

Enforcing Workers’ Rights against State and Corporate Actors in International Law

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Abstract

This chapter examines institutional mechanisms available to workers and their representatives to enforce their internationally recognized labour rights, both against state and corporate actors. It compares enforcement mechanisms within four fields of international law: international labour law, international human rights law, international economic law, and business and human rights law. It examines how the ILO system of supervision, human rights treaty bodies, and arbitration panels in trade and investment law (as in the *EU-Korea* and *US-Guatemala* cases) are used to enforce workers’ rights against state actors. The chapter also considers the role of OECD national contact points, and domestic courts implementing human rights due diligence legislation (as in the French case of *Sud Ltd v La Poste*) as mechanisms through which to enforce workers’ rights against corporate actors. For each enforcement mechanism, the chapter provides insight into the extent to which it is used in practice and by whom, and strengths and limitations.

Keywords: workers’ rights, enforcement mechanisms, international labour law, trade and labour standards, social clause, business and human rights, mandatory human rights due diligence

I. Introduction

In today's globalized economy, workers' rights are governed at multiple levels (local, national, regional and international), and by an array of public and private institutions, rules, norms and enforcement mechanisms. Reflecting the scope of this volume, this chapter is concerned with the public architecture of labour governance at the international level. It examines institutional mechanisms available to workers and their representatives to enforce their internationally recognized labour rights, both against nation-states and private corporate actors. We focus on enforcement as this has proven to be among the most persistent and formidable challenges in global labour governance,¹ yet it is also critical to the effectiveness of any regulatory regime.

Within public international law, labour rights are recognized, protected, and enforced through multiple legal fields. Out of these, this chapter focuses and compares mechanisms available to workers and their representatives to enforce their internationally recognized rights within four legal fields: international labour law, international human rights law, international economic law, and business and human rights law. It begins with a brief overview of the core normative framework of labour rights under international law, before proceeding to examine enforcement mechanisms within each of the four fields. For each, the chapter provides an overview of the relevant legal framework, before examining rules governing who can access the mechanism, procedure and available remedies. We also provide insight into the extent to which these mechanisms are used and by whom, and refer the reader to further scholarship.

Before proceeding, it is important to emphasize that while the enforcement mechanisms discussed in this chapter are important pillars of the contemporary global labour governance architecture, there are other enforcement mechanisms also available to workers and others to enforce their rights that are beyond the scope of this chapter.² In some regions of the world, for example, mechanisms for enforcement under regional human rights conventions play an important role in protecting workers' rights.³ At the national level, domestic courts may also

¹ Frank Hendrickx, Axel Marx, Glenn Rayp and Jan Wouters, 'The Architecture of Global Labour Governance' (2016) 155(3) *International Labour Review* 339; and Glenn Rayp, Axel Marx and Jan Wouters, 'Conclusion: Which Way to Enforcement?' in Axel Marx *et al* (eds) *Global Governance of Labour Rights* (2015) 306-314.

² See Adelle Blackett and Anne Trebilcock (eds), *Research Handbook on Transnational Labour Law* (2015); Marx *et al* (eds) (n 1); Guillaume Delautre, Elizabeth Echeverría Manrique and Colin Fenwick (eds), *Decent Work in a Globalized Economy: Lessons from Public and Private Initiatives* (2021).

³ See, e.g., Karin Lukas, *The Revised European Social Charter: An Article by Article Commentary* (2021), Elena Sychenko, Adalberto Perulli, *Employment Law and the European Convention on Human Rights (ECHR)* (2023) or Kurt Pärli, *Arbeitsrecht im internationalen Kontext* (2017) for the European context. For regional human rights

recognize and protect internationally-recognized labour rights.⁴ Recent decades have also seen a proliferation of private or ‘hybrid’ regulatory initiatives directed at setting, monitoring and (to a lesser extent) enforcing labour standards in global supply chains. These include, for example, transnational industrial relations agreements that provide for legally enforceable obligations and dispute settlement through arbitration.⁵

II. Sources of Universally Recognized Labour Rights

The universal core normative framework for workers’ rights in international law is found in International Labour Organization (ILO) fundamental conventions and United Nations (UN) human rights conventions. This reflects a universally recognized standard.

a. Fundamental Principles and Rights at Work in International Labour Law

As the United Nations (UN) specialized agency responsible for the world of work, the ILO has long been assigned the primary task of protecting, promoting and enforcing respect for internationally recognized workers’ rights. Since its establishment in 1919, the ILO has created a corpus of international labour law through the adoption and supervision of conventions and other instruments. To date, the ILO has adopted 191 Conventions, 6 Protocols and 208 Recommendations, covering a broad array of work-related issues.

Among these international instruments, the Declaration of Fundamental Principles and Rights at Work elevates five categories of principles and rights at work as ‘fundamental’, deriving from ten fundamental conventions.⁶ These are: freedom of association and effective recognition of collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; elimination of discrimination in respect of employment and occupation; and a safe and healthy working environment.⁷ The Declaration recognizes that all

law and labour rights see, e.g., Rose-Marie Belle Antoine, ‘Constitutionalising Labour in the Inter-American System on Human Rights’ in Adelle Blackett and Anne Trebilcock (eds), *Research Handbook on Transnational Labour Law* (2015) 284.

⁴ See, e.g., ‘Part 1: National Perspectives’ in Colin Fenwick and Tonia Novitz (eds) *Human Rights at Work: Perspectives on Law and Regulation* (2010).

⁵ See, e.g., Mark Anner, Jennifer Bair and Jeremy Blasi, ‘Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks’ (2013) 15 *Comparative Labor Law & Policy Journal* 1.

⁶ ILO, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022).

⁷ Jean-Michel Servais, *International Labour Law* (2022) 85.

member states have an obligation to respect, promote and realize these principles and rights at work by virtue of their membership in the ILO, irrespective of whether they have ratified the relevant ‘fundamental conventions’ from which these rights and principles derive.⁸ The five fundamental principles and rights at work, the ten ‘fundamental’ ILO conventions underpinning these principles and rights at work, and key provisions are summarized in Table I.

Table I: Fundamental Rights at Work in the ILO Declaration on Fundamental Principles and Rights at Work

Fundamental Convention	Fundamental Rights or State Obligation
Freedom of association and the right to collective bargaining	
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87)	Right to establish and join workers’ organizations (Art 2) Right to freely organize their activities without interference (Art 3) Right to strike (Art 3) ⁹ Right to establish and join federations (Art 5)
Right to Organise and Collective Bargaining Convention, 1949 (No 98)	Protection against anti-union discrimination (Art 1) Right to freely organize their activities without interference (Art 2) Obligation to encourage voluntary negotiation between workers and employers (Art 4)
Elimination of all forms of forced or compulsory labour	
Forced Labour Convention, 1930 (No 29) (and its 2014 Protocol)	Prohibition of forced labour (Art 1) Obligation to establish mechanisms of remedy (Art 1)
Abolition of Forced Labour Convention, 1957 (No 105)	Obligation to abolish forced labour (Art 1)
Effective abolition of child labour	
Minimum Age Convention, 1973 (No 138)	Obligation to abolish child labour (Art 1)
Worst Forms of Child Labour Convention, 1999 (No 182)	Urgent obligation to abolish the worst forms of child labour (under 18) (Art 1)
Elimination of discrimination in respect of employment and occupation	
Equal Remuneration Convention, 1951 (No 100)	Obligation to promote and apply equal remuneration for men and women workers for work of equal value (Art 2)
Discrimination (Employment and Occupation) Convention, 1958 (No 111)	Obligation to adopt and pursue a policy promoting equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination (Art 2)
A safe and healthy working environment	
Occupational Safety and Health Convention, 1981 (No 155)	Obligation to formulate, implement and periodically review a national policy on occupational safety, health and the working environment (Art 4)
Promotional Framework for Occupational Safety and Health Convention, 2006 (No 187)	Obligation to promote continuous improvement of occupational safety and health and take active steps (Art 2) Obligation to adopt a national policy (Art 3) Right to a safe and healthy environment (Art 3)

⁸ ILO (2022) (n 6), para 2.

⁹ According to the current ILO practice. As of mid-2025, this question was pending at the ICJ (*Right to Strike under ILO Convention No. 87*, Request pursuant to the resolution of the Governing Body of the International Labour Organization of 10 November 2023).

b. Labour Rights in Universal Human Rights Treaties

In parallel with the fundamental rights at work developed and promoted through the ILO framework, international human rights instruments protect several labour rights. At the universal level, labour rights are recognized in the Universal Declaration of Human Rights (UDHR) of 1948, in the International Covenant on Civil and Political Rights (ICCPR), and in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, in addition to other human rights instruments.¹⁰ In the UDHR, Article 23 protects the right to work, to equal pay for equal value, to just conditions of work and trade union rights¹¹ and Article 24 guarantees the right to rest and leisure, including reasonable limitation of working hours.¹² The ICCPR protects a narrow range of labour rights: Article 8 prohibits slavery, servitude and forced labour and Article 22 guarantees freedom of association, including the right to form and join trade unions. The ICESCR recognizes and protects numerous labour rights, as listed in Table II below. The content of the rights to work, to social security, and to just conditions of work has been further developed by the Committee on Economic, Social and Cultural Rights (CESCR), respectively through General Comments 18, 19 and 23.¹³ Both covenants also prohibit discrimination in relation to the enjoyment of labour rights.¹⁴

Table II: Labour Rights in the ICESCR

Art 6	Right to the opportunity to gain a living by work
	Right to equal access to work
	Right to freely choose work (prohibition of forced labour)
	Prohibition of unfair dismissals
Art 7(a)(i)	Right to fair wages
	Right to equal remuneration for work of equal value
Art 7(a)(ii)	Right to a remuneration that provides a decent living for workers and their families
Art 7(b)	Right to safe and healthy working conditions
Art 7(c)	Right to equal opportunity for promotion

¹⁰ Additional labour provisions are also found in more specific human rights treaties.

¹¹ Nicolas Bueno, 'Work, Right to' in Cristina Binder, Manfred Nowak, Jane A Hofbauer and Philipp Janig (eds), *The Elgar Encyclopaedia of Human Rights* (Vol IV. 2022) 578.

¹² See further Nicolas Bueno, 'Article 24: The Right to Rest and to the Limitation of Working Hours' in Cantu Rivera H (ed.), *The Universal Declaration of Human Rights: A Commentary* (2023); Lee Swepston, *The Development in International Law of Articles 23 and 24 of the Universal Declaration of Human Rights: The Labor Rights Articles* (2014).

¹³ CESCR 'General Comment No 18 on the Right to Work' (6 February 2006) UN Doc E/C.12/GC/18; CESCR, 'General Comment No 23 on the Right to Just and Favourable Conditions of Work' (4 March 2016) UN Doc E/C.12/GC/23; CESCR, 'General Comment No 19 on the Right to Social Security' (4 February 2008) UN Doc E/C.12/GC/19.

¹⁴ ICCPR, Arts 2(1), 3 and 26; ICESCR, Arts 2(2) and 3.

Art 7(d)	Right to rest through limitation of working hours
	Right to rest through periodic holidays with pay
	Right to remunerated public holidays
	Right to leisure
Art 8.1(a)	Right to form and join trade unions
Art 8.1(b)	Right to establish national and international federations
Art 8.1(c)	Right of trade unions to function freely
Art 8.1(d)	Right to strike
Art 9	Right to social security, including unemployment benefits and workers' compensation where necessary.
Art 10(2)	Right to paid maternal leave
Art 10(3)	Prohibition of child labour
Art 12(b) (c)	Right to highest attainable standard of health, including obligation on state parties to take measures to improve industrial hygiene and prevent occupational diseases

Having identified the source of core universally recognized workers' rights in international law, the following sections of this chapter examine how these rights are monitored and enforced at the international level, focusing on four different fields of international law that have developed alongside, but with reference to each other.

III. Enforcement in International Labour Law

a. Legal Framework

As the oldest UN agency and with a broad membership and mandate to advance social justice in the world of work, the ILO has long served as the primary international forum through which parties have sought to pursue allegations of non-compliance by a state with its obligations to respect internationally recognized workers' rights, including those identified in the Declaration of Fundamental Principles and Rights at Work. There are two channels at the ILO through which member state obligations are monitored and enforced: the regular system of supervision and *ad hoc* special procedures.¹⁵ All these enforcement mechanisms are addressed to state actors, not corporate actors.

¹⁵ See Servais (n 7), 314ff, for more detail. The 1998 Declaration also established a separate reporting obligation for states that have not ratified one or more of the fundamental ILO instruments relating to the principles and rights stated in the Declaration. These states are required each year to report on the status of the relevant rights and principles within their borders. These reports are used by the International Labour Office to prepare and update 'country baselines.'

Under the regular system of supervision, ILO member states are required to report regularly on how they are implementing the provisions of ratified ILO conventions.¹⁶ These reports are at first subject to a technical examination by the Committee of Experts on the Application of Conventions and Recommendations (the Committee of Experts, CEACR), which evaluates legislative conformity of national laws and regulations with ILO Conventions.¹⁷ The regular system of supervision does not permit workers (or any other party) to raise ad hoc complaints. However, member states are obliged, when preparing their reports for submission to the Committee of Experts, to consult with the most representative employers' and workers' organisations. Employers and workers' organizations can also directly convey comments on member state compliance to the Committee of Experts.¹⁸

The Committee of Experts' annual report is considered by the tripartite Committee on the Application of Standards (CAS), a standing committee of the annual International Labour Conference. Each year, the CAS also selects and discusses a list of about twenty-five of the most problematic 'individual cases' of non-compliance with ratified conventions.¹⁹ The governments on the list are invited to respond before the CAS draws conclusions, often recommending that governments take specific steps to remedy a problem and/or invite ILO missions or technical assistance.

In addition to the regular system of supervision, the ILO has three special procedures through which parties can raise allegations concerning non-compliance by a member state. Through the *representation* procedure under Article 24 ILO Constitution, 'an association of employers or workers' may submit an allegation to the effect that an ILO member-state 'has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party.'²⁰ If accepted, an *ad hoc* three-member tripartite committee of the Governing Body is established to examine the representation and the member state's response. The Committee

¹⁶ These reporting requirements arise under Art 22 of the ILO Constitution.

¹⁷ The CEACR comprises twenty eminent jurists appointed by the Director General with the approval of the Governing Body. The Committee produces 'observations' and 'direct requests'. Direct requests are directed to the government under review, and generally pertain to technical issues or requests for further information. Observations address fundamental issues in a member State's application of a particular convention, or circumstances of sustained failure to fulfil reporting obligations.

¹⁸ On the emergence of this practice, see Francis Maupain, 'The ILO Regular Supervisory System: A Model in Crisis?' (2013) 10 International Organizations Law Review 117, 130.

¹⁹ For the criteria to select individual cases see CAS, 'Work of the Committee' (International Labour Conference, 113th Session, CAN/D.1, 2 May 2025) <www.ilo.org/sites/default/files/2025-05/CAN-2025-D1-EN.pdf> (9 August 2025).

²⁰ ILO Constitution, Arts 24-25.

submits its conclusions and recommendations to the Governing Body for adoption.²¹ Where a government fails to take the necessary measures to bring its law or practice into compliance, the Governing Body may refer the case to the Committee of Experts for follow up.

A *complaint* under Article 26 of the ILO Constitution may be filed against a member state for failing to comply with a ratified Convention by another member state which has ratified the same Convention, a delegate to the International Labour Conference or by the Governing Body on its own motion.²² Upon receiving the complaint, the Governing Body may decide to establish a Commission of Inquiry. This is the ILO's highest-level investigative procedure, under which three independent members are tasked with carrying out a full investigation of the matter and making recommendations. Where a member state fails to carry out the recommendations of a Commission of Inquiry (or to refer the complaint to the International Court of Justice (ICJ)), the International Labour Conference may act under Article 33 of the ILO Constitution. Under this article, the Governing Body may recommend to the ILC measures of a punitive or corrective nature, including sanctions, to secure compliance.

The third special procedure involves the ILO's Committee on Freedom of Association (CFA) receiving and examining specific allegations of non-compliance by an ILO member state with the fundamental principles of freedom of association and rights to organize.²³ As these freedoms are considered founding principles of the ILO, any member state may be subject to a complaint brought by an employers' or workers' organisation to the CFA, irrespective of whether the state has ratified the relevant fundamental Conventions.²⁴ The main function of this committee is to determine whether a specific piece of legislation (or draft legislation) or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions.²⁵ If the complaint is accepted, the Committee engages in

²¹ Since 2018, the Committee may temporarily suspend its consideration of a representation for up to six months where the complainants and the government concerned have agreed to voluntary conciliation at the national level. Conciliation may be accompanied by technical assistance from the International Labour Office where deemed appropriate by the parties: ILO, *Voluntary Conciliation in the Context of the ILO's Supervisory System* (7 October 2021).

²² ILO Constitution, Arts 26-34.

²³ Established in 1951, the CFA comprises an independent chairperson and three representatives each of governments, employers and workers.

²⁴ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87) and Right to Organise and Collective Bargaining Convention, 1949 (No 98).

²⁵ ILO 'Special procedures for the examination in the International Labour Organization of violations of complaints alleging violations of freedom of association' <https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:4046805:NO> (9 August 2025) Points 14 and 27.

dialogue with the government concerned to establish the facts. Where a violation of freedom of association is found, the CFA issues a report through the Governing Body and makes recommendations as to how the situation should be remedied. The government concerned is requested to report on the implementation of these recommendations.

A complaint to the CFA may be submitted by an organization of workers or employers or a member state. The Committee will only receive a complaint if it is submitted by a national organization directly interested in the matter, an international organization of employers or workers having consultative status with the ILO, or another international organization of employers or workers where the allegations relate to matters directly affecting their affiliated organizations. There is no requirement that the complainant exhaust national procedures before lodging a complaint, however where the complaint is under examination by a national body, the CFA may take this into account when considering the complaint.²⁶

b. Practical Application and Current Debate

Both the ILO's regular system of supervision and its special procedures are well-used, however documenting their effectiveness as enforcement mechanisms remains an ongoing challenge. Between 2000 and 2024, for example, over 150 representations were lodged under the Article 24 procedure and 17 complaints were submitted under Article 26.²⁷ Each year, the CFA considers around 120 cases.²⁸ Through their activities, the Committee of Experts and the CFA have produced a large body of quasi-jurisprudence on the fundamental conventions that is drawn upon not only within the ILO and its membership, but also by regional human rights courts and other state and non-state actors.²⁹

Regarding the ILO's highest-level investigative procedure, fourteen Commissions of Inquiry have been established under the complaint procedure and the ILO has invoked its strongest sanctioning power under Article 33 of its Constitution three times: twice in response to forced labour in Myanmar, and in 2023, in response to the failure of the Government of Belarus to

²⁶ ILO 'Special procedures...' (n 25), Points 28-30.

²⁷ Authors' calculations, based on ILO Normlex database.

²⁸ Paul Van der Heijden, 'The ILO Stumbling towards its Centenary Anniversary' (2018) 15 *International Organizations Law Review* 203, 210. Between 1951 and 2020, the CFA considered over 3,400 cases.

²⁹ See, e.g., Franz Ebert and Martin Oelz, *Bridging the Gap between Labour Rights and Human Rights: The Role of ILO Law in Regional Human Rights Courts* (2012). See also <<https://compendium.ilo.org/en>> (9 August 2025).

comply with recommendations arising from a Commission of Inquiry into violations of freedom of association.³⁰

For much of the ILO's existence, its monitoring system has been regarded as innovative and effective in comparison to those of other international organizations.³¹ However, the system relies overwhelmingly on dialogue and persuasion, as well as 'naming and shaming' where necessary, like for shortlisted individual cases for discussion before the CAS. While the system can and does secure important improvements in member state law and practice,³² progress can be slow³³ and there is little the organization can do to bring wilfully noncompliant states into line.³⁴

Moreover, the tripartite consensus upon which this system depends has come under considerable strain in recent years.³⁵ In 2012, growing tensions between the Employer and Worker constituents of the Organization culminated in an institutional crisis from which the ILO has yet to recover. This crisis was precipitated by an overt challenge by the Employer group within the CAS to the existence of a right to strike in the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87) and, more broadly, to the role of the Committee of Experts in interpreting ILO conventions.

Within the ILO system, the Committee of Experts and the CFA have long expressed the view that a right to strike exists as a corollary of the principle of freedom of association in Convention No 87.³⁶ At the June 2012 International Labour Conference, the Employers Group in the CAS insisted that a disclaimer be added to the Committee of Experts' annual report indicating that its work was not 'an agreed or determinative text of the ILO tripartite

³⁰ ILO, 'Resolution Concerning the Measures Recommended by the Governing Body under Article 33 of the ILO Constitution on the Subject of Myanmar' ILC 88/Resolution 1 (14 June 2000); 'Resolution Concerning the Measures Recommended by the Governing Body under Article 33 of the ILO Constitution on the Subject of Belarus', ILC 111/Resolution 1 (22 June 2023) and 'Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar, ILO 113/Resolution (5 June 2025)

³¹ See Maupain (n 18).

³² See Paul van der Heijden, 'The ILO Stumbling towards its Centenary Anniversary' (2018) 15 *International Organizations Law Review* 203, 210-211, noting that recommendations of the CFA are implemented in 75% of cases, referring to *The Committee on Freedom of Association: Its Impact Over 50 Years* (2001) <<https://www.ilo.org/publications/committee-freedom-association-its-impact-over-50-years>> (8 August 2025).

³³ Van der Heijden (32), 212.

³⁴ Kari Tapiola and Lee Swepston, 'The ILO and the Impact of Labor Standards: Working on the Ground After an ILO Commission of Inquiry' (2010) 21(3) *Stanford Law and Policy Review* 517.

³⁵ See, e.g., Claire La Hovary, 'A Challenging *Ménage à Trois*? Tripartism in the International Labour Organization' (2015) 12 *International Organizations Law Review* 204.

³⁶ Jeffrey Vogt *et al*, *The Right to Strike in International Law* (2020) 56ff.

constituents.’³⁷ It made clear that, without such a disclaimer, they would not agree for the committee to consider any cases concerning the right to strike. The Worker Group refused to accept these conditions, resulting in the CAS refusal to select individual cases in 2012, for the first time in its history. This crisis – and the ongoing failure of the ILO constituents to resolve the dispute through dialogue – is widely seen as embodying broader political and regulatory challenges within and outside the ILO system.³⁸ In November 2023, the Governing Body reached the decision to refer the dispute over the existence of a right to strike to the International Court of Justice for an advisory opinion.³⁹

IV. Enforcement in International Human Rights Law

a. Legal Framework

Compliance with the labour provisions in UN human rights treaties (including those listed in Table II above) is monitored principally through state reporting and individual communications to UN treaty bodies. This section explains first the enforcement mechanisms before presenting the practice of the CESCR regarding labour provisions of the ICESCR.

Regarding reporting, Article 16 of the ICESCR obliges states parties to submit reports on the measures that they have adopted and the progress made in achieving the observance of the rights recognized by the treaty. State reports are then considered by the CESCR, which subsequently adopts concluding observations. Through concluding observations, the CESCR evaluates state implementation of each right and makes non-legally-binding recommendations. A follow-up procedure is in place allowing the CESCR to select the most urgent recommendations requiring the state to react to them within a given period.⁴⁰ The mechanism is exclusively addressed to state actors, not to corporate actors, although the CESCR has adopted a general comment on the scope of state human rights obligations regarding business

³⁷ ILO, Record of Proceedings No 19(Rev.)/Part 1 (2012), para 150.

³⁸ On this crisis, see Claire La Hovary, ‘Showdown at the ILO? A Historical Perspective on the Employers’ Group’s 2012 Challenge to the Right to Strike’ (2013) 42 *Industrial Law Journal* 338; Janice R Bellace, ‘The ILO and the Right to Strike’ (2014) 153(1) *International Labour Review* 29; Lee Swepston, ‘Crisis in the ILO Supervisory System: Dispute over the Right to Strike’ (2013) 29 *International Journal of Comparative Labour Law and Industrial Relations* 199; Maupain (n 18).

³⁹ ICJ (*Right to Strike*) (n 9).

⁴⁰ CESCR, ‘Reporting Guidelines’, www.ohchr.org/en/treaty-bodies/cescr/reporting-guidelines (9 August 2025).

activities.⁴¹ Finally, workers have no legal standing, but civil society organizations representing workers are encouraged to submit written information prior to the elaboration of the concluding observations.

In addition to reporting, alleged violations of the ICESCR's labour provisions can be brought by affected workers or on their behalf before the CESCR through the mechanism of individual communications. Individual communications against a state require, before all, that the state in question has ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights of 2008 (OP-ICESCR). Article 2 of the OP-ICESCR provides for a right to submit individual communications and Article 3 sets conditions of admissibility for such communications, including that claimants must have exhausted national remedies.⁴² The next section discusses how both mechanisms of enforcement have been used regarding labour rights.

b. Practical Application and Current Debate

Regarding reporting first, the CESCR has published 558 concluding observations, which are an important source of interpretation for the content of the labour rights of the ICESCR.⁴³ The CESCR has, for example, clarified the right to rest through the limitation of working hours in Article 7 ICESCR by raising specific concerns over excessive work in informal sectors in Cameroon,⁴⁴ domestic workers working up to twelve hours a day often without overtime pay in Paraguay,⁴⁵ and migrant workers working without contracts and subject to long working hours in Kazakhstan.⁴⁶ It has also recommended Japan to take measures to reduce working hours in all sectors,⁴⁷ Poland to investigate allegations of excessive working hours⁴⁸ and China to review paid weekly rest time.⁴⁹

⁴¹ CESCR, 'General Comment No 24 on State Obligations under the ICESCR in the Context of Business Activities' (10 August 2017) UN Doc E/CN.12/GC/24.

⁴² Technically, the Optional Protocol allows for inter-state communications as well (Article 10) and an inquiry procedure (Article 11), which have not been applied so far regarding labour rights.

⁴³ UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en.

⁴⁴ CESCR, 'Concluding Observations on Cameroon' (25 March 2019) UN Doc E/C.12/CMR/CO/4, para 32.

⁴⁵ CESCR, 'Concluding Observations on Paraguay' (4 January 2008) UN Doc E/C.12/PRY/CO/3, para 15.

⁴⁶ CESCR, 'Concluding Observations on Kazakhstan' (29 March 2019) UN Doc E/C.12/KAZ/CO/2, para 29.

⁴⁷ CESCR, 'Concluding Observations on Japan' (24 September 2001) UN Doc E/C.12/1/Add.67, para 46.

⁴⁸ CESCR, 'Concluding Observations on Poland' (2 December 2009) UN Doc E/C.12/POL/CO/5, para 18.

⁴⁹ CESCR, 'Concluding Observations on China: Hong Kong SAR' (21 May 2001) UN Doc E/C.12/1/Add.58, para 34. See also Ben Saul, David Kinley and Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (2014) 392ff, for a detailed overview of concluding observations regarding Article 7 ICESCR..

The efficacy of UN human rights reporting mechanisms is debated. According to a comprehensive study on the implementation of the UN human rights treaties at the domestic level, labour provisions of the ICESCR are directly used by supreme courts in many of the surveyed countries.⁵⁰ CESCR's concluding observations perform a key role in clarifying their content. If they also enable civil society organizations to bring social policies to the attention of the government, the concrete impact of concluding observations on domestic labour legislation is hard to assess. In the case of the Russian Federation and Zambia, for example, changes in minimum wage legislation and gender equality, respectively, have been made after recommendations by the CESCR, but it is uncertain to what extent concluding observations practically influenced the domestic legislative process.⁵¹

As regards individual communications, 31 of the 173 state parties to the ICESCR have ratified the Optional Protocol. The CESCR has considered 121 individual communications, but only few related to workers' rights.⁵² Most of them were rejected as inadmissible. In the case of *Arellano Medina v Ecuador*, for example, the author of the communication claimed that it had been dismissed without benefitting from the compensation based on a collective agreement. The CESCR dismissed the claim on the ground that it did not fall within its purview to interpret the State party's domestic legal order, which three domestic courts had already done.⁵³ The communications of *M.L.B. v Luxemburg* concerning the dismissal of a trade union delegate and of *Luciano Daniel Juárez v Argentina* on the right of a judge to equal opportunity to be promoted were declared inadmissible for failing to exhaust all domestic.⁵⁴

To our knowledge, the case of *Turjillo Calero v Ecuador* is the only example of an individual communication that led to the conclusion of a violation of a labour-related human right of the ICESCR. The case concerns the right to social security of a worker under Article 9 of the

⁵⁰ Christof Heyns, Frans Viljoen and Rachel Murray (eds), *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years On* (2024). The study covers twenty countries.

⁵¹ Aslan Abashidze *et al*, 'The Impact of the United Nations Human Rights Treaties on the Domestic Level in the Russian Federation', in Christof Heyns†, Frans Viljoen and Rachel Murray (eds), *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years On* (2024) 955; O'Brien Kaaba, 'The Impact of the United Nations Human Rights Treaties on the Domestic Level in Zambia' in *ibid.*, 1301.

⁵² OHCHR, Jurisprudence Database, <https://juris.ohchr.org/>.

⁵³ *Arellano Medina v Ecuador*, CESCR, Communication No 7/2015, UN Doc E/C.12/63/D/7/2015 (26 March 2018), para 8.10. Arguments were similar in *F.M.B. et al v Spain*, CESCR, Communication No 18/2016, UN Doc E/C.12/60/D/18/2016 (22 February 2017) and *A.C.G. et al v Spain*, CESCR, Communication No 17/2016, UN Doc E/C.12/60/D/17/2016 (22 February 2017), but the facts occurred before the entry into force of the Protocol for Spain.

⁵⁴ *Luciano Daniel Juárez v Argentina*, CESCR, Communication No 149/2019, UN Doc E/C.12/68/D/149/2019 (15 October 2020).

ICESCR. Pursuant to this provision, States parties are obliged to establish non-contributory schemes to provide support to those individuals who are unable to make sufficient contributions for their own protection. The author of the communication contributed voluntarily as a domestic worker to the old-age pension scheme for several decades. The state dismissed her retirement request because some of her contributions were invalid, although it continued to receive them for several years. The Committee found that Ecuador not only failed to inform the author in an appropriate and timely fashion of the invalidity of her voluntary contributions but that it also disregarded the legitimate expectation that it had created in the author's mind, which violated Article 9 ICESCR.⁵⁵

Individual communications to the CESCR offer a potential for adjudication and remedy for violations of workers' human rights. However, this potential has yet to be realized with the low number of ratifications of this instrument. Viljoen and Murray explain the lack of ratification by concerns over the justiciability of economic, social and cultural rights; resistance against perceived 'control' by (quasi)-judicial bodies over social policies or resource allocation; and arguments to the effect that the Optional Protocol is unnecessary as national legislation sufficiently protects economic, social and cultural rights.⁵⁶ The paucity of individual communications regarding workers' rights can further be explained by the existence of alternative regional human rights courts and committees with a more established case-law.⁵⁷ In regions without such enforcement mechanisms, individual communications to UN bodies remain nevertheless essential. They are among the very mechanisms that can be directly triggered by a worker against a state before an international body.

V. Enforcement in International Economic Law

In recent decades, labour provisions have proliferated in bilateral and regional trade agreements, and in international investment agreements. Their enforcement in practice has

⁵⁵ *Marcia Cecilia Trujillo Calero v Ecuador*, CESCR, Communication No 10/2015, UN Doc E/C.12/63/D/10/2015 (14 November 2018), para 16.1.

⁵⁶ Frans Viljoen and Rachel Murray, 'Introduction: What a Difference do 20 Years Make? The Impact of the Core UN Human Rights Treaties on the Domestic Level in Selected States between 1999 and 2019' in Christof Heyns†, Frans Viljoen and Rachel Murray (eds), *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years On* (2024) 1, 19-20.

⁵⁷ See note 3, for the European case-law.

raised a debate regarding their ability to trigger changes for workers in international economic law.

a. Labour Clauses of International Trade Agreements: Legal Framework and Practical Application

Labour provisions are now found in several trade agreements, particularly those negotiated by the European Union (EU), the United States (US) or Canada. These provisions can be broadly categorized into four groups.⁵⁸ The first group imposes obligations on parties to the trade agreement to respect and effectively implement the ILO's fundamental principles and rights at work. The second group obliges parties to make continued and sustained efforts to pursue ratification of the fundamental ILO Conventions. The third group imposes obligations on parties to effectively implement other (non-fundamental) ratified ILO labour conventions. The final group seeks to prevent a race to the bottom with respect to labour standards through imposing obligations on parties not to fail to effectively enforce its domestic labour laws in a manner affecting trade.⁵⁹

Mechanisms for enforcing labour provisions in trade agreements have evolved over time. Under most EU agreements, a state party to the agreement may raise a concern regarding the respect of labour obligations by another party and request governmental consultations and the establishment of a panel of experts. The role of the panel is to make recommendations for the resolution of the matter, without recourse to trade sanctions.⁶⁰ However, under the EU-New Zealand Free Trade Agreement signed in 2023, violations of a labour provision may lead to economic sanctions.⁶¹

In practice, one panel of experts has been established under an EU agreement. In *EU-South Korea*, the EU alleged a lack of genuine effort by South Korea towards ratification of ILO

⁵⁸ See generally Liam Campling *et al*, 'Can Labour Provisions Work Beyond the Border? Evaluating the Effects of EU Free Trade Agreements' (2016) 155(3) *International Labour Review* 357, 363; Ronald Brown, 'Promoting Labour Rights in the Global Economy: Could the United States' New Model Trade and Investment Frameworks Advance International Labour Standards in Bangladesh?' (2016) 155(3) *International Labour Review* 383; James Harrison *et al*, 'Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda' (2019) 18(4) *World Trade Review* 1; Jeffrey Vogt, 'The Evolution of Labor Rights and Trade: A Transatlantic Comparison and Lessons for the Transatlantic Trade and Investment Partnership' (2015) 18 *Journal of International Economic Law* 827; ILO, *Promoting and Enforcing Compliance with Labour Provisions in Trade Agreements: Comparative Analysis of Canada, European Union and United States Approaches and Practices* (ILO 2023).

⁵⁹ Tonia Novitz, *Trade, Labour and Sustainable Development* (2024) 221ff.

⁶⁰ *Ibid.*, 221.

⁶¹ EU-New Zealand Free Trade Agreement (9 July 2023), Art 26.16(2)(a)(i).

fundamental conventions and a failure to effectively implement ILO fundamental labour rights, particularly those governing freedom of association and collective bargaining. The panel agreed that there had been a violation of the obligation to effectively implement labour law under the agreement, but rejected the claim that Korea's efforts to ratify ILO fundamental conventions were insufficient.⁶² Three months after the Panel issued its recommendation in April 2021, South Korea proceeded to ratify the three fundamental conventions.⁶³

Under US trade agreements, a breach of a labour provision may trigger the main dispute settlement mechanism within the agreement, usually entailing the establishment of a panel and possible imposition of trade sanctions.⁶⁴ Cases have been very rare so far and, to our knowledge, have never led to a trade sanction. The case of *United States v Guatemala* came close to it. It concerned a failure by Guatemala under the Dominican Republic-Central America-USA free trade agreement to effectively enforce its labour laws on freedom of association and collective bargaining. The Panel concluded that Guatemalan labour courts had failed to enforce orders to reinstate or compensate unlawful dismissals of workers who had engaged in unionization activities.⁶⁵ However, the Panel concluded that this failure could not be considered as constituting a sustained or recurring course of inaction 'affecting trade between the parties' and therefore rejected the claim.⁶⁶ This outcome has raised doubts about the capacity of parties under US trade agreements to establish a breach of a labour provision in practice.⁶⁷

Recently, the United States-Mexico-Canada Trade Agreement (USMCA) has established a 'rapid response mechanism' (RRM) to improve enforcement of the labour provisions of the agreement. Annex 31-A USMCA authorizes the state parties to initiate enforcement proceedings at facilities where they have a good-faith belief that the facility has denied workers

⁶² Panel of Experts Proceeding Constituted under Article 13.15 of the EU-Korea Free Trade Agreement, Report of the Panel of Experts of 20 January 2021.

⁶³ Laurence Boisson de Chazournes and Jeamin Lee, 'The European Union-Korea Free Trade Agreement Sustainable Development Proceeding: Reflections on a Ground-Breaking Dispute' (2022) 23(3) *The Journal of World Investment & Trade* 329, 341; Aleydis Nissen, 'Not That Assertive: The EU's Take on Enforcement of Labour Obligations in Its Free Trade Agreement with South Korea' (2022) 33(2) *European Journal of International Law* 627, 628.

⁶⁴ Harrison *et al* (n 58), 640; Brown (n 58), 389. See United States-Mexico-Canada Trade Agreement (1 July 2020), Art. 31.19, for an example.

⁶⁵ Panel Report, In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR (14 June 2017), para 431.

⁶⁶ *Ibid.*, para 504.

⁶⁷ Tequila Brooks, 'US-Guatemala Arbitration Panel Clarifies Effective Enforcement under Labor Provisions of Free Trade Agreement' (2018) 4(1) *International Labor Rights Case Law* 45; Kathleen Claussen, 'Reimagining Trade-Plus Compliance: The Labor Story' (2020) 23(1) *Journal of International Economic* 25.

the right of freedom of association and collective bargaining.⁶⁸ Although the text of the USMCA suggests the RRM is reciprocal, its application to facilities in Canada and the United States is severely limited by carve-outs inserted by those countries.⁶⁹ Leclerc *et al* have empirically examined the application of the RRM under the USCMA. So far, it has been triggered only by the US government that has launched 23 cases, 17 of which have concerned the automobile sector in Mexico. Of these 17 cases, 13 have been triggered by information brought by trade unions, workers or NGOs from Mexico, and four by the US government or US trade unions.⁷⁰

Enforcement mechanisms in international trade law appear to offer opportunities to improve state-state cooperation concerning respect for internationally recognized labour rights at a ministerial level. The risk of trade sanctions against a trade partner can also improve the efficacy of the mechanism for workers. However, these enforcement mechanisms can only be triggered by a state party to the agreement. They are never enforceable by a worker and do not provide remedies for affected workers. This raises questions of legitimacy, particularly where claims seem to be motivated not by the protection of workers, but to ensure fair competition between trading partners.

b. Enforcing Labour Clauses in International Investment Agreements: Legal Framework and Practical Application

While international investment agreements are designed to protect foreign investors within a host state, a number of recent investment agreements now include labour clauses.⁷¹ There are three common types of such clauses. The first type of clause obliges states parties to refrain from derogating from labour laws or failing to enforce labour law in order to attract foreign investors.⁷² The second type encourages corporate social responsibility, including respect for

⁶⁸ Desiree LeClercq, Alex Covarrubias-V and Cirila Quintero Ramirez, 'Enforcement of the United-States-Mexico-Canada (USMCA) Rapid Response Mechanisms' (Research Report, 2024) 17.

⁶⁹ Kathleen Claussen, 'The Track Record of the USMCA Rapid Response Mechanism' (UMSCA Forward 2024, 6 March 2024) <www.brookings.edu/articles/the-track-record-of-the-usmca-rapid-response-mechanism/> (9 August 2025).

⁷⁰ LeClercq *et al* (n 68), 19.

⁷¹ Disputes between an investor and a state in international investment law are typically resolved through investment arbitration. See Henner Gött and Till Patrik Holterhus, 'Mainstreaming Investment-Labour Linkage Through "Mega-Regional" Trade Agreements' in Henner Gott (ed.), *Labour Standards in International Economic Law* (2018) 239 for another classification.

⁷² For example, Brazil-India BIT 2020, Art 22(2): 'The parties recognize that it is inappropriate to encourage the establishment, acquisition, expansion, or retention of an investment by lowering the standards of their labour law.'

labour rights by the foreign investor. Corporate social responsibility clauses in agreements negotiated by the EU, Canada and the US tend to be vague and hortatory⁷³, in contrast to clauses negotiated between countries in the global South. Agreements to which Brazil is a party, for example, contain provisions enumerating labour obligations of foreign investors in Brazil.⁷⁴ The third type of labour clause protects the right of a host state to regulate public matters (including labour standards) without fear of being subject to a claim for compensation by an investor.⁷⁵

In practice, the first two types of labour clauses have played a marginal role. Despite the volume of international investment caselaw, there is yet to be a case (to our knowledge) that pertains to any of the first two clauses. By contrast, the right to regulate has provided a safeguard for investment-receiving states against claims by foreign investors. For example, in *Veolia Propreté v Egypt*, a French investor filed a complaint against Egypt arguing that increases in minimum wages negatively impacted its investment in Egypt.⁷⁶ Similarly, in *Centerra v Kyrgyz Republic*, a Canadian mining company filed a complaint against the Kyrgyz Republic contesting a law that increased the wage of workers working above a certain altitude. Finally, in *Paushok v Mongolia*, a Russian investor claimed against the change in labour legislation that increased the fee for employing non-national workers. In these cases, the arbitration tribunal did not protect foreign investors against changes in the labour legislation.⁷⁷ In *Centerra v Kyrgyz Republic*, the parties settled the case, and the tribunal split the costs of the arbitration of EUR 168.667.⁷⁸ Apart from this clause, labour provisions in investment agreements cannot

⁷³ A typical clause in EU investment agreements reads that the contracting parties must ‘encourage investors to develop and use voluntary best practices of corporate social responsibility by enterprises.’ Nicolas Bueno, Anil Yilmaz Vastardis and Isidore Ngueuleu Djeuga, ‘Investor Human Rights and Environmental Obligations: The Need to Redesign Corporate Social Responsibility Clauses’ (2023) 24(2) *Journal of World Investment & Trade* 179, 187; Gött and Holterhus, ‘Mainstreaming Investment-Labour’ (n 71), 254.

⁷⁴ For example, Brazil-India BIT 2020, Art 12. For intra-African examples see also ECOWAS Supplementary Act on Investments 2008, Art 14(4); ECOWAS Common Investment Code of 2019, Art 30.

⁷⁵ For example, EU-Singapore BIT 2018, Art 2(2): ‘The Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, [...] safety [...], social protection’.

⁷⁶ *Veolia Propreté v Arab Republic of Egypt*, ICSID Case No ARB/12/15, Award (25 May 2018), para 181. See Valentina Cagnin, ‘Investor-State Dispute Settlement (ISDS) from a Labour Law Perspective’ (2017) 8(3) *European Labour Law Journal* 217; Valentina Cagnin, ‘New Generations Treaties and the Attempts for a Renewal of the ISDS’ in Adalberto Perulli (ed.), *Sustainable Development, Global Trade and Social Rights* (2018) 151, 160.

⁷⁷ *Veolia Propreté v Arab Republic of Egypt*, ICSID Case No ARB/12/15, Award (25 May 2018), para 282. *Paushok v Mongolia*, UNCITRAL, Award on Jurisdiction (28 April 2011), para 373.

⁷⁸ *Centerra v The Kyrgyz Republic*, PCA Case No 2007-01/AA278, Termination Order (29 June 2009); Encinas de Muñagorri R, ‘Les protections des investissements internationaux et le dumping social: quels arbitrages?’ in *Droit sans frontières – Mélanges en l’honneur d’Eric Loquin* (2018) 448.

therefore be seen as playing a meaningful role for the protection of workers' rights in international investment law.

VI. Enforcement in Business and Human Rights Law

a. Legal Framework

Recent decades have seen remarkable growth in the influence and impact of private actors in global labour governance. However, longstanding public international law mechanisms designed to protect workers' human rights, the ILO and human rights bodies, have yet to adequately recognize this development. As the analysis above reveals, these systems for promoting and enforcing workers' rights in public international law overwhelmingly adopt statist conceptions of responsibility.⁷⁹ The youngest field to be considered in this chapter, business and human rights (BHR) law has emerged largely in response to this failure of public international labour and human rights fields to adequately recognize, and impose accountability on, multinational enterprises for harm caused to workers' human rights.

To date, BHR law at the international level is comprised overwhelmingly of 'soft' (not legally-binding) instruments that set voluntary standards for multinational enterprises. Since the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011, there has been significant convergence towards the responsibility of business actors to respect workers' rights in global value chains.⁸⁰ The UNGPs, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,⁸¹ and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (which contains chapters on employment and industrial relations, and human rights)⁸² all recommend that businesses adopt due diligence to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts on human rights. Businesses are also expected to remediate adverse

⁷⁹ Yossi Dahan *et al*, 'The International Labour Organization, Multinational Enterprises, and Shifting Conceptions of Responsibility in the Global Economy' in Axel Marx *et al* (eds) *Global Governance of Labour Rights* (2015) 278, 283.

⁸⁰ See Nicolas Bueno, 'Multinational Enterprises and Labour Rights: Concepts and Implementation' in Janice R *et al* (eds), *Research Handbook on Labour, Business and Human Rights Law* (2019) for further detail.

⁸¹ ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO, 2023).

⁸² OECD, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023) <<https://doi.org/10.1787/81f92357-en>> (9 August 2025).

impacts which they have caused or to which they have contributed.⁸³ The UNGPs serve as the framework of reference for current negotiations for a legally binding instrument to regulate the activities of transnational corporations (a BHR treaty),⁸⁴ and for domestic and regional mandatory human rights and environmental due diligence legislation. Both the treaty and domestic due diligence legislation envisage a greater role for domestic courts in the enforcement of internationally-recognized workers' rights against transnational corporations.

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines) is the only multilateral BHR instrument that is accompanied by an enforcement mechanism. While the Guidelines are recommendations addressed by OECD member states to multinational enterprises (MNEs) operating in or from their territories, states adhering to the OECD Guidelines are legally obliged to establish 'National Contact Points' (NCPs) to promote the instrument and to receive allegations of non-observance by MNEs.⁸⁵

b. Enforcement through OECD National Contact Points

NCPs established pursuant to the OECD Guidelines are not judicial bodies and do not have the authority to compel a company to participate in the dispute resolution process, or to impose legally-enforceable remedies. Rather, they are national agencies that provide 'good offices' to the parties and facilitate resolution of the complaint through non-adversarial methods such as mediation or conciliation.⁸⁶ However, irrespective of whether an agreement is reached, NCPs can make recommendations to the company with respect to the Guidelines. NCPs may also make determinations as to whether a company has observed the Guidelines with respect to the matter at hand.

⁸³ On the rise of human rights due diligence in transnational labour governance, see Ingrid Landau, *Human Rights Due Diligence and Labour Governance* (2023).

⁸⁴ In 2014, the UN Human Rights Council adopted a resolution to establish the Open-Ended Intergovernmental Working Group to draft an international, legally binding instrument to regulate, in international human rights law, the activities of businesses with respect to human rights. The Working Group has since met annually, and produced three drafts. See further Surya Deva, 'Treaty Tantrums: Past, Present and Future of a Business and Human Rights Treaty' (2022) 40(3) *Netherlands Quarterly of Human Rights* 211.

⁸⁵ As of April 2025, there are 51 countries adhere to the OECD Guidelines: 38 OECD member states and 13 non-OECD member states.

⁸⁶ Adhering states have considerable flexibility as to the form and structure of their NCPs, however NCPs must meet seven core effectiveness criteria. See further OECD Guidelines (n 82), Part II: Implementation Procedures of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and accompanying commentary.

A complaint to a NCP may be submitted by any entity – individual, group or organization – with ‘a legitimate interest’ in the issues raised,⁸⁷ A NCP may handle a case involving an enterprise headquartered: (i) in the NCP’s country and operating within it; (ii) in the NCP’s country and operating in any other country; and (iii) in any other country and operating within the country of the NCP. The Guidelines recommend a flexible interpretation of the notion of enterprise, which has enabled NCPs to consider complaints concerning a broad range of actors including not only multinational companies but also multistakeholder initiatives⁸⁸ and football federations.⁸⁹ As the Guidelines incorporate the concept of due diligence in line with the UNGPs, NCPs also have scope to consider allegations of non-compliance with the Guidelines, and potentially facilitate remedy, by entities that do not cause or contribute to impacts, but have leverage over the actors that do (such as financial institutions).⁹⁰ The existence of parallel proceedings (where the matter is also being considered under another formal procedure) does not in theory prevent a NCP from receiving a case,⁹¹ however it is not uncommon for NCPs to reject complaints on this basis.⁹²

Between 2000 and 2022, NCPs have handled over 650 cases, the majority (65%) of which have referenced the human rights chapter in the Guidelines and over a third (39%) of which have referenced the employment and industrial relations chapter.⁹³ Most cases are lodged by NGOs and trade unions.⁹⁴ According to the OECD, about 30-40% of cases accepted by NCPs result

⁸⁷ OECD, Guide for National Contacts Points on the Initial Assessment of Specific Instances, OECD Guidelines for Multinational Enterprises (2019) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/01/guide-for-national-contact-points-on-the-initial-assessment-of-specific-instances_e2268cca/c8d7f80a-en.pdf> (9 August 2025). The Guidelines simply direct NCPs to verify the identity of the party concerned and their interest in the matter, and to ensure that all parties are of good faith: see OECD Guidelines (n 82), Part II: Implementation Procedures of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and accompanying commentary.

⁸⁸ Roundtable for Sustainable Palm Oil and TUK Indonesia (2019, Dutch NCP).

⁸⁹ Fédération Internationale de Football Association (FIFA) and Building and Wood Workers’ International (BWI) (2017, Swiss NCP).

⁹⁰ Natixis and Unite Here (2017, French NCP).

⁹¹ OECD Guidelines (n 82), Part II: Implementation Procedures of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and accompanying commentary.

⁹² See, e.g., OECD, Annual Report of the Activity of National Contact Points for Responsible Business Conduct 2022 (2023) 18-19.

⁹³ OECD, ‘Cases handled by the National Contact Points for Responsible Business Conduct’ <https://www.oecd.org/content/dam/oecd/en/networks/national-contact-points/Flyer-OECD-National-Contact-Points.pdf> (9 August 2025).

⁹⁴ OECD, National Contact Points for Responsible Business Conduct: Providing Access to Remedy: 20 Years and the Road Ahead (2020) 20.

in full or partial agreement.⁹⁵ In certain cases, agreements facilitated by NCPs have resulted in financial compensation⁹⁶ or reparation for the parties concerned.⁹⁷

There is a significant body of literature on the OECD Guidelines and the functioning of the NCP system, including on the effectiveness of the mechanism as a means for enforcing labour and human rights.⁹⁸ Among the key challenges recognized by the OECD itself are a lack of visibility of NCPs, ongoing barriers to accessibility (particularly for individuals), and the high proportion of complaints that fail, or only partially, pass initial assessment.⁹⁹ Many cases also fail to comply with the OECD's indicative timelines for resolution.¹⁰⁰ Despite ongoing efforts within the OECD to raise the visibility and quality of NCPs (including through a system of peer review), there continues to be significant variation between national mechanisms with respect to accessibility, resourcing and expertise, activities, degree of conformity with the Procedural Guidance and quality of dispute resolution process.¹⁰¹

Scholars, NGOs and trade unions have found the voluntarist nature of the Guidelines and its grievance mechanism, along with the variation in quality between NCPs to be key weaknesses. Even where determinations of non-compliance and recommendations are made, NCPs lack the ability to enforce compliance. The system has also failed to adequately protect complainants from intimidation and reprisals.¹⁰² Despite these limitations, civil society organizations and

⁹⁵ *Ibid.*, 22. See also Tamar Meshel, 'Business and Human Rights Dispute Settlement: The OECD NCPs as Grievance Mechanism' in Otgontuya Davaanyam and Markus Krajewski (eds), *Exploring Corporate Human Rights Responsibilities in OECD Case Law* (2025) 155, 159.

⁹⁶ See, e.g., *Australia New Zealand Banking Group (ANZ Bank) and NGOs Equitable Cambodia (EC) and Inclusive Development International (IDI)* (2020, Australian NCP)

⁹⁷ See, e.g., *ENI S.p.A., ENI International BV, and CWA and ACA* (2019, Italian NCP).

⁹⁸ See, e.g., Axel Marx and Jan Wouters, 'Rule Intermediaries in Global Labor Governance' (2017) 670(1) *The Annals of the American Academy of Political and Social Science*, 189; Kinnari Bhatt and Gamze Erdem Türkelli, 'National Contact Points as Sites of Effective Remedy: New Expression of the Role and Rule of Law within Market Globalization' (2021) 6 *Business and Human Rights Journal* 423; Karin Buhmann, 'Confronting Challenges to Substantive Remedy for Victims: Opportunities for OECD National Contact Points under a Due Diligence Regime Involving Civil Liability' (2023) 8(3) *Business and Human Rights Journal* 403; Otgontuya Davaanyam and Markus Krajewski (eds), *Exploring Corporate Human Rights Responsibilities in OECD Case Law* (2024).

⁹⁹ Between 2000 and 2018, 36% of cases concluded by NCPs failed to pass initial assessment. In 2018, this peaked at 60%: OECD (20 Years) (n 94), 30.

¹⁰⁰ OECD (20 Years...) (n 94), 31-32.

¹⁰¹ *Ibid.*, 31.

¹⁰² OECD Watch, 'Use With Caution: The Role of the OECD National Contact Points in Protecting Human Rights Defenders' (OECD Watch, 2019).

trade unions persevere in their efforts to use the Guidelines to hold companies accountable for workers' rights violations, often as one of a number of strategies pursued simultaneously.¹⁰³

c. Enforcement through Mandatory Due Diligence Legislation

At the international level, states are currently negotiating a treaty on business and human rights. Without waiting for its conclusion, several countries on the European continent have recently adopted human rights due diligence laws to hold businesses accountable (through civil or administrative means) for violations of workers' rights in their global value chains. Human rights due diligence laws adopted in France, Germany, and in the EU provide concrete examples of how due diligence laws at the national level may provide mechanisms through which workers may seek to enforce their internationally-recognized workers' rights transnationally.

The French Loi De Vigilance of 2017 requires large companies to establish and implement vigilance plans to identify and prevent severe violations of human rights. Where a company fails to meet its obligations after receiving a formal notice to comply and upon the request of any person with a legitimate interest, a court can require the company under financial compulsion to comply with its duties.¹⁰⁴ The law also introduces fault-based liability to the extent that it makes clear that a company that fails to comply with the vigilance duties may be liable and obliged to compensate for the harm that due diligence would have permitted to avoid under French tort law.¹⁰⁵

In practice, eleven formal notices have been served on companies, five of which concern workers' rights.¹⁰⁶ Twelve civil lawsuits have been initiated. In *Sud Ltd v La Poste*, a French trade union claimed that La Poste violated its due diligence obligations regarding working conditions of undocumented workers within certain subsidiaries of the group. The Paris Judicial Court ruled that the vigilance plan drawn up by La Poste was inadequate and ordered

¹⁰³ See, e.g., Michelle Ford and Michael Gillan, 'Power Resources and Supranational Mechanisms: The Global Unions and the OECD Guidelines' (2021) 27(3) *European Journal of Industrial Relations* 307.

¹⁰⁴ Art L.225-102-4 al. 2 French Commercial Code, as introduced by Loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses.

¹⁰⁵ Art. L-225-102-5 French Commercial Code. For details see Sandra Cossart, Jérôme Chaplier and Tiphaine Beau de Lomenie, 'The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All' (2017) 2(2) *Business and Human Rights Journal* 317.

¹⁰⁶ According to the database 'duty of vigilance radar' <<https://vigilance-plan.org/>> (8 August 2025).

the company to make improvements, but refrained from imposing financial sanctions.¹⁰⁷ This decision has been upheld by the Paris Appeals Court, which clarified that whilst companies maintain considerable discretion as to how they meet the due diligence requirements, they must be able to demonstrate that they have adopted specific due diligence measures tailored to their activities and operations, and that they have engaged in meaningful dialogue with relevant trade unions when establishing their alert and grievance mechanisms.¹⁰⁸ In the case of *Yves Rocher*, French NGOs and a Turkish trade union allege that the company has violated its duty of vigilance concerning the freedom to join a trade union, the principle of non-discrimination and the health and safety of individuals in its Turkish subsidiary Kosan Kozmetik. The case is still pending.

Under the German Supply Chain Due Diligence Law of 2021, large companies in Germany are required to adopt due diligence to ensure they respect an established list of internationally recognized human rights, including workers' rights.¹⁰⁹ The law imposes administrative liability for non-compliance, with oversight and enforcement by the Federal Office for Economic Affairs and Export Control (BAFA).¹¹⁰ In practice, workers have no legal standing to bring complaints or pursue remedy against companies covered by the Act. However, they can submit a substantiated claim that their rights have been violated and request that BAFA take action. In 2023, BAFA reported 492 investigations and 40 complaints by individuals regarding the violation of the law.¹¹¹ So far, it is too early to assess the extent to which the law is delivering concrete outcomes for workers.

In June 2024 finally, the EU adopted Directive 2024/1760 on Corporate Sustainability Due Diligence Directive (CSDDD), which aims to harmonize due diligence obligations within all member states. The CSDDD contains a list of internationally recognized workers' rights that large companies are required to respect, and requires EU member states to establish, monitor

¹⁰⁷ Tribunal Judiciaire de Paris, *Fédération des syndicats solidaires et al. c. La Poste*, Jugement de 5 décembre 2023

¹⁰⁸ Paris Court of Appeal, Pôle 5 – Chamber 12, 17 June 2025, RG No 24/05193.

¹⁰⁹ Lieferkettensorgfaltspflichtengesetz, § 3(2).

¹¹⁰ Lieferkettensorgfaltspflichtengesetz, § 19(1) and §24. See Markus Krajewski, Franziska Wohltmann and Kristel Tonstad, 'Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?' (2021) 6(3) *Business and Human Rights Journal* 550, 557.

¹¹¹ Bundesamt für Wirtschaft und Ausfuhrkontrolle, *Rechenschaftsbericht 2023 nach dem Lieferkettensorgfaltspflichtengesetz*, 10.

and enforce corporate human rights and environmental due diligence obligations.¹¹² To enforce the new requirements, the CSDDD requires member states to establish administrative and civil liability mechanisms.¹¹³ In early 2025 however, the European Commission proposed to simplify EU legislation in the field of sustainability, including by removing the EU-wide civil liability regime. Pursuant to this proposal, member states shall ensure affected persons have a right to full compensation, but only where a company is held liable pursuant to national law.¹¹⁴

Human rights due diligence (HRDD) laws are widely recognised as positive developments with respect to the construction of an enforcement architecture for internationally recognised workers' rights, and there is a rapidly growing literature on their design, implementation and impact. As indicated above, these laws are already being used by trade unions and other civil society actors to pursue violations of workers' rights where these occur in corporate supply chains that cross national borders. Even where cases are not pursued formally, these laws may be used by civil society actors strategically to increase pressure on corporate actors.¹¹⁵ However, mediated by national political dynamics and regulatory cultures, the laws vary significantly with respect to the nature of entities covered and rights protected, substantive due diligence obligations imposed, the extent to which these obligations extend along the supply chain, and enforcement mechanisms.¹¹⁶ Ultimately, it remains too early how effective these laws will be as tools through which to hold corporate actors accountable for violations of internationally recognised workers' rights.¹¹⁷

¹¹² Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (EU CSDDD), Annex I, Part I.

¹¹³ *Ibid.*, Arts 24 and 29. See for details also Nicolas Bueno, Nadia Bernaz, Gabrielle Holly and Olga Martin-Ortega, 'The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise' (2024) 9(2) *Business and Human Rights Journal* 296.

¹¹⁴ Proposal for a Directive amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, Art 4(12).

¹¹⁵ Almut Schilling-Vacaflor and Marie-Therese Gustafsson, 'Toward More Sustainable Global Supply Chains? Company Compliance with New Human Rights and Environmental Due Diligence Laws' (2024) 33(3) *Environmental Politics* 422.

¹¹⁶ Marie-Therese Gustafsson, Almut Schilling-Vacaflor and Andrea Lenschow, 'The Politics of Supply Chain Regulation: Towards Foreign Accountability in the Area of Human Rights and the Environment?' (2023) 14(4) *Regulation & Governance* 853.

¹¹⁷ Jeffrey Vogt and Ruwan Subasinghe, 'Protecting Workers' Rights in Global Supply Chains: Will the EU Corporate Sustainability Due Diligence Directive Make a Meaningful Difference?' (2024) 57 *Cornell International Law Journal* 209; Ingrid Landau and Shelley Marshall, 'Will Remedy Remain Rare? The Potential of Mandatory Human Rights Due Diligence to Remediate Modern Slavery' in Hila Shamir and Tamar Barkay (eds), *Modern Slavery and the Governance of Global Value Chains* (2025); Vincent Dupont, Diana Pietrzak and Boris Verbrugge, 'A Step in the Right Direction, or More of the Same? A Systematic Review of the Impact of Human Rights Due Diligence Legislation' (2024) 25(2) *Human Rights Review* 131.

VII. Conclusion

This chapter has sought to provide an overview of the international architecture for enforcing internationally-recognised workers' rights. It has surveyed enforcement mechanisms available in four overlapping but distinct legal fields or domains. While comprehensive evaluation and comparison of these mechanisms is beyond the scope of this chapter, we offer some concluding observations in this final section.

While the international community has successfully established a strong normative framework for workers' rights in international law through the ILO and the UN, it has been less successful in constructing and maintaining accessible and effective mechanisms through which these rights can be enforced. The ILO continues to be the predominant forum through which state compliance with international labour standards is pursued. Through its regular reporting and special procedures, it offers a range of complementary mechanisms through which parties can pursue and elevate allegations of non-compliance by an ILO member state with ratified and (in the case of freedom of association) unratified ILO Conventions. Importantly, a number of these procedures provide opportunities not only for member states but also for workers' organisations to draw the international community's attention to serious violations of labour rights. However, as Maupain observes, the system is biased in favour of 'insiders' who know best how to use the relevant procedures and offers little relief to the majority of the world's working population.¹¹⁸ It is increasingly questionable as to whether the gatekeeping role of employer and worker organisations within the ILO system remains a suitable model in a world in which the majority of workers are not union members and other organisations (such as NGOs) play important roles in representing and advancing workers' rights and interests.¹¹⁹ Prompted by the Employers Group's challenge to the existence of a right to strike, the ILO's supervisory system is also suffering a crisis of legitimacy through which it has yet to successfully navigate.

The UN human rights system offers an additional avenue through which states may be held accountable for their compliance with obligations to respect workers' rights under international conventions. Like the ILO, this system relies heavily on regular reporting by states and

¹¹⁸ Francis Maupain, 'A Second Century for What? The ILO at a Regulatory Crossroad' (2020) 17 *International Organizations Law Review* 291, 306.

¹¹⁹ See, e.g., Janice R Bellace, 'The ILO and Tripartism: The Challenge of Balancing the Three-Legged Stool in George P Politakis, Tomi Kohiyama and Thomas Lieby (eds), *ILO100 – Law for Social Justice* (2019) 289; La Hovary (n 35).

delegates the authority to interpret and apply the relevant legal norms to independent experts. Also like the ILO, it relies overwhelmingly on dialogue, persuasion and ‘naming and shaming’ to encourage states to bring their law and practice into compliance. These mechanisms are important for encouraging and supporting legislative and practical change. However, and with the exception of the ILO’s rarely used Article 33-constitutional mechanism, both systems lack the capacity to impose strong punitive measures on member states to secure compliance.

International trade law has emerged as a promising avenue through which to promote and enforce international labour standards. A number of states now include labour provisions in their bilateral and multilateral trade agreements, with the primary goal of ensuring a level playing field between trade partners. Many of these provisions are hortatory. But some states have embraced provisions with enforcement mechanisms and shown a willingness to use them, as demonstrated in the *EU-South Korea* and *US-Guatemala* cases. These mechanisms have yet to prove effective in securing meaningful and sustainable change for workers. However, as the rapid response mechanism in the USCMA suggests, these labour provisions continue to evolve in creative ways.

Overwhelmingly, and unsurprisingly given the genesis and nature of international law, the majority of the legal mechanisms surveyed in this chapter focus on securing compliance by nation-states with international conventions. Many of these mechanisms are also only accessible by nation-states. However, there are exceptions. These include, for example, the capacity of workers’ organizations to bring complaints within the ILO system and the capacity (albeit limited to date) for individuals to bring complaints within the UN system through the OP-ICESCR.

When contrasted to other mechanisms, NCPs under the OECD Guidelines are accessible to a broad range of actors. They are unique among the mechanisms surveyed in this chapter for their capacity to enable workers and their representatives to seek remedy for violations of internationally-recognized workers’ rights against private actors. Their flexible procedural rules may also enable them to facilitate access to remedy where other mechanisms are not available. However, the quality of many NCPs continues to be variable, and these agencies lack powers to compel companies to participate in the process, or to secure corporate compliance with recommendations.

In recent years, the failure of well-established mechanisms at the international level to facilitate access to effective remedy for workers and their representatives, particularly with respect to

violations of their rights by private actors (*e.g.* multinational enterprises), has driven the adoption of mandatory due diligence laws at regional and national levels. It has also inspired efforts to imagine and pursue new international instruments that seek to move beyond an exclusive focus on nation-states and to create more accessible and effective enforcement mechanisms. Examples include the draft business and human rights treaty and advocacy for a new ILO instrument on decent work in global supply chains.¹²⁰ The prospect of such instruments eventuating is still unclear. The need for them, however, is readily apparent.

¹²⁰ See, *e.g.*, James J Brudney, ‘Hiding in Plain Sight: an ILO Convention on Labor Standards in Global Supply Chains’ (2023) 23 *Chicago Journal of International Law* 272; Ingrid Landau and Shelley Marshall, ‘Draft Text for an ILO Convention on Decent Work in Global Supply Chains’ (International Lawyers Assisting Workers Network (ILAW), April 2024) <www.ilawnetwork.com/wp-content/uploads/2024/04/ILAW-Draft-Text-for-an-ILO-Convention-on-Decent-Work-in-Global-Supply-Chains.pdf> (9 August 2025).

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