrine is not accepted by the CJEU. This doctrine allows courts to reject cases when another jurisdiction is more “convenient” for the parties, without considering the lack of other possibilities for obtaining a remedy (e.g. due to a lack of institutional capacity), or the security of victims.

1 <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32012R1215>

2 <http://curia.europa.eu/common/reccdoc/convention/en/c-textes/lug-idx.htm>

3 <https://www.hcch.net/>

4 http://diplomatie.belgium.be/nl/Verdragen/databank_van_verdragen

5 <http://curia.europa.eu/juris/liste.jsf?&num=C-145/10>

• The ***forum necessitatis*** doctrine applies in Belgium to avoid cases of denial of justice, when:

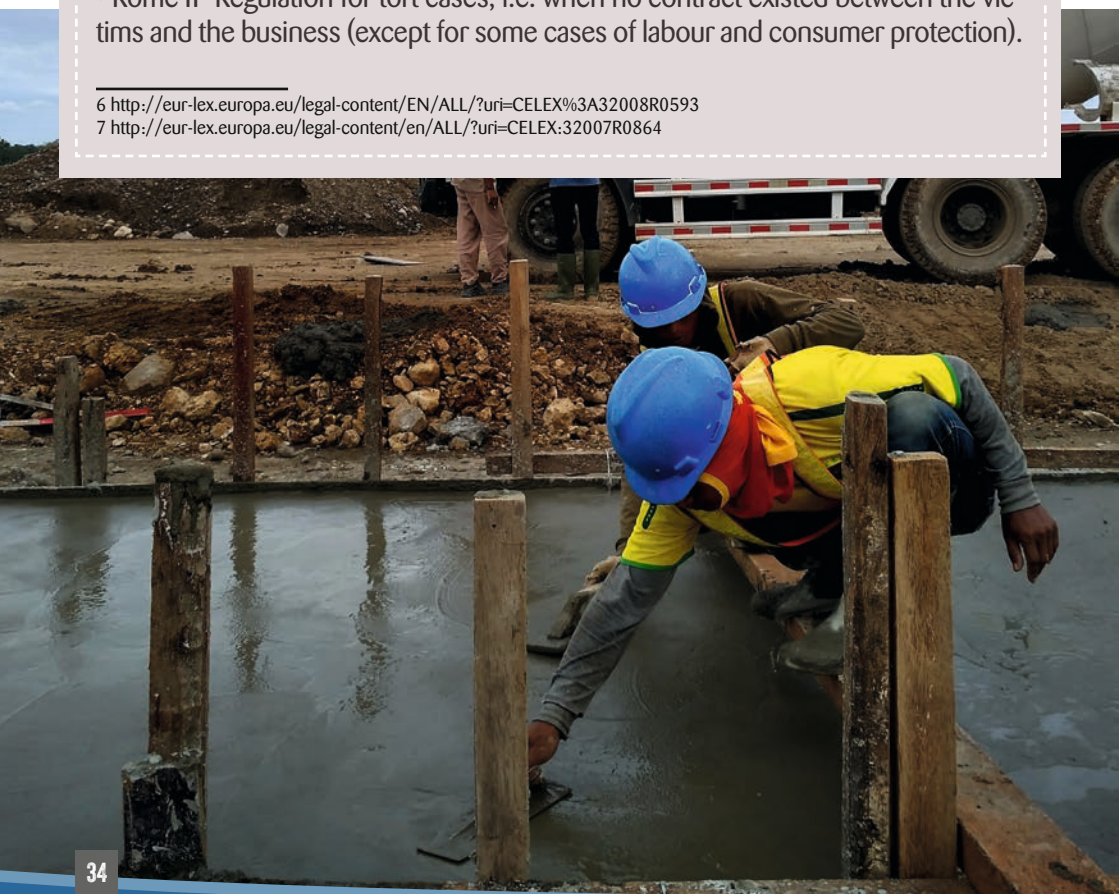
- the claimant cannot sue in any other country; or
- the foreign competent court does not guarantee a fair trial, such as in cases of war, discrimination, or excessive costs that obstruct access to justice; or
- it is impossible to enforce the judgment.

The choice of applicable law is also relevant in cross-border litigation, particularly when the third country tort law is not as favourable as Belgian tort law. This is regulated by:

- Rome I⁶ Regulation for contractual disputes (e.g. employment or consumer contracts). These are not the most common cases involving human rights abuses.
- Rome II⁷ Regulation for tort cases, i.e. when no contract existed between the victims and the business (except for some cases of labour and consumer protection).

6 <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R0593>

7 <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32007R0864>



4.2.1 COURTS OF FIRST INSTANCE

The Judicial Code (Part IV - Book II) regulates how to present judicial actions other than criminal or administrative actions; who has standing; when victims or stakeholders may appear in person, and when they need to be represented by a lawyer. In general, only victims can use these mechanisms, because the claimant should have the capacity to initiate the action, and a legal interest in doing so. The existing interest should be concrete, although it is possible to admit claims seeking to prevent serious rights violations. When stakeholders can demonstrate such an interest, they can also be admitted as claimant.

Conciliation¹ is a way to conclude judicial procedures which have already started before a judge, under certain conditions:

- The claimant may settle the dispute in a confidential way
- Non-negotiable rights cannot be the object of conciliation
- Conciliation has the same binding character as a judgment and is mandatory in cases within the competence of labour courts (Art. 578 Judicial Code).

Where? Before the competent judge where the judicial process started.

Outcome: The remedy could be compensation or an end to the abuse.

¹ <http://s-mediation.be/nl/bemiddeling>

■ Civil courts

Civil tort disputes

This is the most prominent judicial route for victims to get compensation from businesses and/or the State in tort cases (i.e. when the human rights abuse occurs outside any contractual relationship).

Claims against the State follow the same judicial path as tort cases against businesses. Such a claim may arise when the State fails to comply with its duty to regulate businesses, when it acts as an economic agent (e.g. through State-owned corporations or public procurement), or when it grants subsidies to bu-

businesses perpetrating human rights abuses. When the human rights abuse is also a criminal offence, victims can choose between being recognized as a civil party in the criminal procedure, or asking for compensation before civil courts after the criminal court renders a favourable judgment. In some cases, victims can ask for compensation before civil courts, even if the business has not been condemned for a criminal offence.

Victims may choose between challenging a damaging administrative act, regulation or implicit act before the Council of State, or suing the State by using the civil tort procedure. The latter is the only possibility if the damage was caused by a lack of State action, or if compensation is claimed from both a business and the State. The civil court cannot annul the challenged administrative act, but it can avoid its application. Annulment must be sought from the Council of State.

Conditions:

- Art. 1382 and 1384 of Civil Code stipulate that victims should prove damage, fault on the part of the business and/or the State, and that an act or omission of the business/State caused the damage. Causation is a key element of tort claims.
- The deadline for suing the offender is 5 years.

Outcome: Victims can claim compensation proportional to the damage caused, as well as guarantees of non-repetition. However, there are many difficulties, such as collecting of evidence, proving causation and/or fault, and proving the existence of the corporate group.



Specific difficulties of this judicial mechanism:

A major difficulty is how to establish the liability of parent corporations (secondary liability) for abuses committed by their subsidiaries or commercial partners (primary liability). This depends on multiple factors, including:

- Whether the structure of the corporate group allows the “corporate veil” to be lifted
- How Belgian Law deals with parent corporations’ control over their subsidiaries.
- How businesses can be held liable through tort law for human rights abuses.
- In cross-border cases, the choice of competent court and applicable law.
- How to prove that the parent company’s acts were decisive in causing the damage.
- The role of the different entities in the corporate group.

Class Actions

To the extent that a human right abuse also violates consumer rights, a collective claim by consumers may be considered. Victims need not reside in Belgium but should act through a representative who does not need any mandate and should not seek financial gain. It should be a consumer rights association, a member of the Consumers’ Council, or otherwise approved by the Minister for Consumer Affairs. Public mediation services for consumers can also take this role, but only to have settlement agreements approved by a judge. Consumers may “opt in” to a collective action if they wish to participate, or “opt out” if they wish to be excluded. “Opting out” is irrevocable.

Conditions:

- Such actions can only be filed by an authorised consumer representative if a collective claim against the business is more effective than a civil action.
- When consumers ask for compensation for physical or moral damages, they cannot “opt out”.

Where? The civil courts of first instance in Brussels.

Outcome: The remedy for victims is established in a reparation agreement that

defines the damage and the corresponding monetary compensation. This does not prove the responsibility of the business. This option is not suitable for preventive/urgent actions.

■ Criminal Courts

When business-related human rights abuses are also a crime, the complaint can be brought before a criminal court. Cases involving minor crimes are heard by the police court. Intermediate or serious crimes are dealt with by the correctional court. The Council Chamber of the court of first instance must first conduct a formal pre-trial investigation to determine whether the case must be referred to the criminal court or whether the accused must be discharged. In Belgium, criminal liability of persons and corporations is possible. Corporations can share criminal liability with directors/employees of the corporation.

Conditions:

- The claim can be brought before the criminal court in two ways: directly by the public prosecutor, or through a claim submitted by the victim/affected person or any person with evidence of the alleged crime.
- The prosecutor starts the procedure. If she/he does not take any initiative, the victim can present a claim (for non-serious crimes), but must pay a guarantee.
- In principle, only victims can be recognised as civil parties.

Advantages regarding business-related human rights abuses:

- Criminal claims have been recommended to initiate civil claims, because of the limitations of tort law. In criminal cases, the burden of gathering evidence is on the prosecutor, and the victim does not pay the costs of the procedure.
- If victims are recognised as civil parties, they can request financial support from the State after the sentence.

Cross-border business-related human rights crimes

- In cross-border cases, Belgian criminal courts have more restricted jurisdiction than in civil claims. They can only act if the crime has close connections to Belgian businesses, or if victims cannot be reasonably expected to present the claim in another jurisdiction, or if the offences are an (international) crime.

Conditions:

- The human rights abuse should be a crime in the host country and in Belgium.
- If the victim is not Belgian, the Prosecutor can only start the criminal investigation after a claim has been filed by victims, their relatives or by an official communication of the public authorities of the State where the crime was perpetrated, and only if the accused is on Belgian territory.
- Universal jurisdiction is the most far-reaching cross-border criminal mechanism. It can be used for violations of international humanitarian law if Belgium has some connection to the case and the parties involved.

Outcome:

- Criminal sanctions for the offender: prison, fines and/or asset confiscation (in some cases).
- A judgment awarding compensation can be enforced (executed) before an attachment court.



Commission for Financial Support¹ for Victims of Intentional Acts of Violence

- There are three types of financial support for victims of crimes committed on Belgian territory: urgent financial support may be awarded before a criminal judgment; main and complementary financial support awarded after the sentence. This support covers physical, material and moral damage.
- Only victims can request this support. Family members may only do so when the victim has died or has no possibility to present the claim.
- This financial support does not have a compensatory character, because it does not recognize any liability of the State. Based on the solidarity principle, the Commission provides monetary support to victims who do not have any other financial sources of reparation, such as insurance or compensation from the offender.
- The deadline to present the petition is three years after notification of the sentence.

¹ https://www.belgium.be/nl/justitie/slachtoffer/financiele_hulp

■ Labour courts

Labour courts may consider claims directly related to employment, accidents at work, occupational illness, social security, or the right to equality and non-discrimination at work. They also rule on application of administrative sanctions for violations of social administrative rules, as well as asbestos victims' claims. In these cases, insurance law, the rules of compensation funds and tort law can be applied. Workers may also be represented by a trade union delegate.

4.2.2 THE COUNCIL OF STATE

The Council of State has jurisdiction in claims seeking to hold the state responsible for the violation and is the only defendant. It hears tort claims that also request annulment of an administrative act, regulation or implicit decision that violates an overriding rule or legal principle. In certain cases, claimants can also request compensation for damage caused by these administrative acts.

Conditions:

- If the compensation claim is addressed to both a business and the State, only a civil court may deal with the complaint.
- A civil claim may not have already been filed to seek compensation for damage caused by the same administrative act. Filing the administrative claim excludes lodging a civil claim later.
- Victims should demonstrate the damage suffered as a consequence of the administrative acts, taking into account the public interest.
- The deadline for initiating this action is 60 days after notification of the challenged administrative act, or notification of the decision finalising the administrative recourse.
- When the claim refers to public procurement⁴⁵ processes, victims or stakeholders can ask for suspension of the act, without needing to prove damage. In this case, the deadline is 15 days. This takes place via the procedure of extreme urgency before the Council of State. In these cases, the claim should first be presented to the competent administrative authorities. The public procurement act can be nullified when European, constitutional or legal rules have been violated.

Outcome: This option is faster than the civil tort law action. However, the prescription deadline is shorter and there is no appeal, unlike in civil tort actions. The Council of State may order provisional, preventive or corrective measures, as well as compensation in certain cases. Provisional measures seek to prevent damage. The suspension is not automatic and depends on the criteria of the public entity in question. A claim to annul an administrative act does not suspend the act; therefore, in urgent cases administrative recourse is possible to request additional preventive action.



⁴⁵ <https://www.publicprocurement.be/nl/overheidsopdrachten/regelgeving/wetten>



5.

MECHANISMS ADDRESSED
EXCLUSIVELY TO THE STATE
TO SEEK STRUCTURAL REFORM
TO AVOID FUTURE ABUSES:
CONSTITUTIONAL MECHANISMS OF
HUMAN RIGHTS PROTECTION

5. MECHANISMS ADDRESSED EXCLUSIVELY TO THE STATE TO SEEK STRUCTURAL REFORM TO AVOID FUTURE ABUSES: CONSTITUTIONAL MECHANISMS OF HUMAN RIGHTS PROTECTION

■ Judicial review

Judicial review by the Constitutional Court checks whether legislation respects constitutional rights and freedoms. It can be used to annul legislation adopted by the federal parliament (statutes) and by the parliaments of the communities and regions (decrees and ordinances) when they violate constitutional fundamental rights, including the rights of non-citizens.

Conditions:

- The term for filing the claim is six months after publication of the disputed legislative act in the Official Journal.
- The Court cannot directly review compliance with international treaties.
- Any authority designated by statute or any person with a justifiable interest may challenge such acts. The scope of “any person with justifiable interest” covers natural or legal persons, whether private or public, and of any nationality that can be affected by the challenged law.

Referral decisions (preliminary rulings) in Belgium (and before the CJEU¹)

- Any tribunal can refer preliminary questions to the Constitutional Court on the compatibility of legal rules with constitutional human rights provisions.
- The Constitutional Court may also refer preliminary rulings to the CJEU, to decide whether national rules respect EU law, including the EU Treaties and the Charter of Fundamental Rights. Preliminary questions may concern the interpretation or validity of EU law.
- Neither victims nor NGOs have standing before the CJEU. They should present the action before the Constitutional Court.
- The ruling of the CJEU does not decide the case: The Constitutional Court should enforce the CJEU ruling at the national level. If the preliminary ruling finds that the national statute violates EU law, the Constitutional Court must strike down the challenged statute.
- There is also an urgent procedure for exceptional circumstances related to freedom, security and justice.
- Preliminary rulings have *res judicata* effect, i.e. this judicial way cannot be triggered if there has already been a ruling on the same issue. They are also binding on all national courts of the Member States, even if they refer to other Member States. If an EU law is struck down, national laws based on it are also invalidated.
- This mechanism has already protected human rights related to access to justice in environmental issues², consumer protection³, etc.

1 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A114552>

2 http://ec.europa.eu/environment/aarhus/pdf/notice_accesstojustice.pdf

3 http://www.eur-charts.eu/wp-content/uploads/2012/03/EUR-Charts_Test-Achats_V16_2011.pdf

Outcome: This mechanism does not provide direct compensation to victims. However, it seeks to redress structural failures at the root of business-related human rights abuses. Challenging laws that allow business-related human rights abuses can have more impact than suing businesses individually, and can avoid future abuses.



6.

HOW TO ASK FOR
THE ENFORCEMENT OF
A JUDGEMENT ?

6. HOW TO ASK FOR THE ENFORCEMENT OF A JUDGEMENT?

A final judicial decision should be implemented to ensure an effective remedy.

Conditions:

- Enforcement should be requested by the victim or stakeholder that received the favourable judgment.
- The Judicial Code foresees different measures for this purpose, e.g. conservatory measures in disputes over assets, to ensure that the assets are conserved until the final judgment (Art. 1955-62 Civil Code). An inventory may also be requested to evaluate the amount and value of the assets.
- In some cases, preventive execution may be requested without waiting for an appeal. However, victims benefiting from this may be required to offer a guarantee.
- Other provisional measures can be taken in both injunctive and ordinary processes.

Where? In the attachment courts of Belgium⁴⁶.

Outcome: This procedure is a component of the right to an effective remedy because it provides the means to execute favourable judgments ordering remedies such as restitution, compensation or sanctions.

⁴⁶ <https://www.tribunaux-rechtbanken.be/fr/tribunaux-cours/personnes/juge-des-saisies>

Execution of judgments in cross-border cases

If the human rights abuse was committed outside the EU, and a favourable judgment delivered outside the EU must be enforced in Belgium, the judgment may need to follow an *exequatur*, i.e. procedure to enforce a foreign judgment in Belgium.

Conditions:

- “Brussels I bis”¹ (Art. 36.1 and 39): judgments pronounced in EU Member States will be recognised in other Member States without the need to follow any special procedure.
- The EU Regulation on the European Enforcement Order² for uncontested claims and the EU Regulation on mutual recognition of protection measures³ in civil matters may also apply.
- The procedure for cross-border non-EU judgments is regulated by international conventions in force in Belgium and the State rendering the judgment, e.g. the Lugano Convention⁴, conventions of the Hague Conference⁵ on Private International Law, or other related conventions⁶.
- If there are no conventions in force, the Belgian Code of International Private Law applies, together with the rules of the Judicial Code and the Belgian Consular Code. These regulate the requirements for the judgment (finality), formal requirements (authentic instrument, translation, legalisation, apostille), the circumstances for rejecting an *exequatur* request (public policy, violation of rights of defence, etc.) and the competent enforcement authorities (courts, administrative entities).

1 <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32012R1215>

2 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:143:0015:0039:EN:PDF>

3 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0606>

4 <http://curia.europa.eu/common/recdoc/convention/en/c-textes/lug-idx.htm>

5 <https://www.hcch.net/>

6 http://diplomatie.belgium.be/nl/Verdragen/databank_van_verdragen

A background image showing two individuals in full-body silver decontamination suits, including hoods and face shields. They are standing in an industrial or laboratory setting with yellow and grey equipment visible. The image is semi-transparent to allow text to be overlaid.

7.

IF NONE OF THE NATIONAL
MECHANISMS PROVIDE ACCESS
TO AN EFFECTIVE REMEDY...

7. IF NONE OF THE NATIONAL MECHANISMS PROVIDE ACCESS TO AN EFFECTIVE REMEDY...

7.1. INDIVIDUAL COMPLAINTS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS (ECtHR)⁴⁷

Victims can lodge complaints of violations of individual rights protected by the European Convention of Human Rights (ECHR)⁴⁸ and the Protocols ratified by Belgium.

Conditions:

- The process is regulated in the ECHR and in the Rules of the Court⁴⁹.
- Complaints⁵⁰ can only be directed against a State-party of the Council of Europe for abuses committed within its jurisdiction. This is in principle territorial, but may exceptionally be extraterritorial.
- All available domestic legal remedies must be exhausted.
- The deadline to file the complaint is six months after the final decision of the national court has been notified, or from the moment the applicant has knowledge of the final national decision.
- Victims or their relatives may lodge the complaint. In some cases, other stakeholders (e.g. NGOs) may do so when they can demonstrate that they are also victims of the abuse. NGOs can also intervene as *amicus curiae* (friends of the court) to offer information.
- Victims should be nationals of a State Party or in the territory of a State Party at the moment of the abuse.

47 <http://www.echr.coe.int/Pages/home.aspx?p=home>

48 http://www.echr.coe.int/Documents/Convention_ENG.pdf

49 http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf

50 <http://www.echr.coe.int/Pages/home.aspx?p=applicants&c=>

- When a law or administrative regulation may violate human rights, victims can lodge a complaint. However, this should not be a general complaint against the regulation.

Outcome: The State may be ordered to redress the situation, pay compensation or enact new laws to avoid repetition of human rights abuses. Some judgments on environmental matters, for instance, have condemned a State for failing to regulate private industry, based on the rights to a healthy environment⁵¹ and healthy conditions at work. Examples include cases filed by victims of asbestos⁵².

Interim measures¹ can be requested when urgent measures are necessary against an imminent risk of irreparable harm.

- The victims should demonstrate that they could suffer serious and irreversible harm.
- These measures last, as a maximum, for the duration of the proceedings before the Court.
- They have been mostly ordered in cases of threats to life or threats of torture or inhuman or degrading treatment or punishment. They have so far not been used for business-related human rights abuses.

¹ http://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf

⁵¹ http://www.echr.coe.int/Documents/FS_Environment_ENG.pdf

⁵² [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-141567%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-141567%22]})



7.2. THE COLLECTIVE COMPLAINTS PROCEDURE⁵³ BEFORE THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS OF THE COUNCIL OF EUROPE

This mechanism protects human rights incorporated in the European Social Charter⁵⁴, which means that only this Charter can be invoked in the complaint.

Conditions:

- Exhaustion of domestic remedies is not necessary, and complainants need not prove victimhood.
- The following organisations have standing to file the complaint: The European Trade Union Confederation (ETUC)⁵⁵, Business Europe⁵⁶ (formerly UNICE), the International Organisation of Employers (IOE)⁵⁷, international NGOs that have participatory status⁵⁸ and have been included in a dedicated list for that purpose by the governmental committee, national employers' organisations and trade unions, and in some cases national NGOs.

Outcome: This mechanism seeks to redress abuses based on the law or national procedures, and to avoid future abuses.

53 <https://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure>

54 <https://www.coe.int/en/web/turin-european-social-charter>

55 <https://www.etuc.org/>

56 <https://www.buinesseurope.eu/>

57 <http://www.ioe-emp.org/>

58 <https://www.coe.int/en/web/ingo/participatory-status>

7.3. THE UNITED NATIONS (UN) SYSTEM OF INDIVIDUAL COMPLAINTS⁵⁹

Eight of the UN treaties, i.e. the CCPR- OP1⁶⁰, CERD⁶¹ (14), CAT⁶² (22), CE-DAW-OP⁶³, CRPD-OP⁶⁴, CED⁶⁵ (31), CESC-OP⁶⁶ and CRC-OP⁶⁷, authorise individual complaints against State parties that have violated the rights these treaties protect. For the corresponding committee to hear an individual complaint, the State Party concerned must have recognised its competence.

Conditions:

Each UN Committee has some particularities, but the most relevant admissibility criteria are that:

- Victims should file the complaint, unless they give a third party written consent to do so, or consent is impossible to obtain. Groups of victims can file a complaint, but collective actions are not admitted.
- The violations should have occurred after its entry into force, except for continuing violations.
- The complaint should not have been submitted to another international body.
- All domestic remedies should have been exhausted, except when there is solid evidence that national procedures were unreasonably prolonged or would be ineffective.

Outcome: The Committee decides whether a violation has occurred and can issue recommendations to the State Party. The Committee can monitor compliance with the recommendations.

59 <http://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>

60 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>

61 <http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>

62 <http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIndex.aspx>

63 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx>

64 <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx>

65 <http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>

66 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>

67 <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

Special interim measures¹ can be requested against a State Party to the relevant Convention to avoid irreparable damage to victims.

- The request should be presented by the claimant and duly motivated.

¹ <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#specialcircumstances>

7.4. OTHER MECHANISMS:

Structural reforms or redress can also be sought through other international mechanisms, e.g. those provided by the International Labour Organisation⁶⁸. When the violation is linked to a project financed by the European Investment Bank (EIB), victims can use the EIB Complaints Mechanism⁶⁹.

⁶⁸ <https://www.ilo.org/global/lang-en/index.htm>

⁶⁹ http://www.eib.org/infocentre/publications/all/complaints_mechanism-policy.htm







Federal Institute for Sustainable Development (FISD)

<http://www.developpementdurable.be>

Author: Faculty of Law_UAntwerpen_Liliana.LizarazoRodriguez@uantwerpen.be

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