

LEGAL BRIEF

Corporations Operate Globally. Accountability Must Too

Three legal elements to establish a treaty that could help stop corporate impunity

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1. Introduction

Twelve years into negotiations for a treaty to regulate transnational corporations (TNCs) and enterprises operating extraterritorially, States have an important opportunity this year to advance a strong legal foundation for corporate accountability and to champion the intergovernmental working group established on 26 June 2014 via [UN resolution 26/9](#).

As this treaty process enters a critical stage, arguments on corporate obligations, liability, scope, jurisdiction and enforcement will determine whether the treaty strengthens the international legal framework for corporate accountability or leaves significant existing gaps unresolved. **This paper advances three closely connected legal arguments** that would achieve a historic and inspiring leap forward to stop corporate impunity and strengthen international law:

1. **Direct obligations on businesses**, linked to prevention, liability and remedy, especially for grave violations.
2. A scope that captures transnational corporations and enterprise activity is consistent with **extraterritorial obligations and universal jurisdiction** so that affected communities can seek and obtain remedy for harms caused across borders.
3. A pathway to an **international tribunal** when domestic mechanisms fail to provide effective remedy.

ESCR-Net argues that a treaty that recognizes liability without establishing corresponding legal obligations risks reproducing the limitations of non-binding instruments in respecting human rights, as promoted by instruments such as the UN Guiding Principles on Business and Human Rights (UNGPs). Similarly, obligations without effective liability for responsible actors, remedy for those they affect across borders, and a strong enforcement mechanism would allow human rights violations and abuses to accumulate, compound, and fester if dependent on domestic or regional systems that may be unwilling or unable to hold transnational business enterprises accountable.

The objective of this potentially historic negotiation process should therefore be to establish a coherent chain from obligation to prevention, to liability, ultimately with an international tribunal to hold legal persons (entities) accountable for their actions and ensure remedy across borders.

2. Corporate obligations and liability of entities for their operations across borders

2.1. Human rights obligations of business and other enterprises

The third draft treaty expressly referred in Article 2(1)(b) to the objective of clarifying and ensuring respect and fulfilment of the “human rights obligations of business enterprises”. This was subsequently changed to “responsibilities”. The distinction is important. The United Nations Guiding Principles on Business and Human Rights (UNGPs) recognise that enterprises have a responsibility

to respect internationally recognized human rights. But the purpose of a legally binding instrument is precisely to move beyond a framework in which corporate responsibility is principally articulated as a normative expectation and instead establish enforceable legal duties for corporate actors.

The treaty should, therefore, restore a reference to the “obligations” of business enterprises, or at minimum expressly recognize both their responsibilities and obligations. This does not require the treaty to make business enterprises direct subjects of international law in the same manner as States. Rather, the treaty can require States Parties to establish, within their domestic legal systems, enforceable obligations governing business enterprises including obligations applicable to conduct occurring beyond territorial boundaries. In this way, the treaty would impose an international obligation upon States to regulate corporate conduct while simultaneously requiring them to give corresponding corporate obligations effective through domestic law and international enforcement mechanisms.

An Inter-American Commission on Human Rights [report](#) on business and human rights, the [Routledge Handbook](#) on Extraterritorial Human Rights Obligations and the [Maastricht Principles](#) on Extraterritorial Obligations in the area of Economic, Social and Cultural Rights develop the relationship between States’ international human rights obligations and their duties to regulate, prevent, investigate, sanction and provide remedy in relation to corporate conduct. This reinforces the point that the treaty can create binding obligations on States to establish and enforce concrete legal duties and obligations applicable to business enterprises without making the broader question of corporate international legal personality determinative.

The direct obligations of business and other enterprises is neither novel nor unique to this process. Several international legal instruments already establish that obligations may extend to nonstate actors, including both legal persons and individuals. For example, the [WHO Framework Convention on Tobacco Control \(WHO FCTC\)](#) has established, through State parties, obligations on cigarette and tobacco companies including to limit advertising and false information and to prevent violations of the right to health. Similarly, the Convention against Corruption obligates the private sector to comply with certain obligations to avoid corruption.

In a [paper](#) published in 2025, the Global Campaign to Dismantle Corporate Power elaborated further on how corporate obligations exist in different formats as part of law. Taken together, these examples demonstrate that imposing enforceable human rights obligations for business enterprises through a legally binding instrument would not constitute a departure from international law, but rather a further development of an existing principle: human rights protection cannot be effective if obligations cease to apply because the relevant relationship is between private actors rather than between an individual and the State. This provides a strong legal basis for requiring States Parties to establish enforceable obligations and liability for corporations, including transnational corporations, within their domestic legal systems.

Accordingly, ESCR-Net proposes that the purpose of the treaty under Article 2 should provide that:

“Each State Party shall ensure that its domestic legal and regulatory framework establishes and enforces effective human rights obligations for corporations within the scope of this instrument, including obligations to respect internationally recognised human rights, prevent and address human rights abuses and violations, and provide or cooperate in effective remedy where they benefit, cause or contribute to such abuses or violations.”

Some States such as Brazil and Cuba have previously suggested language to support the establishment and clarification of corporate obligations in the context of the treaty negotiations and several States are likely to support this notion.

2.2. Extraterritorial Liability in transnational enterprises

The cross-border nature of the accountability gap is well documented: An [analysis](#) of 200 landmark corporate-related human rights lawsuits found that more than half (54%) involved claims were brought in a country other than where the abuse or violation took place. A further [analysis](#) identifies *forum non conveniens* — States dismissing cases in favor of a court deemed more appropriate — as sharply limiting the delivery of justice and a key gap in international law that results in the dismissal of a majority of cases related to corporate accountability.

While it is important to clarify and articulate the purpose of the treaty, it is also significant to designate liability to transnational entities (corporations and other enterprises) in the complex structures that they purposefully build to alleviate any legal action against them. Parent companies and entities within transnational corporate structures should not be able to escape liability for human rights abuses and violations merely because the relevant conduct is attributable to its subsidiaries, contractors, suppliers, joint ventures or other business relationships located in different jurisdictions.

The treaty must, therefore, ground corporate liability in the conduct and activities of business enterprises, rather than their formal legal status. The experience under WHO FCTC Article 19 may also provide useful comparative support here, particularly regarding evidentiary barriers in corporate liability cases. The relevant question should not be limited to identifying the legal entity that committed the harmful act. It should also consider which entity exercised control or decisive influence, who made the relevant decisions, who benefited from the activity, who contributed to the harm, and who had the capacity and legal duty to prevent it.

This is particularly important in global value chains.

Article 6.5 already recognizes that business enterprises should take appropriate steps to prevent human rights abuses by third parties where the enterprise controls, manages or supervises the third party. That language should be retained and clearly connected to the liability provisions. The legal principle of foreseeability and the corresponding duty to prevent are of limited value if no legal consequences result from failing to discharge that duty.

Connected to this, Article 8 should, therefore, establish liability not only for entities that directly cause an abuse or violation, but also for those whose conduct, decisions, or exercise of influence materially contributed to, benefitted from, or failed to prevent an abuse or violation. The existing reference to aiding, abetting, facilitating and counseling in Article 8.3(b) provides an important basis. However, it should be made clear that these forms of liability operate alongside, rather than instead of, joint and several liability.

Joint and several liability is particularly important in transnational cases. Where several entities contribute to the same harm, those affected by corporate abuses and violations should not be required to pursue each corporation separately and bear the risk that one entity is insolvent, inaccessible or protected by the corporate structure.

Article 8.1 should, therefore, be strengthened as previously proposed by Palestine:

"Each State Party shall ensure that its domestic law provides for a comprehensive and adequate system of legal liability, including joint and several liability where appropriate, of legal and natural persons for human rights abuses and violations falling within the scope of this instrument."

The provision should further clarify that where several legal and natural persons are responsible for the same abuse or violation, victims may obtain full compensation from any person legally responsible, without prejudice to rights of contribution between the responsible parties. This would be particularly important for parent companies and other entities operating across global value chains.

Human rights due diligence should likewise not operate as a defence to liability where a business enterprise has caused, contributed to, benefitted from or failed to prevent human rights harm.

2.3. Human rights due diligence should not automatically absolve a legal or natural person from corporate liability

The former Article 8.7 of the third draft provided that conducting human rights due diligence would not automatically absolve a legal or natural person from liability for causing or contributing to human rights violations or abuses, benefiting from them, or failing to prevent them. Palestine, Ghana and South Africa supported the reintroduction of this principle as Article 8.6 quinquies.

That language should be restored and further strengthened to read:

"Human rights due diligence shall not automatically absolve a legal or natural person conducting business activities, in particular those of a transnational character, from liability for causing, contributing to or benefiting from human rights abuses or violations or failing to prevent such abuses and violations by a natural or legal person."

Due diligence is a process of prevention. It should not become a safe harbour from liability. An enterprise that conducts a formal due diligence exercise should not automatically escape legal liability where it nevertheless benefits from, causes or contributes to abuses and violations, or fails to discharge a legal duty to prevent harm. This is important in situations involving grave violations of international law.

2.4. Evidential burdens in corporate liability

In relation to access to remedy, the [2022 Chair's Proposals](#) included measures to address difficulties in proving corporate liability. These included mechanisms to reverse or reduce evidential burdens, including through presumptions and, in appropriate cases, strict or absolute liability. That language should be reconsidered for inclusion in the next draft.

The rationale is compelling, especially where individuals and communities affected by corporate power face a profound informational imbalance, leaving them with limited access to the information necessary to establish corporate liability. Evidence concerning corporate decision-making, risk assessments, internal communications, ownership structures, and relationships between parent companies and subsidiaries is frequently held by the corporation itself and very rarely, if ever, disclosed.

Tobacco litigation has demonstrated the significant imbalance in access to information, internal corporate evidence and resources between corporations and those seeking accountability. The recent Article 19 Expert Group of the WHO FCTC [report](#) provides that disclosure, access to evidence and appropriate evidentiary rules are integral to effective access to remedy in complex transnational corporate cases.

The treaty should therefore include provisions enabling domestic courts, in appropriate cases, to reduce or reverse evidential burdens, draw appropriate presumptions, or impose strict liability where justified by the nature of the activity, the gravity of the harm, the degree of corporate control and the availability of evidence.

2.5. Violation of international humanitarian law

The development of legal frameworks to reduce or reverse evidential burdens is especially relevant in the context of large development projects, genocide, war crimes and crimes against humanity.

Article 10.1, which addresses the absence of statutes of limitation for the most serious crimes of concern to the international community, including war crimes, crimes against humanity and genocide, provides an important foundation. But temporal accountability is only one part of the problem. The treaty should connect Article 10.1 to prevention, liability and access to remedy.

Where business activities are associated with atrocity crimes or other grave breaches and gross violations of international law, the duty of prevention should become substantive. It should not be enough for an enterprise simply to identify the risk and continue operating.

Where an enterprise knows or should know that its activities contribute to a grave violation, prevention should include, where necessary, cessation of the relevant activity or withdrawal/divestment from the relevant business relationship. When the risk is unclear, the treaty must ensure that precautionary measures are put in place – similar to the [precautionary principle](#) specific to environmental law, which ultimately alleviates the burden of proof from communities and people facing human rights violations or abuses and places it on those involved throughout the chain of action.

The principle should be clear: Where continued corporate activity would contribute to or benefit from a serious violation of international human rights or humanitarian law, the obligation to prevent should include an obligation on corporations to immediately cease or withdraw where necessary to prevent further harm.

This is particularly important in conflict-affected areas, including situations involving occupation, apartheid, armed conflict, genocide, war crimes and crimes against humanity. In previous positions, ESCR-Net highlighted that Article 6 on prevention should include an expanded definition of enhanced due diligence in conflict-affected areas, going beyond the possibly restrictive confines of due diligence.

“...the enhanced due diligence must take place prior to the commencement of business activities and throughout all phases of operations, corporations and/or State-entities must refrain from pursuing or starting operations in situations where no independent due diligence assessment can guarantee neither directly causing, contribution, benefiting or being directly linked to human rights abuses or violations of human rights and humanitarian law standards arising from business activities, or from contractual business relationships across the value chain, including with respect to their products and services; entities already engaged in business activity in conflict-affected areas, including situations of occupation and as part of apartheid regimes, shall also adopt and implement urgent and immediate measures, such as divestment and disengagement policies, to avoid corporate involvement in or contribution to human rights abuses and violations in their activities and relationships.”

In summary, the treaty should therefore establish a coherent framework of corporate liability addressing the following :

- first, an obligation to identify and prevent risks;
- second, an obligation to cease business operations where abuses or violations occur or mitigate where a risk of abuses and violations exists;
- third, liability where an enterprise causes and/or contributes to the abuse or violation of human rights or benefits from it;
- fourth, liability where an enterprise fails to discharge a legal duty to prevent;
- and finally, effective remedy and reparation for those facing corporate abuses and violations.

3. Scope of the treaty: transnational corporate power

The treaty should expressly remain focused on business activities of a transnational character - applicable both to profit and non-profit enterprises operating across borders as well. This scope should be elaborated in a way that captures the realities of transnational corporate power. The third revised draft deliberately moved away from defining a "transnational corporation" as a particular corporate form and instead focused on "business activities of a transnational character". Article 3 provides that the instrument applies to all business activities, including those of a transnational character.

It is important that the concept of transnationality should be interpreted dynamically. The reason is simple: corporate power increasingly travels independently of corporate registration. A corporation or enterprise may be incorporated in one State, have its parent company in another, make strategic decisions in a third, operate data infrastructure in a fourth, use suppliers and contractors in a fifth, and produce human rights impacts across numerous jurisdictions.

Transnationality is, therefore, not simply a question of where a company or enterprise is incorporated. It is a question of where corporate power is exercised, where decisions are made, where money is being held and utilized, where control is located, how business activities are organized across borders, and where the effects of those activities are experienced.

The treaty should accordingly recognize that business activities have a transnational character where they cross borders through their operations, ownership, planning, direction, control, financing, technology, data flows, supply chains, value chains or effects.

A possible interpretive formulation would be:

"For the purposes of this instrument, business activities have a transnational character where the activities, operations, decision making, ownership, control, financing, technology, data flows, supply or value chains, or other exercise of corporate power of a business enterprise or profit or non-profit designations crosses national borders or produces significant human rights impacts across borders."

The place of incorporation should not be determinative.

This approach is consistent with the treaty's evolution. Earlier drafts focused more explicitly on transnational corporations, whereas the current architecture focuses on business activities and their transnational character. The negotiating history therefore provides a basis for retaining the broader concept while ensuring it is not interpreted so narrowly that the treaty ceases to address transnational corporate power beyond the duty-bearing state.

Additionally, the current victim/survivor-focused language could unintentionally narrow the treaty towards individual rights. The treaty should provide a specific space for collective rights, self-determination and right-to-development claims, particularly for Indigenous Peoples and

communities affected by extraction and climate injustice. This is particularly relevant when we discuss two industries whose cross border actions affect the multitudes of populations/communities, such as the extractive, military, financial and technology industries.

3.1. Capitalist extractivism

From [Colombia](#) and the lack of Free, Prior and Informed Consent by Indigenous Peoples in carbon offset investments to [Iraq](#) where the impacts of war-related environmental contamination have caused lasting health impacts on communities across regions, including birth defects, miscarriages and cancer. The same is seen in genocide throughout [Palestine](#) and ecocide in [Lebanon](#), [Palestine](#), [Sudan](#), and elsewhere. With no one to regulate corporate and other nonstate actors or hold them accountable. Similarly, in the case of the [DRC](#), growing incidences of soil and air pollution by transnational corporations lead to forced displacement of communities with catastrophic consequences on their lives and livelihoods. Many of these corporate entities are still in operation, with several of them taking advantage of the conflict situation to their benefit. For example, many companies employ armed groups, or are backed by governments, to guard mining sites.

In 2025, ESCR-Net warned that corporate actors benefiting from capitalist extractivism will increasingly and systematically target this long-awaited and hard-fought opportunity as it approaches its final stages. Provisions that were designed to protect communities in conflict-affected areas, including those living under occupation, have already been removed or diluted, despite repeated calls from States such as Palestine, South Africa, Namibia, and others for them to be maintained. References to international humanitarian law, to the protection of human rights defenders, and even to the right to a clean, healthy, and sustainable environment, all are being slowly erased or softened under pressure.

The potential for the treaty remains enormous if States take the opportunity to create a progressive and precedent-setting final draft for endorsement over the next year. The treaty could bridge recognition and enforceability of the right to a clean environment. Articles 6, 7, 8, and 9, in particular, create a cross-border accountability architecture currently absent from environmental governance. Remedies must go beyond financial compensation to include restitution (clean-up, return, resettlement and rehabilitation of all kinds), non-repetition guarantees, and satisfaction. This requires restitution of Indigenous and community rights over land, resources and livelihood, rather than mere compensation, as part of comprehensive reparation measures.

3.2. Techno-colonialism

The treaty should also be future-proof.

Corporations that pose significant cross-border human rights risks today are not limited to traditional extractive companies or manufacturers. They include financial institutions, digital platforms, AI companies, cloud providers, data brokers, surveillance technology companies, digital advertisers, payment systems and other actors whose business models operate through global

technological and financial infrastructures. In a report on [digital innovation, technologies and the right to health](#) in 2023, the UN Special Rapporteur on the Right to Health examined digital technologies through a right-to-health framework, including questions of privacy, discrimination, surveillance and accountability. The Special Rapporteur argued that States must invest "in the development of a guiding transnational code that regulates private ownership, data extraction and databanks so as to hold technology companies and States accountable beyond national borders will contribute to ensuring full enjoyment of the right to health." The Special Rapporteur also proposed that governance must be reformed "to ensure that States, the private sector and other third parties respect, protect and fulfil their duties regarding the right of everyone to the highest attainable standard of physical and mental health."

Digital technology companies demonstrate clearly why transnationality should be understood through corporate power rather than material corporate formations. A platform headquartered in one jurisdiction may make decisions about content moderation, algorithms, data processing or advertising that profoundly affect enjoyment of the human rights to political participation; information, including health and environmental information; freedom of expression; decent work/labour rights; participation in culture (civic space) or even security of person, including technology-facilitated violence and abuse, in another jurisdiction.

A [recent judicial development](#) could help illustrate this argument. In *Meareg & Others v Meta Platforms, Inc.* (High Court of Kenya, 2025), the Court rejected Meta's jurisdictional challenge in litigation concerning alleged human rights harms connected to Facebook content and content moderation, including impacts in Ethiopia. The case may provide a useful contemporary example of courts confronting precisely the issue raised here: Corporate power and digital activity can produce human rights impacts across borders, even where the corporation seeks to rely on formal corporate structure or territorial distance to challenge jurisdiction.

An AI company may develop a model in one country, train it on data collected globally, test it on specific populations, deploy it across dozens of jurisdictions and outsource important parts of its operation to contractors in other countries. A surveillance technology company might sell technology in one jurisdiction that is then used to target journalists, human rights defenders or political dissidents elsewhere.

For example, Manushya Foundation, which is a member of ESCR-Net, has worked with Tamtang, a Thai feminist organization providing lawful information on safe abortion. Following the election of President Trump and Meta's corresponding policy changes, reflecting the new anti-feminist and anti-rights approach in the United States, Meta [repeatedly suspended](#) Tamtang's Facebook page, with over 25,000 followers, for sharing lawful, life-saving reproductive health and rights information. HIV organizations providing information on affordable medicines faced similar restrictions. Decisions made in one country were imposed through private digital platforms and ended up limiting access to essential health information in another.

This is techno-colonialism in practice: political and ideological choices originating in one jurisdiction are exported through private digital infrastructure and imposed upon communities in another jurisdiction. We see similar dynamics in transnational repression across Southeast Asia, where digital infrastructures, AI-enabled monitoring, and surveillance technologies, including the Israeli-developed Pegasus spyware, enable the cross-border surveillance and intimidation of human rights defenders.

Digital technology companies fall squarely within the treaty process.

Their obligations should not differ because they operate through software, rather than factories. They must respect, protect and, where possible, fulfill human rights, prevent harm, provide effective remedy and be held accountable when they cause or contribute to abuses or violations of human rights. Human rights due diligence must never become a shield against liability.

We must also recognize digital value chains. Corporate responsibility and obligations cannot stop at the platform. These chains include AI developers, Cloud providers, data brokers, content moderation contractors, and surveillance technology providers. The example of [Palantir being used to make arrests](#) that target and harm families and children in the US illustrates how surveillance, data analytics, and AI companies increasingly provide technological infrastructure that becomes embedded in State enforcement systems.

Companies must respect, protect and, where possible, fulfill human rights, but the necessary obligations to do so are not part of the national legal systems. This is a gap that the treaty process attempts to address. When companies that design, supply, integrate or maintain technological systems used by governments to carry out violations or abuses of human rights, liability for harms committed must extend to companies that are contributing to, benefiting from, aiding, facilitating or failing to prevent such abuses and violations. Where these actors exercise or facilitate transnational corporate power and enterprises, they must fall within the accountability framework.

Ultimately, while technology may change the mechanism through which violations and abuses occur, it does not change the corporate obligation to respect human rights. If we define transnationality solely through legal incorporation, we risk regulating the multinational corporations of the 20th century. In contrast, if we define transnationality through the cross-border exercise of corporate power and pursuit of self-interest in violation of human rights, we create a treaty capable of regulating big business of the 21st century.

For far too long, multinational corporations in their home states where they are headquartered have made decisions to start business across continents and borders but have entirely escaped accountability for their actions abroad, especially where subsidiaries and subcontractors operate in national jurisdictions with weak safeguards. This is why the scope of the treaty should ensure its legal text establishes a primary responsibility on all home or domicile States to hold multinational actors accountable for violations committed abroad; and where this fails, the treaty must establish a pathway for accountability in other jurisdictions, including the host state. Parent companies making

decisions in the comfort of board rooms at home must no longer be able to enjoy the protections afforded by the corporate veil.

4. Enforcement mechanism: an international tribunal

A treaty imposing stronger obligations on corporations will have limited value if those affected by corporate power and cross-border violations remain dependent exclusively on domestic or regional courts, particularly where the relevant corporation operates across several jurisdictions or where the State in which the harm occurs and/or the domicile state lacks the capacity or political will to provide an effective remedy.

The treaty should, therefore, provide a pathway toward an international judicial or quasi-judicial mechanism. An international tribunal would function as a safety net for those negatively affected by corporate power.

The tribunal's jurisdiction should be based on complementarity. Thus, it would not replace domestic courts, but intervene where national systems (e.g., domicile or host States) fail to provide a genuine, timely and effective avenue for accountability.

This is important because transnational cases regularly expose jurisdictional gaps. The Samarco/BHP/Vale litigation illustrates the problem. The collapse of the Samarco dam in Brazil involved a joint venture between Vale and BHP and caused catastrophic damage along the Rio Doce. Proceedings against BHP in its domicile, the United Kingdom, and related proceedings in Brazil demonstrated how corporate structures can divide legal responsibility between and among jurisdictions. Such cases show the difficulty victims/survivors can face when a corporate entity spans multiple legal systems and the relevant courts approach jurisdiction and corporate obligations and responsibility differently. In this case, accountability has not yet been attained despite some legal battles won recognizing the responsibility of a transnational corporation that is headquartered both in Australia and the UK.

This problem is structural rather than exceptional. A corporation can be incorporated in one or more States, operate through a subsidiary or subcontractor in another, contract with entities in a third and cause harm in a fourth. Each jurisdiction may have a partial connection to the dispute, while none provides a complete avenue for accountability. This is precisely the gap an international mechanism could address. The tribunal should have jurisdiction based on meaningful connections to the harm and the corporate actors involved, and should include, as appropriate:

- the incorporation, domicile or principal place of business of the relevant enterprise (otherwise, the home State);
- the location of a parent or controlling company (otherwise, the home State);
- the place where significant decisions contributing to the harm were made (otherwise, the home State);
- the territory where the harm occurred (otherwise, the host State);

- the location of substantial business operations and financial assets; and
- other substantial connections between the enterprise and a State Party.

Expanding jurisdiction is key to addressing the asymmetry between host States and home States—especially considering the power of corporate actors and their influence on public policy and decision-making in home States, which is practiced widely, as seen in analysis in relation to [corporate capture](#).

A system in which States in the Global South accept international supervision, while the principal home States of major transnational corporations and other cross-border entities remain outside international jurisdiction, would risk reproducing the very power imbalance the treaty is intended to resolve. Corporate entities currently wield significant power that shapes the legislative landscape of both the host countries and other jurisdictions. Strong extraterritorial jurisdiction should, therefore, be combined with strong corporate liability rules, including rules that stop corporate capture of decision-making, including in the setting of laws, nationally and internationally.

The treaty can establish clearer language to remove barriers in accessing justice, starting with limiting States' ability to apply the doctrine of *forum non conveniens* in cases that involve several jurisdictions. In a [report by the South Center](#), the doctrine of *forum non conveniens* is cited as "a recurrent argument used to decline jurisdiction in corporate-related human rights abuses in some countries. For example, almost 40 to 50 percent of motions to dismiss cases on the basis of *forum non conveniens* were granted in the United States and, from those, almost 99 percent were never filed again in any jurisdiction."

This doctrine, if not quashed from the treaty text, creates an extremely dangerous legal loophole that prevents people and communities affected by corporate power from pursuing justice in different jurisdictions. Corporations argue that this creates "forum shopping" but, in reality, forum shopping is a practice primarily employed by companies, particularly in relation to investment arbitration. People affected by corporate abuses and violations seldom enjoy a real choice of jurisdiction and, where they fail to hold corporations accountable in different national jurisdictions, they should be able to hold corporations and cross-border operations accountable via an international mechanism of accountability. Access to the most-protective forum is not abuse; it is justice.

The updated Article 9 bases jurisdiction on clear, accepted links. These are not "exorbitant" as some have claimed, but rather essential to close gaps in access to remedy. Claims that Article 9 enables "excessive extraterritorial jurisdiction" are misleading and aimed at shielding companies and other enterprises from accountability. The jurisdictional bases listed in Article 9.1 are standard in international law and domestic law. These are neither novel nor extreme. Rather, they are necessary and reflect the global nature of transactional operations and the need to close accountability gaps. Far from undermining sovereignty, they reinforce States' duty and, thus, tools of statecraft to ensure just remedy and prevent impunity for cross-border violations and abuses.

In situations where grave violations of human or environmental rights have been committed, including severe environmental damage and ecocide, it is important to include in Article 6 (or reinclude from the zero Draft) that States shall incorporate, or otherwise implement appropriate measures within their domestic law for universal jurisdiction in human rights violations and internationally recognized crimes mentioned in the preceding. The Zero Draft mentioned this under Article 6, and it must be reintroduced. Proposed text to reinclude as Article 6(8) bis: "States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction over human rights violations that amount to international crimes."

Similarly, the treaty should also consider allowing victims/survivors to bring cases in courts where jurisdiction would not normally extend and where they would otherwise have no reasonable access to an effective forum for accountability. This is otherwise referred to as the doctrine of *forum necessitatis*.

If all else fails, the establishment of an international tribunal would be key to guarantee remedy through administration of justice. In particular, where a violation occurs in a State Party and the relevant corporate group includes a parent or controlling entity in another jurisdiction, the tribunal must be empowered to adjudicate the responsibility of the entities connected to the harm where the relevant jurisdictional and liability conditions are satisfied. Joint and several liability would reinforce this jurisdictional framework by preventing corporate entities from using fragmentation between and among parent companies, subsidiaries and other value-chain actors to defeat effective remedy.

The tribunal should also have the power to issue provisional measures necessary to prevent serious or irreparable harm. This is particularly important because many human rights harms cannot be adequately repaired after the fact. Environmental destruction, loss of life and dignity, land dispossession, displacement, ongoing conflict-related business activities, deprivation of natural resources, population transfer, genocide, destruction of evidence and continuing digital or surveillance harms may require urgent intervention.

The tribunal should also have advisory jurisdiction. Advisory opinions could provide authoritative interpretation of the treaty and assist States, courts, local spheres of government, other organs and institutions of the treaty-bound state in addressing salient questions concerning transnational corporate obligations, digital technologies, corporate activity in conflict-affected areas and the application of human rights across global value chains.

The tribunal should be designed also to ensure that private arbitration or Investor-State Dispute Settlement (ISDS) mechanisms cannot undermine access to remedy under the treaty. Contractual arbitration clauses should not prevent victims/survivors from bringing claims before competent courts, other administration-of-justice or law-enforcement mechanisms established under the treaty. Nor should corporations be able to use private dispute-resolution arrangements to contract out of mandatory human rights obligations, thereby obstructing justice.

The overall enforcement architecture should therefore operate at three levels:

1. Domestic courts should remain the primary avenue for remedy.
2. States Parties should be required to establish effective mechanisms for jurisdiction, collective actions, disclosure, evidentiary relief and corporate liability.
3. An international tribunal should provide a judicial safety net where domestic systems are unable or unwilling to provide timely and effective justice.

Finally, we consider that the most realistic institutional pathway may be to include in Article 15 an explicit provision recognising the establishment of a tribunal through an additional protocol.

A possible provision would be:

“States Parties shall establish a process for the negotiation and adoption of an additional protocol providing for the establishment of an international judicial mechanism competent to adjudicate violations falling within the scope of this instrument and to provide effective remedies to those affected by corporate power in accordance with the principle of complementarity.”

An optional protocol could permit States to determine whether they accept the tribunal's jurisdiction. However, the treaty should not leave the establishment of such a mechanism entirely aspirational. Article 15 should create a clear institutional pathway and establish the basic jurisdictional principles upon which the additional protocol would operate.

5. Conclusion

The treaty should be built around the reality that businesses with a transnational character have long escaped accountability with disastrous consequences we see unfolding today. It should also be sufficiently principled and, thereby, equipped to guide remedy toward equitable and sustainable, domestic and extraterritorial harm in the future.

Corporate obligations must, therefore, be sufficiently clear to generate enforceable duties. Liability must follow those obligations and must extend across corporate structures where companies cause, contribute to, facilitate, benefit from, or fail to prevent human rights abuses or violations. Joint and several liability, appropriate evidentiary rules, and enshrining the principle that due diligence does not automatically absolve liability are all necessary to make those provisions effective.

The scope of the treaty must capture the modern manifestations of transnational business activities and corporate power. This is essential not only for traditional transnational corporations and enterprises, but also for extractive companies, digital platforms, AI companies, financial institutions, data infrastructures, parastatals, surveillance companies, charities, development agencies, and other tax-exempt or nonprofit organizations causing cross-border harm through global value chains. This remedial process confronts one of the central civilizational challenges of our age.

Finally, enforcement must address the reality that domestic systems can fail precisely where corporate power is most harmful. We still must operationalize the related discoveries and outcomes of the Nuremberg and Tokyo Tribunals. An international tribunal operating on complementarity, with meaningful jurisdiction, provisional-measure powers, and advisory jurisdiction, would be indispensable to provide the necessary final layer of accountability and remedy needed to deter future extraterritorial harm.

The treaty should ultimately ensure that corporations and enterprises cannot operate with impunity by conducting their activities across borders.

Transnational business activities must entail transnational legal accountability.

ESCR-Net - International Network for Economic, Social, and Cultural Rights, is a member-led network uniting 300 social movements, human rights organizations, and advocates across 80 countries, collaborating toward the world we need: a world where care for people and the planet, solidarity, and equality inform decisions and shape structures to guarantee human rights for all.

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