

A LEGALLY BINDING TREATY ON BUSINESS AND HUMAN RIGHTS:

First impressions in preparation for
the Twelfth Session of the IGWG, 2026

Introduction and History of Treaty

In 2011, the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), a set of guidelines for States and companies to prevent and address human rights abuses committed by business. These principles were drafted by UN Special Representative for Business and Human Rights, Professor John Ruggie^[1], and are also known as the “Ruggie Framework”.

In 2011, at the same time that the Human Rights Council adopted the UN Guiding Principles, a UN Working Group on the issue of human rights and transnational corporations and other business enterprises (also referred to as the Working Group on Business and Human Rights) was established. This Working Group have the mission of promoting, disseminating, and implementing the UNGPs, exchanging and promoting good practices, and assessing and making recommendations on the implementation of the UNGPs.

The UNGPs comprises of a collection of 31 principles designed to provide guidance to both States and corporations, outlining their obligations and roles in safeguarding and upholding human rights within the sphere of business operations. The UNGPs unequivocally recognises that States have the duty under international human rights law to protect everyone within their jurisdiction from human rights abuses committed by business enterprises. This duty requires that States have effective laws and regulations in place to prevent and address business-related human rights abuses and ensure access to effective remedy for those whose rights have been violated.

Although the Guiding Principles do not establish a system for holding businesses accountable for rights violations or non-compliance of the Principles, beyond restating the States’ duties to provide remedy, the UNGPs had a significant political effect. The Guiding Principles has notably led to the expansion of the concept that businesses have responsibilities towards human rights by advancing general agreement of the idea that corporations have to respect human rights.

Following increased concerns regarding the need to develop a binding instrument to prevent harm and provide remedy for corporate human rights abuses, a statement was made to the UN Human Rights Council by a group of approximately 80 States, led by Ecuador and South Africa, in 2013. The statement affirmed their commitment to “work towards the elaboration of a legally binding instrument on the basis of a careful and serious assessment of options available in the framework of the Human Rights Council.”^[2]

[1] John Ruggie is Professor at Harvard University and was at the time the United Nations Secretary-General’s Special Representative on the issue of human rights and transnational corporations and other business enterprises.

[2] ‘Statement on behalf of a Group of Countries at the 24rd Session of the Human Rights Council’, (2013), available at: <https://media.business-humanrights.org/media/documents/files/media/documents/statement-unhrc-legally-binding.pdf>

In June 2014, the UN Human Rights Council adopted a resolution^[3] drafted by Ecuador and South Africa resulting in the establishment of an open-ended intergovernmental working group (IGWG), chaired by Ecuador, with the mandate to elaborate an international legally binding instrument (LBI) on transnational corporations and other business enterprises with respect to human rights.

The negotiations concerning the LBI have been a recurring annual event, typically held towards the end of October at the United Nations headquarters in Geneva. This significant gathering brings together representatives from various States, civil society organisations, affected communities, trade unionists, and business representatives to make textual suggestions, share their insights, and recommendations to the ongoing drafting process. As of the latest developments, the Updated Draft Treaty has been released, with Ecuador continuing to hold the position of chair of the IGWG.

The first two sessions, held in 2015 and 2016, were dedicated to conducting constructive deliberations on pertinent conceptual issues such as the form, content, nature, and scope of the envisaged instrument. Countries, mostly from the Global South, have expressed continuous support for the treaty and this is indeed an important step for environmental rights, gender justice, indigenous peoples' rights, human rights defenders, and a peoples' movement struggles for corporate accountability. The sessions that followed focused on reviewing the draft treaty line by line to identify where there is agreement and where delegations wish to modify the text of the draft treaty. Furthermore, it took into account discussions of the intersessional thematic consultations, inputs from the appointed legal experts as well as informal proposals by the Chair to foster consensus.

The ongoing negotiations in 2026 presents an opportunity to highlight the gaps in the current Updated Draft Treaty^[4] that requires addressing if the final version of the treaty is to be meaningful for those it is envisioned to protect, namely frontline communities, including indigenous communities and human rights defenders, who have historically borne the burden of harmful practices by business.

It further presents an opportunity for African States to make textual proposals to specific articles to ensure that the treaty will ultimately be able to adequately and meaningfully address the challenges and experiences of affected communities in Africa; shape a strong framework that ensures effective access to remedies for victims of rights violations in Africa; advance justice in Africa; as well as ensure that the standards of respect for and prevention of violations of human rights are mandatory.

[3] Human Rights Council resolution 26/9, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, A/HRC/RES/26/9 (14 July 2014), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement>

[4] This Updated Current Draft also referred to as the "Updated Draft Treaty" is the fifth version of the text discussed by the IGWG, after the Zero draft, Revised draft, and Second and Third revised drafts.

Textual Recommendations

Legally Binding Treaty on Business and Human Rights

The Updated Draft Treaty contains a number of significant changes compared to the Third Revised Draft. The treaty in its current form has a number of structural gaps and inconsistencies that must be addressed in the upcoming negotiations to ensure that the treaty remains relevant and that the process can move forward. The most pressing issues are:

Primacy of human rights

Reference to the primacy of human rights obligations has been removed from the Updated Draft Treaty. The core purpose of an international human rights instrument on business and human rights is to raise national standards to align with international human rights law and address the systemic accountability and access to remedy gaps victims face when seeking justice for corporate abuses. The treaty holds significant potential to enhance international human rights protections, particularly through its provisions on liability, jurisdiction in cross-border cases, and access to remedies.

As the most robust and tangible mechanism for closing the major accountability gaps within the international framework, the treaty must reaffirm and enforce the primacy of international human rights law, including the African Charter on Human and Peoples' Rights, over economic activities, including trade and investment agreements. This ensures that individuals and communities can seek effective redress for human rights violations.^[5]

Language of text

The Updated Draft Treaty's language has shifted from stronger language typical of international human rights law instruments to softer terms found in the United Nations Guiding Principles on Business and Human Rights (UNGPs), which contain obligations for states and responsibilities for corporations, and other similar soft law frameworks. For example, the term "obligation" of businesses to respect human rights has been replaced by "responsibility" or "responsibilities."^[6] While related, these concepts differ significantly with "obligations" implying legally binding duties, whereas "responsibilities" can be voluntarily assumed or based on values. This reflects the general approach of the Updated Draft Treaty not to introduce binding obligations for companies.

[5] The primacy of international human rights law is aligned to Article 103 of the UN Charter read together with articles 55 and 56.

[6] PPI2 of the Updated Draft Treaty dated July 2023.

Similarly, the use of the term “adverse” in Article 1 introduces a higher threshold for proving human rights violations, leaving it open to broad interpretation without clear criteria for determining what constitutes adverse human rights impacts. This ambiguity may suggest that corporations could avoid accountability for human rights violations unless they are deemed adverse.

Lastly, the use of “abuses” instead of “violations” when referring to corporate actions provides a semantic shield for misconduct. Mainstream states argue that only sovereign nations can commit “violations” while corporate misconduct should be merely termed as “abuses”. This distances corporate acts from international human rights standards.

Reference to domestic law

Several Articles in the Updated Draft Treaty defer to domestic laws, administrative systems, or suggest adjusting its provisions to align with national frameworks.^[7] This weakens the treaty's role as an international instrument and diminishes the effectiveness of its provisions. Rather than setting binding international standards that apply universally, these provisions leave it to individual States to establish standards through their own laws. To preserve the treaty's global applicability, references to domestic laws, frameworks, and administrative systems should be removed or alternatively, its over-reliance should be diminished.

Obligations for business

Arguably, the two most pivotal aspects of the treaty are the establishment of clear obligations for businesses and the implementation of robust mechanisms for holding them accountable in cases of failure to protect human rights. The obligations placed upon businesses must be precisely defined, leaving no room for ambiguity, ensuring that they proactively safeguard human rights throughout their operations.

Equally crucial are the mechanisms for holding these businesses accountable. These mechanisms must not only be effective but also accessible to victims of human rights abuses, serving as a means of compensation to help restore them to the same position they were in before the impact of these abuses. Moreover, these mechanisms act as a powerful deterrent, sending a resounding message that human rights violations by corporations will not be tolerated, thus fostering a culture of responsible corporate behaviour and a safer, more rights-respecting environment for all.

[7] Articles 7.2, 8.2, 8.4, 8.5, and 9.3 of the Updated Draft Treaty dated July 2023.

Key Provisions & Articles

Preamble and Article 2: Statement of Purpose

Although the Preamble of the Updated Draft was negotiated during the 2023 IGWG session, we encourage States to support expanding the substantive scope of the text, including a fuller integration of environmental and climate considerations.

Article 1: Definitions

The definition of “human rights abuse” in **Article 1.3** has been changed and specific reference to the environment has been removed.

Recommendation:

re-inclusion of explicit reference to the right to a safe, clean, healthy and sustainable environment.^[8] The term “abuse”, should be changed back to “violations”.

Article 1.4 includes an overly broad definition of “business activity”. It includes “any economic or other activity undertaken by a natural or legal person”. This could include virtually any possible human activity.

Recommendation:

elaborate a narrower definition of business activity limiting to Resolution 26/9, transnational corporations and other business enterprises with a transnational character.

Article 1.8 refers to human rights due diligence processes and includes an obligation to mitigate adverse human rights impacts. Due diligence obligations should not seek to “mitigate adverse human rights impacts” as this implies accepting a certain level of abuse, which contradicts and undermines the purpose of the treaty.

Article 1.9 defines remedy and states that remedy shall mean “restoration of a victim of a human rights abuse to the position they would have been had the abuse not occurred, or as nearly as is possible in the circumstances.”

[8] In July 2022, the United Nations General Assembly unanimously affirmed that a clean, healthy, and sustainable environment is a human right – and a right for all, not just a privilege for some.

The idea of restoration is rooted in civil law and is very individualistic. However, harms committed by transnational corporations often impact an entire community and their way of life. **Article 1.9** ought to include specific reference to victims or communities as well as group remedy.

Furthermore, restoration does not consider the cumulative impacts of business, which are commonly understood as the impacts which combine from different projects resulting in significant change, which is larger than the sum of all the impacts.

Consequently, remedy should also include structural or collective relief to adequately address the harm an entire community would have faced, cumulative impact, as well as the reality that often the community cannot be put back into the position it once was in.

Recommendation:

inclusion of the words “victims” or “community”, “group remedy” or “class actions” to provide for group harm and insertion of “structural relief”.

Article 3: Scope

The scope of the treaty^[9] is one of the most fundamental and contentious components of the negotiations. It involves two aspects, namely the type of corporations to which the treaty should apply and the types of human rights that the treaty should cover.

The Updated Draft Treaty expands the scope of the treaty to all business, including micro, small and medium scale enterprises and businesses, companies, and corporations operating at the national level, thus departing from the objectives set out in Resolution 26/9. Moreover, the objective of the treaty was to address the growing power imbalance between states and corporations. It was also about ensuring more responsibilities for TNCs which are getting more influent at the international scale, without the accompanying obligations. For example, TNC's can sue states before the investor-state dispute settlement system. Micro, small and medium scale enterprises and businesses, companies and corporations operating at the national level are already subjected to domestic legal frameworks and instruments that oversee their operations and conduct.

[9] The scope of the treaty has been set out in a footnote to the preamble of Resolution 26/9.

Generally, human rights violations committed in developing countries by transnational corporations are headquartered in the Global North. It is clear that there are complex regulatory challenges posed by the nature of transnational corporations' operations because their operations span across jurisdictions, which often undermines the pursuit of an effective remedy for affected people and communities due to legal and practical challenges. Consequently, the treaty must respond to these specific challenges created by the transnational character of transnational companies and not companies that only operate at the domestic level.

Expansion of the scope of the treaty fails to respond to the specific challenges associated with transnational companies and falls outside of the scope of the IGWG's negotiations, thus negating the democratic nature of the negotiation and drafting process.

A strict focus on TNCs is essential because the treaty must address the distinct accountability gap created by corporate transnationality: the ability of TNCs to structure operations, assets, subsidiaries, supply chains and decision-making across multiple jurisdictions can fragment responsibility and place effective remedy beyond the reach of affected communities. Extending the treaty to purely domestic enterprises risks diluting this central purpose and imposing an additional international framework where domestic regulation already exists, while failing to confront the cross-border structures and power imbalances that necessitated the treaty in the first place.

In addition to the type of corporations to which the treaty should apply, scope also refers to the types of human rights that the treaty should cover. **Article 3.3** restricts the scope to "internationally recognized human rights and fundamental freedoms binding on the State Parties", limiting the scope of the treaty to the instruments ratified by each state and excludes all non-binding instruments such as UN Declarations.

Given the kinds of violations and harms affected people and communities experience, the treaty must cover all human rights, including civil, political, social, economic, cultural, and environmental. If the treaty is limited to 'gross' human rights violations, it will not be able to capture most of the human rights violations experienced by people and communities living in the Global South, especially in Africa.

Recommendation:

scope should be restricted to transnational corporations and other business enterprises with a transnational character and must include all international human rights instruments.

Article 4: Rights of Victims

Article 4 refers to a broad range of rights and protections which already exist in international law and should be guaranteed not only to victims of corporate abuses but to all individuals. Consequently, “rights-holder” is a preferable term and should be used. “Victim” may be kept in specific instances when it relates to rights holders whose rights have been violated or allege that their rights have been violated.

Recommendation:

as **Article 4** sets out rights that concern all rights-holders, a change in title to **Article 4** is recommended. This would align **Article 4** with international human rights law instruments.

Article 4.2(c) lists a series of rights that are guaranteed. A significant challenge for workers exercising their right to freedom of association is the fear of discriminatory dismissal. In such cases, the remedy must be reinstatement, given that compensation alone may continue to contribute to an atmosphere of intimidation in the workplace.

Recommendation:

inclusion of the terms “reinstatement in employment” as a right guaranteed after the term “compensation” in the list as it stands now.

Article 4.2 (f): the treaty would gain to establish a non-exhaustive list of categories of documents that would help judicial and non-judicial grievance mechanisms. It is true that differences in jurisdictional systems make establishing a precise list quite complicated (and there is the risk that company see it as a “checkbox” list without giving further documents). Nevertheless, there are certain documents that are recurrent across jurisdictions, especially when it comes to transnational companies, and it would help victims establish liability while identifying potential actors for several and joint liability (example, list of owners of the TNC, contracts signed between TNCs and financial institutions, service level agreements etc.).

Article 5: Protection of Victims

Article 5 is of crucial importance for the people and communities affected by human rights violations committed by transnational corporations. The protection of rights holders and affected communities is vital to ensure that victims and affected communities can secure access to redress and justice for the abuses and violations committed against them, in light of the intensification of attacks against victims and affected communities seeking accountability and justice. However, **Article 5** fails to explicitly mention State Parties’ obligation to protect communities.

Recommendation:

inclusion of the word "communities", in the first paragraph of **Article 5.1** so that it reads –

"States Parties shall protect victims, their representatives, families, communities and witnesses from any unlawful interference with their human rights and fundamental freedoms...".

Article 5.2 must further explicitly state that the measures that State Parties must take to guarantee a safe and enabling environment for human rights defenders be 'gender-responsive', in addition to being adequate and effective.

Recommendation:

insertion of the term "gender-responsive" before words "adequate and effective" to **Article 5.2**

Article 6: Prevention

The Updated Draft Treaty has not made sufficient progress in clearly defining the requirements for conducting due diligence. It remains vague, particularly regarding the due diligence process, material scope, and compliance. While it removed earlier provisions in **Article 6** that required companies to take specific measures under human rights due diligence, it added a definition of human rights due diligence in **Article 1.8**. However, this definition falls short of clearly outlining the responsibilities of business enterprises compared to other international instruments. **Article 6** ought to also include positive obligations to ensure that corporations have a duty to positively impact the environment.

Additionally, the previous definition of adverse human rights impacts, which included both direct and indirect harms, has been removed. This omission limits the treaty's scope, particularly regarding actors such as parent companies, investors and financiers, who are often linked to indirect harm.

In previous versions, **Article 6.3** afforded flexibility to implement Due Diligence obligations in a manner proportionate to companies' size, risk of human rights abuse or the nature and context of their business activities and relationships. This is important because, since the current version of the treaty applies to all businesses, flexibility must be allowed to small and medium enterprises of a transnational character which may not have the same means as big multinationals. The treaty should not negatively impact smaller businesses.

Article 6.4 includes due diligence obligations that companies must undertake. The steps listed in Article 6.4 differs from international due diligence standards such as UNGP 17 and the Organization for Economic Cooperation and Development (OECD) standards. Furthermore, it fails to refer to “actual or potential” impacts, makes no reference to the ongoing nature of due diligence, and when compared to the OECD standards, the definition is missing two key steps of the due diligence process, namely step 1, to embed responsible business conduct into policies and management systems and step 6, to provide for or cooperate in remediation when appropriate.

Furthermore, “labour rights, environmental and climate change” impact assessments has been removed from **Article 6.4(a)** and should be reincluded.

Reference to enhanced due diligence in conflict-affected areas, including in situations of occupation, have been removed from **Article 6** and must be re-included.

Recommendation:

align Due Diligence steps with UNGP 17 and OECD standards, reinclude “labour rights, environmental and climate change” with respect to impact assessments, and re-include obligations regarding enhanced due diligence in conflict-affected areas, including in situations of occupation.

Article 6.5 is quite limited and fails to refer to supply chain relationships. The treaty must cover all activities along the value chains of transnational corporations to guarantee the full protection of human rights.

Recommendation:

reference to the entire supply chain must be made in **Article 6.5**.

Article 7: Access to Remedy

One of the primary objectives of the proposed treaty is to improve access to remedy. The right to access adequate remedy is inclusive of both substantive and procedural aspects. Procedural matters are central to many legal battles between affected groups and businesses and have played a key role in landmark transnational litigation.

Article 7 requires States to enable victims access to adequate, timely, and effective remedy and access to justice, and to overcome the specific obstacles which women and groups in vulnerable or marginalised situations face in accessing such mechanisms.

While the Updated Draft Treaty provides greater legal clarity on some procedural matters, it represents a step back from previous drafts with regard to several contentious issues, particularly jurisdiction. Specific mention of *forum non conveniens* as a legal obstacle has been removed and must be reincluded.

We have seen that the principle of *forum non conveniens* is a legal barrier to justice for victims of rights violations by corporations because it allows courts to dismiss cases on the grounds that another jurisdiction would be more appropriate for trial, often leading to dismissals or transfers to jurisdictions where victims may face significant obstacles in seeking redress. This can disproportionately affect individuals from certain countries, as they may lack access to legal resources or protections in the jurisdictions to which their cases are moved.

Consequently, corporations can exploit this doctrine to evade accountability by shifting cases to favourable legal environments, further complicating the victims' ability to pursue justice and undermining the principles of corporate responsibility. The discretionary nature of *forum non conveniens* also introduces unpredictability and inconsistency in judicial outcomes, discouraging victims from filing claims and perpetuating a lack of accountability for human rights abuses. The principle of *forum necessitates* will therefore facilitate victims and affected communities' ability to access justice through the courts of their choosing.

As mentioned above, the language of **Article 7.2 and 7.4** is limiting and therefore the words "consistent with its domestic legal and administrative systems" in **7.2** and "to the extent applicable to the State agency in question" in **Article 7.4**, respectively, and should be removed to avoid limiting the effectiveness of these provisions.

The obligation to "progressively reduce" obstacles in **7.2(b)** should be replaced with the obligation to "remove".

Article 7.4(d) relates to adopting measures to facilitate the production of evidence such as the reversal of the burden of proof and the dynamic burden of proof. This is however limited by the phrase "when appropriate", which must be removed.

In previous versions of the treaty, victims were guaranteed "access to appropriate diplomatic and consular means to facilitate access to effective remedy, especially in cases of business-related human rights abuses of a transnational character". This provision has not been considered in the two last versions of the treaty, which is a regression in negotiations.

Recommendation:

Deletion of the phrase “consistent with its domestic legal and domestic systems” in **Article 7.2** and “relevant State agencies” in **7.2**.

The text of **7.2(b)** should include the obligation to “remove” obstacles as opposed to “progressively reduce” them.

Article 7.3 must also facilitate access to information in a gender sensitive manner.

Deletion of the words “appropriate” in **Article 7.4(d)** and include stronger and effective access to remedy.

Reinsertion of a provision on *forum necessitates* as per **Article 9.3** of the *Third Revised Draft*.

Article 8: Legal Liability

The Updated Draft Treaty requires States Parties to establish “a comprehensive and adequate system of legal liability for legal and natural persons conducting business activities.”^[10] Holding businesses accountable for human rights abuses resulting from their operations is a key motivation behind the proposal for a legally binding instrument to regulate corporate activities, making this one of the most contested provisions in the various drafts.

However, the introduction of numerous qualifiers in **Article 8** subjects the principles outlined in the Updated Draft to the domestic legal systems of States Parties. For example, paragraphs **8.2 and 8.3** begin with “Subject to the legal principles of the State Party,” and paragraphs **8.2, 8.4, and 8.5** include the phrase “consistent with its domestic legal and administrative systems.” These references significantly weaken the provisions of **Article 8** and should be removed.

Article 8.3(b) of the Updated Draft states that businesses shall be liable for “aiding, abetting, facilitating, and counselling the commission of human rights abuse”, addressing corporate complicity in a broader sense.

[10] Article 8.1 of the Updated Draft Treaty dated July 2023.

Article 8.4(c) further clarifies that this liability is independent of whether the main perpetrator has been held liable for the unlawful act. While the Updated Draft provides greater clarity on the ways a business can be complicit in human rights abuses, compared to the Third Draft's more limited reference to "complicity in a criminal offense", this improvement is undercut by domestic law qualifiers in both paragraphs **8.3 and 8.4** mentioned above. This gives States the ability to opt out through their domestic legal frameworks, limiting the effectiveness of these provisions.

One of the treaty's most critical elements is the regulation of parent company liability. It is essential to establish a presumption of liability for the parent or controlling company throughout the entire supply chain when: (i) the company controls, supervises, or influences the company directly violating human rights; (ii) the company controls or supervises the specific activity causing the violation; or (iii) the company could have foreseen the harm.

The Updated Draft, unlike previous drafts, does not directly address the issue of joint or several liability. It also lacks a clear provision on when a business can be held responsible for harm caused by others. The Third Draft provided more clarity on this by including former **Article 8.6**, which required States to ensure that businesses are liable for human rights abuses committed by persons they control, manage, or supervise, or for abuses they could have foreseen but failed to prevent. By omitting this, the Updated Draft weakens efforts to ensure that domestic legal systems hold parent companies or buyers accountable for human rights violations occurring within their business activities and relationships. It also fails to include a rebuttable presumption of control, a mechanism supported by civil society to establish corporate liability for human rights abuses in value chains or corporate groups. These matters are thus left entirely to domestic law.

Furthermore, the Updated Draft remains silent on the connection between due diligence and legal liability for businesses. In contrast, the previous draft aimed to balance avoiding the creation of a "due diligence defense" to legal liability while allowing States to incentivise businesses to implement due diligence requirements, which could, to some extent, limit liability. The previous **Article 8.7** stated that "[h]uman rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability...".

This provision was removed from the Updated Draft Treaty and amounts to a significant step backward, as the current draft allows States Parties to create a due diligence defense, meaning that if a business complies with specific due diligence requirements, it could avoid being held liable for human rights abuses resulting from its activities or relationships. This provision should be reintroduced, clearly defining the relationship between due diligence and liability, ensuring that due diligence cannot be used as a blanket defense against legal responsibility.

An additional article ought to be included, stating that home and host states will have the responsibility to cooperate along with corporations recognized of having abused a human right to ensure that necessary measures are put in place to ensure that violations never take place again, irrespective of geographical location.

Recommendation:

removal of reference to “domestic legal and administrative systems” in **Articles 8.2, 8.4, and 8.5** and “subject to the legal principles of the State Party” in **8.2**.

Article 9: Jurisdiction

Article 9.1 outlines jurisdictions competent to hear cases that fall within the scope of the treaty. The Updated Draft establishes the competence of jurisdictions where the human rights abuse occurred and where the harm was sustained. In contrast, the previous draft referred to both the location where the abuse took place and/or its effects were felt, as well as where an act or omission contributing to the abuse occurred. Both drafts allow jurisdiction where harm occurred, but the Updated Draft is somewhat less clear regarding the jurisdiction of the State Party where the act or omission leading to the harm—the causal or originating event—took place. While “human rights abuse” may be interpreted broadly to cover this, greater legal clarity could be achieved by explicitly stating that both the State where the causal event occurred and the State where the harm resulted are competent to hear cases.

When applied together, the principles of jurisdiction and *forum non conveniens* often enable business enterprises to evade liability in their home states for damages caused abroad. To prevent businesses from avoiding liability through *forum non conveniens*, the treaty must explicitly ensure that courts in the home state of the business enterprise do not decline jurisdiction on this basis.

Similar to States collectively exercising their regulatory power over transnational corporations and therefore must also ensure that they are able to fulfil their obligation to cooperate internationally to create an enabling environment for holding transnational corporations accountable and for the realisation of human rights.

Jurisdiction must ultimately be designed around access to justice rather than corporate domicile. A treaty that permits victims to pursue claims only in the place of immediate harm risks reproducing the structural inequalities that make transnational corporate accountability difficult in the first place, particularly where affected communities face weak institutions, limited resources, or procedural barriers. The treaty should therefore recognise multiple, concurrent and complementary bases of jurisdiction including territorial, causal, home-State and forum necessitatis jurisdiction while preventing forum non conveniens from defeating legitimate claims. This would ensure that jurisdiction functions not as a procedural barrier to accountability, but as a means of overcoming the transnational fragmentation through which corporate power can otherwise evade effective judicial scrutiny.

Moreover, the terms 'human rights abuse carried out' focus on companies that willingly violated human rights. It thus does not include companies whose acts or omissions led to adverse human rights violations, even though those violations are not intended.

Article 9.4 of the Updated Draft introduces the concept of international *lis pendens*, requiring States to consult with one another when the same issue is already under litigation. According to the draft's wording, a case under consideration in one State could not proceed in another. However, for victims, access to multiple jurisdictions is often essential to secure comprehensive reparations and ensure the effectiveness of potential judgments. To address this, **Article 9.4** from the Third Revised Draft should be reinstated, allowing recourse to multiple jurisdictions when necessary.

Although limited, the Third Revised Draft allowed for some possibilities of *forum necessitatis*, which has completely disappeared from the Updated Draft. It is therefore recommended that an additional sub-article is included in **Article 9**.

Recommendation:

Reinclusion of **Article 9.4** "Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is connected with a claim against a legal or natural person domiciled in the territory of the forum State."

Inclusion of an **Article 9.5** stating "Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State if no other effective forum guaranteeing a fair judicial process is available and there is a connection to the State Party concerned as follows:

- a. the presence of the claimant on the territory of the forum;
- b. the presence of assets of the defendant; or
- c. a substantial activity of the defendant.

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