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Forum Shopping and Human Rights Litigation: Balancing Access to Justice with the Principles of Private International Law

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This paper examines the unique intersection of forum shopping, human rights litigation, and private international law. It considers how to reconcile legal certainty, justice, and sovereignty in the context of transnational disputes while at the same time ensuring that victims of human rights abuses have access to justice. The research question considers how the international legal system can find a balance between the consistency and stability that private international law strives for and the efficient access to justice for victims of human rights abuses. Therefore, this study aimed to explore this relationship and consider potential solutions. This study is important because it addresses a key issue in international law: how to achieve enforceable human rights in conjunction with existing theories of private international law. The project also adopted a research methodology that considered various legal doctrines and reforms, examined major legal cases, and reviewed existing and relevant research literature. It examines why particular venues are selected in human rights cases and the impact of the link between private international law distinctions and venue selection. The findings reveal a complex and shifting landscape in which courts attempt to balance conflicting considerations. The paper concludes that development would most certainly depend on generating further complicated policies that consider the distinctiveness of human rights claims within private international law. The recommendations involve encouraging ongoing legal creativity to suit the realities of global human rights violations and constraining the application of private international law principles with greater awareness of ensuring effective remedies in human rights cases.

Keywords: *forum shopping, human rights, international law, justice, transnational human rights, legal certainty.*

INTRODUCTION: THE CONVERGENCE OF FORUM SHOPPING, HUMAN RIGHTS, AND PRIVATE INTERNATIONAL LAW

The realm of international law is increasingly characterised by the rise of transnational human rights litigation (THRL). Victims who have suffered human rights abuses and often encounter overwhelming obstacles to obtaining justice in the regions where these violations took place are increasingly seeking redress in foreign courts. These legal actions usually target transnational corporations (TNCs) or similar powerful entities, with legal claims being brought in the defendant's home country or in an alternative jurisdiction that is believed to be favourable for hearing the case and providing effective remedies.[1] Inherently, this approach is fundamentally an example of forum shopping, which involves making a deliberate choice to be in a court where the victims may have perceived advantages.[2]

This situation introduces considerable strain on the global legal framework. On one side, there exists a strong ethical and legal obligation, grounded in fundamental human rights principles, to guarantee that individuals affected by severe violations have access to an effective remedy.[3] When national systems fall short, pursuing justice internationally might seem like the only feasible solution. Conversely, the established principles of private international law (PIL), also referred to as conflict of laws, are intended to introduce order, predictability, and fairness into transnational legal disputes by establishing rules for jurisdiction, choice of law, and the enforcement of judgments.[4] Unrestricted forum shopping, even when driven by human rights considerations, may potentially conflict with these principles, raising issues related to legal certainty, fairness to defendants, judicial burden,

[1] Angela Lindt, 'Transnational Human Rights Litigation: A Means of Obtaining Effective Remedy Abroad?' (2020) 4(2) Journal of Legal Anthropology 57 <http://dx.doi.org/10.3167/jla.2020.040204> accessed 25 May 2025

[2] 'Forum Shopping' (*Legal Information Institute*) <https://www.law.cornell.edu/wex/forum_shopping> accessed 25 May 2025

[3] Lindt (n 1)

[4] Davy Karkason, 'International Law: An in-Depth Comparison of Public vs Private' (*Transnational Matters*, 21 November 2024) <https://www.transnationalmatters.com/international-law-an-in-depth-comparison-of-public-vs-private/> accessed 25 May 2025

and respect for state sovereignty.[5] The primary challenge, therefore, is to manage a delicate balance: how can the global legal framework ensure effective access to justice for victims of human rights abuses, especially those encountering local impunity, without significantly disrupting the consistency, fairness, and stability that private international law aims to uphold? This article investigates this complex relationship. It starts by clarifying the fundamental concepts of forum shopping, transnational human rights litigation, and the essential principles of private international law. Following this, the discussion explores the rationale for selecting particular forums in human rights litigation.

It evaluates the role of Private International Law (PIL) doctrines, including jurisdiction, forum non conveniens, and lis pendens, in either facilitating or constraining this choice. The article delves into the discourse on forum selection, evaluating its role in facilitating access to justice while also considering counterarguments that stress the importance of legal certainty and fairness. It analyses pivotal legal cases where this issue has been resolved, considers potential legal reforms and judicial methods to strike a more just balance, and concludes by weaving together the intricate debate, emphasising the ongoing challenges and the range of perspectives on harmonising human rights enforcement with the established doctrines of private international law. The objective is to deliver a comprehensive, expert examination of this vital intersection in contemporary international law.

FOUNDATIONAL CONCEPTS

To understand the debate, we will need to clarify three key conceptual pillars: forum shopping, transnational human rights litigation, and private international law.

Defining Forum Shopping In The International Context: Forum shopping is the tactic employed by a plaintiff who, when they are presented with the option of multiple courts that can legitimately handle their case, deliberately chooses the one they believe will most likely deliver a favourable verdict.[6] This strategy relies on two fundamental conditions: firstly, the presence of concurrent jurisdiction, which means more than one court is available to hear the case; and secondly, a significant difference between the legal systems or courts involved so

[5] Tejas N Narechania et al., 'Forum Crowding' (2024) 112 California Law Review 327 <https://papers.ssrn.com/abstract=4343031> accessed 25 May 2025
[6] Forum Shopping (n 2)

that selecting one over the other provides a perceived or real benefit.[7] If all legal systems were the same, the motivation to engage in forum shopping would largely vanish.[8]

The reasons for forum shopping are varied. Litigants might pursue forums with more favourable substantive laws relevant to their claim or procedural rules that offer tactical advantages, such as broader discovery, quicker proceedings, or different evidence rules.[9] Additional considerations include the potential for higher damage awards, the availability of specific remedies like injunctions, reduced litigation costs, or the belief that a particular court or jury pool might be more sympathetic to their case, possibly due to local bias.[10] Regardless of the specific motivation, the overarching aim is consistently to secure a strategic advantage in the litigation.[11]

Forum shopping is often viewed negatively and frequently described as manipulative gamesmanship that emphasises tactical gain over fairness and the pursuit of justice in the most suitable venue. It can be perceived as an effort to inconvenience the opposing party, possibly by compelling them to litigate in a particularly inconvenient jurisdiction. Nonetheless, some commentators and courts take a more neutral stance, seeing it as a natural outcome of legal systems that allow concurrent jurisdiction, with litigants logically seeking their best interests among the available choices.[12] Some contend that it is not inherently negative, particularly if the selected forum provides high-quality justice and efficient service. Ultimately, it remains a strategic behaviour driven by a party's evaluation of the potential advantages offered by the substantive and procedural law of a specific system.[13]

It is important to differentiate between domestic forum shopping, which involves selecting between courts within a single nation, such as state v federal courts, and transnational forum

[7] Luciano Castelli et al., 'Forum Shopping: A Legal Loophole or a Strategic Advantage? A Glance at the Italian Experience' (*International Bar Association*, 04 April 2025) <https://www.ibanet.org/forum-shopping-Italian-experience> accessed 25 May 2025
[8] Tamar Mskhvilidze, 'The Legal Nature of Forum Shopping in International Civil Procedure Law' (2023) 9(25) International Journal of Law: 'Law and World' 93 <https://doi.org/10.36475/9.1.8> accessed 25 May 2025
[9] Jan-Peter Ewert and David Weslow, 'Forum Shopping in Europe and the United States' (2011) 66(9) INTA Bulletin <https://www.wiley.law/media/publication/116_Weslow--INTABulletin--05_01_11.pdf> accessed 25 May 2025
[10] Narechania (n 5)
[11] Mskhvilidze (n 8)
[12] Narechania (n 5)
[13] Mskhvilidze (n 8)

shopping, which entails choosing between courts in different countries.[14]This article concentrates on the latter, dealing with the intricacies of various national legal systems.

The possibility of forum shopping stems from the structure of global legal systems. Where multiple courts across different jurisdictions might legitimately claim authority over a dispute, and where those jurisdictions possess different legal rules and procedures, the potential for forum selection arises inherently. This indicates that forum shopping is not just a tactic employed by litigants but a systemic feature arising from legal pluralism and overlapping jurisdictional rules. Consequently, addressing concerns about abusive forum shopping entails examining not only the behaviour of the litigants but also the implied Private International Law (PIL) structure that allows these options in the first place.

Moreover, the dynamic is not exclusively propelled by plaintiffs in search of favourable courts. A similar occurrence, known as forum shopping, has surfaced, especially in the realm of international commercial disputes. Courts with specialised functions, like International Commercial Courts (ICCs), might actively vie for litigation by highlighting procedural benefits such as efficiency, expertise, and predictability, essentially marketing themselves to prospective litigants.[15] Although the phenomenon primarily pertains to commercial contexts, it highlights that the litigation market incorporates both the parties choosing forums and the forums themselves, which can sometimes seek out actual case filings. This creates additional layers of complexity for jurisdictional consideration, and this may have parallels or implications in other transnational areas as well, including human rights.

Transnational Human Rights Litigation: Seeking Remedies across Borders: Transnational human rights litigation (THRL) encompasses legal actions initiated to seek remedies for human rights violations where the harmful conduct, the victim, the perpetrator, or other relevant elements cross national borders.[16] A significant subset of THRL involves lawsuits brought in the home states of powerful actors, notably TNCs, for human rights abuses or severe environmental damage connected to their operations abroad, often through subsidiaries or supply chains in the Global South.[17] Leading TNCs like Shell, Chevron,

[14] Forum Shopping (n 2)
[15] Castelli (n 7)
[16] Andrew Chubb and Kirsten Roberts Lyer, 'Transnational Human Rights Violations: Addressing the Evolution of Globalized Repression through National Human Rights Institutions' (2024) 16(3) Journal of Human Rights Practice 770 <https://doi.org/10.1093/jhuman/huae017> accessed 25 May 2025
[17] Lindt (n 1)

Vedanta, Unilever, and Nestlé have faced such proceedings.[18] Other contexts include seeking redress for cross-border impacts of conflict, violations against migrants during transit or at borders, or challenging extraterritorial state actions.[19]

THRL is primarily driven by the goal of ensuring accountability and providing remedies when such options are unavailable or ineffective in the jurisdiction where the harm took place (the host state).[20] It seeks to address impunity, especially corporate impunity, by creating transnational responsibility networks that mirror the global scope of economic activities and influence.[21] This approach emerges as a response to the perceived shortcomings of traditional state-focused human rights systems in dealing with harms caused by non-state entities or those occurring outside a state's borders, a situation exacerbated by globalisation, transnational migration, and the worldwide reach of corporations.[22]

Although THRL holds promise, it encounters significant procedural and legal obstacles. Claimants must manoeuvre through intricate PIL regulations to secure jurisdiction in their selected forum, frequently facing defences such as *forum non conveniens* or issues related to the distinct legal identities of parent companies and their subsidiaries (the corporate veil).[23] Additionally, litigants may face substantial costs, difficulties in accessing evidence located overseas, and potential social or political risks associated with pursuing their claims. Consequently, many THRL cases experience slow progress, with a notable number being dismissed on procedural grounds or concluding with out-of-court settlements, frequently without any admission of liability by the defendant.[24] The Monterrico case, where Peruvian

[18] Lindt (n 1)
[19] Professor Geoff Gilbert and Clara Sandoval, 'Cross-Border Conflict and International Law' Accord Conciliation Resources, January 2011) <https://www.c-r.org/accord/cross-border-peacebuilding/cross-border-conflict-and-international-law> accessed 25 May 2025
[20] Lindt (n 1)
[21] Daniel Blackburn, 'Removing Barriers to Justice: How a Treaty on Business and Human Rights Could Improve Access to Remedy for Victims' (Centre for Research on Multinational Corporations, August 2017) <https://www.somo.nl/wp-content/uploads/2017/08/Removing-barriers-web.pdf> accessed 25 May 2025
[22] Chubb (n 16)
[23] Dr. Jennifer Zerk, 'Corporate Liability for Gross Human Rights Abuses Towards a Fairer and More Effective System of Domestic Law Remedies' (*Office of the UN High Commissioner for Human Rights*, 28 February 2014) <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticeLawRemedies.pdf> accessed 25 May 2025
[24] Lindt (n 1)

claimants filed a lawsuit against a mining company in London and reached a settlement, serves as a typical example of this outcome.[25]

The idea of an effective remedy is important for THRL.[26] This right is part of international human rights law, like the International Covenant on Civil and Political Rights. It means having real access to justice and fair treatment. People often turn to THRL because they think foreign courts are the only way to get this remedy when local systems do not work.[27] THRL is not just about reacting to specific wrongdoings. It is a planned effort by groups like civil society organisations, human rights lawyers, and victims to fix big problems in global rules.[28] Sometimes, countries cannot or do not want to control powerful international companies or provide justice. Also, there are a few international ways to punish companies directly for wrongs done outside their home country. THRL tries to use the legal systems of the companies' home countries or other available places to hold them accountable.[29] The use of the Alien Tort Claims Act (ATCA) in the U.S. is an example of finding legal ways in home countries.[30] THRL acts as legal activism to connect global business activities with legal responsibility.[31]

Furthermore, the impact and success of THRL should not be measured solely by final court judgments. While adjudication is crucial[32], the process itself can yield significant outcomes. Out-of-court settlements, even those without admission of liability, can provide vital financial compensation to victims.[33] Beyond monetary relief, the litigation process can serve

[25] David Licurgo Velazco Rondón and Rosa María Quedena Zambrano, 'La Criminalización De La Protesta Social Y El Caso Majaz' (*Oxfam*, February 2015) <https://cng-cdn.oxfam.org/peru.oxfam.org/s3fs-public/file_attachments/La%20Criminalizaci%C3%B3n%20de%20la%20Protesta%20y%20el%20Caso%20Majaz_3.pdf> accessed 26 May 2025
[26] Godfrey M Musila, 'The Right to an Effective Remedy under the African Charter on Human and Peoples' Rights' (2006) 6(2) African Human Rights Law Journal 442 <https://www.ahrlj.up.ac.za/images/ahrlj/2006/ahrlj_vol6_no2_2006_godfrey_m_musila.pdf> accessed 26 May 2025
[27] Lindt (n 1)
[28] Blackburn (n 21)
[29] Laura Nader, 'The Globalization of Law: ADR as "Soft" Technology' (1999) 93 Proceedings of the Annual Meeting (American Society of International Law) 304 <https://www.jstor.org/stable/25659315> accessed 26 May 2025
[30] Surya Deva, *Regulating Corporate Human Rights Violations : Humanizing Business* (1st edn, Routledge 2014)
[31] Liesbeth Enneking, 'The Future of Foreign Direct Liability? Exploring the International Relevance of the Dutch Shell Nigeria Case' (2014) 10 Utrecht Law Review <https://utrechtlawreview.org/articles/10.18352/ulr.256> accessed 26 May 2025
[32] Julia Eckert, 'Does Evidence Matter?' (*Allegra Lab*, November 2016) <https://allegralaboratory.net/does-evidence-matter/> accessed 26 May 2025
[33] Nader (n 29)

broader social and political functions: raising public awareness of abuses, empowering affected communities, putting pressure on corporate or state actors to change practices, and contributing to the development of legal norms around corporate responsibility and human rights.[34] Therefore, THRL often works on two tracks: it seeks formal solutions to legal problems, but it can also catalyse social mobilisation and norm advocacy.

PILLARS OF PRIVATE INTERNATIONAL LAW (CONFLICT OF LAWS)

Private International Law (PIL), often known as Conflict of Laws in common law countries such as the U.S., UK, and Canada, establishes a set of guidelines that national courts use to address legal matters involving foreign elements.[35] It regulates the interaction of domestic legal systems when disputes or transactions extend beyond national boundaries, dealing with private law issues like contracts, torts, family law, and property rights. Notably, PIL is mainly a national law, with each country having its own conflict rules, although international treaties and conventions strive to harmonise these rules in specific areas. PIL tackles three essential questions:[36]

Jurisdiction: This relates to the jurisdiction or authority of a court to hear and resolve a case that involves cross-border elements. National laws establish the criteria for when their courts can claim jurisdiction. Standard bases include the defendant's domicile or habitual residence, the location where a contract was to be carried out (lex loci contractus), the place where a tort occurred (lex loci delicti), the site of property (lex rei sitae), the presence of assets within the jurisdiction, or the parties' agreement (e.g., through a contractual forum selection clause or by agreeing to the court's authority).[37] In some jurisdictions, like the U.S., transient jurisdiction is recognised, which is based solely on serving the defendant while they are physically present in the area, though this is debated internationally.[38] Constitutional principles, such as the Due Process clause in the U.S., may limit the unreasonable exercise of jurisdiction.

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[34] Lindt (n 1)
[35] 'Private International Law' (*Peace Palace Library*) <https://peacepalacelibrary.nl/research-guide/private-international-law> accessed 26 May 2025
[36] *Ibid*
[37] Karkason (n 4)
[38] Ulrich M. Drobnig and Max Rheinstein, 'Jurisdiction' (*Britannica*) <https://www.britannica.com/topic/conflict-of-laws/Jurisdiction> accessed 26 May 2025

Choice of Law: After a court establishes its jurisdiction, it must then determine which jurisdiction's substantive law should apply to the core issues of the case.[39] This requires the use of the forum's choice-of-law rules. There are several approaches: lex fori (the law of the forum court, typically used for procedural issues), lex loci delicti (the law of the location where the wrongdoing occurred, often used in tort cases), lex loci contractus (the law of the place where the contract was formed), or the law related to performance.[40] Contemporary methods frequently take into account factors such as the parties' domicile and the location of their relationship or use methodologies like governmental interest analysis (which state has a more substantial interest in applying its law) or the most significant relationship test (which jurisdiction is most closely connected to the dispute).[41] Party autonomy is also a fundamental principle, especially in contract law, allowing the parties to select the governing law themselves.[42]

Recognition and Enforcement of Foreign Judgments: This concerns the circumstances in which a judgment issued by a court in one nation will have legal effect and be enforced by the courts of another nation.[43] Recognition and enforcement are not an automatic process, as judgments are a manifestation of sovereign power, most often limited to the territorial boundaries of the issuing state.[44] Nevertheless, recognition and enforcement procedures are available in nearly all legal systems for foreign judgments, subject to certain qualifying criteria. These qualifications typically include that the original court had jurisdiction, that the defendant received adequate notice and opportunity to be heard (due process), and that the foreign judgment does not contravene the public policy of the enforcing state. The rationale for enforcing a foreign judgment is, to a large extent, practical: to avoid the cost and inefficiencies of re-litigation, to provide an element of certainty in legal transnational dealings, and to support international commercial relations. Various international agreements, such as the Hague Conventions on Choice of Court Agreements and Judgments, and regional instruments, such as the EU's Brussels Regulation, have been developed to

[39] Karkason (n 4)
[40] 'Conflict of Laws: Principles & Jurisdiction' (*Vaia*, 31 January 2024) <https://www.vaia.com/en-us/explanations/law/international-and-humanitarian-law/conflict-of-laws/> accessed 26 May 2025
[41] Will Laursen, 'Conflict of Laws Outline' (*Law Schoolers*, 16 May 2024) <https://lawschoolers.com/conflict-of-laws-outline/> accessed 26 May 2025
[42] 'Conflict of Laws' (*Fynk*) <https://fynk.com/en/clauses/conflict-of-laws/> accessed 26 May 2025
[43] Karkason (n 4)
[44] Marta Requejo Isidro, 'Recognition and Enforcement of Judgments' in Burkhard Hess et al. (eds), *Comparative Procedural Law and Justice* (pt VII, 2024)

enhance and standardise the process of recognition and enforcement amongst those states that participate.[45] User orientation and courtesy or comity, i.e., respect or mutual courtesy in the functioning of one country's legal system to the next, also underpin the willingness of the courts to enforce a foreign judgment.

These PIL regulations, particularly those concerning jurisdiction and the recognition and enforcement of judgments, act as crucial gatekeepers in transnational litigation scenarios, including THRL. They decide if a claim filed outside the area where the harm took place can be considered by a court and, if successful, whether the resulting judgment will have any practical impact in regions where the defendant possesses assets.[46] In THRL cases, defendants often exploit these rules by raising jurisdictional challenges or opposing enforcement, making the navigation of PIL doctrines a significant hurdle for claimants.[47]

Additionally, the entire domain of PIL illustrates an inherent tension between national sovereignty, where national governments govern their territory, laws, and courts, and the realities of an interconnected world that requires international legal coordination and consistency.[48] Although states are generally not internationally obligated to apply foreign law or enforce foreign judgments,[49] the demands of global commerce, human mobility, and transnational justice encourage greater cooperation, often formalised through treaties or guided by principles like comity.[50] The private international law rules frequently create a delicate balance between these competing pressures, preserving national legal autonomy while resolving international issues. This underlying tension becomes particularly evident when PIL rules are applied to sensitive and politically charged human rights claims.

MOTIVATIONS AND STRATEGIES: FORUM SELECTION IN TRANSNATIONAL HUMAN RIGHTS CLAIMS

In the context of general litigation, forum shopping is often driven by the pursuit of minor benefits. However, in transnational human rights litigation (THRL), the choice of forum is

[45] Private International Law (n 35)
[46] Karkason (n 4)
[47] *Andrew Owusu v NB Jackson, trading as 'Villa Holidays Bal-Inn Villas' and Ors* [2005] C-281/02
[48] Karkason (n 4)
[49] Isidro (n 44)
[50] Private International Law (n 35)

usually based on more significant reasons, often due to a complete lack of justice opportunities in the region where the violation occurred.[51]

The primary motivation for seeking foreign courts in THRL is often to address impunity. Victims and their legal representatives frequently turn to the judicial systems of other countries because the legal system in the state where the harm took place (*locus delicti*) is either unwilling or unable to offer an adequate remedy.[52] This shortcoming may result from various issues, such as a lack of judicial independence, corruption, inadequate legal frameworks, procedural hurdles designed to protect influential parties, limited resources within the justice system, or even direct threats to claimants and their attorneys. In such circumstances, pursuing litigation abroad is not merely about finding the most favourable forum among several adequate options but about finding any forum capable of delivering a measure of justice.[53] This element of necessity distinguishes much of the THRL forum selection from purely tactical shopping in commercial disputes and strongly informs the access to justice arguments discussed later.

Strategic decisions are made to maximise the likelihood of success, even within those limitations of need. It is important to remember that claimants actively seek jurisdictions that have substantive laws that are more favourable to their claims.[54] This frequently involves choosing forums that found corporate liability on more expansive grounds, such as a parent company's duty of care for its negligent foreign subsidiary, thereby avoiding the formidable 'corporate veil'[55] Defence based on distinguishing between parent and subsidiary liability.[56] Until its recent narrowing by the courts, the Alien Tort Statute (ATS) in the United States provided a jurisdictional basis for certain violations of international law, which attracted numerous human rights claims. Similarly, claimants may identify forums of other legal

[51] Laurence R Helfer, 'Forum Shopping for Human Rights' (1999) 148 University of Pennsylvania Law Review 285 <https://scholarship.law.duke.edu/faculty_scholarship/2032/> accessed 26 May 2025
[52] Lindt (n 1)
[53] Gwynne Skinner, 'Beyond Kiobel: Providing Access to Judicial Remedies for Violations of International Human Rights Norms by Transnational Business in a New (Post-Kiobel) World' (2014) 46(158) <https://papers.ssrn.com/abstract=2544131> accessed 26 May 2025
[54] Ewert (n 9)
[55] Zerk (n 23)
[56] Hassan M Ahmad, 'Parent Company Liability in Transnational Human Rights Disputes: An Interactional Model to Overcome the Veil in Home State Courts' (2021) 12(4) Transnational Legal Theory 501 <https://doi.org/10.1080/20414005.2022.2030646> accessed 26 May 2025

systems that provide better protection for certain human rights or laws that are closely aligned with international standards.

A major driving force is the pursuit of more effective legal remedies. In certain areas, particularly within developed nations, courts possess the authority to award significantly larger compensatory or punitive damages than those available in the host country. The option to secure injunctive relief, which mandates a defendant to halt harmful activities or undertake specific preventive actions, can be a pivotal consideration in selecting a legal forum.

The procedural advantages offered by specific legal systems are equally important. Claimants may be inclined to choose jurisdictions with comprehensive pre-trial discovery procedures, which are crucial for gathering evidence often held by powerful corporate or state defendants. Differences in the standard of proof, rules on the admissibility of evidence, the availability of collective redress mechanisms such as class actions, perceived judicial independence and expertise, or the relative speed and efficiency of court proceedings can all influence the decision on where to file a lawsuit.[57] Furthermore, the presence of legal aid or contingency fee arrangements in some jurisdictions can be a determining factor, given the high expenses associated with complex transnational litigation.[58]

Although it is more subjective, the belief that a forum's judiciary or potential jury pool might be more favourable to human rights claims or less influenced by the political pressures or biases present in the host state can also play a role in strategic decision-making.[59] For example, claimants might think that a court in the defendant's home country holds its corporations to stricter standards or is more aligned with international norms.

Moreover, selecting a forum in THRL is frequently part of larger advocacy strategies. Legal proceedings, especially in prominent forums, can attract considerable media attention, increase public awareness, apply political pressure on defendants and governments, rally support networks, and empower affected communities. Thus, the choice of forum may be

[57] Castelli (n 7)
[58] Mskhvilidze (n 8)
[59] Forum Shopping (n 2)

driven not only by the likelihood of a legal win but also by its potential to further these broader campaign objectives, even if the case is eventually settled or dismissed.[60]

Nevertheless, the capacity to effectively choose a forum is not evenly distributed. Successfully navigating the intricacies of various legal systems, comparing procedural rules, evaluating judicial tendencies, and determining the best forum demands significant legal expertise and financial resources.[61] This can lead to an imbalance in information and resources. Claimants, often vulnerable individuals or communities from the Global South represented by NGOs with limited budgets, may find it challenging to access the sophisticated legal analysis required for optimal forum selection, particularly when up against well-funded corporate defendants with seasoned international legal teams.[62] This disparity can perpetuate existing power imbalances and restrict the practical ability of victims to effectively utilise forum choice, even when theoretical options are available.

THE ROLE OF PRIVATE INTERNATIONAL LAW DOCTRINES: FACILITATORS OR OBSTACLES?

The principles and rules of private international law (PIL) are not simply passive elements; rather, they actively influence the field of transnational human rights litigation (THRL). These principles can serve as either entry points or obstacles for individuals pursuing justice outside the jurisdiction where the harm was inflicted. Doctrines such as jurisdiction, forum non conveniens, and lis pendens frequently become points of contention in THRL cases.

Jurisdictional Rules and Their Application: Jurisdictional rules act as the initial gatekeeper. Before a court can even address the merits of a THRL claim, the claimant must convince the court that it has the legal authority to adjudicate the dispute. This typically involves demonstrating a recognised connection between the defendant or the dispute and the forum state based on established principles such as the defendant's domicile, the location where the tortious act had effects, consent, or substantial business operations within the jurisdiction.[63]

[60] Ekaterina Aristova, 'Tort Litigation against Transnational Corporations in the English Courts: The Challenge of Jurisdiction' (2018) 14 Utrecht Law Review <https://utrechtlawreview.org/articles/10.18352/ulr.444> accessed 26 May 2025
[61] Castelli (n 7)
[62] Julia Eckert, 'Law in Protest: Transnational Struggles for Corporate Liability' (*Swiss National Science Foundation*, 01 November 2016) <https://data.snf.ch/grants/grant/169438> accessed 26 May 2025
[63] Karkason (n 4)

Determining jurisdiction in THRL cases poses unique difficulties, particularly when pursuing parent companies for the actions of their overseas subsidiaries. Defendants frequently contend that the appropriate party to sue is the foreign subsidiary, a distinct legal entity over which the court lacks jurisdiction. To counter this, claimants often attempt to establish a direct connection between the parent company and the harm caused, such as by asserting that the parent violated a duty of care owed to those impacted by the subsidiary's activities, with this duty originating or being managed from the parent's headquarters within the forum state. This approach seeks to bypass, rather than penetrate, the corporate veil by concentrating on the parent's conduct or failures. The likelihood of success depends on the specific circumstances and the forum court's openness to such arguments, which can vary significantly. Achieving the stringent requirements for general business jurisdiction can also be challenging. It necessitates a continuous and systematic connection. This is even tougher if the claim is not directly linked to the defendant's activities within the forum.

Although jurisdictional rules generally serve as barriers, they may also be of assistance in specific THRL claims. For example, broad statutory provisions granting jurisdiction, such as the earlier iterations of the U.S. Alien Tort Statute, provided a substantial footing for human rights claims.[64] Similarly, if courts adopt a broad interpretive approach to the 'necessary connection' in tort cases or assess the foreseeability of a wrongful claim by considering the local impacts of foreign conduct, it could potentially open avenues for claimants. The use of forum selection clauses in contracts is another form of consent jurisdiction, although this is quite rare for tortious claims based on human rights violations arising from a non-contractual relationship.

The Doctrine of Forum Non Conveniens (FNC): In common law systems, even when a court establishes its jurisdiction, defendants often resort to the doctrine of forum non conveniens (FNC) to seek dismissal. This doctrine grants courts the discretion to refuse to exercise their legitimate jurisdiction if they find that another forum is more suitable and convenient for resolving the case. Courts usually weigh 'private interest' factors, such as the ease of accessing evidence, the availability of witnesses, the cost of attendance, and the possibility of inspecting premises, against 'public interest' factors, including the administrative burden on the court, the local interest in the case, and the desire to avoid applying foreign law. The

[64] Lindt (n 1)

purpose of this doctrine is to prevent plaintiffs from choosing a forum merely to inconvenience or harass the defendant by imposing unnecessary burdens.

FNC poses a significant obstacle in THRL cases. Defendants argue that the case should be heard in the foreign country where the alleged human rights violations occurred, as that is where the relevant events took place, most witnesses and evidence are located, and the local legal system has the strongest interest.

A critical element of the FNC analysis is the requirement that there must be an adequate alternative forum available to the plaintiff.[65] Much litigation revolves around this point. Claimants contend that the proposed alternative forum, typically the host state, is inadequate due to systemic issues such as a lack of judicial independence, pervasive corruption, insurmountable procedural obstacles for impoverished claimants, ineffective remedies, or even physical threats to plaintiffs and witnesses if they pursue the case locally. Defendants counter that the foreign system, while perhaps different, meets basic standards of fairness. The court's assessment of the adequacy of the alternative forum is often decisive and involves a complex balancing act, weighing the plaintiff's choice of forum and access to justice concerns against considerations of convenience, fairness to the defendant, and judicial administration. This balancing act is where the tension between PIL's focus on order and convenience and human rights law's focus on effective remedy is often most sharply contested.

Lis Pendens And Related Doctrines: The *lis alibi pendens* (a suit pending elsewhere) doctrine will allow a court to end a case and prevent ongoing litigation if there is an identical proceeding with the same parties and the exact cause of action already pending in a competent court. The related principles, such as res judicata, exclude repeating issues that were settled by a competent court. The principle and doctrine are used to improve judicial efficiency, prevent conflicting judicial assessments, and free defendants from the burden of having to defend against multiple allegations and claims.[66]

In the THRL arena, lis pendens issues can occur when claimants have brought, or defendants argue should have brought, an action in both the host state and in a foreign forum. The

[65] Drobnig (n 38)
[66] Isidro (n 44)

defendant could seek to utilise the presence of certain (potential or actual) host state proceedings as a basis to request the dismissal or suspension of the foreign court proceedings. Lis pendens largely depends on the rules of the respective forums and often involves a specific and detailed review as to whether the parties, subject matter, and legal issues are indeed identical in both acts. Courts may also give weight to whether the proceedings in the original would likely be effective and progress when disposing of the matter.

The use of these PIL doctrines, particularly those that involve discretion like FNC, is infrequently a mere technical endeavour. Instead, it often transforms into a forum where more profound judicial philosophies and policy considerations about the function of domestic courts in addressing international injustices are highlighted. When a court chooses to either assume jurisdiction or dismiss a THRL case due to FNC, it can reveal its stance on international comity, its concerns about the allocation of judicial resources, the potential effects on foreign relations, or its commitment to ensuring remedies for human rights violations. The varied results in similar cases indicate that these doctrines grant courts the latitude to either implicitly or explicitly advance broader policy aims concerning transnational justice.

Moreover, the procedural aspects of PIL can be manipulated for strategic purposes unrelated to PIL. Defendants named in a THRL lawsuit might raise complex jurisdictional or FNC defences not merely to have the case dismissed but also to delay the proceedings and build up costs.[67] Subjecting claimants with limited financial and other resources to prolonged, costly, and preliminary procedural battles may force them to accept settlements they do not like or abandon the claims altogether, regardless of the merits. This demonstrates how procedural rules, crafted to ensure fairness and predictability, can be exploited to obstruct claimants' litigation efforts and potentially intensify the structural power imbalance inherent in many THRL cases.

[67] Andrew Bartlett, *Enforcement of Foreign Judgments 2025* (Global Legal Group 2025)

ARGUMENTS FOR PERMISSIVENESS: FORUM SELECTION AS A VITAL AVENUE FOR ACCESS TO JUSTICE IN HUMAN RIGHTS

A substantial body of arguments advocates for the idea that permitting a certain level of forum selection, including forum shopping, in transnational human rights cases is not only acceptable but often crucial for ensuring victims have genuine access to justice. These arguments emphasise the importance of addressing human rights abuses over strictly following traditional principles of public international law that might otherwise prevent such claims.

The core argument focuses on the fight against impunity. In numerous instances, the legal system in the country where severe human rights violations have taken place is clearly either unwilling or incapable of providing justice. State involvement in abuses, a lack of judicial independence, corruption, insufficient legal systems, high costs, or intimidation of those pursuing justice may contribute to this situation.[68] When domestic remedies are either unavailable or ineffective, pursuing justice through an international court may be the only viable means of holding perpetrators accountable. Preventing access to foreign courts in these scenarios could lead to ongoing impunity for grave international offences. This viewpoint considers the choice of the forum not as opportunistic shopping but as a crucial forum of last resort.'

Similarly, we can make an argument based on the right to an effective remedy as part of the framework of international human rights law. Treaties such as the ICCPR establish a state's obligation to provide an effective remedy determined by a competent authority to individuals whose rights have been violated. When a state fails to provide an effective remedy for a violation, international human rights law principles imply that individuals should have the opportunity, or perhaps even the obligation, to seek an adequate remedy in an alternative forum. If anything, the rules of PIL that impede this individual from accessing the only potentially effective forum available diminish their right to an effective remedy.

Allowing forum selection can also neutralise the inherent playing field, which is usually unbalanced in THRL cases. In THRL cases, the victim is often an individual or community

[68] 'Justice across Borders: Access to Labour Justice for Migrant Workers through Cross-Border Litigation | International Labour Organization' (*ILO*, 30 November 2024) <https://www.ilo.org/publications/justice-across-borders-access-labour-justice-migrant-workers-through-cross> accessed 26 May 2025

with limited resources and political power, while their opponents are usually a state or a large TNC. The host state's legal system is likely to be biased or easily manipulated in favour of the actor with the most significant resources. Permitting claimants to pursue legal action in a jurisdiction outside the host state, where the legal system is more capable, independent, and equally resourced, grants victims the most equitable opportunity to present their case and confront powerful defendants on an equal playing field.

Moreover, permitting THRL in competent international forums can lead to broader beneficial impacts beyond the specific case at hand. Successful lawsuits or even prominent legal proceedings can create a strong deterrent effect, discouraging potential human rights violators worldwide by showing that accountability can be enforced across national boundaries. These cases also aid in the ongoing development and clarification of international human rights standards, especially about corporate accountability, supply chain obligations, and the enforcement of care duties in transnational settings.

The cross-border nature of the harm itself offers another rationale. When transgressions are carried out by or associated with transnational entities such as TNCs that function through intricate global networks or when state actions have effects beyond their borders, it seems reasonable and fair for accountability systems to also function across borders.[69] The home country of a TNC, which benefits both economically and politically from its international operations, has a corresponding responsibility to ensure its corporate citizens do not cause significant harm abroad and to provide a platform for seeking justice when they do. Arguments centred on the parent company's duty of care embody this reasoning.

Supporters of more lenient applications of the forum non conveniens doctrine often express concerns about its restrictive use, particularly in determining whether an adequate alternative forum is available.[70] They argue that adequacy should not be evaluated solely on the theoretical existence of courts and legal systems in the host nation. Instead, a comprehensive and practical analysis is essential, considering elements such as the genuine accessibility of courts for financially disadvantaged claimants, the actual independence of the judiciary, the chances of fair trials free from corruption or political pressure, the presence

[69] Lindt (n 1)
[70] Drobnig (n 38)

of effective legal remedies, and the physical security of plaintiffs and witnesses. In situations where these practical conditions are absent, dismissing a case on FNC grounds essentially equates to a denial of justice.

At the heart of these arguments is an acknowledgement that the traditional principles of PIL, which were mainstreamed to govern private commercial disputes and facilitate order between sovereign states, may not accurately account for the significant normative weight and disputes over substantive justice that are inherent in human rights claims.[71] Doctrines privileging convenience, providing defendants predictability, and consideration for interstate comity[72] can seem inadequate when faced with victims who have suffered a total deprivation of remedy for fundamental rights violations. The argument for permissiveness is framed by the idea that the balance in PIL should shift pivotally and place greater significance on the necessity of providing an adequate remedy in the human rights context. Although this shift might appear radical, accepting jurisdiction in cases typically considered inappropriate or inconvenient by traditional standards of convenience or comity is justified when the alternative is to reject claims under the guise of convenience.

ARGUMENTS FOR RESTRICTION: PROTECTING LEGAL CERTAINTY, FAIRNESS, AND SOVEREIGNTY

Balancing the push for greater access to justice are substantial worries about the potential adverse effects of unrestrained forum shopping in cross-border human rights litigation. These concerns underscore the need to uphold essential public international law principles, such as ensuring legal certainty, fairness to defendants, judicial efficiency, and honouring state sovereignty.

A significant issue with excessive forum shopping is that it disrupts legal certainty and predictability, which are essential objectives of private international law. When defendants, especially transnational corporations involved in legitimate global operations, are at risk of being sued in nearly any jurisdiction based on a plaintiff's perceived advantage, it becomes difficult to evaluate legal risks and foresee potential liabilities. This unpredictability could discourage cross-border investment and activities, as parties cannot reliably predict where

[71] Lawrence Collins et al., *Dicey, Morris and Collins on the conflict of laws* (15th edn, Sweet and Maxwell 2014)
[72] Karkason (n 4)

and under what legal standards their actions might be evaluated. PIL seeks to establish rules that allow parties to foresee the applicable law and the appropriate forum.

Equity for the defendant also plays an important role. Essentially, if a defendant has to fight a case in a remote and unfamiliar court system, which was no doubt obtained because it was not convenient, there is a fairness question on various levels. Defendants can face serious and significant inconveniences, such as travel expenses, moving witnesses and evidence across borders, language for witnesses and even the parties, dealing with the foreign court's procedure, and potential unintentional bias from local jurors. This is part of the reason that public international law doctrines such as FNC are in place - to stop unreasonable inconveniences to defendants.

An additional concern that has arisen is abusive litigation, where a plaintiff selects a forum not based on connection to the dispute or better justice but merely as a way to obtain some perceived tactical benefit unrelated to the merits of the case. This would be the same sort of thing as pursuing jurisdictions known for staggering damage awards, procedural idiosyncrasies, or local jurors perceived as more prejudicial against a foreign or corporate defendant in this case. Seeking these tactical benefits can lead to unjust outcomes or coerce a defendant to settle a weak claim simply to avoid excessive and disproportionate costs and risks of litigating in an unknown and unfriendly forum.

Respect for state sovereignty and international comity is a fundamental pillar supporting the argument for restriction. When courts in one nation frequently adjudicate matters that have occurred entirely within the territory of another sovereign state, it may be seen as an infringement on the latter's authority to manage its internal affairs.[73] Such actions can strain international relations and be perceived as a form of judicial imperialism, especially if the forum state imposes its laws or standards on foreign conduct. The principle of comity suggests that courts should typically defer to the jurisdiction most closely connected to the dispute, which is usually the location where the events took place.

The possible strain on the judicial resources of the selected forum is also a practical consideration. Courts being asked to decide on complex transnational cases involving foreign

[73] Collins (n 71)

events, foreign witnesses, and potentially foreign law would involve significant administrative difficulties and costs. This constitutes a waste of judicial time and resources that could otherwise be used to resolve local disputes in which the forum state has a more direct interest.

Similarly, allowing parallel litigation in multiple forums runs the risk of inconsistent decisions on the same issues, which undermines legal certainty and finality.[74] PIL doctrines like *lis pendens* try to curb that from happening, but where there is aggressive forum shopping, there is a higher likelihood of concurrent proceedings.

In addition to the recognised concerns of PIL, the practice of extensive forum shopping for human rights cases presents a critical challenge to legal pluralism. When claimants habitually select forums in specific (often Western) countries that are reputed for robust human rights protections or more lenient liability rules, the decisions from these courts may unintentionally endorse their particular legal norms and standards as universally applicable. While this could potentially aid in strengthening global human rights enforcement, it also poses the risk of overshadowing the diverse legal cultures and standards of other regions, circumventing international consensus-building, and possibly imposing the values of one region.[75] Traditional PIL, on the other hand, typically strives to accommodate legal diversity rather than suppress it.[76] Thus, curbing forum shopping can be perceived as a strategy to uphold this legal pluralism, though it might come at the expense of justice in certain instances where local systems are deficient.

A practical concern emerges regarding the potential for backlash. If courts in certain nations adopt overly lenient positions on jurisdiction and forum selection in sensitive human rights cases, especially those with foreign policy implications or that impose significant burdens on domestic corporations, it could provoke adverse reactions from legislative or executive bodies. This could lead to the introduction of more restrictive jurisdictional laws, constraints on the acknowledgement of foreign judgments, or other measures intended to limit judicial activism in this domain. Such a backlash might ultimately be counterproductive, shutting

[74] Isidro (n 44)
[75] Drobnig (n 38)
[76] Collins (n 71)

down current pathways for transnational justice. This highlights a strategic risk in extending the limits of forum selection too aggressively and rapidly.

CASE LAW ANALYSIS: ILLUSTRATIVE JURISPRUDENCE ON THE PIL-HUMAN RIGHTS TENSION

The real-world application of private international law principles in transnational human rights litigation and the corresponding tensions between these principles are exemplified clearly by court rulings across countries. Important trials, in particular, are from higher courts in older common law countries such as the UK, Canada, and the U.S., and developing parts of the EU, show how courts attempt to balance access to justice with concerns for comity, fairness, and the wider consequences of judicial administration.

A pivotal issue has been determining the legal responsibility of parent companies for the actions of their overseas subsidiaries. Historically, the corporate veil, which signifies the distinct legal identity of corporations, has protected parent companies from being held liable for the conduct of their subsidiaries. However, in transnational human rights litigation (THRL) cases, there is an increasing assertion that parent companies have a direct 'duty of care' to individuals impacted by their subsidiaries' activities, especially when the parent company exercises considerable control or enforces group-wide policies. The UK legal framework has experienced significant progress in this domain. The case of Chandler v Cape plc EWCA Civ 525 set forth criteria for acknowledging such a duty. More recently, the UK Supreme Court in Vedanta Resources plc v Lungowe UKSC 20[77] and Okpabi v Royal Dutch Shell plc UKSC 3[78] permitted claims by foreign plaintiffs against UK-based parent companies (Vedanta and Shell) to move forward. The court identified arguable cases suggesting that the parent companies had adequate control over or involvement in the management of their foreign subsidiaries' operations, which could potentially establish a duty of care concerning environmental harm and human rights violations abroad. These cases illustrate a judicial readiness, under particular factual conditions, to create jurisdictional links between parent companies and foreign harm, thereby advancing THRL.

[77] *Vedanta Resources PLC and Anr v Lungowe and Ors* [2019] UKSC 20
[78] *Okpabi and Ors v Royal Dutch Shell Plc and Anr* [2021] UKSC 3

The doctrine of forum non conveniens (FNC) remains a significant point of debate. Courts must weigh the plaintiff's chosen forum against considerations of convenience and the suitability of the suggested alternative forum. The outcomes can differ greatly based on the specifics of each case and the court's evaluation. In certain instances, courts have approved FNC dismissals, prioritising the foreign jurisdiction where the events took place (such as in early ATS cases in the U.S. and some Canadian mining cases). Conversely, in situations where evidence indicates that the alternative forum is effectively inaccessible or unable to deliver fair and effective justice, courts have opted not to dismiss. The Vedanta and Okpabi cases also involved FNC arguments, with the UK Supreme Court ultimately determining that there was a genuine risk the claimants would not receive substantial justice in the host countries (Zambia and Nigeria), thereby justifying the English court's jurisdiction. These rulings underscore the importance of analysing the adequacy of the alternative forum and suggest a possible trend towards a more thorough examination of the practicalities of obtaining justice in host states, especially in human rights cases.

In the United States, the Alien Tort Statute (ATS)[79] has traditionally been a key tool for choosing a forum in human rights cases, enabling foreign plaintiffs to bring lawsuits in U.S. federal courts for breaches of international law. However, a series of Supreme Court rulings have greatly limited its scope. In Kiobel v Royal Dutch Petroleum Co., 569 U.S. 108 (2013)[80], the court introduced a presumption against the ATS's extraterritorial application, stipulating that claims must touch and concern U.S. territory with adequate force. Furthermore, Jesner v Arab Bank, PLC, 138 S.Ct. 1386 (2018)[81] determined that foreign corporations are not subject to lawsuits under the ATS. These decisions indicate a judicial retreat motivated by worries about foreign policy consequences, international comity, and the potential strain on U.S. courts, thus narrowing a significant path previously utilised for THRL forum shopping in the U.S.

In the European Union, the legal framework is influenced by the Brussels I Regulation (Recast), which oversees jurisdiction and the recognition and enforcement of judgments in civil and commercial cases among member countries. The primary rule gives precedence to jurisdiction based on the defendant's domicile. Although there are exceptions, such as

[79] Alien Tort Statute 1789
[80] *Kiobel v Royal Dutch Petroleum Co* [2013] 569 US 108
[81] *Jesner v Arab Bank, PLC* [2018] 584 US __

jurisdiction where a harmful event took place, the Regulation generally restricts the use of forum non conveniens between EU member states. This system offers greater predictability regarding jurisdiction within the EU, but it may interact differently with THRL claims involving defendants or incidents outside the EU, where national and private international law rules (including potentially FNC, depending on the member state) might still be applicable.

This succinct examination of case law reveals that the relationship between PIL principles and access to justice in THRL is neither stable nor uniform. It is heavily influenced by the distinct facts of each case, the particular legal doctrines at play (such as 'duty of care', ATS, or FNC), the procedural phase of the case, and the evolving judicial philosophies across different legal systems. Courts are consistently involved in defining boundaries, striving to balance conflicting values in complex transnational situations. This variability makes predicting outcomes challenging and necessitates legal strategies that are precisely tailored to the unique circumstances and the prevailing legal doctrines of the potential forum. There is no single, universally applicable formula that governs the intersection of PIL and THRL.

TOWARDS RESOLUTION: EXPLORING LEGAL REFORMS, CONVENTIONS, AND JUDICIAL APPROACHES

In light of the ongoing challenges and tensions at the intersection of forum shopping, human rights litigation, and private international law, there are numerous reform proposals and evolving strategies aimed at achieving a more effective balance between ensuring access to justice and upholding the international legal order. These efforts encompass a range of initiatives, from international treaty negotiations to amendments in national legislation and shifts in judicial interpretation.

One approach to standardising Private International Law (PIL) rules is through international conventions, mainly facilitated by the Hague Conference on Private International Law. Conventions such as the 2005 Choice of Court Agreements Convention and the 2019 Judgments Convention[82] strive to enhance predictability in jurisdiction by relying on party

[82] Lucas Clover Alcolea, 'The 2005 Hague Choice of Court and the 2019 Hague Judgments Conventions versus the New York Convention - Rivals, Alternatives or Something Else?' (2020) 6 McGill Journal of Dispute Resolution 186

agreements and ensuring the recognition and enforcement of judgments internationally. Although these conventions are beneficial for commercial disputes, their influence on tort-based Transnational Human Rights Litigation (THRL) claims, where pre-dispute choice of court agreements are uncommon, might be limited. Moreover, previous attempts to create a comprehensive global convention on jurisdiction and judgments have been hindered by significant disagreements among nations, highlighting the difficulty of achieving widespread consensus in this domain.[83] An important consideration is whether current and future PIL conventions adequately address the unique requirements of human rights cases, such as providing effective remedies when local justice systems are inadequate.

At a national level, legislative reforms could be implemented to overcome specific challenges in THRL. Parliaments have the potential to pass laws that explicitly empower domestic courts to handle certain transnational human rights cases. This might include clarifying the liability of parent companies for the actions of their foreign subsidiaries or establishing specific civil legal remedies for breaches of international human rights law that occur abroad but have a connection to the forum. Additionally, reforms could address the *forum non conveniens* doctrine by potentially requiring courts to prioritise access to justice in human rights cases, establishing more stringent criteria for proving the adequacy of an alternative forum, or instituting rebuttable presumptions against dismissal when fundamental rights are at risk. Moreover, legislation could enhance THRL by increasing access to legal aid, allowing for more flexible funding options, or reducing procedural costs for claimants.

Judicial strategies can advance even in the absence of formal legislative revisions. Courts are capable of adopting interpretations of jurisdictional rules that emphasise purpose, aligning their assessments with the goals of international human rights law when evaluating connections to the forum. They can also enhance doctrines like the parent company's 'duty of care', adjusting the criteria for its application in cross-border situations by taking into account the evolving nature of corporate structures and control mechanisms. Judges can exercise their discretion under the FNC doctrine with a heightened awareness of the practical difficulties encountered by human rights victims, insisting on compelling evidence of the adequacy and accessibility of alternative forums before dismissing claims. This necessitates

[83] Drobnig (n 38)

moving beyond a purely theoretical analysis to a practical consideration of whether substantial justice is genuinely achievable elsewhere.

Another major development is the current negotiation process within the UN Human Rights Council regarding a legally binding international instrument designed to regulate the activities of TNCs and other business entities regarding human rights. If an international treaty becomes adopted and widely ratified, it could make provision for jurisdiction, applicable law, and mutual legal assistance (specifically to enable access to remedy for victims of human rights abuses related to corporations), thereby responding directly to some of the PIL issues currently faced in THRL.

Non-judicial grievance mechanisms (NJGMs), such as corporate-level complaint systems or multi-stakeholder initiatives, are sometimes suggested as alternatives. However, they frequently encounter criticism for their lack of independence, transparency, and enforceability of outcomes. Transnational corporations (TNCs) might prefer these mechanisms as a strategy to circumvent formal litigation. Although NJGMs can be beneficial in specific situations, they cannot entirely replace judicial remedies, particularly in instances of severe violations that necessitate binding decisions and enforceable compensation.

Achieving a significantly improved balance between access to justice in THRL and the principles of PIL is unlikely to be realised through a single, sweeping reform. The entrenched nature of PIL principles within national legal frameworks, along with persistent concerns regarding state sovereignty and judicial resources, indicates that advancements will probably be gradual. This process may involve a blend of approaches: expanding the ratification and thoughtful application of specific international treaties like the Hague Judgments Convention[84], implementing targeted national legislative reforms to address particular deficiencies (such as parent company liability)[85], and fostering ongoing

[84] Peter Arnt Nielsen, 'The Hague Judgments Convention' (2011) 80 Nordic Journal of International Law 95
[85] Gerry Liston, 'Parent Company Liability and the European Convention on Human Rights – An Analysis from the Perspective of English Law' (2020) 31(5) European Business Law Review 819 <https://doi.org/10.54648/eulr2020031> accessed 26 May 2025

development in judicial interpretation of doctrines like 'duty of care'[86] and FNC[87], guided by human rights standards. This gradual, multi-faceted strategy appears more practical than attempting a radical, top-down overhaul of PIL rules on a global level.

SYNTHESIS AND CONCLUSION: NAVIGATING THE COMPLEX BALANCE BETWEEN JUSTICE AND ORDER

This article highlights the significant and intricate conflict between two essential priorities in the international legal framework: the imperative to offer effective remedies to victims of transnational human rights abuses and the need to uphold a consistent, predictable, and equitable system for resolving international disputes through private international law. The practice of forum shopping, often utilised by human rights claimants due to the inadequacies of local justice systems. Represents the intersection where these conflicting priorities meet.

Proponents of forum selection in human rights litigation highlight its essential function in addressing impunity, upholding the globally acknowledged right to an effective remedy, balancing the power dynamics between vulnerable victims and influential defendants, preventing future violations, and holding transnational entities accountable for their actions. From this viewpoint, PIL doctrines should be applied with flexibility, giving precedence to substantive justice when fundamental rights are involved, particularly considering the potential' justice deficit' that arises when traditional PIL principles centred on convenience and comity take precedence over the necessity for a remedy.

In contrast, proponents of imposing restrictions on forum shopping stress the significance of preserving the essential values of Private International Law (PIL): providing legal certainty and predictability for cross-border participants, ensuring fairness to defendants who may be subjected to lawsuits in inconvenient jurisdictions, honoring the sovereignty of the state where the events transpired, minimizing excessive burdens on the courts of the forum, and curbing exploitative litigation practices.[88] It is argued that allowing unrestricted forum selection could threaten the stability and order that PIL is designed to uphold, potentially

[86] Tara Simson, 'The Duty to Care: Progressive Judicial Interpretation of the Directors' Duty of Care and Diligence' (2022) 4(1) University of South Australia Law Review <https://doi.org/10.21913/USLRunisalr.v4i1.1631> accessed 26 May 2025
[87] Tibisay Morgandi, 'Parent Company Liability, Forum Non Conveniens and Substantial Justice' (2022) 11(1) Cambridge International Law Journal <https://www.elgaronline.com/view/journals/cilj/11/1/article-p118.xml> accessed 26 May 2025
[88] Karkason (n 4)

leading to legal uniformity or inciting political responses that might further curtail access to justice.

The practical application of PIL doctrines like jurisdiction and *forum non conveniens* in THRL cases, as revealed by case law, demonstrates that courts are constantly engaged in a difficult balancing act.[89] Establishing jurisdiction over foreign-based harms or parent companies remains a significant hurdle, often turning on evolving concepts like 'duty of care.' FNC analysis frequently becomes a proxy battle over the adequacy of foreign justice systems, with outcomes varying based on judicial assessment of practical realities versus theoretical availability. The strategic use of these procedural doctrines by defendants to create delay and increase costs further complicates the pursuit of justice for resource-constrained claimants.[90]

The following table summarises the core competing values inherent in this debate:

Arguments Supporting Permissiveness (Focus on Access to Justice)	**Arguments Supporting Restriction (Focus on PIL Principles)**
Addresses Impunity / Provides Forum of Last Resort	Ensures Legal Certainty / Predictability for Transnational Actors
Fulfils Fundamental Right to an Effective Remedy	Guarantees Fairness to Defendants (Avoiding Undue Burden/Cost)
Level Playing Field (Victim v Powerful Defendant)	Prevents Abusive Litigation / Tactical Gamesmanship
Deters Future Violations	Respects Sovereignty / Comity / Non-Interference

[89] Drobnig (n 38)
[90] Lindt (n 1)

Promotes Norm Development (e.g., Corporate Accountability)	Avoids Undue Burden on Forum Courts / Judicial Resources
Reflects Transnational Nature of Harm/Actors	Prevents Inconsistent Judgments / Promotes Finality
Challenges: Practical Adequacy of Local Forums	Preserves Legal Pluralism / Avoids Imposing External Norms
	Mitigates Risk of Political/Legislative Backlash

The landscape is in constant flux. Elements such as globalisation, the expanding influence of transnational corporations, heightened awareness of human rights responsibilities, and ongoing legal advancements, including treaty negotiations and the evolution of jurisprudence, continually reshape the boundaries of this debate. Achieving an ideal balance that completely satisfies all competing interests remains a challenging pursuit.

Progress in this area likely depends on crafting more sophisticated strategies that recognise the distinct nature of human rights claims within the framework of PIL. This might entail interpreting and applying PIL principles such as jurisdiction and FNC with a keen awareness of the necessity for effective remedies, especially when there is credible evidence indicating that local justice systems are either unavailable or ineffective. It calls for a shift from formalistic evaluations to a more substantive assessment of justice requirements. While it remains essential to uphold predictability and fairness for defendants, the significant severity of human rights violations may require an adjustment of the traditional balance, potentially distinguishing human rights claims from standard commercial disputes in the application of certain discretionary PIL doctrines.

To ensure that private international law effectively meets the needs of global commerce, legal order, and the fundamental demands of human rights justice, it is crucial to engage in ongoing dialogue, foster legal innovation, and secure the commitment of courts, lawmakers,

and international entities to adapt legal frameworks to the realities of a globally connected world where human rights violations frequently transcend national boundaries. The challenge is to develop a system that supports the pursuit of transnational justice when necessary while upholding the core principles of fairness and predictability that are vital to the rule of law in international contexts.