AFRICA AND THE UNITED NATIONS BINDING TREATY ON BUSINESS & HUMAN RIGHTS

A practical guide for African civil society, policymakers, diplomats and advocates

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CENTRAL MESSAGE

Africa should not be a passive recipient of a treaty negotiated elsewhere. The treaty is being negotiated now. African states have a critical opportunity to shape the rules that will govern how powerful transnational businesses prevent harm, are held accountable and provide remedy when harm occurs.

AT A GLANCE

This guide is designed for a reader who may know little or nothing about the UN treaty process. It explains the problem the treaty seeks to solve, why the issue is especially important for Africa, what is currently being negotiated, why African states need to participate meaningfully, and how civil society organisations can help make that participation politically and technically effective.

Key date	Why it matters
2011	The United Nations Human Rights Council endorses the UN Guiding Principles on Business and Human Rights. The UNGPs are an important global framework, but are not binding and are not a corporate accountability treaty.
2014	The Human Rights Council adopts Resolution 26/9 which establishes an open-ended intergovernmental working group to develop a legally binding instrument on business and human rights.
2017	The working group publishes a document outlining the elements which will be used to inform the drafting of the treaty.
2018	The working group publishes the first full draft of the treaty known as the “zero draft” and negotiations on the treaty begin.
2019 – 2022	Negotiations on the treaty continue, resulting in the publication of three further drafts.
2023	The working group publishes the updated draft treaty containing significant structural gaps and areas requiring stronger, clearer and more victim-centred language. Negotiations continue.
2025	Negotiations continue based on the updated draft with a first complete reading of articles 12 –24. Overall participation in the negotiations is low, with about 64 states present and 23 actively tabling textual proposals.
2026	Negotiations are set to continue from 12 – 16 October in Geneva, with intersessional consultations shaping the next stage at a critical time for African engagement

EXECUTIVE SUMMARY

Business and human rights is about a simple but consequential proposition: businesses can affect human rights profoundly, and the law must be capable of preventing those harms and providing effective remedies when they occur. Globalisation has expanded the economic power and geographical reach of corporations, while legal accountability has often remained fragmented across national borders. The result can be a serious accountability gap.

The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed in 2011, established the widely accepted "Protect, Respect and Remedy" framework. They have had major political significance, but they do not themselves create a comprehensive system for directly holding businesses legally accountable for human rights violations. The treaty seeks to address some of these gaps through binding international rules on prevention, access to remedy, liability and cross-border jurisdiction.

For Africa, this is not an abstract legal exercise. African economies are deeply connected to transnational business through mining, oil and gas, agriculture, infrastructure, manufacturing, finance, digital services and global supply chains. Where harms occur, communities can face weak or inaccessible domestic remedies, corporate structures that separate parent companies from subsidiaries, cross-border jurisdictional barriers and the practical difficulty of obtaining evidence and enforcing judgments.

African states therefore have a direct interest in the outcome. Participation gives them a seat at the table where the rules are being written. Non-participation risks leaving African experiences, legal traditions and priorities under-represented while provisions affecting access to remedy, corporate liability, due diligence, jurisdiction and environmental protection are settled.

Civil society has a crucial role: documenting harm, bringing affected communities into the process, translating technical treaty language into concrete consequences, preparing textual proposals, engaging African diplomats and ministries, building coalitions across countries and ensuring that the African Group's negotiating positions are informed by lived realities.

ADVOCACY OBJECTIVE

Move African engagement from general support for the idea of a treaty to sustained, informed and strategic participation: attendance at negotiations; active textual proposals; co-ordination across states; engagement with the African Group; and treaty language that responds to African realities.

1. BUSINESS AND HUMAN RIGHTS: WHAT IS THE PROBLEM?

In international human rights law, the state is the primary duty-bearer. But the modern economy is not organised around states alone. Corporations can control land, mines, factories, infrastructure, technology, supply chains, financial flows and essential services. A company's decisions can therefore affect whether people can enjoy their rights to land, health, water, a clean environment, decent work, equality, culture, food, housing and physical security.

The problem of a transnational corporate structure: a parent company head-quartered in one country controls a subsidiary operating in another country, where serious harm occurs. The affected community may face a weak domestic judicial system, an unwilling government, asset transfers between corporate entities, separate legal personality and a foreign court that declines jurisdiction on the basis that another forum is more appropriate. The practical result can be that the community remains exposed to harm without an effective route to justice.

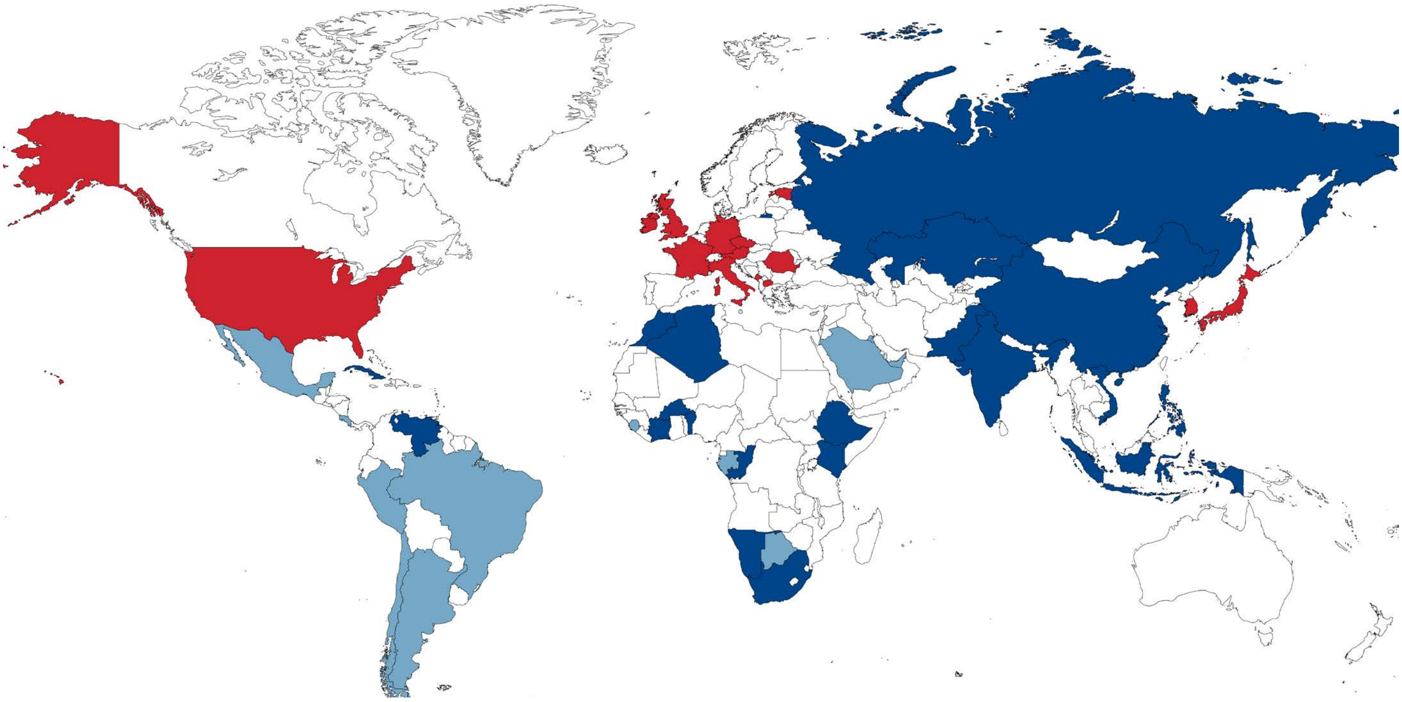
This is the core accountability problem the treaty process is trying to address: corporate activity can be transnational, while regulation, courts, evidence, assets and enforcement may remain nationally fragmented.

Why voluntary standards are not enough

The UNGPs were a major development. They recognise the state duty to protect against business-related human rights abuses, the corporate responsibility to respect human rights, and the need for access to remedy. But they have limitations: the UNGPs are not themselves a binding corporate liability regime, do not establish direct corporate accountability for violations, and do not comprehensively solve extraterritorial accountability problems.

THE GAP

A company can operate across borders, structure itself through subsidiaries, move assets and rely on legal differences between jurisdictions. Victims, by contrast, are often rooted in the community where the harm occurs. The treaty's value lies in narrowing this structural mismatch between corporate power and victims' ability to obtain justice.



Countries that voted for creating an internationally binding treaty on corporate accountability, with those voting in favour in dark blue, those against in red and those that abstained in light blue.

2. WHAT IS THE BINDING TREATY?

The proposed instrument is an international legally binding treaty on transnational corporations and other business enterprises with respect to human rights. It is being negotiated through an Open-Ended Intergovernmental Working Group (OEIGWG) established by the UN Human Rights Council in 2014.

The process began after growing concern that voluntary standards did not adequately address the accountability gap. In 2013, a group of approximately 80 states, led by Ecuador and South Africa, expressed support for working towards a legally binding instrument. In 2014, Human Rights Council Resolution 26/9 established the intergovernmental working group and gave it the mandate to elaborate an international legally binding instrument.

The negotiations are an active law-making process. States debate the text, propose changes, negotiate formulations and determine what the final obligations will mean in practice. Civil society, affected communities, trade unions and business representatives also participate by providing evidence, analysis and proposals.

3. WHY DOES THE TREATY MATTER FOR AFRICA?

Africa is not simply one region among many in this process. The treaty addresses precisely the kinds of cross-border power imbalances that can be especially difficult for developing countries to regulate. Human rights violations committed in developing countries by transnational corporations are frequently connected to corporations head-quartered in the Global North, while the operations and consequences occur in developing-country jurisdictions.

The African context also requires attention to the relationship between corporate activity, natural-resource extraction, land, environmental degradation, labour rights, climate impacts and community rights. A treaty that does not adequately capture these realities could reproduce the very accountability gaps it is intended to close.

The African Charter on Human and Peoples' Rights provides an especially important regional anchor. The treaty must reaffirm the primacy of international human rights law, including the African Charter, over economic activities and trade and investment agreements.

What is at stake for African communities?

- **Natural resources and land**

  Mining, oil, gas and infrastructure projects can profoundly affect land, livelihoods, water, health and community life.

- **Environmental and climate harm**

  Environmental damage can accumulate across projects and over time, making individualised remedies inadequate.

- **Workers' rights**

  Retaliation, discriminatory dismissal and unsafe conditions can undermine freedom of association and other labour rights.

- **Human rights defenders**

  Communities and defenders seeking accountability may face intimidation, retaliation or violence.

- **Cross-border corporate structures**

  Parent companies, subsidiaries, financiers, contractors and buyers can operate across several jurisdictions.

- **Access to justice**

  Victims may face evidence barriers, legal costs, *forum non conveniens*,* jurisdictional disputes and difficulty enforcing judgments.

- **Collective harm**

  Corporate projects can affect whole communities and ways of life, requiring group and structural remedies rather than only individual compensation.

AFRICA’S NEGOTIATING INTEREST

A strong treaty can help African states regulate transnational corporate activity while strengthening victims’ ability to obtain remedy. But that benefit depends on the final text. Participation is therefore not symbolic: the wording of individual articles can determine whether the treaty works for African communities in practice.

4. WHY MUST AFRICAN STATES BE IN THE ROOM?

The treaty process is at a decisive stage. Public information on the 11th session in October 2025 indicates that overall state participation was low: about 64 UN Member States attended, and only about 23 actively tabled textual proposals. This is a global participation figure, not a verified count of African States. African participation is vital; African states must make textual proposals so that the treaty can address African experiences and ensure effective access to remedy.

The concern is therefore not simply whether African states support the concept of a treaty. The more important question is whether they are consistently present, co-ordinated and active enough to shape the actual wording. A state that is absent from a negotiation may support the treaty in principle but have little influence over the final formulation of provisions that will later determine liability, jurisdiction, due diligence and remedy.

The 12th session is scheduled for 12 – 16 October 2026 in Geneva. This makes the period before the session an important mobilisation window for African civil society and government stakeholders.

* *Forum non conveniens* is a legal term meaning “inconvenient forum”. It is a rule that allows a court to decline to hear a case. Even where the court has jurisdiction to hear the matter, a judge may refuse to do so if another court in a different jurisdiction would be a more appropriate and convenient forum for the parties. *Forum necessitatis* means “forum of necessity”. It describes an exception under which a court that would ordinarily lack jurisdiction over a dispute may hear the matter in exceptional circumstances, particularly where there is no other available or effective forum.

What Africa risks by not participating

Risk	Why it matters
African realities may disappear from the text	Rules may be framed around assumptions drawn from other legal systems and economic contexts rather than the realities of African communities.
Access to remedy may be weakened	Procedural rules can determine whether a victim can actually get into court, obtain evidence, overcome costs and secure enforcement.
Domestic law loopholes	References that make treaty protections subject to domestic legal or administrative systems can produce uneven standards and create opportunities for avoidance.
Weak parent-company accountability	Without clear rules, corporate groups can continue to rely on separate legal personality and complex value-chain structures.
Environmental harms may be under-protected	If environmental and climate dimensions are not clearly included, significant harms experienced by communities may fall through gaps.
Loss of negotiating leverage	If only a small number of states table proposals, the range of positions considered by the negotiating process becomes narrower.

5. THE ROLE OF AFRICAN CIVIL SOCIETY

Civil society organisations are not spectators to treaty negotiations. They are an essential bridge between affected communities and diplomatic processes. Negotiations involve states, civil society organisations, affected communities, trade unions and business representatives. The importance of front-line communities and human rights defenders is equally vital.

For Africa, CSOs can convert lived experience into negotiating priorities and convert technical treaty language back into practical consequences for communities. This is particularly important where treaty provisions are highly technical but have immediate consequences for victims.

THE MOST IMPORTANT SHIFT

Do not lobby states merely to "support the treaty". Lobby them to attend, speak, propose text, co-ordinate positions, defend progressive provisions and report back on what they did. Treaty advocacy is most effective when support is translated into specific negotiating instructions.

A practical CSO mobilisation model

Function	Practical action
1. Document	Collect credible evidence of business-related human rights and environmental harms, including patterns, cumulative impacts and barriers to remedy.
2. Translate	Explain what proposed treaty language means for an affected community, worker, defender or regulator.
3. Draft	Prepare concise textual proposals that African states can adopt, sponsor or support in negotiations.
4. Mobilise	Build coalitions across national CSOs, trade unions, environmental groups, women's rights groups, Indigenous and local community representatives and legal experts.
5. Lobby	Engage foreign ministries, justice ministries, trade ministries, environment ministries, natural-resource ministries and permanent missions in Geneva.
6. Co-ordinate	Work with the African Group so that African priorities are reflected consistently across the negotiating text.
7. Monitor	Track attendance, interventions, textual proposals and shifts in state positions.
8. Communicate	Use accessible public messaging so treaty negotiations are understood as a practical issue, not a distant UN process.

4. THE TREATY IN PRACTICAL TERMS: WHAT ARE THE KEY ARTICLES?

The table below turns the technical treaty provisions into plain-language questions. It should be read as an advocacy guide rather than a definitive statement of the final treaty text: the instrument remains under negotiation.

PREAMBLE AND ARTICLE 2

Plain language purpose	Current problematic direction	African civil society priority
Purpose and overall orientation	The treaty should have a strong human rights purpose and integrate environmental and climate considerations.	Keep human rights at the centre; affirm primacy of international human rights law, including the African Charter, over economic agreements; integrate environmental and climate concerns.

ARTICLE 1

Plain language purpose	Current problematic direction	African civil society priority
Definitions	Defines key terms such as "human rights abuse", "business activity", "due diligence" and "remedy".	Use rights-protective language; restore explicit reference to the right to a safe, clean, healthy and sustainable environment; avoid narrowing 'violations' into softer or higher-threshold concepts; make remedy capable of addressing community and cumulative harm.

ARTICLE 3

Plain language purpose	Current problematic direction	African civil society priority
Scope	Determines which businesses and which human rights fall within the treaty.	Keep the treaty focused on transnational corporations and other businesses with a transnational character, while covering all internationally recognised human rights and fundamental freedoms, including environmental rights.

ARTICLE 4

Plain language purpose	Current problematic direction	African civil society priority
Rights of victims or rights-holders	Sets out procedural and substantive protections for people seeking justice.	Use 'rights-holder' where the provision concerns everyone; include reinstatement in employment; facilitate access to information and evidence needed to establish corporate responsibility.

ARTICLE 5

Plain language purpose	Current problematic direction	African civil society priority
Protection of victims	Protects victims, defenders and others from interference or retaliation.	Expressly protect communities, families, representatives and witnesses; require a safe and enabling environment for defenders that is gender-responsive.

ARTICLE 6

Plain language purpose	Current problematic direction	African civil society priority
Prevention or human rights due diligence	Sets out what businesses must do to identify and address human rights impacts.	Make due diligence clear, ongoing and comprehensive; include actual and potential impacts, labour, environmental and climate impacts, value/supply chains and enhanced due diligence in conflict-affected areas; do not treat mitigation as acceptance of abuse.

ARTICLE 7

Plain language purpose	Current problematic direction	African civil society priority
Access to remedy	Requires states to enable adequate, timely and effective remedy and address barriers to justice.	Remove rather than merely reduce obstacles; strengthen evidence rules; address legal costs and other barriers; restore protection against *forum non conveniens*; ensure gender-sensitive access to information; retain diplomatic or consular support for transnational cases.

ARTICLE 8

Plain language purpose	Current problematic direction	African civil society priority
Legal liability	Requires states to establish comprehensive and adequate legal liability systems.	Remove domestic law qualifiers that weaken the international standard; strengthen parent-company, buyer and value-chain liability; preserve joint/several liability; ensure due diligence cannot become a blanket defence to liability.

ARTICLE 9		
Plain language purpose	**Current problematic direction**	**African civil society priority**
Jurisdiction	Determines which courts can hear treaty claims.	Cover the state where harm occurs, where the causal act/omission occurs and relevant home-state jurisdictions; prevent *forum non conveniens* from defeating accountability; preserve access to multiple effective jurisdictions and forum necessitatis where no fair forum is otherwise available.

7. PROVISIONS THAT DESERVE STRONG AFRICAN ADVOCACY

A. Primacy of human rights

An explicit reference to the primacy of human rights obligations was removed from the Updated Draft. This matters because the treaty should not become subordinate to trade and investment rules where those rules conflict with human rights protection. The recommendation is to reaffirm the primacy of international human rights law, including the African Charter on Human and Peoples' Rights.

ADVOCACY LINE

African states should insist that economic activity, investment protection and trade commitments cannot be interpreted or applied in a way that defeats internationally recognised human rights obligations. Trade and investment cannot take precedence over human rights.

B. Definitions and the danger of softer language

There is a shift from stronger human rights law language towards language associated with the UNGPs and other soft-law frameworks. In particular, 'obligation' has been replaced by 'responsibility' in relation to business. The concern is straightforward: a legally binding treaty should not create only language that sounds binding while leaving the core corporate duty ambiguous.

'Adverse' human rights impacts can create uncertainty and potentially raise the threshold for accountability. The preferred direction is clear, rights-based language that captures violations and harm rather than creating unnecessary conceptual hurdles.

C. Remedy must work for communities, not only individuals

A major African advocacy point is that corporate harm is often collective. A mining, infrastructure or pollution event can change a community's land, water, livelihoods, health and social fabric. A definition of remedy based only on restoring an individual to their previous position is therefore inadequate where the community itself has been transformed or where cumulative impacts make restoration impossible.

There is a need for express recognition of victims or communities, group remedies or class actions, and structural relief. This is a critical issue for African communities affected by large-scale projects.

D. Due diligence must be meaningful

Due diligence should not become a compliance checklist. There must be alignment with UNGP 17 and OECD standards, including ongoing assessment, embedding responsible business conduct in policies and management systems, and providing for or co-operating in remediation where appropriate. Labour rights, environmental and climate impacts, enhanced due diligence in conflict-affected areas and coverage of the entire supply chain are vital.

For Africa, this matters because many harms arise not only from the immediate operator but through parent companies, investors, contractors, buyers and other business relationships. The treaty should therefore capture the full value-chain reality of transnational business.

E. Access to remedy and *forum non conveniens*

Forum non conveniens can allow a court to decline a case on the basis that another jurisdiction is more appropriate. This is a serious obstacle because the alternative forum may be inaccessible or ineffective for victims. The recommendation is to restore treaty language addressing this obstacle and to ensure that home-state courts cannot simply decline jurisdiction where doing so would undermine effective remedy.

The evidence and cost dimensions are equally important. Victims may not have access to corporate records, contracts, ownership information or financial information needed to prove liability. Stronger disclosure and burden-of-proof rules can therefore be decisive.

F. Liability must reach the corporate group

A central concern is the relationship between parent companies, subsidiaries and other businesses in the value chain. There must be a presumption of liability for parent or controlling companies where they control, supervise or influence the offending entity or activity, or where the harm could reasonably have been foreseen.

G. Jurisdiction must prevent corporate escape

The treaty should allow claims in the state where harm occurs and where the causal act or omission occurs, and should provide meaningful routes to relevant home-state jurisdictions. The recommendations also support restoring provisions that facilitate claims involving connected defendants and creating a *forum necessitatis* option where no other effective and fair forum is available.

THE AFRICAN TEST

For every jurisdiction provision, ask: if a community in Africa is harmed by a company whose corporate group, decision-makers, assets or financing are spread across borders, will this provision make it easier or harder for that community to reach an effective court?

8. A PRACTICAL LOBBYING STRATEGY FOR AFRICAN CIVIL SOCIETY

The most effective campaign should combine political advocacy with technical legal drafting. African states need both the political case for participation and ready-to-use language that diplomats can table or support.

- **Map the decision-makers**: Identify the permanent mission in Geneva, foreign ministry, justice ministry and the ministries responsible for trade, investment, mining, energy, environment and labour.
- **Create a Geneva-capital bridge**: Ensure diplomats have technical support before and during negotiations, and that capital-based ministries understand what is being negotiated.
- **Provide draft language**: Do not only say what is wrong. Give diplomats language they can use in the room.
- **Engage the African Group**: Seek co-ordinated African positions and encourage states to sponsor or co-sponsor textual proposals.
- **Track participation**: Monitor which states attend, speak and table proposals. Use this information to target follow-up advocacy.
- **Keep communities visible**: Bring testimonies and evidence from affected communities into diplomatic discussions, while protecting individuals from retaliation.

9. TEN MESSAGES AN AFRICAN CSO CAN TAKE TO THEIR GOVERNMENT

1. Participation is not an endorsement of every provision in the draft; it is the means by which a State can change provisions it does not support.
2. The treaty is being negotiated now, and the final wording will determine whether it creates meaningful accountability or another layer of weak standards.
3. Africa has direct experience of the cross-border corporate accountability problems the treaty is designed to address.
4. Support for a treaty in principle is not enough: states must attend, intervene, table text and co-ordinate positions.
5. Human rights should remain primary over conflicting trade and investment commitments.
6. The treaty must protect all internationally recognised human rights, including environmental rights and the rights of workers and communities.
7. Due diligence must be substantive, ongoing and linked to prevention and remediation—not a box-ticking exercise.
8. Victims must be able to bring collective claims and obtain structural remedies where harm is collective or cumulative.
9. Parent companies and other powerful actors in corporate groups and value chains must not be able to escape accountability through corporate structure.
10. Jurisdictional rules must ensure that victims are not sent from one inaccessible forum to another until accountability disappears.

10. THE STRATEGIC OPPORTUNITY FOR AFRICA

The treaty process presents Africa with an unusual opportunity: to shape an international legal instrument around the realities of communities that have historically experienced the costs of transnational economic activity while having limited access to the centres where corporate decisions are made.

African states were instrumental in bringing the treaty process into existence. South Africa was among the states that led the 2013 initiative, and the African Group has repeatedly engaged with the process. The challenge now is to translate that history into sustained participation at the point where the text is being negotiated article by article.

Civil society can make this possible by connecting three worlds that too often operate separately: affected communities, African governments and international treaty negotiations. Communities provide evidence and legitimacy; lawyers and researchers provide technical drafting; diplomats provide negotiating authority. Together, these actors can help ensure that the treaty responds to the realities of Africa rather than merely describing them.

Quick reference: The African negotiating agenda

Priority	What to seek
Human rights primacy	Reaffirm international human rights law, including the African Charter, over conflicting economic rules.
Strong definitions	Use clear, rights-based definitions of violations, business activity, due diligence and remedy.
Transnational focus	Keep the treaty responsive to the cross-border accountability problems created by transnational corporate structures.
All rights	Cover civil, political, economic, social, cultural and environmental rights.
Communities & collective harm	Recognise group harm, cumulative impacts, collective remedies and structural relief.
Defender protection	Protect victims, communities, witnesses, representatives and human rights defenders, with gender-responsive safeguards.
Robust due diligence	Require ongoing due diligence across value chains, including labour, environmental and climate impacts and conflict-affected settings.
Effective remedy	Remove procedural and financial barriers and strengthen access to information, evidence and legal assistance.
Corporate liability	Strengthen parent-company, controlling-company, buyer and value-chain liability; avoid a blanket due-diligence defence.
Cross-border jurisdiction	Ensure effective jurisdiction, address *forum non conveniens*, preserve connected claims and provide *forum necessitatis* where needed.