

## Enhancing Access to Remedy through International Cooperation: Considerations from the Legally Binding Instrument on Transnational Corporations and Other Business Enterprises

By Danish\*

### 1. Introduction

In 1993, while reaffirming the commitment of all States to fulfil their obligations to promote and protect all human rights and fundamental freedoms, the Vienna Declaration and Programme of Action also recognized that “enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations”<sup>1</sup>.

Cooperation among countries on a wide range of issues has been a long standing feature of international law, even though the term ‘co-operation’ has itself never been defined by an international treaty or a resolution of an international organization<sup>2</sup>. Instead, the relationships among countries have been built on the basis of ‘comity’, which has been described as “the principle that one sov-

ereign nation voluntarily adopts or enforces the laws of another sovereign nation out of deference, mutuality, and respect.”<sup>3</sup> However, it need not be “a rule of law at all, but a standard to be respected in the course of exercising judicial or administrative discretion [...] or at least indicate the policy underlying particular rules or what is more generally known as public policy.”<sup>4</sup>

Today, despite the multilateral system being under severe stress and facing criticism from many quarters, economic globalization continues unabated. Transnational corporations (TNCs) have become significant actors on the global scale, with 69 corporations among the top 100 economic entities.<sup>5</sup> Given their vast economic scale and reach, TNCs and their global supply chains can have significant effects, both positive and negative, on the lives of people in all countries.

### Abstract

The shortcomings in international cooperation between regulatory authorities in different countries can open up a gap in their legal regimes which could be exploited by transnational corporations and allow them to elude responsibilities for the violation or abuse of human rights. The Revised Draft of the Legally Binding Instrument on Transnational Corporations and Other Business Enterprises seeks to bridge this gap and works towards increasing collaboration among countries for ensuring access to effective remedies for victims of human rights violations or abuses due to business activities. This brief looks at some of its salient features and how they can be utilized by countries for the protection and promotion of human rights in their territories.

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*Le manque de coopération qui règne au niveau international entre les différentes autorités de régulation est susceptible d'ouvrir une brèche dans les régimes juridiques nationaux qui pourrait être exploitée par les sociétés transnationales et leur permettre d'échapper à leurs responsabilités en cas de violation ou d'abus des droits humains. Le projet révisé de traité juridiquement contraignant visant à réglementer, dans le cadre du droit international des droits de l'homme, les activités des sociétés transnationales et autres entreprises a pour but de combler cette lacune et de renforcer la collaboration entre les pays afin de garantir aux victimes de violations des droits de l'homme ou d'abus liés aux activités commerciales l'accès à des voies de recours effectives. Ce document d'information examine certaines des mesures envisagées dans le projet et la façon dont elles peuvent être utilisées par les différents pays pour protéger et promouvoir les droits de l'homme sur leur territoire.*

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*Las deficiencias en la cooperación internacional entre las autoridades reguladoras de diferentes países pueden abrir una brecha en sus regímenes jurídicos que podría ser explotada por las empresas transnacionales y permitirles eludir sus responsabilidades respecto de la violación o el abuso de los derechos humanos. El Borrador Revisado del Instrumento Internacional para regular las actividades de las Empresas Transnacionales y otras Empresas Comerciales tiene por objeto acercar posiciones en relación con esta brecha y trabaja para aumentar la colaboración entre los países a fin de garantizar el acceso a recursos eficaces para las víctimas de violaciones de derechos humanos o de abusos derivados de actividades comerciales. En este resumen se examinan algunas de las características más destacadas y cómo éstas pueden ser utilizadas por los países para la protección y promoción de los derechos humanos en sus territorios.*

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United Nations (UN) Human Rights Council (HRC) Resolution 26/9 reflects this reality by “acknowledging that transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth, as well as causing adverse impacts on human rights”. Given the vast extent of the business activities of TNCs across countries, there is also an increased risk of being involved in violations and abuses of human rights across jurisdictions. Thus, there is an imperative need to regulate their activities to prevent such violations and abuses, as well as to provide effective access to remedy for the victims of their acts.

On 16 July 2019, the Chairmanship of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (OEIGWG) released a revised draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (Revised Draft). It represents a significant evolution from the zero draft of the Legally Binding Instrument (LBI) that was the basis for negotiations during the fourth session of the OEIGWG which took place in October 2018.

The protection and promotion of human rights is a priority for the international community as a whole, and the LBI is meant to strengthen this aim through increasing collaboration among countries through various modalities for the implementation and fulfilment of its purposes. This is also specifically included as one of its core purposes, which states that the LBI will “promote and strengthen international cooperation to prevent human rights violations and abuses in the context of business activities and provide effective access to justice and remedy to victims of such violations and abuses”<sup>6</sup>.

The following section therefore focuses on the specif-

ic issues of mutual legal assistance (MLA), recognition and enforcement of judgments and international cooperation within the context of the Revised Draft, and looks at how these could be operationalized for extending and enhancing access to remedy for victims of human rights violations and abuses due to business activities.

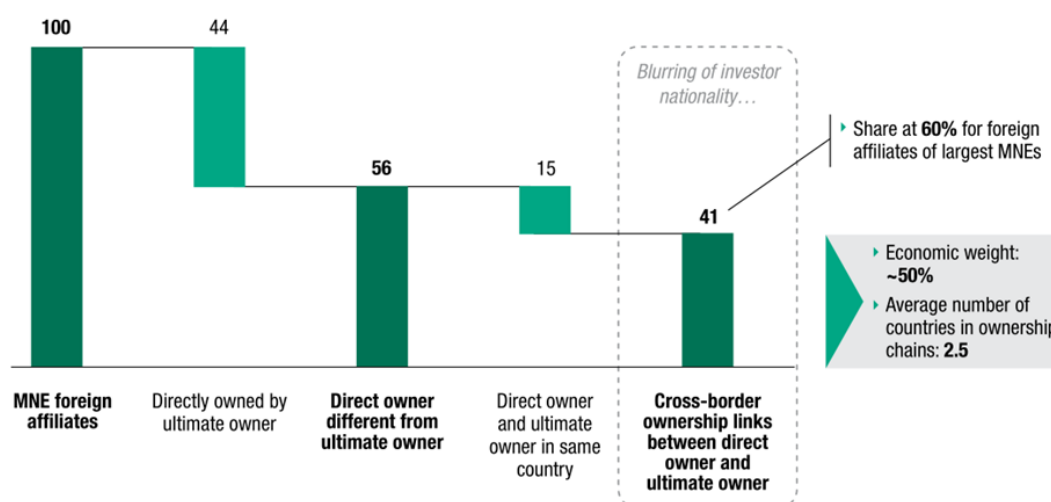
## 2. Strengthening Access to Remedy through International Cooperation in the Revised Draft

The UN HRC has recognized that “the enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations, including the effective promotion and protection of all human rights”; and that it can make “an effective and practical contribution to preventing violations of human rights and fundamental freedoms”<sup>7</sup>. This makes the inclusion of international cooperation under the LBI especially vital, given that many victims of human rights violations and abuses due to transnational business activities, particularly those in the developing world, are unable to access effective legal remedies and hold the perpetrators to account.

There are various factors which can limit the access to judicial remedies for victims of TNCs’ activities<sup>8</sup>. A very significant hurdle is the highly complex corporate structures of TNCs, which make it extremely difficult for victims to bring claims against the parent company, its affiliates or controlling entities. For instance, the United Nations Conference on Trade and Development (UNCTAD) has found that “the top 100 multinational enterprises in [its] Transnationality Index have on average more than 500 affiliates each, across more than 50 countries, with multiple hierarchical levels across up to six borders. They have about 20 holding companies owning affiliates across multiple jurisdictions, and they have almost 70 entities in offshore investment hubs.”<sup>9</sup>

In such a scenario, being able to track the effective nationality of the entity ultimately liable for human rights violations and abuses is a herculean task, requiring re-

**Figure 1 - Complex ownership of Multinational Enterprise (MNE) foreign affiliates**  
(Share of foreign affiliates, %) <sup>10</sup>



Source: ©UNCTAD analysis based on Orbis data (November 2015).

sources which most victims would not have access to. It is therefore necessary for States to cooperate with each other to allow access to remedies, especially when gathering evidence of human rights violating acts or omissions by a corporate actor with business activities spread over many countries.

The Revised Draft thus includes Article 10 on Mutual Legal Assistance and Article 11 on International Cooperation for strengthening cooperation and collaborations among States. These provisions seem to have been integrated in the Revised Draft as a mechanism for ensuring efficient investigation and prosecution of violations of human rights due to business activities, as well as the effective enforcement of judgments, while ensuring that the rights of victims are preserved and upheld. They seek to guarantee access to information for investigations and prosecutions, adoption of rules for mutual judicial cooperation, adequate standards of due process of law and enforcement of effective remedies through mutual cooperation. These Articles, as included in the Revised Draft, contain materially the same language as that of the previous Article 11 and Article 12 of the Zero Draft respectively, with a single provision migrating from the former to the latter; with the likely intent of keeping the text more consistent.

Beyond these two articles, the notion of legal assistance and cooperation is also found in other parts of the Revised Draft. For example, in Article 4 on the Rights of Victims, the Revised Draft clearly lays out that victims shall have the right of access to appropriate diplomatic and consular means to ensure that they can exercise their right to access justice and remedies. This can include access to information required to bring a claim, and the procedural and substantive requirements to pursue claims before competent domestic courts and State-based non-judicial grievance mechanisms. In addition, within Article 4 itself, there is also the requirement for States to ensure that their domestic laws and courts facilitate access to information through international cooperation in a manner consistent with their domestic law.

Another significant aspect in this context is related to the provisioning of legal assistance and aid for victims of human rights violations and abuses. A UN report has noted that many countries have some form of legal aid for litigants in need, even though it might not be an express right to access legal aid<sup>11</sup>. In instances where it is explicit, the right to legal aid has been included in international conventions<sup>12</sup>, national constitutions<sup>13</sup>, laws on criminal and civil procedure, and some countries even have separate laws on legal aid<sup>14</sup>. Only a few States have an implicit right to legal aid in their laws on due process, but not explicitly provided for in any legislation<sup>15</sup>.

The form in which this concept has been included in the Revised Draft expands the provision of legal assistance by States to victims, irrespective of their nationality or domicile, as long as the relevant claims under the

LBI are filed or sought to be filed in a forum under their jurisdiction. Thus, victims would be given the same standard of legal aid that would be available to any other litigant in that country. This would also not preclude the possibility of other actors, such as lawyers or other entities acting *pro bono*, from providing legal aid as well.

### **2.1 Mutual Legal Assistance**

In general terms, it is a process by which States seek and provide assistance for judicial cases in their territories<sup>16</sup>. It is a form of international cooperation between States with respect to the fulfilment of legal proceedings in one of the States which has any element in or connection with the territory of the other. For example, this can include the provision of information, evidence, serving of summons, witness testimony and even extradition. Similarly, in case of criminal matters, it can extend to enforcement of possible confiscation orders, as well as freezing or seizure of proceeds or instrumentalities of crime<sup>17</sup>. Many countries already have existing bilateral and regional mutual legal assistance treaties which include these elements, in addition to their own national laws and procedures<sup>18</sup>.

The inclusion of a provision on MLA in a legally binding instrument for the protection of human rights represents our current reality where acts, omissions, abuses and violations in the course of business activities can have significant ramifications across territorial borders. As Prof. Olivier de Schutter rightly notes, “the difficulties victims encounter in having access to remedies has to do with the fact that States do not cooperate with each other in freezing assets, in collecting information, in enforcing judgments delivered by courts in other States, in collecting evidence, or in forcing witnesses to testify in trial in a foreign state. There are many areas in which a failure to establish a duty of mutual legal assistance is the source of impunity for companies operating transnationally”<sup>19</sup>.

The LBI therefore seeks to prevent and mitigate the harms that can be caused by TNCs and other businesses, and bridge the lacunae that exist in providing effective access to remedy for victims in cases of human rights violations and abuses due to such businesses and their activities.

Article 10 of the Revised Draft seems to be heavily influenced by several international legal instruments dealing with mutual legal assistance in criminal matters, such as the UN Convention against Corruption, the UN Convention against Transnational Organized Crime, and even the Convention against Torture. These in turn have been based on or similarly inspired by the UN Model Treaty on Mutual Assistance in Criminal Matters.

A prominent issue with currently existing mechanisms of treaty based MLA has been that it has generally been limited in its scope to specific criminal matters, such as for investigations and proceedings<sup>20</sup>. By expanding it to the violation of human rights and having some minimum baselines as well as comprehensive procedures for MLA, the LBI also seeks to resolve an inherent tension in the international legal regime when there is a disparity in the

level of human rights protections between two or more jurisdictions<sup>21</sup>.

A plain reading of Article 10 reveals a wide range of salient elements which inform both the substance and process for providing mutual legal assistance for victims. First, it envisages MLA for “investigations, prosecutions and judicial and other proceedings” which would be instrumental for access to remedy for relevant claims under the LBI. Second, it lists, but does not limit itself to, eleven specific kinds of mutual legal assistance that can be provided under the LBI, as well as “any other type of assistance that is not contrary to the domestic law of the requested State Party”.

Other provisions under Article 10 provide for *suo moto* transfer of information which may be relevant for an action or violation that occurred in the territory of another country; the possibility of establishing joint investigative bodies; and the requirement to designate a central authority with the competence to receive requests for mutual legal assistance. This central authority would have the power “either to execute them or to transmit them to the competent authorities for execution”.

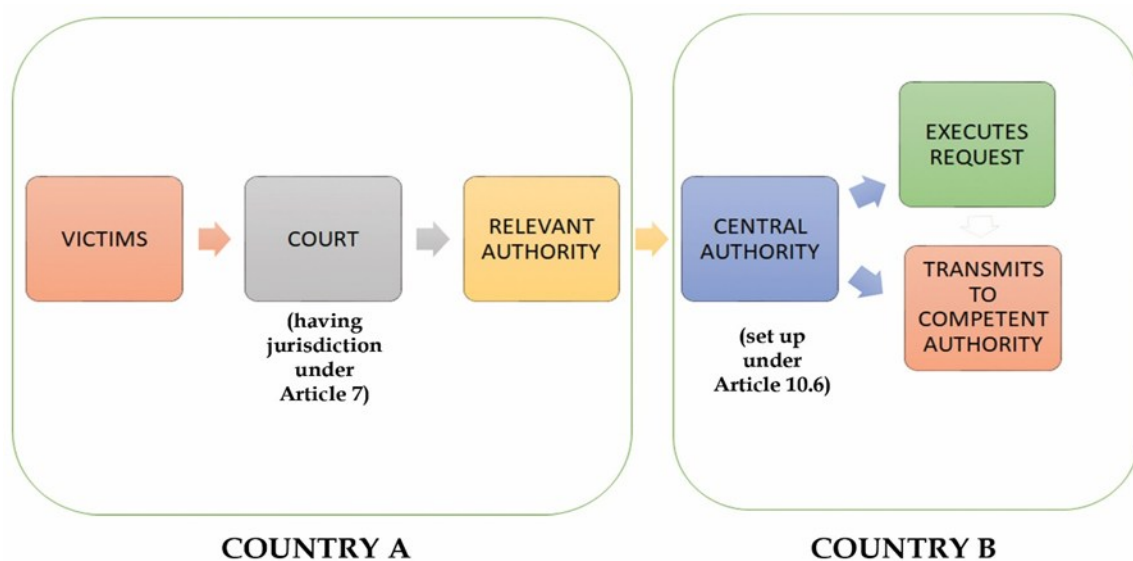
The LBI also posits an obligation to provide legal assistance in the pursuit of access to remedy for victims of human rights violations. The contents of legal assistance as proposed come from Article 4(12) of the Revised Draft, which has obligations of making information available to victims of their rights and the status of their claims; guaranteeing their right to be heard in all stages of proceedings; avoiding unnecessary costs or delays; and providing assistance with all procedural requirements for starting and during the legal proceedings.

## 2.2 Recognition & Enforcement of Foreign Judgments

The issue of recognition and enforcement of foreign judgments is essential for ensuring effective access to remedies and holding perpetrators of human rights violations and abuses to account. The current system for the recognition and enforcement of foreign judgments generally relies on bilateral<sup>22</sup> or multilateral arrangements<sup>23</sup> between countries (or in rare instances, is undertaken as a unilateral action by a judicial body without an express agreement to that effect). In the case of arbitral awards, which may be possible in the case of State-based non-judicial grievance mechanisms, the victims may also be able to utilise the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). This also furthers the aims of Article 4(14) of the Revised Draft, which requires that States provide effective mechanisms for the enforcement of remedies for violations of human rights.

Thus, while there is a positive duty to recognise and enforce the judgment, this duty is not absolute on the signatory countries. The grounds for refusal of recognition by courts as provided in the LBI reflect those commonly seen in other similar legal instruments. The inclusion of these grounds seeks to ensure that the principle of natural justice and due process are upheld for both the victims and the defendants, while also preserving the essential sovereign interests of the State such as its internal security, public order etc. It would also prevent the possibility of forum shopping and parallel proceedings being conducted in multiple jurisdictions between the same parties on the same issues. This is also echoed by the UN Committee on Economic, Social and Cultural Rights, which has noted that, “[i]mproved international cooperation should reduce the risks of positive and negative conflicts of jurisdiction, which may result in legal uncertainty and in fo-

**Figure 2 – Request Process for Mutual Legal Assistance under the LBI**



Note: The process to obtain remedies is initiated by victims approaching a court with competent jurisdiction. Depending on the nature of mutual legal assistance sought, the court will order the relevant authority under its own domestic law to transmit the request to the central authority in the other country (receiving state). Depending on the nature of assistance sought, the central authority may execute the request or transmit it to another body with the competence to execute it.

rum-shopping by litigants, or in an inability for victims to obtain redress.”<sup>24</sup>

This issue is also linked with Article 12.4, which envisages that the provisions of the LBI would be applied in conformity with any new or previously existing agreements or arrangements on the mutual recognition and enforcement of judgements. This would allow victims to fully enjoy the benefits of new treaties and arrangements meant to increase international cooperation among countries for the protection and promotion of human rights.

As per the Revised Draft, for any foreign judgment to be enforceable, it should no longer be subject to ordinary forms of review in its State of origin. In the country where it is sought to be enforced, such action is required to be taken as soon as the requisite formalities have been completed. These formalities cannot be more onerous and the attendant fees and charges should not be higher than those required for the enforcement of domestic judgments.

The grounds for refusal as provided reflect those commonly seen in other similar instruments. It provides three grounds for the refusal of recognition and enforcement by a court or the competent authority, but only at the request of the defendant. The grounds include that the defendant was not given reasonable notice and a fair opportunity to present their case; or that the judgement is irreconcilable with an earlier judgement validly pronounced in another country with regard to the same cause of action and between the same parties; or in instances where the judgement is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of the country. In addition, recognising the variety and diversity in the legal systems of countries, the LBI allows States to also refuse legal assistance if the violation to which the request relates is either not covered under the LBI or if it would be contrary to its legal system.

Finally, for claims involving liability for harms or criminal offences falling within the scope of the LBI, the Revised Draft excludes the possibility of countries relying on their fiscal or banking secrecy statutes as a reason to reject requests for legal assistance. This is very much in line with the international zeitgeist which seeks to combat the harmful effects of illicit financial flows, especially from developing countries, which is “essential to make better progress in realizing international human rights obligations”<sup>25</sup>.

### **2.3 International Cooperation**

Aside from considering international cooperation as a guiding principle throughout the text, the Revised Draft also includes the express responsibility of States to cooperate in ‘good faith’ to fulfil the purposes and implement their commitments under the LBI. More specifically, under Article 11(2), States are required to “undertake appropriate and effective measures in this regard, between and among States and, as appropriate,

in partnership with relevant international and regional organizations and civil society”. This is a further recognition of the role that various stakeholders can and should play in the success of the LBI.

The Revised Draft itself provides examples of what international cooperation under this Article might look like, suggesting the promotion of “effective technical cooperation and capacity-building among policy makers, operators and users of domestic, regional and international grievance mechanisms”; the sharing of “experiences, good practices, challenges, information and training programs” for implementing the LBI; and “facilitating cooperation in research and studies on the challenges and good practices and experiences for preventing violations of human rights in the context of business activities, including those of a transitional character.”

This provision seems to have been largely inspired by Article 32 of the UN Convention on the Rights of Persons with Disabilities, which itself builds on previous human rights treaties which refer to international cooperation among States, such as the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child<sup>26</sup>.

Therefore, the guidance previously provided is also instructive for operationalizing international cooperation in the implementation of the LBI. For instance, the Handbook on the Convention on the Rights of Persons with Disabilities affirms that “not only do States parties have a role to play in fostering international cooperation to promote the rights of persons with disabilities, but civil society, including organizations representing persons with disabilities, and international and regional organizations, such as the United Nations specialized agencies, the World Bank and other development banks, and regional organizations, such as the European Commission and the African Union, do, too.”<sup>27</sup> This would remain relevant in the case of the LBI as well, in the context of victims of human rights violations and abuses due to business activities.

This inclusion of a wide array of stakeholders is also supported by a study of the UN HRC Advisory Committee, which considers States, international organisations, national human rights institutions and other actors such as the business world, trade unions and civil society organisations as relevant participants for the promotion of human rights in a transnational dimension<sup>28</sup>.

### **3. International Cooperation for Human Rights - Building capacity and promoting ownership**

Given the diversity in national laws and legal systems of countries, international treaties provide them with sufficient flexibility to ensure implementation of their obligations. In the context of mutual legal assistance, it has been noted that “treaties create binding obligations on States parties, but the actual execution of [a] request also requires analysis and consideration of the domestic laws of the requesting and requested States. Gaining a basic understanding of the legal traditions of the world, ascertain-

ing which legal tradition a country is subject to and then determining the legal systems that each country utilizes are necessary aspects of international cooperation.”<sup>29</sup>

Having mechanisms for effective international cooperation is essential for ensuring the protection and promotion of human rights. Hence, the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 24 readily observed that “[i]n transnational cases, effective accountability and access to remedy requires international cooperation (...) The use of direct communication between law enforcement agencies for mutual assistance should be encouraged in order to provide for swifter action, particularly in the prosecution of criminal offences.”<sup>30</sup>

However, countries frequently face many barriers in the effective implementation of their international human rights obligations, which can limit the effective access to remedies for victims of human rights violations and abuses due to business activities. Building the capacity of countries to better fulfil their human rights obligations would therefore be instrumental for the promotion and protection of human rights.

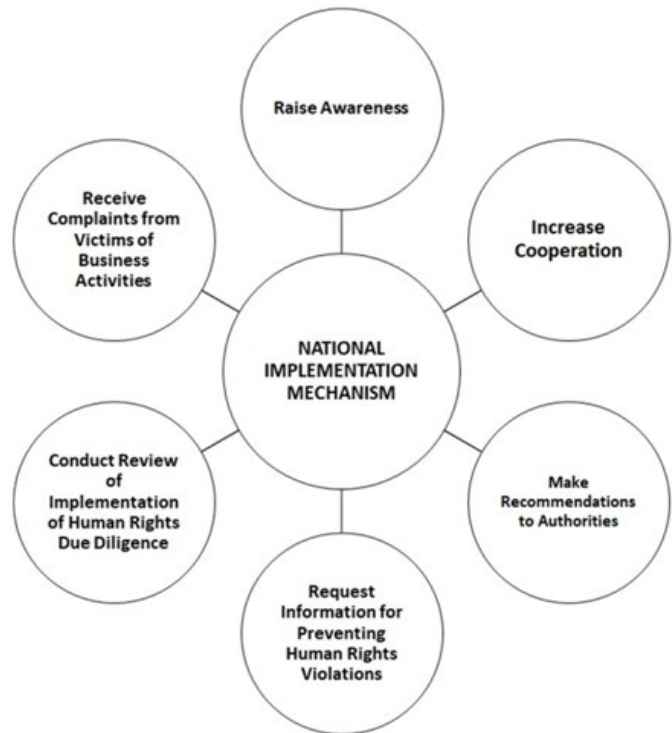
The UN is already cognizant of the issue, as reflected in the UN General Assembly Resolution 68/268 which, “Requests the Secretary-General, through the Office of the High Commissioner, to support States parties in building the capacity to implement their treaty obligations and to provide in this regard advisory services, technical assistance and capacity-building, in line with the mandate of the Office, in consultation with and with the consent of the State concerned...”<sup>31</sup>

Similarly, during the fourth session of the OEIGWG, suggestions had been raised regarding how capacity building and initiatives for raising awareness through State institutions could play a decisive role in supporting States in fulfilling their duties for the protection of human rights by facilitating the exchange of information on challenges and best practices, while promoting more coherent approaches to the issue.

While the institutional arrangements as currently included in the Revised Draft provide a substantial base for the implementation of the LBI, it also represents an opportunity to consider how cooperation between human rights relevant institutions, organisations and actors can be further enhanced within this context.

For instance, national institutions or mechanisms for the protection and promotion of human rights can be utilised for undertaking capacity building and awareness raising activities in developing countries, which would help them in better implementing the obligations under the LBI. This would also be in line with the aims of the proposed Draft Optional Protocol<sup>32</sup>, which is to establish a National Implementation Mechanism to “promote compliance with, monitor and implement the LBI”. The Draft Optional Protocol also elaborates on the functions of such a Mechanism, specifically requir-

**Figure 3 – Proposed Functions of the National Implementation Mechanism**



ing it to cooperate with other stakeholders and raising awareness<sup>33</sup>, among various others.

The Committee of Experts to be established by the LBI can also have a pivotal role in the implementation of the LBI. In brief, as per its current formulation in Article 13 of the Revised Draft, States would submit reports to the Committee on the measures they have taken to give effect to the LBI, and the Committee could provide concluding observations and recommendations on such reports, as it may consider appropriate. It would make general comments and normative recommendations to help in clarifying the substantive content of the LBI. In addition, the Committee would also provide support to States in the “compilation and communication of information required for the implementation of the provisions of the LBI”. Given the fairly wide ambit of its functions, the Committee could be expected to play both a supporting and an evaluative role for the implementation of the LBI.

The Conference of Parties (CoP) for the LBI can also substantially enhance the ownership that countries have in the process, going beyond the standard reporting requirements that are generally seen in human rights mechanisms. For instance, they could play a proactive role in the further development of the LBI through the sharing of experiences and challenges faced in its implementation. Similarly, developing countries can also consider using the modality of South-South cooperation for enhancing the implementation of the LBI in their territories, by exchanging experiences and good practices with other countries from the global South<sup>34</sup>.

The dual institutional arrangements of having the Committee and a CoP would allow States to benefit from

both the technical expertise of the Committee members and exchanges with other countries. However, concerns have been raised over the years regarding the effective functioning of the committees under existing human rights treaties, including on their reporting backlogs<sup>35</sup> and lack of adequate resources, among various others<sup>36</sup>. It might therefore be useful for States to consider if it would be more efficient for State reports on the implementation of the LBI to be submitted to the CoP instead, and using that to better inform their discussions on further developments of the LBI. This would also increase the cooperation among States for better enforcement of the LBI by the sharing and evaluation of experiences and also increase their ownership in the process.

#### 4. Conclusion

The Revised Draft of the LBI provides an elaborated technical and legal basis for negotiations to be carried out by States in the fifth session of the OEIGWG on TNCs and Other Business Enterprises (OBES). While much of the discussion is expected to revolve around issues of scope, prevention, legal liability and others, it remains imperative that the modalities of mutual legal assistance and international cooperation are also emphasized as being instrumental for providing victims with effective access to remedies.

The LBI is therefore based on recognition of the plurality of legal traditions in the international community conjoined with the commonality of purpose to promote and protect human rights and fundamental freedoms. Thus, for fulfilling its purposes, it is vital that countries increase their cooperation with each other to better regulate TNCs and provide clear legal and regulatory frameworks to prevent human rights violations and abuses due to business activities.

#### Endnotes:

<sup>1</sup> United Nations General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.

<sup>2</sup> Rüdiger Wolfrum, "International Law of Cooperation", Max Planck Encyclopedia of Public International Law. Available from <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1427?prd=EPIL>.

<sup>3</sup> Cornell Legal Information Institute Wex, "Comity of Nations". Available from [https://www.law.cornell.edu/wex/comity\\_of\\_nations](https://www.law.cornell.edu/wex/comity_of_nations).

<sup>4</sup> F. A. Mann, *Foreign Affairs in English Courts* (Oxford, 1986). Available from <https://opil.ouplaw.com/view/10.1093/law/9780198255642.001.0001/law-9780198255642-chapter-7>.

<sup>5</sup> Global Justice Now, "69 of the richest 100 entities on the planet are corporations, not governments, figures show", 17 October 2019. Available from <https://www.globaljustice.org.uk/news/2018/oct/17/69-richest-100-entities-planet-are-corporations-not-governments-figures-show>.

<sup>6</sup> Article 2.1.c of the Revised Draft

<sup>7</sup> UN HRC Resolution 30/25 on Promoting international cooperation to support national human rights follow-up systems and processes, A/HRC/RES/30/25, 12 October 2015.

<sup>8</sup> One report lists ten different issues that can be barriers to accessing judicial remedies. See Skinner, McCorquodale, De Schutter, *The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business*, ICAR, CORE & ECCJ, December 2013. Available from <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/58657dfa6a4963597fed598b/1483046398204/The-Third-Pillar-FINAL1.pdf>.

<sup>9</sup> UNCTAD *World Investment Report 2016, Investor Nationality: Policy Challenges*.

<sup>10</sup> *Ibid.*, p. 125.

<sup>11</sup> United Nations Office on Drugs and Crime (UNODC) & United Nations Development Programme (UNDP), *Global Study on Legal Aid Global Report* (United Nations, October 2016). Available from [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid\\_Report01.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf).

<sup>12</sup> For e.g. European Convention on Human Rights, Article 6.

<sup>13</sup> For e.g. Constitution of the Republic of India, Article 39A. Equal justice and free legal aid.

<sup>14</sup> For e.g. Legal Aid South Africa Act, Act No. 39 of 2014.

<sup>15</sup> UNODC & UNDP, *Global Study on Legal Aid Global Report*.

<sup>16</sup> UN Manual on Mutual Legal Assistance and Extradition, p. 19.

<sup>17</sup> See European Convention on Mutual Assistance in Criminal Matters of 1959.

<sup>18</sup> UNODC Report of the Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice (Vienna, 2001). Available from [https://www.unodc.org/documents/legal-tools/lap\\_mlaeg\\_report\\_final.pdf](https://www.unodc.org/documents/legal-tools/lap_mlaeg_report_final.pdf).

<sup>19</sup> Oliver De Schutter, "Towards a New Treaty on Business and Human Rights", Lecture at Castan Centre, 23 June 2015. Available from <https://youtu.be/8mxSLK04Y94>.

<sup>20</sup> Hon. Virginia M. Kendall and T. Markus Funk, "The role of mutual legal assistance treaties in obtaining foreign evidence", *Litigation*, Volume 40, Number 2 (Winter 2014). Available from <https://www.perkinscoie.com/images/content/3/1/v2/31795/2014-winter-litigation.pdf>.

<sup>21</sup> Robert J. Currie, "Human Rights and International Mutual Legal Assistance: Resolving the Tension", *Criminal Law Forum*, Vol. 11, No. 2 (2000).

<sup>22</sup> For e.g. see Agreement between the Republic of India and the United Arab Emirates on Juridical and Judicial Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgements and Arbitral Awards. Available from <http://legalaffairs.gov.in/sites/default/files/mlat.PDF>.

<sup>23</sup> For e.g. see Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). Available from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012R1215-20150226>.

<sup>24</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 (2017) on State obligations

under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 35.

<sup>25</sup> Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, A/HRC/31/61, 15 January 2016.

<sup>26</sup> See Article 10(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

<sup>27</sup> From Exclusion to Equality: Realizing the rights of persons with disabilities, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

<sup>28</sup> Study of the Human Rights Council Advisory Committee on the enhancement of international cooperation in the field of human rights, A/HRC/19/74, 29 February 2012.

<sup>29</sup> UN Office on Drugs and Crime, Manual on Mutual Legal Assistance and Extradition (United Nations, 2012), p. 8.

<sup>30</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 34.

<sup>31</sup> Resolution 68/268 adopted by the General Assembly on 9 April 2014 on Strengthening and enhancing the effective functioning of the human rights treaty body system, A/RES/68/268, 21 April 2014.

<sup>32</sup> Draft Optional Protocol to the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises. Available from

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/ZeroDraftOPLegally.pdf>

<sup>33</sup> Article 3 of the Draft Optional Protocol.

<sup>34</sup> Resolution 35/8 on Enhancement of international cooperation in the field of human rights, adopted by the Human Rights Council on 22 June 2017, A/HRC/RES/35/8.

<sup>35</sup> Note by the Secretary-General, Effective Functioning of Bodies established pursuant to United Nations Human Rights Instruments, E/CN.4/1997/74, 27 March 1997.

<sup>36</sup> Report by the Secretary-General, Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, A/57/476, 15 October 2002. See also Michael O'Flaherty, Claire O'Brien, "Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body", *Human Rights Law Review*, Volume 7, Issue 1 (2007), Pages 141-172.



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