



## NGOs & legal experts call on the EU to allow UK accession to Lugano Convention on access to justice grounds

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**The United Kingdom must be allowed to accede to the Lugano Convention, a cross-border legal cooperation treaty, on grounds concerning access to judicial remedy for victims of corporate human rights abuses.**

The Lugano Convention is an international judicial treaty negotiated by the EU with Iceland, Norway and Switzerland on matters of jurisdiction in civil matters. It supplements the corresponding Brussels I Regulation Recast, which only applies to EU members. On 8<sup>th</sup> April 2020 the UK applied to accede to the Lugano Convention.

The Lugano Convention and Brussels I Regulation Recast both overcome a longstanding barrier faced by overseas victims of corporate abuse when attempting to access judicial remedy – the so-called *forum non conveniens* doctrine.

The *forum non conveniens* doctrine allows a defendant corporation to argue that the most appropriate forum for cases against them is that of the victims' domicile. This allows the transfer of transnational cases against European companies away from European courts to jurisdictions where claimants are likely to face a variety of additional barriers to accessing justice.<sup>1</sup> The doctrine also provokes jurisdictional arguments that add years to litigation. The case [Lubbe & others v Cape PLC \(2000\)](#) is a tragic case in point, when around 1,000 out of the 7,500 foreign plaintiffs died awaiting the resolution of Cape PLC's *forum non conveniens* arguments in UK courts.

**The Lugano Convention and Brussels I Regulation Recast overcome the *forum non conveniens* doctrine by establishing mandatory jurisdiction over companies where they are domiciled.<sup>2</sup> No other existing and applicable international judicial cooperation treaty, including those concluded under the Hague Conference on Private International Law, includes this same, essential rule.<sup>3</sup>**

During the UK's membership to the EU, the Brussels I Regulation Recast facilitated the bringing of numerous historic claims against UK companies in UK courts by overseas victims of corporate human rights abuses in cases such as [Vedanta v Lungowe \(2019\)](#) and [Okpabi v. Shell \(2021\)](#). It also led to numerous settlements providing much-needed financial remediation for overseas victims. Without the UK now joining the Lugano Convention, the doctrine will re-apply in future cases against UK corporations in UK courts. This would be a damaging blow to corporate accountability at exactly the time UK courts are beginning to recognise causes of action against UK companies for harms abroad; and when the EU is developing a corporate human rights and environmental due diligence regime with proposed improvements to judicial remedy for victims harmed by EU companies abroad.

Under Pillar III of the *United Nations Guiding Principles on Business & Human Rights*, the EU and its Member States have committed to advancing access to judicial remedy for victims of corporate human rights abuses. In light of this international human rights commitment, the United Kingdom must be allowed to accede to the Lugano Convention.

<sup>1</sup> See, for example, European Parliament DROI committee report, [Access to legal remedies for victims of corporate human rights abuses in third countries](#) (2019) p. 15; and ECCJ, ICAR, CORE Coalition, [The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Businesses](#) (2013) p. 23.

<sup>2</sup> By virtue of Articles 2.1 and 4.1 respectively. In 2005 the Court of Justice of the European Union, in [Andrew Owusu v. N. B. Jackson](#), confirmed the removal of the *forum non conveniens* doctrine by virtue of the Brussels I Regulation.

<sup>3</sup> In fact relevant [initiative discussions on jurisdiction within the Hague Conference on Private International Law](#) even indicate a possible re-introduction of the *Forum Non Conveniens* doctrine.

Signatory Networks & Organisations:

[European Coalition for Corporate Justice](#)

[Corporate Justice Coalition UK](#)

[Fédération internationale des Droits de l'Homme / International Federation for Human Rights](#)

[European Centre for Constitutional & Human Rights \(ECCHR\)](#)

[Human Rights Watch](#)

[Amnesty International](#)

[Anti-Slavery International](#)

[Clean Clothes Campaign](#)

[Brot für die Welt / Bread for the World](#)

[Human Rights International Corner](#)

[CIDSE](#)

[Sherpa](#)

[UNISON](#)

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