

RESOLUTION No.2/2016

INTERNATIONAL HUMAN RIGHTS LAW COMMITTEE

The 77th Conference of the International Law Association, held in Johannesburg, South Africa, 7-11 August 2016:

REITERATES that the Human Rights Law Committee (the Committee) was vested with a dual mandate concerning (i) the impact of international human rights law on the International Court of Justice (ICJ) and (ii) the domestic implementation of judgments/decisions of courts and other international bodies;

TAKES NOTE of the Interim Reports of the Committee submitted to the 75th Conference held in Sofia, Bulgaria, in 2012 and the 76th Conference held in Washington D.C., USA, in 2014 and the final Report submitted to the 77th Conference;

The impact of international human rights law on the International Court of Justice

ENDORSES the findings of the Committee that the impact of international human rights law on general international law is an on-going process in which the International Court of Justice, as a court of general jurisdiction, has had an important role to play, and that the ICJ has integrated international human rights law into its work and thereby contributed to the effort to define States' obligations under international human rights and other branches of law;

ENCOURAGES international courts and other bodies dealing with human rights issues to ensure the integration of international human rights law in their work and, where relevant, to make explicit the role and significance of international human rights law to their work, regardless of whether the international body is vested with specific or general jurisdiction;

The domestic implementation of judgments/decisions of courts and other international bodies

ENDORSES the findings of the Committee that despite States' obligations to respect and ensure, in good faith, the human rights of all persons within their jurisdiction, significant challenges impede the effective implementation of international human

rights law due to the lacuna in international law regarding a State's obligations in the face of an adverse judgment or decision of an international supervisory body;

RECOGNISING the importance of setting forth Guidelines to assist States in carrying out their obligations;

ADOPTS the Committee's Guidelines on the domestic implementation of international human rights judgments and decisions annexed to this Resolution;

ENCOURAGES States and their organs to take account of the Guidelines in their efforts to give full effect to international human rights law in domestic law;

REQUESTS that the Executive Council dissolve the International Human Rights Law Committee, since it has accomplished its mandate, and that it establish a new Committee on International Human Rights Law with a new mandate;

REQUESTS the Secretary-General of the International Law Association to forward a copy of this Resolution and the Guidelines (annexed to the Resolution), to the UN High Commissioner for Human Rights, the International Court of Justice, the International Law Commission and members of other international and regional courts and other international bodies dealing with international human rights law.

Annex
GUIDELINES

**The obligations of a state and its domestic courts with respect to a decision issued
by an international judicial or quasi-judicial body involving international
human rights law**

1. States, on becoming parties to human rights treaties, undertake to make such changes to domestic laws and practices as are necessary to ensure their conformity with the treaties and the jurisprudence of any judicial or quasi-judicial body with jurisdiction to interpret and apply the pertinent human rights provisions.
2. States give human rights treaties the force of law, allowing individuals to invoke them before domestic courts, and to take precedence over any conflicting national law.
3. States are under an obligation to organise the governmental apparatus, i.e. all structures through which public power is exercised, including the judiciary, so that they are capable of compliance with international human rights law. This obligation extends to
 - a) bringing ongoing violations to a stop,
 - b) preventing future violations from occurring,
 - c) offering interim measures to prevent irreparable harm to persons,
 - d) conducting effective investigation of human rights violations and, if warranted, guaranteeing that criminal proceedings are opened,
 - e) providing for the option to re-open closed cases in which judgments and decisions are based on human rights violations and
 - f) guaranteeing that restitution for a violation is made and, where such restitution proves inadequate or impossible, that damages are compensated.
4. States are encouraged to recognise individual complaint procedures pertaining to the treaty systems to which they are party. They are under an obligation to provide adequate and effective remedies for violations of international human rights law.

5. The state, in the implementation of a judgment or decision is more apt to render justice to the petitioner under a human rights treaty when that judgment or decision is principled, precise and clearly spells out the state's obligations in its operative paragraphs. In cases where the state has been unable or unwilling to execute the supervisory body's final judgment, the petitioner continues to have standing before the court or body, which delivered the judgment or decision, either by means of a new petition on the failure of compliance or by means of follow-up to the original petition until justice is rendered.
6. States are under an obligation to cooperate with the supervisory bodies in the processing of a case, i.a., by respecting interim measures and providing necessary information. They ensure the right to petition, i.a., by protecting petitioners and their counsel against threats and reprisals for bringing complaints.
7. States and their courts are under an obligation to give full effect to legally binding decisions of competent international courts and give due regard in good faith to all other decisions of competent international bodies.
8. States are under an obligation to cooperate in good faith with the follow-up mechanism developed to ensure compliance with decisions of international bodies.
9. Good practices of states lead to the following recommendations:
 - a) Constitutional and supreme courts develop and practice control of conventionality. All courts accordingly interpret domestic law in conformity with international human rights law. They take the pertinent judgments and decisions of courts and quasi-judicial bodies, also in those cases to which the state was not a party, fully into account and integrate them in their reasoning in good faith.
 - b) Domestic courts take into account the practice of courts of other states in their implementation of international human rights law. Courts facilitate this practice by translating their judgments.

- c) To avoid norm conflicts before courts, institutions and procedures are in place to review bills to be presented in the legislatures with respect to their compatibility with international human rights law and the pertinent jurisprudence of the competent international bodies.
- d) States establish paths of dissemination, including translation of judgements and decisions in international human rights law to governmental bodies, legislative committees and the judiciary with a view to enhancing awareness of these practices and their impact on domestic law.
- e) States establish independent National Human Rights Institutions (NHRIs), in accordance with the UN Paris Principles.