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## Questions

### *Consultation on the draft text of a possible convention on parallel proceedings and related actions*

#### **Question 1 on the scope of the Draft Text**

1.1 What are your views on the scope of the Draft Text?

The proposed scope of the draft text is broadly appropriate and reflects a careful attempt to address parallel proceedings in civil or commercial matters while remaining consistent with existing Hague instruments. The exclusions listed provide helpful guidance and demonstrate sensitivity to areas already governed by specialised conventions.

1.2 Does the subject matter scope of the Draft Text cover those matters for which rules on parallel proceedings and related actions would be beneficial?

2 The subject matter scope of the draft text appropriately focuses on civil or commercial matters for which rules on parallel proceedings and related actions are likely to bring real procedural benefits, such as increased coordination and legal certainty.

1.3 What are your views on the subject matter exclusions in particular, and how they would work in practice? For example, what are your views on the formulation of the arbitration exclusion in Article 2(3)?

3 The subject matter exclusions in Article 2 appear to be carefully structured and should generally operate effectively in practice. The exclusions address several important areas, however see further discussion below regarding the explicit exclusion of government contracts. The arbitration exclusion in Article 2(3) appears clearly formulated.

One area where further clarification may assist in practice concerns the treatment of family-related matters. While certain family issues, such as maintenance, are expressly excluded, it is not entirely clear whether family law is excluded as a whole as 2(1)(c) expands on rights and obligations arising out of a marriage or similar relationships. Clarifying this point could help avoid uncertainty and conflict in matters pertaining to children, ensuring coherence with existing Hague family law instruments - see for example O.Momoh, *When two worlds collide: the 1970 Hague Evidence Convention and the 1980 Hague Child Abduction Convention*, (Family Law Journal, Lexis Nexis, 2025).

In addition, consideration could be given to clarifying the treatment of government contracts within the scope of the Draft Text. While Article 2 includes exclusions relating to sovereign debt restructuring and preserves State privileges and immunities, these provisions do not fully address the distinct public-law and sovereignty considerations raised by contracts concluded by governments or State entities. Given the constitutional, regulatory, and public-interest features of such contracts - particularly in jurisdictions where governments and State-owned enterprises are significant commercial actors - explicit exclusion of government contracts could enhance legal certainty and support broader acceptance of the Convention in practice. As such, clarifying that government contracts fall outside the scope of the Draft Text would enhance legal certainty, respect constitutional arrangements, and increase the Convention's appeal to a wider range of States, without undermining its objectives in purely private commercial disputes.

- 1.4 What are your views on the geographical scope of the Draft Text and how it would work in practice? (See paragraph 16 for further information).
- 4 The Draft Text is framed in a geographically neutral manner; however, its practical operation will inevitably vary across regions depending on domestic legal structures and patterns of economic activity. In many African States, governments and State owned enterprises play a more prominent role in commercial transactions than in other regions, and such transactions are often subject to constitutional, statutory, or parliamentary controls.

In this context, the absence of a clear exclusion for government contracts may affect the willingness of some States to participate in the Convention or to apply it fully in practice. Addressing this issue at the level of scope would support broader geographical uptake and ensure that the Convention operates effectively and predictably across diverse legal and economic systems.

### **Question 2 on definitions**

What are your views on the definitions of parallel proceedings and related actions? In particular, please share your views on how these definitions might operate, and be applied by parties and courts, in practice.

- 5 The definitions of “parallel proceedings” and “related actions” reflect concepts that are familiar to Nigerian courts through the doctrine of *lis alibi pendens*. In Nigerian practice, proceedings are treated as parallel only where the same parties and the same subject matter are involved, a requirement that helps courts and parties identify genuine duplication and avoid unnecessary stays.

This approach suggests that the draft definitions are capable of operating effectively in practice by providing courts with a clear threshold for identifying parallel proceedings, while leaving room for judicial discretion where proceedings are not truly duplicative but merely connected. In particular, the distinction between parallel proceedings and related actions aligns with the Nigerian experience of balancing procedural fairness, avoidance of oppression, and the risk of inconsistent judgments.

### **Question 3 on when a court is deemed to be seised**

What are your views on Article 4?

Article 4 provides a clear and workable basis for determining when a court is deemed to be seised. This should assist in promoting predictability and reducing disputes over the timing of proceedings in cross-border litigation.

### **Question 4 on Article 5 obligations**

What are your views on Article 5?

The obligations set out in Article 5 appear to be appropriately framed and proportionate. They should assist courts in managing parallel proceedings in a coordinated manner, while respecting procedural autonomy.

### **Question 5 on priority jurisdiction / connection**

What are your views on Articles 6 – 8 including how they will work in practice?

- 6 Nigerian courts adopt a discretionary approach to parallel proceedings grounded in the doctrine of *lis alibi pendens*. Under Nigerian law, proceedings are regarded as parallel only where the same parties and the same subject matter are involved, a conjunctive requirement that serves as an important threshold in practice. Where this threshold is met, the court will consider whether allowing proceedings to continue would be oppressive, vexatious, or amount to an abuse of process, while also taking into account the risk of inconsistent judgments and potential enforcement difficulties.

At the same time, Nigerian courts are cautious not to deprive a claimant of legitimate procedural advantages without good reason, reflecting a balance between judicial comity and access to justice. This discretionary, fact-sensitive approach aligns with the objectives of Articles 6–8 of the Draft Text, which seek to prioritise an appropriate forum while preserving flexibility and avoiding rigid or automatic outcomes in cases of parallel proceedings.

#### **Question 6 on Article 8(2) jurisdiction / connection requirements**

6.1 What are your views on the ‘jurisdiction / connection’ list in Article 8(2)?

The jurisdiction and connection factors listed in Article 8(2) are broadly appropriate and reflect considerations commonly applied by courts, including party autonomy, convenience, and the avoidance of abuse of process.

6.2 Based on your experience, do you consider these factors appropriate for parallel proceedings i.e. for obliging courts to suspend or dismiss proceedings if they are not seised on the basis of one of these? Why or why not?

Based on Nigerian judicial practice, the factors listed in Article 8(2) are appropriate for guiding decisions on whether proceedings should be suspended or dismissed in the context of parallel litigation. Nigerian courts generally approach such questions through a discretionary assessment that balances respect for the claimant’s choice of forum against concerns of oppression, vexation, and the risk of inconsistent judgments.

6.3 Are there any additional factors that you believe should be included?

No additional factors are suggested at this stage.

#### **Question 7 on the determination of the more appropriate court**

7.1 What are your views on the approaches proposed in Article 9 for determining which court should adjudicate the dispute in cases of parallel proceedings which Articles 6 – 8 have not resolved?

The approaches set out in Article 9 appear capable of operating effectively in practice. We do not express a particular view at this stage.

7.2 What are your views on how the two approaches may work in practice?

In practice, the approaches set out in Article 9 are likely to operate effectively by allowing courts to take account of the particular circumstances of each case. Nigerian courts are accustomed to balancing multiple considerations when addressing parallel proceedings, therefore Article 9 should assist courts in reaching proportionate outcomes.

7.3 Do you have a preference for either approach? If so, please explain why.

No firm preference is expressed.

#### **Question 8 on factors to be considered to determine the more appropriate court**

8.1 What are your views on the factors listed in Article 10 for determining the more appropriate court in cases of parallel proceedings subject to Article 9 (i.e. that are not resolved by Articles 6 – 8)?

Nigerian courts address parallel proceedings through the doctrine of *lis alibi pendens*, which illustrates how the Draft Text’s concepts may operate in practice. *Lis alibi pendens* arises where proceedings instituted in the Nigerian court between the same parties and regarding the same subject matter are already pending in another forum. This requirement is conjunctive, so that *lis alibi pendens* is inapplicable where either the parties or the subject

matter involved in the 'parallel' proceedings are not the same. In *Jammal v Abdalla Hashem* (1975) NCLR 141, the plaintiff brought an action against the defendant to recover the money it had paid to the defendant for the purchase of shares in the defendant's company, which the defendant allegedly failed to deliver. The defendant's case was that the money paid by the plaintiff was the price of promissory notes which the plaintiff had bought from a third party through the defendant. The defendant prayed the court to stay the action on the ground that the plaintiff had brought a similar action on the promissory notes against the promisor as a defendant in a pending foreign court proceeding (Tribunal du Commerce d'Anvers, in Antwerp, Belgium). The court, in dismissing the defendant's application and refusing a stay, held that on the evidence "the defendant was sued in Nigeria while an entirely different person was sued in another country, Belgium. It would be an uphill task for the defendant to attempt to prove the action pending in this court is vexatious. He is not a party to the Antwerp proceedings, neither has he shown any relationship between him and the party sued in Antwerp" [*Jammal*, 148].

There are two factors Nigerian judges should counterbalance when confronted with *lis alibi pendens* in an application for a stay of proceedings. On the one hand, the Nigerian court, which is part of a sovereign state, should not ordinarily deprive a plaintiff of the procedural advantage it may derive from instituting proceedings in Nigeria. On the other hand, the existence of parallel proceedings could be oppressive and vexatious to one of the parties or amount to an abuse of the court's process (*Okafor v Attorney-General Anambra State* (1991) 6 NWLR (Pt. 200) 659, 681; *Ogunsola v All Nigeria Peoples Party* (2003) 9 NWLR 462, 487 (Oduyemi JCA); *NV Scheep v MV 'S Araz'* (2001) 4 WRN 105, 145–47 (Karibi-Whyte JSC); *Owners of MV Lupex v Nigerian Overseas Chartering and Shipping Ltd* (2003) 15 NWLR; 469, 490–91 (Iguh JSC)). There is also the danger that the existence of parallel proceedings could result in inconsistent judgments, which could be problematic at the enforcement stage. This approach demonstrates how clearly defined thresholds combined with judicial discretion can manage parallel proceedings effectively, consistent with the objectives of the Draft Text.

## 8.2 Do you have any views on how Article 10 might work in practice?

- 7 In practice, Nigerian courts are more likely to stay proceedings where a matter is already pending before another forum [generally *Owners of MV Lupex v Nigerian Overseas Chartering and Shipping Ltd* (2003) 15 NWLR 469] and the parties have entered into a forum selection or arbitration agreement designating that forum, provided it is convenient and appropriate to resolve the dispute.
- 8 Nigerian law also draws a distinction between international litigation and inter-State litigation. In cases of international litigation, a plaintiff is entitled to institute parallel proceedings abroad and in Nigeria; however, the Nigerian court may, in the exercise of its discretion, decline jurisdiction where the defendant shows that the parallel proceedings are vexatious, oppressive, or constitute an abuse of process, or that no legitimate procedural advantage is gained by maintaining multiple actions. By contrast, in inter-State litigation within Nigeria, parallel proceedings are generally regarded as *prima facie* an abuse of court process and may be struck out (*NV Scheep v MV 'S Araz'* (2001) 4 WRN 105, 145–47 (Karibi-Whyte JSC); *Ogunsola v All Nigeria Peoples Party* (2003) 9 NWLR 462; *Agwasim v Ojichie* (2004) 10 NWLR (Pt. 882) 613, 622–23; *Unifam Ind Ltd v Oceanic Bank Intl (Nig) Ltd* (2005) 3 NWLR (Pt. 911) 83).
- 9 Further, the decision in *Nahman v Allan Wolowicz* (1993) 3 NWLR 443 has sometimes been read as suggesting a mandatory decline of jurisdiction where proceedings are pending

elsewhere. However, the facts of that case did not require consideration of *lis alibi pendens*, and subsequent authority confirms that Nigerian courts retain discretion in addressing parallel proceedings. This discretionary, context-sensitive approach illustrates how Article 10 may operate effectively in practice.

- 10 Nigerian admiralty practice provides a further illustration of how discretionary stays may operate in practice. Under Section 10 of the Admiralty Jurisdiction Act 2004, proceedings may be stayed in favour of arbitration or a foreign court, but only where a substantive action is pending before the Nigerian court and subject to conditions designed to protect the claimant, such as the provision of security. This experience underscores the importance of granting stays in a manner that balances coordination with fairness, a concern reflected in Article 10.

- 8.3 Are there additional considerations that, in your view, should be taken into account?  
No additional considerations are suggested at this stage.

#### **Question 9 on the effectiveness of the framework for parallel proceedings**

Do you have an overall view on the effectiveness of the framework developed in the Draft Text for dealing with **parallel proceedings** in an international context? Please explain any advantages and / or disadvantages of the framework, and how you think it will work in practice.

Overall, the framework developed in the Draft Text provides a coherent and balanced approach to managing parallel proceedings in an international context. Its emphasis on coordination, judicial discretion, and the avoidance of inconsistent judgments represents an improvement on the current fragmented position. Further, experience under specialised regimes such as the admiralty jurisdiction demonstrates that frameworks for staying proceedings can be effective where they combine judicial discretion with safeguards against abuse. Nigerian courts have rejected the use of stay mechanisms purely to obtain interim advantages or security in support of foreign proceedings, reinforcing the need for balanced and principled coordination rules.

#### **Question 10 on related actions**

Do you have a view on the effectiveness of the framework developed in the Draft Text for dealing with **related actions** in an international context? Please explain any advantages or disadvantages of the framework, and how you think it will work in practice.

The framework for related actions appears to complement the rules on parallel proceedings and should assist courts in managing closely connected disputes efficiently.

#### **Question 11 on the communication mechanism**

- 11.1 What are your views on the practical operation (or the effectiveness) of the communication methods set out in Chapter IV of the draft text for use between courts seised, in cases involving parallel proceedings and related actions?

The communication mechanisms set out in Chapter IV appear to provide a useful structure for judicial cooperation and information exchange in appropriate cases.

- 11.2 Are there particular advantages and challenges you foresee in applying these methods?  
While these mechanisms offer clear advantages in terms of coordination and efficiency, their effectiveness in practice will likely depend on judicial familiarity and available resources.

### **Question 12 on safeguards**

What are your views on the three safeguards provided in the Draft Text (Articles 19-21), particularly as to how they will operate in practice?

The safeguards provided in Articles 19 to 21 appear appropriately designed to protect fundamental procedural rights and to prevent disproportionate outcomes.

### **Question 13 on the objectives of the Draft Instrument**

13.1 Would the rules set out in the Draft Text achieve the objectives of a future instrument?

The objective of a future instrument is to enhance legal certainty, predictability and access to justice by reducing litigation costs, and to mitigate inconsistent judgments in transnational litigation in civil or commercial matters.

The Draft Text is capable of achieving the stated objectives.

13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?

The proposed rules would improve the status quo by providing a structured framework where none currently exists at the international level.

13.3 Do you consider there are any risks of tactical or satellite litigation arising from any of the provisions, or the overall approach of the Draft Text? Are these risks greater or fewer than those that currently exist? Are there any ways that such risks could be addressed in the Draft Text?

The stated risks do not appear any greater than those under the current fragmented landscape and are mitigated by the Draft Text's emphasis on discretion and safeguards. Nigerian admiralty case law (e.g. *NV Scheep v MV 'S Araz'* (2001) 4 WRN 105) illustrates the risk of tactical litigation where parallel or foreign proceedings are invoked primarily to secure interim advantages. Judicial insistence on a substantive connection to the forum and the rejection of proceedings brought solely to obtain security suggest that such risks can be mitigated through clear thresholds and safeguards, as envisaged by the Draft Text.

### **Question 14 - comments**

What other comments, if any, do you have?

For further background on Nigerian private international law and broader African perspectives relevant to the Draft Text, reference may be made to CSA Okoli and RF Oppong, *Private International Law in Nigeria* (1st edn, Oxford: Hart 2020), chapter 6, section IV; and CSA Okoli and RF Oppong, 'Enhancing the Draft African Principles on the Law Applicable to International Commercial Contracts: Innovations for the African Context' (2024) 88 *Rebels Journal of Comparative and International Private Law* 694, 714-718.