

**8<sup>th</sup> Session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights**

Art. 9: Adjudicative Jurisdiction  
26 October 2022

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With your permission, I am coming back on article 8 to express support for article 8bis as proposed by Namibia and supported by other States.

On article 9, we generally support it as it has been proposed in the third revised draft LBI.

We support suggestions made by States on the third draft to say both abuses and violations in this article.

We also support the maintenance of the reference to forum non conveniens as one of the doctrines that should not be imposed as a legal obstacle to initiate proceedings, as it is in article 9.3 of the third draft and as supported by several States.

We hear the point made by some States that this is not a concept or doctrine that is being used in all legal systems. However, as it is mentioned in article 9.3, it is only one of the obstacles covered (the word including is used in article 9.3 of the third draft), and so not excluding others. In turn, since in our experience, this doctrine is a very real obstacle to legitimate attempts by victims to access remedies in an appropriate jurisdiction and de facto leading to denial of justice, we think it is important to list it explicitly.

Another point that is slightly more general but should have specific implications in the future drafts is an issue we hear from many victims of business abuses and misconduct: many of them and their lawyers highlight that they need to have access to information including in regard to where a company is domiciled, and the location of their assets. Corporate disclosure rules should facilitate information for communities they work with. We thus encourage States to keep strong language about access to information for the proceedings themselves (related to evidence, etc.) as in article 7 of the LBI but also to consider access to information as a prerequisite to make decisions on jurisdiction to bring a claim.