

RESOLUTION No 2 /2012

INTERNATIONAL CIVIL LITIGATION AND THE INTERESTS OF THE PUBLIC

The 75th Conference of the International Law Association held in Sofia, Bulgaria, 26 to 30 August 2012:

HAVING CONSIDERED the Report on International Civil Litigation for Human Rights Violations by the Committee on International Civil Litigation and the Interests of the Public;

ADOPTS the Sofia Guidelines on Best Practices for International Civil Litigation for Human Rights Violations, as incorporated in the Report and annexed to this Resolution;

COMMENDS the Guidelines to the attention of:

- (1) National courts and law reform agencies, with a view to facilitating the progressive development of the law on this subject;
- (2) Organisations concerned with international legal co-operation, with a view to considering measures at the international level of mutual co-operation in the field of transnational human rights violations;
- (3) The Working Group on the issue of human rights and transnational corporations and other business enterprises;

REQUESTS the Secretary-General of the International Law Association to transmit this Resolution and the Committee's Report to international organisations such as the United Nations, the Hague Conference on Private International Law and regional organisations such as the European Union;

THANKS the Committee for its work and for having completed its mandate;

RECOMMENDS to the Executive Council that the Committee on International Civil Litigation and the Interests of the Public, having accomplished its mandate, be dissolved.

**SOFIA GUIDELINES ON BEST PRACTICES FOR INTERNATIONAL CIVIL
LITIGATION FOR HUMAN RIGHTS VIOLATIONS**

**AS ADOPTED BY THE INTERNATIONAL LAW ASSOCIATION AT ITS 75th
CONFERENCE HELD IN SOFIA, BULGARIA, August 2012**

RECOGNISING that civil litigation for human rights violations against corporations and individuals occurs increasingly in jurisdictions around the world;

MINDFUL of the fundamental nature of the rights of the parties involved in these claims and the related duties of States, including their domestic courts, under international law;

DESIRING to promote private international law conducive to a fair and efficient resolution of issues relating to the international jurisdiction of courts, the law applicable to claims and issues, and the recognition and enforcement of judgments;

DESIRING to promote transnational cooperation between courts with a view to increasing judicial fairness and efficiency in the absence of an international convention dealing with the issues addressed in the present Guidelines;

HEREBY STATES the following Guidelines on best practices:

1) Scope

- 1.1 These Guidelines apply to civil claims against corporations, individuals and other non-State actors arising out of or brought to redress conduct constituting a human rights violation, in view of the nature of the norm allegedly violated or the gross or systematic nature of the breach alleged.
- 1.2 A court shall determine whether it is seized of such a claim by reference to contemporary international law, without prejudice to the issue of retroactivity which may arise when the claim is determined on the merits.

2) International Jurisdiction

2.1. Defendant's domicile

- 2.1(1) The courts of the State where the defendant is domiciled shall have jurisdiction.
- 2.1(2) Domicile in the sense of paragraph 2.1(1) refers to:
 - (a) for a natural person, her or his habitual residence;

- (b) for a legal person, either the place where
 - (i) it has its statutory seat or is incorporated (or under the law of which it was formed; or
 - (ii) it has its central administration; or
 - (iii) its business, or other professional activity, is principally carried on.

2.2. Connected claims

- 2.2(1) The courts of the State where one of a number of defendants is domiciled shall have jurisdiction over all of the defendants in respect of closely connected claims.
- 2.2(2) Claims are closely connected in the sense of paragraph 2.2(1) if:
 - (a) it is efficient to hear and determine them together; and
 - (b) the defendants are related.
- 2.2(3) Defendants are related in the sense of paragraph 2.2(2)(b), in particular if at the time the cause of action arose:
 - (a) they formed part of the same corporate group;
 - (b) one defendant controlled another defendant;
 - (c) one defendant directed the litigious acts of another defendant; or
 - (d) they took part in a concerted manner in the activity giving rise to the cause of action.

2.3. Forum of necessity

- 2.3(1) The courts of any State with a sufficient connection to the dispute shall have jurisdiction in order to avert a denial of justice.
- 2.3(2) A denial of justice in the sense of paragraph 2.3(1) occurs if the court concludes upon hearing all interested parties, and after taking account of reliable public sources of information, that:
 - (a) no other court is available; or
 - (b) the claimant cannot reasonably be expected to seize another court.
- 2.3(3) A sufficient connection in the sense of paragraph 2.3(1) consists in particular in:
 - (a) the presence of the claimant;
 - (b) the nationality of the claimant or the defendant;
 - (c) the presence of assets of the defendant;

- (d) some activity of the defendant; or
- (e) a civil claim based on an act giving rise to criminal proceedings in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.

2.4. Other grounds of jurisdiction under national law

These Guidelines apply without prejudice to alternative grounds of jurisdiction available under the law of the forum seized, provided that they are not contrary to international law.

2.5. Forum non conveniens

2.5(1) Except when the court is seized in accordance with paragraph 2.1, 2.2 or 2.3, the court seized in accordance with these Guidelines may exceptionally stay proceedings in favour of the courts of another State, so long as this is allowed under the law of the forum.

2.5(2) The application of paragraph 2.5(1) is conditional upon:

- (a) the defendant undertaking to accept the jurisdiction of the courts of the State in favour of which jurisdiction is stayed; and
- (b) the actual exercise of jurisdiction by the courts of the State in favour of which jurisdiction is stayed within a reasonable time and in accordance with fundamental standards of access to justice.

2.6 Venue

The allocation of domestic jurisdiction is a matter for the law of the court seized.

3) Applicable law

3.1 The court seized shall apply its own choice of law rules.

3.2 The court seized shall apply its own law to the extent that the law designated by its choice of law rules:

- (a) conflicts with internationally recognised human rights; or
- (b) attributes legal responsibility among members of a corporate group in a manner that avoids appropriate accountability; or
- (c) fails to provide an effective remedy.

4) Transnational Judicial Cooperation

- 4.1. The courts of States using these Guidelines shall cooperate with one another.
- 4.2. A court may communicate with a court or authority in another country in connection with matters relating to such proceedings with a view to coordinating the proceedings to avoid duplication and costs and enhance efficiency in the administration of justice. A court may appoint a special judge to carry forward the coordination.
- 4.3. Such cooperation must not be carried out in such a way as to prejudice the rights of the parties to the proceedings. The adversarial principle (right to be heard) must always be respected by judges during the cooperative process, even if it may be adapted in case of emergency.
- 4.4. The courts using these Guidelines should clearly inform the parties as to their intention to do so and keep them informed of each step they intend to take.
- 4.5. Courts using these Guidelines may communicate at any stage of the proceedings, including as to questions of jurisdiction, matters of evidence and, more generally, all issues arising out of civil claims for human rights violations.
- 4.6. Courts may use various means of communication, including in writing, telephone, video conferencing or other electronic means. Counsel or representatives of affected parties should be entitled to participate in such communications or, where this is not feasible, to be informed of them. An official transcript of any such communications should be kept by the court and made available to all affected parties.
- 4.7. Courts may also conduct joint hearings using video conferencing or other available techniques to the courts. Submissions made during such hearings will be considered to be made to all participating courts, unless the courts rule otherwise in advance of the hearing or unless the person making the submission directs it only to the specified court or courts.
- 4.8. Courts may wish to coordinate their orders so that they are rendered at the same time and do not conflict with one another.

5) Recognition and enforcement

- 5.1 If the court of origin took jurisdiction in accordance with paragraphs 2.1, 2.2, or 2.3, the requested court shall not reopen the jurisdictional issue.
- 5.2 Reciprocity cannot be imposed as a condition for recognition and enforcement.
- 5.3 Subject to the rules in paragraphs 5.1 and 5.2, the requested court shall apply its own rules on recognition and enforcement.