

Belgian NBA

Business and Human Rights

National Baseline Assessment Business and Human Rights in Belgium - Executive Summary - Version 2.0 -



About this report

This report covers the findings and recommendations of the Belgian National Baseline Assessment (NBA) on Business and Human Rights. The NBA charts the progress made by Belgian authorities and companies since the launch of Belgium's first National Action Plan on Business and Human Rights in June 2017. The research was commissioned by the Belgian Federal Institute for Sustainable Development (FIDO/IFDD) and was executed by a consortium of the research institutes [HIVA-KU Leuven](#), and the [Law and Development Research Group](#) (University of Antwerp). [IPIS Research](#) supported the team in the topics of conflict zones and arms trade. The report draws on a comprehensive data collection and review process covering the 31 United Nations Guiding Principles on Business and Human Rights (UNGPs).

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Executive summary

While the globalisation of production has lifted hundreds of millions of people out of poverty, many Global Value Chains (GVCs) remain beset by serious violations of human rights. The Covid-19 pandemic has not only exposed, but has in many cases exacerbated the risks of human rights violations. In 2011, the United Nations Human Rights Council (UN HRC) unanimously adopted the UNGPs. Pillar I outlines the duty of states to protect people against human rights abuses committed by companies within their territory and/or jurisdiction. The operational principles of this duty require states to: (1) enforce laws that require companies to respect human rights; (2) ensure that other laws and policies do not prevent companies from respecting human rights; and (3) guide companies on the implementation of adequate mechanisms to identify, redress or mitigate human rights risks throughout their operations. Pillar II lays out the responsibility of companies to respect human rights by, (1) putting in place a policy commitment to respect human rights; (2) carrying out Human Rights Due Diligence (HRDD); and (3) creating processes that enable the remediation of adverse human rights impacts. Finally, Pillar III deals with the duty of states to ensure that whenever adverse human rights impacts do occur, rightsholders (e.g. local communities, workers) have access to an effective remedy through judicial, administrative or legislative means.

In the decade that followed the adoption of the UNGPs, there has been a proliferation of initiatives that attempt to improve corporate behaviour in the domain of human rights and that variably align with (elements of) the UNGPs. Prime examples include international initiatives like the OECD Due Diligence Guidance for Responsible Supply Chains and Multi-Stakeholder Initiatives (MSIs) like the Fair Wear Foundation. Increasingly, however, voluntary mechanisms are being complemented with hard regulation. Several of Belgium's neighbouring countries have adopted legislation that obliges companies to carry out (aspects of) HRDD processes. For instance, the UK Modern Slavery Act requires all companies active on the UK market to report on modern slavery risks in their supply chains. In France, all large companies are required to publish and implement a 'vigilance plan' in which they outline their approach to identifying and addressing risks in their own activities and in their supply chains. At level of the European Union (EU), the European Parliament (EP) released a [Draft report](#) on corporate due diligence and corporate accountability, in which it urges the European Commission to propose mandatory due diligence requirements on human rights, environmental and governance risks for European companies.¹ Similarly, on 1 December 2020, the European Council issued a call for a proposal from the Commission for an EU legal framework on corporate due diligence. It also called on member states to step up their efforts to implement the UNGPs, including "through new or updated National Action Plans (NAPs) that contain a mix of voluntary and mandatory measures."² In 2017, Belgium published its first National Action Plan on business and human rights (B-NAP). This plan contains 33 Action Points through which the federal and subnational governments should work towards implementing the UNGPs. With this National Baseline Assessment (NBA), the research team assessed where the Belgian state and Belgian companies are situated today with the implementation of the UNGPs. The chapters in this report deal respectively with Pillar I (the Belgian state's duty to protect human rights), Pillar II (the responsibility of Belgian companies to respect human rights), and Pillar III (the duty of the Belgian state to provide access to an effective remedy).

Overall, the results of the NBA indicate that while Belgium has taken a number of valuable steps (e.g. the fight against Trafficking in Human Beings (THB) and commissioning of tools and studies on business and human rights), Belgian governments and companies still have a long way to go before they fulfil their responsibilities as outlined in the UNGPs. Belgian authorities are not yet aligning their own activities with the UNGPs, e.g. in public procurement, or in mechanisms to support companies that

¹ The [EP 2020/2129\(INL\)](#) 11.9.2020 Draft Report with recommendations to the Commission on corporate due diligence and corporate accountability Committee on Legal Affairs.

² The full text can be consulted [here](#).

set up activities abroad. There are also challenges related to a lack of vertical (between different levels of government) and horizontal (among different government agencies and ministries) policy coherence. There is a need for stronger institutional support mechanisms with a clear mandate that can drive the business and human rights agenda in a systematic and coherent way. Moreover, earlier initiatives taken by Belgian governments, which include the first NAP, have primarily emphasised voluntary action by companies. The results of this NBA (and particularly of pillar II) suggest that this one-sided emphasis on voluntary action has not resulted in higher degrees of corporate alignment with the UNGPs. While a growing number of large companies are now formally committed to respecting human rights, none of the companies analysed in Pillar II translate this commitment into systematic HRDD processes, or into independent and accessible mechanisms that allow rightsholders and stakeholders to raise concerns and to claim a remedy.

Belgian authorities would do well to re-evaluate the existing regulatory mix in light of these findings, and in line with the recommendations made by the EU and other international organisations. In particular, the current emphasis on voluntary action might need to be complemented with some form of hard regulation. A growing number of stakeholders inside Belgium endorse this view including not only civil society organizations, but also, a growing number of companies and business federations.

Finally, it is worth highlighting that both Belgian authorities and Belgian companies are currently undertaking a wide range of efforts to help achieve the Sustainable Development Goals (SDGs). While the SDGs can certainly contribute to improving the human rights situation in GVCs (e.g. SDG 8 on decent work and SDG 12 on sustainable consumption and production), it is important that efforts to achieve them are aligned with the UNGPs.

Conclusions per pillar

Pillar I – The state duty to protect human rights

Pillar I deals with the state duty to protect against actual or potential human rights abuses perpetrated by companies within their territory and/or jurisdiction. Section A assesses how Belgium aligns with the operational principles of Pillar I (UNGP Principle 3) that require states (1) to enforce laws that require companies to respect human rights; (2) to ensure that other laws and policies do not prevent companies to respect human rights; and (3) to guide companies on the implementation of adequate mechanisms to identify, redress or mitigate human rights risks throughout their operations. The selected legal areas relevant for the implementation of the UNGPs coincide more or less with the results of the empirical research reported in the [EU FRA \(2019\)](#)³ focus paper. In each selected area, the NBA team focused, firstly, on the relevance of the area for Belgium. Secondly, it assessed progress since the adoption of the B-NAP, and whether the measures taken can be aligned with the [EP Draft EU Directive](#)⁴ (2020) where applicable. The assessment consists of the identification of structural reforms and policies adopted in line with the UNGPs. Thirdly, it described the key outcomes or gaps for the implementation of the UNGPs. In particular, two parameters were considered: whether the measures adopted, (1) target vulnerable or marginalised groups and, (2) seek to address salient human rights risks in the value chains of corporate groups headquartered in Belgium.

Section A reports progress in several legal areas. Firstly, there have been important legislative amendments regarding corporate responsibility, notably reforms to the criminal responsibility of companies and on compensation funds that cover serious disasters. However, the structural reform of corporate governance did not require companies to implement HRDD procedures. Secondly, social (labour, occupational and anti-discrimination legal areas) protection are covered by a consolidated

³ [EU FRA \(12/2019\)](#) Business-related human rights abuse reported in the EU and available remedies. Focus paper.

⁴ The [EP 2020/2129\(INL\)](#) 11.9.2020 Draft Report with recommendations to the Commission on corporate due diligence and corporate accountability Committee on Legal Affairs.

legal framework. Belgian governments, however, encounter several challenges linked to the globalisation and digitalisation that create new labour relations and new environmental protection needs. In the fight against THB and modern slavery, globalisation and the free movement of people inside the EU have exacerbated existing challenges and created new ones for Belgium. [Myria](#) and the inspectorates have played a crucial role, that is internationally recognised. They have been able to target actions of THB in value chains operating in Belgium. Thirdly, Belgium also reported progress in environmental and consumer protection, although part of the progress reported for Belgium is connected to the implementation of EU law.

Section B deals with the state-business nexus. This area is very important because public procurement, State-Owned Companies (SOCs) and the provision of services of general interest carry significant economic weight. The standards of compliance with human rights are expected to be higher.⁵ State support for export and investment activities could act as an important lever towards responsible conduct of Belgian companies abroad. Several B-NAP actions refer to concrete commitments to this end. These include systematically mainstreaming human rights in trade missions or creating synergies to implement due diligence or impact assessment processes before providing economic assistance. The outcomes of these actions however, are rather modest. There were practically no structural reforms in line with the UNGPs and when there were, for e.g., in the case of public procurement, the implementation needs to advance further. In general, while several of these agencies have implemented policies seeking to align with the SDGs and some have promoted CSR schemes, the NBA team did not find concrete actions seeking to implement the UNGPs in a systematic way. Although CSR mechanisms are relevant, the materiality analysis looks at risks for the company but not necessarily at salient human rights risks for rightsholders. The NBA did not find any measure targeting vulnerable communities that may be affected by value chains driven by Belgian companies.

The NBA team also consider the role of the EU because many of the legal areas of relevance for the implementation of the UNGPs are a shared competence with the EU. These include public procurement, trade and investment and the reinforced protection of consumer rights and of privacy of personal data. The creation of stringent measures means that the latter rights obtain solid protection, which represents progress, but also discloses the lack of efforts to protect other human rights or at least human rights of citizens in third countries.

The main gaps in the implementation of the UNGPs include, firstly, the lack of measures taken to seek greater responsibility from companies headquartered in Belgium. After a detailed screening, the NBA team found no systematic structural or policy reforms that encourage or require parent companies based in Belgium to create mechanisms to influence the systematic respect for human rights across their value chains. There have been several missed opportunities such as, the regulation of the joint liability of subcontractors in the framework of public procurement, for all economic sectors, the inclusion of a clause for objective liability when companies do not implement HRDD processes or the creation of complaint mechanisms by all entities that support companies doing business abroad. These conclusions however, cannot claim to be one hundred percent accurate. This is related to the second gap, which is the deficient access to information for stakeholders. While reporting of state activities has improved, there is also a systematic lack of statistics which prevents an effective assessment of the progress made in each of the analysed areas. This, in fact, has been one of the recommendations from international agencies such as the Council of Europe (CoE), the EU and the UN.

A third gap is that human rights are not mainstreamed into the Belgian state's agenda yet. This observation also applies to the adoption of reinforced measures to protect vulnerable communities. In some areas such as in labour law or THB, the adopted measures protect vulnerable persons because

⁵ Cf. Committee on Economic, Social and Cultural Rights (CESCR) [General comment \(GC\)24 \(2017\)](#) regarding state obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the context of business activities.

this is the main objective, but in other areas connected to the operations of companies, there is no explicit attention to vulnerable communities.

A fourth gap was also identified in assessments of NAPs in other countries, namely that they do not sufficiently explore regulatory options to ensure adequate human rights protection. Instead, they emphasise voluntary actions by companies, e.g. through awareness-raising, training, research, and the promotion of best practices.⁶ While the Belgian government adopted some structural reforms and policies aligned with the UNGPs, they were not (explicitly) adopted with the purpose of implementing the UNGPs.

Section C deals with the state's role in relation to business conducted in Conflict-Affected and High-Risk areas (CAHRAs). According to UNGP 7, states have a responsibility to ensure that companies respect human rights in CAHRAs. As the risk of human rights abuses is heightened in these areas, actions by the state and due diligence by companies should be increased accordingly. To date, Belgium has no policies or policy instruments that can guide companies or sector federations on how to assess and address human rights risks in CAHRAs. Belgian embassies in CAHRAs also do not give systematic support to companies about potential "red flags".

Section D deals with policy coherence. The NBA observes challenges related to a lack of policy coherence in the domain of business and human rights. In part, this is a consequence of Belgium's complex institutional architecture, and a concomitant lack of vertical coordination between different government levels. However, the NBA has also revealed a lack of horizontal coherence across government agencies and ministries. While the creation of a National Human Rights Institute (NHRI) represents a window of opportunity to achieve greater coherence, its mandate is currently constrained to the federal level and limited to residual competences. At the international level, while Belgium has always been a proponent of multilateralism, it has been sending out mixed signals over the possibility of binding agreements on business and human rights.

Policy recommendations pillar I

- While progress has been made in certain areas (e.g. liability, labour law, THB, etc.), important gaps remain. The most relevant reforms were not aimed at enforcing corporate respect for human rights as such. Belgian governments need to consider a more structural human rights agenda that also has leverage over companies operating overseas that have headquarters in Belgium.
- Belgium has ratified relevant international treaties on humanitarian law and human rights. Following the adoption of the NAP, Belgian authorities have raised awareness on the importance of supply chain due diligence, but heightened risks in the CAHRAs were focussed on only in the minerals and timber sector. To date, there is no general guidance nor policy for companies specifically addressing heightened risk of doing business in CAHRAs.
- Policy coherence remains a challenge in Belgium, both vertically (between levels of government) and horizontally (between different agencies and ministries). While the NHRI could play an important role in situating human rights at the centre of the political agenda and in ensuring policy coherence, its mandate needs to be strong enough to actually fulfil this task.
- The NBA team encountered difficulties when attempting to map the progress made in the implementation of the UNGPs due to gaps in state reporting practices and a lack of statistics. The governments should design a strong reporting system with solid statistics that is accessible to all relevant stakeholders.

⁶Cf. [ICAR, ECCJ, DEJUSTICIA](#). A critical assessment of National Action Plans on Business and Human Rights (2017 update) 23/8/2017.

Pillar II – The corporate responsibility to respect human rights

To assess the extent to which Belgian companies assume their responsibility to respect human rights, we used a combination of tools, (1) a screening of Belgian companies from 11 sectors;⁷ (2) a mapping of human rights abuses (allegedly) implicating Belgian companies; and (3) a consultation of key stakeholders. Our analysis reveals that Belgian companies currently do not undertake systematic attempts to meet the corporate responsibility to respect human rights as outlined in the UNGPs. This is a worrying observation considering the ongoing shift (both at EU level and in neighbouring countries) towards hard regulation that obliges companies to carry out (aspects of) HRDD.

While a growing number of companies are formally committed to respecting human rights, none of the companies that we assessed translates this commitment into effective HRDD processes that allow them to proactively identify, assess, address, and communicate about adverse human rights impacts. In addition, few companies that are sourcing from CAHRAs have specific policies on how to deal with human rights risks in these areas. Instead, the focus lies one-sidedly on efforts to avoid the sourcing of ‘conflict minerals’. Even in the arms industry, a sector that is highly problematic from a human rights perspective and that has particular relevance in Belgium, policy commitments and management systems are minimal and rarely look beyond the rights of the company’s own workforce.

One explanation for the low levels of corporate alignment with the UNGPs observed in Belgium is company size. Our sample contains a large number of companies that, while not technically qualifying as SMEs, are still relatively small in an international context. Larger companies often (but not always) score better on this type of assessment, whereas smaller companies face different barriers when attempting to carry out HRDD. However, this does not relieve them of their responsibility to do so. A second important explanation relates to the institutional context (outlined in pillar I), which currently fails to encourage companies to assume their responsibility, let alone oblige them to do so. Thirdly, while membership in multi-stakeholder initiatives (MSIs) can have a positive impact on the extent to which companies act in accordance with the UNGPs, not all MSIs are oriented towards this goal. To the extent that companies in our sample participate in MSIs, these MSIs mostly have a more ‘generic’ focus on sustainability issues, and pay only limited attention to human rights.

Policy recommendations pillar II

- Belgian companies should increase their efforts to align their policies, procedures and practices with the UNGPs. This involves adopting human rights policy commitments, and carrying out HRDD to proactively identify, assess, address and communicate about adverse human rights impacts. The means through which they do this should be proportional to their size and operating context and to the risks they face.
- The regulatory environment in Belgium does not seem to incentivise companies to align their policies, procedures and practices with the UNGPs. This raises questions about the existing regulatory mix and the balance between voluntary action and hard regulation.
- A lot of work is needed to raise awareness about the corporate responsibility to respect human rights, and what it means for specific sectors and companies. The governments (notably intermediary structures like the SERV), employer organizations (e.g. VBO-FEB, UNIZO, VOKA, UWE, sector federations), but also trade unions and NGOs, can all play an important role in this.
- There is a need to develop instruments that can help companies meet their responsibilities. Many instruments are available internationally, and it is often a matter of tailoring them to the needs of Belgian companies, ideally through multi-stakeholder collaboration. There is a particular need to ensure that instruments are responsive to the needs of smaller companies.

⁷ First, we screened 10 sectors (Agri-Food, Metals, Precious Metals and Diamonds, Retail, Chemistry and Pharma, Construction, Transport, Textiles, Electronics, Public Utilities) using the CHRB Core UNGP Indicator Assessment developed by the Corporate Human Rights Benchmark. In addition, we conducted a qualitative assessment of the human rights policies of 15 companies active in the arms industry.

- While MSIs can play a crucial role in helping companies meet their responsibility to respect human rights, it is crucial for governments and for other stakeholders to support initiatives that are oriented towards achieving corporate alignment with the UNGPs.

Pillar III – Access to remedy

Pillar III focuses on rightsholders (actual or potential victims), as states have the duty to protect them against adverse business-related human rights impacts or abuses. Therefore, 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 who are affected have access to effective remedy. This obligation has several components. Firstly, it includes the duty to secure access to state-based judicial and non-judicial mechanisms without procedural obstacles (i.e. effective access to justice). Secondly, it includes the duty to guarantee an effective remedy depending on the particular circumstances, on the human right affected or violated, on the condition of the victim, and on the severity of the impact or abuse. This means that the analysis of whether a remedy is effective can only be conducted on a case-by-case basis.

The NBA followed international standards to assess the procedural (access to justice) and substantial (effective remedy) components of Pillar III. It assessed four elements. Firstly, it assessed the minimum conditions to obtain access to effective remedy, i.e. how Belgium guarantees access to justice. Secondly, it assessed the possibilities that rightsholders or stakeholders (e.g. human rights defenders) have to trigger available state-based non-judicial mechanisms (NJ-SBM) and whether these mechanisms in principle allow for obtaining 'effective' remedies. Thirdly, it assessed the possibilities that victims have to trigger available state-based judicial mechanisms (SBJM), whether they can be used for human rights claims, and whether victims could get (from a regulatory perspective) an effective remedy. And finally, it assessed complementary mechanisms that are directly related to Pillar III of the UNGPs, i.e., transnational litigation, active state support to operational-level grievance mechanisms (OLGM), and inter-state cooperation.

The NBA of Pillar III focused on the following aspects: (1) the relevance of the issue or the mechanism in (for) Belgium; (2) whether the corresponding actions of the B-NAP and the recommendations of the report on access to justice (2017)⁸ were implemented or considered; and (3) the identification of the key outcomes and gaps in the implementation of the UNGPs.

Several important findings arose from the analysis. Firstly, the B-NAP did not commit to specific actions to implement Pillar III. It only referred to the creation of a NHRI, and to some specific actions by the OECD National Contact Point (NCP). In general, this corroborates the findings of NAP assessments in other countries, which also found a lack of attention for Pillar III⁹.

Secondly, few structural reforms were implemented in line with the UNGPs. Only the recommendation on the creation of the NHRI was explicitly adopted. Other reforms sought to increase the efficiency of state-based mechanisms in general, but could nonetheless benefit actual or potential victims of adverse impacts or abuses committed by companies. This finding coincides with the observation by the CESCR that the applicability of the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been rarely invoked before the courts in Belgium¹⁰. In fact, the reforms reported in Pillar III did not refer to the enforcement of human rights and even less to the implementation of the UNGPs. The CESCR celebrated the creation of the NHRI, but regretted that it only has residual competences at the federal level and that it lacks a complaint mechanism.

⁸ UNGPs. State-Based Judicial Mechanisms and State Based Non judicial Grievance Mechanisms, with Special Emphasis on the Barriers to Access to Remedy. [Fido Project MP-OO/FIDO/2016/5](#) L. Lizarazo Rodríguez (2017).

⁹Cf. [ICAR, ECCJ, DEJUSTICIA](#). A critical assessment of National Action Plans on Business and Human Rights (2017 update) 23/8/2017.

¹⁰ Cf. CESCR, Concluding observations on the fifth periodic report of Belgium [E/C.12/BEL/CO/5 of 22/3/2020](#).

Thirdly, the reforms and policies adopted in line with the UNGPs did not systematically reinforce the protection of marginalised communities in Belgium and did not foresee any measures to allow actual or potential victims from third countries to lodge claims in Belgium against companies headquartered in Belgium.

Fourthly, the NBA team actively looked for judicial and non-judicial decisions on business-related human rights abuses. Yet the NBA team faced difficulties in accessing important information. Belgium does not provide systematic access to judgments in many courts, which makes a detailed analysis of case law almost impossible. There are also no statistics available on the number of cases filed, resolved and rejected. While information can be found in the [EU Justice Scoreboard](#), even this report issues a warning about the lack of information regarding the activities of the courts in Belgium. These observations do not apply to the Belgian Constitutional Court (BCC) and the Council of State, where most decisions are available online, although there are no statistics on the activity of these courts. Regarding non-judicial mechanisms, UNIA, Myria, the Data Protection Authority (DPA), the OECD NCP and some environmental, public health and (to a lesser extent) labour inspections offer publicly available information on their activities and the number of cases lodged and addressed. The duty of courts to communicate case law related to the areas of competence of UNIA and Myria is a good practice that guarantees better access to information and case law. The report on access to remedy (2017) recommended expanding this practice to other jurisdictions and topics, but the NBA team did not find evidence for the adoption of this good practice for other human rights. The NBA team found some cases where courts adjudicated on claims against companies. However, they are not a representative sample of what happens in courts. Important to note is that in certain courts, there is a growing number of decisions that make direct references to human rights, such as the Courts of Appeal (which annulled arms export licences, protected the right to a healthy environment, or recognised compensation for non-working victims of asbestos). The Council of State and the BCC have also rendered important decisions related to the need to conduct impact assessments to identify human rights risks in third countries or environmental risks. However, there is still considerable room for improvement in terms of the systematisation and publicity of judicial decisions and the systematic adoption of a human rights approach to justice.

Finally, regarding the mechanisms explicitly conceived for the implementation of UNGPs, there is still a long way to go. Belgian authorities have not assessed the possibility of accepting jurisdiction for transnational complaints, and there is no systematic state policy to support and promote OIGM. The reform of public interest litigation represents progress in the enforcement of human rights but has a very limited scope, as it does not admit collective claims seeking concrete remedies. It is also important to explore the option to include human rights complaints against companies headquartered in Belgium when they cause adverse impacts in third countries in the jurisdiction of the international commercial court, whose creation is being discussed in the Federal Parliament. Besides these efforts, Belgian governments can reinforce judicial and diplomatic cooperation with countries where Belgian companies operate and have high risks of causing adverse impacts on human rights.

Policy recommendations pillar III

- Belgian governments need to include the implementation of Pillar III of the UNGPs in the political agenda by creating concrete ways to enforce respect for human rights by companies. Some recommendations are tailored to the specific mechanisms (cf. below).
- Access to information, including systematic access to case law and to statistics on court activities, is crucial to guarantee access to an effective remedy. While non-judicial mechanisms can be a valid option for actual or potential victims of business-related human rights abuses, according to the empirical analysis of the EU FRA (2019), more than 70% of reported abuses against companies are lodged before judicial authorities.
- Belgian authorities need to assess how to adopt structural reforms and policies to allow transnational claims in the framework of the UNGPs, to promote and support the implementation

of OLGm by companies, and to reinforce cooperation between judiciaries and the diplomatic service, to increase the possibilities for rightsholders to obtain effective remedy when Belgian companies and their partners worldwide cause adverse impacts or harms.

- Belgian authorities need to implement permanent and tailored capacity building of diplomatic, judicial and administrative officers in the three pillars of the of UNGPs.

Overall conclusions and recommendations

Findings

- Overall, the implementation of the UNGPs by the Belgian authorities and by Belgian companies is limited. Many of the actions that were proposed in the NAP are still pending. The NAP itself adopted a minimalistic approach to the responsibility of companies and instead limited itself to activities that aim to create an enabling environment for voluntary action by companies. In this institutional context, companies are insufficiently incentivised to align their policies and processes with the UNGPs.
- There is a lack of vertical (between levels of government) and horizontal (among government agencies and relevant ministries) policy coherence. Moreover, there are gaps in the institutional support structures that could push for a more systematic and more coherent business and human rights agenda.
- A lot of the positive efforts that are being undertaken by Belgian authorities and companies are framed in the context of the Sustainable Development Goals. However, all too often, the SDGs and the UNGPs are treated in isolation, and no systematic efforts are made to marry both agendas.
- The B-NAP did not focus on Pillar III, and therefore, the most urgent structural reforms and policies have not even been discussed. The obstacles that have been denounced for years have not been systematically addressed, which makes that victims' rights are not duly protected.

Recommendations

- Belgian authorities should develop a smart regulatory mix that combines initiatives to promote and support voluntary actions by companies, with consistent and coherent legislative work that requires companies to systematically respect human rights across their operations and value chains. In particular, a more incisive approach is needed for those companies that face clear risks of adverse human rights impacts, but currently fail to acknowledge, let alone address, these risks in a systematic way.
- This smart regulatory mix needs to be embedded, as much as possible, in a coherent institutional architecture. While this inevitably represents a challenge in the Belgian context, the NHRI, but also 'intermediary structures' like the SERV/ CESE Wallonia could play a role in achieving greater policy coherence. However, it is important that these structures are sufficiently resourced, and have the mandate to fulfil these tasks.
- Belgian authorities need to implement crucial reforms and policies in order to make possible that when Belgian companies cause adverse impacts on human rights or the environment, victims can get and opportune and effective remedy. Particularly, Belgian authorities need to assess how Belgian victims of adverse impacts, caused by Belgian companies or their partners in third countries, can claim for an effective remedy before Belgian competent authorities.
- There is a need to critically rethink how efforts to achieve the SDGs can be more systematically coupled with efforts to implement the UNGPs. In particular, it is important that efforts to achieve the SDGs are informed by a thorough understanding of human rights risks, so as to avoid actions that result in improvements in one domain, but risk undermining gains made in others.

Key findings and recommendations per pillar

Pillar I – The State duty to protect

Overall findings

- While progress has been made in certain legal areas, significant gaps remain, and most relevant reforms were not aimed at enforcing corporate respect for human rights. Belgian governments need to consider a more structural human rights agenda that also covers leverage overseas on activities of companies headquartered in Belgium. The NHRI could play an essential role in setting human rights at the centre of the political agenda.
- Belgium has ratified relevant international treaties on humanitarian law and human rights. Since the NAP adoption, the Belgian State has raised awareness on supply chain due diligence, but only for the minerals and timber sectors was there a focus on heightened risks in conflict-affected areas. To date, there is no specific guidance to companies or any policy on the heightened risk of doing business in conflict-affected areas.
- Although the SDGs and CSR initiatives have dominated Belgian policies at all levels of government, the implementation of the UNGPs remains weak and is in some cases non-existent. Belgian governments need to adopt binding measures to increase the respect for human rights by companies headquartered in Belgium, as the voluntary scheme of compliance with human rights has not resulted in clear progress.
- The NBA team encountered difficulties when attempting to map the progress made in implementing the UNGPs due to gaps in state reporting practices and a lack of statistics. The governments should design a robust reporting system with reliable statistics that is accessible to all relevant stakeholders.

Section A. The state duty to protect

Enforce laws requiring Belgian companies and their partners to respect human rights (UNGP 1-3)

UNGP 1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. UNGP 2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. UNGP 3. States should: (a) Enforce laws (...) requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; (b) Ensure that other laws and policies governing (...) business enterprises do not constrain but enable the business' respect for human rights; (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations; (d) Encourage, and where appropriate, require, business enterprises to communicate how they address their human rights impacts.

Implementation of a (mandatory) human rights due diligence (HRDD) in value chains (UNGP 1-3)

Status and gaps

- The NBA team has not found publicly available information on structural reforms, policies or programmes requiring businesses to implement due diligence procedures and increase awareness in the value chains, except for the EU timber regulation.
- Belgian governments have not taken public positions regarding the versions of the draft treaty being negotiated in the framework of the UN working group on business and human rights and the draft of the EU Directive on due diligence released by the EP.

Recommendations

- Belgian authorities need to assess the guidelines provided by The [EP draft report](#) and their future development at the EU level to explore how national legislation and policies could be in line with the UNGPs, the CESCR GC 24/2017, the OECD and ILO principles among other international standards.
- Therefore, Belgian authorities need to start a broad dialogue with the stakeholders to assess which options for the implementation are the most adequate for the Belgian context (company size, relevant sectors, etc.) and to consider the situation of vulnerable communities.
- Belgian governments are encouraged to assess the UN draft treaty and engage in its negotiation.

Ensure that other laws and policies governing (...) companies, enable business' respect for human rights; provide effective guidance on how to respect human rights throughout their operations (UNGP 1-3)

UNGP 1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. UNGP 2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. UNGP 3. States should: (...) (b) Ensure that other laws and policies governing (...) business enterprises, do not constrain but enable business' respect for human rights; (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations; (d) Encourage, and where appropriate, require, business enterprises to communicate how they address their human rights impacts.

Corporate responsibility and liability (UNGP 1-3)

Status and gaps

- The bill that reforms tort law has been pending for approval since 2019.
- Belgium has not regulated the option of covering human rights and environmental risks by directors and officers liability insurance ("D&O").
- The NBA team has not found publicly available information on concrete measures adopted to provide reinforced protection to vulnerable or marginalised groups affected by activities of value chains with Belgian companies.

Recommendations

- The Federal Parliament needs to approve the tort law reform. It could also assess whether a Royal Decree (RD) to develop this law could provide for mandatory due diligence procedures to complement this reform.
- Belgian governments need to assess whether including human rights and environmental risks in D&O policies could represent an improvement for victims of business-related human rights abuses.
- Belgian authorities need to provide options to hold companies headquartered in Belgium accountable for abuses perpetrated in third countries before Belgian courts.

Corporate structures and governance (UNGP 1-3)

Status and gaps

- Belgium failed to include mandatory HRDD procedures in the reform of the Corporate Governance Code in response to action 15 of the B-NAP.
- Although the Belgian Companies and Associations Code (BCAC) transposed the EU Directive on non-financial reporting, the NBA identified several gaps:
- A Royal Decree (RD) should have been adopted to define the international standards companies should follow to submit the yearly non-financial report.
- The implementation of the non-financial reporting duty has not produced the expected results and there is no guidance on how these reports should be published (cf. Corporate governance section).
- Belgian companies mainly use CSR reporting schemes that focus on the analysis of materiality (risk for the company) and do not assess human rights at risk. The lack of assessment of salient human rights at risk has resulted in a lack of identification of actual or potential victims of business-related human rights impacts.
- The instruments developed to raise awareness among businesses on the need to implement

Recommendations

- Belgian authorities are encouraged to find mechanisms to require companies headquartered in Belgium to conduct HRDD covering their value chains.
- The RD that develops the BCAC should be adopted to define the content and scope of the yearly non-financial report in accordance with international standards.
- This RD needs to explicitly consider the assessment of salient human rights at risk. The UNGPs reporting framework provides important guidance to be considered in complementing the CSR reporting schemes.
- The reporting of salient human rights at risk would allow Belgian companies to identify actual or potential groups at risk of being victims of business-related human rights abuses related to the activities of their value chains.
- The instruments developed to raise awareness among businesses on implementing the UNGPs need to be disseminated online and periodically updated in order to reach stakeholders inside and outside Belgium.

<p>the UNGPs have not been actively disseminated and are not updated.</p>	
<p>Labour protection and occupational health (UNGP 1-3)</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Belgium has progressed in tackling undeclared work, but many challenges remain, particularly in protecting victims. • Belgian authorities have not adopted structural measures or policies to promote Global Framework Agreements (GFA) between companies and global union federations. • The Ministry of Foreign Affairs committed to raising awareness on children’s rights in value chains, but no public information is available on how this has been done. • The right to strike remains unregulated in Belgium. • New contractual (and atypical) employment relationships (cf. labour and occupational health section) put workers at risk (e.g. precarious employment, lack of occupational safety, health protection, and occupational hygiene). 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgian authorities need to adopt recommendations from Myria, GRECO and the EU regarding the protection of victims of undeclared work. • Belgian authorities need to promote the adoption of GFAs. • The Ministry of Foreign Affairs needs to establish structural policies to raise awareness of children’s rights in the value chains, mainly through its embassies and consulates. • Belgian authorities need to agree on the legal status of the right to strike. • Belgian authorities need to make increased efforts to tackle new (atypical) employment relationships from a human rights perspective.
<p>Trafficking in Human Beings (UNGP 1-3)</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Belgium has not signed the UN Convention on the protection of the rights of all migrant workers and members of their families. • Belgium has not ratified the Convention against trafficking in human organs (CoE, CETS 216). • Belgium is one of the best performing countries in the EU in combatting THB, but Myria flags the following gaps: <ul style="list-style-type: none"> • Victims do not receive systematic support to claim an effective remedy and in some cases the principle of non-criminalisation of victims is not recognised. The situation is worse for non-EU victims who leave the Belgian territory. • The possibility for Myria or other CSOs to represent workers and employers should be attributed by a RD that has not been adopted yet. • The fight against THB and modern slavery in the value chains of EU companies operating outside the EU have only been tackled by few cooperation agreements. • Belgium lacks statistics on THB. • The increasing use of digital technologies by perpetrators of THB challenges the prosecution of the four stages of THB: recruitment, transportation, exploitation of victims, and management of illicit profits. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgium needs to ratify the UN Convention on the protection of the rights of all migrant workers and members of their families and the Convention against trafficking in human organs (CoE, CETS 216). • The Belgian governments need to enforce the principle of non-criminalisation of victims of THB and provide for effective remedy mechanisms. • Belgian authorities need to adopt the RD that allows Myria and other CSOs to represent workers and employers in THB cases. • The best practices highlighted by the EU and the CoE need to continue, particularly the signature of cooperation agreements with other countries where these chains operate • Belgian authorities need to create statistics on THB to improve the fight against it. • Belgian inspectorates need to be reinforced to tackle challenges related to new technologies used in all stages of THB.

Anti-discrimination (UNGP 1-3)	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Discrimination in the labour and housing markets remains a structural problem. Vulnerable communities such as migrant women or people with disabilities are the most affected. • The NBA team has not found publicly available information regarding the fight against discrimination in the value chains of Belgian corporate groups. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgian authorities need to adopt structural measures to address discrimination in all economic sectors and with a coordinated approach from all levels of government. • The inclusion of discrimination as a salient human rights risk needs to be prioritised when assessing human rights risks of Belgian companies and their value chains.
Environmental protection (UNGP 1-3)	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Although Belgium has ratified most of the international conventions seeking to protect the environment, there are still some key conventions and protocols that have not been ratified (Cf. Pillar I, Part A, environmental protection) • Belgium will not meet its targets for the reduction of greenhouse gas emissions by 2030 • Belgian policy to support large-scale production of agro-fuels by Belgian firms in third countries can affect local farmers. • Deep-sea mining represents a major challenge that has not been fully addressed by Belgium. • Belgium has not ensured that national rules allow all categories of persons mentioned by the EU Directive regarding prevention and remediation of environmental damage to be held liable. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgium needs to ratify key conventions and protocols seeking to protect the environment (Cf. Pillar I, Part A, environmental protection). • Belgium needs to continue efforts to identify and address risks of the most polluting industries, including nitrates from agricultural sources. • Belgian authorities need to require a human rights impact assessment (HRIA) from businesses involved in the production of agro-fuels in third countries to avoid negative impacts on the rights of local communities. • Belgium as sponsor state of companies active in deep-sea mining needs to require impact assessments to avoid adverse impacts on host country communities and on the environment. • Belgium needs to guarantee that anyone who causes environmental damage can be held accountable before courts.
Trade and investment (UNGP 1-3)	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Belgium has not ratified ILO Convention 169 and abstained from supporting the adoption of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018), despite the recommendations of the EP. • Neither the EU nor Belgium have adopted any measure regarding the prohibition of land grabbing and the protection of biodiversity and food security in the trade and investment agreements of the EU. • The NBA team did not find any publicly available information on measures adopted to provide reinforced protection to vulnerable or marginalised groups in the framework of trade and investment activities in the Belgian value chains. • Belgium has supported investment protection of Belgian companies against countries without 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgium should consider the ratification of ILO Convention 169 and support the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018) • Belgium needs to promote that EU trade and investment agreements clauses assess salient human rights at risk and prevent activities such as deforestation, land grabbing, and biopiracy. Therefore, Belgian authorities should support: <ul style="list-style-type: none"> • The International Criminal Court (ICC) announcement (2016) that land grabbing and environmental destruction may precipitate charges of crimes against humanity (ecocide). • The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, and to actively sign forest law enforcement, governance and trade voluntary partnership agreements (VPAs) to ensure compliance with Timber Regulation.

<p>assessing the human rights impact on local communities</p>	<ul style="list-style-type: none"> • Belgium needs to promote concrete measures to protect vulnerable populations that could be affected by trade and investment activities of its corporate groups. • Belgium needs to assess the impact on human rights when supporting actions of its companies against developing countries in international fora.
<p>Measures against corruption and bribery (UNGP 1-3)</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • The UN, CoE and EU have flagged challenges for Belgium regarding the fight against corruption and bribery, particularly when the private sector is involved. • The NBA team did not find any measure seeking to provide reinforced protection to victims of corruption and their defenders. • The B-NAP actions related to the fight against corruption were limited to releasing a booklet that has been published, but not as an online tool that can be regularly updated. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgium needs to consider the recommendations of the UN, CoE and the EU, particularly with respect to fighting corruption in the private sector. • Belgian authorities could pay increased attention to victims of corruption and to their defenders in the framework of the UNGPs. • Tools released to raise awareness among Belgian businesses about corruption need to be online tools that are regularly updated so that stakeholders have access to them.
<p>Consumer protection (UNGP 1-3)</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • The NBA team did not find information about the protection of consumers affected by value chains of Belgian companies or about special attention paid to vulnerable or marginalised populations. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Consumers in third countries of products and services of EU companies need to be protected by EU and Belgian consumer protection measures, in line with measures to fight unfair competition. • Belgium should further raise awareness about responsible consumption.
<p>Section B The state business-nexus</p>	
<p>The state as an economic actor (UNGP 4 and 6)</p>	
<p>UNGP 4. States should protect against human rights abuses by state-owned companies (SOCs), or by private organisations that receive economic support and services from the state by requiring (when appropriate) human rights due diligence. UNGP 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • The application of the sustainable public procurement (SPP) principles has not been a priority for Belgian governments • The Law on SPP required the government to regulate the responsibilities of economic operators vis-à-vis their subcontractors, but the R.D. has a limited scope (social dumping in sectors sensitive to fraud). • The social label, created by the FPS Social Integration to certify producers who comply with the eight core ILO conventions in all steps of production, remains a pending issue for the federal government. The NBA team questions the relevance of a new social label. • In general, online tools on public procurement do not provide guidance on the systematic 	<p>Recommendations</p> <ul style="list-style-type: none"> • Further empirical analysis on how SPP is being implemented is important to assess the effectiveness of these measures. • The federal government needs to systematically incorporate the principles of the state-business nexus of the UNGPs in public procurement activities and extend the regulation of subcontracting to all economic sectors, and not only those that are sensitive to social dumping in Belgium. It is important to require traceability mechanisms in the GVCs from economic operators. • Instead of developing a new social label, the Belgian government should, in its procurement, only accept social labels and audits that comply with international environmental and social standards. This could be expanded over time to a requirement

<p>implementation of the principles of SPP according to the law.</p> <ul style="list-style-type: none"> • SOCs represent a key topic for the state-business nexus. Many SOCs are also part of value chains, but Belgian authorities have not adopted any targeted measures in line with the UNGPs. 	<p>for companies who wish to provide services or goods to the state to have the necessary HRDD systems in place.</p> <ul style="list-style-type: none"> • The tools developed to support businesses that participate in tenders and public procurement procedures need a periodic update and should explicitly refer to the SPP principles. • Belgian authorities need to address structural measures and targeted policies to promote SOCs' adoption of due diligence procedures in line with the UNGPs, in accordance with their size and sectors.
<p>Services of general interest (UNGP 5)</p>	
<p>UNGP 5. States should oversee that their international human rights obligations are respected when they contract with, or legislate for, businesses to provide services that may have an impact on human rights.</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • The NBA team did not find any publicly available information regarding the implementation of the UNGPs in the area of services of general interest. • Ombudspersons competent to receive complaints against services of general interest of the corresponding level of government have mediated, but their competences are not framed in human rights terms. • The distribution of competences regarding services of general interest and social protection systems among federal and sub-national levels accounts for coordination problems. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgian authorities need to adopt structural measures or policies to integrate the UNGPs together with the SDGs into the activities of services of general interest. • Belgian authorities need to assess how value chains of services of general interest operate in order to adopt targeted measures to implement the UNGPs. • Belgian authorities need to frame the competences of ombudspersons in human rights terms in order to allow them to hear complaints against services of general interest when they cause human rights harms. • Belgium needs to provide guidance for users of entities that provide services of general interest and social protection in order to make them more accessible to vulnerable communities.
<p>Economic support to businesses and development cooperation linked to businesses (UNGP 4 and 6)</p>	
<p>UNGP 4. States should protect against human rights abuses by state-owned companies (SOCs), or by private organisations that receive economic support and services from the state by requiring (when appropriate) human rights due diligence. UNGP 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Agencies that economically support international businesses have been implicated more in the implementation of the UNGPs than agencies that support businesses in Belgium. Most of the screened entities have implemented some CSR policies or promoted the implementation of the SDGs, but none of them explicitly refers to the UNGPs, nor to the need to implement HRDD in the value chains. • Some entities conduct (environmental, social and governance) ESG screening when the projects are submitted for funding. However, they mainly focus on environmental compliance with legal standards, but none of 	<p>Recommendations</p> <ul style="list-style-type: none"> • Although many of these entities have adopted CSR and SDG monitoring schemes, Belgian authorities need to complement these schemes with the implementation and monitoring of the UNGPs. • The leverage of agencies supporting businesses is crucial in the implementation of the UNGPs, particularly in value chains involving Belgian companies. Therefore, Belgian authorities should adopt structural measures and policies to implement systematic due diligence and impact assessment procedures to identify and address human rights adverse impacts before granting economic support, and should oversee compliance with human rights during the execution of the projects.

<p>them conducts systematic human rights impact assessments.</p> <ul style="list-style-type: none"> • Only BIO has established an operational level grievance mechanism to hear claims related to the projects it supports, but its use is very limited. 	<ul style="list-style-type: none"> • Belgian entities that provide economic support to Belgian businesses need to implement an operational level grievance mechanism to allow victims and stakeholders to raise concerns of adverse effects caused by Belgian companies and their value chains.
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Section C State’s role in relation to business conducted in CAHRAs (UNGP 7)

UNGP 7. Because the risk of gross human rights abuses is heightened in conflict affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

<p>Status and gaps</p> <ul style="list-style-type: none"> • There is no public policy or guideline on business respect of human rights in CAHRAs. • No systematic guidance through embassies is given to businesses about potential “red flags” in conflict settings. • State support to sector federations on business conducted in CAHRAs is lacking. • Economic interests are in certain cases unduly taken into account in the arms export control decision making process. • In the arms trade sector, HRDD is most often left solely to the arms export control authority, instead of requiring the arms industry to conduct their own HRDD. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgian authorities should systematically (e.g. through the establishment of policies and/or guidelines) ensure that businesses engage in conflict-sensitive heightened due diligence when operating in conflict-affected areas. • Belgian authorities should support sector federations and companies on the issue of human rights risks in CAHRAs. • Embassies in CAHRAs, BIO and Credendo should provide conflict-sensitive advisory services and tools to the private sector to assist them in respecting human rights in conflict-affected regions. • Belgian authorities need to be made more aware of applicable international obligations & proven good practices in export assessment. • Belgian authorities should assist companies to develop or improve their internal compliance programmes to comply with arms export control procedures.
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Section D Policy coherence

Policy coherence across state activity (UNGP 8-10)

1. Horizontal and vertical policy coherence | 2. Policy coherence in state agreements with business enterprises | 3. State policy coherence in multilateral institutions

UNGP 8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support. UNGP 9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts. UNGP 10. States, when acting as members of multilateral institutions that deal with business-related issues, should (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights; (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for

human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising; (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

Status and gaps

- Policy coherence is constrained by Belgium’s complex institutional architecture, and gaps in the mandate and resources of (possible) intermediary actors.
- The B-NAP provides limited guidance in allocating specific roles and responsibilities to different state actors.
- At the international level, Belgium is committed to human rights and a proponent of multilateral collaboration in the domain of business and human rights
- The creation of the NHRI provides opportunities to drive the business and human rights agenda, but with its competencies constrained to the federal level, its potential contribution to policy coherence is likely to be limited to specific policy domains.
- In the governments’ actions on the UN 2030 Agenda for Sustainable Development (SDGs), a systematic alignment with existing UNGPs commitments is missing.

Recommendations

- Although many of these entities have adopted CSR and SDG monitoring schemes, Belgian authorities need to complement these schemes with the implementation and monitoring of the UNGPs.
- A clear role division, mandate and sufficient resources for governmental agencies are required to support the implementation of the UNGPs across different government levels and policy domains.

Pillar II – The corporate responsibility to respect human rights

Overall findings

- Our analysis reveals low levels of corporate alignment with the UNGPs in Belgium. Very few companies currently have systematic processes for carrying out human rights due diligence (HRDD). Much work remains for governments and other stakeholders (e.g. business federations) to raise awareness about the corporate responsibility to respect human rights, to support the development and diffusion of instruments that can help companies meet this responsibility, and to create a more conducive incentive system through a smart regulatory mix.
- While smaller companies also have a responsibility to respect human rights, they face particular challenges when attempting to align their policies and processes with the UNGPs. Yet the means and processes through which they do so should be proportional to their size and type of activities (including the risks they face).
- While sectoral and multi-stakeholder initiatives can help companies meet their responsibility to respect human rights, the extent to which different initiatives are oriented towards the UNGPs differs substantially. Support for Multi-Stakeholder Initiatives (MSIs) has been a key policy focus in Belgium, but it is important to prioritize those initiatives that emphasize corporate alignment with the UNGPs.
- Bearing in mind the evolution at the international (EU) level, a growing number of stakeholders is growing accustomed to the idea of regulation that would make (aspects of) HRDD mandatory for companies. While civil society emphasizes the importance of having regulation that applies to all sectors and companies, and that is developed both at the national and at EU level; companies emphasize the importance of regulation that levels the playing field (notably with Eastern and Southern European companies), is developed at EU level, and takes into account the needs of smaller companies.

Human rights policy commitment (UNGP 11-16)

1. Human rights policy commitments | 2. Management commitment and embedding of human rights into the company

UNGPs 11-15 set out the general human rights responsibilities of companies, while UNGP 16 states that companies should express their commitment to meeting these responsibilities through a formal policy statement and outlines how such a statement should be issued and implemented.

Status and gaps

- Our assessment reveals that while many large companies (annual turnover >€750m) have a formal policy commitment to respecting human rights, smaller companies (turnover below €750m) often do not.
- Only few companies with a policy commitment move beyond a general commitment to human rights. Only a very small number of companies are committed to engaging with affected stakeholders, and no company could be found that explicitly commits to providing access to remedy.
- No companies were found that have policies on how to deal with human rights in CAHRAs.
- While several companies have a policy on conflict minerals, these policies rarely address broader human rights issues.
- In the arms industry, commitments to respect human rights rarely extend beyond a company's own workers.

Recommendations

- Additional efforts should be made by governments to raise awareness about the need for formal commitments to respecting human rights, engaging with affected stakeholders, and providing access to remedy. Particular attention should be paid to the need to respect human rights in CAHRAs.
- Business federations can play an important role as conduits for government policies but can also develop their own initiatives.
- Companies should develop a policy commitment that is (1) approved at the senior level; (2) informed by relevant expertise; (3) stipulate clear expectations towards personnel and all business partners and other parties linked to its operations along the supply chain; (4) publicly available and communicated; and (5) translated into operational policies and procedures. This commitment should be coupled to a broader set of HRDD processes.

Human rights due diligence (UNGP 17-24)

1. Assessment of adverse human rights impacts | 2. Integrating and acting upon findings and prioritising responses | 3. Tracking responses and communicating action taken | 4. Reporting adverse impacts on human rights.

UNGP 17 states that companies should have Human Rights Due Diligence (HRDD) processes that include “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.” These four elements are subsequently elaborated in UNGPs 18-21.

Status and gaps

- No companies that were analysed currently have systematic HRDD processes. This includes companies in the arms industry.
- When companies take action, they mostly remain in ‘audit mode’. While social audits can play a role in HRDD processes, as a way to identify and monitor adverse human rights impacts, they face mounting criticism for their failure to capture all types of human rights challenges on the ground. In short, audits should be treated with caution, and should form part of a broader HRDD process.
- Very few companies undertake efforts to communicate openly about their approach to identifying, assessing, and addressing human rights risks.

Recommendations

- Large companies should integrate existing approaches that revolve around sustainable procurement and social audits into a broader and more systematic HRDD process.
- Smaller companies also have a responsibility to respect human rights. Yet the means through which they meet this responsibility – which include but are not limited to HRDD-processes – should be proportional to their size and operating context.
- Business federations and governments should raise awareness about the need to carry out HRDD and should support the development and diffusion of tools tailored to the particular needs of Belgian companies.

<ul style="list-style-type: none"> • Companies with conflict minerals policies provide little information on how these policies are put into practice. 	
<p>Access to remedy (UNGP 22, 29-31) <i>Mechanisms for effective remediation of adverse human rights impacts</i></p>	
<p>In cases where companies cause or contribute to adverse human rights impacts, they should provide for- or cooperate in their remediation (UNGP 22). To do so, they should establish or participate in effective mechanisms through which affected individuals and communities raise complaints and seek remedy (UNGP 29-31).</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • While many Belgian companies provide some sort of whistle-blower or complaints mechanism through which violations of codes of conduct can be raised, not all of these codes refer to human rights, and many of the procedures are only accessible to the company’s own workers. • Few companies couple these whistle-blower and complaints procedures with transparent procedures for remedial action. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Companies should develop transparent grievance mechanisms that are independently managed and allow all stakeholders to raise complaints and concerns about human rights. • Companies should have a transparent approach for remedial action to respond to (alleged) adverse human rights impacts. • Companies should disclose practical data about the operation of their grievance mechanism and the approach taken to remedial action. • Business federations and governments should consider setting up new collective grievance mechanisms or supporting existing ones

Pillar III – Access to remedy

<p>Overall findings</p>	
<ul style="list-style-type: none"> • Belgian governments need to include the implementation of Pillar III of the UNGPs in the political agenda by creating concrete ways to enforce respect for human rights by companies. Some recommendations are tailored to the specific mechanisms (cf. below). • Access to information, including systematic access to case law and to statistics on court activities, is crucial to guarantee access to an effective remedy. While non-judicial mechanisms can be a valid option for actual or potential victims of business-related human rights abuses, according to the empirical analysis of the EU FRA (2019), more than 70% of reported abuses against companies are lodged before judicial authorities. • Belgian authorities need to assess how to adopt structural reforms and policies to allow transnational claims in the framework of the UNGPs, to promote and support the implementation of OLGm by companies, and to reinforce cooperation between judiciaries and the diplomatic service, to increase the possibilities for rightsholders to obtain effective remedy when Belgian companies and their partners worldwide cause adverse impacts or harms. • Belgian authorities need to implement permanent and tailored capacity building of diplomatic, judicial and administrative officers in the three pillars of the of UNGPs. 	
<p>The minimum conditions to get access to effective remedy (UNGP 25-26)</p>	
<p>UNGP 25. States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when abuses occurred within their territory and/or jurisdiction, victims have access to effective remedy. UNGP 26. States should ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, by reducing legal, practical and other relevant barriers that could lead to a denial of access to remedy.</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Belgium has not ratified important instruments from the CoE: the Protocol to the European Agreement on the Transmission of Applications for Legal Aid (ETS 179); the Convention on 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgium needs to ratify important instruments from the CoE: the Protocol to the European Agreement on the Transmission of Applications for Legal Aid (ETS 179); the Convention on Access to Official

<p>Access to Official Documents (CETS 205); Protocol 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS 214) that allows the highest courts and tribunals of a High Contracting Party, to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR .</p> <ul style="list-style-type: none"> • Several international and national organisations point to the persistent obstacles that victims encounter in Belgium to get access to legal aid and assistance, despite the legal reforms and the extra resources allocated. Victims from third countries only have the right to access legal aid and assistance in exceptional cases • The right to access to information is mainly enforced in environmental cases, but this needs more attention in other areas. The tools released by the government are usually not online nor periodically updated. • Belgium has not taken concrete measures to protect human rights defenders in Belgium and in third countries, particularly from threats of cybercrime, strategic lawsuits against public participation (SLAPPs) or when they denounce corruption. 	<p>Documents (CETS 205); Protocol 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS 214) that allows the highest courts and tribunals of a High Contracting Party, to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR.</p> <ul style="list-style-type: none"> • Belgium needs to enlarge the coverage of legal aid and assistance to allow vulnerable populations to claim their rights. This includes access to additional services such as interpreters and social support during the process. • Belgian authorities need to increase their efforts to provide appropriate access to information and to require businesses to report on the risks their activities may cause. The tools created to provide useful information need to be online to reach actual or potential victims in third countries and need to be periodically updated. • Belgium needs to adopt regulatory and policy measures to protect human rights defenders that support victims in the EU and in third countries.
<p>State-based non-judicial mechanisms (SBN-JM) (UNGP 27 and 31)</p>	
<p>UNGP 27. States should provide effective and appropriate non-judicial grievance mechanisms, for the remedy of business-related human rights abuse. UNGP 31. Effective non-judicial grievance mechanisms, need to be legitimate, accessible, predictable equitable and transparent.</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • The creation of the NHRI is an important point of progress in Belgium. However, its limited territorial scope and the lack of a complaint mechanism reduce its capacity to enforce human rights law. • The Optional Protocol to the Convention against Torture also requires the implementation of an independent monitoring system to oversee human rights compliance but Belgium is one of the four EU countries that has not ratified this Optional Protocol. • The OECD NCP has heard transnational claims against Belgian businesses, but its capacity is limited. In addition, it only applies the OECD Guidelines, which are not exclusively centred on human rights protection. • Belgium (as part of the EU) has improved state-based mechanisms to protect specific rights, such as privacy, equality, environmental or consumers' rights. However, other human rights are not enforced in an effective way. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgian authorities need to progressively enlarge the competences of the NHRI to the level of a category A institute according to international standards and provide for a human rights complaint mechanism. • Belgian authorities need to ratify the Optional Protocol to the Convention against Torture that requires the implementation of an independent monitoring system to oversee human rights compliance, that could be the NHRI. • The OECD NCP is an important forum to deal with transnational claims and, therefore, Belgium needs to reinforce its capacity and allow it to apply the ILO Tripartite Declaration and the UNGPs. • SBN-JM should guarantee that victims do not lose their right to submit lawsuits when they trigger SBN-JM first. These mechanisms should also provide for effective injunctions. • Belgian authorities need to analyse the convenience of ratifying the UN Convention on International Settlement Agreements Resulting from Mediation (The Singapore convention) of

<ul style="list-style-type: none"> • Belgium has not ratified the UN Convention on International Settlement Agreements Resulting from Mediation (The Singapore convention) of 20/12/2018, which is necessary to improve direct enforcement of transnational mediation agreements. 	<p>20/12/2018, to improve direct enforcement of transnational mediation agreements.</p>
<p>State-based judicial mechanisms (SBJM) (UNGP 25-26)</p>	
<p>UNGP 25. States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when abuses occurred within their territory and/or jurisdiction, victims have access to effective remedy. UNGP 26. States should ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, by reducing legal, practical and other relevant barriers that could lead to a denial of access to remedy.</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Belgian authorities did not include any action in the B-NAP to improve judicial mechanisms in order to guarantee effective access to justice for victims. This is a serious gap, as this is the most important state-based remedy for business-related human rights abuses. • The EU Directive on victims’ rights has been only partially transposed in Belgium, and victims still encounter multiple obstacles to trigger state-based remedy mechanisms. • The reform of public interest litigation is an important point of progress, but it does not allow collective claims to obtain remedy for human rights or environmental harms. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgian authorities should continue improving the institutional capacity of the judiciary, and adopt reforms and policies to facilitate the use of the judiciary by victims of business-related human rights abuses, such as providing for reasonable prescription terms and accepting collective claims. • Belgian authorities needs to assess whether all the requirements of the EU Directive on victims’ rights have been implemented. • Belgian authorities needs to enlarge the possibilities in public interest litigation to allow victims to lodge complaints against companies responsible for human rights harms or environmental damage, and to claim redress or compensation.
<p>Complementary mechanisms directly related to Pillar III (UNGP 25-31)</p>	
<p>UNGP 25. States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when abuses occurred within their territory and/or jurisdiction, victims have access to effective remedy. UNGP28. States facilitate access to effective operational grievance mechanisms (OLGM) dealing with business-related human rights harms.</p>	
<p>Status and gaps</p> <ul style="list-style-type: none"> • Belgian authorities have not contemplated the possibility of allowing transnational human rights claims against Belgian businesses in the draft bill setting up the Brussels International Business Court • The NBA team has not found any publicly available information regarding the assessment of the measures proposed by the report on access to remedy¹¹ (2017), by the revised version of the draft treaty (2020), or by the multiple international analyses mentioned in Pillar I on the reform of the regime of private international law. • Belgium has not considered to allow courts to accept jurisdiction on human rights abuses when the company has its assets in Belgium. 	<p>Recommendations</p> <ul style="list-style-type: none"> • Belgian authorities should consider if transnational business-related human rights claims could be heard by the Brussels International Business Court (when it is created). • Belgian authorities need to assess the best way to allow victims from third countries to lodge lawsuits before Belgian courts when Belgian companies and their commercial partners are involved in human rights harms. They also need to consider if Belgian courts could accept jurisdiction on human rights abuses against companies with assets in Belgium. • Belgian governments need to implement policies that support the implementation of OLGM by

¹¹ [UNGPs on Business and Human Rights in Belgium](#). State-Based Judicial Mechanisms and State Based Non judicial Grievance Mechanisms, with Special Emphasis on the Barriers to Access to Remedy. L. Lizarazo Rodríguez (2017)

- The NBA team has only found two initiatives to promote the implementation of OLGGM by Belgian authorities.
- Belgium has not signed the [Convention of 2/7/2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#).
- The NBA team did not find information on the conclusion of bilateral cooperation agreements with countries where Belgian companies have serious risks of violating human rights.
- The NBA team has not found publicly available information regarding capacity building of the judiciary or the diplomatic staff on the main issues of access to remedy in cross-border human rights abuses perpetrated by companies headquartered in Belgium.

business associations, MSIs, SOCs, credit and export promotion agencies.

- Belgium needs to ratify the [Convention of 2/7/2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#).
- Belgian authorities need to conclude bilateral cooperation agreements with countries where Belgian companies have serious risks of violating human rights.
- Belgian authorities need to systematically organise permanent and tailored capacity building of the administrative, judiciary and diplomatic staff on the main issues of access to remedy in cross-border human rights abuses perpetrated by companies headquartered in Belgium.

CONTROL OF CHANGES

Date	Version	Changes
8/3/2021	1. Final version submitted by the Consortium Hiva KUL -Law and Development Research Group – Universiteit Antwerpen	
30/9/2021	2. Revision of the Public procurement recommendations.	Pages: 5 and 15. Realised by L. Lizarazo Rodriguez