Promoting Women's Human Rights

A Resource Guide for Litigating International Law in Domestic Courts

GLOBAL RIGHTS

Partners for Justice

GLOBAL RIGHTS is a human rights advocacy group that partners with local activists to challenge injustice and amplify new voices within the global discourse. With offices in countries around the world, we help local activists create just societies through proven strategies for effecting change.

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This guide is the result of a collective effort between Global Rights' headquarters and field office staff worldwide, our local NGO partners from Algeria, Morocco, and Tunisia, the trainers at our February 2005 regional workshop in Marrakech, and all of the lawyer participants at both the Marrakech workshop and a lessons-learned workshop held in Rabat in March 2004. Through their formal presentations, interventions at the workshops, and on-going input into our work in the Maghreb, all of these people have made valuable contributions to this guide. Special recognition must be given to the trainers—Global Rights and external—from the Marrakech workshop, including Gay McDougall, Jennifer Rasmussen, Mark Bromley, Carlos Quesada, Fanny Benedetti, Ahmed Arehmouch, Mohamed Jmour, Professor Hamid Rbii, Ibrahima Kane, and Sharita Samuel. Margaret Huang, Paul Simo and Rachel Taylor also provided helpful suggestions for the content of this guide, and Ginger Hancock conducted valuable research for the guide during her internship with Global Rights.

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There is much that can be done.
Today when I am asked
"What can the Convention really do for women?"
I reply softly
"What do you plan to do with the Convention?"

Shanti Dairiam,
director of International Women's Rights Action Watch, Asia Pacific

I. INTRODUCTION

What are the objectives of this guide?

Promoting Women's Rights: A Resource Guide for Litigating International Law in Domestic Courts was designed as a practical tool to help lawyers and other legal advocates use international law to advance the promotion and protection of women's human rights in their daily lives. This guide considers how lawyers can integrate international human rights standards into domestic litigation and legal policy advocacy involving women's rights; seeks to encourage lawyers to undertake such advocacy; and provides practical strategies on how lawyers might go about doing this.

Specifically, this guide aims to be a resource for lawyers who are using or wish to use international human rights standards as a part of their litigation strategy to advance the human rights of women. It was created to:

- Examine how international standards can be used in domestic litigation to promote women's human rights;
- Analyze how lawyers from a variety of different legal systems around the world have used international human rights standards to advance gender equality and non-discrimination;
- Promote the sharing of case law, experiences, and best practices among lawyers, at the national, regional, and international level;
- Encourage lawyers and legal advocates to discuss ways of promoting greater use of international standards at the domestic level, craft new case strategies, develop innovative legal arguments to address violations of women's human rights, and create new legal interpretations of international and domestic laws that address the realities of women's lives.

It must be emphasized from the beginning that international women's human rights is a new and developing area of human rights law. Lawyers around the world continue to learn about this topic and are pioneers in the effort to develop best practices and progressive jurisprudence on the subject.

This guide, therefore, offers issues to reflect upon and concrete suggestions for local lawyers to use when developing their own strategies for promoting women's rights. It provides a practical framework for building litigation strategies and information on how international standards can help promote women's rights in domestic legal systems. The guide is also designed to help lawyers analyze deficiencies in their current domestic hierarchy of laws or procedures and to initiate strategic litigation to overcome these shortcomings. Finally, it encourages lawyers to participate in, contribute to, and enrich the global discourse on women's human rights and the menus of possible strategies for promoting them.

We hope that human rights lawyers and other legal advocates will find this guide useful both as an individual research tool for preparing their own litigation, as well as for designing and conducting training workshops on how to use international human rights standards in domestic litigation and legal policy advocacy.

The largest promise of human rights is that all people have access to their rights. Yet discrimination based on gender as well as other social categories puts limits on the fulfillment of this promise in practice. The most significant possibilities of human rights rests in their creative and strategic application. International human rights, as they have been elaborated in international documents, are not intended to be descriptive or reflective of the reality of women's — or any particular individual's or group's — lives. Rather, the guarantees contained in the texts are meant to be definitional as tools and a starting point from which rights-based litigation can be elaborated, specified, particularlized and implemented. So while

this guidebook gives some suggestions as to what international human rights law can do for local lawyers, the real question is what can local lawyers do with and for international human rights law. For international human rights law to reach its full potential, lawyers and activists must actively participate in the development, use and refinement of these norms.

Many countries around the world have discriminatory, ineffective, or insufficient legislation related to women's rights. In many others, legislation is not adequately implemented. However, this guide begins from the premise that contradictions, lack of clarity, gaps, and silence in domestic legislation create a rich opportunity for litigation and legal advocacy to fill in these gaps by creating explicit arguments about what the law is, or should be, from the perspective of international human rights standards. It is our hope that this guide will provide sources, techniques, and strategies for helping lawyers and other legal advocates to advance their domestic litigation and legal standards while adding specificity and clarity to the promise of international human rights law.

When using international human rights law in domestic litigation, advocates must be flexible and creative. Readers will need to take the ideas, examples, and suggestions in this resource guide, conduct additional research, and then develop their own litigation strategy. The existing human rights system evolved, and continues to evolve, as a result of people's efforts in local, national, regional, and global arenas. This guide is a modest attempt to contribute to local lawyers' and legal advocates' participation in this process.

What does this guide contain?

This guide discusses how to use international human rights standards in domestic litigation, and other legal advocacy campaigns, as a tool to promote the human rights of women, and it presents case studies from countries around the world. It provides: general principles of strategic litigation; critical legal issues that arise when arguing international law domestically; the implications

of strategic litigation for the human rights of women specifically; and a list of reasons lawyers may want to integrate international standards into their domestic litigation. It also suggests a decision-making process to assist lawyers in how they can use international law in domestic cases. Additionally, the guide identifies potential obstacles to the application of international standards in domestic courts, provides strategies to overcome them, and offers a list of sources of international human rights standards that lawyers can use to construct their legal arguments.

At the end of this Guide there is a list of websites with information on international and comparative law and other resources for lawyers to use in their research.

What does this guide not contain?

This guide is intended to help facilitate the use of international law for domestic legal advocacy on issues of relevance to the human rights of women. Therefore, it focuses on identifying important questions to consider and provides comparative examples, suggestions, and information to assist lawyers in the development of their own litigation strategies. It is not intended to be comphrehensive or prescriptive—not every suggestion or strategy in it will be relevant to every context or case.

We hope this is a tool that complements the wide variety of rich resources already available. Because it offers an introduction to the topic—and both international and domestic law are always evolving—readers will need to conduct targeted research to obtain additional information and continually remain up to date on the latest legal developments in the field.

This guide presents case studies and examples of litigation strategies from diverse countries and different legal systems around the world. By offering an international and comparative approach, the guide does not intend to suggest that one can or should transplant one particular country's or region's model to another. Rather, such an approach is meant to provide guidance and inspiration, and to help

advance efforts to promote the human rights of women. By exploring how legal arguments have been constructed in diverse jurisdictions, lawyers can avoid "reinventing the wheel," learn from others who have faced similar obstacles, engage in transnational dialogues to enrich their legal arguments, and develop creative new litigation and legal policy advocacy strategies to advance women's rights.

In-depth legal information on specific women's rights themes, and explanations or expositions of the content of international conventions are amply covered in existing publications. This guide does not address these topics.

Finally, this guide does not provide a description or an assessment of the situation of women around the world nor an analysis of their legal status and the laws that impact them. Many studies, articles and publications by previous authors and other local and international NGOs are already available on these topics.

While this guide focuses on litigating international human rights standards in front of domestic courts, lawyers should not limit rights-based advocacy only to the courts. Local advocates should also consider how international human rights standards, and the tools elaborated in this guide, can be integrated into their advocacy before other domestic advisory, investigatory, and judicial bodies. These might include national human rights commissions, consultative councils, constitutional courts, ombudspersons, and permanent and ad hoc commissions.

Finally, it must be stressed that domestic litigation is one strategy among many that can and should be used in support of women's human rights. This guide focuses specifically on domestic litigation in order to examine this strategy in detail. Other forms of activism are often as important. Domestic litigation is just one element of a multi-faceted approach to human rights advocacy that can also include public education, legislative advocacy and policy reform, and international advocacy.

How was this guide developed?

This guide is the result of two years of workshops, conferences, consultations with local NGOs and lawyers, and examines the issue of strategic litigation for women's human rights in specific local contexts. It presents the results of this participatory research and the lessons we have learned from our collaborative efforts. As we are continually in a process of learning, we hope that this guide will be the first in a series of guides and lessons-learned tools that will develop as advocates integrate international norms into their domestic litigation for the promotion of human rights of women.

II. WHAT DO WE MEAN BY HUMAN RIGHTS LAWYERING?

GLOBAL RIGHTS HUMAN RIGHTS LAWYERING PROGRAMS WORLDWIDE

Human rights lawyering is one of the five core strategies[1] that Global Rights uses in its work with lawyers and activists to effect change. This guide is part of Global Rights' ongoing initiative to document, analyze, and share best practices, and to develop systematic approaches to strategic human rights lawyering with our field offices and partners around the world. Since 1979, Global Rights' work has demonstrated the need to create solidarity among activists globally, promote information sharing about progress lawyers and other legal advocates have made on human rights, and support stronger demands for change through the development of domestic and international jurisprudence on human rights.

The organization's work in the Maghreb Initiative that has culminated in this Guide builds on the Global Rights regional conferences held during 1999 and 2000 in Southeast Asia and China, Central and Eastern Europe, Sub-Saharan Africa, and Mexico and Central America. These regional meetings brought together more than 180 human rights lawyers and activists from 125 legal and human rights organizations in more than 50 countries to share and critically analyze strategies for promoting human rights and access to justice.[2] The Maghreb Initiative has contributed additional dimensions to Global Rights' strategic lawyering work by focusing exclusively on the promotion of women's human rights in countries with Islamic legal contexts.

Global Rights continues to work with lawyers and activists on sharing and developing effective legal strategies through its field offices and regional and global meetings of legal practitioners. Global Rights is committed to producing useful tools and disseminating information on human rights litigation.

Human rights lawyering[3] is defined as using the law, legal concepts, and legal advocacy as a strategic tool to ensure the promotion and protection of human rights. Using this model, lawyers reflect critically on how they can use the courts to create social change in their own local and national contexts, and better enable/facilitate disadvantaged and marginalized groups by using or challenging the law. It is distinct from traditional forms of lawyering in that it is:

- **Strategic:** the result of a calculated planning process designed to achieve a specific goal or goals in addition to the resolution of an individual case;
- **Holistic:** combines litigation with other non-legal forms of action;
- **Long-term:** based on a series of cases and sustained efforts over a period of time; and
- **Political:** designed to bring about social change.

Human rights lawyering is different from the practice of law as a conventional lawyer would perform, since as human rights activists we have specific values that we bring to and associate with our work, beyond the implementation of the existing law or legal framework. It is based on the premise that lawsuits can have a broader impact than simply resolving private disputes between the two parties to an individual case and the belief that a single case, or series of cases, especially if issued from higher courts or if involving issues of constitutional interpretation, can help shape the law.

Especially in controversial areas of social policy such as women's rights, when it may be difficult to get legislative consensus through the political process, strategic litigation can be one tool for protecting the rights of marginalized individuals and groups. Here the law can be a source of liberation and can provide immediate relief for those who have experienced discrimination, violence

or other human rights abuses. Strategic lawyering therefore goes beyond individual cases and involves using the law to challenge and change existing power structures. This guide will focus in particular on how the movement for gender equality and women's empowerment and the law can intersect in order to change the existing dynamics that operate to disadvantage women.

Strategies used by human rights lawyers may be strictly legal, including:

- **Impact or test case litigation:** Uses an individual case to seek a decision on a controversial issue of social policy that will have a broader impact than merely resolving the case at hand.
- **Class action lawsuit:** A legally recognized practice in some countries that allows multiple individuals who have suffered similar harm to file a lawsuit collectively.
- **Mass filings:** Lawyers simultaneously file hundreds or thousands of individual cases based on the same legal theory or set of facts in order to demonstrate a pattern of large-scale human rights violations. This is often a good alternative in legal systems that do not allow for class action lawsuits.
- **Public interest lawyering:** Legal services are targeted to benefit marginalized or disadvantaged populations. This assistance is often provided in legal aid centers or through programs for clients with limited resources who often lack access to justice.
- **Paralegal services:** Lay persons trained in basic legal rights and procedures conduct outreach and provide services such as legal orientation, counseling, advice, and case preparation to underserved, isolated, or minority populations.

In addition to such legal actions, human rights lawyers may also adopt extra-legal strategies as part of a holistic approach to human rights lawyering. These may include community education and mobilization programs, mediation or alternative dispute resolution, community service referral networks, and outreach to the press with media campaigns. Combining legal and extra-legal approaches helps obtain community support for the changes being sought so that progress is achieved not only in the courtroom but in society at large.

Finally, it is important to emphasize that strategic lawyering is, above all, an attempt to develop, apply and reinforce the rule of law. The rule of law is therefore an objective and a desired outcome of strategic lawyering, and not a necessary predicate or precondition to doing this work.

III. INTERNATIONAL STANDARDS IN DOMESTIC COURTS: LEGAL THEORY AND KEY CONCEPTS

This section presents a brief overview of the place and role of international standards in domestic legal systems. It offers key concepts that lawyers will need to keep in mind when designing case strategies and legal arguments. It also highlights legal questions that may require preparatory research and identifies opportunities for strategic litigation.

The use of international standards in domestic legal systems is a relatively new strategy in many countries. The place of international standards in domestic legal systems and their applicability in domestic courts is always evolving based on the creative litigation strategies developed by lawyers in their daily work. The point of this guide is to motivate lawyers to participate in this dynamic process.

What is international law's place in the domestic legal system?

The "hierarchy of laws" refers to the normative rank of the different possible sources of law—international treaty law, customary international law, the national constitution, national legislation, jurisprudence, religion, and custom—within the domestic legal order. It determines which sources of law are definitive, and therefore take precedence over the others.

Lawyers will need to determine the place of specific sources of international law (treaty law or customary international law) in the hierarchy of laws in their domestic legal system. To this end, lawyers should ask themselves:

- Which domestic legal sources, if any, determine the relationship between international standards and domestic laws?
- What does the national constitution say about the hierarchy of laws and the relationship between international standards and domestic law?

- Is the national framework (constitutional or other) on the hierarchy of laws clear in the domestic legal system?
- Does the national framework (constitutional or other) on the hierarchy of laws in the domestic legal system contradict international law?
- What, if anything, will lawyers need to do in order to establish the legal basis of the supremacy of international law over domestic law?

What is the domestic process for enforcing the hierarchy of laws?

In theory, derivative sources of law must conform to the supreme sources of law in the domestic legal hierarchy. Questions then arise as to which branch of government or domestic body, if any, is charged with monitoring and enforcing respect for the hierarchy of laws; what mechanism, if any, exists to control this; and at what point in the law-making process (a priori, a posteriori, and/or at any time) this control may be exercised.

The process for ensuring that the different sources of law conform with each other, and identifying the appropriate governmental institution to determine this, can often be quite complex and, in many legal systems, unclear. Lawyers should think about the following questions as issues they might need to address in their long-term litigation strategy and as opportunities for advocating for the direct application of international norms in national courts.

- Who/which institution is responsible for controlling the constitutionality of international engagements? In other words, what do the national constitution, legislation, and jurisprudence say about the process for ensuring that international conventions your country has ratified (or will ratify) conform to your national constitution?

- Who/which institution is responsible for controlling the constitutionality of national laws? In other words, what do the national constitution, legislation, and jurisprudence say about ensuring that national legislation conforms to the national constitution?
- What do the national constitution, legislation, and jurisprudence say about the process for ensuring the conformity of national laws with international conventions the country has ratified? Is a distinction made between laws enacted prior to ratification of the international convention and laws enacted after ratification of the international convention?

This last question is often the one on which national constitutions, legislation, and/or jurisprudence are silent or unclear. This ambiguity presents an opportunity for lawyers to argue in front of domestic courts that they should appropriate this power for themselves.[4]

How do international treaties become applicable in the domestic legal system?

Nations follow different practices to give international treaties the force of law within their domestic legal structures. Lawyers should therefore determine what conditions, if any, the country's constitution, legislation, and/or jurisprudence indicate are necessary for international conventions to be applicable in the domestic context. Possibilities include ratification, publication in an official gazette, and legislative action such as an act of incorporation, among other things.

In some countries, international (and/or regional) conventions automatically become a part of domestic law as soon as the country has ratified or acceded to an agreement. In this system, international treaties are considered to be self-executing—that is, they are directly applicable by domestic courts immediately upon ratification and publication, with no additional legislative action,

such as the promulgation of an act of incorporation that integrates the treaty into domestic legislation, necessary.

In other countries, international treaties that have been ratified do not automatically form part of domestic law without the promulgation of additional legislation by the national legislature.[5] Such states use a variety of means to implement their obligations in the domestic legal order. Some modify or amend existing legislation to bring it into conformity with the treaty obligations without referring to or invoking the specific terms of the convention. Others incorporate the text of the convention itself into domestic law so that its terms remain intact.

Can individuals invoke international human rights standards directly in domestic litigation?

Justiciability refers to those matters that can be resolved by the courts and invoked by the parties to litigation. Lawyers should ask themselves whether, in a given legal system, an individual can go into court and invoke international standards as the basis (or one basis) of their claim and receive a remedy for a violation of their human rights as defined by these standards.

Can domestic judges base their decisions on international standards?

This will depend on the role of and power given to judges versus legislators, especially in civil law systems where judges are supposed to restrict their role to "applying the law." There are several ways domestic judges can use international standards in their decisions, including:

- Setting aside domestic law on the ground that it contradicts international standards, and then applying those international standards directly instead.
- Using international standards to clarify or fill gaps in the content and meaning of domestic legislation.

- Noting in their decisions that international standards conform to domestic legislation and religious principles, or that domestic legislation and religious principles conform to international standards.

Under international law, national courts are state organs, and as a result, they are required to conform to international standards. Failure to do so can impose international liability on the country. Lawyers can therefore argue that national courts have a role in enforcing international obligations on recalcitrant governments.

In addition, international law makes clear that international treaties:

- Take precedence over contradictory internal law;
- Should have direct applicability in internal legal systems;
- Should be enforced through judicial remedies in domestic courts; and
- Should be able to be invoked directly by individual litigants.

Lawyers can find evidence to support these arguments in the terms of the treaties, as well as in the subsequent authoritative statements issued by appropriate treaty monitoring bodies. For example, the Vienna Convention on the Law of Treaties[6] provides in Article 27 that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

Similarly, the Committee on Economic, Social and Cultural Rights says in paragraph 3 of its General Comment 9[7] that:

> [T]he Universal Declaration of Human Rights [says that] 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.' The International Covenant on Economic, Social and Cultural Rights contains no direct counterpart to article 2, paragraph 3 (b), of the

> International Covenant on Civil and Political Rights, which obligates States parties to, inter alia, 'develop the possibilities of judicial remedy.' Nevertheless, a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not 'appropriate means' within the terms of article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies.

The General Comment goes on in paragraph 4 to say that

> In general, legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals.

Likewise, article 7(1) of the African Charter on Human and Peoples' Rights guarantees the right of appeal before competent national organs, which may redress violations of rights recognized by "conventions, laws, regulations, and customs in force." In other words, states parties guarantee the right of individuals to bring cases based on the African Charter to domestic courts. Recent surveys of domestic court decisions in states parties to the African Charter analyzing their application of the Charter have noted a tendency towards (a) greater judicial activism, (b) a commitment to the realization of regional human rights, and (c) application and/or reference by national judges to the Charter in their decisions.[8]

IV. WHY USE STRATEGIC LITIGATION TO PROTECT WOMEN'S HUMAN RIGHTS?

This section discusses how and why domestic courts have historically been reluctant to apply international standards in women's human rights cases. It also presents some concrete examples of the growing movement to apply international human rights law in domestic cases involving women's human rights, and studies of how women's rights advocates have started to utilize international human rights discourses and develop it to meet the needs of women in their communities.

Historically, international human rights standards have been applied to women's rights cases infrequently due to:

- **The limited and biased nature of traditional human rights standards:** Women's rights have traditionally been neglected in rights discourse, and only relatively recently has the international human rights system initiated efforts to become responsive and accessible to women's concerns. Most national, regional, and international human rights systems and enforcement mechanisms were developed and implemented with a male model in mind and have not adequately taken into account the gender-specific ways in which women are targeted for human rights violations or the gender-specific means to ensure that the human rights of everyone – including women – are respected, protected and fulfilled. Thus, it is critical to focus on the gender-specificity of women's experiences when developing substantive rights and remedies, or complaints and enforcement mechanisms.

- **The non-application of international standards by domestic courts in cases involving women's rights specifically:** While there has been a growing tendency for domestic courts to apply international human rights obligations in their decisions, very few domestic court cases have applied international human rights in cases involving

women. This is often due to the use of religious arguments (or "respect for culture" and/or "traditions" and/or "culture") in cases about the human rights of women. But when religion is cited as a source of law for women's human rights cases, and international human rights standards are applied in other areas, gender discrimination is reinforced and women are relegated to a separate area of law. In addition, because many people around the world continue to define human rights as involving only civil and political rights (traditionally "male" rights), they frequently do not consider violations of women's human rights "real" human rights violations, but, rather, personal or private issues.

- **The non-litigation of women's cases as human rights cases:** Lawyers often take on litigation involving women's human rights issues—especially cases involving domestic violence, divorce, alimony, child support, or marital property—as charity cases instead of as human rights cases to be argued using international standards.

How can international standards be used to promote women's human rights?

International human rights law is dynamic in nature and always evolving. Lawyers have an important role to play in their daily litigation to get existing rights more broadly interpreted and additional rights recognized. Given the historical resistance to using international human rights law in cases involving the violations of the human rights of women, this is especially important when addressing these issues. At the same time, there has been a growing development of gender-sensitive and gender-specific human rights jurisprudence upon which to build domestic litigation to promote and protect the human rights of women (see web resource guide).

Lawyers can use, expand, and redefine international human rights concepts to render violations of women's human rights more

visible—in both law and practice. By exposing and identifying these abuses and getting them recognized as human rights violations, lawyers can make human rights protections and remedies more accessible to women, and can carve out a more holistic jurisprudence relating to gender-specific issues in the exercise and enjoyment of rights.

Specifically, lawyers can use litigation to identify, document, and expose injustices against women that were previously invisible and unnamed, as was the case with sexual harassment and, "honor killings." International standards can thus be used both to enforce existing rights that are not being respected and to name previously unnamed rights violations.

This type of grassroots level advocacy has contributed not only to the promotion of individual women's human rights on the ground, but also to the development of international human rights law. It has led to the recognition of rape as a war crime, and to the Committee on the Elimination of Discrimination Against Women's General Recommendation No. 19, which declared violence against women a violation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As these examples show, lawyers can create and enrich international law through a bottom-up approach to the elaboration and creation of international norms.

Using international human rights standards creatively in domestic litigation can also help bridge the gap between the law on the books and the reality of women's lives. Some women's rights may be protected by domestic legislation (although, in general, when they are protected, this is done as a set of special or particular rights, rather than the inclusion of gender-specific perspectives on all rights), but the laws must be interpreted and applied in such a way as to promote the human rights of women and must be enforced for everyone. International human rights standards are one tool that lawyers can use to litigate for meaningful

judicial relief for women in the context of what they need and based on the context of the human rights violated. Rather than stopping at formal equality in the law, the main question that lawyers continually should be asking themselves is whether the predominant interpretation and application of the law actually improves women's lives.

How has the domestic application of women's international human rights begun to evolve?

In recent years, domestic court judges in a number of jurisdictions have begun to base their decisions on CEDAW or refer to it in the course of their judgments. In doing so, they have also included references to the body of jurisprudence that has developed on the Convention through its application by judges at the national, regional, and international levels. Examples of domestic court cases applying, observing the spirit, or referring to international conventions as an interpretive tool to promote women's rights are increasingly being documented in scholarly analyses, activist guides and and on a growing number of websites.[9]

"The Citizenship Case"
Attorney General of Botswana v. Unity Dow
(Botswana Supreme Court, 1992)[10]

Background:

National Legislation: Sections four and five of the Botswanan Citizenship Act of 1984, based on Tswana customary law, effectively prevented a woman citizen from being able to transmit Botswanan citizenship to her husband or children if her husband/their father was not a citizen of Botswana. This restriction did not apply to situations in which the man was a citizen of Botswana but the woman was not, and a male Botswanan citizen could readily confer citizenship upon his children. The discriminatory nature of the Citizenship Act was rooted in the country's culture and history of customary law, which was inherently gender-biased.

International Obligations: Botswana had not ratified any international human rights treaties when the case was filed.

Preparation for the Case: A local women's NGO was established with the aim of removing all laws in Botswana that discriminated against women. The issue of the Citizenship Act was chosen as one of the most glaring examples of discrimination against women. The members of the NGO conducted research into the background of the Act, the official justification for the Act, the arguments for and against it, and documented how many women were affected by it and in what ways. The NGO then conducted awareness-raising campaigns to heighten public knowledge about the discriminatory provisions of the Act and its violation of women's rights. Once the citizenship issue had been highly publicized and official and public debates were underway, the decision was made to bring a test case to challenge the Constitutionality of the Act.

Facts of the Case:

Unity Dow was married to a non-Botswanan citizen. They had two children together, but under the Botswanan Citizenship Act, Dow's two children with her non-citizen husband were not Botswanan citizens.

Plaintiff's Arguments:
Ms. Dow challenged the legitimacy of the Citizenship Act on multiple grounds, including the fact that the law discriminated against women and that it violated the Constitution of Botswana, which afforded all individuals basic human rights regardless of their sex.

She also argued that: (1) She was precluded from passing citizenship to her children, whereas a man in her position would have been able to pass on citizenship; (2) She was denied equal protection under the law; (3) Her freedom of movement, a right under the Constitution, was limited by the fact that her children were not citizens and that a man in the same position would not have been so restrained; and (4) The law amounted to inhuman and degrading treatment.

State's Arguments:
The State argued that customary law in Botswana was based on patrilineal societal structures, and if gender discrimination were outlawed, very little would remain of customary law.

Ruling and Reasoning of the Court:
The Supreme Court ruled that the Citizenship Act discriminated against women and violated the Constitution.

In its decision, the High Court cited the Act's violations of individual rights, which included "the rights to liberty, protection of the law, immunity from expulsion from Botswana, protection from being subjected to degrading treatment, and not to be discriminated against on the basis of her sex." The Court relied on domestic as well as international law to find in favor of Ms. Dow, thereby setting the stage for further international human rights-based litigation improving the status of women.

The opinion relied extensively on a number of international conventions invoked by Dow, even though Botswana at that time was not a signatory to them. These included CEDAW, the Convention on the Rights of the Child (CRC), the Universal Declaration of Human Rights, and the African Charter on Human and Peoples' Rights (to which Botswana was a signatory). The justices pointed out that they were entitled to take judicial notice of these conventions by the mere fact that Botswana was a member of the community of nations through the United Nations.

As Justice Aguda wrote, "[t]he domestic application of human rights norms is now regarded as the basis for implementing constitutional values beyond the minimum requirements of the Constitution. The international human rights norms are in fact part of the constitutional expression of liberties guaranteed at the national level. The domestic courts can assume the task of expanding these liberties."

Positive Outcomes of the Case:
Following this decision, Botswana ratified CEDAW and the CRC. In addition, the Citizenship Act was amended to reflect the Supreme Court decision. Gender-neutral provisions that went beyond the requirements of the court decision were added.

In a later case, *Rattigan and Ors. v. Chief Immigration Officer* (1994), the Supreme Court of Zimbabwe cited and applied the reasoning in Dow to hold that the practice of Zimbabwean immigration officers preventing an alien husband from living with his wife in Zimbabwe was unconstitutional. As a result of this and another constitutional case, Zimbabwe's constitution was amended in 1996.

Negative Outcomes of the Case:
International participation in the case was seen by some as a plot to destroy Botswanan culture. It also led to government resentment.

Extralegal Strategies Employed:
The foreign press covered the case and local NGOs conducted public education and media campaigns. International Women's Rights Action Watch, an international NGO, filed an amicus brief and provided support and materials that would not have been accessible otherwise. The organization also helped organize a petition to make sure the Court's decision was implemented. Regional NGOs organized petitions to the Botswanan Government, urging implementation of the decision.

States parties to CEDAW have a legal obligation to take all measures necessary for its implementation, including its incorporation into their domestic legal systems. The CEDAW Committee has been particularly interested in the status and direct applicability of the Convention in internal legal systems and the possibility for individuals to invoke the Committee's dispositions in litigation before domestic courts.

In assessing a state party's compliance with this obligation, the Committee looks at whether and how CEDAW has been incorporated into national constitutions, legislation, regulations, and judicial decision-making. The Committee's Guidelines indicate that the reports that states parties submit describing their compliance with and implementation of CEDAW should explain:[11]

> (1) Whether the Convention is directly applicable in domestic law on ratification, or has been incorporated into the national Constitution or domestic law so as to be directly applicable;
>
> (2) Whether the provisions of the Convention are guaranteed in a Constitution or other laws and to what extent; or if not, whether its provisions can be invoked before and given effect to by courts, tribunals and administrative authorities….[12]

The United Nations Division for the Advancement of Women (DAW) has made the application of international human rights law for the promotion of women's rights in domestic courts a major focus of its work, and recently organized a series of regional judicial colloquia on this subject with hundreds of national judges and magistrates from countries around the world.[13] These judges and magistrates stressed the importance of, and committed themselves to, applying international human rights conventions, notably CEDAW, in their domestic court decisions addressing women's rights issues.

The DAW noted in the first colloquium that both the CEDAW and CRC[14] Committees:

> …have stressed the relevance of the Conventions and the jurisprudence of the Committees in domestic litigation. The status of international treaty law in domestic law is resolved differently in different countries, but there are a growing number of cases in which domestic courts and tribunals, from constitutional courts to lower-level courts, have referred directly or indirectly to international human rights law including in cases concerning women and children. International human rights instruments and the decisions of judicial and quasi-judicial bodies with regard to these instruments are increasingly used by judges and magistrates as a tool to attain the goals of these instruments.

In her opening statement at one of the Colloquia, Angela King, Special Adviser to the Secretary-General of the United Nations on Gender Issues and Advancement of Women, also noted that international human rights norms:

> …outlined in human rights treaties—together with the body of jurisprudence that has developed through their application by judges at the national and international levels—are increasingly relied on as a source of inspiration and as benchmarks by judges in courts in countries in all parts of the world. Courts increasingly rely on these norms where domestic law is incomplete, uncertain, or ambiguous. Courts are more and more assessing the validity of domestic legislation against the standards of international human rights treaties. In several cases, enlightened judges have overruled domestic laws where these conflict with treaty obligations. With these developments, international human rights law, and particularly that concerning women, has become the measure against which to assess domestic legislation and the guide for judicial decision-making. It has become the means to transform law into justice for women and girls.

At the Judicial Colloquium held in Arusha, Tanzania in September 2003, the judges and magistrates present adopted *The Arusha Declaration of Commitments on the Role of the Domestic Judge on the Application of International Human Rights Law at*

the Domestic Level.[15] In it, they noted that the judicial system, as an arm of the state, has a duty to ensure the state's compliance with its international legal obligations, for which it can be held accountable at the international level. The participating judges and magistrates also committed themselves, among other things, to cite articles from CEDAW and the CEDAW Committee's General Recommendations in relevant decisions interpreting domestic law. They also agreed to cite decisions from comparable jurisdictions in which CEDAW has been referenced.

Likewise, judges participating in the Judicial Colloquium in Nassau, the Bahamas, in May 2004 recommended that judges "make use of and refer to the CEDAW in their decisions, so as to set precedents and contribute to a broader interpretation of domestic law in light of international human rights instruments." They also encouraged "judicial activism in the interpretation of legislation and in the approach of judges in dealing with issues affecting women, identifying gaps in legislation and inconsistencies of existing legislation with the spirit of the CEDAW."[16]

V. WHY USE INTERNATIONAL HUMAN RIGHTS LAW IN DOMESTIC LITIGATION?

This section presents some reasons why lawyers may want to integrate international human rights standards in their litigation before domestic courts. Some of these reasons can be presented in pleadings to domestic judges when arguing that they should apply international human rights law (a topic addressed later in this guide). But the main point of this section is to identify legal imperatives and practical considerations that may motivate lawyers to use international law in what otherwise might appear to be a long and upward battle for women's human rights in domestic courts. Based on different national and legal contexts, lawyers and activists will have additional ideas to add to this list.

1. Many national constitutions indicate that international and regional treaties that have been ratified, and/or customary international law, are supreme in the national hierarchy of laws, and are therefore binding on the state. In such countries, international law is the law. Lawyers should refer to international law in their arguments, and domestic courts should apply it.

2. Many international and regional treaties make clear that ratifying states are under a legal obligation to take all necessary measures towards the treaty's implementation. This includes incorporating the terms of the treaty into the domestic legal system. Domestic courts therefore can and should ensure that the state is accountable for its international legal obligations.

3. International law is often more progressive and does more to protect the human rights of historically disadvantaged members of society, especially women, than does domestic law. When domestic law is repressive or insufficient, lawyers can turn to international human rights law to address their concerns. For example, a regional NGO advocating for the rights of the Roma effectively used the International Convention on the Elimination of All Forms of Racial

Discrimination to demonstrate what the right to education, the right to water, and the right to health means for their client populations.[17]

4. Even though lawyers may not be able to persuade a judge to apply international standards in their case, raising the issue of international human rights law in a lower level court may open the way to an appeal and persuade a higher-level judge later on to apply the international standards.

5. International and regional mechanisms require that parties exhaust domestic remedies before resorting to their complaint procedures**.** As a result, lawyers who introduce international human rights law in cases before domestic courts may help prepare for international admissibility requirements and can set the stage for bringing the case before a regional or international mechanism later.

   In addition, because parties are required to exhaust domestic remedies before resorting to international fora, and because courts are the mechanism by which parties obtain remedies, it follows that domestic courts are the logical mechanism through which to start seeking redress for violations of international human rights.

6. Litigating international human rights law in front of domestic courts can raise public awareness about international human rights standards and women's human rights violations.

   For example, in Nigeria, under the military regimes, the Constitutional Rights Project (CRP) was established in 1990 with the aim of using research and litigation to promote basic rights and to strengthen the judiciary. CRP's work could help build public awareness of rights abuses and sustain the momentum of those working for democracy. CRP and other law groups brought case after case charging the government with a wide range of abuses of power. In some cases, they were

able to win release of prisoners illegally detained; in others, they were able to win limited victories for free speech. Much of their litigation, however, was hamstrung by interminable delays, judicial apathy, and corruption, and in many instances the courts threw out cases or otherwise denied relief. Even when the court ruled in favor of CRP's clients, the military authorities ignored the rulings. CRP nevertheless succeeded in focusing a public spotlight on the injustices of the military regime. Newspapers that did not dare report a public demonstration would nevertheless cover a court case and give the reform effort much-needed publicity. For complicated reasons, litigation became a somewhat safe way to challenge government practices. Those undertaking direct human rights campaigns, by contrast, often faced jail, torture, and even death for their efforts. Despite "losing" many cases in court, CRP's litigation served as a vital tool for educating the public at home and for exposing official crimes to an international audience.[18]

In this example, despite the courts' refusal to apply human rights standards, lawyers were able to force a debate and mobilize the public around an issue. The lawyers' role was thus important not only before and during the case, but also after the court rendered its decision. For litigation to serve a public education role, lawyers need to share, widely distribute, and publicize decisions with other lawyers, members of the local and international media, and domestic and international NGOs.

7. By integrating international human rights law into their pleadings, lawyers can educate domestic judges, who often lack access to information, training, and up-to-date resources on this area of the law.

8. Citing international standards before domestic courts can be useful in lobbying for, and triggering, constitutional or legislative reform. Governments are not likely to initiate reform unless they are subject to pressure. Litigation and

the threat of litigation, is one form of pressure. In the complex dialogue between the judiciary and the legislature, court decisions can therefore prompt rights-based legislative reform. In the "Citizenship Case" described above, for example, as well as in subsequent cases challenging domestic immigration laws before Botswana's Supreme Court[19], lawyers who litigated international human rights norms later saw amendments made to both the Citizenship Act and the national constitution.

9. By litigating international standards before domestic courts, lawyers can pressure states to ratify additional human rights conventions, or to officially publish those conventions that have already been ratified. After the "Citizenship Case", for example, Botswana ratified CEDAW and the CRC.

10. Lawyers can remind states that the CEDAW Committee, which monitors states' application of CEDAW, has expressed an interest in CEDAW's direct applicability and justiciability before national courts. The Committee's Guidelines[20] make clear that states' reports to the Committee must include information on this issue.

11. Lawyers and advocates can refer to successful and unsuccessful domestic cases that cite international law when they submit "shadow" or "parallel" reports to treaty-monitoring bodies such as the CEDAW Committee. Shadow reporting provides treaty-monitoring bodies with alternative sources of information concerning state compliance with treaties, since states can be less than forthcoming or thorough.

12. By documenting a series of unsuccessful domestic cases based on international human rights law, lawyers can show the state's failure to respect and implement its obligations under the conventions it has ratified. This is another example of how a long-term litigation strategy can be helpful. While litigating based on international norms may not always lead to success

in the short-term, it can ultimately play an important role in the sustainable promotion of human rights.

For example, NGOs often use litigation as a way to document and thus expose institutionalized injustices, even where the lawsuit as a formal matter is unlikely to succeed in court. By creating a record of official practices, grantees try to use well-targeted litigation to document official abuse or private violence; to crack the veneer of legality that some repressive government practices claim; and to lay the foundation for future action. In Chile, for example, the "Vicariate of Solidarity" repeatedly filed lawsuits during the years of military rule to seek the release of prisoners (called "habeas corpus" actions). They thus created a powerful record of abuses that over time acquired political importance. Although the Vicariate could count few courtroom victories, its massive documentation later played an important role in proving the extent of the government's rights violations. After changes in the political regime, the Vicariate's work in documenting prior repression contributed to the work of the National Commission on Truth and Reconciliation.[21]

13. In systems where the judiciary is not independent, or is lacking in credibility and integrity, litigation can be used to highlight the lack of judicial independence and fairness. This strategy works best when the average citizen easily understands that a rights violation has occurred, and public education is conducted on the role of the judiciary and its present failure. In this sense, litigation can work as a "naming and shaming" device.

14. Lawyers may wish to invoke international human rights law in domestic legal systems, where remedies are stronger and more enforceable than in the international system. Indeed, sanctions and remedies for individual cases are very often weak or absent in international cases. The application of international human rights standards in domestic courts can

therefore help to remedy the lack of strong enforcement for many international human rights conventions.

15. By citing international human rights law in domestic cases, lawyers can participate in, contribute to, and sustain the democratic development of this body of law. International human rights law is not necessarily, and should not be, elaborated by states and imposed in a top-down manner. Litigating international norms in front of domestic courts is one way to amplify local voices in the global discourse on the subject of what international law says and means (or should say and mean). By integrating interpretations of international human rights standards into their domestic litigation, lawyers at the grassroots level can diversify the input into the creation and development of international standards.

    International human rights law often looks to judgments from domestic courts in order to establish its meaning. In other words, through litigation at the local level, lawyers can contribute to developing a body of international human rights jurisprudence that other lawyers, judges, and activists can reference in cases before other domestic courts. In this way, the cross-pollination of progressive human rights case law at the domestic level can contribute to the development of new global norms. Domestic court interpretations can therefore benefit both international and domestic law.

    This is particularly relevant when it comes to women's human rights issues. International human rights law was developed in a male-oriented world, and has often ignored women's concerns and has failed to recognize the subordination of women as a human rights violation. For example, violence against women was not identified as a human right violation when CEDAW was adopted, and only after years of local activism on the issue did the CEDAW Committee issue its General Recommendation No. 19 (1992) on violence

against women. Likewise, traditionally male-focused civil and political rights, such as the right to life and to freedom from torture, have only relatively recently been expanded to include violence against women.

Lawyers who engage in domestic litigation for women's human rights based on creative and innovative interpretations of international conventions can begin to redress the historic invisibility of women's concerns and ensure their inclusion in the future development of more progressive international human rights norms.

And as Shanti Dairiam, director of International Women's Rights Action Watch, Asia Pacific so eloquently states:

> There is much that can be done.
> Today when I am asked
> "What can the Convention really do for women?"
> I reply softly
> "What do you plan to do with the Convention?"[22]

16. Domestic litigation can serve to put controversial issues on the human rights agenda.

17. Lawyers who integrate international standards into domestic litigation can help make economic, social, and cultural rights justiciable. Litigation to this end has helped counteract the idea that these rights are mere policy objectives. In South Africa, for example, the Legal Resources Centre has successfully taken cases on the right to housing. In one such case, the court ordered the government to submit a plan for dealing with the lack of housing in a particular township.[23]

18. If lawyers do not raise international legal arguments in their pleadings, domestic judges very often legally cannot (or will not) refer to it. A survey conducted in 16 African countries to assess how frequently judges applied the African Charter in domestic court decisions found that "the frequency and

innovative use of the Charter by local judiciary is closely linked to the arguments forwarded by local counsel." The survey authors therefore encouraged NGOs and bar associations to take an active role in training lawyers on international human rights norms in order to encourage their integration and use in written and oral legal pleadings.[24]

19. In countries undergoing transition, lawyers who litigate international norms in front of domestic courts can help build the foundation of the country's new legal system. In Bosnia, for example, local lawyers began to cite international human rights law soon after the end of the war in order to build judges' confidence in using these norms.

VI. HOW CAN LAWYERS USE INTERNATIONAL HUMAN RIGHTS LAW IN DOMESTIC LITIGATION?

There are several ways lawyers can integrate international human rights standards into their daily litigation, and several possible strategies for constructing legal arguments in cases before domestic courts.

Explanation of the Decision Chart

The chart on page 40 takes lawyers through a decision-making process that begins by asking questions and then, depending on the answers, helps frame the legal arguments for a particular case. In the chart, the dotted arrows indicate a "Yes" answer, while the darker arrows indicate a "No" answer.

1. Can you argue that the facts of your case constitute a violation under an international human rights convention?

⇒ If yes, go on to question 2.

→ If no, can you argue that the right in your case is protected by customary international law?

⇒ If yes, then build your legal argument around customary international law.

→ If no, you are limited to arguing domestic law.

2. Has your country ratified the relevant convention?

⇒ If yes, go on to question 3.

→ If no, base your argument on domestic law, but refer to the convention in your legal pleadings. Argue that the convention reflects what the global community thinks of the issue and that the court should take this into account when interpreting domestic law.

3. Has the convention been incorporated into your domestic legal system?[25]

⇒ If yes, then go on to question 4.

→ If no:

(a) Launch an advocacy campaign to get it incorporated and

(b) Base your legal argument on domestic law but argue that the fact that the government has ratified the convention indicates its intent for the convention to be recognized as law, and make clear that the court should therefore rely on the convention in its decision.

4. Is the convention equal or superior to domestic law in the state's hierarchy of laws?

⇒ If yes, then go on to question 5.

→ If no, base your legal argument on domestic law but rely on the convention as a source for interpreting domestic law.

5. When the government signed and ratified the treaty, did it do so without reservations?

⇒ If yes, then go to question 6.

→ If no, ask whether the reservations apply in your case.

→ If no, go on to question 6.

⇒ If yes, argue that under international law the reservation cannot nullify the object and purpose of the treaty. If the reservation in question does, argue that it is invalid and the government is still bound by the terms of the convention.

6. Is the right you are seeking to promote more advantageous in the treaty than in domestic law?

⇒ If yes, then base your legal argument primarily on international law, and supplement it with domestic law if possible.

→ If no, then use the more advantageous domestic law.

⇒ ***The outcome of this decision-making process leads to the construction of your legal argument.***

Regardless of your answers on this decision chart, you can always find a way to use international norms indirectly in your domestic litigation and to integrate international law into your larger strategy.

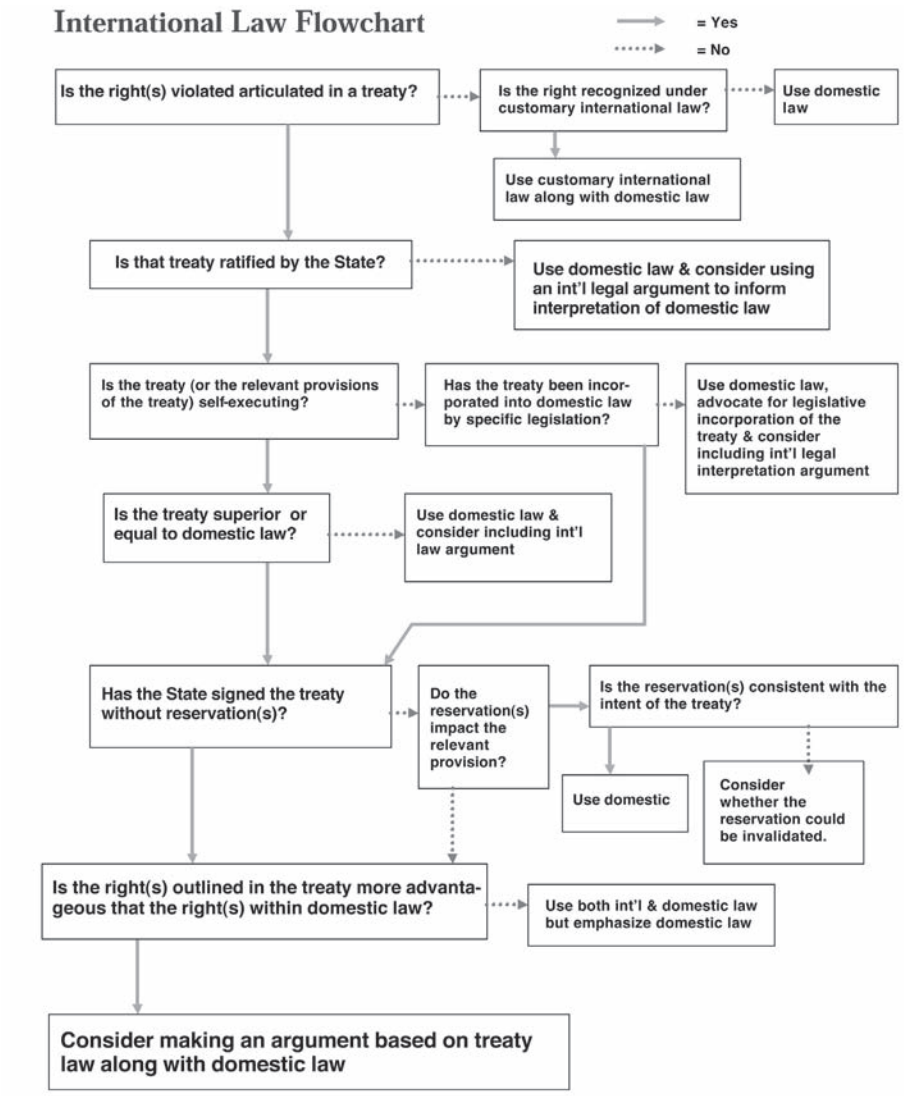
Case Example: Rape of Women Prisoners in the United States

This example demonstrates how lawyers can identify a local issue as a human rights violation in order to put it on a national government's agenda and make it a matter of international embarrassment if the government's international obligations are not met.

Male prison guards had raped prisoners at a women's penitentiary in Michigan and the women decided to bring suit. When the women's lawyer found that there was no domestic law exactly on point to address all of the specific elements of this situation, the lawyer argued that the rapes were a violation of the Convention against Torture (CAT). While the United States had ratified CAT, the Convention had not been incorporated into domestic legislation and therefore was not considered legally binding. The lawyer also argued that the rapes constituted cruel, inhumane, and degrading treatment, which is prohibited by the U.S. Constitution. Finally, the lawyer cited decisions of the international tribunals for Rwanda and the former Yugoslavia that stated that rape by a guard in a detention situation was cruel, inhumane, and degrading treatment.

The lawyer also invited the UN Special Rapporteur on Violence against Women to come to the United States and conduct an investigation into the women's prisons in Michigan. Following her visit, the Special Rapporteur stated that the situation violated the United States' obligations under CAT. The case received publicity in the newspapers and created embarrassment for the prison administration in Michigan, for the state court judge assigned to the case, and for the national government in Washington D.C.

As a result, the national government intervened and forced the case's prosecutor and judge, as well as the prison system, to reach an agreement that sanctioned the guards and established that only women could be guards in women's prisons.


International Law Flowchart
= Yes
= No
Is the right(s) violated articulated in a treaty?
Is the right recognized under customary international law?
Use domestic law
Use customary international law along with domestic law
Is that treaty ratified by the State?
Use domestic law & consider using an int'l legal argument to inform interpretation of domestic law
Is the treaty (or the relevant provisions of the treaty) self-executing?
Has the treaty been incorporated into domestic law by specific legislation?
Use domestic law, advocate for legislative incorporation of the treaty & consider including int'l legal interpretation argument
Is the treaty superior or equal to domestic law?
Use domestic law & consider including int'l law argument
Has the State signed the treaty without reservation(s)?
Do the reservation(s) impact the relevant provision?
Is the reservation(s) consistent with the intent of the treaty?
Use domestic
Consider whether the reservation could be invalidated.
Is the right(s) outlined in the treaty more advantageous that the right(s) within domestic law?
Use both int'l & domestic law but emphasize domestic law
Consider making an argument based on treaty law along with domestic law

How to argue that international human rights law applies in your case:

There are several legal arguments lawyers can make when integrating international human rights law into domestic litigation. Which legal argument should be used will depend on: 1) the decision-making process detailed in the chart; 2) the source(s) of international law that will be used (see the section below detailing potential sources of international human rights standards); 3) the country's legal framework and political context; and 4) the strategic objectives of the case and the long-term litigation strategy. As part of this process, lawyers will generally ask themselves whether a particular source of international human rights law is either binding on the judge or that it is merely persuasive.

Lawyers may choose from among several kinds of arguments about the applicability and relevance of international standards in domestic systems in their pleadings. These include:

1. Lawyers may argue that international human rights standards are directly applicable in domestic courts if they have been incorporated into the domestic legal order and are considered the highest source of law within the domestic system. Under this framework, international standards are considered an integral and binding part of national law and the judge is legally obligated to apply them, even if that means setting aside contradictory domestic legislation.

2. If international standards are not directly applicable in domestic courts, lawyers can argue that judges should interpret domestic legislation through reference to international human rights conventions. The Supreme Court of Canada for example, though often hesitant to apply international human rights law directly, nonetheless refers to international standards frequently in its decisions, using them as an interpretive tool to define the scope and content of domestic laws. [26]

With this approach, lawyers may refer to international human rights standards to remove ambiguity or uncertainty in national legislation. They can recommend that judges look to international standards for guidance on how they should interpret domestic law. In many countries, the domestic judiciary is obliged to interpret domestic laws in a way that conforms to international standards. Lawyers can remind judges that if the state has, through ratification of a treaty, freely assumed an obligation, national enforcement mechanisms such as the judiciary are under a duty to interpret national law so as not to conflict with the state's international obligations.

3. If domestic legislation is silent on an issue, lawyers can turn to international standards to fill this void.

4. If a national law conflicts with the national constitution, lawyers can use international standards as evidence of public policy. In this model, rather than asking the domestic judge to apply international standards directly and set aside contradictory domestic legislation, the lawyer can use international standards to interpret the national constitution. The lawyer in this situation may argue that the national legislation should not be applied because of its incompatibility with the constitution.

5. Lawyers can argue that widespread ratification of a specific international human rights convention by a large number of countries, or the inclusion of the same values in numerous international instruments—such as the right to equality, dignity, and non-discrimination—is evidence of customary international law, which is legally binding on all states.

6. If the state, including the domestic judiciary, accepts the legally binding nature of international conventions and treaties in other areas of law such as commerce and trade, lawyers should criticize the state for treating women's human rights issues differently than other cases for political, economic, cultural, and religious reasons.

VII. COMMON OBSTACLES TO THE APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS LAW IN DOMESTIC LITIGATION FOR WOMEN'S HUMAN RIGHTS (AND WAYS TO GET BEYOND THEM)

This section explores some of the common hurdles encountered by lawyers from around the world when litigating international human rights standards in front of domestic courts, focusing in particular on cases involving women's rights. The point of this section is not to discourage lawyers from attempting to integrate international law into their domestic litigation, but to flag potential issues for lawyers to anticipate so that they may prepare creative counter-arguments. This section also presents some solutions that lawyers can and have used to overcome these obstacles.

When facing obstacles to the application of international human rights law, it is important to distinguish between what is a real legal problem—either substantive or procedural—and what is an excuse the state is using to attempt to justify its lack of respect for its international obligations, especially when the case involves women's human rights. Common obstacles may include:

1. Some opponents of women's human rights will argue that women's issues fall within the private sphere where the law does not apply. They will suggest that violations of women's human rights, in particular those that take place within the home, are a private matter with which the state should not (or will not) interfere. According to this argument, the existence of a private sector somehow justifies violations of women's human rights.

   Local and international NGOs have long advocated for and succeeded in proving that violations of women's human rights that occur in the home, such as violence against women, are a matter of concern for international human rights law and domestic law.

2. Others will argue that domestic courts should not apply international human rights law because this would constitute judicial activism. In civil law systems in particular, some people believe that the role of the judge is to apply the law, not create it. Under this theory, domestic judges who apply international human rights standards are rewriting the law, which is the role of the elected legislature.

   If a state were to heed this concern, judges would defer to the other branches of government, relieving the court of its obligation to provide checks and balances in matters of international relations. Domestic courts would narrowly interpret those articles of the national constitution that import international law into the local legal system, interpret international rules so as not to upset the state's short-term interests, and rule that parties have no standing to invoke international standards or that the standards are not justiciable. Under this scenario, courts might even seek guidance from the executive branch on the interpretation of treaties.[27]

   To refute this way of thinking:

   (a) Lawyers may question the legitimacy of the allegedly majoritarian outcomes in legislation and point out that the role of the judiciary can be to remedy defects in legislation enactment processes that exclude disadvantaged groups.

   (b) Lawyers may convince the judiciary that it is supposed to be an independent branch of government with a creative role and its own power.

   (c) Lawyers may encourage domestic judges to presume that the legislature did not intend to violate its international obligations when promulgating the law at issue, and therefore to interpret domestic legislation in conformity with the state's international obligations. If that presumption is false, the legislature may simply repudiate the treaty's obligations in

subsequent legislation. As one commentator has noted "Thus there is no real counter-majoritarian problem, only an issue as to where the risks of inertia should be placed."[28]

(d) If relevant, lawyers may argue that a particular international convention was signed, ratified, or published after the passage of the domestic legislation at issue. This would demonstrate the state's intent to apply the convention rather than the pre-dated piece of legislation, which is no longer relevant given the convention's subsequent signature, ratification, or publication. If the court or opposing counsel ask why the domestic legislation has not been amended or abrogated to incorporate the international obligation, lawyers can argue that their client should not be penalized for parliamentary lethargy and that the Parliament's inaction cannot be construed as negating the government's intent to be bound by the convention.

(e) Lawyers can argue that under international law, domestic courts are state organs and thus are required to conform to international human rights standards. Their failure to do so can impose international responsibility on the state. For example, according to Article 2 of CEDAW, judges violate the Convention when they do not consider its dispositions. Specifically, according to CEDAW, states undertake:

> (c) To establish legal protection of the rights of women on an equal basis with men and *to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination*;
>
> (d) *To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation*… (italics added)

3. Lawyers often lack up-to-date information on litigation strategies and legal arguments that they can use to integrate international human rights standards into domestic litigation. This is particularly true in systems where only limited decisions of the Supreme Court and selected appellate courts are published in court report, court decisions are archived centrally in the capital city, or on-line resources do not exist.

   Lawyers can develop both short and long-term strategies for distributing progressive case law, monitoring judicial application of international human rights standards in court decisions, and sharing practical strategies with each other. For example:

   (a) Lawyers can use text messaging on mobile phones, e-mails, and electronic newsletters to transmit information.

   (b) Lawyers can post positive court decisions on websites (either by creating their own websites or sending them to existing websites).

   (c) Lawyers can create fora for sharing information through the local or national bar and young lawyer's associations, or at regular biannual meetings between lawyers, judges, and professors.

   (d) Lawyers can share information through listservs, such as the International Network for Economic, Social and Cultural Rights (ESCR-Net).[29]

   (e) Lawyers can attend international conferences which bring together legal practitioners to share experience and case strategies.[30]

4. Some people argue that international standards should not apply in women's human rights cases but that these cases should be decided according to religion and local custom. This is most common when national constitutions or domestic legislation cite religion as a source of law.[31] It is often only in

cases involving women's rights that religion is used to invoke the non-applicability of international law. At the same time, cases that do not involve women, such as those concerning commerce, tax, or fishing are almost always considered under the law.

This raises the question of religion's place in relation to international conventions and domestic law, and which should ultimately take precedence. It also highlights questions over the utility, desirability, and appropriateness of integrating progressive interpretations of religion into legal pleadings to fortify arguments based on domestic or international law.[32]

To counter this argument:

(a) Lawyers may point out that texts of many international human rights conventions and subsequent interpretive documents, such as the comments and recommendations from the treaty-monitoring bodies, forbid using religion as a justification for not meeting obligations under the convention. For example, the CEDAW Committee, in General Recommendation No. 21 (13th session, 1994), stated that

> …States parties should introduce measures directed at encouraging full compliance with the principles of the Convention, particularly where religious or private law or custom conflict with those principles.

Likewise, the African Charter indicates that only customs not in contradiction to the Charter and consistent with international human rights norms can be used as a source of law.[33]

5. Many countries have ratified international human rights conventions, including CEDAW, with reservations to provisions they do not consider legally binding.

   There are several arguments lawyers can use to overcome claims by opposing counsel or judges based on a state's reservation to a convention. For example:

(a) Lawyers may argue that the reservation in question is invalid and should not be given legal effect because it is incompatible with the object and purpose of the convention. The Vienna Convention on the Law of Treaties provides in Article 19 that states may formulate a reservation to a treaty unless:

> (i) the reservation is prohibited by the treaty;
>
> (ii) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
>
> (iii) in cases not falling under sub-paragraphs (i) and (ii), the reservation is incompatible with the object and purpose of the treaty.

Specific human rights conventions also have articles on the validity of reservations. For example, CEDAW states in Article 28(2): "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."

(b) Lawyers may argue that the reservation has lost its relevance due to subsequent court decisions, domestic legislation, or statements by the national government.[34] If the court asks why the appropriate government authority has not withdrawn the reservation, lawyers can argue that there is clear intent to no longer invoke the reservation and that the client should not bear the cost of administrative lethargy.

(c) If any other state party to the convention has filed an objection to the reservation, lawyers may cite this as evidence that the reservation is not applicable.[35]

(d) Lawyers may cite statements of the treaty-monitoring body for the convention in question on the validity of reservations. Such statements can be found in the body's reports, conclusions, general recommendations, or comments to the state's report.

(e) Lawyers can determine what other international human rights conventions the state has ratified and analyze whether the reservation contradicts obligations found in these other conventions. If the state did not make a reservation to another human rights convention that has similar provisions, lawyers should consider arguing that the other convention applies instead.

6. Critics may argue that international institutions are dominated by the West and are not meaningfully representative of the global community or of individual countries. In this context, arguments about the legally binding nature of international human rights conventions can create anxiety about imperialism and neo-colonialism. Domestic judges may be concerned about being perceived as un-religious or as "agents of the West." Lawyers can refute this argument in a number of ways. For example:

   (a) Lawyers can remind the domestic court that when the state signed the international convention it consented to the domestic application of its international legal obligations.

   (b) Lawyers can cite the history of the international convention's elaboration. (For a description of CEDAW's elaboration, see the section below in part VIII on the Sources of International Human Rights Law.)

7. Judges and magistrates may lack knowledge of international human rights standards. To address this:

   (a) Lawyers may litigate international human rights cases in domestic courts to begin educating judges and magistrates.

   (b) Lawyers may advocate for or organize special judicial seminars and magistrate trainings on international human rights law.

8. Countries may ratify conventions, but then block their applicability by not publishing them, delaying their publication, or not passing implementing legislation. In the

Maghreb countries, for example, years passed between the time when CEDAW was ratified and when it was eventually published. Under these circumstances:

(a) Lawyers can argue that under the national constitution or relevant legislation, ratification is the legally significant act, and publication is merely an administrative formality and not legally necessary for the convention's direct applicability

(b) Lawyers can point out that despite the non-publication of the convention, its ratification indicates a clear intent for it to be applied. The lawyer's client should not bear the costs of administrative lethargy in publishing the convention

(c) Lawyers can argue that the convention should be treated as persuasive authority and, because it was ratified, the judge should use the convention to interpret domestic legislation.

9. Domestic judges who are aware of, and would like to apply, international standards may hesitate out of fear of professional and political considerations, such as being criticized or being reversed on appeal. To counter this[36]:

(a) Lawyers may cite a concern for the rule of law. They may point out that the state's ratification of an international convention (which it was not required to do) was a legally significant act, through which the state consented to be bound by the convention's obligations and commitments. Domestic courts, in their role of promoting observance of the law, should hold national governments accountable to their legal commitments.

(b) Lawyers may note that ratification of the convention is irrelevant in the case at hand because some of its provisions are considered universal norms with the status of customary international law. As such, the judge has no choice but to apply the international right because it has the status of natural law and is therefore non-derogable. Lawyers may draw analogies between the right in question and a right already regarded

as universal. For example, in the "Citizenship Case", one of the Supreme Court justices compared sex discrimination to slavery. Likewise, the Indian Supreme Court has dismissed India's reservations to the CEDAW given the fundamental rights at issue.[37]

(c) Lawyers may argue that international law reflects values inherent in the domestic regime. They can point out that international human rights law does not import new values from the outside but rather acts as a mirror that reflects values already inherent in the domestic order. As such, a state's ratification of a convention is evidence that the treaty norms reflect national values.

(d) Lawyers may argue that judges should invoke the logic of decision makers in other jurisdictions (a process known as transjudicialism). They may recommend that judges refer to the decisions of other domestic courts: (i) as support for the proposition that international law represents a legitimate source for judicial decision-making; and (ii) to buttress their interpretation of the content of an international convention.

(e) Lawyers may advocate that judges apply international law out of a desire to avoid negative assessments from the international community. They should remind the judge that the world is watching the outcome of the case, and that the judge should apply international human rights law to avoid international criticism.[38]

10. Domestic judges may hesitate to apply international human rights standards (and lawyers may hesitate to argue them) because the conventions often provide rights without specific remedies for their violation. To combat this situation, lawyers will not only need to argue what the international standards say about the existence of a right, but will also need to tell the judge what a concrete remedy in conformity with the text and spirit of the convention would look like.

VIII. WHAT SOURCES OF INTERNATIONAL HUMAN RIGHTS LAW CAN LAWYERS USE IN DOMESTIC LITIGATION?[39]

This section describes sources of international human rights law that lawyers can choose from when constructing their legal arguments in domestic litigation. How lawyers decide to use and combine these in any individual pleading will depend on the national legal context, including what the national constitution and domestic jurisprudence say about the applicability of international human rights standards, the status of the ratification and publication of international conventions, and other strategic considerations.

Whether lawyers argue that a particular source of international human rights law is binding legal authority for the domestic judge, or that it serves as persuasive authority for interpreting national law, is both a legal and strategic decision that should be made on a case-by-case basis.

Lawyers can use the sources below to argue that a specific women's human right as defined in a convention has been violated, or to argue that international human rights standards apply in domestic cases.

Lawyers should not limit themselves to using just one or two sources of international law in any one case. Many successful legal pleadings are constructed by using a combination of several or all of these sources—and numerous judicial decisions from around the world referring to international law have cited a combination of these sources.[40] With so many sources of international human rights law there is no such thing as a legal void, and lawyers therefore should be creative when using international standards in domestic litigation.

International Human Rights Conventions

Definition:

A convention is a formal agreement that creates legally binding obligations and rights among the states parties.[41] Human rights conventions define human rights concepts, set standards for state conduct, guarantee specific rights in favor of individuals, create obligations on the part of countries to promote and protect those rights, and identify public and/or private actors who may be held responsible for human rights violations. Many international human rights conventions contain both "negative" obligations, which prohibit actions that violate specific rights, as well as "positive" obligations, which require nations to adopt affirmative measures to ensure the enjoyment and protection of rights.

States parties to international human rights conventions are required to adopt national laws and policies that comply with their international obligations, implement the standards contained in the conventions, and accept at least minimal international oversight of their compliance. Some conventions have mechanisms for monitoring and reporting on state compliance, while others provide inter-state or individual complaint mechanisms to seek redress for human rights violations.

Examples:

- *International Covenant on Economic, Social and Cultural Rights* (ICESCR), entry into force 3 January 1976, monitored by the U.N. Committee on Economic, Social and Cultural Rights
- *International Covenant on Civil and Political Rights* (ICCPR), entry into force 23 March 1976, monitored by the U.N. Human Rights Committee
- *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), entry into force 4 January 1969, monitored by the U.N. Committee on the Elimination of Racial Discrimination

- *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), entry into force 3 September 1981, monitored by the U.N. Committee on the Elimination of Discrimination against Women
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), entry into force 26 June 1987, monitored by the U.N. Committee against Torture
- *Convention on the Rights of the Child* (CRC), entry into force 2 September 1990, monitored by the U.N. Committee on the Rights of the Child
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (MWC), entry into force 1 July 2003, monitored by the U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

Using international human rights treaties in domestic litigation:

When arguing that a state has international obligations, lawyers should not only cite a convention's preamble, text, and appendices, but supplement their advocacy by also analyzing the convention's:

- Origins
- History
- Goals and objectives
- Preparatory travaux
- Circumstances of its conclusion and adoption and
- Relevance[42]

The Vienna Convention on the Law of Treaties also provides that treaties shall be interpreted by taking into account "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."[43] For this reason, lawyers should examine domestic court decisions from foreign countries that have applied the treaty.

Research into how a convention was developed may also help lawyers address resistance. By offering a holistic analysis of a convention, lawyers can also serve to counter the argument that the convention was created by Western countries, that it reflects Western values, and that it has been imposed on non-Western countries.

For example, CEDAW was developed at the initiative of 32 developing and Eastern European countries who submitted a request to the Commission on the Status of Women (CSW). These countries asked the CSW to draft a declaration on the elimination of all forms of discrimination against women. Among the countries participating in the creation and submission of this proposition were Algeria and Morocco.[44]

When using international human rights conventions in litigation to promote women's rights, lawyers may also need to make a strategic choice about whether to build their legal argument on a convention specifically related to women's rights such as CEDAW or on one of the "gender neutral" or "general" human rights conventions such as CAT or ICCPR.

For example, ICCPR and CAT can and have been interpreted to apply to certain violations of women's human rights, such as violence against women. In certain instances, lawyers have chosen to invoke these general conventions when their country has not yet ratified or published CEDAW and these conventions have been accepted as having direct applicability in their domestic courts. Advocates have also invoked these general conventions instead of CEDAW when they felt that doing so would make their legal argument stronger.

For example, the United States has ratified ICCPR but not CEDAW. In order to get beyond this hurdle, lawyers have argued in domestic courts that violence against women is a violation of ICCPR. While ICCPR does not mention violence against women, these advocates have argued that the right to be free from

gender-based violence is protected through a combination of the articles prohibiting discrimination on the basis of sex and the articles explicitly protecting the rights to life, liberty, and security of person; freedom from slavery or servitude; torture and other cruel, inhuman or degrading treatment or punishment; and the right to protection of and equality in family life; among others.[45]

Even in countries that have not ratified specific human rights conventions, lawyers can still base their legal arguments on them. Lawyers may argue that the convention is still binding as customary international law, given the huge number of ratifications by countries around the world, or that the convention should have relevance as an interpretive source, due to its wide international acceptance.

Regional Human Rights Conventions

In addition to the international human rights framework established by the United Nations, several regional systems also exist for the protection and promotion of human rights within the Inter-American, European, and African systems, each with its own set of conventions and monitoring mechanisms.

Some of major regional human rights treaties include the:

- *African (Banju) Charter on Human and People's Rights*, entry into force October 21, 1986;
- *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, entry into force November 25, 2005;
- *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 213 U.N.T.S. 222, entry into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998 respectively;
- *American Convention on Human Rights*, entry into force July 18, 1978.

Sometimes regional conventions provide more opportunities for progressive human rights-based litigation than do international conventions. The African Charter, for example, places economic, social, and cultural rights on the same level as civil and political rights, and considers these rights to be inseparable, while at the international level there is still a debate about the binding nature of economic, social, and cultural rights. The African Charter also includes the right to property and the right to development.

A survey published in 1999 examining the application of the African Charter in 16 African domestic jurisdictions found that in 10 of these countries, domestic courts had referred to the African Charter and other international conventions in their decisions, either as directly applicable and superior to national legislation, or as a tool for interpreting the national constitution and domestic legislation.[46]

Another example of a progressive regional convention that deals specifically with women's rights comes from the Inter-American system. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, known as the "Convention de Belem do Para," entered into force on March 5, 1995.[47]

Regional conventions may also provide greater opportunities for direct application in domestic courts, as well as for sanctions should a domestic court refuse to apply the regional convention's provisions. For example, according to its Constitutive Act, the African Union may impose sanctions on any nation that does not comply with the decisions and policies of the Union. In addition, article 30 of the Protocol establishing an African Court on Human and People's Rights establishes that states parties to the Protocol must comply with, and guarantee execution of, judgments rendered by the court in any case to which they are parties.

Likewise, under the Inter-American system, countries should be in compliance with all decisions of the system, including

the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights, before receiving loans from the Inter-American Development Bank. If a state party is not in compliance, civil society may lobby the Inter-American Development Bank to deny the loan request.

Statements by Treaty Monitoring Bodies

As noted above, most international human rights conventions establish a committee or a commission to monitor state compliance with the conventions' provisions. These include the following U.N. Committees: the Human Rights Committee (which monitors the ICCPR); the Committee on Economic, Social and Cultural Rights (which monitors the ICESCR); the Committee on the Elimination of all forms of Racial Discrimination (which monitors the ICERD); and the Committee on the Elimination of All Forms of Discrimination against Women (which monitors CEDAW). These treaty-based bodies generally receive periodic reports from states parties on their compliance with the conventions; hold regular sessions at which they examine state reports and engage in discussions with the states parties; and issue reports, recommendations, and conclusions on how states are meeting their obligations.

For example, the CEDAW Committee examines states parties' periodic reports and issues conclusions; it also publishes reports for each session. This Committee has also issued a series of general recommendations elaborating the Committee's view of the obligations assumed under the convention. These statements are important because they provide the Committee's interpretation of how States parties should meet their obligations under the convention. As described earlier, the CEDAW Committee is particularly interested in the issue of domestic litigation, the place of the convention in the internal hierarchy of laws, and whether the convention can be directly invoked before domestic courts.

Lawyers and activists can actively solicit statements from appropriate treaty monitoring bodies, as well as from the other international mechanisms mentioned in this section. For example, in the creation and submission of shadow reports to treaty monitoring bodies, NGOs and activists should address the hierarchy of laws and the justiciability of the convention in front of national courts, and provide documentation as to the state's compliance with its obligations. The treaty monitoring body's response will provide lawyers with an interpretation of the treaty obligations, and their applicability in internal law. Lawyers can then return to the domestic court judge and use that statement in legal pleadings, stating that "this is what an authoritative committee of X number of experts from diverse countries around the world say on this topic."

Statements by States Parties in Front of Treaty Monitoring Bodies

Most international human rights conventions require states parties to submit periodic reports to the treaty-monitoring body describing their compliance with the obligations contained in the convention. For example, in its second periodic report to the Committee on the Elimination of Discrimination against Women, Algeria noted:[48]

> Algeria's international commitments take pre-cedence over domestic law. In a decision dated 20 August 1989, the Constitutional Council reaffirmed the constitutional principle that international treaties ratified by Algeria take precedence over domestic law. That decision states that after its ratification and as soon as it is published, any convention becomes part of domestic law and, pursuant to article 132 of the Constitution, acquires an authority higher than that of the law, allowing any Algerian citizen to invoke it before the courts…
>
> The Algerian authorities, the National Advisory Committee on the Promotion and Protection of Human Rights, associations and the media attach great importance to these possibilities of recourse to international machinery. In practice, Algerian citizens and their lawyers appear to be satisfied with the many existing domestic remedies (courts, National Advisory Committee).

In addition to their periodic reports, states parties also submit written responses to questions posed by the treaty monitoring bodies, make oral interventions to the treaty monitoring bodies during the presentation of their periodic reports, and engage in dialogue with experts at the sessions in which their reports are examined.

In response to the above statement in Algeria's second periodic report, in its List of Issues and Questions, the CEDAW Committee asked the Algerian government to:

> Please clarify whether the Convention has been published, as well as widely disseminated, and provide information on court cases, if any, where the provisions of the Convention have been invoked, and the outcome of such cases.[49]

In its written response, the Algerian government replied in paragraph 2(c) that:

> Article 132 of the Constitution provides that "treaties ratified by the President of the Republic under the conditions provided for by the Constitution shall take precedence over the law."
>
> Specifically, the Convention on the Elimination of All Forms of Discrimination against Women may be invoked before an Algerian judge in accordance with the conditions that Algeria accepted at the time of its accession, namely that the provisions of the Convention are applicable and may be invoked by citizens before the Algerian courts, except with regard to the articles on which reservations were made.
>
> Any citizen may thus apply to the court if he or she believes that there has been any failure to observe the provisions of this international legal instrument.
>
> To answer the question specifically, there has been no case relating to the Convention, although the courts remain available to any person choosing to invoke it.[50]

In addition, according to a transcript from the examination of Morocco's second periodic report in July 2003, the following

exchange took place between an expert member of the CEDAW Committee and Moroccan government representatives:

> HYND AYOUBI IDRISSI, director of inter-national relations, Ministry of Human Rights, said that …(i)nternational law had precedence over domestic provisions…
>
> CORNELIUS FLINTERMAN, expert from the Netherlands…was intrigued to hear that international conventions took precedence as a matter of principle over domestic law, provided there was no conflict with law and order in Morocco. In light of the fact that the Convention had been published, had it been directly invoked in any court cases? Were there any cases in which Moroccan law and order had prevailed over its international obligations? ...
>
> Mr. BENNOUNA said that…the country was aware of the fact that international conventions had superiority over domestic law. However, he could not cite any cases when the Women's Convention was applied in domestic courts.[51]

Statements by Charter-Based Bodies

The United Nations Charter establishes several bodies that play a role in human rights standard-setting and enforcement. These include the Security Council, the General Assembly, the Economic and Social Council, the Commission on the Status of Women, and the United Nations Commission on Human Rights, which in 1994 decided to appoint a Special Rapporteur on violence against women.[52] As part of their mandate, the Special Rapporteur receives individual complaints and transmits urgent appeals and communications to countries regarding alleged cases of violence against women, undertakes fact-finding country missions, and submits annual thematic reports to the U.N. Commission on Human Rights. Additionally, other Special Rapporteurs are tasked with considering the specific situation of women within their mandates, and their reports may help confirm women's issues as human rights concerns.

Customary International Law

Customary international law is one of the principal sources of international law, and although unwritten in a treaty or a convention, is nonetheless binding on states. Norms attain the status of customary international law through state practice and a sense of obligation; said another way, when enough states consistently behave as if something is the law, it becomes the law. For example, many NGOs, activists, and scholars argue that the Universal Declaration of Human Rights has attained the status of customary international law.

The fact that a treaty has widespread or near-unanimous ratification can constitute evidence of a customary norm that is binding on all states, whether a state is party to it or not. Lawyers can therefore argue in front of national courts that a widely ratified treaty, together with interpretive declarations and statements, has achieved the status of customary international law—even if a particular state has not ratified that treaty.

The fact that several treaties identify the same issue as a human rights violation can serve as evidence of a customary international norm. For example, lawyers can argue that the combination of similar provisions in ICCPR, CAT, CEDAW, the African Charter, and the Inter-American "Belem do Para" Convention establishes that gender-based violence violates a customary norm of international law.

Language adopted at United Nations Conferences

Recommendations, statements, and other language adopted at UN conferences, as well as in their follow-up documents, can serve as resources for lawyers interpreting international human rights standards. For example, the Fourth World Conference on Women held in Beijing, China from 4-15 September 1995 resulted in the Beijing Declaration and Platform for Action[53], which articulated a series of actions that governments and other institutions are

responsible for taking on the local, national, and international levels to improve the status of women.

Statements by Regional Treaty Monitoring Bodies

Regional human rights systems also have mechanisms charged with monitoring compliance with regional human rights conventions. These include the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, and the European Court of Human Rights.

According to their specific mandates, these bodies may prepare reports, hear and resolve inter-country complaints of human rights violations, receive individual complaints in specific cases, make recommendations, issue advisory opinions, and impose sanctions. Depending on the regional legal framework, decisions and statements made by these bodies may be binding and obligatory on states parties (see the section on Regional Human Rights Conventions, above).

As with the international conventions, lawyers and other advocates should not exclude the use of regional human rights instruments and regional jurisprudence in their litigation even if their country is not a state party to that convention (or even geographically in that region). Treaties from other regional systems may still be used as interpretive tools or as persuasive authority. Some domestic courts have referred in their decisions to the jurisprudence of regional systems to which they are not a party, even when they are not located in the region. For example, in Rattigan and Others v Chief Immigration Officer and Others 1994 (2) ZLR 54 (S) Zimbabwe's Supreme Court referred to the European Court of Human Rights' finding that article 8(1) of the European Convention involves the preservation of well-established family ties. Likewise, landmark decisions rendered by the Constitutional

Court in South Africa have also referred to the jurisprudence of the European Court of Human Rights.[54]

Statements Made by National Institutions and Authorities on the Role and Place of International Standards in Domestic Systems

Many countries have national institutions and mechanisms that are charged with monitoring compliance with international human rights standards, reviewing domestic texts to ensure conformity with international obligations, and otherwise ensuring the promotion and protection of human rights in the domestic legal order. These may include a constitutional council, human rights ministry, national ombudsperson, or consultative commissions. These mechanisms and institutions may render decisions, issue advisory opinions, make recommendations, submit propositions, or produce reports that provide their interpretation of international human rights standards and views of what compliance with them requires.

Likewise, heads of state, ministers, and government representatives to the international community may give speeches about their country's respect for international human rights standards; these frequently take place in international fora. Public authorities should be held accountable for their statements on international human rights standards in the national system when this would lead the judge to a progressive and favorable outcome in the case. These official statements can therefore provide lawyers with material to use in litigation before domestic courts.

References to International Law in National Legislation

Sometimes domestic legislation contains references to international human rights standards or conventions, indicating that the legislation intends to incorporate these directly into domestic law. For example, the preamble to Moroccan Family Code of February 5, 2004, indicates that the new law was developed: "in accordance with the Kingdom's commitment to internationally recognized

human rights." It also states that it aims to "Protect children's rights by inserting provisions of international conventions ratified by Morocco into [this Code]"

When referring to national legislation (as with international conventions), lawyers should not limit themselves to the law's preamble and articles. Lawyers should also look to the legislation's origins, history of its elaboration, goals and objectives, preparatory work, and the circumstances of its conclusion and adoption. Together, these should be used to support the argument that international human rights standards are an integral part of the domestic legislation and, thus, that they should apply in the domestic context.

Court Decisions from Your Own Country

Lawyers may find useful judicial precedents for applying international human rights standards in domestic litigation from other courts in their country. Earlier cases can help to show that international standards are binding and to bolster a substantive interpretation of the human rights standards in question.

Whether or not another domestic court decision is binding on the judge in a specific case depends on each country's legal system and the weight given to previous judicial decisions. It can also be based on the position of the court that rendered the decision in the judicial hierarchy as well as on its subject matter and territorial jurisdiction.

In civil law countries, judicial precedent does not necessarily carry the same weight or play the same role that it does in common law systems.[55] Nonetheless, even in civil law countries, citing cases from other jurisdictions can have persuasive authority, especially when the possibility of appeal helps shape judges' opinions. As such, progressive decisions rendered by lower level courts in other geographic regions may be used to show what judges in the country have said and are doing about certain legal issues. Even if the judge does not render a similar verdict, this approach may be

used to create a conflict in the jurisprudence and to force a higher-level court to decide the issue in a binding decision.

Lawyers may also refer in their legal pleadings to domestic court decisions that give effect to judgments of foreign courts, if those foreign courts cite international law. While such judgments are not binding and the judge will merely order the execution of a foreign court judgment and not adopt the entire reasoning of the foreign court, it will show that other domestic courts give effect to decisions issued in other countries. This can be used to argue that the decision was not against the public order.

Court Decisions from Foreign Countries

Decisions rendered by domestic courts in other countries can also serve as a resource for lawyers arguing for the application of international standards in their own country's domestic courts. Again, foreign court decisions can be used to argue that international standards are directly applicable in, and binding on, domestic courts. They can also be used as examples of how other courts have interpreted the substance of the rights in question.

By referring to foreign court decisions, lawyers can establish positive models for domestic judges to follow. Reference to foreign court decisions can also serve to put geopolitical pressure on the domestic judges, should the national authorities not wish to be seen as "less progressive" on an issue than neighboring countries.

Domestic courts have begun citing decisions that reference international law from other countries' domestic courts in their own decisions. For example, in *Rattigan and Others v Chief Immigration Officer and Others*[56] , the Supreme Court of Zimbabwe applied the reasoning from *Dow v. Attorney-General* of neighboring Botswana. In *Bhe and Others v The Magistrate*, the South African Constitutional Court referred to case law from Nigeria, Zimbabwe, Tanzania, and Ghana. Likewise, the Supreme Court in Canada has referred to decisions of the United States Supreme Court in its jurisprudence.

This phenomenon, in which domestic judges share strategies, reasoning, and experiences with their counterparts across national borders in a horizontal manner, rather than the traditional vertical model international law usually envisions, is called transjudicialism.[58] Under this model, international law circulates horizontally as well as vertically, based on the cross-fertilization of ideas between national courts. Decisions from foreign courts are cited as persuasive authority based on the strength of their legal reasoning and analysis, rather than because they are binding authority. Comparing judgments across national borders can make for stronger, more considered decisions, or at least can encourage national courts to invoke decisions of other national courts out of a wish to link itself to a larger community of courts addressing similar issues and thus enhance its legitimacy.

As judges increasingly communicate with one another in a form of collective deliberation about common legal questions and share their best practices and strategies, human rights may be promoted. Under this model, international human rights law is not imposed by a "World Court," but by overlapping networks of domestic courts that can reinforce each other's legitimacy and independence from political interference.

IX. DESIGNING A CASE STRATEGY CHECKLIST

When considering whether and how to integrate international human rights standards into their domestic litigation, lawyers may want to ask the following questions and conduct additional research as necessary. While previous sections of this guide have focused on how lawyers may construct legal arguments around international human rights law, this non-exhaustive checklist is designed to help guide lawyers through strategic planning issues.

Choosing an area of law:

- Which area(s) of law must be reformed to address violations of women's human rights?
- Which area(s) of law could be most susceptible to change?
- What are the specific legal changes needed?

Many types of cases, including family law, labor law, and administrative law cases involve human rights and should be litigated as such. Lawyers trained in human rights need to expand their case repertoire beyond the traditional civil and political rights cases, and encourage "non-human rights" lawyers to integrate international human rights law and concepts into their litigation.

Targeting a specific court:

- Which type of court will be most sympathetic to the case? Criminal? Commercial? Administrative? Labor?
- At which level of the judicial process is the case most likely to succeed? At first instance? On appeal? Upon a decision by the country's highest court?
- Where, geographically, is the case most likely to succeed? Is a particular city or region known for being more progressive on women's issues? Is a particular city or region known to apply international human rights standards?

The court(s) that will be most sympathetic to the case may depend on the personalities of the individual judges, positive jurisprudence or customs in that particular region of the country, the place of that court in the judicial hierarchy, the legislation falling under that court's jurisdiction, or other factors.

Selecting a case:

- What would an ideal fact pattern look like, given the area of law you have targeted for change, the convention you would like to use, and the specific court identified as the most likely from which to obtain a positive judgment?
- Is the potential client committed to goal of the litigation? Does the client understand the potential implications of bringing the case under this specific strategy?

Maximizing your chances of success:

- If publicity would be good for your case, is there a particular moment when you could file the case in order to generate local or international publicity or create maximum pressure on the decision makers, such as in an election year?
- What outreach and publicity strategies should be taken prior to filing the case?
- How does the local community feel about the issue?
- How does the opposition feel about the issue?
- What backlash could occur from the case, and would this have a negative impact on women's rights?
- What sort of information dissemination strategies should be conducted during and after the court case in order to generate public awareness and mobilization?

ENDNOTES

[1] Our four other Core Strategies are human rights monitoring, community education and mobilization, domestic advocacy, and international advocacy.

[2] For a more in-depth presentation and analysis of strategic lawyering generally, as well as for the details and results of these regional conferences, please see *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* by Richard J. Wilson and Jennifer Rasmussen (International Human Rights Law Group, 2001), available in PDF format at www.globalrights.org.

[3] It can also be called public interest litigation, cause lawyering, or social activist litigation.

[4] In many countries, this power to control the "conventionality" of national laws with international treaties has fallen to the domestic judge through a long process of strategic litigation by lawyers to obtain a series of decisions in domestic courts in which the judges gave themselves this power. For a detailed description of how the jurisprudence in France developed in this sense, read the article (in French) at http://www.conseil-constitutionnel.fr/cahiers/ccc4/ccc4fran.htm

[5] The United States, for example, ratifies most international treaties with the proviso in the act of ratification that the United States does not consider the treaty to be self-executing.

[6] 1155 U.N.T.S. 331, adopted May 22, 1969, entry into force January 27, 1980.

[7] 3 December 1998, E/C.12/1998/24.

[8] See for example Viljoen, Frans, Application of the African Charter on Human and Peoples' Rights by Domestic Courts in Africa, 43 JOURNAL OF AFRICAN LAW, 1-17 (1999).

[9] These cases and the sources are listed in the Appendices.

[10] This description of the case was based on and compiled from the following sources: Unity Dow, "National Implementation of International Law: the Dow Case," in Department of Economic and Social Affairs, Division for the Advancement of Women, Bringing International Human Rights Home: Judicial Colloquium on the Domestic Application of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (United Nations 2000); "Les tribunaux – le cas de Botswana" *in L'égalité chez soi: Mettre en oeuvre la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes*, (UNIFEM, 1998); *Women's Human Rights Step by Step: A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights"* (Women, Law and Development International and Human Rights Watch, 1997).

[11] See the Guidelines issued by the Committee for the Elimination of Discrimination Against Women for all reports submitted after December 31, 2002 at http://www.un.org/womenwatch/daw/cedaw/reporting.htm.

[12] Other treaty-monitoring bodies also examine the applicability and justiciability of conventions in front of national courts as part of compliance with the state's obligations. The Committee on Economic, Social and Cultural Rights charged with monitoring compliance of the *International Covenant on Economic, Social and Cultural Rights* includes in its guidelines for states' reports that the states are requested to provide information as to whether the provision of the Covenant "can be invoked before, and directly enforced by, the Courts, other tribunals or administrative authorities." See E/1991/23, annex IV, chap. A, para. 1(d)(iv).

[13] These Judicial Colloquia have been held in: Santiago, Chile (25 to 27 May 2005); Nassau, The Bahamas (17 to 21 May 2004); Arusha, Tanzania (9 to 13 September 2003); Bangkok, Thailand (4 to 6 November 2002); Vienna, Austria (27 to 29 October 1999). More information can be found at http://www.un.org/womenwatch/daw/meetings/Colloq/index.html and in the publication *Bringing International Human Rights Law Home: Judicial Colloquium on the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child* (United Nations, 2000).

[14] The CRC Committee is charged with monitoring states' compliance with the *Convention on the Rights of the Child*.

[15] http://www.un.org/womenwatch/daw/meetings/Colloq/Communique-Arusha03.htm

[16] http://www.un.org/womenwatch/daw/meetings/Colloq/Nassau04.htm

[17] For more information, including a case database, please see www.errc.org

[18] McClymount & Golub, eds. *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World* (2000) – http://www.fordfound.org/publications/recent_articles/docs/manyroads.pdf

[19] *Rattigan and Others v Chief Immigration Officer and Others* 1994 (2) ZLR 54 (S) and *Salem v Chief Immigration Officer and Another* 1994 (2) ZLR 287 (S).

[20] The Guidelines are available in the official languages of the U.N. (English, French, Spanish, Arabic, Chinese and Russian) http://www.un.org/womenwatch/daw/cedaw/reporting.htm#guidelines

[21] McClymount & Golub, eds. *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World* (2000) – http://www.fordfound.org/publications/recent_articles/docs/manyroads.pdf

[22] As quoted in the Introduction to *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women* (The United Nations Development Fund for Women, 1998), available at http://www.unifem.org/resources/item_detail.php?ProductID=2

[23] This case and other similar cases in South Africa represent examples of how social, economic and cultural rights can be litigated. However, it is important to note that these international rights are also enshrined in the South African constitution.

[24] Viljoen, Frans, Application of the African Charter on Human and Peoples' Rights by Domestic Courts in Africa, 43 JOURNAL OF AFRICAN LAW, 1-17 (1999).

[25] In the U.S. legal system lawyers ask if the convention is self-executing or has been implemented through domestic legislation. In the Maghreb legal systems lawyers ask if the convention has been published or gazetted.

[26] *Canadian Foundation for Children, Youth and the Law v. Canada*, 2004 Can. Sup. Ct. lexis 6 and *R. v. Ewanchuk*, 1999 Can. Sup. Ct. lexis 7, among others, refer to CEDAW.

[27] For an in-depth analysis of this, see Eyal Benvenisti, *Judicial Misgivings Regarding the Application of International Law: An Analysis of Attitudes of National Courts (European Journal of International Law*, Volume 4 (1993) number 2) at www.ejil.org/journal.

[28] Bayesfsky, Anne F. "General Approaches to Domestic Application of Women's International Human Rights Law" in *Human Rights of Women: National and International Perspectives,* Rebecca J. Cook, ed. (University of Pennsylvania Press, 1994).

[29] For information on ESCR-Net visit www.escr-net.org

[30] Global Rights has held several meetings to bring lawyers from different countries together for experiential learning. [Bangkok 1999, Sarajevo 1999, Guatemala City 2000, Johannesburg 2000, Rabat 2004, Marrakesh 2005, Johannesburg 2005, Ulaan Bataar 2006]. For information on upcoming meetings, please consult our website www.GlobalRights.org.

[31] For example, as is the case in the Moroccan Personal Status Code, article 400.

[32] For a detailed discussion by activists from a diversity of Muslim countries about the potential advantages and disadvantages of integrating religious arguments into legal pleadings, see *Promoting Women's Human Rights through Strategic Lawyering: Lessons Learned Workshop Final Report* (Global Rights, 2004), available on-line in English and Arabic at www.globalrights.org/morocco.

[33] Article 61.

[34] This was the reasoning the Supreme Court of India gave to justify setting aside a reservation India had made in 1979 to the ICCPR in *D.K. Basu v.State of West Bengal* (1997) 1 SCC 416 at 438.

[35] As provided for in the *Vienna Convention on the Law of Treaties*, articles 20-23.

[36] As described and analyzed in detail by Bahdi, Reem *Globalization of Judgment: Transjudicialism and the Five Faces of International Law in Domestic Courts* (34 Geo. Wash. Int'l L. Rev. 555, 2002).

[37] *D.K. Basu v.State of West Bengal (*1997) 1 SCC 416 at 438.

[38] This is an example of why it is advantageous for lawyers to take a holistic approach to their litigation: by including outreach and press relations, national judges know that their opinions will be rendered public.

[39] Please see the list of websites at the end of this Guide for orientation as to where the resources listed in this section can be found.

[40] For example, an *amicus curiae* legal brief was submitted by a group of 36 international legal scholars and human rights experts to the United States Supreme Court in a case involving the constitutional authority of the U.S. Congress to enact the *Violence Against Women Act*. It argues that violence against women is a violation of human rights under both the *International Covenant on Civil and Political Rights* and international customary law, and constructs legal arguments through a combination of detailed references to all of the sources presented in this list. It can be found at http://www.law-lib.utoronto.ca/Diana/fulltext/cope.pdf

[41] In this section we are concerned only with the multilateral treaties concluded between numerous states in the framework of the United Nations human rights system, rather than bilateral treaties concluded between just two countries.

[42] See, for example, the *Vienna Convention on the Law of Treaties*, articles 31-1 and 32.

[43] *Article 31-3(b) General rule of interpretation.*

[44] See *Knowing our Rights: Women, family, laws and customs in the Muslim world* (Women Living Under Muslim Laws, 2003) – http://www.wluml.org/ (website in English, French and Arabic), page 32, and the *Draft Declaration on the Elimination of Discrimination Against Women*, G.A. Res. 1921 (XVIII), U.N. GAOR, 18th Sess., 1274th plen. Mtg. 1, 1963 U.N.Y.B. 357, U.N. Doc. A/5606 (1963).

[45] See note 35.

[46] Viljoen, Frans, Application of the African Charter on Human and Peoples' Rights by Domestic Courts in Africa, 43 JOURNAL OF AFRICAN LAW, 1-17 (1999). The ten countries identified in the survey as referring to the Charter and other international conventions in their decisions were Benin, Botswana, Ghana, Malawi, Namibia, Nigeria, South Africa, Tanzania, Zambia, and Zimbabwe.

[47] The text of this convention is available at http://www.cidh.org/

[48] CEDAW/C/DZA/2 (February 5, 2003), available at http://www.un.org/womenwatch/daw/cedaw/32sess.htm. The Algerian government has made this same statement in its second periodic report to the Committee on the Rights of the Child, available at http://www.ohchr.org/english/bodies/crc/crcs40.htm, as well as in its second periodic report on its compliance with the International Convention on Civil and Political Rights, CCPR/C/101/Add.1 (May 18, 1998).

[49] CEDAW/PSWG/2005/I/CRP.1/Add.1 (August 5, 2004), available at http://www.un.org/womenwatch/daw/cedaw/32sess.htm

[50] CEDAW/PSWG/2005/I/CRP.2 (November 5, 2004), available at http://www.un.org/womenwatch/daw/cedaw/32sess.htm

[51] United Nations Press Release WOM/1413, *Women's Anti-Discrimination Committee Urges Morocco to Eliminate Stereotypes, Reconcile Human Rights Obligations with Islamic Law, Culture and Traditions* (July 15, 2003), available at http://www.un.org/News/Press/docs/2003/wom1413.doc.htm.

[52] There are a number of Special Rapporteurs focusing on specific human rights issues within the United Nations framework.

[53] For the complete Beijing Declaration and Platform for Action see: http://www.un.org/womenwatch/daw/beijing/platform/

[54] Bhe and Others v The Magistrate, Khayelitsha and Others CCT49/03; Shibi v Sithole and Others CCT69/03; South African Human Rights Commission and Another v President of the Republic of South Africa and Another CCT50/03.

[55] Legal scholars worldwide have noted the recent tendency for the two systems to become more similar to each other – with common law systems according greater importance to legislative texts, and civil law systems according greater weight to other domestic court decisions and jurisprudence.

[56] 1994 (2) ZLR 54 (S).

[57] CCT49/03

[58] For example, see http://www.lawsite.ca/IAWJ/CRKnop_f.htm ICI ET LÀ-BAS : LE DROIT INTERNATIONAL DEVANT LES TRIBUNAUX CANADIENS Karen Knop (2000) 32 NYU Journal of International Law and Politics 501.

WEBSITES

1. Conventions and International Bodies

http://www.ohchr.org/english

The website of the Office of the High Commissioner of Human Rights (this website is also in Arab and French) with resources such as the conventions, the works of the treaty bodies and the reports written by Special Rapporteurs.

http://www.un.org/womenwatch/daw/

The website of the Division for the Advancement of Women (DAW) with links to the Committee for the Elimination of the Discrimination (CERD) and to the Convention on the Elimination of all forms of discrimination against Women (CEDAW).

http://www.un.org/womenwatch/

Website with U.N. documents on the rights of the women, including the documentation on the Beijing Platform (also in French and in Arab).

http://www1.umn.edu/humanrts/

Vast on-line international human rights library with many resources in French and Arab.

http://www.worldlii.org/int/cases/

Website of the International Courts and Tribunals Project with a collection of jurisprudence of the international and regional courts.

2. Conventions and Regional Bodies :

http://cmiskp.echr.coe.int/

European Court of Human Rights portal that contains a database with the jurisprudence of the Court.

http://www.echr.coe.int/

Text of the European Convention on Human Rights.

http://www.cidh.org/
Website of the Inter-American Commission of Human Rights, with the jurisprudence and many resources in English, French, Spanish, and Portuguese.

http://www.corteidh.or.cr
Website of the Inter-American Court on Human Rights (in English and Spanish).

http://www.africa-union.org/
Website of the African Union.

http://www.achpr.org/
Website of the African Commission on Human and Peoples' Rights with the African Charter on Human and Peoples' Rights.

http://www.fidh.org/article.php3?id_article=2062
The FIDH website, a network for human rights defenders. It has a practical guide in English and French, "10 Keys to Understand and use the African Court on Human and Peoples' Rights," that you can download in PDF format from the website.

3. Other Useful Links:

www.hrni.org
Human Rights Network International website with links to the jurisprudence of the Human Rights Committee and the European Court of Human Rights.

http://confinder.richmond.edu/ and http://www.oefre.unibe.ch/law/icl/
Websites with links to the text of various national constitutions.

http://www.lawsite.ca/IAWJ/CRKnop_f.htm
Karen Knop, "Ici Et Là-Bas: Le Droit International Devant Les Tribunaux Canadiens," (2000) 32 NYU Newspaper of International Law and Politics 501.

http://www.law-lib.utoronto.ca/diana
On-line library with resources on the human rights of the women.

www.bayefsky.com
This is a wide-ranging website with resources and materials on human rights law, treaty bodies, etc. This is a very user-friendly website.

Bayefsky.com was designed for the purpose of enhancing the implementation of the human rights legal standards of the United Nations. The information provided on the website encompasses a range of data concerning the application of the UN human rights treaty system by its monitoring treaty bodies since their inauguration in the 1970's.

http://www.ipas.org/english/default.asp
This website has a really good publication on working in the Inter-American and the African human rights systems.

Ipas has worked for three decades to increase women's ability to exercise their sexual and reproductive rights and to reduce deaths and injuries of women from unsafe abortion. Ipas's global and country programs include training, research, advocacy, distribution of equipment and supplies for reproductive-health care, and information dissemination

http://www.hri.ca/index.aspx
This website has a set of excellent and extensive links.

HRI is a leader in the exchange of information within the worldwide human rights community. Launched in the

United States, HRI has its headquarters in Ottawa, Canada. From Ottawa, HRI communicates by phone, fax, mail and the Internet with more than 5,000 organizations and individuals around the world working for the advancement of human rights.

HRI is dedicated to the empowerment of human rights activists and organizations, and to the education of governmental and intergovernmental agencies and officials and other actors in the public and private sphere, on human rights issues and the role of civil society.

http://www.hrea.org/

This website has on-line tutorials on key human rights issues, useful powerpoints, as well as information about a wide range of distance learning programs

HREA supports human rights learning; the training of activists and professionals; the development of educational materials and programming; and community-building through on-line technologies. HREA is dedicated to quality education and training to promote understanding, attitudes and actions to protect human rights, and to foster the development of peaceable, free and just communities.

http://www.ishr.org/

This website is especially good for Geneva-based UN bodies and global human rights defenders programs

ISHR is an international non-governmental organisation which bases its work on the Universal Declaration of Human Rights proclaimed by the United Nations on 10 December 1948. ISHR seeks to promote international understanding and tolerance in all areas of culture and society. It is a non-profit organisation, independent of all political parties, governments or religious groups.

www.omct.org/

This website is useful for urgent action information and global human rights defenders programs.

OMCT is the world's largest coalition of non-governmental organisations fighting against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. Its global network comprises nearly 300 local, national and regional organisations, which share the common goal of eradicating such practices and enabling the respect of human rights for all.

http://www.unifem.org/

This website is a good portal for Gender and HIV/AIDS issues.

UNIFEM is the women's fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies to foster women's empowerment and gender equality. Placing the advancement of women's human rights at the centre of all of its efforts, UNIFEM focuses its activities on four strategic areas: (1) reducing feminized poverty, (2) ending violence against women, (3) reversing the spread of HIV/AIDS among women and girls, and (4) achieving gender equality in democratic governance in times of peace as well as war.

http://www.acpd.ca/

This is a reference guide on sexual and reproductive health decisions in the treaty bodies. ACPD has a CD-ROM and an on-line searchable database

ACPD's overall goal is to advance action by the Canadian government to meet the commitments that it made in the 1994 Cairo Programme of Action, and, in particular, to meet the financial targets set at Cairo

http://www.crlp.org/
This website has a series of shadow reports to CEDAW.

The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to protect, respect and fulfill.

http://www.mnadvocates.org/
This website has a series of shadow reports to CEDAW

Minnesota Advocates for Human Rights is dedicated to the promotion and protection of internationally recognized human rights. Minnesota Advocates documents human rights abuses, advocates on behalf of individual victims, educates on human rights issues, and provides training and technical assistance to address and prevent human rights violations.

http://www.iwraw-ap.org/
This website has extensive information about CEDAW shadow reporting, as well as information on the draft optional protocol to the ICESCR

IWRAW Asia Pacific is a non-profit international women's organisation based in the South. We promote the domestic implementation of international human rights standards by building the capacity of women and human rights advocates to claim and realise women's human rights. This is done through the development of new knowledge and the utilisation of a rights-based approach. Apart from information about us, this website has been designed to provide official and practical information on the application of the UN CEDAW Convention and other international human rights treaties.

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