



Article 9: Jurisdiction

The ICJ recommends restating a well-accepted definition of *forum necessitatis* as an extraordinary ground for jurisdiction that can be invoked when the business enterprise is not domiciled in the forum State but the other conditions are present:

Where business enterprises are not domiciled within their jurisdiction, States should empower their domestic courts to exercise jurisdiction over civil claims concerning business- related human rights abuses against such a business enterprise, if no other effective forum guaranteeing a fair trial is available (*forum necessitatis*) and there is a sufficiently close connection to the member State concerned.¹

The ICJ also notes that Article 9 continues to be essentially focused on civil jurisdiction, leaving criminal proceedings that could possibly arise out of provisions such as art 8.8 outside its purview. The ICJ considers that this provision needs to also address the issue of jurisdiction in criminal cases, to be consistent with the provision on crimes under international law which are seemingly foreseen in Article 8.8 and the provisions on statute of limitations in article 10. In that regard, the ICJ reiterates its recommendation on the introduction of a new Article 9.6 provision regarding jurisdiction with respect to criminal offences.

¹ Formulation based on article 36 of Council of Europe's Recommendation 2016 on Business and Human Rights