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

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Recommendations and Conclusions

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This part summarises the main findings of this study. The main point of attention is that the mapped mechanisms can - in theory - be used to protect human rights abuses, not only those caused by business-related activities or omissions. In the same way, many obstacles indicated in the study are rather general obstacles for getting effective access to remedies for human rights violations. Therefore, we refer here to the most relevant ones for (but not exclusive to) business-related human rights abuses. We also refer to solutions proposed by previous analyses that we consider as feasible in the Belgian context (federal and/or subnational competent authorities). We also selected good practices that should be preserved, measures that should be implemented to improve the possibilities of victims to get effective remedy, and finally we listed some measures that imply a legal reform to fill existing gaps or to remove existing obstacles.

1 Good practices in Belgium

There are several good practices in Belgium that need to be maintained (and perhaps could be improved), and that can be built upon to strengthen remedies for business-related human rights abuses more generally. We highlight the following good practices:

➔ The possibility to introduce interlocutory proceedings in ordinary courts (civil, criminal and labour) as well as in administrative cases is very helpful to protect victims (The Venice Commission 2007:18).
➔ Interdepartmental approaches (i.e. involving all competent authorities from diverse levels of government) to complex problems such as discrimination, THB, or consumer claims, have shown better results than excessive decentralisation of similar competences such as in environmental issues. Having a unique contact point increases the access for victims.
➔ Judicial cooperation by means of international agreements in THB have shown satisfactory results that may be replicated for other business-related human rights abuses.
➔ Labour inspections have also shown satisfactory results and this kind of control could also be implemented in other sectors, such as in environmental or public procurement processes.
➔ Mechanisms that can result in structural State reforms, such as constitutional judicial review of laws (or of decrees and ordinances) or the annulment of administrative acts that allow business practices that may affect human rights, are good practices because by triggering these mechanisms a guarantee of non-repetition of abuses perpetrated under the "apparent legality" of the annulled law or administrative act are not possible anymore. The role of institutions such as UNIA or Myria that have competence to promote these judicial actions increases the relevance of these mechanisms.
➔ NGOs active in environmental and consumer matters and associations of victims (e.g. asbestos) that have promoted actions against business-related human rights abuses with an important social impact are also good practices to be supported.

2 Measures that should be improved to grant effective access to remedy

These measures refer to existing mechanisms that should be improved or implemented to increase the possibilities of victims to get effective remedy without the need to pass structural reforms (legislative reforms).

➔ Many of the existing mechanisms are not known by victims or stakeholders and businesses are not aware of these possibilities either. Therefore, the promotion of remedy mechanisms for business-related human rights abuses is important.
➔ The requirement that competent judges have to send judgments on the specific topic to the competent administrative institutions as in the case of e.g. UNIA or Myria and the Privacy commission (institutions that have the competence to gather and disseminate

court decisions) is positive because this way a database can be constructed to support an accurate analysis of case law that victims can use to support future claims and to raise public awareness on the violations. This mechanism can be improved by implementing it in other areas such as environmental law, labour law, consumer protection etc. The possibility to have access to a case law database for the different judicial mechanisms mapped in the first part increases the possibilities of victims to get remedy.

➔ In addition, a periodical systematic follow-up of case law from the mapped jurisdictions (civil, criminal, labour, administrative and constitutional) will allow to visualise whether these rulings, even if they are not framed in a human rights language, are protecting the interest of the victims, and this way, it is possible to identify new adjustments that are needed to further improve the existing mechanisms.

➔ Training of judges and lawyers on the possibility and necessity to support victims of business-related human rights abuses who should file their claims under ordinary judicial proceedings is also necessary. Initiatives such as the IBA Guidelines (2016) on Business and Human Rights for lawyers should be adopted in Belgium by the Belgian Bars and by the institutions in charge of the training of judges.

➔ To control compliance with ILO core conventions and with international environmental standards in the complete Belgian value chains, the government can enforce existing labels, such as the social label or the Ecolabel. This enforcement can be reached by requiring these labels as a condition for granting public procurement processes, or economic support (incentives, insurances, credits) by institutions such as BIO or Delcredere.

➔ When victims of THB are receiving support from the State, the possibility to grant them residence permits (and if possible labour permits) is important not only for victims but also for obtaining their cooperation in the prosecution process (CoE/ Greta 2016).

➔ The mechanisms of the Aarhus Convention that make public administrations accountable for adverse effects on human health and the environment can be used to provide effective mechanisms to protect related human rights (Ebbeson 2011). This option can be reinforced by disseminating case law from the ECtHR that enhance synergies between environmental and human rights protection (Augenstein 2010: 33-4; Augenstein and Jaggers 2016).

➔ Even if there are clear limitations to the complaint mechanism of the OECD guidelines, and that its reform is not a Belgian competence, the use of the present OECD compliance procedure before the NCP should be promoted, particularly for transnational claims. NCPs should be required to admit more human rights complaints, and to provide faster and public recommendations to increase accountability of Belgian MNEs. The possibility to consider compliance with the updated version of the ILO Guiding Principles for MNEs (2017), by means of this procedure before the NCP, is also an option to be explored. In particular the enlargement of their application to all kind of businesses and not only to MNEs. In addition, public authorities can take the results of these NCP recommendations as a criterion to award contracts, subsidies or insurances to business partners.

➔ These measures can be incorporated into the NAP as concrete targets to improve remedy mechanisms. From a recent evaluation of the approved NAPs in other countries, it is remarkable that access to remedy remains one of the main weaknesses of such plans (ICAR and ECCJ 2015:4).

3 Structural reforms needed to fill in gaps or to remove barriers

In this section, we list the necessary measures that imply a legal reform to fill in existing gaps or to remove existing obstacles. Some draft bills referred in the study already include some of these recommendations.

➔ Legal aid and assistance should be extended to third country residents, particularly because vulnerable groups are mostly from non-EU countries.

➔ The adoption of the required legal reforms to transpose EU Directive on non-financial reporting is necessary and should be realized by Belgium. In addition, the best way to transpose the recent reform of the EU shareholders Directive should be assessed.
➔ The royal decree that should be enacted to regulate the sustainable public procurement law on the links between contractors and their subcontractors should establish explicit liability links between parent corporations and their subsidiaries and subcontractors. Similar recommendations have also been proposed in Germany (cf. Boll and Saage-Maaß 2015). This decree can also incorporate the adoption of OECD/NCP recommendations on public procurement processes, as mentioned above.
➔ The creation of a non-judicial mechanism such as the NHRI is necessary to avoid the fragmentation of mechanisms indicated in the study, and to provide one contact point on human rights issues in Belgium.
➔ The implementation of human rights due diligence as a legal duty of care of parent corporations vis-à-vis their subsidiaries and commercial partners in accordance with the UNGP is necessary to increase the possibility to hold parent corporations liable for the acts of their subsidiaries.
➔ The CIPL should be reformed to give jurisdiction to Belgian courts to hear complaints against Belgian businesses with their main assets located in Belgium for abuses committed by their cross-border activities or by their business partners (Pigrau Solé et al. 2016:68; Augenstein and Jaggers 2016:20).
➔ The reform of Universal Jurisdiction by including gross human rights abuses perpetrated by Belgian businesses as well, is a way to give access to victims from third countries to Belgian jurisdiction. However, the scope given to "Belgian business" would depend on the theory adopted (the real seat in force, or the theory of incorporation, as it is being proposed).
➔ Judicial mechanisms should be reformed to make them simpler and more effective (CoE 2016).
    - Some measures included in the draft bill on civil tort law described in the study represent an improvement in this direction. We refer here to some of them, and also to some other that are needed: i) to allow the possibility to present civil collective tort actions before courts of first instance; ii) to shift the burden of proof in civil tort cases when it is very difficult for victims to demonstrate the causal link between the business conduct/omission and the damage; and to increase the margin of appreciation of courts in defining whether there is a causal link between the business action/omission and the damage caused; iii) to allow competent judges for tort claims to render interlocutory proceedings in the same process;
    - Concerning the reform of the corporate law: i) to create clear regulations concerning the responsibility of *de facto* and shadow directors of corporate groups; ii) to give the possibility to order internal inquiries within the corporate groups by stakeholders and not only by shareholders; iii) to adopt the rules of competition law and/or of accountancy to establish the control of parent corporations over subsidiaries.
    - For the annulment actions (with compensation) before the Council of State: i) it should be possible that the Council of State modifies the sanctions and not only confirms or rejects them. Participation of third persons should be explicitly authorised to support the sanction or to ask a stronger sanction; ii) to extend the prescription term to give the opportunity to gather relevant evidence and to obtain legal assistance; iii) to limit the discretion of the Council of State in establishing the compensation in order to make it possible for victims to get just satisfaction by this mechanism as well.
➔ Belgium should negotiate and conclude bilateral or regional judicial cooperation agreements, particularly with countries where violations of human rights by Belgian businesses are more plausible.
➔ Belgium should reinforce attention to vulnerable groups. Some measures protect children (such as sanctions for child labour) but other groups such as migrant women are not protected by specific measures.

➔ It could be suitable to explore the possibility to implement a specific judicial action to protect human rights; this way, the claims should be framed in a human rights language, and domestic courts would be more aware of the relevance to control compliance with IHRL (CoE 2016:40).