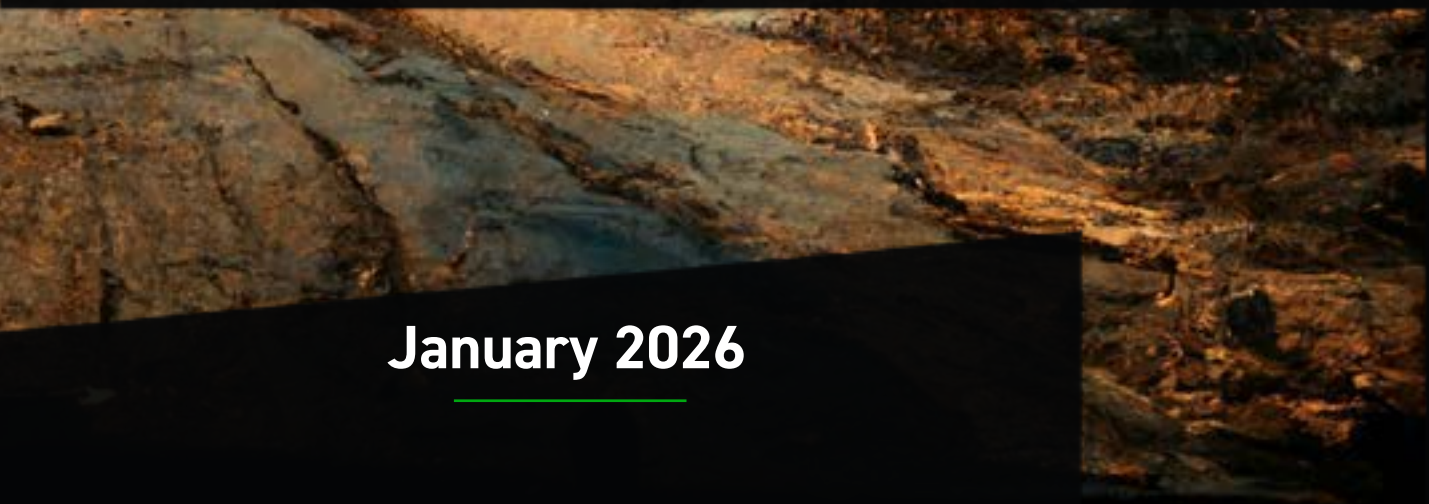




# **The Liability of Legal Persons in the Future Convention on the Prevention and Punishment of Crimes Against Humanity**

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**January 2026**

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*This briefing was drafted by [TRIAL International](#) and benefited from inputs and support of the endorsing organisations and individuals.*

# I. Background

## a. *Why is it crucial to foresee the liability of legal persons in the future Convention?*

**Legal persons**, especially companies, have repeatedly been **involved in the commission of crimes under international law**, including crimes against humanity.<sup>1</sup>

For this reason, the International Law Commission (hereinafter, 'ILC') decided to include a provision on this matter in the Draft Articles on Prevention and Punishment of Crimes Against Humanity (hereinafter, '[Draft Articles](#)').<sup>2</sup>

On the same position, acknowledging that "the involvement of corporations in international crimes has been recognized since the Nuremberg Tribunal",<sup>3</sup> the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination affirmed that "**ensuring corporate accountability for international crimes is [...] essential**".<sup>4</sup>

**At the domestic level, an increasing number of cases** address the potential involvement of corporate entities in crimes under international law, including crimes against humanity.<sup>5</sup> For instance, in 2024, the French Supreme Court confirmed the indictment of a company for complicity in crimes against humanity, and the corresponding judicial investigation is ongoing.<sup>6</sup> The same year, in the United States, a multinational company was found responsible "for complicity in serious human rights abuses in another country",<sup>7</sup> while a government private contractor was held liable for its role in the torture of foreigners in a detention facility outside the country.<sup>8</sup> More recently, in 2025, a US jury found a foreign bank liable

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<sup>1</sup> In this regard, see, for instance, van Sliedregt, E., [The Future of International Criminal Justice is Corporate](#), Journal of International Criminal Justice, 2025, p. 17; [IBA War Crimes Committee shines a light on corporate liability cases](#), 25 November 2022; De Vos, D., [Corporate Criminal Accountability for International Crimes](#), Just Security, 30 November 2017; Zerk, J., [Corporate liability for gross human rights abuses](#), Towards a Fairer and More Effective System of Domestic Law Remedies: A Report Prepared for the Office of the U.N. High Commissioner for Human Rights, 2013, pp. 16 and following.

<sup>2</sup> Draft articles on Prevention and Punishment of Crimes against Humanity, adopted by the ILC at its 71<sup>st</sup> session in 2019, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/74/10), (hereafter, '[Draft Articles with commentaries](#)'), Article 6, commentary, § 47.

<sup>3</sup> Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies, 5 July 2022, UN Doc [A/HRC/51/25](#), § 81. In this regard, it is worth noting that in the "Industrialists Trials" corporations as legal persons were found to have committed international crimes. For instance, in the [IG Farben case](#), it was found that "the proof establishes beyond a reasonable doubt that offenses against property as defined in Control Council Law No. 10 were committed by Farben [a corporation], and that these offenses were connected with, and an inextricable part of the German policy for occupied countries as above described [...] [t]he action of Farben and its representatives, under these circumstances, cannot be differentiated from acts of plunder or pillage committed by officers, soldiers, or public officials of the German Reich" (US Military Tribunal Nuremberg, judgment of 30 July 1948, in Trials of War Criminals Before the Nuremberg Military Tribunals, Vol. VIII, p. 1139).

<sup>4</sup> Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, *supra* note 3, § 81.

<sup>5</sup> The Universal Jurisdiction Annual Review 2023 emphasizes "the growing attention drawn to companies' involvement in international crimes" (TRIAL International, [Universal Jurisdiction Annual Review 2023](#), p. 11).

<sup>6</sup> Cour de cassation, Chambre criminelle, 16 January 2024, [22-83.681](#); see also Business & Human Rights Resource Centre, [Lafarge in Syria](#): French Supreme Court issues decisive ruling on charges faced by the multinational, 16 January 2024. In this regard, it is worth mentioning that, in 2022, the Investigative Chamber of the Paris Court of Appeal had confirmed the indictment of another company for complicity in torture (FIDH, [Surveillance and torture in Libya](#): The Paris Court of Appeal confirms the indictment of Amesys and its executives, and cancels that of two employees, 21 November 2022; TRIAL International, [Universal Jurisdiction Annual Review 2025](#), p. 36).

<sup>7</sup> EarthRights International, [Colombian victims win historic verdict over Chiquita](#): Jury finds banana company liable for financing death squads, 10 June 2024. See also JusticeInfo.Net, [Insights from the Chiquita trial \(1\)](#): 25 years of struggle, 12 September 2024.

<sup>8</sup> Center for Constitutional Rights, [Abu Ghraib Verdict](#): Iraqi Torture Survivors Win Landmark Case as Jury Holds Private Contractor CACI Liable, 12 November 2024.

for its role in atrocities committed in a third country.<sup>9</sup> In a landmark case in Brazil, prosecutors brought a public civil inquiry against a company for complicity in crimes against humanity, which led in 2020 to a settlement by agreement with the company.<sup>10</sup> As a result, a public apology was issued, and approximately R\$36 million was agreed to be paid “to compensate victims, support state reparation, establish a memorial for those harmed [...], and support future investigations of corporate crimes”.<sup>11</sup>

The future Convention on the Prevention and Punishment of Crimes Against Humanity will establish the legal framework applicable to these crimes for the coming decades. **It is therefore imperative that this instrument includes an effective response to the involvement of legal persons** – for instance, multinational corporations, private military and security companies (hereinafter, ‘PMSCs’), and other corporate entities, **in crimes against humanity**. This is essential to avoid any impunity gaps by adequately preventing and punishing the commission of these crimes by legal persons as well as guaranteeing victims’ access to justice and remedy.

This is even more crucial since an international obligation to establish adequate measures ensuring the liability of legal persons for crimes against humanity will be reflected in national legislations, thus capable of exerting a **deterrent effect**. For instance, if a legal person can be subject to penalties for its involvement in crimes against humanity, this may result in further obligations or strong incentives for the legal entity itself to adopt more robust internal measures aimed at preventing the involvement of its executives or employees in the commission of such crimes. Punishments might include not only fines but also other measures, such as, among others, the suspension of activities or disqualification from contracting with public authorities. Accordingly, by including an appropriate provision in this regard, the future Convention can more effectively contribute to the prevention of the perpetration of crimes against humanity.

Furthermore, providing for the liability of legal persons is crucial to capture the full range of responsibilities in the perpetration of crimes against humanity, and to **avoid any impunity gaps**. Importantly, recognising the liability of legal persons for their participation in crimes against humanity can also considerably **increase victims’ access to full and effective reparation**,<sup>12</sup> in accordance with a well-established right under international law.<sup>13</sup>

Finally, it is worth noting that several States have expressed support for the inclusion of a provision addressing the liability of legal persons for crimes against humanity.<sup>14</sup> Therefore, the inclusion of such a provision can also reflect States’ position on this matter.

## ***b. What do the ILC Draft Articles establish?***

By acknowledging the “potential involvement of legal persons” in crimes against humanity,<sup>15</sup> Draft Article

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<sup>9</sup> DiCello Levit, [Historic Human Rights Verdict: Jury Awards \\$20M+ To Sudanese Refugees In Landmark Genocide Litigation](#), 17 October 2025; RFI, [BNP Paribas found liable for atrocities in Sudan under Bashir regime](#), 20 October 2025.

<sup>10</sup> Amnesty International, [The Corporate Crimes Handbook](#), 2025, p. 16.

<sup>11</sup> *Idem*.

<sup>12</sup> In this regard, see, for instance, van Sliedregt, E., *The Future of International Criminal Justice is Corporate*, *supra* note 1, p. 18.

<sup>13</sup> Victims’ right to reparation has been consistently upheld in numerous international legal instruments. See, among others, the [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#); the [Universal Declaration of Human Rights](#) (Article 8); the [International Covenant on Civil and Political Rights](#) (Article 2, para. 3); the [International Convention for the Protection of All Persons from Enforced Disappearance](#) (Article 24, paras. 4 and 5); the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (Article 14); the [Rome Statute of the International Criminal Court](#) (Article 75); the [American Convention on Human Rights](#) (Article 25); the [European Convention on Human Rights](#) (Article 13). Conversely, pursuant to a rule of customary international law, the State has an obligation to make full reparation for the harm caused by an internationally wrongful act: Permanent International Court of Justice, [Case concerning the Factory at Chorzów](#), Jurisdiction, 26 July 1927, p. 21.

<sup>14</sup> See, for instance, [Mexico](#), [France](#) (§39), [Thailand](#) (§100), [Czechia](#) (§18), and [Sierra Leone](#) (p. 76).

<sup>15</sup> Draft Articles with commentaries, *supra* note 2, Article 6, commentary, § 47.



6, para. 8, stipulates that:

*"Subject to the provisions of its national law, each State shall take measures, where appropriate, to establish the liability of legal persons for the offences referred to in this draft article. Subject to the legal principles of the State, such liability of legal persons may be criminal, civil or administrative."*

In its Commentaries, the ILC clarifies that the provision "provides the State with considerable flexibility to shape those measures in accordance with its national law."<sup>16</sup> Indeed, "the clause '[s]ubject to the provisions of its national law' should be understood as according to the State considerable discretion as to the measures that will be adopted; the obligation is 'subject to' the State's existing approach to liability of legal persons for criminal offences under its national law".<sup>17</sup> Furthermore, according to the ILC Commentaries, "each State is obliged to take measures to establish the legal liability of legal persons 'where appropriate'. Even if the State, under its national law, is in general able to impose liability upon legal persons for criminal offences, the State may conclude that such a measure is inappropriate in the specific context of crimes against humanity".<sup>18</sup>

Taken together, the two qualifying clauses – "subject to the provisions of its national law" and "where appropriate" – may result in the neutralisation of the scope of the provision entirely. A State may simply invoke its domestic legal principles to conclude that establishing the liability of legal persons for crimes against humanity is "inappropriate". As currently formulated, this provision would therefore enable States to remain fully compliant with a future convention on the prevention and punishment of crimes against humanity while declining, on the basis of their domestic law, to introduce any form of liability for these crimes if perpetrated by legal persons.

The combined effect of "subject to the provisions of its national law" and "where appropriate" deprives the provision of any real normative force. Instead, given the gravity of the crimes in question, which are "among the most serious crimes of concern to the international community as a whole",<sup>19</sup> **there should be a clear obligation to adopt all necessary measures to hold perpetrators – whether individuals or legal persons, such as companies – accountable.**

The second part of the provision already affords States the necessary discretion to "acknowledge[...] and accommodate[...] the diversity of approaches adopted within national legal systems", given that the liability of legal persons may be criminal, civil, or administrative.<sup>20</sup> It is therefore sufficient to provide for flexibility, without undermining the foundations of a future convention.

Although Draft Article 6, para. 8, draws upon Article 3, para. 4, of the 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography<sup>21</sup> – several other instruments, including the widely-ratified UN Convention against Corruption (hereinafter, 'UNCAC')<sup>22</sup> and the UN Convention against Transnational Organized Crime (hereinafter, 'UNTOC')<sup>23</sup> – include provisions on the liability of legal persons without allowing for the loophole introduced by Draft Article 6, para. 8.<sup>24</sup> While such treaties address transnational crimes – which do not fall within the category of the "most serious crimes", they nonetheless contain terminology that has been widely agreed upon, and therefore constitute valuable sources from which relevant and appropriate language can be drawn. In addition, the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International

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<sup>16</sup> Ibid., § 49.

<sup>17</sup> Idem.

<sup>18</sup> Ibid., § 50.

<sup>19</sup> Draft Articles, Preamble, § 5.

<sup>20</sup> Draft Articles with commentaries, supra note 2, Article 6, commentary, § 51.

<sup>21</sup> Ibid., § 48.

<sup>22</sup> Article 26 of [UNCAC](#).

<sup>23</sup> Article 10 of [UNTOC](#).

<sup>24</sup> See also Article 5 of the [International Convention for the Suppression of the Financing of Terrorism](#).

Crimes (hereinafter, 'Ljubljana-The Hague Convention' or 'LHC') – which, in light of its scope, is the instrument most likely to serve as a point of reference – draws its own formulations on this matter from those very sources.<sup>25</sup>

## II. How a Comprehensive Provision on the Liability of Legal Persons can be included in the Future Convention on Crimes Against Humanity

### a. **Main Proposal**

One suggested proposal for incorporating a comprehensive provision on the liability of legal persons, which would close potential impunity gaps and be consistent with the objective of the future Convention on Crimes against Humanity, is the following:

Art. X

~~1. Subject to the provisions of its national law, Each State shall take the necessary measures; where appropriate; to establish the liability of legal persons for the offences crimes referred to in this draft article 6. Subject to the legal principles of the State, Such liability of legal persons may be criminal, civil or administrative.~~

2. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the crimes, and shall not be contingent upon the establishment of the liability of any natural person.

3. Each State shall ensure that legal persons held liable under this article are subject to effective, proportionate and dissuasive sanctions, including monetary sanctions and other appropriate measures.

### b. **Proposed Specific Amendments and Underlying Rationale**

#### i. A stand-alone article should specifically address the issue of the liability of legal persons

This proposal maintains that Draft Article 6, entitled “criminalization under national law”, is not the appropriate provision for addressing the liability of legal persons, which may be civil, administrative or criminal. Furthermore, several key elements are absent from the current text, warranting the creation of a separate provision to capture all relevant aspects.

Several universal instruments providing the liability of legal persons, such as the UNTOC, the UNCAC, the International Convention for the Suppression of the Financing of Terrorism, and the Ljubljana-The Hague Convention include a stand-alone article on this matter.<sup>26</sup>

In this regard, France has already noted that “it might be appropriate to devote a specific draft article” to this matter and that “further clarification could also be provided, based on the relevant provisions of Ljubljana-The Hague Convention”.<sup>27</sup> Likewise, Canada has suggested that “it might be appropriate to move that paragraph [para. 8] into a separate draft article, as the concept of liability extended beyond that of criminalization”.<sup>28</sup>

<sup>25</sup> Article 15 of the [Ljubljana-The Hague Convention](#).

<sup>26</sup> See Article 10 of UNTOC; Article 26 of UNCAC; Article 5 of the International Convention for the Suppression of the Financing of Terrorism; Article 15 of LHC.

<sup>27</sup> UN Doc [A/C.6/78/SR.42](#), §39.

<sup>28</sup> UN Doc [A/C.6/77/SR.41](#), §107.

**Bearing in mind the nature and specific features of the liability of legal persons, as well as the number of issues that the provision should address, it is recommended that the future Convention on Crimes against Humanity includes a stand-alone article specifically regulating the liability of legal persons.**

ii. *Each State shall take the necessary measures*

Consistently with the language used in most of the provisions of the Draft Articles requiring States to take “the necessary” measures<sup>29</sup> and with a view to strengthening the language of the provision on the liability of legal persons, States should amend the first paragraph accordingly.

This wording would also reflect the language used in the provision on the liability of legal persons included in the International Convention for the Suppression of the Financing of Terrorism.<sup>30</sup> Alternatively, in analogous provisions, other instruments such as the UNTOC and the UNCAC refer to the adoption of “such measures as may be necessary”.<sup>31</sup>

**In order to strengthen the language of the provision on the liability of legal persons, it is recommended to add “the necessary” before “measures” in paragraph 1.**

iii. *The obligation to establish the liability of legal persons shall be included*

The wording “where appropriate” in the first paragraph should be deleted, as it introduces ambiguity and undermines the clarity and enforceability of the provision. As mentioned above, according to the ILC Commentaries, “even if the State, under its national law, is in general able to impose liability upon legal persons for criminal offences, the State may conclude that such a measure is inappropriate in the specific context of crimes against humanity”.<sup>32</sup> Given the indisputably serious nature of crimes against humanity, there is no case in which preventing and punishing involvement in such crimes can be considered inappropriate, regardless of the perpetrator.

This would also be in line with the provisions regarding the liability of legal persons contained in other treaties such as the UNCAC, the UNTOC, the LHC, and the International Convention for the Suppression of the Financing of Terrorism, which do not include the wording “where appropriate”.

The proposed formulation reduces ambiguity and avoids creating a lower standard for crimes against humanity than for corruption, organised crime or terrorism financing.

**The future Convention on the Prevention and Punishment of Crimes against Humanity should set forth a clear obligation for States to establish the liability of legal persons for these crimes. Accordingly, the clause “where appropriate” should be removed from paragraph 1.**

iv. *The clause ‘subject to the provisions of its national law’ in sentence 1 and the expression ‘subject to the legal principles of the State’ in sentence 2 should be removed*

The second sentence of the first paragraph clearly specifies that the liability of legal persons “may be

<sup>29</sup> See, for instance, Draft Article 6, paras. 1, 2, 3, 4, 5, 6 and 7 ; Draft Article 7, paras. 1 and 2 ; Draft Article 12, paras. 1 and 3.

<sup>30</sup> Article 5, para. 1 : “Each State Party, in accordance with its domestic legal principles, shall take *the necessary* measures to enable a legal entity located in its territory or organized under its laws to be held liable [...]” (emphasis added).

<sup>31</sup> Article 10, para. 1, of UNTOC and Article 26, para. 1, of UNCAC : “Each State Party shall adopt *such measures as may be necessary*, consistent with its legal principles, to establish the liability of legal persons [...]” (emphasis added).

<sup>32</sup> Draft Articles with commentaries, supra note 2, Article 6, commentary, § 50.

criminal, civil, or administrative.” As explained by the ILC in its Commentaries, “[t]he flexibility indicated in such language [...] acknowledges and accommodates the diversity of approaches adopted within national legal systems”.<sup>33</sup> This provision alone suffices to afford States wide latitude in determining the approach to be taken when implementing the obligation to establish the liability of legal persons.

The proposed removal of the two clauses “subject to the provisions of its national law” (in the first sentence) and “subject to the legal principles of the State” (in the second sentence) therefore serve to avoid unnecessary repetition and to reduce loopholes that could render the obligation to establish the liability of legal persons illusory.

States should consider that the approach suggested here allows for the formulation of a provision with a more meaningful normative value, consistent with the objectives of the future treaty, while preserving the necessary flexibility for States’ implementation.

**It is recommended to delete the expression “subject to the provisions of its national law” in the first sentence, and the clause “subject to the legal principles of the State” contained in the second sentence.**

v. *The liability of legal persons should be without prejudice to the criminal liability of the natural persons who have committed the crimes*

The ILC Commentaries clarify that “in any event, whether criminal, civil or administrative, such liability [of legal persons] is without prejudice to the criminal liability of natural persons provided for in draft article 6”.<sup>34</sup> However, unlike other international instruments, the Draft Articles do not explicitly mention this important aspect.

States should explicitly provide in the future Convention that the liability of legal persons – such as companies – should not affect the parallel criminal liability of the individuals who have committed the crimes. The proposed wording is taken from the language used in widely adhered-to treaties, such as the UNTOC and the UNCAC.<sup>35</sup> An identical language is also used in the LHC,<sup>36</sup> and a very similar one in the International Convention for the Suppression of the Financing of Terrorism.<sup>37</sup>

**It is recommended that the future Convention explicitly stipulates that the liability of legal persons shall be without prejudice to the criminal liability of the natural persons who have committed the crimes.**

vi. *The liability of legal persons should not be contingent upon the establishment of the liability of any natural person*

The Draft Articles do not clarify the relationship between the liability of legal persons and that of natural persons. Without such clarification, States may assume that proceedings against a legal person depend on the identification, prosecution or conviction of an individual, which could hinder accountability in situations where the physical perpetrator cannot be identified, or cannot realistically be brought before a court. Moreover, criminal liability of individual perpetrators may at times be difficult to establish –

<sup>33</sup> Ibid., § 51.

<sup>34</sup> Idem.

<sup>35</sup> Article 10, para. 3, of UNTOC, Article 26, para. 3 of UNCAC read as follows: “Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences”.

<sup>36</sup> Article 15, para. 3 of the LHC reads as follows: “Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the crimes”.

<sup>37</sup> Article 5, para. 2, spells out: “Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences”.



especially in cases involving corporate actors. For instance, complex corporate structures often make it difficult to ascertain an individual's precise contribution to the offence or to demonstrate the requisite *mens rea* necessary to establish individual criminal liability.

For all these reasons, the liability of a legal person should not depend on the determination of individual responsibilities. It is instead essential that the liability of both legal persons and natural persons is independently established, without making the first conditional on the latter. Otherwise, one of the very purposes of the Convention – namely, to close impunity gaps – would be undermined. To this end, the future Convention should include a specific provision on this matter.

In this regard, the current version of the *legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises* (hereinafter, 'LBI'), whose negotiation is still ongoing, offers a useful reference for relevant wording. Its Draft Article 8, para. 4, lit. a reads as follows: "Each State Party shall adopt such measures as may be necessary, [...], to ensure that, in cases concerning the liability of legal or natural persons in accordance with this article: (a) *the liability of a legal person is not contingent upon the establishment of liability of a natural person*".<sup>38</sup>

**States should consider clearly spelling out that the liability of legal persons shall not be conditional upon the establishment of the liability of any natural person so as not to defeat one of the very purposes this form of liability seeks to achieve.**

vii. Effective, proportionate and dissuasive sanctions should be provided

Unlike several other widely ratified instruments, there is no specific mention in the Draft Articles of the obligation of States to punish legal persons for their involvement in offenses. However, it is of paramount importance that the future Convention explicitly stipulates that, should a legal person be found responsible for crimes against humanity, it shall be subject to measures that are "effective, proportionate, and dissuasive," reflecting the gravity of the offence. Such provision would be essential not only to punish the perpetrators of crimes against humanity, regardless of who those perpetrators are, but also to ensure that preventive measures are in place, as sanctions also serve a dissuasive function as mentioned above. In addition, monetary sanctions (such as fines) may be directed toward financing reparations, thereby giving concrete effect to the widely recognized right of victims to reparation.<sup>39</sup>

The suggested wording is drawn upon the language enshrined in the widely ratified UNTOC and UNCAC, reproduced verbatim in the LHC, which reads as follows: "*Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions*".<sup>40</sup> The International Convention for the Suppression of the Financing of Terrorism contains a similar provision.<sup>41</sup>

The principal variation proposed here to the language employed in the above-mentioned treaties – apart from the removal of the redundant attribution of sanctions as "criminal or non-criminal" – concerns the addition of the phrase "and other appropriate measures". In this context, sanctions other than monetary ones can be particularly appropriate, and may exert a further deterrent effect. Those include, for instance, adverse publicity orders, the temporary or permanent suspension of certain activities or closure of premises, the temporary or permanent incapacity to enter into contracts with public authorities, as well

<sup>38</sup> Article 8, para. 4, of the [Updated draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises](#), July 2023, emphasis added.

<sup>39</sup> On the right to reparation, see also *supra* note 13.

<sup>40</sup> Article 26, para. 4, of UNCAC ; Article 10, para. 4, of UNTOC ; Article 15, para. 4, of LHC.

<sup>41</sup> Article 5, para. 3: "Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions".

as dissolution.<sup>42</sup>

**It is recommended that the future Convention provides that legal persons held liable for crimes against humanity shall be subject to effective, proportionate and dissuasive sanctions, including monetary sanctions and other appropriate measures.**

viii. *While establishing the liability of legal persons, States shall take into account and respect victims' right to an effective remedy and reparation*

It may be useful to recall that, while establishing the liability of legal persons, States shall take into account and fully respect the well-established victims' right to an effective remedy and reparation.<sup>43</sup> To this end and to avoid any possible loopholes, States should consider any amendment to Draft Article 12 that may be deemed appropriate to ensure that victims of crimes against humanity have effective access to remedy, and that such access is not impeded by the fact that the perpetrator is a legal person rather than an individual. This is especially relevant as legal persons might often be headquartered outside of the countries of commission of crimes against humanity, but still play a role in the perpetration of such crimes. It is therefore paramount that victims' right to an effective remedy and reparation is guaranteed in all circumstances.

### **III. Recommendation**

The undersigned organisations call on States to include and adopt clear language in the future Convention on the Prevention and Punishment of Crimes against Humanity stipulating that legal persons shall be liable for their participation in these crimes. Such a provision will be crucial to prevent, punish and redress the harm caused by legal persons, including business entities – such as PMSCs and multinational corporations, involved in the commission of crimes against humanity.

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<sup>42</sup> In this regard, see, for instance, UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group of Government Experts on Technical Assistance, Eighth session, Vienna, 6-7 October 2014, Liability of legal persons, article 10 of the UNTOC, [CTOC /COP/WG.2/2014/3](#), 6 June 2014, §§55-75 ; see also UNODC, [Legislative guide for the implementation of the United Nations Convention against Corruption](#), Second Revised Revision 2012, §338.

<sup>43</sup> In this regard, see *supra* note 13.

## **Endorsements**

*Prepared by TRIAL International, this briefing reflects the engagement of, and has been endorsed by, the organisations and individuals listed below. An ongoing list of the endorsing organisations and individuals is available [here](#).*

- » Amnesty International
- » Alessandra De Tommaso, Senior Lecturer in Law, Middlesex University
- » European Center for Constitutional and Human Rights (ECCHR)
- » International Federation for Human Rights (FIDH)
- » REDRESS
- » Women's Initiatives for Gender Justice

*The views expressed in this paper are without prejudice to any future positions that may be taken in light of the evolution of consultations and negotiations regarding the Convention of the Prevention and Punishment of Crimes against Humanity.*

