Working Paper 3: The Role of 'Home States' in Facilitating Access to Reparation for Victims of Gross Human Rights Violations in Ukraine

By: Emma Baldi

July 2026

Engaging Businesses
in Repairing War-Related Damage

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Working Paper Series 3: The Role of 'Home States' in Facilitating Access to Reparation for Victims of Gross Human Rights Violations in Ukraine

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July 2026

Front Page Photo Credit: Anzhela Bets, Unsplash https://unsplash.com/photos/a-man-is-walking-through-a-destroyed-building-LJ3l4ij3q8M
The building of a cinema and youth center in Chernihiv, Ukraine that was destroyed by an aerial bomb in March 2022. Chernihiv, Chernihiv Oblast, Ukraine

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I. Introduction

This Working Paper addresses the following question: *What role and what responsibilities do businesses' home states have in promoting, enabling, or requiring corporate participation in reparations efforts related to Ukraine?*

In business and human rights discourse, and for the purposes of this Working Paper, 'home states' are understood as the states in which a business enterprise is incorporated, registered, domiciled, or headquartered. In the context of transnational or multinational corporations, the home state will often correspond to the jurisdiction in which the parent company or lead firm is based or incorporated. Home states are commonly contrasted with 'host states', namely the states in which business activities take place and where business-related human rights abuses may occur. This distinction has long played an important role in debates on the scope of states' obligations in the field of business and human rights, including in relation to the regulation of corporate conduct abroad and the extent to which victims may seek remedies before courts and other mechanisms in businesses' home states.

Against this background, the Working Paper examines several avenues — selected based on both their relevance in the Ukrainian context and their assessed legal and policy feasibility — through which businesses' home states may support, incentivise, or require corporate contributions to reparation. These include liability-based avenues, notably transnational or cross-border litigation before home-state courts, as well as a range of non-liability-based pathways, including forms of public economic support and related conditionality, as well as taxation-based measures.

While the report focuses on the above avenues, it is important to note that other relevant pathways through which home states may influence corporate conduct and support access to reparation exist, particularly over the medium to longer term. These include, in particular, regulatory approaches, such as mandatory human rights due diligence (HRDD) legislation,[1] as well as policy instruments such as National Action Plans (NAPs) on Business and Human Rights.[2] Although not examined in detail in this Working Paper, such frameworks may contribute to shaping corporate behaviour in conflict-

[1] Existing domestic mandatory human rights due diligence legislation does not generally provide specific rules for conflict-affected and other high-risk areas. Nevertheless, instruments such as the Norwegian Transparency Act and the German Supply Chain Act, in line with the United Nations Guiding Principles on Business and Human Rights, rely on a risk-based and proportionate approach, under which companies are required to adjust the scope and intensity of their due diligence processes to the nature of their activities and the severity and likelihood of adverse impacts — a requirement that may, in practice, entail heightened expectations in conflict-affected contexts.
[2] On National Actions Plans on Business and Human Rights, see, 'National Actions Plans on Business and Human Rights – Conflict-Affected Areas' (National Actions Plans on Business and Human Rights) <https://globalnaps.org/issue/conflict-affected-areas/>.

affected and high-risk contexts and, indirectly, to facilitating corporate engagement in reparation processes.

Given the breadth of the issues under consideration, and mindful of the specificities of the concept of reparation as understood in its strict legal sense, the Working Paper adopts a relatively broad understanding of reparation. The term is used here to encompass not only measures aimed at redressing harm suffered by victims in the strict sense, but also, where relevant, broader initiatives connected to reconstruction and economic recovery in Ukraine.

II. Transnational Litigation before Home-State Courts

In the context of judicial remedies, so-called 'home states' have often been called upon, through their courts, to play a critical role in providing victims of business-related human rights abuses with a more realistic prospect of obtaining reparation for harm suffered.[3] This phenomenon, according to which victims seek to bring claims before the courts of a state other than the one where the alleged harm occurred, is commonly described as transnational or cross-border litigation.

The reasons for this are multiple and interrelated and generally stem from the inability — and sometimes unwillingness — of host states' courts, namely those most closely connected geographically to the harm, to provide reparation to victims of business-related human rights abuses.[4] Without any pretence of generalisation, these challenges may include weak judicial independence and impartiality, inadequate legal and regulatory frameworks, and poor law enforcement. In addition, host states may face political or economic pressures, including fears of deterring foreign investment or situations where state actors themselves are implicated in the abuses.

Practical obstacles also play an important role. Victims often face difficulties in securing experienced legal representation, accessing financial resources for litigation, or pursuing claims against undercapitalised local subsidiaries or business partners that lack the resources to provide meaningful reparation. These challenges are frequently compounded by weak rule-of-law conditions, corruption, and situations sometimes described as 'corporate capture'. Victims may also face intimidation, threats, or reprisals.

These limitations are particularly acute in situations of armed conflict — and, often, also in post-conflict settings — where domestic judicial systems may be severely weakened or even non-functional. In such contexts, competing priorities linked to security, reconstruction, and political stabilisation may further reduce the capacity of host states to ensure effective access to justice for victims of corporate misconduct.

As a result, victims of business-related human rights abuses frequently turn to the courts of states where companies — particularly parent companies or lead firms — are incorporated or have their

[3] See, e.g., Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 March 2011) UN Doc A/HRC/17/31 (UNGPs) commentary to principle 26.

[4] Generally on this, see, e.g., Gwynne Skinner, Robert McCorquodale and Olivier De Schutter, 'The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business' (ICAR-CORE-ECCJ 2013) 24; Axel Marx, Claire Bright and Jan Wouters, 'Access to Legal Remedies for Victims of Corporate Human Rights Abuses in Third Countries' (European Union 2019) 14-17; Dalia Palombo, *Business and Human Rights: The Obligations of the European Home States* (Hart Publishing 2020) 43-50.

principal place of business. These states are often located in the so-called 'Global North'.[5] In some cases, litigation before home-state courts forms part of a broader litigation strategy, pursued simultaneously or sequentially before host-state courts, third-state courts, and/or regional human rights bodies.[6]

Access to home state courts, however, has also proven fraught with both legal and practical challenges. Legally, for instance, establishing the jurisdiction of home state courts — that is, their authority to hear and decide civil disputes between private parties involving a foreign element — can be extremely complex. Practically, transnational litigation is often lengthy and costly, frequently placing it beyond the reach of many overseas victims, who may also face language barriers.

These challenges may be even more pronounced in cases arising from armed conflict, where, for example, evidence may be difficult to collect or preserve due to ongoing hostilities, restricted access to affected areas, and the destruction of infrastructure and documentation. Victims may also face practical barriers to leaving conflict-affected areas to initiate proceedings abroad or to participate effectively in litigation.

Despite these obstacles, courts in several home states have received — and continue to receive — complaints concerning business-related human rights abuses linked to armed conflict. Generally, litigation has involved allegations that corporate actors — both natural and legal persons — provided goods, services, infrastructure, or financial support to state or non-state armed actors, despite knowledge of the risk that such support could contribute to violations of international humanitarian law, international human rights law, or international criminal law. In other cases, claims have focused on corporate activities that allegedly benefited from, or were enabled by, abuses committed in conflict settings. In many instances, corporate involvement has arisen through complex corporate structures, supply chains or contractual relationships — a situation that may further complicate efforts to establish legal responsibility. As the following overview shows, such cases have been pursued through both criminal and civil proceedings.[7]

Having regard to criminal litigation, proceedings have been brought against corporate officers and directors,[8] and, in some jurisdictions that recognise corporate criminal liability, against corporations

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[5] Transnational litigation before home state courts has sometimes attracted criticism as a form of judicial imperialism or 'delocalised justice', allegedly infringing host states' sovereignty and the principle of non-intervention, and potentially undermining efforts to strengthen local capacity. See, e.g., Antoine Duval and Misha Plagis, 'Delocalized Justice: The Delocalization of Corporate Accountability for Human Rights Violations Originating in Africa' (*AfronomicsLAW*, 4 October 2021) <https://www.afronomicslaw.org/category/analysis/delocalized-justice-delocalization-corporate-accountability-human-rights>; Debadatta Bose, 'Decentring Narratives around Business and Human Rights Instruments: An Example of the French *Devoir de Vigilance* Law' (2023) 8 Business and Human Rights Journal 18.

[6] For instance, the *Anvil Mining* case — concerning allegations that an Australian-Canadian mining company provided logistical support to Congolese armed forces during the Kilwa operation, thereby facilitating serious abuses against the civilian population — has been pursued before domestic courts in Australia, Canada, and the Democratic Republic of Congo, albeit without success as well as before the African Commission on Human and Peoples' Rights. Claims relating to Chiquita Brands International's alleged involvement in conflict-related gross human rights abuses in Colombia have been brought before both United States and Colombian courts.

[7] Given the scope of the present analysis, the discussion that follows focuses on claims concerning alleged business-related human rights abuses committed in conflict-affected settings and brought before home state courts, rather than before host state or third state courts. The cases examined were identified through open-source databases, primarily the *Business and Human Rights Resource Centre*'s Lawsuits Database (<https://www.business-humanrights.org/en/from-us/lawsuits-database/>) and complemented by additional independent research.

[8] See, e.g., *Lundin* case. The criminal trial in Sweden against former Lunding Oil executives Ian Lunding and Alexandre Schneiter, who are accused of complicity in war crimes committed by Sudanese government forces in today's South Sudan between 1999 and 2003, concluded its hearings in May 2026, with judgment scheduled for December 2026.

themselves.[9] Criminal investigations relating to business involvement in conflict-related human rights violations have particularly been initiated in several European (civil law) jurisdictions,[10] including France,[11] Belgium,[12] the Netherlands,[13] Sweden,[14] and Switzerland.[15]

However, the use of criminal law in transnational business and human rights litigation faces significant hurdles. Opening criminal investigations typically requires meeting demanding evidentiary thresholds, and criminal convictions must be established beyond a reasonable doubt. Prosecutorial discretion may further limit the number of cases that proceed to trial. Often, these limitations operate in conjunction.[16]

Moreover, criminal proceedings often provide limited avenues for victims to obtain reparation beyond the symbolic — 'satisfactory' — value associated with criminal accountability.[17] While some jurisdictions allow victims to attach civil claims for damages to criminal proceedings — for example in France and certain other European systems — such mechanisms remain relatively limited and rarely result in comprehensive reparation.

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[9] See, e.g., *Lafarge* case. In April 2026, the Paris Criminal Court convicted Lafarge of financing a terrorist enterprise and violating international financial sanctions in connecting with payments to armed groups (Jabhat al-Nusra and the Islamic State) in Syria between 2013 and 2014. The company was fined EUR 1.125 million and ordered, jointly and severally with four former executives, to pay a customs fine of EUR 4.57 million. The defendants announced their intention to appeal, while a separate investigation into alleged complicity in crimes against humanity remains ongoing.

[10] See, Wolfgang Kaleck and Miriam Saage-Maaß, 'Corporate Accountability for Human Rights Violations Amounting to International Crimes: The Status Quo and its Challenges' (2010) 8(3) Journal of International Criminal Justice 699, 703.

[11] See, e.g., *DLH* case (this criminal complaint was filed by NGOs against DLH Nordisk A/S and its subsidiary DLH France and alleged that the companies purchased timber from Liberian suppliers linked to Charles Taylor's regime during the Liberian civil war despite UN reports indicating that timber revenues financed the conflict in violation of UN sanctions; the French prosecutor dismissed the complaint due to an 'insufficiently characterised offence'); *Qosmos* case (this criminal complaint was filed by NGOs, alleging that the French technology company supplied surveillance technology to the Syrian government that could have been used to identify and repress political opponents during the conflict, amounting to complicity in torture and crimes against humanity; the French authorities closed the investigation in 2017 due to insufficient evidence to establish a causal link between the alleged provision of equipment and the acts of torture and crimes against humanity allegedly perpetrated by the Syrian regime); *Lafarge* case (n 9); *Apple France and Apple Retail France* case (this criminal complaint was filed by the DRC government, alleging that Apple France and Apple Retail France sourced minerals originating from conflict areas in the Democratic Republic of Congo linked to armed groups responsible for serious human rights abuses, amounting to receiving goods derived from criminal activity, laundering, and deceptive commercial practices; French prosecutors dismissed the complaint in 2019 considering it not sufficiently well-founded).

[12] See, e.g., *Apple Retail Belgium* case (this criminal complaint was filed by the DRC government, accusing Apple Retail Belgum of the crimes of receiving goods originating from criminal activity, laundering and deceptive commercial practices in connection with its alleged sourcing of minerals originating from conflict areas in the Democratic Republic of Congo; the case is ongoing).

[13] See, e.g., *Riwal* case (this criminal complaint was brought in the Netherlands against Lima Holding BV by NGOs alleging that Lima Holding BV's subsidiary Riwal supplied construction equipment used in building the separation wall in the Occupied Palestinian Territory, thereby contributing to violations of international humanitarian law; the Dutch prosecutors closed the investigation on the basis that Riwal's contribution to violations of international humanitarian law was 'minor').

[14] See, *Lundin* case (n 8).

[15] See, e.g., *Nestlé* case (this criminal complaint alleged that Nestlé and members of its senior management were complicit in the murder of trade unionist Luciano Romero, an employee of Nestlé's Colombian subsidiary Cicolac, by failing to take precautionary measures to prevent the killing after Romero had allegedly received death threats and been falsely branded a guerrilla fighter; the complaint was dismissed by the prosecutor on the ground that it had been filed after the expiration of the applicable statute of limitations); *Argor Heraeus* case (this criminal complaint alleged that Argor-Heraeus refined gold looted by armed groups during the conflict in the Democratic Republic of Congo; Swiss prosecutors closed the investigation due to insufficient evidence).

[16] See, e.g., *DLH* case (n 11); *Argor-Heraeus* case (n 15); *Riwal* case (n 13); *Qosmos* case (n11).

[17] See, UN General Assembly, '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' (16 December 2005) UN Doc A/RES/60/147, principle 22.

As a result of the above, notwithstanding some positive outcomes in the past,[18] civil litigation has generally played a more prominent role in transnational business and human rights cases, including those connected to armed conflict. Civil claims have relied on a variety of legal bases, including specialised statutes — such as the Alien Tort Statute (ATS) but also the Torture Victim Protection Act (TVPA) and the Trafficking Victims Protection Reauthorization Act (TVPRA) in the United States, often in combination[19] — as well as tort law,[20] contract law,[21] and/or other domestic causes of action. Each of these legal bases presents specific challenges. In particular, traditional tort frameworks sit uneasily with the complex organisational structures of multinational enterprises and transnational business activities, where harmful conduct is often dispersed across multiple actors and jurisdictions.

Claimants frequently face enormous difficulties establishing that a company — particularly a parent company, and even more so a lead firm within a global value chain[22] — owed them a duty of care, as courts tend to treat corporate entities as legally separate and may view relationships with subsidiaries or business partners as too indirect to ground liability. Third, tort litigation imposes demanding causation and evidentiary burdens, requiring victims to demonstrate a clear causal link between the defendant's conduct and the harm suffered, against a backdrop of significant information asymmetries and the practical challenges of obtaining evidence about corporate

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[18] In the Netherlands, two businessmen, Frans van Anraat and Guus Kouwenhoven, were sentenced to 17 and 19 years in prison for complicity in war crimes through the provision of chemicals to Saddam Hussein's regime in Iraq during the Iraq-Iran conflict and the provision of weapons to Charles Taylor's regime in Liberia during the civil war, respectively. As noted above (nn 8, 9), the proceedings against Lafarge concluded at first instance in April 2026 with the company's conviction for financing terrorist organisations in Syria and violating international financial sanctions. In Sweden, the trail hearings against former Lundin Oil executives concluded and the judgment is expected on December 2026. Other criminal investigations appear to be ongoing, such as the one against Booking.com, following a criminal complaint brought in the Netherlands by human rights organisations, alleging that the company profited from listings of accommodation in Israeli settlements in the Occupied Palestinian Territory, and the Dutch prosecutors' declared intention to open an investigation.

[19] See, e.g., *ExxonMobil* case (this case was brought by Indonesian villagers alleging that ExxonMobil was complicit in murder, torture, and other gross human rights abuses committed by Indonesian military forces guarding the company's gas facilities during the conflict in Aceh; the case was ultimately settled almost a week before the trial date and following a protracted litigation spanning more than two decades); *Coca-Cola* case (this case alleged that Coca-Cola and its Colombian bottling partners hired, contracted with, or otherwise directed paramilitary groups that perpetrated gross human rights abuses against trade unionists at bottling plants in Colombia during the armed conflict; the case was dismissed by United States courts, holding that the allegations did not sufficiently establish violations of international law); *Occidental* case (this case alleged that Occidental Petroleum and its security contractor AirScan assisted the Colombian Air Force in carrying out a bombing attack on the village of Santo Domingo while protecting oil infrastructure during the internal armed conflict; United States courts dismissed the claims based on the political question doctrine as well as a lack of sufficient ties to the US).
Note, however, that the TVPA, which provides both US and non-US citizens with a civil cause of action against an individual who subjects another individual to torture or extrajudicial killing, has been interpreted as applying only to natural persons and therefore not to corporations (see, *Mohamad v Palestinian Authority*, 566 US 449 (2012)) whereas claims under the ATS are now subject to significant jurisdictional limitations (see, n 24 below). In June 2026, the US Supreme Court, in *Cisco Systems, Inc. v. Doe* (609 U.S. ___ (2026)), held that federal courts may not create new causes of action under the ATS for violations of international law and that the TVPA does not provide for aiding-and-abetting liability.

[20] See, e.g., *ExxonMobil* case (n 19); *Chiquita* case (i) (this case alleged that Chiquita Brands International provided payments and other support to Colombian armed groups, whose acts allegedly contributed to the killing of US militaries in Colombia; the litigation ended with an out-of-court settlement between Chiquita and the victims' families).

[21] See, e.g., *Veolia & Alstom* case. This case concerned a lawsuit brought in France by NGOs challenging the participation of the French companies Veolia and Alstom in a consortium that had concluded a public-private contract with Israeli authorities to construct and operate the Jerusalem light rail system. The claimants argued that the contract was unlawful because the project contributed to violations of international law by facilitating Israeli settlements in the Occupied Palestinian Territory. The claimants sought annulment of the contract and an injunction halting the project. French courts dismissed the claim, holding that the international law provisions invoked by the claimants created obligations primarily for states and could not be relied upon to invalidate contracts concluded by private companies or establish their civil liability.

[22] See, Anil Yilmaz Vastardis and Emma Baldi, 'Litigating Human Rights Harm in Global Value Chains: Evolving Pathways to Corporate Accountability' in Hassan Ahmad, Ekaterina Aristova and Rachel Chambers (eds), *The Cambridge Handbook on Litigating Business and Human Rights Violations: Themes, Perspectives, and Prospects* (Cambridge University Press 2026).

decision-making and operational practices. These features make tort law an uncertain and often difficult route for victims seeking access to justice for business-related human rights abuses, particularly in conflict settings.

Nevertheless, civil litigation also faces important obstacles. Generally, the exercise of extraterritorial adjudicative jurisdiction by home-state courts over situations that have arisen abroad typically requires, under private international law or conflict of laws rules, a sufficient — often territorial — connection between the dispute and the forum state in which the case is brought. This requirement is conceptualised differently by the various jurisdictions, but it has often resulted in claims being dismissed by home state courts for lack of a sufficient territorial nexus.

This emphasis on a territorial connection between the dispute and the forum state has been particularly evident in the United States, where the extraterritorial application of the ATS — a statute historically used to bring civil claims before United States courts for 'violations of the law of nations' committed overseas, including business-related human rights abuses connected to conflict-affected contexts[23] — has been progressively restricted by the United States Supreme Court.[24]

Additional barriers may arise from doctrines such as the political question doctrine[25] and *forum non conveniens* considerations.[26] Further obstacles may stem from statutes of limitations, which are often determined by the law applicable to the dispute — frequently the law of the place where the alleged harm occurred. In practice, several cases concerning conflict-related corporate conduct have ultimately been resolved through settlements, which often remain confidential.[27]

In terms of outcomes, civil litigation most frequently results in monetary compensation, which is often the only form of reparation available in such proceedings, particularly in the context of settlements. Notwithstanding these challenges, some cases have nevertheless achieved meaningful outcomes,[28] demonstrating that home state litigation can play an important — albeit often limited — role in facilitating access to justice and reparation for victims of conflict-related business-related human rights abuses.

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[23] See, n 19.
[24] The United States Supreme Court has held that the statute does not apply extraterritorially unless the claims 'touch and concern' the territory of the United States with sufficient force (see, *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013)), that foreign corporations may not be sued under the ATS (see, *Jesner v. Arab Bank, PLC*, 584 U.S. 241(2018)), and that allegations of general corporate activity in the US are insufficient to displace the presumption against extraterritoriality (see, *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021)).
[25] See, e.g., *Occidental* case (n 19).
[26] See, e.g., *Green Park Intl.* case (this case, brought in Canada by residents of the Palestinian village of Bil'in, alleged that Green Park International built housing projects on land confiscated from Palestinians in the occupied West Bank; Canadian courts dismissed the case on the basis that the Israeli judicial system was in a better position to decide on it).
[27] See, e.g., *ExxonMobil* case (n 19); *Blackwater USA* case (this case, brought in the US by victims and relatives of those killed in the 2007 Nisour Square shooting in Baghdad, alleged that Blackwater USA contractors unlawfully killed and injured civilians while providing security services in Iraq; the claims were ultimately resolved through settlements with victims' families); *Chiquita* case (i) (n 20); *Unocal* case (this case, brought in the United States by villagers from Myanmar, alleged that Unocal was complicit in forced labour, killings, and other abuses committed by the Myanmar military during the construction of the Yadana gas pipeline; the litigation was ultimately resolved through a settlement).
[28] See, e.g., *Chiquita* case (ii) (this case, brought in the United States by Colombian nationals alleged that Chiquita Brands International made payments to paramilitary groups in Colombia, thereby contributing to killings, torture, forced disappearances, crimes against humanity, and war crimes committed against civilians in Colombia's banana-growing regions during the internal armed conflict; in 2024, a US federal jury found Chiquita liable under Colombian law and ordered the company to pay damages, a decision that the Chiquita has appealed); *CACI* case (this case, brought in the United States by former detainees of Abu Ghraib prison, alleged that private military contractors CACI International and Titan Corporation (now L-3 Services) participated in, directed, or enabled torture, sexual assault, and other cruel, inhuman, or degrading treatment of detainees at Abu Ghraib while providing interrogation and translation services to the US military; a US jury found CACI liable and ordered it to pay compensatory and punitive damages, a decision that the company has appealed and which remains pending).

The dynamics described above are particularly relevant in the context of the war in Ukraine. While Ukrainian courts may, in principle, exercise jurisdiction over business-related conduct connected to the conflict, ongoing hostilities, evidentiary challenges, and the transnational structure of many corporate actors within corporate groups and global value chains may complicate domestic accountability efforts. In these circumstances, litigation before the courts of businesses' home states may represent an important — albeit still fraught with significant legal and practical challenges — avenue through which victims may seek justice and reparation for business involvement in Russia's full-scale aggression against Ukraine and related gross human rights violations. Home state courts may therefore play a complementary role alongside Ukrainian judicial mechanisms and, potentially, emerging international accountability initiatives, helping to close accountability gaps and strengthen victims' access to reparation. In this sense, an important role for home states is to ensure that existing avenues for transnational litigation remain open and practically accessible to Ukrainian claimants where jurisdictional requirements are met.

Therefore, while litigation before home-state courts remains an important avenue through which victims may seek reparation for gross business-related human rights abuses in Ukraine, it represents only one element of a broader range of mechanisms through which home states may facilitate corporate participation in reparative processes.

III. Public Economic Support and Related Conditionality: The Role of Export Credit Agencies

While transnational litigation before home-state courts represents one important avenue through which businesses' home states may help facilitate access to reparation for victims of gross business-related human rights abuses in Ukraine, it is only one element of a broader set of instruments through which home states may influence corporate engagement in reparation processes. In addition to liability-based mechanisms, home states also possess a range of policy and economic tools through which they can shape corporate conduct and incentivise responsible business behaviour abroad. Among these, forms of public economic support provided to domestic businesses, such as export credit, investment guarantees, or other state-backed financial instruments, may operate as important leverage mechanisms. By conditioning access to such support on compliance with responsible business conduct standards, home states may encourage corporate contributions to reparation, reconstruction, and economic recovery efforts linked to Russia's full-scale invasion of Ukraine.

Within this broader category of policy instruments, export credit systems and the activities of export credit agencies (ECAs) occupy a particularly significant position.[29] ECAs are public or publicly backed institutions that provide insurance, guarantees, loans, and other financial services to domestic companies engaged in international trade and investment. By reducing economic and political risks associated with operating abroad, ECAs facilitate business activities in foreign markets, including in contexts characterised by political instability or elevated investment risks.

Because export credit support involves the use of public resources and state-backed financial instruments, ECAs have long been recognised as important leverage points through which home states may promote responsible business conduct abroad. Experience has shown that projects

[29] On this, see, Human Rights Council, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises – "Economic diplomacy" as a Tool for States to Promote Corporate Respect for Human Rights' (2 May 2018) UN Doc A/HRC/38/48.

supported through export credit have at times been associated with adverse human rights and environmental impacts.[30] For this reason, international frameworks have increasingly emphasised ECAs' responsibility to ensure that their support does not become associated with such harms. As public or publicly backed institutions, ECAs are expected to act consistently with the state duty to protect human rights articulated in the United Nations Guiding Principles on Business and Human Rights.[31] For states participating in the OECD Export Credit Group, ECAs are also expected to align their practices with the OECD Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, more commonly known as the 'Common Approaches', which recommend integrating environmental and social due diligence into decision-making processes relating to export credit support.[32]

These frameworks recognise that states may use trade promotion and export finance instruments to incentivise corporate respect for human rights.[33] For example, governments may require businesses seeking export credit support to demonstrate a commitment to responsible business conduct, including by implementing human rights due diligence. Some states, e.g., Norway and the Netherlands, have indicated in their National Action Plans on Business and Human Rights that public export support may be conditioned on compliance with international standards such as the UNGPs and the OECD Guidelines for Multinational Enterprises.[34] Other governments, including Austria,[35] Canada,[36] Germany,[37] and the Netherlands,[38] have committed to imposing trade- or investment-related consequences on companies that refuse to participate in good faith in OECD National Contact Points (NCPs) processes. In at least one instance, Canada has reportedly refused export support following an adverse human rights determination.[39]

Against this background, export credit systems may serve not only as instruments of trade promotion but also as potential leverage mechanisms through which home states may influence corporate engagement in reparation processes. A key question for the present research is therefore whether

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[30] See, UN General Assembly, 'Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights – Export credit agencies and human rights' (5 August 2011) UN Doc A/66/271.
[31] See, particularly, UNGPs (n 3) principle 4.
[32] See, Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (The "Common Approaches") (OECD 2025) <https://legalinstruments.oecd.org/public/doc/280/280.en.pdf>.
[33] See, A/HRC/38/48 (n 29).
[34] See, 'Business and Human Rights National Action Plan for the implementation of the UN Guiding Principles' <https://globalnaps.org/wp-content/uploads/2024/01/NAP-Norway-2015-open-English.pdf>, 23; 'National Action Plan Business and Human Rights' <https://www.government.nl/documents/publications/2022/11/8/national-action-plan-business-and-human-rights>, 35.
[35] See, 'Case-Handling Procedures in Accordance with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' <https://www.bmwet.gv.at/en/Topics/International/Austrian-National-Contact-Point-for-Responsible-Business-Conduct/Grievance-Mechanism-under-the-OECD-Guidelines.html>, para 3.8.
[36] See, 'Canada's National Contact Point – Specific Instance Procedures 2022' <https://www.international.gc.ca/transparency-transparence/national-contact-point-contact-national/procedures.aspx?lang=eng>, para 9.5.
[37] See, 'Procedural Guidance of the German National Contact Point for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct at the Federal Ministry of Economic Affairs and Climate Action' <https://www.bundeswirtschaftsministerium.de/Redaktion/EN/Publikationen/Aussenwirtschaft/procedural-guidance-german-national-contact-point-240101.pdf?__blob=publicationFile&v=2>, para 3.
[38] See, 'National Action Plan Business and Human Rights' (n 34) 70.
[39] See, 'Remedy Remains Rare: An Analysis of 15 Years of NCP Cases and Their Contribution to Improve Access to Remedy for Victims of Corporate Misconduct' (OECD Watch, 2015) <https://www.oecdwatch.org/wp-content/uploads/sites/8/2015/06/Remedy-Remains-Rare.pdf>, 46. This NCP specific instance concerned the operations of Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, in the Tibet Autonomous Region.

access to export credit support could be conditioned on businesses contributing to reparation for harms associated with Russia's full-scale invasion of Ukraine.

First, within existing export credit frameworks, home states could, in principle, condition the provision of future export credit support on potential recipient companies taking steps to provide reparation where credible information indicates that the enterprise has caused or contributed to adverse human rights impacts.[40] Such findings may arise, for example, from judicial decisions or from determinations by recognised non-judicial mechanisms, such as OECD NCPs. In these circumstances, access to export credit support could function as a prospective leverage mechanism, encouraging businesses to address past harms.

Corporate involvement in adverse impacts may relate either to projects or transactions benefiting from export credit support, or to business activities outside the scope of such transactions. Recommendations encouraging ECAs to facilitate access to remedy have thus far largely focused on harms connected to supported projects.[41] In such cases, the link between public financial support and corporate activity provides a particularly clear basis for attaching remedial expectations. Where adverse impacts arise outside ECA-supported transactions, the role of ECAs becomes more indirect. Nevertheless, ECAs may still consider a company's human rights record as part of their broader due diligence and risk assessment processes, potentially affecting decisions concerning the granting of future support.

In addition to conditioning future support, ECAs may also suspend, withdraw, or refuse to renew existing export credit support when credible information indicates that a beneficiary enterprise has caused or contributed to serious human rights harms. In practice, such measures would typically depend on the contractual terms governing the export credit arrangement.

A second possibility would involve conditioning export credit support on businesses contributing to Ukraine's broader reconstruction and economic recovery efforts. Unlike the first scenario, such conditionality would not necessarily be linked to a finding that a company caused or contributed to specific adverse human rights impacts. Rather, it would reflect a broader economic and foreign-policy choice by home states to align export credit support with reconstruction objectives. The use of export credit instruments in this way would therefore represent a more innovative and policy-driven approach, rather than a direct implication of existing export credit frameworks.

Initiatives such as the EU Ukraine Export Credit Pilot[42] illustrate how export credit systems can already be mobilised to support economic recovery and reconstruction in Ukraine. While such initiatives are primarily aimed at facilitating trade and investment, they could also provide an institutional framework within which participating states may, through their ECAs, consider linking export credit support to expectations of responsible business conduct or to corporate contributions to economic recovery and reconstruction initiatives in Ukraine.

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[40] The UNGPs and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, both recalled in the "Common Approaches", expect business enterprises to provide or cooperate in remediation where they have caused or contributed to adverse impacts.

[41] See, A/HRC/38/48 (n 29).

[42] The InvestEU Ukraine Export Credit Pilot is a €300 million export credit guarantee facility established in 2024 by the European Commission together with the European Investment Bank Group under the EU's InvestEU Programme. Managed by the European Investment Fund, the facility provides EU-backed guarantees to national export credit agencies in participating Member States to support exports by European SMEs and small mid-caps to Ukraine. By reducing the financial and political risks associated with trade in a war-affected market, the pilot aims to encourage EU businesses to continue exporting goods and services to Ukraine and thereby contribute to the country's economic resilience, recovery, and reconstruction.

The same reasoning developed above may also extend to other forms of public economic support that home states provide to domestic businesses. Access to such support — including, for example, eligibility for public procurement, investment incentives, or other state-backed economic instruments — could in principle be conditioned on corporate contributions to reparation or to broader reconstruction and economic recovery initiatives in Ukraine. As with export credit support, the use of such instruments would enable home states to leverage public resources and economic incentives to encourage corporate participation in reparation or recovery efforts, without necessarily relying on formal findings of liability. While the practical application of such conditionality remains largely unexplored and would largely depend on the political willingness of home states to make active use of these policy tools, these mechanisms nevertheless arguably illustrate the wider range of policy tools available to home states to promote responsible business conduct and support reparation processes in the Ukrainian context.

IV. Taxation Measures

Taxation policies may also provide a potential avenue through which home states could mobilise corporate resources in support of reparation or reconstruction initiatives linked to Russia's full-scale invasion of Ukraine. Unlike the export credit mechanisms discussed above, which operate through conditional access to public economic support, taxation measures would rely on states' fiscal powers to either require or incentivise corporate financial contributions. Two broad approaches may be envisaged: compulsory fiscal contributions and tax incentives designed to encourage voluntary corporate engagement.

In principle, home states could adopt temporary taxation measures — which would likely operate primarily as a solidarity or reconstruction financing mechanism rather than as a direct tool for corporate reparation — requiring corporate nationals to contribute financially to reparation or reconstruction efforts linked to the war in Ukraine.

States generally enjoy discretion in designing their tax systems, including the ability to introduce temporary or sector-specific taxes in response to exceptional circumstances, subject to applicable domestic and international legal constraints. Examples include solidarity taxes, windfall profit taxes, or temporary reconstruction surcharges adopted following major crises or disasters.

A useful illustration can be found in the measures Japan adopted following the 2011 Tohoku earthquake and tsunami. The Japanese government introduced a temporary corporate tax surcharge to support national reconstruction and recovery efforts.[43] Although this measure concerned domestic reconstruction, it demonstrates how governments can mobilise corporate contributions through taxation in response to large-scale harm and humanitarian needs.

In the context of Ukraine, however, two important limitations would arise. First, the territorial nexus would be weaker than in domestic disaster recovery cases. While the Japanese tax financed reconstruction within Japan, a tax introduced by a home state to support reparation or recovery efforts in Ukraine would finance initiatives in a foreign state. While such an arrangement would not necessarily be legally impermissible, it would likely require clear political justification.

[43] The 10% surcharge on base corporate tax liability was discontinued one year earlier than initially envisaged, in response to concerns expressed by business groups relating to high tax burdens and international competitiveness.

A more complex question concerns whether taxation measures could be designed to apply selectively to companies connected to economic activities in Ukraine. In principle, states might attempt to design a tax applicable, for example, to companies deriving income from operations in Ukraine, participating in reconstruction-related economic activities, or benefiting from state-backed support linked to Ukraine. However, such targeted taxation would raise several legal and policy considerations.

Domestic constitutional frameworks generally require equal treatment of taxpayers in comparable situations. Any taxation measure targeting companies connected to Ukraine would therefore need to be supported by a reasonable and objective policy justification. For home states that are members of the European Union, additional constraints may arise under EU law. Finally, where taxation measures are linked to profits derived from activities abroad, they would also need to be designed consistently with bilateral double taxation treaties, which allocate taxing rights between states.

For these reasons, if a home state were to introduce compulsory fiscal contributions linked to Ukraine, it would likely be more legally and politically feasible to design such measures in broader terms. Possible models could include temporary solidarity surcharges on corporate income earmarked for Ukraine's recovery, windfall taxes on sectors benefiting from the geopolitical situation created by the conflict, or levies on companies benefiting from state-backed support connected to reconstruction efforts. These approaches would avoid singling out companies solely based on their presence in Ukraine. Yet, this solution would arguably require a clear political justification and support.

In addition to compulsory taxation measures, home states could also encourage corporate engagement in reparation or reconstruction initiatives through fiscal incentives. Compared to mandatory taxation measures, this approach may be more flexible and politically feasible, as it relies on encouraging voluntary corporate contributions rather than imposing binding financial obligations. States could, for example, introduce tax deductions or tax credits for corporate contributions to funds supporting reparation or recovery initiatives in Ukraine, provide preferential tax treatment for corporate donations to victim assistance programmes, or offer fiscal incentives for investments in reconstruction or community rehabilitation projects.

Elements of this approach can already be observed in practice. Following the outbreak of the war, for instance, Poland introduced tax measures allowing corporations to deduct donations and in-kind contributions provided in support of Ukrainian citizens and humanitarian assistance efforts.[44] Such initiatives illustrate how taxation policy may be used to facilitate corporate contributions to crisis response and recovery efforts without creating legal liability for businesses.

Overall, taxation measures may provide an additional pathway through which home states could mobilise corporate resources in support of reparative or recovery initiatives related to the war in Ukraine. In practice, however, compulsory taxation mechanisms would likely function primarily as solidarity-based reconstruction financing tools rather than as instruments directly linked to corporate responsibility for harm. Fiscal incentives encouraging voluntary corporate engagement may therefore represent a more flexible and politically feasible means through which home states could support corporate participation in reparation or recovery processes.

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[44] See, Act of March 12, 2022, on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country.