ACKNOWLEDGMENTS

The Handbook was initially prepared by the Center for Human Rights and Humanitarian Law at American University Washington College of Law (the “Center”) through its Local Human Rights Lawyering Project. We are especially grateful to the National Law Center on Homelessness and Poverty, the Human Rights Clinic and the Human Rights Institute at Columbia Law School, as well as Professor Carrie Bettinger-Lopez at the University of Miami School of Law, and Professor Martha Davis at Northeastern School of Law, for granting us permission to adapt their previously published works for sections of this Handbook. Lauren E. Bartlett, Project Director of the Local Human Rights Lawyering Project, developed the concept for the Handbook, adapted the previously published works mentioned above, compiled Sections 1, 2, 3, 4, 5.3, 5.4, 5.5, 5.9 and 5.10 of the Handbook, and supervised the research and editing of the Handbook. Other contributors to the initial research and drafting of the Handbook include: Lynsay Gott, Acting Director of Human Rights USA, Sections 5.1, 5.7. and 5.8; Sarah Paoletti, Director of the Transnational Legal Clinic at University of Pennsylvania School of Law, Section 5.2; Erik Pitchal, an independent consultant to child-serving non-profit organizations, Section 5.6.; Kevin Cremin, Director of Litigation for Disability and Aging Rights for MFY Legal Services, Inc., Section 5.10. Rachel Schulman and Jackie Zamarrippa, members of the Center’s Student Advisory Board, as well as Mary Kim, Samir Aguirre, Rob Dordan and Brittany West, interns for the Center, also contributed to research and drafting of the Handbook. Center staff contributed to the Handbook’s design, production and editing, including: Melissa C. del Aguila, Assistant Director; Whitney Hayes, Program Coordinator; Marc Rambeau, former Communications Fellow; Cecili Thompson Williams, former Assistant Director; and Erica Nordberg, former Dean’s Fellow. Members of the Local Human Rights Lawyering Project’s Advisory Board, as well as Reena Shah and Nelson Mock, the Project’s Human Rights Coordinators, provided valuable feedback, guidance and edits for the Handbook. This Handbook was generously supported by the Ford Foundation.
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<th>Description</th>
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<td>ACHR</td>
<td>American Convention on Human Rights</td>
</tr>
<tr>
<td>ADRAM</td>
<td>American Declaration on the Rights and Duties of Man</td>
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<tr>
<td>AFL-CIO</td>
<td>Convention on the American Federation of Labor and the Congress of Industrial Organizations</td>
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<tr>
<td>CAT</td>
<td>Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<tr>
<td>CATOC</td>
<td>Convention Against Transnational Organized Crime</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<tr>
<td>CERD</td>
<td>Convention on the Elimination of Racial Discrimination</td>
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<tr>
<td>COHRE</td>
<td>Centre on Housing Rights &amp; Evictions</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<tr>
<td>CTM</td>
<td>Confederation of Mexican Workers</td>
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<tr>
<td>DEVAW</td>
<td>Declaration on the Elimination of Violence Against Women</td>
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<tr>
<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<td>EEOC</td>
<td>Equal Employment Opportunity Commission</td>
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<td>FLSA</td>
<td>Fair Labor Standards Act</td>
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<td>GCP</td>
<td>UN Guidelines for Consumer Protection</td>
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<td>HUD</td>
<td>US Department of Housing and Urban Development</td>
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<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICCTC</td>
<td>UN Draft International Code of Conduct on Transnational Corporations</td>
</tr>
<tr>
<td>ICRMW</td>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</td>
</tr>
<tr>
<td>ICRSR</td>
<td>International Convention Relating to the Status of Refugees</td>
</tr>
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<td>ILO</td>
<td>International Labor Organization</td>
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<td>ACRONYMS</td>
<td>Description</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
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<tr>
<td>OAS</td>
<td>Organization of American State</td>
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<td>OSHA</td>
<td>Occupational Safety and Health Administration</td>
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<tr>
<td>TVPA</td>
<td>Torture Victims Protection Act</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<td>UGT</td>
<td>General Worker of Spain</td>
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<tr>
<td>UNDOC</td>
<td>UN Office on Drugs and Crime</td>
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<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
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1 INTRODUCTION

Legal aid attorneys\(^1\) fight every day to secure basic rights for the most vulnerable persons in the U.S.—among them, the poor, racial minorities, young people, the elderly and immigrants. Yet, U.S. law more often than not falls short of providing a “floor” of minimum protections for these marginalized individuals. More expansive guarantees are found under international human rights law and some advocates in the U.S., including legal services attorneys, have begun successfully incorporating human rights norms, language and strategies into their domestic work to help advocate for increased protections.

The Center for Human Rights and Humanitarian Law developed the Local Human Rights Lawyering Project to provide training, coaching and mentorship for legal aid attorneys in the U.S. to integrate the human rights framework into their daily work. The Center began by working with Maryland Legal Aid and Texas RioGrande Legal Aid as founding partners for the project in 2012, but plans to expand the project to include legal aid attorneys from across the U.S.

This Handbook is just a starting place. Moreover, it is a working document. We hope that our Project Partners, and other legal aid attorneys, will provide edits to the Handbook, add resources, useful cases, success stories, and sample pleadings. We hope to continue to add additional legal issue areas to the Handbook, as human rights arguments are made and successes are achieved, and to share strategies and arguments that resonate with judges and policymakers across the U.S. Please email bartlett@wcl.american.edu with comments, edits, and sample pleadings to add to the Handbook.

1.1 ABOUT THE CENTER FOR HUMAN RIGHTS AND HUMANITARIAN LAW

For nearly a decade, the Center for Human Rights & Humanitarian Law (the “Center”) has been working on various initiatives to integrate human rights into the work of lawyers and activists in the United States. The Center holds an ongoing series of workshops, conferences and trainings to build capacity with practitioners in the United States around the existence, application and use of international human rights norms in the United States. This effort, which has focused on trainings around using the UN Human Rights Treaty Bodies, writing “shadow reports,” using the Inter-American Commission on Human Rights and more, is aimed at practitioners in the United States who engage in domestic social justice work. It seeks to enhance their understanding of international law and the ways that it can be applied in their work in the United States, seeking to bridge the disconnect between the United States’ promotion of human rights abroad and its adherence and appreciation for international law and standards as they apply within the United States. The Local Human Rights Lawyering Project is the result of several years of research and needs assessments to consider the most effective ways to reach out to legal services organizations and build a replicable model for integration of human rights in the local lawyering context.

The Center was established in 1990 to provide scholarship and support for human rights initiatives around the world. The Center works with students, academics and practitioners to enhance the understanding and implementation of human rights and humanitarian law domestically, regionally and internationally. The Center explores emerging intersections in the law and seeks to create new tools and strategies for creative advancement of international norms.

1.2 PROJECT PARTNERS

Maryland Legal Aid Bureau, Inc. (MDLAB) is a private, non-profit, multi-funded law firm providing free legal services to low-income people, children and the elderly since 1911. MDLAB’s mission is to provide high-quality

\(^1\) For the purposes of this Project, the term “Legal Aid attorney” refers to lawyers that work for nonprofit organizations that provide free advice and legal representation to low income people in the U.S., which includes organizations that are funded by the Legal Services Corporation (“LSC”), as well as those that receive no funding from LSC.
MDLAB serves Baltimore City and Maryland’s 23 counties from 13 office locations. MDLAB’s clients are provided necessary legal assistance to gain protection from domestic violence, retain custody of children, fight unlawful evictions, prevent foreclosures on homes, secure educational services, and obtain needed medical and disability benefits, unemployment insurance, and other forms of temporary financial assistance. Special statewide programs provide representation and assistance for children who are victims of abuse and neglect, the elderly, nursing home and assisted living residents, migrant and seasonal farmworkers, tenants working to preserve affordable housing, and home owners facing foreclosure due to predatory lending. In 2010, MDLAB adopted a human rights framework to guide its mission of finding legal remedies for the problems that afflict the poor—and to advance the recognition and protection of basic human rights.

Texas RioGrande Legal Aid, Inc. (TRLA) is a non-profit organization that provides free legal services to low-income residents in sixty-eight counties of Southwest Texas, and represents migrant and seasonal farm workers throughout the state of Texas and six southern states: Kentucky, Tennessee, Alabama, Mississippi, Louisiana and Arkansas. In addition, TRLA operates public defender programs in several Southwest Texas counties, representing the poor who are accused of felonies, misdemeanors and juvenile crimes. TRLA is the third largest legal services provider in the nation and the largest in the state of Texas. TRLA serves approximately 25,000 clients each year. However, over 2.6 million residents of Southwest Texas are considered eligible for TRLA services, a ratio of almost 21,000 potential clients per lawyer. Moreover, there are more than three dozen practice areas in which TRLA attorneys specialize, including colonias and real estate, civil rights, environmental justice, labor and employment, public benefits, disaster assistance, federally subsidized housing, foreclosure, bankruptcy, wills and estates, border issues, human trafficking, and international child abduction.

1.3 HANDBOOK OVERVIEW AND LAYOUT

This Handbook is just a starting place and we hope that U.S. Legal Aid attorneys will add to it as they make arguments in court and become more versed in using the human rights framework. Some of the principles to be used for drafting the Handbook include:

- **Simple language:** This is not an academic treatise. We want the Handbook to be as accessible as possible. Additions to this handbook should not include a lot of legal-ese. We want legal aid attorneys to be able to easily explain to clients why and how they are integrating human rights into their work.
- **Everyday use:** This needs to be as easy to use as possible. If a Legal Aid attorney wants to put an argument and citation into a brief, he or she should be able to go to the Handbook, find the citation, and cut and paste it into her brief, all in less than five minutes. All citations must be uniform format.
- **Repetition:** The attorneys using this handbook may not read the entire handbook and may not even read an entire section of the handbook. Therefore, it is fine to repeat important concepts. Each legal issue section should standalone, providing all of the information needed or referring to a prior section.

This Handbook aims to get practical and useable human rights information into the hands of legal aid attorneys. Parts 2 and 3 of the Handbook are designed to introduce legal aid attorneys to the human rights framework and provide the background necessary to strategically integrate human rights into litigation and advocacy work. Part 4 of the Handbook is designed to give U.S. legal aid attorneys the specific information that they need to make persuasive human rights arguments in state and federal court. Part 5 of the Handbook covers specific legal issue areas, including an introduction to each issue area and the related human rights, quick statistics and resources for data, a sampling of relevant human rights law, a list of state and federal court cases citing human rights law, a sampling of relevant cases before international bodies, a sampling of relevant cases before national courts or sub-regional bodies, a sampling of treaty body and special procedures commentary and recommendations, sample arguments to add to briefs and pleadings, sample talking points to take to court, relevant case studies of legal aid attorneys using human rights law in their work, links to sample briefs and petitions, and links to other potentially useful resources such as other available guides or handbooks. We
This section is designed to introduce legal aid attorneys to the human rights framework and provide the background necessary to strategically integrate human rights into litigation, advocacy and all legal aid work.

2.1 INTRODUCTION TO HUMAN RIGHTS

Human rights recognize and promote dignity, fairness and opportunity for all people. These norms recognize the inherent interrelationship between economic, social, cultural, civil and political rights. And, a human rights framework places a duty on governments to respect, protect and fulfill these rights.

International human rights law is part of international law, and is designed to promote and protect human rights at an international, regional and domestic level. International law is binding on state and federal courts through the Supremacy Clause of the U.S. Constitution and sources of international human rights law serve as persuasive authority in U.S. courts and can bolster arguments based on domestic law. Indeed, the U.S. Supreme Court has recognized that the laws of the U.S. should be interpreted as consistent with international law whenever possible.²

International law is defined by written documents as well as common practices. One widely accepted definition of international law includes “international conventions, whether general or particular, establishing rules expressly recognized by the contesting states”; “international custom, as evidence of a general practice accepted as law”; and “judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”³ Each of these sources of international human rights law is introduced below: “international conventions” in Section 2.2 and corresponding “RUDs – reservations, understandings and declarations” in Section 2.3, “customary international law” in Section 2.4, “decisions of international and foreign courts” in Section 2.5, and “general guidelines and principles” in Section 2.6.

2.2 INTERNATIONAL CONVENTIONS

International human rights treaties and other instruments, such as declarations, make up the core of human rights law. The U.S. has ratified (and thereby become a party to) some of the treaties listed below. Throughout this

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³See, e.g., Murray v. Schooner Charming Betsy, 6 U.S. 64, 118 (1804) (“[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.”); Talbot v. Seeman, 5 U.S. 1, 43 (1801) (”[T]he laws of the U.S. ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations.”). See generally Sarah Cleveland, Our International Constitution, 31 Yale J. Int’l L. 1, 81 (2006) (likening the “liberty” rights of the Fourteenth Amendment’s Due Process Clause to fundamental international human rights); Harold Hongju Koh, International Law as Part of Our Law, 98 Am. J. Int’l L. 43, 44 (2004) (describing the framers’ and early Justices’ recognition of the importance of international law).

⁴Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1031, 33 U.N.T.S. 993. See also RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 (1987) (“A rule of international law is one that has been accepted as such by the international community of states (a) in the form of customary law, (b) by international agreement, or (c) by derivation from general principles common to the major legal systems of the world.”).
Handbook there is an American Flag (🇺🇸) next to U.S.-ratified treaties each time they appear in table format to indicate visually that the U.S. has ratified.

However, for the majority of the treaties discussed below, the U.S. has signed but not ratified the treaty. The degree of legal authority or relevance that treaties have in U.S. courts depends in large part on whether the U.S. has ratified, signed, or taken no action on them.

Treaties that the U.S. has ratified are binding as a matter of domestic law (i.e. creating obligations of the State toward its people) under the Supremacy Clause of the U.S. Constitution and as a matter of international law (i.e. creating obligations of the State toward other States). The Supremacy Clause of the U.S. Constitution establishes that “all treaties made, or which shall be made, under the authority of the U.S., shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

However, ratified treaties are enforceable in a U.S. court only if they are self-executing or if implementing legislation has been passed. The Senate typically ratifies human rights treaties with “reservations”, “understandings”, and “declarations” stating that they are not “self-executing,” and the courts uphold this limitation. The U.S. reservations for each treaty are available along with the treaty text on the websites listed with each treaty in the charts below.

Treaties that the U.S. has signed, but not yet ratified, are not binding as domestic law. Signed-but-not-ratified treaties are nevertheless relevant to domestic law because they create general negative obligations. Under the Vienna Convention on the Law of Treaties (Vienna Convention), a State that has signed a treaty has an obligation “to refrain from acts which would defeat the object and purpose of a treaty,” unless and until that State has expressed its intention not to become a party. Because the U.S. has signaled its intention to abide by the principles contained in treaties it has signed, and because the U.S. has an obligation not to act in contravention of the object and purpose of those treaties, advocates may, when appropriate, argue that the federal/state/local government has violated them.

A treaty that the U.S. has only signed—or even a treaty that the U.S. has neither signed nor ratified—can still serve as a powerful advocacy tool in U.S. courts if it has acquired the status of customary international law through broad ratification by many other countries. For example, many of the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are arguably customary international law, as the U.S. is one of the very few countries that has not ratified these treaties. Similarly, provisions contained within Declarations (such as the Universal Declaration of Human Rights) are relevant to domestic law if they have developed into customary international law. See Section 2.4. below for more on Customary International Law. But declarations are not formal legal documents like treaties, and

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4 U.S. CONST. art. VI, § 2.
5 The Supreme Court has held that some treaties require implementing legislation (domestic legislation allowing for implementation of treaty provisions in the U.S.) in order to be enforced in a U.S. court. Self-executing treaties do not require such implementing legislation; they can be enforced in a U.S. court as soon as the U.S. becomes a party. See Medellín v. Texas, 128 S.Ct. 1346, 1356 (2008). However, President Bill Clinton issued an executive order in 1998 ordering U.S. implementation of international human rights treaties “to which it is a party, including the ICCPR, the CAT, and the CERD.” Exec. Order No. 13107, 63 Fed. Reg. 68991 (Dec. 15, 1998).
6 A full list of human rights treaties that the U.S. is at present, or has been, party to is listed on the Bureau of Democracy, Human Rights and Labor, of the U.S. Department of State’s website, http://www.humanrights.gov/references/international/. For more on Reservations, Understandings and Declarations see Section 2.3 of the Handbook.
7 A “positive obligation” refers to an obligation to act, to secure the actual and effective realization of human rights. In contrast, a “negative obligation” is an obligation to not act, to merely refrain from engaging in human rights violations.
9 While the U.S. is not a party to the Vienna Convention, the U.S. recognizes that many of the Convention’s provisions have become customary international law. See, e.g., Maria Frankowska, The Vienna Convention on the Law of Treaties Before U.S. Courts, 28 Va. J. Int’l L. 281, 299-300 (1988) (discussing how the U.S. has demonstrated that it considers itself bound by the provisions of the Vienna Convention).
the Vienna Convention on the Law of Treaties does not apply to them. For more on general principles and guidelines, see Section 2.6 of this Handbook.

2.2.1 UNIVERSAL (UNITED NATIONS) HUMAN RIGHTS CONVENTIONS

The United Nations has created a global or “universal” system for protecting human rights. Below is a list of some of the United Nations human rights instruments. This list does not include all of the conventions and declarations.

<table>
<thead>
<tr>
<th>Sampling of Conventions in the Universal (United Nations) Human Rights System</th>
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<tr>
<td><strong>Treaty or Declaration</strong></td>
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<tr>
<td>Universal Declaration of Human Rights (UDHR)</td>
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| International Covenant on Civil & Political Rights (ICCPR) | The ICCPR prohibits forced marriage, torture, and cruel, inhuman or degrading treatment or punishment. It affirms the rights to self-determination; liberty and security of person; freedom of thought, conscience and religion; freedom of expression; and freedom of association. These rights are recognized without distinction of any kind, such as sex, birth or other status. Under the ICCPR, States parties undertake to ensure an effective remedy for violations, notwithstanding that the violation has been committed by persons acting in an official capacity. All persons are equal before the courts. The U.S. specifically stated in its reservations to the ICCPR that articles 1-27 are not self-executing. Full text. Reservations and Declarations. | Dec. 16, 1966 | Ratified and entered into force, Sep. 8, 1992. |

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9 The dates listed in the column labeled “Date” refer to the date the instrument was opened for signature.
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<thead>
<tr>
<th>Treaty or Declaration</th>
<th>Description and Citation</th>
<th>Date</th>
<th>U.S. Action</th>
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<tbody>
<tr>
<td><strong>International Covenant on Economic, Social, and Cultural Rights (ICESCR)</strong></td>
<td>The ICESCR is the principal human rights treaty regarding economic and social rights, and protects the equal rights of men and women to housing, work, social security, the highest attainable standard of health, and the continuous improvement of living conditions. The ICESCR prohibits all forms of discrimination in the enjoyment of these rights, and calls for special protection for mothers and children. Full <a href="#">text</a>.</td>
<td>Dec. 16, 1966</td>
<td>Signed only</td>
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<tr>
<td><strong>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</strong></td>
<td>As a State party to CAT, the U.S. must undertake to prevent acts of torture, or cruel, inhuman or degrading treatment or punishment, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, in its declarations, the U.S. stated “...nothing in this Convention requires or authorizes legislation, or other action, by the U.S. prohibited by the Constitution of the U.S. as interpreted by the United States.” Full <a href="#">text</a>. <a href="#">Reservations and Declarations</a>.</td>
<td>Dec. 10, 1984</td>
<td>Ratified and entered into force on Nov. 20, 1994.</td>
</tr>
<tr>
<td><strong>International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</strong></td>
<td>CERD, the principal human rights treaty on racial discrimination, affirms the equality of all persons’ civil, political, economic and social rights without any distinction regarding race, color, descent, or national or ethnic origin. The U.S. explicitly stated in its reservations to CERD that it is not self-executing. Full <a href="#">text</a>. <a href="#">Reservations and Declarations</a>.</td>
<td>Dec. 21, 1965</td>
<td>Ratified and entered into force, Nov. 20, 1994.</td>
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<tr>
<td>Treaty or Declaration</td>
<td>Description and Citation</td>
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<td>CEDAW is the principal</td>
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<td>Signed only</td>
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<td>Elimination of</td>
<td>human rights treaty on</td>
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<td>Discrimination</td>
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<td>Against Women</td>
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<td>women's equal access to-</td>
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<td>Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography</td>
<td>This Optional Protocol codifies the prohibition of the sale of children, child prostitution and child pornography. States parties such as the U.S. must adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programs to prevent these offenses. Child victims of these offenses have a right to specific procedural protections adapted to their special needs. The U.S. stated in its reservations that “the Protocol shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein”. Full text, Reservations and Declarations.</td>
<td>May 25, 2000</td>
<td>Ratified and entered into force, Jan. 23, 2003.</td>
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<td>Treaty or Declaration</td>
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<tr>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)</td>
<td>The ICRMW promotes the rights of migrant workers and their families by defining and protecting specific rights and applies through the duration of the migration process. Full <a href="#">text</a>.</td>
<td>Jul. 1, 2003</td>
<td>N/A</td>
</tr>
<tr>
<td>International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD)</td>
<td>The CRPD promotes the rights of persons with disabilities to equal protection, equal participation, and accessibility, and provides for special protections for women and children with disabilities. It entered into force in March 2008. As of January 2012, the Convention had 153 signatories, of which 109 were also parties. Full <a href="#">text</a>.</td>
<td>Mar. 30, 2007</td>
<td>Signed only</td>
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2.2.2 INTER-AMERICAN HUMAN RIGHTS CONVENTIONS

Besides the United Nations, there are also three principal regional human rights systems in the world: the Inter-American system, the European system, and the African system. In the Americas, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights operate to promote and protect human rights. The Court is based in San José, Costa Rica; the Commission is based in Washington, D.C. The Inter-American Court does not have jurisdiction to hear individual complaints brought against the U.S., as the U.S. has not ratified the American Convention on Human Rights or the Optional Protocol granting the Court jurisdiction. In contrast to the Court, the Inter-American Commission can hear individual complaints brought against the U.S. under the American Declaration—an advocacy avenue increasingly pursued by American advocates. Below is a list of sample relevant conventions for the Inter-American Human Rights System. Please note that this list does not include all of the human rights conventions for the Inter-American System.

<table>
<thead>
<tr>
<th>Treaty or Declaration</th>
<th>Description and Citation</th>
<th>Signed by President</th>
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<tr>
<td>The American Declaration on the Rights and Duties of Man (American Declaration)</td>
<td>The American Declaration sets forth a wide spectrum of civil, political, economic, social, and cultural rights, including the obligation of States to provide special protections to vulnerable individuals, such as domestic violence survivors. As an OAS member State, the U.S. is arguably bound by the provisions of the American Declaration through its ratification of the Charter. Full text of the American Declaration.</td>
<td>Apr. 30, 1948</td>
<td>N/A</td>
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<tr>
<td>American Convention on Human Rights (ACHR)</td>
<td>The American Convention codifies the OAS Charter. While the Convention focuses primarily on civil and political rights, it generally recognizes their interdependency with economic and social rights, and Article 26 specifically recognizes States’ duties to progressive realization of those rights. The Convention recognizes that spouses have equal rights before, during and after marriage. Full text.</td>
<td>Nov. 21, 1969</td>
<td>Signed only</td>
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2.3 “RUDs” – RESERVATIONS, UNDERSTANDINGS AND DECLARATIONS

2.3.1 INTRODUCTION TO RESERVATIONS, UNDERSTANDINGS AND DECLARATIONS

“RUDs” is shorthand for Reservations, Understandings and Declarations. The U.S. Senate attaches a package of RUDs to its ratifications of all human rights treaties, which affect how the treaties are interpreted by U.S. courts. Treaty reservation law is one of the most complex parts of international law\(^\text{10}\) and this section of the Handbook provides only a basic introduction to RUDs.\(^\text{11}\)

The U.S. Constitution does not mention Reservations, Understandings or Declarations to treaties. However, the U.S. Senate has nonetheless been attaching conditions to its resolutions of advice and consent to treaties since 1795.\(^\text{12}\) These conditions are sometimes called Reservations, Declarations or Understandings. The Vienna Convention on the Law of Treaties defines a Reservation as "a unilateral statement, however phrased or named...whereby [a State] purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."\(^\text{13}\) So any kind of statement that modifies the legal effect of the treaty is technically a Reservation, regardless of whether the U.S. Senate calls it a Reservation, Declaration, or Proviso or anything else.\(^\text{14}\)

Understandings and Declarations are different from a reservation. Instead of modifying a treaty, an Understanding is an interpretation, statement, clarification or elaboration assumed to be consistent with the obligations of the treaty as submitted.\(^\text{15}\) Declarations are usually statements of the Senate’s position, opinion or purpose relating to the subject matter of the treaty, but not to its specific provisions, and do not modify the legal effect of the treaty.\(^\text{16}\)

One State may officially enter an objection to a RUD entered by another state, which alters the treaty obligations only between those two parties.\(^\text{17}\) Therefore, for example, when Pakistan objects to an RUD entered by the U.S., the objection only alters the agreement as between Pakistan and the U.S. The objection by Pakistan does not affect the U.S. being party to the treaty or otherwise affect U.S. obligations under the treaty.

Under international treaty law, only RUDs that are compatible with the object and purpose of the treaty are allowed.\(^\text{18}\) There is no clear definition of the object and purpose of human rights treaties, though much has been written on this topic. The Inter-American Court of Human Rights, has concluded that the object and purpose of human rights treaties are unique. The Court has stated that the unique purpose of human rights treaties is for:

> the protection of the basic rights of human beings irrespective of their nationality, both against the State of their nationality and all other contracting States...States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction.\(^\text{19}\)

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\(^{11}\) For a thorough explanation of treaty reservation law, see e.g. LIESBETH LIJNZAAD, RESERVATIONS TO UN HUMAN RIGHTS TREATIES (1994).


\(^{13}\) Vienna Convention, supra note 8.

\(^{14}\) Dalton, supra note 12 at 6.


\(^{16}\) Id.

\(^{17}\) Id.


2.3.2 SPECIFIC RUDs ATTACHED BY THE US TO RATIFIED HUMAN RIGHTS TREATIES

Professor Louis Henkin, who has often been credited with founding the study of human rights law, laid out several “principles” that he found guide the package of Reservations, Understandings and Declarations the U.S. attaches to its human rights treaties:

1. The U.S. will not undertake any treaty obligation that it will not be able to carry out because it is inconsistent with the U.S. Constitution.

2. U.S. adherence to an international human rights treaty should not effect—or promise—change in existing U.S. law or practice.

3. The U.S. will not submit to the jurisdiction of the International Court of Justice to decide disputes as to the interpretation or application of human rights conventions.

4. Every human rights treaty to which the U.S. adheres should be subject to a “federalism clause” so that the U.S. could leave implementation of the convention largely to the states.

5. Every international human rights agreement should be "non-self-executing." 20

The fourth principle, that the U.S. could leave implementation of the human rights convention largely to the states, has sometimes been used by human rights advocates as a tool, as opposed to a restriction, in trying to emphasize that all levels of government, including state and local, have a role in implementation. 21 In addition, the last principle, that every international human rights agreement should be non-self-executing is very important as it requires each human rights treaty ratified by the U.S. to have corresponding implementing legislation (domestic legislation allowing for implementation of treaty provisions in the U.S.) passed by Congress in order to be enforced in a U.S. court. 22

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<tr>
<th>Treaty or Declaration</th>
<th>Reservations, Understandings and Declarations</th>
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<tr>
<td>International Covenant on Civil &amp; Political Rights (ICCPR)</td>
<td>Reservations, Understandings and Declarations made by the United States of America upon ratifying the International Covenant on Civil &amp; Political Rights (ICCPR)</td>
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<tr>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>Reservations, Understandings and Declarations made by the United States of America upon ratifying the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</td>
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<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</td>
<td>Reservations, Understandings and Declarations made by the United States of America upon ratifying the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</td>
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21 For an example of a human rights advocate using this type of reservation in local and state advocacy, see the National Law Center on Homelessness and Poverty, Letter to New Orleans Opposing Anti-Camping Ordinance (April 2008), http://www.nlchp.org/content/pubs/Letter_to_New_Orleans_Opposing_Anti-camping_Ordinance_April_20081.pdf.

2.4 CUSTOMARY INTERNATIONAL LAW

Customary law is an independent source of international law, defined as “a general practice accepted as law.”23 In order for a practice to become customary international law, States must follow it out of a sense of legal obligation, not as a matter of policy or self-interest, and enough States must follow it to be considered “general practice.”24 The meaning of each of the above variables—“general,” “practice,” and “accepted as law”—has been the subject of debate in the legal community. However, some norms in international law, such as the prohibition on torture, are widely accepted as falling within the scope of customary international law.25

U.S. courts have long recognized that customary international law is a part of U.S. law.26 Moreover, both federal and state courts apply international human rights law, as well as international practices, in deciding domestic cases. Courts use international human rights law as an interpretive guide, to give content to general concepts such as standards of need and due process, and in further support of analyses under domestic law. Here are some examples of U.S. courts that have used human rights law as an interpretive guide:

In In Re White, the California Court of Appeals cited the Universal Declaration of Human Rights in support of its conclusion that both the U.S. and California Constitutions protected the right to intrastate and intramunicipal travel, a matter upon which the U.S. Supreme Court had not ruled, as well as the right to interstate travel, which a Supreme Court ruling has protected.27 At issue in White was a challenge to a condition of probation imposed for prostitution; the condition barred the probationer from entering or simply being in certain defined areas of the city.

Courts also apply the directive to interpret domestic law to be consistent with international law by looking to human rights law as a source of content in cases where domestic legal standards are ambiguous or vague. For example, in Boehm v. Superior Court, indigent plaintiffs sought to prevent the reduction of general assistance benefits for indigent persons.28 A state statute provided that “[e]very county . . . shall relieve and support all incompetent, poor, indigent persons” and required each county to adopt standards of aid and care. While the statute gave counties discretion to determine the type and amount of benefits, the court held that benefit levels must be sufficient for survival. In making the determination, the court required the county to consider the need for food, housing, transportation, clothing, and medical care and cited the Universal Declaration of Human Rights (the declaration refers specifically to these elements).29

A similar example of the use of international law is Lareau v. Manson, in which a federal district court considered whether alleged overcrowding and other prison conditions violated the due process clause of the U.S. Constitution.30 As part of its analysis, the court looked to the United Nations’ Standard Minimum Rules for the Treatment of Prisoners, a nonbinding document. The court reasoned that these standards constituted an authoritative international statement of basic norms of human dignity and thus could help define the “canons of

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23 Statute of the International Court of Justice, art. 38(1)(b), supra note 3. See also RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102, supra note 3 (“Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.”).


26 See, e.g., The Paquete Habana, 175 U.S. 677, 700 (1900) (“International law is part of our law, and must be ascertained and administered by the courts of justice…as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations….”).


29 Id.

decency and fairness which express the norms of justice embodied in the Due Process Clause” and the “evolving standards of decency” relevant to evaluating Eighth Amendment challenges.  

Further, the court in Lareau noted that the standard minimum rules might have acquired the force of customary international law and thus constituted binding legal authority. The court also cited the International Covenant on Civil and Political Rights, which had not then been ratified by the U.S. Nevertheless, the court considered it to have been so widely adopted that it constituted customary international law. This is particularly significant because the analysis supports the use in litigation of the International Covenant on Economic, Social and Cultural Rights, the treaty that contains the most detailed protection of the right to housing (and other economic rights) but has not yet been ratified by the U.S.

The practices of other nations can also be relevant even if they do not support a claim of customary international law. Courts, including the U.S. Supreme Court, cite and rely on such practices without analyzing whether they rise to the level of customary international law. For example, in a 1997 decision concerning the constitutionality of a state law banning assisted suicide, the Court cited the practices of other countries (in particular, “Western democracies”). Recently, the Supreme Court cited the practices of other nations, as well as international treaties, in its decision that abolished the death penalty for juveniles. Several federal courts have recognized such norms in dicta, and continued advocacy will increase the prominence of international human rights in domestic proceedings.

2.5 DECISIONS OF INTERNATIONAL AND FOREIGN COURTS

A number of courts around the world have built up rich jurisprudence concerning government duties and human rights, and that jurisprudence can inform U.S. judges as they reason through similar legal issues. While not all judges are equally open to looking to foreign case law to inform their decisions, there is strong Supreme Court jurisprudence to support the use of foreign case law, in appropriate circumstances, as a comparative perspective on U.S. legal questions. For example, in Roper v. Simmons, Justice Kennedy, in a majority opinion joined by Justices Stevens, Souter, Ginsburg and Breyer, observed that “[i]t does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.” The Court has expressly looked to the laws and opinions of other nations in determining issues pertaining to the rights guaranteed by the Eighth and Fourteenth Amendments of the Constitution, as well as issues pertaining to the fundamental rights of freedom and privacy and universal concepts, such as “human dignity.”

The European Court of Human Rights is one of the most respected human rights tribunals in the world. The Court hears cases alleging violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (more commonly known as the “European Convention on Human Rights”) brought against States parties to the Convention, which include the 47 member States comprising the Council of Europe. The Court’s decisions and judgments are binding on States parties to the Convention. While the Court’s decisions are not binding on the U.S., they may serve as persuasive authority, especially if they represent global consensus. For example, in Lawrence v. Texas, the Supreme Court considered jurisprudence from the European Court of Human Rights in

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31 Id.
32 Id.
37 Roper, supra note 34. See also Graham, supra note 34.
deciding to strike down a Texas statute criminalizing private sexual activity between consenting adults of the same sex under the Fourteenth Amendment.40

2.6 GENERAL PRINCIPLES AND GUIDELINES

General principles, guidelines and draft international agreements provide secondary evidence of human rights law.41 Just as a Reinstatement, Model Code or even Black’s Law Dictionary in the U.S. can provide a secondary source of law in the U.S., principles and guidelines can provide a secondary source of human rights law. The Boston Principles in Section 5.7.8 and the United Nations Guidelines for Consumer Protection listed in Section 5.4.3 are examples of secondary sources of human rights law. Neither the Boston Principles nor the United Nations Guidelines for Consumer Protection are international agreements signed by countries around the world. However, these documents can provide persuasive language, a distilled explanation and even authority for human rights arguments, just as a U.S. reinstatement and model code can. Moreover, these agreements can provide moral and political authority, and may be evidence of customary international law.42

41 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, §§102(4), Comment l. (“General principles are a secondary source of international law.”), supra note 3.
3 STRATEGIES FOR EFFECTIVELY USING INTERNATIONAL HUMAN RIGHTS IN YOUR EVERYDAY WORK


Everyday human rights advocacy comes in a variety of different forms. This section is designed to provide legal aid attorneys with a variety of different strategies to apply the human rights framework in everyday work. Section 3.1 covers How to Perform Human Rights Monitoring, Documentation and Fact-Finding, which can lead to the documentation necessary to advocate on behalf of your clients with treaty monitoring bodies, covered in Section 3.2. The Human Rights Council is a specific example of an international human rights monitoring body which legal aid attorneys may advocate before, through its Universal Periodic Review, covered in Section 3.3. Advocacy before Special Procedures, covered in Section 3.4, can also be very effective. In addition, Section 3.5 covers How to Bring a Case Before the Inter-American Commission on Human Rights, which is an international treaty-monitoring body that hears individual cases brought against the U.S. for violations of human rights. Section 3.6 Human Rights Principles Applied to Interactions with Clients and Others focuses on how to apply human rights principles to interactions with clients and others. Part 4, the next chapter, will begin to explore local advocacy before state and federal courts here in the U.S.

3.1 HOW TO PERFORM HUMAN RIGHTS MONITORING, DOCUMENTATION AND FACT-FINDING

3.1.1 HUMAN RIGHTS MONITORING

Human Rights monitoring is the process of systematically tracking activities of and actions by institutions, organizations or governmental bodies. The main purpose of monitoring human rights is to determine the truth about the compliance of a government with its human rights obligations. Monitoring involves the collection of information (fact-finding) and documentation of findings for the purpose of bringing about social change. Very often, the process of monitoring can alert you to rights abuses, which can then be reported to treaty bodies or special procedures through the United Nations or Inter-American Human Rights systems, as discussed further below.

While monitoring needs to be undertaken by governments themselves, it is of vital importance that human rights organizations and activists engage in monitoring as well. “Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors, including NGOs, national governments and international organisations. It is indispensable that the relevant international organisations provide the support necessary for the implementation of international instruments in this field[...].”

As a human rights advocate in the U.S., you must first identify, realistically, the objectives of your monitoring activities. What do you intend to do with the documentation you gather? This will, in part, determine the types of information you gather.

*** Available at http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=163703.


Before conducting fact-finding missions, human rights monitors must make a preliminary assessment of the situation. A first step in this preparation is the analysis of relevant domestic and international legal standards that govern the particular abuse/s being monitored. This will help you determine the types of facts needed to prove abuse. It also illustrates a nation’s compliance with international legal standards and allows you to identify which domestic laws are the sources of rights violations.

With this knowledge in hand, human rights monitors must begin to systematically and consistently collect information that may be related to the rights violation being monitored. Sources of information can include:

- Newspapers, magazines, and other forms of print media;
- Radio broadcasts;
- Internet websites;
- Testimony from victims and witnesses of human rights abuse, as well as of alleged perpetrators;
- Reports from human rights organizations and activists or other organizations;
- Official reports, including police reports, forensic reports, medical certificates, etc.;
- and Court records.

Information to look for while monitoring includes:

- Demographic data, such as the size and age of the affected group, particularly compared to the rest of society, race or ethnicity of the affected group, and legal status;
- Social indicators, such as housing conditions, employment, schools, etc., level and type of interaction with the local community;
- Economic data;
- Information on the local political situation; and Reports of allegations of rights abuse.

An important monitoring function is to build a network of contacts working on the ground that you can possibly look to for information and support. The results of your monitoring should answer the following:

Who did what to whom? When, where, how and why?

### 3.1.2 HUMAN RIGHTS DOCUMENTATION AND FACT-FINDING

Information is collected by human rights organizations and activists to determine the truth as accurately and completely as possible concerning alleged human rights violations for the purposes of monitoring human rights practices of governments. In some cases, information is also collected on alleged human rights violations committed by armed opposition groups and private citizens. Human rights organizations and activists collect first-hand information to verify the facts for themselves and to make credible reports on alleged violations of human rights.

Documentation is the process of systematically recording and organizing the information for easy retrieval and dissemination. The word documentation is normally understood as a collection of existing documents. However, human rights organizations and activists also use it to mean recording facts, including collecting documents and establishing a system for easy retrieval and dissemination.

Once a violation has been identified, the next step is to conduct an investigation to collect and document the “evidence.” This is done by carrying out fact-finding activities and carefully recording the findings.

### GUIDING PRINCIPLES FOR HUMAN RIGHTS FACT-FINDERS:

- **Impartiality and accuracy**: Fact-finding must be thorough, accurate and impartial. Ensure the credibility of information collected and disseminated by seeking direct and other evidence. Direct evidence includes victim and witness testimony, statements by alleged perpetrators, official reports,
including police reports, court records, medical certificates, forensic reports, etc. Other forms of evidence include media reports, government reports, and reports by NGOs, etc. Assess the reliability of the evidence gathered and pay attention to any contradictions in the information gathered. Any questions of fact will need further investigation.

- **Application of international standards**: Apply international human rights standards and constitutional rights guarantees to help identify and define what information to collect and to assess the information gathered.

- **Be prepared before entering the field**: Before entering the field, empower yourself by thoroughly researching relevant legal standards and case background. Compile a list of everything you already know about the locations, and the incident, and make a list of all the information you are missing. Create a list of questions/issues you need to address during interviews to allow a proper assessment of the issue at hand.

- **Using diverse sources of information**: Locate and use as many sources of information as possible. Interview the victims (individuals and communities) and witnesses of an event and the violator. Collect and evaluate ALL available evidence. This evidence could include periodic government budget or policy reports; legislative and judicial records; papers and studies produced by academic or research institutions; reports by or interviews with NGOs, official reports, including police reports, medical certificates, building permits, documents attesting to security of tenure, etc.

- **Respect all parties**: All efforts should be carried out within an atmosphere of utmost respect for those concerned.

- **Ensure safety/take steps against victimization**: It is very important to consider both the safety of the victims of the rights violation you are documenting, as well as your own, and to take all measures possible to avoid or prepare individuals for any backlash they might suffer as a result of agreeing to participate in your investigation and subsequent actions. Monitors and fact-finders must therefore develop a plan of action and consider the above in relation to it. Ensure that the victims and witnesses to human rights and housing rights abuses you interview understand the way you intend to use the information they provide as well as any possible repercussions they may face as a result so that they have all the facts in making their decision to co-operate. If potential interviewees agree to divulge information on a particular rights abuse after having this explained to them, proceed with your fact-finding activities. If at any time you feel that either the victims of and witnesses to abuse or yourself are in danger, cease your actions immediately. The purpose of human rights monitoring and fact-finding is not to place persons in the way of further harm.

### 3.2 TREATY MONITORING BODIES AND SHADOW REPORTS

Information and testimony about human rights violations, collected through human rights monitoring, documentation and fact-finding, as discussed above, can be reported to treaty monitoring bodies to advocate for U.S. compliance with a human rights treaty. This section provides legal aid attorneys with an introduction to treaty monitoring bodies and shadow reports.

Once a country signs and ratifies a human rights treaty, it becomes a party (also called a “State party”) to the treaty. Both international and regional human rights treaties have mechanisms to ensure that States parties protect human rights not only in words but also in practice. Many international human rights treaties have **treaty monitoring bodies** (also called **treaty bodies**): permanent bodies made up of independent experts charged with monitoring States parties’ compliance with their legal obligations under the treaties. State compliance with regional human rights treaties is monitored by regional bodies.
Each of the human rights treaties listed in Section 2.2.1 above has a corresponding treaty body, composed of a number of international human rights experts appointed by member States, which is responsible for monitoring the compliance of States with their obligations under the treaty.

Treaty bodies conduct a **periodic review** of States parties’ compliance with treaty obligations, establishing an accountability mechanism, albeit an imperfect one.\(^44\) Many major international human rights treaties require States parties to submit periodic reports on their compliance with their obligations under those treaties.

A very important opportunity for advocacy action relates to the state reporting process under an international treaty. As a State Party to certain international treaties, the U.S. has to present periodic reports to a number of Committees on its obligations under a given Convention, including CERD and the Human Rights Committee. At the same time, NGOs, activists and other interested parties are invited to present their own comments on the government’s performance, calling attention to information excluded from the government report or to refute allegations made by the state that it is complying with its obligations. These written materials, submitted by NGOs and other interested parties, are commonly called **shadow reports**. NGOs and activists (including legal aid attorneys) can submit shadow reports to the Committees at any time.\(^45\) Ideally NGOs and activists collaborate and jointly draft and submit shadow reports, organized around specific topics, which makes a bigger impact and allows for greater efficiency for the members of the committees reviewing the reports.

Ultimately, the treaty bodies issue Concluding Observations and Recommendations, which consider whether and how rights violations have taken place, provide authoritative interpretation of States parties’ treaty obligations, and contribute to the development of “soft law.”\(^46\) While the findings of treaty bodies are not binding, they can be important sources of persuasive authority.

In addition to the periodic review, all treaty bodies issue general interpretations of treaty provisions, known as General Comments or General Recommendations (depending on the treaty body). These comments or recommendations have also become influential internationally in defining the scope of treaty obligations.

Some treaty bodies also take on an adjudicatory function, providing opportunities for individuals to submit complaints against States parties for violations of treaty obligations. Individual complaints can be brought only against States parties that have consented to participate in this process. The U.S. has not consented to participate in the individual complaints process of any treaty body. Nevertheless, treaty body decisions on individual complaints against other countries are relevant to U.S. advocates. Like Concluding Observations, Recommendations, General Comments and General Recommendations, treaty body decisions on individual complaints provide guidance on the interpretation of treaty provisions and may contribute to the development of soft law and customary international law.\(^47\)

### 3.3 THE HUMAN RIGHTS COUNCIL AND THE UNIVERSAL PERIODIC REVIEW

In addition to the treaty monitoring bodies for each human rights instrument described above, the United Nations human rights system also includes the Human Rights Council, a subsidiary body of the General Assembly created in 2006 to replace the now-defunct Human Rights Commission. The Council monitors human rights

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\(^{46}\) Soft law refers to quasi-legal instruments which carry legal weight, though generally less than hard law legal instruments, such as treaties. Soft law takes less time to develop than customary international law. (For a definition and discussion of customary international law, see Section 2.4). Soft law is often aspirational, outlining shared goals to work toward rather than obligations to be immediately imposed. The international community has not reached full consensus as to the content and legal force of soft law, but most agree that soft law includes many UN General Assembly Declarations and Resolutions, such as the Universal Declaration of Human Rights, as well as international principles, guidelines and action plans such as the Millennium Development Goals. Soft law is important not only for its legal force, but also its moral and political force; even if it cannot be enforced in a court, it can be used to name and shame in the “court” of international public opinion.

\(^{47}\) For a definition and discussion of customary international law, see Handbook Section 2.4 Customary International Law.
violations around the world and makes recommendations on how to address them. In 2009, the U.S. was elected by the General Assembly for a three-year term on the 47-seat Council. Human rights monitoring mechanisms through the Council include the Universal Periodic Review process and Special Procedures, discussed in the next section. The Human Rights Council reviews the human rights records of all 192 United Nations Member States once every four years through the Universal Periodic Review (UPR) process. This mechanism, created in 2006, is meant to provide an opportunity for each State to discuss what actions it has taken to fulfill its human rights obligations, and to respond to questions and criticism by other States and civil society. The U.S. underwent its first Universal Periodic Review in 2010.

The UPR is unique because it includes the opportunity for advocates to engage with the U.S. government regarding its compliance with existing human rights obligations beyond those included in ratified treaties. The review includes an assessment of compliance with both the U.N. Charter and the Universal Declaration of Human Rights, which provide protection for civil and political rights, as well as economic and social rights.

The Human Rights Council’s Universal Periodic Review is based primarily on three reports. One report is submitted by the State under review and should be informed by consultations with civil society. A second report is compiled based upon the shadow reports submitted by civil society (giving legal aid attorneys an opportunity to advocate for stronger human rights protections and publicize human rights violations). The Council also relies on contributions from other U.N. bodies (including the treaty bodies, discussed above, and the Special Procedures, discussed below), which are compiled into a third report.

Having received all of these reports, the Human Rights Council conducts a three-hour interactive dialogue with representatives of the State under review. The State presents its report, answers questions, and receives recommendations from other U.N. member countries. The result of this review is an outcome document that includes an assessment of human rights compliance and recommendations made during the review.

Although the Universal Periodic Review mechanism has the potential to enable regular, comprehensive and objective monitoring of human rights in all countries, its actual effect is less clear. The Human Rights Council’s recommendations are not binding on the State under review. Furthermore, the Human Rights Council is a body composed of State representatives, not independent human rights experts. This makeup of the Council can hamper its credibility when member States are perceived to be motivated by political interests rather than a genuine desire to protect human rights. Nevertheless, U.S. advocates may find it useful to cite the Council’s UPR report on the U.S. Both the outcome document and the reports discussed above can also be used to educate the public and engage with government officials about applicable human rights standards, including standards pertaining to treaties to which the U.S. is not a party. In the long term, the UPR process is also a part of the development of soft law and customary international law.

3.4 SPECIAL PROCEDURES—SPECIAL RAPPORTEURS

Special Procedures are the mechanisms established through the Human Rights Council to address specific country situations or thematic issues. Special Procedures are either an individual (usually called a Special Rapporteur, but can also be called a Special Representative, or an Independent Expert) or a working group. Each Special Procedure has its own mandate, defined by the resolution that created it. The Special Procedures are independent experts and receive information on specific human rights abuses and request relevant States’ responses to the allegations.

48 Additional general information about the UPR can be found at http://www.ohchr.org/EN/HRBODIES/UPR/Pages/UPRMain.aspx.
49 Documentation relating to completed and ongoing Universal Periodic Reviews, including the reports and outcome documents discussed in this subsection, are available at http://www.ohchr.org/EN/HRBODIES/UPR/Pages/Documentation.aspx. In addition, the Danish Institute for Human Rights has produced this introductory overview of the UPR, http://www.humanrights.dk/files/doc/UPR/spot_on%20%20eng.pdf.
Special Procedures also conduct country visits to investigate human rights situations first-hand. There are currently 36 thematic mandates and 10 country mandates. Some of the Special Rapporteurs relevant to legal issues covered in this Handbook include: the Special Rapporteur on Adequate Housing, the Special Rapporteur on Extreme Poverty and Human Rights, the Special Rapporteur on the Right to Food, the Special Rapporteur on the Right of Health, the Special Rapporteur on Racism, the Special Rapporteur on the Rights to Water and Sanitation and the Special Rapporteur on Violence Against Women. The term of a thematic Special Rapporteur lasts three years and they can serve a maximum of two terms.

Special Procedures issue findings and recommendations through public reports. Special Procedures can play an important role by clarifying the content and scope of specific rights, but also can use their position to raise awareness and draw attention to specific issues. Through these mechanisms, they may even have the power to prevent widespread human rights violations.

Like the Human Rights Council’s UPR recommendations discussed above, the recommendations of Special Procedures are not binding on the State under investigation, but may still be relevant to advocates as examples of international naming and shaming of particular policies and practices relating to, e.g., domestic violence. The findings and recommendations of these bodies may carry greater weight than those of the Human Rights Council because Special Procedures are independent: they do not serve on behalf of any State and they do not gain financial compensation for their work.

### 3.5 HOW TO BRING A CASE BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS


Unlike the United Nations system, where the U.S. refuses to comply with individual complaint procedures under any human rights treaty, U.S. advocates can file an individual complaint on behalf of clients with the Inter-American Commission on Human Rights and the U.S. must respond and submit to the Commission’s hearing process. This is an additional human rights advocacy strategy for legal aid attorneys to consider.

The Inter-American human rights system consists of the Organization of American States (OAS), the Inter-American Commission on Human Rights in Washington D.C. and the Inter-American Court of Human Rights in Costa Rica. The OAS Charter is the constitutional text of the organization and was ratified by the U.S. in 1951. The human rights principles set out in the OAS Charter are further developed in the American Declaration on the Rights and Duties of Man.

The Inter-American Commission was created in 1959 to “promote the observance and defense” of human rights in OAS member states. The Inter-American Commission on Human Rights carries out a variety of human rights monitoring and promotion activities, not unlike the U.N. Human Rights Council. Advocates may pursue a variety of avenues at the Inter-American Commission, including: thematic or general hearings on a particular issue

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50 For more information on Special Procedures, visit http://www2.ohchr.org/english/bodies/chr/special/index.htm.
51 As of May 1, 2012. A list of the thematic mandates can be found at http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx. A list of the country mandates can be found at http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.

or series of issues; on-site investigations and issue reports; or even Inter-American Court advisory opinions to
effectuate change. However, the Inter-American Commission is the only international forum in which individuals,
nongovernmental organizations acting on behalf of individuals, may bring human rights complaints against the
U.S. and have those complaints adjudicated by a decision-making body. This is an advocacy avenue increasingly
pursued by advocates in the U.S. This section is designed to give legal aid attorneys the basic information they
need to bring a case before the Inter-American Commission on Human Rights.

3.5.1 PETITIONER(S) MAY BE INDIVIDUAL(S) OR ORGANIZATION(S)

Individuals, groups of individuals or organizations may file a complaint with the Commission alleging that the
federal government is responsible for human rights violations. In addition, the petitioner(s) may or may not be the
victim(s). For example, a legal aid attorney could file a complaint on behalf of a community group alleging human
rights abuses committed by the U.S. Petitions may be submitted without the victim’s knowledge or authorization.
The Commission accepts collective petitions, indicating numerous victims of a specific incident or practice, but not
class action suits that set forth generalized harms not limited to a specific group or event. 55

3.5.2 CASES ARE BROUGHT AGAINST A MEMBER STATE OF THE OAS

The Commission will only hear cases against member states of the OAS and not against individual persons or
groups of persons for private conduct.

3.5.3 ALL APPEALS IN DOMESTIC COURTS MUST BE EXHAUSTED BEFORE BRINGING A CASE
TO THE INTER-AMERICAN COMMISSION

Petitioners may turn to the Commission for relief once they have exhausted all appeals or if domestic
procedural restrictions (such as those imposed in Ledbetter v. Goodyear Tire and Rubber Company) or legal
precedent preclude the pursuit of remedies in U.S. courts. 56 The Commission is not designed for cases of first
relief, but rather the Commission is best used as an additional avenue for putting pressure on the U.S. when other
advocacy methods fail. Moreover, petitions must be filed within six months of notification of final judgment or,
under certain circumstances, within a “reasonable period” of time thereafter. 57

3.5.4 DUPLICATIVE CASES WILL NOT BE HEARD

The Commission will not consider petitions that are duplicative of cases pending before or resolved by other
ternational tribunals, or cases that the Commission itself has already resolved. 58

55 For more information and for a copy of the model petition published by the Inter-American Commission on Human Rights, visit the
www.cidh.org/Basicos/English/Basic_TOC.htm (hereinafter “Inter-Am. C.H.R. R. Proc.”). The six-month rule does not apply, for instance, where
there is a continuing violation (Dominguez Dominechetti v. Argentina, Case 11.819, Inter-Am. C.H.R., Report No. 51/03, OEA/Ser.L./V/II.118,
doc. 70 rev. 2 ¶ 48 (2003). In considering the reasonableness of a time period under this admissibility requirement, the Commission has held
that nine years after filing the last domestic appeal constitutes a “reasonable period of time” where there has been an unjustified delay in the
judicial proceedings of the national courts. See James Judge v. Ecuador, Petition 12.393, Inter-Am. C.H.R., Report No. 10/02, at paras. 18 & 22
(Feb. 27, 2002) (holding that a nine year delay is a reasonable period of time). See also Evandro de Oliveira et al. v. Brazil, Case 11.694,
Inter-Am. C.H.R., Report No. 36/01, at paras. 22–26 (Feb. 12, 2001) (holding that a six year delay is a reasonable period of time); Jesús Enrique
Valderama Perea v. Ecuador, Petition 12.090, Inter-Am. C.H.R., Report No. 12/02, at paras. 13 & 17 (Feb. 27, 2002) (holding that a five year
delay is a reasonable period).
3.5.5 THE U.S. MAY BE HELD RESPONSIBLE FOR VIOLATING HUMAN RIGHTS AS A RESULT OF ACTIONS, OMISSIONS OR ACQUIESCENCE

The Commission has imputed casual responsibility to federal governments through its omission or failure to respond appropriately to private conduct that violates human rights, as well as a result of actions by the federal government or its agents.59

3.5.6 URGENT AND SERIOUS RELIEF MAY BE REQUESTED IN THE FORM OF PRECAUTIONARY MEASURES

The Commission considers claims for what are called precautionary measures—which are akin to temporary restraining orders or injunctions—and helps negotiate “friendly settlements” between the parties in contentious cases.60

Examples of requests for Precautionary Measures against the U.S. Government:

Celina Adon Reyes et al v. U.S.

Examples of Precautionary Measures decisions by the Commission against the U.S. Government:

Mossville Environmental Action Now v. U.S.

3.5.7 RESPONSE & CASE ACCEPTANCE PROCEDURE

A panel of commissioners decides whether the petitioner has met the procedural requirements and whether the Commission has competence (akin to jurisdiction) to examine the human rights claims contained in the petition. If the Commission determines that it has competence, it registers the petition, assigns it a number, and then transmits the petition to the state in question. The state (the Department of State represents the U.S. in these matters) normally has two months to respond to the petition. The Commission may request further submissions from the parties, and the petitioner may request an admissibility hearing.61

Examples of U.S. Government responses to the Commission:

Response of the Government of US to the IACHR Regarding Petition of Jessica Gonzales
Response of the Government of USA to the IACHR Regarding Petition of Michael Mackason et al

Examples of Admissibility decisions by the Commission against the U.S. Government:

- Admissible: **Mossville Environmental Action Now v. U.S.**
- Admissible: **Undocumented Migrant, Legal Resident, and U.S. Citizen Victims of Anti-Immigrant Vigilantes v. U.S.**

### 3.5.8 WHAT HAPPENS IF THE COMMISSION ACCEPTS A CASE?

The Commission then considers evidence presented before it and may hold hearings or even conduct investigatory field or on-site visits in which it does its own fact-finding. Petitioners may also request that key local, state, or federal government officials participate as part of the government’s delegation.  

### 3.5.9 WHAT HAPPENS IF THE COMMISSION MAKES FINDINGS THAT THE U.S. VIOLATED THE HUMAN RIGHTS OF A PERSON OR GROUP OF PERSONS?

The Commission explains its decisions in published reports and recommendations. The published reports and recommendations state the Commission’s findings, its determination as to whether a violation occurred, and its suggested remedies. Remedies may include the payment of damages, a public apology, an investigation into the source of a violation, and suggested changes in law, action, or policy.  

After the issuance of the report, petitioners may request a working meeting with the Commission and the state to discuss state progress in implementing the Commission’s recommendations. The Commission publishes statistics on state compliance in its Annual Report.  

### 3.6 HUMAN RIGHTS PRINCIPLES APPLIED TO INTERACTIONS WITH CLIENTS AND OTHERS

*Adapted with permission from: Lauren E. Bartlett, Human Rights Principles for Legal Aid (2012).*

Focusing on the intersection between human rights, ethics and professionalism, this section focuses on how to apply human rights principles to interactions with clients and others. The Human Rights Principles for Legal Aid (the “Human Rights Principles”) introduced in this article are premised on the Michael Jackson’s tenet: you start with the man (or woman) in the mirror if you want to make the world a better place. The Human Rights Principles aim to transform the client-staff relationship and the legal aid office itself, putting the client at the center, both in terms of decision-making and also in terms of empowering clients to tell their own stories and to be their own advocates. For lawyers, legal codes of ethics and rules of professional conduct all too often provide only a baseline for conduct, focusing on what you absolutely cannot do as an attorney or what you need to do in order not to lose your license. As you will see, the Human Rights Principles, read alongside legal codes of ethics or rules of professional conduct, are much more aspirational. The Human Rights Principles provide very simple, yet ambitious goals, such treating all people with respect and as an equal at all times. Moreover, the Human Rights Principles are shared goals. The Human Rights Principles are not meant to apply only to licensed attorneys, but to...

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62 Bettinger-López, supra note 53, at 586;  
63 Id.  
64 Id.  
everyone involved in legal aid work: clients, colleagues, supervisors, opposing counsel, interns, etc.—the legal aid office as a whole.

To begin, this section explains how and why the Human Rights Principles were developed. Next, the Human Rights Principles are introduced. To further demonstrate how the Human Rights Principles directly relate to the role of a legal aid attorney, in particular, this section then maps the connections between the Human Rights Principles and the American Bar Association’s Model Rules of Professional Conduct. Lastly, this section makes suggestions on how to operationalize the Human Rights Principles.

3.6.1 DEVELOPMENT OF THE HUMAN RIGHTS PRINCIPLES FOR LEGAL AID

The human rights framework provides progressive goals and good examples for how people should treat each other and interact within legal systems. When the Center first began working to develop and operationalize the Local Human Rights Lawyering Project, we decided to try to articulate how to apply human rights principles to lawyering and what we ended up with, after the process described below, are the Human Rights Principles for Legal Aid.

In doing initial research on how to integrate human rights principles into legal aid, we realized quickly that there is a dearth of written materials on the topic. Martha Davis, Professor of Law at Northeastern University School of Law, recently wrote one of the few articles that is on point, entitled “Human Rights and the Model Rules of Professional Conduct: Intersection and Integration”.67 In that article Davis writes, “[h]uman rights norms, at their most basic, recite fundamental principles of morality intended to govern behavior of governments as well as individuals…Both human rights and legal ethics share common ground for implementing moral principles.”68 Davis also particularly notes specific human rights principles relevant to professional conduct, including “respect for human dignity, participation (and leadership) of those most affected in crafting solutions to their problems, and recognition of the interrelationships between the full range of human rights.”69 Davis further notes that:

[The lawyer’s obligation to “keep a client reasonably informed” and to “explain a matter to the extent reasonably necessary” would arise from the recognition of the client’s individual dignity consistent with human rights norms, not merely from common law principles of agency…In the current Model Rules, the moderating qualification of “reasonableness” sits in tension with a human rights value—derived from the concept of human dignity—of ensuring participation and, where feasible, leadership by those most affected by rights violations. Changing the terrain underlying the requirement of “reasonableness”…to reflect…human rights norms would likely shift the content of the reasonableness standard toward greater expectations for communication and client participation.]

The U.N. has made efforts to address these needs by developing the Basic Principles on the Role of Lawyers which, though not binding, provide a human rights framework which can be used to examine the role of the attorney.71 The U.N. principles state that:

[[]]awyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.”72

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68 Id.
69 Id. at 179.
70 Id. at 179-80.
72 Id., Principle 14.
In discussions about integrating human rights into legal aid with colleagues and our Project Partners, it became clear that there was a need to be able to articulate the specific human rights principles that apply. It was also clear that we would need to be able to explain how to relate human rights principles to legal ethics and rules of professional conduct for lawyers. A written code seemed to be the best model, which legal aid attorneys could keep on hand and reflect upon during interactions with clients by phone and in person. Using a number of social work codes of ethics which integrate and/or reflect human rights principles as models, we drafted the Human Rights Principles listed below. The Human Rights Principles have since been reviewed by more than fifty practitioners (including the Local Human Rights Lawyering Project Partners and Advisory Board members, academics, students, and others) and revisions have been made to simplify and clarify the language, to tighten parallels with the rules of professional responsibility (mapped out in more detail below), and to better reflect the experiences of additional legal aid staff.

### 3.6.2 THE HUMAN RIGHTS PRINCIPLES FOR LEGAL AID

The human rights principles listed below outline core values which combine human rights, ethics, professional responsibility and client-centered lawyering in pursuit of a set of standards which legal aid attorneys can use both internally and externally. The Human Rights Principles are designed to be publicly displayed in legal aid offices by way of a poster, or possibly online as a meme, with accompanying colorful infographics.

1. **Human Dignity**
   - Treat all people with respect, not as a gesture of charity but as an act of justice. Respect the inherent worth of each individual, each family and their communities. Be patient, kind, and on time. Listen with empathy. Communicate with understanding and honesty. Keep private information private.

2. **Participation and Self-Determination**
   - Meaningfully involve clients in identifying problems, goals, planning and case strategy. Empower clients to tell their own story and advocate for themselves. Clearly and simply explain the law and process, clients’ rights, the role of Legal Aid, and the role of the client.

3. **Equality**
   - Respect all others as your equal. Recognize strength in diversity. Take responsibility for discrimination based on your own beliefs, including but not limited to discrimination based on mental health, sexual orientation, homelessness, education level, age, political opinion, culture, source of income, and place of origin. Work to end all discriminatory acts in your office, as well as in your community.

4. **Solidarity**
   - Foster teamwork among clients and staff. Constantly challenge the traditional power structure of the client-staff relationship. Recognize your strengths and your client’s strengths and invest those strengths in shared responsibilities. Stand with your clients and fellow staff members to fight poverty and expand rights for the most vulnerable.

5. **Innovation**
   - Pursue creative remedies towards shared goals. Litigation is only one option among many. Ask what more you can do to counsel, educate, and advocate for your clients and their communities. Encourage your client to use other tools including community education, organizing, legislation and civic participation. Consider using international and regional mechanisms such as special rapporteurs, United Nations treaty-body monitoring committees and the Inter-American Commission on Human Rights.

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3.6.3 COMPARISON OF THE HUMAN RIGHTS PRINCIPLES FOR LEGAL AID TO THE MODEL RULES OF PROFESSIONAL CONDUCT

The Human Rights Principles could be compared with various codes of legal ethics, but for the sake of brevity, this article focuses on a comparison of the Human Rights Principles to the American Bar Association’s Model Rules of Professional Conduct (the “Model Rules”).

In general, the Human Rights Principles are aspirational, as opposed to the Model Rules which provide more of a baseline for attorney conduct. The Human Rights Principles are also phrased positively, whereas the Model Rules are phrased negatively (e.g. the Human Rights Principles emphasize communicating with honesty; the Model Rules require a lawyer not to make a false statement of material fact). In addition, unlike the Model Rules, the Human Rights Principles are designed to include and apply to all staff at a legal aid organization, including administrative staff, intake workers and interns, not only the attorneys. Below is a detailed explanation of how the Human Rights Principles are related to the Model Rules, with each of the five sections of the Human Rights Principles mapped out separately.

With regard to the human rights principle of “Human Dignity”, respect, honest communication and privacy are key. The Model Rules do not mention respect for clients except in the limited case of clients with disabilities. The Model Rules do, however, require respect for the legal system, those who serve it, and for the rights of third persons. The Model Rules also incorporate several other ideas related to respect, such as diligence and promptness.

In terms of honest communication, the Model Rules require truthfulness in statements to others and also provide that lawyers “should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.” The Model Rules, however, allow for some delay in transmitting information to clients. Client privacy or attorney-client privilege is addressed in great detail by the Model Rules; however, the Model Rules do not provide for broader privacy as the Human Rights Principles do. For example, the statement about privacy in the Human Rights Principles is very broad and is meant to not only apply to the attorney-client relationship, but also to privacy between supervisors and among staff members.

The “Participation and Self-Determination” section of the Human Rights Principles focuses on empowering clients and placing them at the center of advocacy decisions and strategy. This is a different and almost radical approach to the client-lawyer relationship. Compare this section with the Model Rules, which state:

In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. However, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail.

Moreover, previous versions of the Model Rules, and the current rules of professional conduct in some states, such as Texas, include the statement, “Lawyers, as guardians of the law…” The Model Rules push for a strict and
narrow view of the allocation of authority between lawyer and client, whereas the Human Rights Principles require the opposite approach. The Human Rights Principles require that the law and process, as well as the scope of clients’ rights and the roles of all involved, must be clearly and simply explained to clients, and that clients must be meaningfully involved in the entire case process from intake to litigation strategy.

The “Equality” section of the Human Rights Principles is meant to inspire respect for diversity and action to end discriminatory acts. This section lays out specific, if not somewhat unusual, bases for discrimination, to try to make one think about possible personal biases that could affect behavior towards others. The Model Rules put some emphasis on discrimination within the legal system, including against the poor and persons with disabilities. For example, the Model Rules emphasize that “a lawyer should seek improvement of...access to the legal system” and “[a] lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.” The Model Rules also state that “[t]he fact that a client suffers a disability does not diminish the lawyer’s obligation to treat the client with attention and respect.” However, the Model Rules do not address equality and discrimination outside of those brief mentions in the context of poverty and disabilities.

The Human Rights Principles section on “Solidarity” requires the opposite of viewing the role of lawyers as “guardians of the law.” Instead, solidarity requires teamwork between clients and staff, recognizing the strengths of clients and challenging traditional power structures. At first this may seem to conflict with the Model Rules regarding conflicts of interest. However, if one recognizes that the core goal of representing each accepted client at legal aid is to fight poverty and expand the rights of the most vulnerable, then it seems much more difficult to find a true conflict of interest issue. Both the Model Rules and the Human Rights Principles emphasize access to justice for those in poverty.

The “Innovation” section of the Human Rights Principles is likely the most controversial, requiring lawyers to step outside their traditional roles to pursue creative remedies and innovative advocacy approaches, such as civic participation and international mechanisms. The Model Rules do, however, emphasize that a lawyer performs various functions, including advisor, advocate, negotiator and evaluator. The Model Rules also require that lawyers “should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession,” which likely all require innovative strategies. One other important difference to keep in mind is that where the Innovation section of the Human Rights Principles asks what more you can do to counsel, educate and advocate for your clients and communities, the Model Rules require zealous advocacy, yet “[a] lawyer is not bound, however, to press for every advantage that might be realized for a client.” Traditional views of zealous advocacy are much different than thinking outside of the box about how to both stand in solidarity with and empower a client to reach their own goals.

3.6.4 OPERATIONALIZING THE HUMAN RIGHTS PRINCIPLES FOR LEGAL AID

Some legal aid attorneys may find that Human Rights Principles affirm how they have always interacted with their clients. Others may use the Human Rights Principles as a practice guide, or as a set of friendly reminders or goals. A legal aid organization could even integrate the Human Rights Principles into practice guides or employee protocols; the Human Rights Principles can be used as a model for a legal aid organization to develop their own human rights code with staff members. The Human Rights Principles may also form the basis of training modules wherein staff members are given fact patterns and must use the Human Rights Principles to navigate difficult

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83 Id. at Rule 1.2.
84 Id. at Preamble [6].
85 Id. at Rule 1.14[2].
86 See Id. Rule 1.7.
87 Id. at Preamble [6].
88 Id. at Preamble [2].
89 Id. at Preamble [6].
90 Id. Rule 1.3 [1].
situations that have arisen at intake and during interviews with clients, in the lunchroom with other staff, in salary
negotiations with supervisors, in the courtroom with colleagues and otherwise. At the very least, the Human Rights
Principles are meant to be a starting point for a legal aid organization that wishes to begin a much longer
discussion about integrating human rights into daily work.

It is our hope that the Human Rights Principles will be used by legal aid attorneys across the United States to
re-examine their roles towards greater effect. It is by no means easy to examine one’s own actions and to “change
your ways.” It is much easier to simply tell yourself you are already a good lawyer and leave it at that.
However, if legal aid attorneys want to move towards using human rights in their daily work and viewing
themselves as human rights attorneys, they must start first by looking in the mirror.

91 See Michael Jackson, supra note 66.
This section of the Handbook is designed to give legal aid attorneys in the U.S. the specific information needed to make persuasive human rights arguments in state and federal court. Section 4.1 International Human Rights Law is Difficult to Enforce Directly in U.S. Courts is designed to explain why it is so difficult to enforce human rights law in U.S. courts. We encourage legal aid attorneys to use the sample arguments in Section 4.2 Human Rights Law Adds Value to Judicial Interpretation in the U.S. with Sample Arguments to supplement their current work by cutting and pasting these arguments into pleadings and briefs. Section 4.3 Special Considerations When the Government is Not a Party to the Suit provides an overview of the considerations that need to be taken to into account when the government is not a party to the suit you are litigating. Section 4.4 International Law in Project Partner State Courts provides an overview of any and all citation and interpretation of international law by state and federal courts in Maryland and Texas, where the first Local Human Rights Lawyering Project Partners are located. Section 4.5 Sample Opposition Arguments provides sample opposition arguments that have been made in real cases in response to a human rights argument. These sample opposition arguments are intended to help legal aid attorneys anticipate arguments and strategies that may be used by the opposition when litigating human rights law in state or local courts.

4.1 INTERNATIONAL HUMAN RIGHTS LAW IS DIFFICULT TO ENFORCE DIRECTLY IN U.S. COURTS

Whether created through ratified treaties or as customary law, international law is part of federal law and trumps state law. International law applies to states through the Supremacy Clause of the U.S. Constitution, which defines federal law, including ratified treaties, as the supreme law of the land. Some state constitutions even include explicit provisions to this effect. In Maryland and West Virginia, for example, the state constitutions expressly provide that treaties are the supreme law of the land. Moreover, international obligations must be “implemented at the appropriate government level – federal, state or local.”

However, unless ratification includes the clear intent that the treaty be directly enforceable by the courts (i.e., “self-executing”), or unless Congress passes implementing legislation, the treaty is not judicially enforceable. The Senate typically ratifies human rights treaties with “reservations” affirming that they are not “self-executing,” and the courts uphold this limitation. The problem is that Congress has not enacted implementing legislation for most of the human rights conventions that the U.S. has ratified. The major exceptions are the Torture Victims Protection Act (“TVPA”) for the Convention Against Torture (“CAT”) and the International Child Abduction

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94 U.S. CONST., art. VI, cl. 2 (“This Constitution, and the Laws of the U.S. which shall be made in Pursuance thereof; and all Treaties made, or shall be made, under the authority of the United States, shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”)
97 See Medellin, supra note 5 (“not all international law obligations automatically constitute binding federal law enforceable in U.S. courts […] while treaties may comprise international commitments they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be ‘self-executing’ and is ratified on these terms.”); Igartúa v. United States, 654 F.3d 99 (11th Cir. 2011) (“The treaties in question here do not adopt any legal obligations binding as a matter of domestic law. […] the International Covenant on Civil and Political Rights, is a ratified treaty but was submitted and ratified on the express condition that it would be ‘not self-executing.’”); Guaylupo-Moya v. Gonzales, 423 F.3d 121 (2nd Cir. 2005) (“In the context of the International Covenant on Civil and Political Rights (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171, the United Nations Universal Declaration of Human Rights, 1948, G.A. Res. 217(III)A, U.N. Doc. A/810, the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, none of these sources of international law have the effect of domestic law. The ICCPR is a signed and ratified treaty, but it came with attached reservations, understandings, and declarations declaring that it is not self-executing. Self-executing treaties generally have the force of domestic law and can be directly enforced by courts. But when a treaty is not self-executing, the treaty does not provide independent, privately enforceable rights.”); Buell v. Mitchell, 274 F.3d 337 (6th Cir. 2001).

The TVPA is the implementing legislation for the CAT, and the TVPA states it is “an act to carry out obligations of the U.S. under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”98 However, the TVPA severely limits the scope of enforcement of CAT in the U.S.

The International Child Abduction Remedies Act is the implementing legislation for the Hague Convention and states that this legislation provides “a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.”99 In its reservations, the U.S. specifically pointed out that it would help cover costs and expenses of representation if a legal aid program took this type of case. The Legal Services Corporation recently issued guidance to its grantees clarifying that they may represent foreign indigent parents in these cases.100

Other possibly relevant U.S. legislation related to treaty implementation includes the International Religious Freedom Act, passed by Congress in 1998, which cites the UDHR and the ICCPR and states, “It shall be the policy of the U.S., as follows: (1) To condemn violations of religious freedom, and to promote, and to assist other governments in the promotion of, the fundamental right to freedom of religion.”101

In addition, President Bill Clinton issued an executive order in 1998 ordering U.S. implementation of international human rights treaties “to which it is a party, including the ICCPR, the CAT, and the CERD” which has been codified at 5 USCS § 601.102

It is important to note here though, that however difficult it is to enforce human rights treaties directly in U.S. courts, many of the principles in the human rights treaties have risen to the level of customary international law. Customary international law does not require implementing legislation to be binding in the U.S. and is binding on U.S. courts.103

4.2 HUMAN RIGHTS LAW ADDS VALUE TO JUDICIAL INTERPRETATION IN THE U.S. WITH SAMPLE ARGUMENTS

In addition to customary international law, which is binding on U.S. courts, there are at least five types of arguments that can be made in state courts that human rights law has particular value for judicial interpretation:

ARGUMENT 1

The first is that the history of certain state constitutions may support, if not compel, looking to foreign and international law for legal interpretation purposes. For example, Maryland’s Declaration of Rights provides in article 2 that treaties are the “Supreme Law of the State.”104 You should look to your own state constitution to see if this makes sense.

102 Exec. Order No. 13107, supra note 5.
103 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, § 102, supra note 3; LOUIS HENKIN, supra note 25.
104 Davis, supra note 95 (noting that the legislative history of Section 3 of New York’s constitution, granting the right to health, suggests that the framers as well as the public who ultimately approved the provision in 1938, were responding to both specific health needs of the state and an international dialogue on public health and state responsibility in which many New Yorkers participated. With respect to this legislative history, Professor Martha Davis notes: “Given this context, New York's state constitutional reference to health can only be properly understood with reference to the international law of public health.”); Vicki Jackson, Constitutional Dialogue and Human Dignity: States and Transnational
SAMPLE ARGUMENT 1

The legal tradition in the U.S. has long embraced looking to foreign and international precedent for guidance on domestic legal questions. Consequently, federal and state courts in the U.S. regularly look to the opinions of international bodies and colleagues in foreign jurisdictions for assistance in reaching sound conclusions under domestic law.

While international law may not, in most cases, bind U.S. courts, it nevertheless provides an important source of persuasive authority. This is true despite the Supreme Court’s ruling that non-self-executing treaties require congressional legislation to bind U.S. courts. See Medellin v. Texas, 128 S.Ct. 1356 (2008). In fact, the U.S. Supreme Court has significantly expanded its willingness to consider international law when deciding cases in recent years. For instance, the Court has expressly looked to the laws and opinions of other nations and international bodies in determining issues pertaining to the fundamental rights of freedom, equality and privacy, see, e.g., Lawrence v. Texas, 539 U.S. 558, 576 (2003) (noting that the European Court of Human Rights and other nations “have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct”), Grutter v. Bollinger, 539 U.S. 306, 344-45 (2003) (Ginsburg, J., concurring) (citing The International Convention on the Elimination of All Forms of Racial Discrimination and The Convention on the Elimination of All Forms of Discrimination Against Women to provide support for affirmative action under the Constitution), as well as issues pertaining to the rights guaranteed by the Eighth and Fourteenth Amendments of the Constitution. See, e.g., Roper v. Simmons, 543 U.S. 551, 575-78 (2005) (the Court’s determination that the death penalty is disproportionate punishment for juvenile offenders “finds confirmation” in the fact that the U.S. was the only country in the world that officially sanctioned the practice); Atkins v. Virginia, 536 U.S. 304, 316 n.21 (2002); Washington v. Glucksberg, 521 U.S. 702, 718 n.16 (1997), Trop v. Dulles, 356 U.S. 86, 102-03 (1958). In short, the Supreme Court has indicated that international law offers “respected and significant” authority of which courts should take note. Roper, 543 U.S. at 554.

The highest courts across the country have also increasingly looked to international law in recent years when interpreting their own constitutions and statutes. See, e.g., In re Marriage Cases, 43 Cal. 4th 757, 819 n.41 (Cal. 2008) (citing the International Convention on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights in declaring that marriage is a fundamental interest of the individual and the state). See also Grimes v. Kennedy Krieger Inst., 366 Md. 29, 113 (Md. 2001) (looking to the Nuremburg Code, a set of ethical standards for conducting research on human subjects, for persuasive authority in determining that scientific experimentation on minors who had been exposed to lead without their consent violated their rights under state tort law); Opportunity Agenda, Human Rights in State Courts (2011), http://opportunityagenda.org/legal_and_policy_analysis_human_rights_state_courts_2011 (surveying state courts’ use of international law).

Constitutional Discourse, 65 MONT. L. REV. 15, 24 (2004) (tracing the Montana constitution’s provisions on “human dignity” to origins in the Universal Declaration of Human Rights (UDHR) and noting the 1972 amendment to Montana’s constitution, which included the term “human dignity,” was drawn from Puerto Rico’s constitution. Also noting During the drafting of Puerto Rico’s constitution, “the United Nations played a key role, both in inspiring provisions based on the UDHR and as a vehicle for attempted resolution of the Commonwealth’s relationship to the United States”).

ARGUMENT 2

The second argument is that international jurisprudence may offer precedent and models that are far more on point for the case at hand than anything in the federal system or even sister states. Economic and social rights, with some notable exceptions, are still woefully underdeveloped in federal jurisprudence and there are other jurisdictions that have grappled with key issues, such as the relationship between courts and legislatures, the standard of review for positive health or housing rights, and appropriate remedies. Such precedents may represent the only available cases directly on point, and thus the most relevant sources of law for state courts developing economic and social rights provisions in their own constitutions. 105

SAMPLE ARGUMENT 2

Where domestic Constitutional or statutory law is vague, courts have looked to treaties and international law for interpretive guidance. See Hilton v. Guyot, 159 U.S. 113, 163 (1895) (stating “international law . . . is part of our law, and must be ascertained and administered by the courts of justice, as often as such questions are presented in litigation. . . .”); Sosa v. Alvarez-Machain 124 S. Ct. 2739, 2764 (2004) (declaring “[f]or two centuries we have affirmed that the domestic law of the U.S. recognizes the law of nations.”); State v. Steffen, 1994 Ohio App. LEXIS 1973 (Ohio App. 1994) (involving claim that Ohio death penalty provision violated treaties and customary international law); Trop v. Dulles, 356 U.S. 86, 102, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958) (noting the climate of international opinion regarding acceptability of a particular punishment). See also U.S. Const. art. VI, cl. 2. (stating “[A]ll Treaties made... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...”); U.S. Const. art. 1, § 8, cl. 10 (“The Congress shall have Power... [t]o define and punish... Offences against the Law of Nations.”); RESTATEMENT (THIRD) OF FOREIGN RELATIONS, §§ 701, 701 cmt. e (“The U.S. is bound by the international customary law of human rights”).

“The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.” Roper v. Simmons, 125 S. Ct., 1183, 1200 (2005). See, e.g., State v. Wilder, 748 A.2d 444 (Me. 2000) (looking to European common law to support its finding of the fundamental right of parents to control the upbringing of their children).

From Leo Belanger et al v. John Mulholland sample brief, available here.

105 Davis, supra note 95.
ARGUMENT 3

The third argument is that state courts should interpret U.S. law as consistent with international law whenever possible. 106

SAMPLE ARGUMENT 3

The U.S. Supreme Court has recognized that the laws of the U.S. should be interpreted to be consistent with international law whenever possible. See, e.g., Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804) (“[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.”); Talbot v. Seeman, 5 U.S. (1 Cranch) 1, 43 (1801) (“[T]he laws of the U.S. ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations.”).

Moreover, under the Vienna Convention on the Law of Treaties, a State that has signed a treaty has an obligation “to refrain from acts which would defeat the object and purpose of a treaty,” unless and until that State has expressed its intention not to become a party. Vienna Convention on the Law of Treaties art. 18, January 27, 1980, 1155 U.N.T.S. 331. While the U.S. is not a party to the Vienna Convention, the U.S. recognizes that many of the Convention’s provisions have become customary international law. See, e.g., Maria Frankowska, The Vienna Convention on the Law of Treaties Before U.S. Courts, 28 Va. J. Int’l L. 281, 299-300 (1988) (discussing how the U.S. has demonstrated that it considers itself bound by the provisions of the Vienna Convention).

ARGUMENT 4

The fourth argument is that where there is no controlling U.S. law, state courts should look to customary international law for guidance for its decision. 107

SAMPLE ARGUMENT 4

U.S. Courts have long recognized that customary international law can provide guidance where there is no controlling domestic law. In fact, the Supreme Court stated in its 1900 decision, The Paquete Habana, that “International law is part of our law, and must be ascertained and administered by the courts of justice...as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations....” 175 U.S. 677, 700 (1900).

ARGUMENT 5

The fifth argument is that state courts should be part of the transnational dialogue on human rights simply because it is a vital conversation that promotes universal values. Such participation also enhances (and protects) the image and role of the U.S. in the international community. Only by participation can the U.S. legal community safeguard and build its influence globally. Moreover, participating in that “global conversation” provides an additional framework and bridge for dialogue between states on these compelling issues by offering a common language for judicial exchange. 108

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106 Id. at 366.
107 Id.
108 Id.
4.3 SPECIAL CONSIDERATIONS WHEN THE GOVERNMENT IS NOT A PARTY TO THE SUIT

Some, if not most, of the legal issues dealt with by legal aid attorneys do not involve the government as a party. We want legal aid attorneys to be able to make human rights arguments even when the government is not a party to the dispute at hand. However, special thought must be put into human rights arguments made when the government is not a party to the dispute at issue because international human rights conventions by nature bind governments, not private parties.

There are many examples of human rights law arguments that can be made in a dispute between private parties. For example, human rights law and international norms can help a court interpret or reinterpret a local statute that is at issue in a dispute between private parties, such as a divorce case where one party might argue that a local statute discriminates against women or same sex partners. Human rights law can also come into play when a party is arguing that they are third party beneficiaries to a contract between the government and a private entity, such as a public housing contractor in an eviction case or a bank in a foreclosure case.

Because human rights obligations bind governments, legal aid attorneys must think carefully when crafting legal arguments to be sure to bring the government into the case as a party or third party, or to address the validity of a statute or regulation capable of being enforced by government officials.

4.4 INTERNATIONAL LAW IN PROJECT PARTNER STATE COURTS

This section is designed to give our Project Partners, Maryland Legal Aid Bureau, Inc. and Texas RioGrande Legal Aid, Inc., a sampling of citations to and interpretations of human rights law by their respective state courts. For other states, each year the Opportunity Agenda publishes a brief on Human Rights in State Courts, which lays out, state by state, court decisions that have involved human rights law.

4.4.1 MARYLAND

In Trimble v. Maryland, the Court of Appeals mentioned that the International Covenant on Civil and Political Rights and the American Convention on Human Rights have called for the abolition of capital punishment of juveniles, but affirmed the death penalty sentence of a minor anyway. 300 Md. 387, 478 A.2d 1143 (Md. 1984). The defendant’s sentence was later vacated because he was improperly advised of his right to a jury sentencing, however, and he was sentenced to life in prison after Maryland passed a law prohibiting the death penalty for juveniles subsequent to the first case. Trimble v. State, 321 Md. 248, 264, 582 A.2d 794, 802 (Md. 1990). See also Md. Code, Art 27 § 412 (f)(1989), repealed by Acts 2002, c. 26, § 1, eff. Oct. 1, 2002.

In Grimes v. Kennedy Krieger Institute, the Court considered two separate negligence actions involving children who allegedly developed lead poisoning while participating in a research study with the defendant. 366 Md. 29, 782 A.2d 807 (Md. 2001). Relying on the Nuremburg Code, the Court held that informed consent can create a special relationship giving rise to greater duties, the breach of which are actionable in court. Id. at 858. The Court stated that the “Nuremberg Code specifically requires researchers to make known to human subjects of research ‘all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.’” Id. at 849.

The Court of Appeals in In re Heilig held that the trial court had mistakenly believed that it lacked jurisdiction to make a declaration that the petitioner was no longer male and now female. 816 A.2d 68, 372 Md. 692 (Md. 2003). The Court cited the European Convention for the Protection of Human Rights and Fundamental Freedoms and Goodwin v. United Kingdom, [2002] 2 FCR 577, 67 BMLR 199 (European Court of Human Rights (Grand Chamber) 2002) and stated that “a person has a deep personal, social, and economic interest in having the official designation of his or her gender match what, in fact, it always was or possibly has become.” Id. at 79.
In Diallo v. State, the Court of Appeals affirmed the trial court’s dismissal of Diallo’s claim that he had diplomatic immunity through his father. 994 A.2d 820, 413 Md. 678 (Md. 2009). Diallo claimed that he had diplomatic immunity through his father under the Vienna Convention on Consular Relations. *Id.* at 686. However, the Court of Appeals held that because Diallo’s father was a diplomat with the United Nations, the Convention on Privileges and Immunities of the United Nations of 1946 art. V, § 19, 13 Feb. 1946, 21 U.S.T. 1418 applied. *Id.* at 699. Moreover, because Diallo’s father was not present in the U.S. when the offense occurred, Diallo did not enjoy the “functional immunity” protection. *Id.*

### 4.4.2 Texas

In *Hinojosa v. Texas*, the defendant was convicted of capital murder and sentenced to death. 4 S.W.3d 240 (Tex. Crim. App. 1999). The Court of Criminal Appeals affirmed his conviction, refusing to overturn pursuant to the United Nations Charter, stating “individuals do not have standing to bring suit based on an international treaty when sovereign nations are not involved in the dispute” and “[t]he preamble, the portion of the Charter upon which appellant relies, does not establish individually enforceable rights.” *Id.* at 252-53. The Court stated, “[m]oreover, the Charter’s terms do not mandate abolition of the death penalty.” *Id.* at 252.

In *Sorto v. State*, the defendant appealed a judgment of the 184th District Court, Harris County, Texas that convicted him of capital murder and sentenced him to death. 173 S.W.3d 469 (Tex. Crim. App. 2005). The defendant argued that his death sentence violated the United Nations Convention Against Torture, Articles 6 and 14 of the International Covenant on Civil and Political Rights, and the Supremacy Clause of the United States Constitution. *Id.* at 490. However, the Court of Criminal Appeals held that the Senate filed reservations to both treaties stating that this language did not prohibit the U.S. from imposing capital punishment consistent with the Constitution. *Id.*

In *Ex parte Medellin*, a Mexican national was convicted of capital murder and sentenced to death. 223 S.W.3d 315 (Tex. Crim. App. 2006). The defendant filed an application for a writ of *habeas corpus*, claiming that his rights had been violated because he had not been told that he could contact a Mexican consular official after he was arrested in accordance with Article 26 of the Vienna Convention on Consular Relations. *Id.* at 321. While his application was pending the International Court of Justice (ICJ) issued its decision in the *Case Concerning Avena and other Mexican Nationals* (*Mex. v. U.S.*), a case in which Mexico claimed that the U.S. had violated the Vienna Convention by failing to timely advise more than fifty Mexican nationals awaiting execution in U.S. prisons, including Medellin, of their right to talk to a consular official after they had been detained. 2004 I.C.J. No. 128, 2004 ICJ LEXIS 11 (Judgment of Mar. 31). The ICJ ruled in favor of Mexico and held that the Vienna Convention does confer individual rights and that the U.S. violated the Convention. *Ex Parte Medellin* at 322. After the Court of Appeals and the Fifth Circuit denied relief to Medellin, he appealed to the U.S. Supreme Court. *Id.* Before oral argument at the Supreme Court, the President issued a memorandum directing state courts to give effect to the *Avena* decision under the principles of comity. *Id.* The U.S. Supreme Court subsequently dismissed Medellin’s writ as improvidently granted, stating that there is a possibility that “Texas courts will provide Medellin with the review he seeks pursuant to the *Avena* judgment and the President’s memorandum . . .”. *Medellin v. Dretke*, 544 U.S. 660, 125 S. Ct. 2088, 2092, 161 L. Ed. 2d 982 (2005). The Court of Criminal Appeals in Texas then found that the ICJ *Avena* decision and the Presidential memorandum did not constitute binding federal law under the Supremacy Clause of the U.S. Constitution and dismissed Medellin’s application for a writ of habeas corpus. *Ex Parte Medellin* at 352.

In the unpublished decision *Townsend v. Texas*, the defendant was found guilty of the offense of harassment for calling a law office repeatedly and intimidating the office staff. No. 14-96-01571-CR, 1999 Tex. App. LEXIS 9561 (Tex. Ct. App. Dec. 30, 1999). On appeal, the defendant argued that the statute under which he was convicted violated U.S. treaty obligations and violated *jus cogens* international law per the International Covenant on Civil and Political Rights. *Id.* The 14th District Court of Appeals declined to address the arguments, reasoning that “appellant’s complaints [did] not attack the validity of the judgment” and were “inappropriate on appeal.” *Id.*
In *Dubai Petroleum Company v. Kazi*, the decedent, a citizen of India, was killed while working on an oil rig off the coast of the United Arab Emirates. 12 S.W.3d 71 (Tex. 2000). Respondents, decedent's survivors, brought a wrongful death suit in Texas district court. *Id.* The trial court agreed with the respondent corporations, who argued that the trial court lacked subject-matter jurisdiction because India did not have "equal treaty rights" with the U.S., as required under the wrongful death statute that the Kazis sued under for injuries or death in a foreign state or country, and dismissed the case. *Id.* (quoting TEX. CIV. PRAC. & REM. CODE § 71.031(a) (1997)). *Id.* at 74. The court of appeals reversed, holding that the ICCPR, confers "equal treaty rights" between India and the U.S. *Id.* The Texas Supreme Court affirmed, but for different reasons. The Texas Supreme Court stated that the term "equal treaty rights" in the case at hand “simply means that the foreign country's law must, based on a treaty, afford U.S. citizens access to its courts to pursue any remedies available to its own citizens for personal injury or wrongful death.” *Id.* at 80. The court stated “treaties are to be construed broadly” and then went on to interpret article 14(1) of ICCPR, looking to the U.N. Human Rights Committee, General Comment No. 13(1), U.N. Doc. HR1/GEN/Rev.1 (1984), and holding that “the language of the Covenant provides for equal access to courts and equal treatment in civil proceedings, it satisfies the Kazis' initial burden of establishing “equal treaty rights””. *Id.* at 82-83. See also *Ford Motor Co. v. Aguiniga*, 9 S.W.3d 252, 261–62 (Tex. App. 1999) (discussing the ICCPR in the context of equal treaty rights in a negligence suit where subject matter jurisdiction was at issue).

The Tenth District Court of Appeals of Texas in the case of *In re Sigmar*, refused to grant the petitioner’s request to set aside temporary orders prohibiting him from (1) having unsupervised access to his child due to a potential risk for international abduction and (2) disposing of assets pending an evidentiary hearing. 270 S.W.3d 792 (Tex. Crim. App. 2009). The court stated “acts regarding another country's compliance with the Hague Convention on the Civil Aspects of International Child Abduction, or whether that country poses obstacles to the prompt return of a child taken there or poses risks to the child’s safety are legislative facts about which a trial or appellate court may take judicial notice without prompting by the parties.” *Id.*

In *Ex parte Nguyen*, Nguyen was a native of Vietnam who was a permanent resident alien. No. 2-08-207-CR, 2008 Tex. App. LEXIS 7153 (Tex. Ct. App. Sept. 25, 2008). He pled guilty to sexual assault but then sought a writ of habeas corpus, arguing that his guilty plea and community supervision order should be vacated because his plea was not voluntary. *Id.* He made several arguments, including that his plea was involuntary because the Vienna Consular Convention was violated. *Id.* The trial court held that any violation of the Vienna Consular Convention by law enforcement or the trial court did not violate Appellant’s individual due process rights. *Id.*

*Velasco v. Ayala* involved a dispute over whether or not proper service was executed notifying the mother who resided in Mexico regarding an action to terminate her parental rights. 312 S.W.3d 783 (Tex. Ct. App. 2009). The Court in *Velasco* stated that “[s]ervice of process on a defendant in Mexico is governed by the Hague Service Convention [...] which applies in all cases, in civil or commercial matters, where there is an occasion to transmit a judicial or extrajudicial document for service abroad.” *Id.* at 792. The Court further noted that under the Hague Convention, instead of service of process by certified mail or service by publication, requests for service on a defendant within the borders of Mexico must be sent directly to Mexico's designated Central Authority and must be in Spanish or accompanied by a corresponding translation. *Id.* at 794. Because the mother was known to be a resident of Mexico, the Hague Service Convention governed service of process and there was no request for service sent to Mexico’s Central Authority, the trial court did not acquire personal jurisdiction at the commencement of the suit so that the subsequent actions of the trial court were a nullity and remanded. *Id.* at 799-800.

*In re Kamstra* was a child custody dispute involving a mother, a U.S. citizen, who took the children from Africa, where they had been living for over 10 years for a visit to the U.S., leaving the father, a citizen of the Netherlands, behind in Africa. No. 12-09-00017-CV, 2010 Tex. App. LEXIS 1478 (Tex. Ct. App. Mar. 2, 2010). The mother then filed for a divorce and custody of the children in Texas. *Id.* The father sought relief under the Hague Convention and the International Child Abduction Remedies Act. *Id.* The Court of Appeals stated that the Hague Convention “is based on the principle that the country of the child’s habitual residence is best suited to determine questions of
child custody and access.” *Id.* The Court then found that the trial court correctly found that the habitual residence of the children was Burundi and since Burundi was not a signatory to the Hague Convention, the Hague Convention did not apply. *Id.*

The defendant in *Contreras v. State*, appealed judgments that convicted him of intoxication assault and failure to stop and render aid claiming that the his due process rights were violated when he was not notified of his rights as a Mexican citizen to contact the Mexican consulate and asked that breathalyzer test results be suppressed as a result. Nos. 11-09-00107-CR, 11-09-00109-CR, 2010 Tex. App. LEXIS 7454 (Tex. Ct. App. Sept. 9, 2010). Citing *Medellin*, the Court declined Contreras’ request, holding that “suppression under the federal exclusionary rule is not an appropriate remedy for a violation of the Vienna Convention” and citing *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 362, 126 S. Ct. 2669, 165 L. Ed. 2d 557 (2006).

### 4.5 SAMPLE OPPOSITION ARGUMENTS

The following is a sampling of opposition arguments that have been made in real cases and briefs in response to a human rights argument made on behalf of a U.S.-based petitioner or defendant. This section is intended to provide a sampling of opposition arguments and does not represent each and every argument that has ever been made by the opposition. These arguments are merely intended to help legal aid attorneys begin to anticipate arguments and strategies that may be used by the opposition.

#### OPPOSITION ARGUMENT 1: ONLY SELF-EXECUTING TREATIES ARE BINDING

The first possible argument you may hear from the opposition is that only self-executing treaties are binding on the U.S. government and since none of the human rights treaties are self-executing, none are binding on the U.S. government.

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OPPOSITION ARGUMENT 1

“Petitioners principally rely on the ICCPR. The ICCPR, however, is not a self-executing treaty and therefore does not create any rights directly enforceable in the courts of the United States. See Sosa v. Alvarez-Machain, 542 U.S. 692, 728, 735 (2004). The Court in Sosa cited the ICCPR as an example of a circumstance in which “the Senate has expressly declined to give the federal courts the task of interpreting and applying international human rights law.” *Id.* at 728. Because “the United States ratified the Covenant on the express understanding that it was not self-executing and so did not itself create obligations enforceable in the federal courts,” *Id.* at 735, the Court explained, the ICCPR alone could not “establish the relevant and applicable rule of international law” governing litigation in a United States court, *ibid.*”

```
The opposition may also try to argue that treaties are not privately enforceable. The opposition may try to argue that the petitioner fails to state a claim for which relief may be granted and that the complaint does not establish a cause of action.

“Petitioners referenced a virtual patchwork quilt of other international agreements, including the American Declaration on the Rights and Duties of Man ("ADRDM"), art. I, O.A.S. Res. XXX (1948), O.A.S. Off. Rec. OEA/Ser. L./V/1.4 Rev. (1965), and the American Convention on Human Rights ("ACHR"), Nov. 22, 1969, 1144 U.N.T.S. 123, 9 I.L.M. 673. See FAP PP 40, 52, & 54; Khalid Pet. PP 48, 57, & 59; see also Pets. Opp. Mem., p. 23 & n.20. These documents, however, have not been ratified by the United States and therefore they do not create binding rights enforceable in habeas. See Garza v. Lappin, 253 F.3d 918, 925 (7th Cir. 2001) ("The [ADRDM] . . . is an inspirational document which, . . . did not on its own create any enforceable obligations . . . . [The U.S.] has not ratified the [ACHR], and so that document does not yet qualify as one of the 'treaties' of the United States that creates binding obligations.").

Treaties, as a general rule, are not privately enforceable. Indeed, enforcement in the final analysis is reserved to the executive authority of the governments who are parties to the treaties. See, e.g., Comm. of the U.S. Citizens Living in Nicaragua v. Reagan, 859 F.2d 929, 937-38 (D.C. Cir. 1988); see also The Head Money Cases, 112 U.S. 580, 598 (1884) ("A treaty . . . depends for the enforcement of its provisions on the interest and honor of the governments which are parties to it. . . . It is obvious that with all this the judicial courts have nothing to do and can give no redress."). Where a treaty is not self-executing, its terms give rise to a private cause of action only if Congress enacts authorizing legislation. See Whitney, et al. v. Robinson, 124 U.S. 190, 194 (1888) ("When the stipulations [of a treaty] are not self-executing, they can only be enforced pursuant to legislation to carry them into effect, . . . ."). In the absence of a self-executing treaty and Congressional implementation, the individual does not have standing to assert the alleged violation in federal court. See United States v. Tapia-Mendoza, 41 F. Supp. 2d 1250, 1253 (D. Utah 1999) ("[O]nly signatory nations generally have standing to enforce treaty provisions absent evidence, considering the document as a whole, that the signing parties expressly or impliedly intended the treaty to provide independent rights to citizens of either country.").

In this case, neither the CAT nor the ICCPR is a self-executing treaty. Indeed, in giving its advice and consent to ratification of both treaties, the Senate expressly declared that the provisions of both would not be privately enforceable. See 136 Cong. Rec. S36,198 (Oct. 27, 1990) (dealing with the CAT); 138 Cong. Rec. S4781-01 (April 2, 1992) (dealing with the ICCPR). Furthermore, Congress has not enacted any implementing legislation, with respect to either convention, that would authorize the petitioners to challenge the legality of their detention in federal court. See Wesson v. U.S. Penitentiary Beaumont, TX, 305 F.3d 343, 348 (5th Cir. 2002) ("Habeas relief is not available for a violation of the [ICCPR] because Congress has not enacted implementing legislation."). As a result, the petitioners cannot rely on either the CAT or the ICCPR as a viable legal basis to support the issuance of a writ of habeas corpus. Accordingly, the Court finds no viable theory based on United States treaties upon which a writ could be issued.”

In addition, the opposition may try to argue that the U.S. is not legally obligated to abide by overly expansive and broad interpretations of human rights treaties, nor to alleged international agreement on practices which have not reached the threshold of customary international law.

**OPPOSITION ARGUMENT 3**

“[A]llegations are based on extraordinarily and erroneously expansive interpretation of state commitments[,] . . . assertions are unsupported by the text of those articles[,] and rely on a systematically flawed analysis of international law. Petitioner’s claim that the United States has violated customary international law is equally unfounded. Evidence of a customary norm requires indication of extensive and virtually uniform state practice that States undertake out of a sense of legal obligation (i.e., “opinion juris”) North Continental Shelf Cases (W. Ger. v. Den., W. Ger. v. Neth.), 1969 I.C.J. 3, 42-43. It is not enough that certain international declarations espouse a general rule or that certain treaties include the obligation, for custom must derive from the actual repetition of acts by the community of states as a whole that are taken out of a sense of an international legal obligation apart from specific treaty obligations. To reach the level of a customary norm, state practice must “be such, or be carried out in such a way, as to be evidence that this practice is rendered obligatory by the existence of a rule of law requiring it.” Id. at 44. As a prudential matter, when a party to a dispute asserts the existence of a rule of customary international law, the burden falls on that party to establish the clear existence of such rule.”

Finally, the opposition may try to argue that the U.S. government cannot be sued without its consent or waiver of its immunity in matters.

**OPPOSITION ARGUMENT 4**

“The requirements for waivers of sovereign immunity are strict and clear, whether with respect to statutes or international agreements. None of the alleged sources of subject matter jurisdiction . . . meets the standards for a waiver of sovereign immunity . . . [or] even arguably provides a waiver of sovereign immunity . . . . We should note that plaintiffs take the following positions: whatever activities the United States engages in waive sovereign immunity; that discretionary authority to settle claims waives sovereign immunity; that alleged negligence waives sovereign immunity; that having an admiralty cause of action waives sovereign immunity; that regulations (vice statutes) waive sovereign immunity; that bilateral agreements, not congressionally passed waives sovereign immunity, etc.- in short, plaintiffs argue that every action or involvement of the United States in whatever area waives sovereign immunity. No court has accepted this view. It is contrary to precedent, and wholly without support. . . . “ The United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued define that court’s jurisdiction to entertain the suit.” United States v. Sherwood, 312 U.S. 584, 586 (1941). Waivers of sovereign immunity are to be narrowly construed in favor of the sovereign. McMahon v. United States, 342 U.S. 25, 27 (1951). Because of the United States’ sovereign immunity, a district court has no jurisdiction to award relief against the United States unless such relief is expressly authorized by statute. FDIC v. Meyer, 510 U.S. 471, 476 (1994). The waiver must be “unambiguous[,]” and the relevant statutory language is to be “strictly construed” in favor of the sovereign.” Lane v. Pena, 518 U.S. 187, 192 (1996). In addition, “a waiver of the Government’s sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign.” Id., citing United States v. Williams, 514 U.S. 527, 531, 115 S.Ct. 1611, 131 L.E.2d 608 (1995); Library of Cong. v. Shaw, 478 U.S. 310, 318, 106 S.Ct. 2957, 92 L.Ed.2d 250 (1986); Lehman v. Nakshian, 452 U.S. 156, 161, 101 S.Ct. 2698, 69 L.E.2d 548 (1981).

5 SPECIFIC LEGAL ISSUE AREAS

This section of the Handbook covers specific legal issue areas, including Freedom from Domestic Violence, Labor and Employment Rights, Housing Rights, Consumer Rights, Rights to Public Assistance, Children’s Rights, Immigration: Family & Border Rights, Immigration: Trafficking & Domestic Violence Issues, HIV/AIDS and Disability Rights. Each specific legal issue area section provides an introduction to the issue area and the related human rights, quick statistics and resources for data, a sampling of relevant human rights law, a list of state and federal court cases citing human rights law, a sampling of relevant cases before international bodies, a sampling of relevant cases before national courts or sub-regional bodies, a sampling of treaty body and special procedures commentary and recommendations, sample arguments to add to briefs and pleadings, sample talking points to take to court, relevant case studies of legal aid attorneys using human rights law in their work, links to sample briefs and petitions, and links to other potentially useful resources such as other available guides or handbooks.

5.1 FREEDOM FROM DOMESTIC VIOLENCE

The Freedom from Domestic Violence section of the Handbook was written by Lynsay Gott.¹

5.1.1 INTRODUCTION: FREEDOM FROM DOMESTIC VIOLENCE

International law imposes a duty on States to protect the rights of domestic violence victims, including, but not limited to the: 1) right to life; 2) right to privacy and home life; 3) right to be free from torture, cruel, inhuman, or degrading treatment; 4) right to non-discrimination; and 5) right to judicial remedies.¹⁰⁹ States must comply with the due diligence standard when protecting domestic violence victims by demonstrating effort at several levels, such as among law enforcement and within the judiciary, to uphold victims’ rights.¹¹⁰ States must also act with due diligence to protect women from violence by private actors such as through victim protection or thorough investigation, and States incur liability upon failing to meet this standard.¹¹¹

U.S. domestic courts affirm that states have an obligation to protect victims of domestic violence and an interest in preventing further abuse.¹¹² In addition, U.S. courts have acknowledged the judiciary’s obligation to “carry out the legislative goal of protecting victims” through the court system.¹¹³ International law can be used to further define and elaborate on these domestic policy principles.

Advocates have called for the recognition of human rights principles in U.S. courts to address the lack of effective measures to prevent domestic violence. This section of the Handbook is designed to help attorneys

¹ Lynsay Gott is an Associate Attorney with WMR Immigration Law Group. Ms. Gott received her J.D. from University of Cincinnati College of the Law, and was the recipient of an Equal Justice Works Fellowship upon graduation in 2007. Her fellowship project, carried out at Human Rights USA, involved working to close the loopholes in U.S. law that limited the availability of asylum protections for trafficked persons and mandated the return of some to the countries of origin where they were originally victimized. She remained with Human Rights USA upon completion of the fellowship, eventually becoming the Acting Executive Director, and her work expanded to pursuing civil remedies for survivors of human rights abuses. She joined WMR Immigration Law Group in 2012 and currently helps clients receive humanitarian protection such as asylum, as well as other forms of immigration relief. Ms. Gott is a member of the Maryland and District of Columbia Bars.


fighting for the rights of domestic violence victims integrate human rights arguments into their state court advocacy.

5.1.2 QUICK STATISTICS & RESOURCES FOR DATA: FREEDOM FROM DOMESTIC VIOLENCE

More and more women are facing domestic violence and receive inadequate protection by law enforcement and the U.S. court system. Here are some quick statistics:

- One in four women (25%) has experienced domestic violence in her lifetime in the U.S. ¹¹⁴
- Estimates range from 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend, to 3 million women who are physically abused by their husband or boyfriend per year in the U.S. ¹¹⁵
- Women accounted for 85% of the victims of intimate partner violence, men for approximately 15% in the U.S. ¹¹⁶
- From 2001-2005, 615,795 households in the US had intimate partner violence. Of those, 35.2% were known to have children. ¹¹⁷
- It is estimated that anywhere between 3.3 million and 10 million children in the U.S. witness domestic violence annually. Research demonstrates that exposure to violence can have serious negative effects on children’s development. ¹¹⁸
- Fear of reprisal by the perpetrator made up 19% of the reasons females did not report their victimization to the police. About 1 in 10 male victims and fewer than 1 in 10 female victims said they did not report the crime to the police because they did not want to get the offender in trouble with the law. ¹¹⁹
- Reports indicate that 86% of the women who received a protection order state the abuse either stopped or was greatly reduced. ¹²⁰
- The numbers of women or children killed by family members include:
  - 41.8% of female homicide victims are killed by an intimate or other family member. ¹²¹
  - 12.0% of male homicide victims are killed by an intimate or other family member. ¹²²

122 Id.
The cost of intimate partner violence in the U.S. alone exceeds $5.8 billion per year: $4.1 billion is for direct medical and health care services, while productivity losses account for nearly $1.8 billion.\textsuperscript{123}

Resources for data related to domestic violence:

- U.S. Department of Justice, Office of Justice Programs, National Criminal Justice Reference Service, Domestic Violence
- U.S. Department of Justice, Bureau of Justice Statistics
- UN Women (2011), Facts and Figures on Violence against Women

### 5.1.3 RELEVANT HUMAN RIGHTS LAW: FREEDOM FROM DOMESTIC VIOLENCE

The language from the treaties listed below is merely a sampling. This is not an exhaustive list of treaties or the relevant articles in each treaty that are available. There may be language or another treaty not yet listed that is more relevant to your case at hand. Please be sure to review the full treaty text, which is available by clicking on the links below.

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<th>Treaty or Declaration</th>
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<tr>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td>Article 2(1) of the ICCPR: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” International Covenant on Civil and Political Rights, art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992.</td>
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<td><strong>Article 14 of the ICCPR</strong></td>
<td>&quot;All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.&quot; International Covenant on Civil and Political Rights, art. 14, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td><strong>Article 17 of the ICCPR</strong></td>
<td>&quot;1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation; and 2. Everyone has the right to the protection of the law against such interference or attacks.&quot; International Covenant on Civil and Political Rights, art. 17, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td><strong>Article 26 of the ICCPR</strong></td>
<td>&quot;All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.&quot; International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 16 of CAT:</strong> &quot;Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence as a public official or other person acting in an official capacity.&quot; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 16, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20(1988); 23 I.L.M. 1027(1984), as modified by 24 I.L.M.535 (1985), ratified by the U.S. Nov. 20, 1994.</td>
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<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 5 of the Declaration:</strong> &quot;Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.” American Declaration of the Rights and Duties of Man, art. 5, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 6 of the Declaration:</strong> “Every person has the right to establish a family, the basic element of society, and to receive protection therefor.” American Declaration of the Rights and Duties of Man, art. 6, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 24 of the Declaration:</strong> “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” American Declaration of the Rights and Duties of Man, art. 24, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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**HUMAN RIGHTS INSTRUMENTS NOT RATIFIED BY THE U.S.: FREEDOM FROM DOMESTIC VIOLENCE**

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<td><strong>International Covenant on Economic, Cultural and Social Rights (ICESCR)</strong></td>
<td><strong>Article 10 of the ICESCR:</strong> “1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions...” International Covenant on Economic, Social, and Cultural Rights, art. 10, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</td>
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<td><strong>International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)</strong></td>
<td><strong>Article 2 of CEDAW</strong>: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (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; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.” Convention on the Elimination of Discrimination Against Women, art. 2, Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, <em>entered into force</em> Sept. 3, 1981.</td>
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<td><strong>Article 5(a) of CEDAW</strong>: “States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Convention on the Elimination of Discrimination Against Women, art. 5(a), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, <em>entered into force</em> Sept. 3, 1981.</td>
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<td><strong>Article 2 of CRC</strong>: “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.” Convention on the Rights of the Child, art. 2, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), <em>entered into force</em> Sept. 2, 1990.</td>
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<td><strong>Article 5 of CRC:</strong></td>
<td>“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.” Convention on the Rights of the Child, art. 5, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Article 9 of CRC:</strong></td>
<td>“1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence. 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.” Convention on the Rights of the Child, art. 9, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Article 12 of CRC:</strong></td>
<td>“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.” Convention on the Rights of the Child, art. 12, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Article 16 of CRC:</strong></td>
<td>“1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks.” Convention on the Rights of the Child, art. 16, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Article 19 of CRC:</strong></td>
<td>“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Convention on the Rights of the Child, art. 19, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td>Treaty or Declaration</td>
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<td>Article 37 of CRC</td>
<td>“(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily…” Convention on the Rights of the Child, art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
</tr>
<tr>
<td>American Convention on Human Rights (ACHR)</td>
<td>Article 1 of ACHR: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” American Convention on Human Rights, art. 1, Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99, entered into force July 18, 1978.</td>
</tr>
<tr>
<td>Article 5 of the Convention of Belém do Pará</td>
<td>“Every woman is entitled to free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.” Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), art. 5, June 9, 1994, 33 I.L.M. 1534 (1995).</td>
</tr>
</tbody>
</table>
**Treaty or Declaration**  |  **Article/ Citation**  
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**Article 6 of the Convention of Belém do Pará**: “The right of every woman to be free from violence includes, among others: a. The right women to be free from all forms of discrimination; and b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.” Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), art. 6, June 9, 1994, 33 I.L.M. 1534 (1995).  
**European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Right or ECHR)**  
**Article 3 of the ECHR**: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221, *entered into force* Sept. 3, 1953.  
**Article 6 of the ECHR**: “In the determination of his civil rights and obligations . . . everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221, *entered into force* Sept. 3, 1953.

**U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW: FREEDOM FROM DOMESTIC VIOLENCE**

**State v. White**, 668 N.W.2d 850, 856 (Iowa 2003). The court looked to a federal district court Alien Tort Statute case and the district court’s interpretation of torture under the Convention Against Torture to determine that the mental and emotional anguish caused when the defendant kidnapped his estranged wife could constitute torture under Iowa law.

**Nicholson v. Williams**, 203 F.Supp.2d 153, 234-51 (E.D.N.Y. 2002). The federal district court looked to the UDHR, ICCPR, and CRC in holding that the right to family integrity is protected by Due Process rights under the 14th Amendment, granting a preliminary injunction against a child welfare policy to remove children from mothers who were domestic violence victims.

**CASES BEFORE INTERNATIONAL BODIES: FREEDOM FROM DOMESTIC VIOLENCE**

**Jessica Lenahan (Gonzales) v. United States**, Case No. 12.626, Inter-Am. C.H.R., Report No. 80/11 (2011). The Inter-American Commission on Human Rights held that the U.S. violated international obligations where police failure to enforce a restraining order against the petitioner’s husband led to the kidnapping and killing of the petitioner’s three daughters. The Commission stated that “a State’s failure to act with due diligence to protect women from violence constitutes a form of discrimination” and violates women’s right to life. The Commission
The Commission further stated that States have an affirmative duty to protect women from domestic violence. The Commission held “that the systemic failure of the U.S. to offer a coordinated and effective response to protect [the victims] from domestic violence” constituted discrimination and a breach of the obligation not to discriminate, a violation of the right to equality before the law, and a violation of the rights to life and judicial protection.

**Opuz v. Turkey**, App. No. 33401/02, Eur. Ct. H.R. (2009). The European Court of Human Rights found that Turkey’s failure to exercise due diligence, such as instituting timely criminal proceedings or protective orders to prevent further domestic violence against the applicant and her mother, violated customary international law. The court concluded that Turkey’s failure to comply with the right to life and right to be free from torture or ill-treatment was based on gendered discrimination.

**Bevacqua and S. v. Bulgaria**, App. No. 71127/01, Eur. Ct. H.R. (2008). The European Court of Human Rights concluded that excessively lengthy custody proceedings without interim protection for the child following petitioner’s divorce from her abusive husband violated petitioner’s right to private and family life and right to a fair hearing within a reasonable time under the ECHR. The court asserted that States have an affirmative “duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.”

**Yildirim v. Austria**, CEDAW Comm. No. 6/2005, U.N. Doc. CEDAW/C/39/D/6/2005 (2007). The Committee on the Elimination of Discrimination against Women held that Austria violated CEDAW by failing to uphold the decedent’s right to life and to physical and mental integrity where she was subjected to repeated death threats from her husband, but the prosecutor repeatedly refused to detain the husband, resulting in the decedent’s murder.


**E. and Others v. United Kingdom**, No. 33218/96, Eur. Ct. H.R. (2002). The European Court of Human Rights held that the U.K. failed to protect the victims from inhuman and degrading treatment where a man pled guilty to indecent assault of his girlfriend’s children, but was not detained pending sentencing, returned to the home, and subsequently received only a two year suspended sentence after further charges of abuse.

**Maria da Penha Maia Fernandes v. Brazil**, Case No. 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/ser.L./V/II.111, doc. 20 rev. at 704 (2000). The Inter American Commission on Human Rights determined that Brazil failed to exercise its due diligence to protect the applicant where the criminal prosecution of her husband lasted eight years before a guilty verdict was handed down and the husband remained free during the fifteen years between his attempted murder of the applicant and the exhaustion of appeals. The Commission reasoned that a systemic failure to exercise due diligence to guarantee women’s right to be free from domestic violence was equivalent to gendered discrimination, stating that Brazil had an affirmative duty to protect victims of domestic violence.
In a case dealing with failure to detain a sexual assault suspect with a history of previous assault, who then attacked yet another woman, the Constitutional Court of South Africa affirmed State responsibility to protect women from violence and gender-based discrimination, not just those who have already been abused or are specifically in danger of imminent abuse, under both international and constitutional laws.

**TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS: FREEDOM FROM DOMESTIC VIOLENCE**


Highlights:
- States that domestic violence can constitute torture. ¶44.
- “these forms of violence can amount to torture if States fail to act with due diligence…” ¶44.
- Explains how intimate partner violence can constitute torture and when a government may be liable for “acquiescence” to torture. ¶45-49.


Highlights:
- “Violence within the family comprises, inter alia, woman-battering, marital rape, incest, forced prostitution, violence against domestic workers, violence against girls, sex-selective abortions and female infanticide, traditional violent practices against women including forced marriage, son preference, female genital mutilation and honour crimes.” ¶17
- “International standards clearly prohibit violence against women in the family.” ¶19
- “The principle of “due diligence” is gaining international recognition. In accordance with article 4 of the Declaration on the Elimination of Violence against Women, States must ‘exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons’.” ¶23.


Highlights:
- “domestic violence, defined as violence that occurs within the domestic sphere perpetrated by both private and State actors, constitutes a violation of the human rights of women.” ¶ 29.
- “Under international human rights law, Governments are not only obliged to refrain from committing human rights violations but also to prevent and respond to human rights abuses, without discrimination.” ¶30
- “Complicity must be demonstrated by establishing that the State condones a pattern of abuse through pervasive non-action. Where States do not actively engage in acts of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners, States generally fail to take the minimum steps necessary to protect their female citizens’ rights to physical integrity and, in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, States must demonstrate due
diligence by taking active measures to protect, prosecute and punish private actors who commit abuses.” ¶33.

“International law, as contained in, inter alia, articles 2 (1), 3 and 26 of the ICCPR, imposes a duty on States not to discriminate on a number of specified grounds, including gender, in the protection of human rights. Failure to fulfill this duty constitutes a violation of human rights. Women victims of violence, therefore, have an equal right to the enforcement and protection of the law as any other victim of violence, so that a pattern of non-enforcement amounts to unequal and discriminatory treatment on the basis of gender.” ¶40.


**Highlights:**

- “Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.” ¶1.
- “Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.” ¶7.
- “Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” ¶11.


**Highlights:**

- “the duty of States to exercise due diligence to prevent violence against women and girls includes using all appropriate means of a legal, political, administrative and social nature that promote the protection of human rights and ensuring that acts of violence are considered and treated as illegal acts for which adequate, effective, prompt and appropriate punishment and remedies are available” Preamble.
- “States have the obligation to promote and protect all human rights and fundamental freedoms of women and girls, and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms” ¶1.
5.1.4 SAMPLE ARGUMENTS: FREEDOM FROM DOMESTIC VIOLENCE

These sample arguments should be used to supplement your state and federal-law based claims and defenses. Do not rely these arguments alone.

SAMPLE ARGUMENT 1 - Right to Non-Discrimination [Statute/regulation at issue] contravenes the right to non-discrimination.

U.S. courts may use human rights principles to assist in the interpretation of U.S. law. Restatement (Third) of Foreign Relations Law § 701 cmt. e (1987) (“The United States is bound by the international customary law of human rights.”); Murray v. Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804) (finding that “an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains”).


The U.S. has an international obligation to meet the due diligence standard by prohibiting discrimination on the basis of sex or gender and by implementing measures to punish offenders and to protect victims.

[Insert the important facts of this case] violates the Plaintiff’s fundamental human rights under international legal norms.
SAMPLE ARGUMENT 2 - Right to Life


A State is required to protect victims of domestic violence and respond adequately to safeguard a woman’s security. Opuz v. Turkey, App. No. 33401/02, Eur. Ct. H.R. (2009) (failing to institute criminal proceedings or protective orders to prevent violence against domestic violence victims violates their right to life when the offender murders a victim); Yildirim v. Austria, CEDAW Comm. No. 6/2005, CEDAW/C/39/D/6/2005 (2007) (explaining that a State violates a woman’s right to life when as a result of a prosecutor’s repeated refusal to detain a domestic violence offender, the offender fatally stabbed the victim).

Failing to respond to domestic violence in order to protect victims from further abuse, such as by refusing to enforce a protective order, violates the right to life. Jessica Lenahan (Gonzales) v. United States, Case No. 12.626, Inter-Am. C.H.R., Report No. 80/11 (2011) (holding the United States responsible for its failure to protect the victims of domestic violence by refusing to take reasonable measures like the enforcement of a restraining order, thereby violating their right to life under article I of the American Declaration).

[Insert the important facts of this case] violates the Plaintiff’s fundamental human rights under international legal norms.

SAMPLE ARGUMENT 3 - Freedom from Torture and Cruel, Inhuman, or Degrading Treatment

This type of ill-treatment is incompatible with international norms.


A lack of investigation and cooperation among law enforcement violates the right to be free from inhuman and degrading treatment in the context of domestic violence when the victims are subjected to continual physical abuse. E. and Others v. United Kingdom, No. 33218/96, Eur. Ct. H.R. (2002), (holding the State responsible for violating the victims’ right to be free from inhuman and degrading treatment by failing to protect victims subjected to years of physical abuse by the mother’s live-in boyfriend); Nelson v. The Minister of Safety and Security & Another, 2006 ZANCHS 88 (S. Afr. N. Cape Div. 2006) (concluding that the State is constitutionally required to protect its citizens from violence and that the State failed to protect a victim from domestic violence by allowing the perpetrator to keep his firearm).

[Insert the important facts of this case] violates the Plaintiff’s fundamental human rights.
[This conduct/statute] is prohibited by human rights law and jurisprudence.


States are obligated to respond and protect women from domestic violence by upholding the right to a fair hearing within a reasonable time. Bevacqua and S. v. Bulgaria, App. No. 71127/01, Eur. Ct. H.R. (2008) (holding the State responsible for its failure to exercise due diligence to adequately protect the victim of domestic violence by excessively delaying custody proceedings, thereby violating the right to a fair trial).

A State can violate the right to a fair trial by failing to detain perpetrators of domestic violence during criminal proceedings for such an offense. Maria da Penha Maia Fernandes v. Brazil, Case No. 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/ser.L./V/II.111, doc. 20 rev. at 704 (2000) (holding the State responsible for violating the right to a fair trial and judicial protection because of the court’s order to free the perpetrator pending trial and appeals); Jessica Lenahan (Gonzales) v. United States, Case No. 12.626, Inter-Am. C.H.R., Report No. 80/11 (2011) (emphasizing “the link between the duty to act with due diligence and the obligation of States to guarantee adequate and effective judicial remedies for victims and their family members when they suffer acts of violence”); E. and Others v. United Kingdom, No. 33218/96, Eur. Ct. H.R. (2002) (requiring States to implement an effective judicial remedy such as detention pending sentencing and investigation by law enforcement of domestic violence charges).

[Insert the important facts of this case] violates the Plaintiff’s fundamental human rights under international legal norms.

5.1.5 TALKING POINTS: FREEDOM FROM DOMESTIC VIOLENCE

**TALKING POINTS #1 - Right to Non-Discrimination**

- U.S. courts already recognize importance of protecting victims of domestic violence
- Obligation to protect victims’ rights to non-discrimination based on sex
- Lack of investigation, protection, and enforcement of court orders in domestic violence cases violates right to non-discrimination
- Ineffective action or failure to act forms a pattern of discrimination, which violates the human right to equality before the law and marriage
- Must provide domestic violence victims maximum protection of the law
Due diligence requires prohibiting discrimination based on sex, which means to protect victims of domestic violence and punish perpetrators of DV

**TALKING POINTS #2- Right to Life**

- Everyone has the right to life under customary international law
- U.S. ratified the ICCPR and American Declaration
- Failure to respond to DV or protect victims violates right to life
- Must respond adequately to protect woman’s security
- Must initiate criminal proceedings against perpetrator to protect victim

**TALKING POINTS #3- Freedom from Torture and Cruel, Inhuman or Degrading Treatment**

- U.S. ratified the ICCPR and CAT
- Physical abuse or domestic violence is cruel, inhuman, or degrading treatment
- Women have right to be protected from continued abuse
- Violation of right to life is inherently tied to violation of right to be free from torture, cruel, inhuman, or degrading treatment
- The domestic abuse in this case rises to the level of degrading and cruel

**TALKING POINTS #4- Right to Judicial Remedies**

- Right to fair trial and judicial assistance inherent in U.S. legal system
- Victims of DV must have access to judicial remedies like protective orders or they may face further abuse or even death, e.g. Lenahan
- Judicial remedies must be enforced for meaningful protection
- Right to fair trial includes detaining perpetrator of DV during the entire criminal process (pending trial/appeals/sentencing)
- Right to fair trial includes finalizing divorce within a reasonable time
- Right to fair trial includes instituting interim custody protections

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5.1.6 CASE STUDIES OF LEGAL AID ATTORNEYS: FREEDOM FROM DOMESTIC VIOLENCE

**FAMILY VIOLENCE LITIGATION CLINIC, ALBANY LAW CLINIC & JUSTICE CENTER USES RIGHT TO FAMILY IN CUSTODY PETITION**

The case, *Petitioner-Mother v. Respondent-Grandfather*, both refugees from Iraq, is a disputed custody matter brought by the Family Violence Litigation Clinic at Albany Law School on behalf of the Petitioner to regain custody of her child. The Respondent engaged in abusive behavior against the Petitioner, and the Petitioner argues that the environment does not promote the physical, emotional, and mental well-being of the child. The Petitioner derived arguments from the American Convention on Human Rights to establish her right to family. In
her Amended Petition, the Petitioner contended that it is in the best interest of the child to remain in the custody of her mother because “[r]emoving Petitioner’s child from her mother will violate and deprive Petitioner of her basic human right to establish a family and receive protection for that family under the law.” The court will hear the Petitioner’s motion to dismiss on April 3, 2012.

CITY, COUNTY AND HUMAN RIGHTS COMMISSIONS ACROSS THE U.S. PASS FREEDOM FROM DOMESTIC VIOLENCE RESOLUTIONS

On October 5, 2011 the Cincinnati City Council enacted a resolution declaring that freedom from domestic violence is a fundamental human right and that it is a responsibility of state and local governments to secure this human right on behalf of its citizens. A link to the resolution and the supporting memorandum submitted by law students at the University of Cincinnati School of law is available here.

On March 19, 2012, Baltimore City Council also enacted a similar resolution following efforts by law clinic students from the University of Baltimore. A link to the Baltimore resolution is available here.

On July 17, 2012, the Miami-Dade County Board of Commissioners passed a resolution declaring freedom from domestic violence is a human right. A link to the Miami-Dade resolution is available here.

On September 6, 2012, the Seattle Human Rights Commission passed a resolution to urge the U.S. House of Representatives to pass the Senate’s comprehensive version of the Violence Against Women Act (VAWA). The Seattle resolution framed violence against women issues in terms of human rights, citing the U.S.’s “international obligations to enact legislation that does not discriminate and to respect and ensure the right to be protected against violence” and making specific reference to the case of Jessica Lenahan v. U.S., the UN Special Rapporteur on Violence Against Women’s report on the U.S., and various human rights instruments. A copy of the Seattle resolution is available here.

In October 2012, the Albany New York County Executive, Albany City Common Council, and Albany County Legislature have each passed proclamations or unanimous resolutions declaring that freedom from domestic violence is a fundamental human right. More information on the resolutions is available here.

Also in October 2012, City and County officials in Montgomery, Alabama, signed a Domestic Violence Awareness Month Proclamation which not only declared October Domestic Violence Awareness Month for Montgomery, but also included a declaration that freedom from domestic violence is a fundamental human right. More information on the resolution is available here.

5.1.7 SAMPLE BRIEFS & PETITIONS: FREEDOM FROM DOMESTIC VIOLENCE

Nicholson v. Williams – Amicus Brief in Support of Appellees


Campo Algodonero (and others) v. Mexico – Amicus Brief in Support of Petitioners

5.1.8 OTHER RESOURCES: FREEDOM FROM DOMESTIC VIOLENCE


U.S. Human Rights Online Library, provides sample briefs, pleadings and non-litigation advocacy materials on the domestic implementation of human rights law, hosted by Columbia University Human Rights Institute.
5.2 LABOR AND EMPLOYMENT RIGHTS

The Labor and Employment Rights section of this Handbook was written by Sarah Paoletti.¹

5.2.1 INTRODUCTION: LABOR AND EMPLOYMENT RIGHTS

The right to decent work is enshrined in a fundamental notion set forth in the Universal Declaration on Human Rights (UDHR) that “All human beings are born free and equal in dignity and rights.”¹²⁴ The fundamental rights of equality and dignity are at the core of all international human rights pertaining to the workplace.

The further enumeration of workplace rights underlying the ultimate goal of equality in dignity and rights can be categorized as follows: (a) the right to non-discrimination in the workplace, based not only on sex, race and national origin, but also language and citizenship status; (b) the right to be free from slavery or servitude and the right to be paid for all work performed; (c) the right to social security and unemployment when the need arises; (d) the right to freedom of association, and corollary rights to join and form trade unions and collective bargaining; (e) and, the right to redress before the courts when rights to employment and rights in employment are violated.

Increasingly, advocates are looking to international human rights law and mechanisms in pursuit of dignity in work and dignity through work, particularly in light of the narrow opportunities for doing so under U.S. domestic law, be it at the federal, state or administrative levels. While international and comparative law has arisen in domestic litigation primarily in the area of forced labor and labor trafficking, and corporate responsibility for the commission of grievous human rights obligations outside the U.S., this section seeks to introduce the myriad of ways in which labor and employment lawyers can incorporate human rights law into their domestic litigation practice, and can bring their experiences from domestic litigation into the international human rights arena.

5.2.2 QUICK STATISTICS & RESOURCES FOR DATA: LABOR AND EMPLOYMENT RIGHTS.

With the economic recession and high rates of un- and underemployment, workers are increasingly struggling to realize the promise of dignity through work:

- From 1973-2007, male union membership within the private sector declined to from 34 percent to eight percent, and for female workers, from 16 percent to six percent. Wage inequality in that same time frame increased more than 40 percent.¹²⁵
- In February 2010, the unemployment rate for African Americans was 15.8%, for Hispanics it was 12.4%, and for whites, it was 8%.¹²⁶

¹ Sarah Paoletti directs the Transnational Legal Clinic at the University of Pennsylvania Law School. Students enrolled in the clinic engage in direct legal representation of individual and organizational clients in a myriad of cases and projects that require them to grapple with international and comparative legal norms in settings that cut across cultures, borders, languages, and legal systems. Before Penn Law, Paoletti taught in the International Human Rights Law Clinic at American University Washington College of Law and she also taught a seminar on the labor and employment rights of immigrant workers. Her areas of specialty include international human rights, migrant and immigrant rights, asylum law, and labor and employment. She has presented on the rights of migrant workers before the United Nations and the Organization of American States, and also works closely with advocates seeking application of international human rights norms in the United States. Ms. Paoletti holds a J.D. from American University Washington College of Law and a B.A. from Yale University.

From 1992-2006, 11,303 Hispanic workers died from work-related injuries at a rate consistently higher than that for all U.S. workers, with the proportion of deaths among Hispanic workers increasing during that same time period.\textsuperscript{127}

For FY 2011, the EEOC reported an increase in discrimination claims filed, with nearly 100,000 claims filed, and noted a substantial rise in the number of retaliation claims (up to 37,334).\textsuperscript{128}

Of the more than 16,000 workers who seek assistance from Inter-Faith Worker Justice centers across the country each year, more than 80% report wage-theft.\textsuperscript{129}

Here are some resources for relevant labor and employment rights data for the U.S. and worldwide:

- **U.S. Census Bureau, Reports and Publications**
- The **Equal Employment and Opportunity Commission** maintains a range of national statistical information addressing discrimination, including information pertaining to enforcement and litigation statistics, and employment statistics based on job patterns for minorities and women in the private industry, as well as in state and local government.
- The **Occupational Safety and Health Administration of the US Department of Labor** similarly maintains national statistics pertaining to work-related injury and illness and inspections conducted by OSHA.
- The **International Labour Organization Department of Statistics** maintains data searchable by topic, country, publication source, and short term indicators of the labor market at LABORSTA Internet.
- Other valuable sources of data and other information to support potential human rights claims in the area of labor and employment include the [Pew Research Center](https://www.pewresearch.org/), and for reports specific to Latino and Hispanic workers, see [Pew Hispanic Center](https://www.pewhispanic.org/). The [Economic Policy Institute](https://www.epi.org/), conducts research in a range of relevant areas, including: jobs, wages, and living standards; labor policy; race and ethnicity; regulation; and, trade and globalization.

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\textsuperscript{127} Center for Disease Control, “Work-Related Injury Deaths Among Hispanics – United States, 1992-1996, MMWR Weekly (June 6, 2008), [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5722a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5722a1.htm).


\textsuperscript{129} Interfaith Worker Justice, Wage Theft, [http://www.iwj.org/issues/wage-theft](http://www.iwj.org/issues/wage-theft).
### RATIFIED TREATIES: LABOR AND EMPLOYMENT RIGHTS

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<th>Treaty or Declaration</th>
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<tr>
<td><strong>International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</strong></td>
<td><strong>Article 1 of CERD:</strong> &quot;(1) In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life. (2) This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.” International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994 [emphasis added].</td>
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<td><strong>Article 2 of CERD:</strong> &quot;(1) States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:... (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.” International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994 [emphasis added].</td>
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<td><strong>Article 5 of CERD:</strong> &quot;In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights: (...) (e) in particular (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) The right to form and join trade unions.” International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994 [emphasis added].</td>
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<td><strong>International Covenant on Civil and Political Rights (ICCPR)</strong></td>
<td><strong>Article 2 of the ICCPR:</strong> &quot;Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” International Covenant on Civil and Political Rights, art. 2, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992 [emphasis added].</td>
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<td><strong>Article 8 of the ICCPR:</strong> &quot;(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. (2) No one shall be held in servitude. (3)(a) No one shall be required to perform forced or compulsory labour.&quot; International Covenant on Civil and Political Rights, art. 8, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S. Sept. 8, 1992</em> [emphasis added].</td>
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<td><strong>Article 22(1) of the ICCPR:</strong> &quot;Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.&quot; International Covenant on Civil and Political Rights, art. 22(1), Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S. Sept. 8, 1992</em> [emphasis added].</td>
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<td><strong>International Convention Relating to Status of Refugees (ICRSR)</strong></td>
<td><strong>Article 15 of ICRSR:</strong> &quot;As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.&quot; International Convention Relating to the International Status of Refugees, art. 15, 189 U.N.T.S. 137, <em>entered into force Apr. 22, 1954</em> [emphasis added].</td>
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<td><strong>Article 17(1) of ICRSR:</strong> “The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.” International Convention Relating to the International Status of Refugees, art. 17(1), 189 U.N.T.S. 137, <em>entered into force Apr. 22, 1954</em> [emphasis added].</td>
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<td><strong>Article 24 of ICRSR:</strong> “1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters: (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances, where these form part of remuneration, hours of work, overtime arrangements, holidays, with pay, restrictions on home-work, minimum age of employment, apprenticeship and training, women’s work and the work of young persons, and the enjoyment of the benefits of collective bargaining; (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations...” International Convention Relating to the International Status of Refugees, art. 24, 189 U.N.T.S. 137, <em>entered into force Apr. 22, 1954</em> [emphasis added].</td>
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<td><strong>International Labor Organization (ILO) Convention, No. 105, Abolition of Forced Labour, 1957</strong></td>
<td><strong>Article 1 of ILO No. 105:</strong> &quot;Each Member ... undertakes to suppress and not to make use of any form of forced or compulsory labour – (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilizing and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination.&quot; ILO Abolition of Forced Labour Convention (No. 105), art. 1, 320 U.N.T.S. 291, <em>entered into force</em> Jan. 17. 1959.</td>
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<td><strong>Charter of the Organization of American States (Charter)</strong></td>
<td><strong>Article 34(g) of Charter of OAS:</strong> &quot;To accelerate their economic social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the Inter-American System, the Member States agree to dedicate every effort to achieve the following goals... (g) Fair wages, employment opportunities, and acceptable working conditions for all.&quot; Charter of the Organization of American States, art. 34(g), Apr. 30, 1948, 119 U.N.T.S. 3, <em>ratified by the U.S.</em> Dec. 13, 1951 [emphasis added].</td>
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<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 2 of Declaration:</strong> &quot;All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.&quot; American Declaration of the Rights and Duties of Man, art. 2, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>Article 14 of Declaration:</strong> “Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.” American Declaration of the Rights and Duties of Man, art. 14, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Article 15 of Declaration:</strong> “Every person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time to his spiritual, cultural and physical benefit.” American Declaration of the Rights and Duties of Man, art. 15, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Article 16 of Declaration:</strong> &quot;Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.&quot; A American Declaration of the Rights and Duties of Man, art. 16, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>Article 22 of Declaration:</strong> “Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.” American Declaration of the Rights and Duties of Man, art. 22, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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**HUMAN RIGHTS INSTRUMENTS NOT RATIFIED BY THE U.S.: LABOR AND EMPLOYMENT RIGHTS.**

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<td><strong>International Covenant on Economic, Cultural and Social Rights (ICESCR)</strong></td>
<td><strong>Article 6(1) of the ICESCR:</strong> &quot;(1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” International Covenant on Economic, Social, and Cultural Rights, art. 6(1), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976 [emphasis added].</td>
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<td><strong>Article 7 of the ICESCR:</strong> “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d ) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.” International Covenant on Economic, Social, and Cultural Rights, art. 7, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976 [emphasis added].</td>
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<td><strong>Article 8 of the ICESCR:</strong> “(1) The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others…” International Covenant on Economic, Social, and Cultural Rights, art. 8, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976 [emphasis added].</td>
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<td>International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)</td>
<td><strong>Article 11 of CEDAW:</strong> &quot;(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. (2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.” Convention on the Elimination of Discrimination Against Women, art. 11, Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981 [emphasis added].</td>
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<td>Convention on the Rights of Persons with Disabilities (CRPD)</td>
<td><strong>Article 9(1) of CRPD:</strong> “To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures... shall apply to... workplaces.” International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 9(1), Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), entered into force May 3, 2008 [emphasis added].</td>
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<td><strong>Article 27 of CRPD:</strong> “(1) States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia: a…..k.” International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 27, Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), entered into force May 3, 2008 [emphasis added].</td>
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**Treaty or Declaration** | Article/ Citation
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International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family (**ICRMW**) | **Article 7 of ICRMW**:
“States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, art. 7, Jul. 1, 2003, G.A. Res. 45/158, U.N. Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force Jul. 1, 2003 [emphasis added].

**Article 25 of ICRMW**: “1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and: (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms; (b) Other terms of employment, that is to say, minimum age of employment, restriction on work and any other matters which, according to national law and practice, are considered a term of employment. 2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article. 3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, art. 25, Jul. 1, 2003, G.A. Res. 45/158, U.N. Doc. Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force Jul. 1, 2003 [emphasis added].

**Article 26(1) of ICRMW**: “States Parties recognize the right of migrant workers and members of their families: (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned; (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned; (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, art. 26(1), Jul. 1, 2003, G.A. Res. 45/158, U.N. Doc. Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force Jul. 1, 2003 [emphasis added].
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<td>Article 27 of ICRMW:</td>
<td>“1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm. 2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, art. 27, Jul. 1, 2003, G.A. Res. 45/158, U.N. Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force Jul. 1, 2003 [emphasis added].</td>
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<td>Article 28 of ICRMW:</td>
<td>“Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, art. 28, Jul. 1, 2003, G.A. Res. 45/158, U.N. Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force Jul. 1, 2003 [emphasis added].</td>
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<td>Article 33 of ICRMW:</td>
<td>“1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning: (a) Their rights arising out of the present Convention...” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, art. 33, Jul. 1, 2003, G.A. Res. 45/158, U.N. Doc. Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force Jul. 1, 2003 [emphasis added].</td>
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<td>Universal Declaration of Human Rights (UDHR)</td>
<td>Article 23 of the UDHR: &quot;(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.” Universal Declaration of Human Rights, art. 23, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [emphasis added].</td>
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**Article 25 of the UDHR**: “Everyone has the right to a standard of living adequate for the health and well-being of himself (or herself) and of his (or her) family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his (or her) control.” Universal Declaration of Human Rights, art. 25, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [emphasis added].

**The American Convention on Human Rights (ACHR)** | **Art. 6 of ACHR**: “(1) No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women. (2) No one shall be required to perform forced or compulsory labor.” American Convention on Human Rights, art. 6, Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99, *entered into force* July 18, 1978 [emphasis added].

**Art. 16(1) of ACHR**: “(1) Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.” American Convention on Human Rights, art. 16(1), Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99, *entered into force* July 18, 1978 [emphasis added].

**Art. 26 of ACHR**: “The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.” American Convention on Human Rights, art. 26, Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99, *entered into force* July 18, 1978 [emphasis added]. Included among those rights are, “Fair wages, employment opportunities, and acceptable working conditions for all.” See also Charter of the Organization of American States, art. 34(g).
The International Labour Organization is a tripartite entity comprised of governments, labor, and business representatives, and its mission is to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues. The ILO Declaration on Fundamental Principles and Rights at Work (adopted in 1998) commits all ILO Member States (of which the U.S. is one), regardless of ratification of the underlying treaty provisions, including:

- freedom of association and the effective recognition of the right to collective bargaining, as set forth in the ILO Freedom of Association and Protection of the Right to Organize Convention (No. 87), and the ILO Right to Organize and Collective Bargaining Convention (No. 98);
- elimination of all forms of forced or compulsory labor, as provided for in the ILO Forced Labour Convention (No. 29), and the ILO Abolition of Forced Labor Convention (No. 105);
- effective abolition of child labor, as set forth in the ILO Minimum Age Convention (No. 138), and the ILO Worst Forms of Child Labour Convention (No. 182); and,
- elimination of discrimination in respect of employment and occupation, as set forth in the ILO Equal Remuneration Convention (No. 100), and the ILO Discrimination (Employment and Occupation) Convention (No. 111).

**U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW: LABOR AND EMPLOYMENT RIGHTS.**

**Estate of Rodriguez v. Drummond Co.**, 256 F.Supp. 2d 1250, 1264 (N.D. Ala. 2003), denying motion to dismiss complaint brought under the Alien Tort Claims Act and the Torture Victim Protection Act, for alleged murder by Columbian paramilitaries of union organizers in Columbia mine, wherein the court “reluctantly found that the fundamental rights to associate and organize support actionable torts under ATCA.”


**Moore v. Ganim**, 233 Conn. 557, 637 (Conn. 1995), finding minimal state obligation to provide basic assistance, but denying motion to enjoin state from imposing nine month limit on receipt of general assistance benefits. Peters, C.J. (concurring): “These contemporary economic circumstances and contemporary conceptions of democracy already have led the international community to incorporate a right to subsistence into the international law of human rights. For example, article 25 (1) of the Universal Declaration of Human Rights declares that ‘everyone has

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the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

**CASES BEFORE INTERNATIONAL BODIES: LABOR AND EMPLOYMENT RIGHTS.**

**Principle of Equality and Non-Discrimination**

*Petrovic v. Austria*, 11 Eur. Ct. H.R. Rep. 588, ¶¶37-38 (1998). In a challenge to Austria’s Unemployment Benefit Act 1977 denying fathers parental leave benefits (subsequently amended), the European Court noted that “very weighty reasons would be need for such a difference in treatment to be compatible with the Convention,” but ultimately concluded, “the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background; in this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States.”

**Wage claims, Forced Labor and Labor Trafficking**

*Siliadin v. France*, App. No. 733316/01, Eur. Ct. H.R., (2005). State has an obligation to take affirmative measures to protect against and servitude and forced labor. In determining existence of servitude, Court found she was performing work under “menace of threat,” giving consideration to her youth, and that “[h]er freedom to come and go had been limited, her passport had been taken away from her, her immigration status had been precarious before becoming illegally, and she had also been kept by Mr. and Mrs. B in a state of fear that she would be arrested and expelled.” It further assessed whether her decision to work was “voluntary” and assessed the whether the services she provided were done through the use of coercion.

*Prosecutor v. Kmojelac*, Case No. IT-97-25-A, International Criminal Tribunal for the former Yugoslavia, ¶195 (Sept. 17, 2003), finding the climate of fear in a detention camp to be great enough to establish a finding of forced labor, and holding, “Given the specific detention conditions of the non-Serb detainees at the KP Dom, a reasonable trier of fact should have arrived at the conclusion that the detainees’ general situation negated any possibility of free consent.... The climate of fear made the expression of free consent impossible, and it may neither be expected of a detainee that he voice an objection nor held that a person in a position of authority need threaten him with punishment if he refuses to work in order for forced labour to be established.”

*Prosecutor v. Kunerac*, Case No. IT-96-23 & IT-96-23/1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), ¶177 (Jun. 12, 2002), noting evolution of concepts of “chattel slavery” under the 1926 Slavery Convention “to encompass various contemporary forms of slavery which are also based on the exercise of any or all of the powers attaching to the right of ownership.... [where] there is some destruction of the juridical personality.”

*Individual Direct Request concerning Convention No. 29, Forced Labour, 1930 Saudi Arabia*, ILO Comm. of Experts on the Application of Conventions and Recommendations (1998). The committee noted that foreign workers and workers such as agricultural and domestic workers not covered by domestic labor legislation are subjected to condition that “transform their employment into a situation of near slavery. First, the employer, or the employing agency, routinely takes possession of the worker’s passport. The justification is that it is for ‘safekeeping’, but the result is that the passport holder can no longer exercise her or his freedom of movement.

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and certainly cannot leave the country or change employers freely. A second common occurrence is the non-remuneration of work, often for months on end. The worker cannot afford to seek other employment without risking the loss of all her or his earnings. These practices effectively turn migrant workers into bonded labourers.”

**Unemployment**

*S.W.M. Broeks v. Netherlands*, Communication No. 172/1984, U.N. Doc. CCPR/C/OP/2, 196, ¶¶ 12.5, 14-16 (1990). Ms. Broeks, who was married at the time of the termination of her unemployment benefits, challenged the termination of those benefits contending sex discrimination because married women were only deemed eligible for benefits if determined she was a “breadwinner” in the household, and were then calculated proportionate to her earnings as to those of her husband, a provision that applied only to the women and not to men (a provision amended subsequent to the date the claim arose, but prior to the Committee’s consideration). The U.N. Human Rights Committee ruled art. 26 of the ICCPR extended the prohibition of discrimination to the Netherlands’ economic, social and cultural rights obligations undertaken through its ratification of the ICESCR, concluding “12.5. The Committee observes in this connection that what is at issue is not whether or not social security should be progressively established in the Netherlands, but whether the legislation providing for social security violates the prohibition against discrimination contained in article 26 of the International Covenant on Civil and Political Rights and the guarantee given therein to all persons regarding equal and effective protection against discrimination.” The Committee concluded the “breadwinner” provision placed married women “at a disadvantage compared with married men” and stated that “[s]uch as differentiation is not reasonable.”

**Freedom of Association**

*Complaints against the Government of the United States presented by the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM)*, ILO Comm. on Freedom of Association, Case No. 2227, Report No. 332 (2003). In a complaint filed following the U.S. Supreme Court decision in the case of *Hoffman Plastic Compounds, Inc. v. NLRB*, the ILO Committee on Freedom of Association found the failure to provide a remedy to undocumented workers whose rights to freedom of association were violated were effectively denied the underlying right.

*Complaint against the Government of Spain presented by General Union of Workers of Spain (UGT)*, ILO Comm. on Freedom of Association, Case No. 2121, Report No. 327 (2002). “Irregular” foreign workers must be granted the same rights to organize and strike, freedom of assembly and association, and to demonstrate and collective bargaining, as is granted to citizen workers.

**CASES BEFORE OTHER NATIONAL COURTS OR SUB-REGIONAL BODIES: LABOR AND EMPLOYMENT RIGHTS.**

*Vishaka et al. v. State of Rajasthan*, A.I.R. 1997 S.C. 3011 (India), in considering a petition for the enforcement of the fundamental rights of working women, in particular, the right to be free from sexual harassment, the Court relied on international norms and resolutions pertaining to violence and equality at work in developing norms and procedures aimed at eradicating sexual harassment in the workplace.

*Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984 S.C. 803 (India), establishing a rebuttable presumption of a finding of bonded labor, when forced labor for no wage or a nominal wage has been paid.
Rights of Undocumented Workers, Advisory Opinion OC-18/03, Inter. Am. C.H.R., OEA OC-18 (2003). The Inter-American Commission held that the principle of equality and non-discrimination is a *jus cogens* norm imposing upon all States the affirmative obligation to ensure equality and protect against discrimination, in the enjoyment of fundamental rights, including due process of law and access to justice. It then applied that principle to all migrant workers, regardless of legal status, recognizing the following fundamental rights: “157. ... the prohibition of obligatory or forced labor; the prohibition and abolition of child labor; special care for women workers, and the rights corresponding to: freedom of association and to organize and join a trade union, collective negotiation, fair wages for work performed, social security, judicial and administrative guarantees, a working day of reasonable length with adequate working conditions (safety and health), rest and compensation."


“While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.”


Gen. Rec. No. 30 notes that while ICERD allows for differentiation between citizens and non-citizens (in Article 1, paragraph 2), that provision, “2. should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.” In further elaborates on what is permissible and impermissible differentiation based on citizenship status, as follows:

“(3) Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law;

“(4) Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim […]

(29) Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health; […]

*Human Rights in the United States: A Handbook for Legal Aid Attorneys*
(33) Take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects;

(34) Take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault;

(35) Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.”


“ The Committee regrets that despite the various measures adopted by the State party to enhance its legal and institutional mechanisms aimed at combating discrimination, workers belonging to racial, ethnic and national minorities, in particular women and undocumented migrant workers, continue to face discriminatory treatment and abuse in the workplace, and to be disproportionately represented in occupations characterized by long working hours, low wages, and unsafe or dangerous conditions of work. The Committee also notes with concern that recent judicial decisions of the U.S. Supreme Court – including Hoffman Plastics Compound, Inc. v. NLRB (2007), Ledbetter v. Goodyear Tire and Rubber Co. (2007) and Long Island Care at Home, Ltd. v. Coke (2007) – have further eroded the ability of workers belonging to racial, ethnic and national minorities to obtain legal protection and redress in cases of discriminatory treatment at the workplace, unpaid or withheld wages, or work-related injury or illnesses (arts. 5 (e) (i) and 6).

The Committee recommends that the State party take all appropriate measures, including increasing the use of “pattern and practice” investigations, to combat de facto discrimination in the workplace and ensure the equal and effective enjoyment by persons belonging to racial, ethnic and national minorities of their rights under article 5 (e) of the Convention. The Committee further recommends that the State party take effective measures, including the enactment of legislation, such as the proposed Civil Rights Act of 2008, to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.”
5.2.4 SAMPLE ARGUMENTS: LABOR AND EMPLOYMENT RIGHTS.

These sample arguments should be used to supplement your state and federal-law based claims and defenses. Do not rely these arguments alone.

**SAMPLE ARGUMENT 1 - RIGHT TO NON-DISCRIMINATION IN THE ENJOYMENT OF JUST AND FAVOURABLE CONDITIONS OF WORK**

The Universal Declaration of Human Rights [hereinafter “UDHR”] provides that “[a]ll persons are born free and equal in dignity and rights,” art. 1, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), and the principle of equality and non-discrimination in the enjoyment of workplace rights and access to the courts for the realization and enforcement of those rights is well-established under international law. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, *ratified by the U.S.* Nov. 20, 1994 (hereinafter, “CERD”); International Covenant on Civil and Political Rights, art. 2, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), *ratified by the U.S.* Sept. 8, 1992 (extending the rights provided for in the Covenant to all persons “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”); ICCPR, art. 3 (obligating States to “ensure the equal rights of men and women”); ICCPR, art. 26 (providing that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law,” and requiring the law to “guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”). See also American Declaration of the Rights and Duties of Man, art. 2, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) (providing that “all persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”).

The principle of equality and non-discrimination applies to the workplace through the right under international law to the free and full enjoyment of just and favourable conditions of work. See, e.g., CERD, art. 5(e)(i)-(ii) (extending the protections against discrimination to “(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) The right to form and join trade unions.”); UDHR, art. 23(1) (providing for the right to “just and favourable conditions at work”). See also Rights of Undocumented Workers, Advisory Opinion OC-18/03, Inter. Am. C.H.R., OEA OC-18, ¶157 (2003) (extending the principle of equality and non-discrimination to the fundamental workplace rights, including: “the prohibition of obligatory or forced labor; the prohibition and abolition of child labor; special care for women workers, and the rights corresponding to: freedom of association and to organize and join a trade union, collective negotiation, fair wages for work performed, social security, judicial and administrative guarantees, a working day of reasonable length with adequate working conditions (safety and health), rest and compensation.”).

The right to non-discrimination and equality under international law differs from U.S. constitutional protections both in terms of the scope of protected classes, and also – importantly – in that it recognizes discrimination in fact, and not just intent. Therefore, statutes, regulations or policies that employ neutral language but have a disparate impact on protected categories, are prohibited. See, CERD, art. 2 (mandating States Parties to “amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”).

[Potential claims – recognizing that it is governments and not private actors (i.e., employers) who are bound by the provisions of international law: failure to adequately protect against injury or other health hazards in the workplace that result in disparate rates of injury based on one of the protected categories; failure to enforce or guard against wage theft in industries or for individuals of a protected category; failure to recognize de facto discrimination, even where the plaintiff may not be able to meet the burden of proving de jure discrimination;]
LSC restrictions denying H-2B and undocumented workers access to legal aid; discriminatory terms and conditions of employment for guestworkers; discriminatory impact of mandatory welfare-to-work programs, and denial of work based on criminal records checks, where the denial of employment is disproportionate or not related to earlier criminal activity; denial of access to job training programs for persons of limited or non-English proficiency).

[Insert the important facts of this case] violates the Plaintiffs’ fundamental human right to enjoy just and favorable conditions of work without discrimination under established principles of international law.

### SAMPLE ARGUMENT 2 - RIGHT TO JUST AND FAVORABLE REMUNERATION FOR WORK PERFORMED, AND RIGHT TO BE FREE FROM FORCED LABOUR, SERVITUDE AND HUMAN TRAFFICKING

The concept of the right to decent work is clearly set forth in the Universal Declaration of Human Rights, which provides: “(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. The right to be paid for work performed is a fundamental concept in international law, grounded in the prohibition of slavery, servitude, and forced labor, as well as the right to just and favorable terms and conditions of work, including the right to just and equal remuneration.” Universal Declaration of Human Rights, art. 23, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

These enumerated rights are reiterated in several other international and regional human rights documents. See, e.g., American Declaration of the Rights and Duties of Man, art. 14, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/Ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) (providing for the “right to work, under proper conditions,” and guaranteeing “right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.”); Charter of the Organization of American States, art. 34(g), APR. 30, 1948, 119 U.N.T.S. 3, ratified by the U.S. Dec. 13, 1951 (calling upon all member States, including the United States, to take “every effort to achieve... fair wages, employment opportunities, and acceptable working conditions for all.”).

In addition to providing for the right to fair wages and employment opportunities, international law clearly prohibits discrimination in the enjoyment of those rights. [See above, Model Argument #1 - RIGHT TO NON-DISCRIMINATION IN THE ENJOYMENT OF JUST AND FAVOURABLE CONDITIONS OF WORK].

Furthermore, the failure to ensure payment of all wages for work performed, impermissible deductions from pay, and other acts that violate the notion of “just and favourable terms and conditions of work,” risk violating clearly established norms under international law prohibiting slavery, servitude, and forced or compulsory labor. See, e.g., International Covenant on Civil and Political Rights, art. 2, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992; Abolition of Forced Labour Convention, art. 105, 320 U.N.T.S. 291, ratified by the U.S. Sept. 25, 1991.

International tribunals have recognized the differing ways in which control is exercised over individuals to compel their labor, and consider the totality of the circumstances when making a determination as to whether the work environment has deteriorated to a situation of servitude or other forms of prohibited forced or compulsory labor. See, e.g., Siliadin v. France, App. No. 733316/01, Eur. Ct. H.R. (2005), http://www.unhcr.org/refworld/docid/4406f0df4.html (in which the Court considered the worker’s youth, the fact that her passport had been confiscated, her precarious immigration status, and the state of fear brought on by statements by her employer that she would be arrested and expelled, as well as coercion through fraud in her “voluntary” decision to accept employment, in its ultimate finding of prohibited servitude). See also ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Direct Request concerning Convention No. 29,

[Insert the important facts of this case] violates the Plaintiffs’ fundamental human right to enjoy just and favourable conditions of work without discrimination under established principles of international law. [These actions further give rise to violations of the Torture Victim Protection Act, and allow for additional causes of action in tort].

**SAMPLE ARGUMENT 3 - RIGHT TO UNEMPLOYMENT AND SOCIAL SECURITY**

Human rights law clearly recognizes the right to social security in the case of unemployment. The Universal Declaration of Human Rights provides: "(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” Universal Declaration of Human Rights, art. 23, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

Article 25 of the UDHR: “Everyone has the right to a standard of living adequate for the health and well-being of himself (or herself) and of his (or her) family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his (or her) control," Universal Declaration of Human Rights, art. 25, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [emphasis added]. See also American Declaration of the Rights and Duties of Man, art. 16, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) ("Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living."). Rights of Undocumented Workers, Advisory Opinion OC-18/03, Inter. Am. C.H.R., OEA OC-18, ¶15, (2003), [http://www1.umn.edu/humanrts/iachr/series_A_OC-18.html](http://www1.umn.edu/humanrts/iachr/series_A_OC-18.html) (recognizing as a fundamental right, the right to social security).

While international tribunals recognize the progressive nature of the right to unemployment and are reluctant to impose an affirmative obligation on a State in guaranteeing the right to unemployment, it is clearly established under international human rights norms that unemployment and social security must be provided in a manner consistent with a State’s obligation to ensure all persons are equal before the law and in the enjoyment of all rights and benefits provided for under international law, and under the laws of the State in question. See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992 (providing in article 2 that “all persons, without distinction, are entitled to the equal enjoyment of the rights contained in the Covenant” and in article 26 that “all persons are equal before the law and are entitled to equal protection of the law). See also S.W.M. Broeks v. Netherlands, Comm. No. 172/1984, U.N. Doc. CCPR/C/OP/2 at 196, ¶¶ 12.5, 14-16 (1990), [http://www1.umn.edu/humanrts/undocs/newscans/172-1984.html](http://www1.umn.edu/humanrts/undocs/newscans/172-1984.html) (finding that rights contained within the International Covenant on Economic Social and Cultural Rights must be provided for in a manner consistent with Articles 2 and 26 of the International Covenant on Civil and Political Rights).

[Insert the important facts of this case] violates the Plaintiffs’ fundamental human right to enjoy just and favorable conditions of work without discrimination under established principles of international law.
SAMPLE ARGUMENT 4 - RIGHT TO FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING


The rights to freedom of association and the effective recognition of the right to collective bargaining have long been viewed as core to the realization of the right to decent work. As a means towards achieving human rights at work, the ILO Declaration on Fundamental Principles and Rights at Work (adopted in 1998) commits all ILO Member States (of which the United States is one), regardless of ratification of the underlying treaty provisions, to the ensure the right to freedom of association and the effective recognition of the right to collective bargaining, as set forth in the ILO Freedom of Association and Protection of the Right to Organize Convention (No. 87), and the ILO Right to Organize and Collective Bargaining Convention (No. 98), regardless of the status of ratification of the identified core ILO treaties. See International Labour Conference, ILO Declaration, 86th Session, Geneva, June 18, 1998. See The ILO Declaration on Fundamental Principles and Rights at Work, http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm.

The failure to guarantee the right to freedom of association and collective bargaining [may implicate / directly implicates] the right to non-discrimination in the enjoyment of terms and conditions of work, in further violation of international human rights guarantees non-discrimination and equality in the right to just and favourable conditions of work found in the CERD at art. 5(e)(i) (extending the protections against discrimination to “(i) [t]he rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration”), and the Universal Declaration of Human Rights, art. 23(1), G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [providing for the right to “just and favourable conditions at work”). Interference with the right to collective bargaining [may have / has] a disproportionate impact on persons of color and women, particularly those employed in lower-wage sectors. [Fill in statistical data, if relevant.]

The National Labor Relations Board / state Labor Relations Board is bound under international law to ensure protection for workers engaged in those rights, and provide adequate redress to the individual workers when their rights to freedom of association and collective bargaining are violated. See, e.g., ILO Committee of ILO Committee on Freedom of Association, Complaints against the Government of the United States presented by the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM), Case. No. 2227, Report No. 332 (2003) (holding that the U.S. Supreme Court’s decision in Hoffman Plastic Compounds, Inc. v. NLRB denying the remedy of back-pay, the only remedy available to the individual whose right to freedom of association is violated under the NLRA, was an impermissible denial of the underlying right).
5.2.5 TALKING POINTS: LABOR AND EMPLOYMENT RIGHTS.

**TALKING POINTS #1 - RIGHT TO NON-DISCRIMINATION IN THE ENJOYMENT OF JUST AND FAVOURABLE CONDITIONS OF WORK**

- The right to non-discrimination in the workplace has been well-established by the civil rights laws in the U.S., but U.S. law falls short of the full guarantees set forth under international law.

- The Inter-American Court on Human Rights has held that the principle of equality and non-discrimination is a *jus cogens* principle, and as such, creates binding obligations on the U.S. (through its judiciary, legislative, and executive branches) to ensure both *de jure* and *de facto* non-discrimination. In doing so, it relied on the numerous international and regional human rights treaties, declarations and related documents, as well as decisions of international and regional tribunals and UN treaty bodies.

- Where domestic Constitutional or statutory law is vague, international human rights norms regarding non-discrimination should be applied to interpret U.S. law in a way that comports with international principles and norms of equality and non-discrimination.

- In the recent abolition of juvenile death penalty case, Roper v. Simmons, the U.S. Supreme Court looked to international human rights norms and to the jurisprudence of other countries when it was interpreting U.S. law and making its decision as to whether to abolish the juvenile death penalty. The U.S. Supreme Court similarly looked to international human rights norms and jurisprudence of other countries when it ruled laws prohibiting sodomy violated the right to privacy.

- U.S. obligations under CERD reach beyond those found in Title VII and other anti-discrimination statutes both in terms of the categories of protected persons, and in creating an affirmative obligation on the part of the government to combat discrimination, both in fact and in law.

- The CERD and the ICCPR, both treaties ratified by the U.S., extend the protection against discrimination (on account of gender, language, race, national origin, ethnicity, property or other social status) to both the rights contained within the respective treaty, as well as to all rights provided for under law.

- Furthermore, the ILO Declaration on Fundamental Principles and Rights at Work (adopted in 1998) calls upon all members (of which the U.S. is one) to ensure the realization of decent work, and recognized as one of the fundamental principles the elimination of discrimination in respect of employment and occupation.

**TALKING POINTS #2 - FAILURE TO ENSURE DECENT WORKING CONDITIONS AND FULL PAYMENT OF FAIR WAGES AND EXERCISE OF POLICIES AND PRACTICES THAT CONTRIBUTE TO SERVITUDE AND FORCED LABOR ARE INCOMPATIBLE WITH INTERNATIONAL NORMS**

- The right to be paid for work performed is well established under both U.S. and international law, through the prohibition of slavery, indentured servitude and other forms of forced or coerced labor.

- International human rights norms go further in recognizing the right to all persons the right to decent work and to fair and just remuneration. And, as a member of the Organization of American States, the U.S. is called upon to take “every effort to achieve... fair wages, employment opportunities, and acceptable working conditions for all.”

- Where domestic Constitutional or statutory law is vague, international human rights norms regarding non-discrimination should be applied to interpret U.S. law in a way that comports with international principles and norms of equality and non-discrimination.
For example, in the recent abolition of juvenile death penalty case, Roper v. Simmons, the U.S. Supreme Court looked to international human rights norms and to the jurisprudence of other countries when it was interpreting U.S. law and making its decision as to whether to abolish the juvenile death penalty. The U.S. Supreme Court similarly looked to international human rights norms and jurisprudence of other countries when it ruled laws prohibiting sodomy violated the right to privacy.

In claims of forced labor and servitude:

- In interpreting the 13th Amendment of the U.S. Constitutional and its prohibition of slavery, courts can look to international and foreign law sources in its interpretation of forced labor and “modern day” slavery.

In wage claims:

- The U.S. ratified the ICCPR in 1992, and the ICERD in 1994, and it is bound to act in a manner consistent with the obligations set forth therein.

- Article 2 of the ICCPR obligates states to ensure equal enjoyment of all rights contained under both our international treaty obligations (ICCPR, art. 2) and under domestic law (ICCPR, art. 26). Article 5 of the ICERD extends the right to equality and non-discrimination (both in law and in effect) to the enjoyment of rights to decent work, fair remuneration, and equal pay for equal work.
  - Therefore, U.S. obligations to ensure equality under the law and non-discrimination should be used as the lens through which to examine claims brought under domestic law, including claims brought under FLSA and other state and federal wage payment and collection laws, as well as contract law.

TALKING POINTS #3 - RIGHT TO UNEMPLOYMENT AND SOCIAL SECURITY

- The use international human rights norms to assist in interpretation and the development of U.S. law is well established.

- While the U.S. has not ratified the International Covenant on Economic, Social and Cultural Rights, it ratified the ICCPR in 1992, and the CERD in 1994, and it is bound to act in a manner consistent with the obligations set forth therein.

- Article 2 of the ICCPR obligates states to ensure equal enjoyment of all rights contained under both our international treaty obligations (ICCPR, art. 2) and under domestic law (ICCPR, art. 26). Article 5 of the CERD extends the right to equality and non-discrimination (both in law and in effect) to decent work and to social security in the case of unemployment for any reason outside of that individual’s control.

- Furthermore, as a member of the Organization of American States, the U.S. is obligated under the OAS Charter and under the American Declaration of the Rights and Duties of Man to act in a manner that is not regressive in the implementation of the rights contained therein.

- Therefore, U.S. obligations to ensure the progressive realization of the rights contained in the American Declaration, and its obligations to ensure equality under the law and non-discrimination should be used as the lens through which to assess an individual’s right to unemployment benefits.

TALKING POINTS #4- RIGHT TO FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

- The right to freedom of association is recognized in state and federal law in the U.S. and is guaranteed in numerous international and regional human rights documents.
The U.S. ratified the ICCPR in 1992 and the CERD in 1994, both of which guarantee the right to freedom of association to form and join trade unions, without discrimination, and provide for equality before the law to ensure the realization of those rights.

In addition, the U.S. is a member of the International Labor Organization, and is therefore bound by the ILO Declaration on Fundamental Principles and Rights at Work (adopted in 1998), which commits all ILO Member States (of which the U.S. is one), regardless of ratification of the underlying treaty provisions, to the ensure the right to freedom of association and the effective recognition of the right to collective bargaining, as set forth in the ILO Freedom of Association and Protection of the Right to Organize Convention (No. 87), and the ILO Right to Organize and Collective Bargaining Convention (No. 98).

Furthermore, the impact of the denial of the right to freedom of association and the effective recognition of the right to collective bargaining [may implicate / directly implicates] the right to non-discrimination in the enjoyment of terms and conditions of work, in further violation of international human rights guarantees non-discrimination and equality in the right to just and favourable conditions of work.

The National Labor Relations Board / state Labor Relations Board is bound under international law to ensure protection for workers engaged in those rights, and provide adequate redress to the individual workers when their rights to freedom of association and collective bargaining are violated.

5.2.6 CASE STUDIES OF LEGAL AID ATTORNEYS: LABOR AND EMPLOYMENT RIGHTS

MARYLAND LEGAL AID SPEARHEADS JOINT LEGAL AID COMPLAINT ON ACCESS TO JUSTICE FOR MIGRANT FARMWORKERS

On December 13, 2012, Maryland Legal Aid, spearheaded a complaint submitted to Magdalena Sepúlveda Carmona, U.N. Special Rapporteur on extreme poverty and human rights, by a coalition of 28 legal services, healthcare, workers’ rights, anti-trafficking organizations, and other community service programs that serve migrant farmworkers, representing all 50 states. The complaint argues that the practice of denying farmworkers the right to have visitors and social services providers the right to meaningful access to migrant farmworker labor camps is a violation of human rights law.

5.2.7 SAMPLE BRIEFS & PETITIONS: LABOR AND EMPLOYMENT RIGHTS


5.2.8 OTHER RESOURCES: LABOR AND EMPLOYMENT RIGHTS

Report of the August 2011 Human Rights Delegation to Hershey, Pennsylvania (Sept. 2, 2011), setting forth a human rights analysis of the following allegations as reported by J-1 Student visa holders employed at a packing plant for Hershey: fraud and coercion in recruitment and contracting; failure to pay fair remuneration and unlawful pay deductions; failure to provide safe and decent working conditions, free from abusive, exploitative and discriminatory treatment; interference with the right to freely choose one’s place of work; interference with workers’ right to organize and freedom of association; threats, intimidation, coercion and retaliation.


Submission to the United Nations Universal Periodic Review Ninth Session of the Working Group on the UPR (November 2010) – United States of America: Labor Rights, submitted by a coalition of trade unions, union representatives, and organizations and individuals dedicated to ensuring workplace rights through the protection and promotion of the right to freedom of association and collective bargaining for all workers.

Submission to the United Nations Universal Periodic Review Ninth Session of the Working Group on the UPR (November 2010) – United States of America: Gender and Racial Inequalities in the Right to Decent Work, submitted by a coalition of stakeholder dedicated to ensuring the government takes steps to ensure the human right to work, accounting for the needs of women and racial and ethnic minorities in securing decent work.

Submission to the United Nations Universal Periodic Review Ninth Session of the Working Group on the UPR (November 2010) – United States of America: Migrant Labor Rights, submitted by a coalition of organizations, entities and individuals committed to ensuring that all individuals regardless of the industry in which they work and regardless of their migration status, are entitled to all workplace rights and other fundamental rights connected to their status as migrant workers, without discrimination.

Submission to the Committee on the Elimination of All Forms of Racial Discrimination, Labor and Employment Rights in the United States: A Critical Look at U.S. Compliance with the Convention on the Elimination of All Forms of Racial Discrimination, prepared by the US Human Rights Network Labor Caucus (February 2008), and addressing the intersection of labor policies, immigration policies and racialized workplace discrimination in the United States, as well as de jure and de facto discrimination in the protection and promotion of the right to freedom of association, and calling attention to the particularized vulnerabilities under the law of guestworkers, day laborers, and domestic workers.

International Trade and Workers’ Rights: Practical Tools for Reading Labor Rights Provisions of Free Trade Agreements, prepared by Local Human Rights Lawyering Project Advisory Board member R. Michael Waller in 2004, this article aims to make Free Trade Agreement (FTA) texts more accessible and to provide a critical tool with which to analyze FTAs.
5.3 HOUSING RIGHTS

The Housing Rights section of this Handbook was written by Lauren E. Bartlett.¹

5.3.1 INTRODUCTION: HOUSING RIGHTS.

The right to housing is a universal right, recognized at the international level and in more than one hundred national constitutions throughout the world.¹⁴¹

The right to housing should not be interpreted strictly as shelter or narrowly as a single family home. Rather, the right to housing should be seen as the right to live somewhere in security, peace and dignity, and, like all other basic human rights, the right to adequate housing applies to everyone. Additionally, the right to housing refers not just to housing, but to adequate housing. The following aspects of the right are to be taken into consideration when considering adequacy of housing: (a) Legal security of tenure; (b) Availability of services, materials, facilities and infrastructure; (c) Affordability; (d) Habitability; (e) Accessibility; (f) Location; and (g) Cultural adequacy.¹⁴²

Advocates have begun calling for the recognition of a right to housing in the U.S. to address the ongoing severe housing crisis. This section of the Handbook will provide legal aid attorneys with model written and oral arguments with statistics and resources for relevant data, arguments to use in litigation, a list of relevant international and U.S. law, and case studies of legal aid attorneys fighting for housing rights.

5.3.2 QUICK STATISTICS & RESOURCES FOR DATA: HOUSING RIGHTS.

- Today, more than 828 million people worldwide live in slums and more than 1 billion people worldwide live in inadequate housing.¹⁴³

- Between 2007 and 2008, close to 4.5 million people worldwide faced eviction, and over 15 million people worldwide are displaced by economic development each year.¹⁴⁴

- Here in the U.S, in 2009, over 17 million people confronted serious housing problems or had no housing at all.¹⁴⁵

¹ Lauren E. Bartlett is director of the Center’s Local Human Rights Lawyering Project. From 2008-2011, Ms. Bartlett worked as a legal services attorney at Southeast Louisiana Legal Services in the foreclosure prevention unit. She taught a housing law and policy course at Loyola University New Orleans College of Law and served on the board of the ACLU of Louisiana. In 2007, she co-founded the Louisiana Justice Institute, a nonprofit civil rights legal advocacy organization. During law school, Lauren focused on gaining a strong background in international law and human rights. She was an articles editor for the Human Rights Brief, participated in a research program in Geneva, Switzerland for the U.N. Committee Against Torture, and was an Executive Board Member of the student group Action for Human Rights. She also served as a summer associate with the group Advocates for Environmental Human Rights, based in New Orleans, Louisiana. Before law school, Ms. Bartlett worked with non-profit organizations in California, Nepal, Bangladesh and India, alongside advocates fighting for social and environmental justice.

¹⁴¹ A sampling of constitutions which recognize a right to housing include: Argentina, Const. Arg., § 14 (“the States shall grant . . . access to worthy housing”); Belgium, art. 23(3) (“Everyone has the right to lead a life in conformity with human dignity . . . includ[ing], in particular, the right to decent accommodation.”); Ecuador, art. 13 (“Every person enjoys the following guarantees . . . the right to a standard of living that assures health, food, clothing, housing, medical assistance and the necessary social services…”); Mali, art. 16 (“Education, instruction, formation, work, housing, leisure, health and social protection shall constitute recognized rights.”); Mexico, Const. D.O., art. 4 (“Every family has the right to enjoy decent and proper housing.”); Panama, art. 113 (“The state shall establish a national housing policy with the purpose of ensuring the enjoyment of this social right to all of the population, especially low-income groups.”).


On a single night in January 2011, 636,017 people were homeless in the U.S.\(^{146}\)

More than 1.02 million people used homeless shelters in 2010.\(^{147}\)

The number of people in the U.S. in poverty jumped to 15.1% in 2010, a 17-year high.\(^{148}\)

Here are some resources for data related to housing in the U.S. and worldwide:

- **U.S. Census Bureau**
- **U.S. Department of Housing and Urban Development (HUD)**
- **Annual U.S. Conference of Mayors Hunger and Homelessness Survey**
- **National Law Center on Homelessness and Poverty (NLCHP)**
- **U.N. Development Programme, Annual Millennium Development Goals Reports**
- **U.N. Habitat Programme, Land and Housing Publications**
- **Annual Reports of the United Nations Special Rapporteur on the Right to Adequate Housing to the Commission on Human Rights and to the Human Rights Council**
- **Centre on Housing Rights & Evictions (COHRE)**

### 5.3.3 RELEVANT HUMAN RIGHTS LAW: HOUSING RIGHTS.

The language from the treaties listed below is merely a sampling. This is not an exhaustive list of treaties or the relevant articles in each treaty that are available. There may be language or another treaty not yet listed that is more relevant to your case at hand. Please be sure to review the full treaty text, which is available by clicking on the links below.

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<td>Article 5 of CERD</td>
<td>&quot;In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights: (...) (e) in particular (...) (iii) the right to housing.&quot; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994 [emphasis added].</td>
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<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td>Article 2 of the ICCPR: &quot;Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.&quot; International Covenant on Civil and Political Rights, art. 2, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td>Article 17 of the ICCPR: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation; and 2. Everyone has the right to the protection of the law against such interference or attacks.” International Covenant on Civil and Political Rights, art. 17, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td>Article 26 of the ICCPR: &quot;All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.&quot; International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td>International Convention Relating to Status of Refugees (ICRSR)</td>
<td><strong>Article 21 of ICRSR</strong>: &quot;As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.&quot; International Convention Relating to the International Status of Refugees, art. 21, 189 U.N.T.S. 137, entered into force Apr. 22, 1954.</td>
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<td>International Convention Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment (CAT)</td>
<td><strong>Article 16 of CAT</strong>: &quot;Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence as a public official or other person acting in an official capacity.&quot; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 16, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20(1988); 23 I.L.M. 1027(1984), as modified by 24 I.L.M.535 (1985), ratified by the U.S. Nov. 20, 1994.</td>
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<td>Charter of the Organization of American States (Charter of OAS)</td>
<td><strong>Article 34(k) of Charter of OAS</strong>: &quot;To accelerate their economic social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the Inter-American System, the Member States agree to dedicate every effort to achieve the following goals... (k) Adequate housing for all sectors of the population,&quot; Charter of the Organization of American States, art. 34(k), Apr. 30, 1948, 119 U.N.T.S. 3, ratified by the U.S. Dec. 13, 1951 [emphasis added].</td>
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<td>American Declaration on the Rights and Duties of Man (Declaration)</td>
<td><strong>Article 8 of Declaration</strong>: &quot;Every person has the right to fix his residence within the territory of the state of which he is a national, to move freely within such territory, and not to leave it except by his own will.&quot; American Declaration of the Rights and Duties of Man, art. 8, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>Article 11 of Declaration</strong>: &quot;Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care to the extent permitted by the public and community resources.&quot; American Declaration of the Rights and Duties of Man, art. 11, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>Article 23 of Declaration</strong>: &quot;Every person has the right to own such property as meets the essential needs of decent living and helps maintain the dignity of the individual and of the home.” American Declaration of the Rights and Duties of Man, art. 23, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>International Covenant on Economic, Cultural and Social Rights</strong> (ICESCR)</td>
<td>Article 11(1) of the ICESCR: &quot;The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself (or herself) and for his (or her) family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.&quot; International Covenant on Economic, Social, and Cultural Rights, art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976 [emphasis added].</td>
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<td><strong>International Convention on the Rights of the Child</strong> (CRC)</td>
<td>Article 27(1) of CRC: &quot;States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. (...) 3. State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.&quot; Convention on the Rights of the Child, art. 27(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Convention on the Rights of Persons with Disabilities</strong> (CRPD)</td>
<td>Article 9(1) of CRPD: “To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces” International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Mar. 30, 2007, art. 9(1), G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), entered into force May 3, 2008.</td>
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**Article 28(1) of CRPD:** “To an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.”


**Article 28(2) of CRPD:** “States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including ... To ensure access by persons with disabilities to public housing programmes.”


**The American Convention on Human Rights (ACHR)**
Through the Convention, States parties agree to "undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires." These rights include the right to life and the right to property, among others. American Convention on Human Rights, Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99, entered into force July 18, 1978.

**Universal Declaration of Human Rights (UDHR)**

**Article 25(1) of the UDHR:** "Everyone has the right to a standard of living adequate for the health and well-being of himself (or herself) and of his (or her) family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his (or her) control." Universal Declaration of Human Rights, art. 25(1), G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

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**U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW:** **HOUSING RIGHTS.**

*Office of Hawaiian Affairs v. Housing and Community Development Corp. of Hawaii*, 177 P.3d 884 (2008), reversed and remanded by *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009). The Court recognized the support that international law provided the plaintiff’s claims and declined to “engage in a discussion of these issues inasmuch as our holding is grounded in Hawai‘i and federal law.”


*Santa Barbara v. Adamson*, 610 P.2d 436 (Cal. 1980). In striking down an ordinance prohibiting five unrelated persons from residing together in a “family residence zone”, the California Supreme Court cited Article 12 of the Universal Declaration’s protection of the right to privacy.
CASES BEFORE INTERNATIONAL BODIES: HOUSING RIGHTS.


**The Mayagna (Sumo) Awas Tingni Community v. Nicaragua**, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001). The Inter-American Court on Human Rights found in favor of the indigenous families, concluding that the Nicaraguan government had violated their right to property and to legal protection. It ruled that the ancestral lands should be clearly delimited and that the government should, in the future, protect the right to property and to housing against all violation.

CASES BEFORE OTHER NATIONAL COURTS OR SUB-REGIONAL BODIES. HOUSING RIGHTS.

**Victoria (City) v. Adams**, BCSC 1363 (B.C. 2008). The Supreme Court of British Columbia held that the City of Victoria’s prohibition on “taking a temporary abode” constituted an interference with the life, liberty and security of the person of homeless people, citing the IESCR and the UDHR.

**European Roman Rights Centre v. Greece**, Complaint No. 15/2003 (2004). The European Committee on Social Rights held that a significant number of Roma living in conditions that fail to meet minimum standards was a breach of the obligation to promote the right of families to adequate housing. The Committee further held that Greece violated the right to housing by not providing infrastructure at Roma camping sites.

**Minister of Public Works & Ors. V. Kyalami Ridge Environmental Association & Ors**, 1 LRC 139, 3 CHRLD 313 (S. Afr. 2002). The Constitutional Court of South Africa upheld the government’s establishment of a transit camp for flood victims without consultation with the area’s residents association. The government’s constitutional obligations with respect to the right to housing includes “the need to facilitate access to temporary relief for people who [have] no access to land, no roof over their heads, for people living in intolerable conditions and for people who were in crisis because of natural disasters such as floods and fires, or because their home was under threat of demolition.”


**Shantistar Builders v. Narayan Khimalal Totame**, Civil Appeal No. 2598/1989, 1 S.C.C. 520 (India 1990). The Supreme Court of India held that the right to life includes “the right to a decent environment and a reasonable accommodation to live in.” Shelter has to be a suitable accommodation that allows a human being to grow and develop in physical and mental aspects.

TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS: HOUSING RIGHTS


In 2010, the U.N. Special Rapporteur on Adequate Housing, after a mission in the U.S., made recommendations regarding housing law and policy in the U.S. The U.N. Special Rapporteur recommended that:
“86. Additional funding be provided to properly maintain and restore the remaining public housing, and legislation on health standards for subsidized buildings, including proper maintenance and pest control, should be strengthened.

87. The Special Rapporteur considers that, given the crisis in affordable housing, an immediate moratorium be declared on the demolition and disposition of public housing until one-for-one replacement housing is secured, and the right of return is guaranteed to all residents. Housing be made available for displaced residents prior to the demolition of any unit.

90. More resources be devoted to Section 8 vouchers and legislative action be taken to encourage extension of Section 8 contracts and affordable housing programs involving private landlords.

92. Tenant protection legislation should be further strengthened for renters of foreclosed properties. The Helping Families Save Their Home Act (P.L. 111-22): Protecting Tenants at Foreclosure Act (Title VII) should be extended beyond 2012 and become permanent protection.

95. The Interagency Council on Homelessness develop constructive alternatives to the criminalization of homelessness. Homeless persons should be permitted to shelter in public areas when there is no other shelter available.

96. The administration and Congress should encourage the expansion of the definition of homelessness to include those living with family or friends due to economic hardship. The Department of Housing and Urban Development (HUD) should ensure that households living with others due to economic hardship are eligible for rental and other assistance, including from the Emergency Shelter Grant programme.

103. A national prohibition be declared on housing discrimination based on source of income.

104. The Special Rapporteur recommends that the U.S. federally prohibit the use of criteria such as drug tests and criminal records, for gaining access to subsidized housing.”


In 2008 the U.N. Committee on the Elimination of Racial Discrimination expressed several concerns and made recommendations regarding U.S. compliance with the Convention on the Elimination of All Forms of Discrimination.

“9. The Committee also notes with satisfaction the California Housing Element Law of 1969, which requires each local jurisdiction to adopt a housing element in its general plan to meet the housing needs of all segments of the population, including low-income persons belonging to racial, ethnic and national minorities.

16. “The Committee is deeply concerned that racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterized by sub-standard housing conditions.”

31. The Committee “remains concerned about the disparate impact that [Hurricane Katrina] continues to have on low income African American residents, many of whom continue to be displaced after more than two years after the hurricane.”

The Committee further recommended that the U.S.:

“16. Support the development of public housing complexes outside poor, racially segregated areas, eliminate obstacles that limit affordable housing choice and mobility for beneficiaries of the Section 8 Housing Choice Voucher Program, and ensure the effective implementation of legislation at the federal and state levels.”
levels to combat discrimination in housing including the phenomenon of “steering” and other discriminatory practices carried out by private actors.

22. The Committee further recommends that the State party allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs – such as housing, health care, or child custody – are at stake.

26. The Committee recommends that the State party increase its efforts to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, inter alia by: (i) setting up and adequately funding prevention and early assistance centres, counseling services and temporary shelters;

31. Facilitate the return of persons displaced by Hurricane Katrina to their homes, if feasible, or to guarantee access to adequate and affordable housing, where possible in their place of habitual residence.”

Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant of the ICCPR, Concluding Observations, U.N. Doc. CCPR/C/USA/CO/3 (Sept. 15, 2006). In 2006, the UN Human Rights Committee expressed several concerns regarding U.S. compliance with the ICCPR and made several recommendations:

22. “That some 50% of homeless people are African American although they constitute only 12% of the U.S. population.”

26. “That poor people and in particular African Americans, were disadvantaged by the rescue and evacuation plans implemented when Hurricane Katrina hit the U.S. of America, and continue to be disadvantaged under the reconstruction plans.”

26. The Committee recommended that the U.S. […] “Review its practices and policies to ensure the full implementation of its obligation to protect life and of the prohibition of discrimination, whether direct or indirect…In the aftermath of Hurricane Katrina, it should increase its efforts to ensure that the rights of poor people and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing.”

More Treaty Body and Special Procedures Commentary and Recommendations on Housing Rights are available on the National Law Center on Homelessness and Poverty’s Website here.
5.3.4 SAMPLE ARGUMENTS: HOUSING RIGHTS

These sample arguments should be used to supplement your state and federal-law based claims and defenses. Do not to rely these arguments alone.

SAMPLE ARGUMENT 1 - RIGHT TO NON-DISCRIMINATION IN HOUSING

[STATUTE/REGULATION AT ISSUE] CONTRAVENES THE RIGHTS TO HOUSING AND TO NON-DISCRIMINATION IN HOUSING


Adequate housing is universally viewed as one of the most basic human needs. U.N. Office of the High Comm’r for Human Rights, Fact Sheet No. 21, The Human Right to Adequate Housing, [Document/Publications/FS21_rev_1_Housing_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf). While some countries like South Africa have taken on domestic obligations to provide government-supported housing to all needy residents, international law currently sets a lower bar. See S. Afr. Const. 1996 §26(1)-(2). International law recognizes that, while governments are not generally obligated to provide housing, governments must protect, inter alia, equal access for all to adequate shelter.


[Insert the important facts of this case] violates the Plaintiffs’ fundamental human right to be free from discrimination in housing under international legal norms.

SAMPLE ARGUMENT 2 - RIGHT TO HOUSING, SANITATION, AND WATER

[STATUTE/REGULATION AT ISSUE] SHOULD BE CONSISTENT WITH INTERNATIONAL HUMAN RIGHTS LAW STANDARDS BY REFLECTING THE RIGHT TO ADEQUATE HOUSING, WATER, AND SANITATION

The right to adequate housing, as defined by international law, is comparable [or incompatible] with the [statute/regulation at issue] under domestic law. Under human rights law, the mere fact that the plaintiffs had a roof over their heads is not enough. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which has been signed by the U.S., guarantees everyone the right to “an adequate standard of living for himself and his family, including adequate food, clothing and housing...” art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.
While specifying that the right to adequate housing does not merely mean “having a roof over one’s head,” the U.N. Committee in charge of monitoring and implementing the ICESCR, discussed various elements of the right to adequate shelter. Committee on Economic, Social, and Cultural Rights, General Comment 4, U.N. Doc. E/1992/23 (1991), http://bit.ly/IPyRWr. These elements include the availability of services, materials, facilities, and infrastructure like safe drinking water, sanitation and washing facilities, the habitability of the shelter, and its cultural adequacy. Id. Therefore, the term ‘adequate housing’ has an expansive interpretation and “…should be seen as the right to live somewhere in security, peace and dignity.” Id. These words starkly contrast with the Plaintiffs circumstances.

Moreover, in September 2010, the U.N. Human Rights Council, an inter-governmental body tasked with promoting and protecting human rights, affirmed “that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.” G.A Res. A/HRC/15/L.14, U.N. HRC, 15th Sess., (2010), http://bit.ly/JXhIt3.

[Insert the important facts of this case] violates the Plaintiffs’ fundamental human rights under international legal norms.

SAMPLE ARGUMENT 3 - SELF-HELP EVICTION IS INCOMPATIBLE WITH INTERNATIONAL NORMS

Self-help eviction is incompatible with international human rights norms, which define the right to adequate housing to include “legal security of tenure”, which means that a person’s housing cannot be arbitrarily taken away from her. The Committee on Economic, Social, and Cultural Rights, the body that monitors the International Covenant on Economic, Social and Cultural Rights (ICESCR), observed that “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” General Comment 4, U.N. Doc. E/1992/23 (1991), http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/469f4d91a9378221c12563ed0053547e?Opendocument.

Moreover, self-help evictions fail to provide those legal protections and are fairly characterized as “forced evictions” under international law. Forced evictions are “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Committee on Economic, Social, and Cultural Rights, General Comment 7, U.N. Doc. E/1998/22 annex IV at 113 (1997), http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument.

The International Covenant on Civil and Political Rights, which was ratified by the U.S. on June 2, 1992, similarly affirms that “[n]o one shall be subjected to arbitrary or unlawful interference with his[her]…home…Everyone has the right to the protection of the law against such interference or attacks.” art. 17, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992. Self-help evictions do not provide such due process protections such as notices, services of process, hearings, affidavit requirements and rights to appeal.

The court should update state law to forbid self-help eviction, consistent with international human rights law norms.
5.3.5 TALKING POINTS FOR ORAL ARGUMENTS: HOUSING RIGHTS

TALKING POINTS #1- RIGHT TO NON-DISCRIMINATION IN HOUSING

- Housing discrimination is illegal, both under domestic law (Fair Housing Act) and human rights law (CERD, ICCPR)
- ICCPR art. 17: “No one” shall be subjected to arbitrary or unlawful interference with his[her]...home.
- CERD and ICCPR, signed by the U.S. and ratified by the Senate, are the Supreme law of the Land
- Human rights law includes non-discrimination protection for the LGBT community and the elderly.

TALKING POINTS #2- RIGHT TO HOUSING, SANITATION AND WATER

- You can use human rights law to help interpret vague, ambiguous or state law.
- E.g. *Roper v. Simmons*: the U.S. Supreme Court looked to human rights law. Court discussed whether or not other countries apply the death penalty to juveniles. Human rights law helped the Court make its decision to put an end to sentencing juveniles with the death penalty.
- Human rights law provides that just having a roof over your head is not enough to satisfy the right to adequate housing.
- The right to adequate housing has various elements, including:
  - Available safe drinking water and sanitation facilities
  - Available washing facilities
  - Habitability of the shelter, including its cultural adequacy
- Human dignity requires housing to include running water and a bathroom that works.

TALKING POINTS #3- SELF-HELP EVICTION INCOMPATIBLE WITH HUMAN RIGHTS LAW

- First, make your due process arguments under U.S. Constitution, state constitution, state law.
- To follow, argue that few U.S. states allow self-help evictions.
- Then, add the human rights argument: self-help eviction is also contrary to human rights law; forced evictions are specifically prohibited under ICCPR.
- The U.S. signed the ICCPR and the Senate ratified the ICCPR in 1992. The U.S., therefore, is bound by its obligations under the ICCPR.

5.3.6 CASE STUDIES OF LEGAL AID ATTORNEYS. HOUSING RIGHTS.

PINE TREE LEGAL SERVICES' RIGHT TO HOUSING VICTORY IN DECEMBER 2011

The case, *Leo Belanger et al v. John Mulholland*, was brought by attorney Judy Plano of Pine Tree Legal Services on behalf of by tenants who lived in a trailer for several months without running water or a functioning toilet after the water pipes were damaged. When asked by the tenants to fix the water pipes, the landlord told the tenants that he had no obligation to make the repairs. As a result, the tenants were forced to buy bottled water.
water and haul out sewage for several months. On behalf of the tenants, Attorney Judy Plano brought an action against the landlord alleging breach of implied warranty of habitability, and she included human rights arguments encouraging the judge to interpret the Maine warranty of habitability statute through a human rights lens; that the right to housing includes availability of services and infrastructure. The National Law Center on Homelessness and Poverty assisted Judy Plano in drafting the human right to housing arguments. The Superior Court, Kennebec County, awarded tenants $2,500 in damages. Attorney Plano appealed on behalf of her tenant-clients to the Supreme Court of Maine. In its ruling in December 2011, the Supreme Court of Maine agreed that tenants have a right to water and sanitation, and that a dwelling without running water is unfit for human habitation. According to the court, any agreement for rental of a dwelling unit comes with a warranty that the dwelling is fit for human habitation. Therefore, any condition that threatens human health, such as lack of running water and a functioning toilet, constitutes a breach of this warranty. The Court did not specifically cite to human rights law in its decision; however, the human rights law arguments did not deter the judge from granting relief on behalf of the plaintiffs.

MARYLAND LEGAL AID USES RIGHT TO HOUSING ARGUMENTS IN A POST-FORECLOSURE SELF-HELP EVICTION CASE

In *Nickens v. Mount Vernon Realty Group, LLC*, the Maryland Legal Aid filed an amicus brief in support of a challenge to a post-foreclosure self-help eviction. The house that the tenant had been renting was foreclosed on, and he was negotiating a move-out date with the foreclosure purchaser when he returned home one day to find the foreclosure purchaser had locked him out of his home without notice, with all of his personal belongings still inside. The tenant, who was represented by private counsel, sued the purchaser in circuit court. The court held that the eviction was legal under Maryland’s right to conduct a “peaceable self-help” eviction without the Sheriff. The tenant appealed to the Maryland Court of Special Appeals and the Public Justice Center joined the case as counsel for the tenant. Maryland Legal Aid filed an amicus brief which was joined by Civil Justice, Inc., St. Ambrose Housing Aid Center, and the National Law Center on Homelessness & Poverty. The amicus brief made three arguments for overturning the doctrine of self-eviction: 1) self-help eviction is incompatible with developments in international human rights law, which clearly forbids forced evictions without due process of law; 2) the economic and foreclosure crises exacerbated problems with self-help evictions, as more and more landlords and foreclosure purchasers are taking non-judicial shortcuts to oust residents while failing to inform them of their rights and 3) while the doctrine of self-help eviction may have had its place in 14th century England, where it began, in the subsequent centuries, conditions have changed, e.g. Maryland already prevents self-help eviction in the landlord-tenant context, and 23 states prevent it in all contexts. The Maryland Court of Special Appeals ruled against the tenant in early December 2011 in an unreported decision. As of March 2012, a Petition for Certiorari has been filed with Maryland’s highest court.

LEGAL SERVICES OF NORTHERN CALIFORNIA USES RIGHT TO HOUSING ADVOCACY SUCCESSFULLY, ON BEHALF OF HOMELESS CAMPERS IN SACRAMENTO, CA

Legal Services of Northern California (LSNC) launched an advocacy campaign in 2008, which included litigation and municipal advocacy on behalf of people transitioning from homelessness, particularly focusing on tent cities in Sacramento, California, and working with a community group called SafeGround. The National Law Center on Homelessness and Poverty introduced LSNC to the idea of using a human rights approach to homelessness advocacy. In February 2011, LSNC and their clients, met with Catarina de Albuquerque, the U.N. Special Rapporteur on Access to Water and Sanitation. de Albuquerque spent part of her 2011 U.S. fact-finding mission in Northern California and took testimony at the California state capitol from groups who lacked adequate access to water and sanitation. LSNC then submitted a formal complaint on behalf of SafeGround to the U.N. Special Rapporteur on Extreme Poverty against the City of Sacramento, California, alleging human rights abuses on behalf of homeless clients whose access to clean water and sanitation was blocked by both government action and inaction. In January 2012, the Rapporteur sent a letter to Sacramento Mayor Kevin Johnson stating that the city’s systematic elimination of bathrooms and clean water sources near homeless
encampments may constitute “cruel, inhumane, and degrading treatment” under international law. For media coverage of the Rapporteur’s letter, please visit here.

Though there is much work left to be done, LSNC says they have already seen the benefits of using a human rights framework in homeless advocacy, especially with respect to the empowering and validating nature of such a framework for their homeless clients and raising attention to the issue with City officials and other public officials who dislike the idea of their actions and inactions being brought to light before entire world. For more on LSNC’s work, see Clearinghouse Review, Toward a Human Rights Framework in Homelessness Advocacy: Bringing Clients Face-to-Face with the United Nations (Sept. 2011).

5.3.7 SAMPLE BRIEFS & PETITIONS: HOUSING RIGHTS

Nickens v. Mount Vernon Realty Group, LLC – Amicus Brief in Support of Appellants

Curtis v. U.S. Bank National Association – Amicus Brief in Support of Appellants

Leo Belanger et al v. John Mulholland – Brief for Appellants

5.3.8 OTHER RESOURCES: HOUSING RIGHTS


U.S. Human Rights Online Library, provides sample briefs, pleadings and non-litigation advocacy materials on the domestic implementation of human rights law, hosted by Columbia University Human Rights Institute.
5.4 CONSUMER RIGHTS

The Consumer Rights section of the Handbook was written by Lauren E. Bartlett.

5.4.1 INTRODUCTION: CONSUMER RIGHTS

The U.N. has recognized that consumers often face imbalances in economic terms, education levels, and bargaining power, as well as the need for governments to ensure consumer protection at a national level. Moreover, the constitutions of at least 54 countries, on all continents except Antarctica, guarantee economic or financial rights. U.S. consumer protection laws fail to protect from hazards such as fraud, predatory lending, deceptive acts and practices. Evidence of this would include the recent foreclosure crisis, malfeasance on Wall Street and the over 1.8 million identity theft complaints that the U.S. Federal Trade Commission received in 2009-11. This is also seen in more than one-third of states in the U.S. where debtors’ prison is still legal.

Consumer rights include but are not limited to: 1) freedom to contract; 2) rights to be free from deceptive acts and practices in sales and contracting; 3) freedom from unfair, predatory and fraudulent banking practices; 4) freedom from unfair debt collection practices; 5) rights to access to credit; 6) bankruptcy rights; 7) rights to privacy; and 8) freedom from debtors’ prison. More controversial consumer rights include the freedom to consume and the duty of corporate social responsibility.

Human rights law can be invaluable to advocates who wish to push the envelope to protect and venerate the rights of consumers in U.S. courts.

5.4.2 QUICK STATISTICS & RESOURCES FOR DATA: CONSUMER RIGHTS

Quick statistics regarding consumer issues in the U.S. and worldwide:

- Among homeowners who received home loans between 2004 and 2008, 2.7 million households, or 6.4 percent, had already lost their homes to foreclosure as of February 2011.
  - Borrowers of color are more than twice as likely to lose their home to foreclosure as white households. These higher foreclosure rates reflect the fact that African Americans and Latinos were consistently more likely to receive high-risk loan products, even after accounting for income and credit status. Approximately one quarter of all Latino and African-American

^ Lauren E. Bartlett is director of the Center’s Local Human Rights Lawyering Project. From 2008-2011, Ms. Bartlett worked as a legal services attorney at Southeast Louisiana Legal Services in the foreclosure prevention unit. She taught a housing law and policy course at Loyola University New Orleans College of Law and served on the board of the ACLU of Louisiana. In 2007, she co-founded the Louisiana Justice Institute, a nonprofit civil rights legal advocacy organization. During law school, Lauren focused on gaining a strong background in international law and human rights. She was an articles editor for the Human Rights Brief, participated in a research program in Geneva, Switzerland for the U.N. Committee Against Torture, and was an Executive Board Member of the student group Action for Human Rights. She also served as a summer associate with the group Advocates for Environmental Human Rights, based in New Orleans, Louisiana. Before law school, Ms. Bartlett worked with non-profit organizations in California, Nepal, Ghana, Bangladesh and India, alongside advocates fighting for social and environmental justice.

borrowers have lost their home to foreclosure or are seriously delinquent, compared to just under 12 percent for white borrowers.\(^{154}\)

- In 2010, more than 1.5 million bankruptcy petitions were filed by individuals with predominantly nonbusiness debt, an increase of 9 percent over the number of filings in calendar year 2009.\(^{155}\)

- Consumers reported fraud losses of over $1.1 billion to the Consumer Financial Protection Bureau between July 21 and December 31, 2011.\(^{156}\)

- Europe has seen an increase in bankruptcies each year since 2008, with more than a 25% increase each year, in some countries such as France.\(^{157}\)

Here are some resources for data related to consumer rights in the U.S. and worldwide:

- Consumer Financial Protection Bureau
- Federal Trade Commission
- Center for Responsible Lending
- National Consumer Law Center
- Public Citizen
- U.S. Courts Statistics Division
- Harvard’s Corporate Social Responsibility Initiative
- U.S. Public Interest Research Group
- Consumers Union
- Consumers International

\(^{154}\) Id.


\(^{157}\) Credit Reform, Insolvencies in Europe 2009/10, [http://www.creditriform.de/English/Creditreform/index.jsp](http://www.creditriform.de/English/Creditreform/index.jsp).
5.4.3 RELEVANT HUMAN RIGHTS LAW: CONSUMER RIGHTS

The language from the treaties listed below is merely a sampling. This is not an exhaustive list of treaties or the relevant articles in each treaty that are available. There may be language or another treaty not yet listed that is more relevant to your case at hand. Please be sure to review the full treaty text, which is available by clicking on the links below.

**RATIFIED TREATIES: CONSUMER RIGHTS**

<table>
<thead>
<tr>
<th>Treaty or Declaration</th>
<th>Article/Citation</th>
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<tr>
<td><strong>International Convention on Civil and Political Rights (ICCPR)</strong></td>
<td><em>Article 5 of CERD:</em> &quot;In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notability in the enjoyment of the following rights: (...) (e) Economic, social and cultural rights, in particular...&quot; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994.</td>
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<td><strong>International Convention Relating to Status of Refugees (ICCRS)</strong></td>
<td><em>Article 13 of ICRSR:</em> “The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.” International Convention Relating to the International Status of Refugees, art. 13, 189 U.N.T.S. 137, <em>entered into force</em> Apr. 22, 1954 [emphasis added].</td>
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<th>Treaty or Declaration</th>
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<td>Charter of the Organization of American States (Charter of OAS)</td>
<td><strong>Article 34 of Charter of OAS</strong>: “The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: b) Equitable distribution of national income; f) Stability of domestic price levels, compatible with sustained economic development and the attainment of social justice; m) Promotion of private initiative and investment in harmony with action in the public sector.” Charter of the Organization of American States, art. 34, Apr. 30, 1948, 119 U.N.T.S. 3, <em>ratified by the U.S.</em> Dec. 13, 1951.</td>
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<td><strong>Article 45 of Charter of OAS</strong>: “The Member States...agree to dedicate every effort to the application of the following principles and mechanisms: a) human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security... e) The operation of systems of public administration, banking and credit, enterprise, and distribution and sales, in such a way, in harmony with the private sector, as to meet the requirements and interests of the community...” Charter of the Organization of American States, art. 45, Apr. 30, 1948, 119 U.N.T.S. 3, <em>ratified by the U.S.</em> Dec. 13, 1951 [emphasis added].</td>
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**HUMAN RIGHTS INSTRUMENTS NOT RATIFIED BY THE U.S.: CONSUMER RIGHTS**

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<th>Treaty or Declaration</th>
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<td><strong>Article 14(2) of CEDAW</strong>: “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:...(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.” Convention on the Elimination of Discrimination Against Women, art. 14(2), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, <em>entered into force</em> Sept. 3, 1981.</td>
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<td>Treaty or Declaration</td>
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<tr>
<td><strong>Universal Declaration of Human Rights (UDHR)</strong></td>
<td>Article 22 of the UDHR: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” Universal Declaration of Human Rights, art. 22, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).</td>
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<tr>
<td><strong>United Nations Guidelines for Consumer Protection (GCP)</strong></td>
<td>Objectives (1) of the GCP: “Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives: (a) To assist countries in achieving or maintaining adequate protection for their population as consumers.” United Nations Guidelines for Consumer Protection, Objectives (1), Apr. 16, 1985, GA Res. 39/248, 39th Sess., Agenda Item 12, U.N. Doc. A/RES/39/248.</td>
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<td></td>
<td>General principles (2) of the GCP: “Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.” United Nations Guidelines for Consumer Protection, General principles (2), Apr. 16, 1985, GA Res. 39/248, 39th Sess., Agenda Item 12, U.N. Doc. A/RES/39/248.</td>
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### U.N. Draft International Code of Conduct on Transnational Corporations (ICCTC)

**Article 13 of the ICCTC:** “In their social and industrial relations, transnational corporations should/shall not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or political or other opinion. Transnational corporations should/shall conform to government policies designed to extend equality of opportunity and treatment.” United Nations Draft International Code of Conduct on Transnational Corporations, art. 13, 1983, U.N. Doc. E/C.10/1984/S/5, 23 I.L.M. 626 (1984).

**Article 37 of the ICCTC:** “Transnational corporations shall/should also perform their activities with due regard to relevant international standards, so that they do not cause injury to the health or endanger the safety of consumers or bring about variations in the quality of products in each market which would have detrimental effects on consumers.” United Nations Draft International Code of Conduct on Transnational Corporations, art. 37, 1983, U.N. Doc. E/C.10/1984/S/5, 23 I.L.M. 626 (1984).

**Article 38 of the ICCTC:** “Transnational corporations shall/should, in respect of the products and services which they produce or market or propose to produce or market in any country, supply to the competent authorities of that country on request or on a regular basis, as specified by these authorities, all relevant information concerning: Characteristics of these products or services which may be injurious to the health and safety of consumers including experimental uses and related aspects; Prohibitions, restrictions, warnings and other public regulatory measures imposed in other countries on grounds of health and safety protection on these products or services.” United Nations Draft International Code of Conduct on Transnational Corporations, art. 38, 1983, U.N. Doc. E/C.10/1984/S/5, 23 I.L.M. 626 (1984).

**Article 39 of the ICCTC:** “Transnational corporations shall/should disclose to the public in the countries in which they operate all appropriate information on the contents and, to the extent known, on possible hazardous effects of the products they produce or market in the countries concerned by means of proper labeling, informative and accurate advertising or other appropriate methods. Packaging of their products should be safe and the contents of the product should not be misrepresented.” United Nations Draft International Code of Conduct on Transnational Corporations, art. 39, 1983, U.N. Doc. E/C.10/1984/S/5, 23 I.L.M. 626 (1984).

### U.S. State and Federal Court Cases Citing Human Rights Law: Consumer Rights

- None available yet -

### Cases Before International Bodies: Consumer Rights

- None available yet -
CASES BEFORE OTHER NATIONAL COURTS OR SUB-REGIONAL BODIES: CONSUMER RIGHTS

- None available yet -

TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS:
CONSUMER RIGHTS

- None available yet -

5.4.4 SAMPLE ARGUMENTS: CONSUMER RIGHTS

- Not yet completed

5.4.5 TALKING POINTS: CONSUMER RIGHTS

- Not yet completed

5.4.6 CASE STUDIES OF LEGAL AID ATTORNEYS: CONSUMER RIGHTS

- None available yet -

5.4.7 SAMPLE BRIEFS & PETITIONS: CONSUMER RIGHTS

- None available yet -

5.4.8 OTHER RESOURCES: CONSUMER RIGHTS


5.5 RIGHTS TO PUBLIC ASSISTANCE

The Rights to Public Assistance section of the Handbook was written by Lauren E. Bartlett.¹

5.5.1 INTRODUCTION: RIGHTS TO PUBLIC ASSISTANCE

The rights to public or social assistance, including cash, food, and medical assistance, are universal rights, recognized at the international level.¹⁵⁸

The right to public assistance in the U.S. includes access to public benefits such as SNAP (Food Stamps), TANF, Medicare, Medicaid, State Medical Programs, Emergency Medical Assistance, WIC, LIHEAP, Unemployment, Veteran’s benefits and Social Security. Access to such public assistance, can make the difference between health and hunger, housing and homelessness, and heat or freezing temperatures, for many people across the U.S., and especially for children.¹⁵⁹

Almost all people agree that food and medical assistance should be provided to the most needy. It is hard to argue that a child deserves to go hungry or that a pregnant mother should be denied prenatal care. The disagreement comes when other factors are thrown in, such as the child is an illegal immigrant or the pregnant mother is a drug addict. U.S. law is inadequate to protect the rights of even the most needy from hunger or disease. Advocates for public assistance can use human rights law to supply judges and policymakers with guidance especially in the case of public assistance.

Please note that public housing assistance is covered in the Housing Rights section and unemployment is covered in the Labor and Employment Rights section of this Handbook.

5.5.2 QUICK STATISTICS & RESOURCES FOR DATA: RIGHTS TO PUBLIC ASSISTANCE

Here are some quick statistics:

- Hunger in America exists for nearly 49 million people in the U.S. – including more than 1 in 5 children.¹⁶⁰
- In 2010, more than 17 million households in the U.S. faced food insecurity.¹⁶¹
- Over 15% of people in the U.S. live below the official poverty line.¹⁶²

¹ Lauren E. Bartlett is director of the Center’s Local Human Rights Lawyering Project. From 2008-2011, Ms. Bartlett worked as a legal services attorney at Southeast Louisiana Legal Services in the foreclosure prevention unit. She taught a housing law and policy course at Loyola University New Orleans College of Law and served on the board of the ACLU of Louisiana. In 2007, she co-founded the Louisiana Justice Institute, a nonprofit civil rights legal advocacy organization. During law school, Lauren focused on gaining a strong background in international law and human rights. She was an articles editor for the Human Rights Brief, participated in a research program in Geneva, Switzerland for the U.N. Committee Against Torture, and was an Executive Board Member of the student group Action for Human Rights. She also served as a summer associate with the group Advocates for Environmental Human Rights, based in New Orleans, Louisiana. Before law school, Ms. Bartlett worked with non-profit organizations in California, Nepal, Ghana, Bangladesh and India, alongside advocates fighting for social and environmental justice.

¹⁵⁹ Social Security Administration, Benefits Paid by Type of Beneficiary December 2011, http://www.ssa.gov/OACT/ProgData/icp.html; U.S. Census Bureau, supra note 148 at 14.
22% of children in the U.S. live below the official poverty line.\textsuperscript{163}

Over 18% of people in the U.S. do not have health insurance.\textsuperscript{164}

Over 60 million people in the U.S. received social security or supplementary security income in December 2011.\textsuperscript{165}

15% of people in the U.S. who receive social security benefits are disabled workers, and 64% are retired workers.\textsuperscript{166}

The number of retired workers receiving social security benefits has nearly doubled since 1970.\textsuperscript{167}

Here are some resources for data related to public assistance in the U.S. and worldwide:

\begin{itemize}
\item Department of Health and Human Services (TANF, SCHIP)
\item Food and Nutrition Service, U.S. Department of Agriculture (SNAP, WIC)
\item U.S. Social Security Administration
\item Directory of Public Benefit Providers by State
\item National Center for Health Statistics, Centers for Disease Control and Prevention
\item Income and Benefits Policy Center, The Urban Institute
\item U.N. Office of the High Commissioner for Human Rights
\item Center for Economic and Social Rights
\item U.S. Census Bureau, Poverty Data
\item Kaiser Family Foundation (studies, statistics, and other information related to health care access)
\item State Health Facts (maintained by the Kaiser Foundation)
\end{itemize}

5.5.3 RELEVANT HUMAN RIGHTS LAW: RIGHTS TO PUBLIC ASSISTANCE.

The language from the treaties listed below is merely a sampling. This is not an exhaustive list of treaties or the relevant articles in each treaty that are available. There may be language or another treaty not yet listed that is more relevant to your case at hand. Please be sure to review the full treaty text, which is available by clicking on the links below.

\textsuperscript{163} Id. at 15.
\textsuperscript{164} Centers for Disease Control and Prevention, Early Release of Selected Estimates Based on Data From the 2010 National Health Interview Survey, \url{http://www.cdc.gov/nchs/fastats/hinsure.htm}.
\textsuperscript{165} Social Security Administration, Monthly Statistical Snapshot December 2011, \url{http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/}.
\textsuperscript{166} Social Security Administration, supra note 159.
\textsuperscript{167} Social Security Administration, Social Security Beneficiary Statistics, \url{http://www.ssa.gov/OACT/STATS/OASDibenies.html}.
### Ratified Treaties: Rights to Public Assistance

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<th>Treaty or Declaration</th>
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<tr>
<td><strong>International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</strong></td>
<td>Article 5 of CERD: “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . . (e) Economic, social and cultural rights, in particular: . . . (iv) The right to public health, medical care, social security, and social services[.]” International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994.</td>
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<tr>
<td><strong>International Covenant on Civil and Political Rights (ICCPR)</strong></td>
<td>Article 26 of ICCPR: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E. 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td>Article 24(1) of ICRSR: “The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters; . . . (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme[.]” International Convention Relating to the International Status of Refugees, art. 24(1), 189 U.N.T.S. 137, <em>entered into force</em> Apr. 22, 1954.</td>
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<td>Article 24(3) of ICRSR: “The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.” International Convention Relating to the International Status of Refugees, art. 24(3), 189 U.N.T.S. 137, <em>entered into force</em> Apr. 22, 1954.</td>
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<td><strong>International Convention Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment (CAT)</strong></td>
<td><strong>Article 16 of CAT:</strong> &quot;Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence as a public official or other person acting in an official capacity.&quot; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 16, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20(1988); 23 I.L.M. 1027 (1984), <em>as modified by</em> 24 I.L.M.535 (1985), <em>ratified by the U.S.</em> Nov. 20, 1994.</td>
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<td><strong>Charter of the Organization of American States (Charter of OAS)</strong></td>
<td><strong>Article 34 of Charter:</strong> &quot;The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: . . . (l) Protection of man’s potential through the extension and application of modern medical science; (j) Proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food; . . . (l) Urban conditions that offer the opportunity for a healthful, productive, and full life[.]&quot; Charter of the Organization of American States, art. 34, Apr. 30, 1948, 119 U.N.T.S. 3, <em>ratified by the U.S.</em> Dec. 13, 1951.</td>
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<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 45 of Charter:</strong> “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: . . . (h) Development of an efficient social security policy[.]” Charter of the Organization of American States, art. 45, Apr. 30, 1948, 119 U.N.T.S. 3, <em>ratified by the U.S.</em> Dec. 13, 1951.</td>
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<td><strong>Article 1 of Declaration:</strong> “Every Human being has the right to life, liberty and the security of his person.” American Declaration of the Rights and Duties of Man, art. 1, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Article 7 of Declaration:</strong> “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.” American Declaration of the Rights and Duties of Man, art. 7, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Article 11 of Declaration:</strong> “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.” American Declaration of the Rights and Duties of Man, art. 11, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Article 16 of Declaration:</strong> “Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.” American Declaration of the Rights and Duties of Man, art. 16, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td>Article 23 of Declaration</td>
<td>“Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.” American Declaration of the Rights and Duties of Man, art. 23, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.I/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td>HUMAN RIGHTS INSTRUMENTS NOT RATIFIED BY THE U.S.: RIGHTS TO PUBLIC ASSISTANCE</td>
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<td>Article 11(1) of the ICESCR: “The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself (or herself) and for his (or her) family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.” International Covenant on Economic, Social, and Cultural Rights, art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</td>
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<td>Article 11(2) of CEDAW:</td>
<td>&quot;In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: . . . (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.&quot; Convention on the Elimination of Discrimination Against Women, art. 11(2), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.</td>
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<td>Article 12 of CEDAW:</td>
<td>&quot;(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. (2) Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.&quot; Convention on the Elimination of Discrimination Against Women, art. 12, Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.</td>
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<td><strong>Article 23 of CRC:</strong> “(2) States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child. (3) Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.” Convention on the Rights of the Child, art. 23, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), <em>entered into force</em> Sept. 2, 1990.</td>
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<td><strong>Article 24(1) of CRC:</strong> “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” Convention on the Rights of the Child, art. 24(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), <em>entered into force</em> Sept. 2, 1990.</td>
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<td><strong>Article 25(1) of CRPD:</strong> “States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall: (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes; (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons[.]” International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 25, Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), <em>entered into force</em> May 3, 2008.</td>
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<td><strong>Article 28(2) of CRPD:</strong> “States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: . . . (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes; (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counseling, financial assistance and respite care; . . . (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.” International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 28(2), Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), entered into force May 3, 2008.</td>
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| Universal Declaration of Human Rights (UDHR) | Article 22 of UDHR: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” Universal Declaration of Human Rights, art. 22, G.A. Res. 217A (III), U.N. Doc. A/810 (1948). |

| Article 23(3) of UDHR: “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.” Universal Declaration of Human Rights, art. 23(3), G.A. Res. 217A (III), U.N. Doc. A/810 (1948). |

| Article 25(1) of UDHR: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Universal Declaration of Human Rights, art. 25(1), G.A. Res. 217A (III), U.N. Doc. A/810 (1948). |

<p>| Article 25(2) of UDHR: “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Universal Declaration of Human Rights, art. 25(2), G.A. Res. 217A (III), U.N. Doc. A/810 (1948). |</p>
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<td><strong>The European Social Charter (Social Charter)</strong></td>
<td><strong>Article 12 of Social Charter:</strong> “With a view to ensuring the effective exercise of the right to social security, the Parties undertake: to establish or maintain a system of social security; to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security; to endeavour to raise progressively the system of social security to a higher level; to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure: equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties; the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.” European Social Charter, art. 12, 529 U.N.T.S. 89, <em>entered into force</em> Feb. 26, 1965.</td>
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<td><strong>Article 13 of Social Charter:</strong> “With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake: (1) to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition; (2) to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights; (3) to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want.” European Social Charter, art. 13, 529 U.N.T.S. 89, <em>entered into force</em> Feb. 26, 1965.</td>
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<td><strong>Article 14 of Social Charter:</strong> “With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake: (1) to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment; (2) to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.” European Social Charter, art. 14, 529 U.N.T.S. 89, <em>entered into force</em> Feb. 26, 1965.</td>
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**Article 17 of Social Charter:** “[T]he Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed: (1) (a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; (b) to protect children and young persons against negligence, violence or exploitation; (c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support[.]” European Social Charter, art. 17, 529 U.N.T.S. 89, entered into force Feb. 26, 1965.

**U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW: RIGHTS TO PUBLIC ASSISTANCE**

*Moore v. Ganim*, 233 Conn. 557, 637 (Conn. 1995), finding minimal state obligation to provide basic assistance, but denying motion to enjoin state from imposing nine month limit on receipt of general assistance benefits. Peters, C.J. (concurring): “These contemporary economic circumstances and contemporary conceptions of democracy already have led the international community to incorporate a right to subsistence into the international law of human rights. For example, article 25 (1) of the Universal Declaration of Human Rights declares that ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’”

**CASES BEFORE INTERNATIONAL BODIES: RIGHTS TO PUBLIC ASSISTANCE**

*Alyne da Silva Pimentel v. Brazil*, Communication No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011). A health center in Brazil failed to give timely access to emergency obstetric care, resulting in the death of a pregnant woman. This was part of a broader health-care access problem, and the U.N. Committee on the Elimination of Discrimination against Women found Brazil to be in violation of Article 12 of CEDAW. Brazil was found directly responsible for health-care institutions regardless of its decision to outsource to private institutions.

*International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 13/2003, Eur. Comm. S.R. Dec. (2004). Challenges were made based on the European Social Charter to France’s policy of not exempting low income illegal immigrants from medical treatment charges. The European Committee on Social Rights found that foreign nationals, even if in a state illegally, were entitled to medical assistance under Article 17 of the Charter. According to the Committee, France did not violate this because after three months it did provide medical assistance to illegal immigrants. However, France did violate the rights of children to protection under Article 17 because children’s rights are more expansive.

*Case of the “Five Pensioners” v. Perú*, Case 12/034, Inter-Am. Ct. H.R. (2003). The Inter American Commission on Human Rights dealt with a group of retired citizens who worked for a state agency in Peru had their pensions reduced to one fifth or one sixth of their value. The citizens alleged violations of the rights to private property and judicial protection under the American Convention on Human Rights. The Court found that arbitrarily reducing the pensions violated these rights.

**CASES BEFORE OTHER NATIONAL COURTS OR SUB-REGIONAL BODIES: RIGHTS TO PUBLIC ASSISTANCE**

**Case No. 2009-43-01 On Compliance of the First Part of Section 3 of State Pensions and State Allowance Disbursement in 2009 – 2012** (Lat. 2009). Pensioners made a constitutional challenge to a law decreasing pensions in a time of economic decline. The Constitutional Court of the Republic of Latvia found the law was an unconstitutional denial of the right to a pension because less restrictive alternatives were not considered, there was no transition period, and there was no plan for future compensation for the reductions. The Court found a right to a pension was a part of the fundamental right to social security based on the Latvian Constitution as well as Article 9 of the International Covenant on Economic, Social, and Cultural Rights.

**Reyes Aguilera, Daniela v. Argentina**, R. 350. XLI. (Arg. 2007). The Supreme Court of Argentina held that a requirement to prove 20 years of residence in Argentina to qualify for a disability pension was unconstitutional. The judges’ reasoning was split—some referenced the right to social security and others the right to equality before the law and non-discrimination.

**People’s Union for Civil Liberties v. Union of India & Ors**, Writ Petition (Civil) No.196 of (India 2001). Deaths from starvation were occurring, but excess grain was being held and food distribution schemes were failing. The People’s Union for Civil Liberties sought to have grain released and other relief to address the starvation crisis. The Supreme Court of India found a right to food derived from the right to life, and ordered numerous forms of relief including implementation of India’s Famine Code and increased financial support for food distribution.

**V. v. Einwohnergemeinde X. und Regierungsrat des Kantons Bern**, BGE/ATF 121 I 367 (Switz. 1995). Three brothers lived illegally in Switzerland, but could not be expelled because their citizenship in the Czech Republic had been rescinded. The brothers were denied social support and welfare because of their illegal status, and they challenged this as an unconstitutional denial of their rights. The Highest Court in Switzerland found that this violated an implied constitutional right to a basic minimum level of subsistence which was derived from rights to life, dignity, and equality.

**TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS. RIGHTS TO PUBLIC ASSISTANCE.**

- None available yet -

**5.5.4 MODEL ARGUMENTS: RIGHTS TO PUBLIC ASSISTANCE**

- Not yet completed-

**5.5.5 TALKING POINTS: RIGHTS TO PUBLIC ASSISTANCE**

- Not yet completed-
5.5.6 CASE STUDIES OF LEGAL AID ATTORNEYS: RIGHTS TO PUBLIC ASSISTANCE

- None available yet -

5.5.7 SAMPLE BRIEFS & PETITIONS: RIGHTS TO PUBLIC ASSISTANCE

- None available yet –

5.5.8 OTHER RESOURCES: RIGHTS TO PUBLIC ASSISTANCE

U.S. Human Rights Online Library, provides sample briefs, pleadings and non-litigation advocacy materials on the domestic implementation of human rights law, hosted by Columbia University Human Rights Institute.
5.6 CHILDREN’S RIGHTS

The Children’s Rights section of the Handbook was written by Lauren E. Bartlett and Erik Pitchal.

5.6.1 INTRODUCTION: CHILDREN’S RIGHTS.

Children’s rights have been recognized in the U.S. since colonial times and are now recognized by over 190 countries internationally.168

Children’s rights are limited by the definition of a child—every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.169 However, beyond that limitation, children’s rights are broad and include all human rights. Moreover, because children are particularly vulnerable and have special needs, priority and special rights are given to children. Children are to be viewed as individuals, not property of their parents but as equal members of the family, with responsibilities appropriate to his or her age and stage of development. Children’s rights include the emphasis on the parents and the family, who bear the primary responsibility for providing care and guidance for their children. States are obliged to prevent children from being separated from their families unless the separation is necessary for the child’s best interests. Children must be provided for and when primary caregivers cannot meet children’s needs, it is up to society to fill the gap.170

Children’s advocates in the U.S. have begun calling for the broad recognition of children’s rights to encompass all aspects of a child’s life and the child’s relationship to others. Specifically, children’s rights should cover: 1) protection from abuse and exploitation; 2) access to justice; 3) access to provision of services (including education, health care, nutrition, housing and economic support); 4) right to remain with the family unit and an emphasis on parental responsibilities, unless the separation is necessary for the child’s best interests; and 4) freedom for children to participate in national life.

This section of the Local Lawyering Human Rights Project Handbook will provide legal aid attorneys with model written and oral arguments with statistics and resources for relevant data, arguments to use in litigation, a list of relevant international and U.S. law, and case studies of legal aid attorneys fighting on behalf of children in foster care.


169 CRC, art. 1.

5.6.2 QUICK STATISTICS & RESOURCES FOR DATA: CHILDREN’S RIGHTS

Here are some quick statistics related to children’s issues:

- Children in the U.S., but also all over the world, suffer from poverty, homelessness, abuse, neglect, preventable diseases, unequal access to education, and justice systems that do not recognize their special needs.\(^{171}\)

- Violence against children exists in every country of the world, cutting across culture, class, education, income and ethnic origin.\(^{172}\)

- Children are particularly vulnerable to and often more affected by stress than adults in similar situations. For example, children represent a disproportionate share of the poor in the U.S.; they are 24 percent of the total population, but 36 percent of the poor population.\(^{173}\)

- Severe childhood stress causes long term effects which last through adulthood, including increased risk of depression, drug and alcohol abuse, and even heart disease.\(^{174}\)

- 408,425 children were in foster care in the U.S. in September 2010.\(^{175}\)

- While most children in foster care live in family settings, a substantial minority — 16 percent — live in institutions and group homes.\(^{176}\)

- Nearly half of all children in foster care have chronic medical problems and up to 80 percent of all children in foster care have severe emotional problems.\(^{177}\)

- As of January 26, 2012, 677,221 children in the U.S. are victims of abuse and neglect.\(^{178}\)

- African-American children are twice as likely to enter foster care then White children, despite equal rates of abuse and neglect for children of all races.\(^{179}\)

- More than 35 states in the U.S. do not require that a child have an attorney present at child protective proceedings. Yet, more than 30 countries around the world have no child protective proceedings provided for by law.\(^{180}\)

Here are some resources for data related to children’s rights issues in the U.S. and worldwide:

- **U.S. Census Bureau, Reports and Publications**
  - [U.S. Census Bureau, Reports and Publications](http://www.census.gov)


- [University of Michigan, National Poverty Center, Poverty in the United States](http://www.npc.umich.edu/poverty/)


- Id.


- Yale Law School, Representing Children Worldwide, a survey (2005), [http://www.law.yale.edu/rcw/index.htm](http://www.law.yale.edu/rcw/index.htm)
5.6.3 RELEVANT HUMAN RIGHTS LAW. CHILDREN’S RIGHTS.

The language from the treaties listed below is merely a sampling. This is not an exhaustive list of treaties or the relevant articles in each treaty that are available. There may be language or another treaty not yet listed that is more relevant to your case at hand. Please be sure to review the full treaty text, which is available by clicking on the links below.

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<tr>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td><strong>Article 14(1) of the ICCPR:</strong> “The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.” International Covenant on Civil and Political Rights, art. 14(1), Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <strong>ratified by the U.S. Sept. 8, 1992</strong> [emphasis added].</td>
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<td><strong>Article 18(4) of the ICCPR:</strong> “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.” International Covenant on Civil and Political Rights, art. 18(4), Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <strong>ratified by the U.S. Sept. 8, 1992</strong> [emphasis added].</td>
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<td><strong>Article 23(4) of the ICCPR:</strong> “States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.” International Covenant on Civil and Political Rights, art. 23(4), Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <strong>ratified by the U.S. Sept. 8, 1992</strong> [emphasis added].</td>
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<td><strong>Article 24(1) of the ICCPR:</strong> “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” International Covenant on Civil and Political Rights, art. 24(1), Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td><strong>Article 4 of the ICRSR:</strong> “The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.” International Convention Relating to the Status of Refugees, art. 4, 189 U.N.T.S. 150, <em>entered into force April 22, 1954.</em></td>
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<tr>
<td><strong>International Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT)</strong></td>
<td><strong>Article 1 of CAT:</strong> “[T]orture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20(1988); 23 I.L.M. 1027(1984), <em>as modified by 24 I.L.M.535 (1985), ratified by the U.S.</em> Nov. 20, 1994.</td>
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<td><strong>Charter of the Organization of American States (Charter of OAS)</strong></td>
<td><strong>Article 49 (a) of Charter of OAS:</strong> “Elementary education, compulsory for children of school age, shall also be offered to all others who can benefit from it. When provided by the State it shall be without charge.” Charter of the Organization of American States, art. 34, Apr. 30, 1948, 119 U.N.T.S. 3, <em>ratified by the U.S.</em> Dec. 13, 1951.</td>
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<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 7 of the Declaration</strong>: “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.” American Declaration of the Rights and Duties of Man, art. 7, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Optional Protocol)</strong></td>
<td><strong>Article 30 of the Declaration</strong>: “It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.” American Declaration of the Rights and Duties of Man, art. 30, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Article 31 of the Declaration</strong>: “It is the duty of every person to acquire at least an elementary education.” American Declaration of the Rights and Duties of Man, art. 31, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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| | **Article 8 of the Optional Protocol**: “1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:  
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.  
3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.  
4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.  
5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.  
**Treaty or Declaration | Article/Citation**

**Article 9 of the Optional Protocol:** “1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices. 2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level. 3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery. 4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible. 5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.” Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, art. 9, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), entered into force January 18, 2002.

**HUMAN RIGHTS INSTRUMENTS NOT RATIFIED BY THE U.S.: CHILDREN’S RIGHTS**

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<tr>
<th>Treaty or Declaration</th>
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<tr>
<td><strong>International Covenant on Economic, Cultural and Social Rights (ICESCR)</strong></td>
<td><strong>Article 10(1) of the ICESCR:</strong> “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. International Covenant on Economic, Social, and Cultural Rights, art. 10(1), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</td>
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<td><strong>Article 10(3) of the ICESCR:</strong> Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law. International Covenant on Economic, Social, and Cultural Rights, art. 10(3), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</td>
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<td><strong>International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)</strong></td>
<td><strong>Article 13(3) of the ICESCR</strong>: “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.” International Covenant on Economic, Social, and Cultural Rights, art. 13(3), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, <em>entered into force</em> Jan. 3, 1976.</td>
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<td><strong>Article 5(b) of CEDAW</strong>: “States parties States Parties shall take all appropriate measures... [t]o ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.” Convention on the Elimination of Discrimination Against Women, art. 5(b), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, <em>entered into force</em> Sept. 3, 1981.</td>
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<td><strong>Article 16(1) of CEDAW</strong>: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:... (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.” Convention on the Elimination of Discrimination Against Women, art. 16(1), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, <em>entered into force</em> Sept. 3, 1981.</td>
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<tr>
<td><strong>Declaration on the Rights of the Child (Declaration on Child)</strong></td>
<td><strong>Principle 2 of the Declaration on Child</strong>: “The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.” Declaration of the Rights of the Child, principle 2, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).</td>
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<td><strong>Principle 4 of the Declaration of the Rights of the Child:</strong> “The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.” Declaration of the Rights of the Child, principle 4, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).</td>
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<td><strong>Principle 6 of the Declaration of the Rights of the Child:</strong> “The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.” Declaration of the Rights of the Child, principle 6, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).</td>
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<td><strong>Principle 7 of the Declaration of the Rights of the Child:</strong> “The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.” Declaration of the Rights of the Child, principle 7, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).</td>
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<td><strong>Principle 9 of the Declaration of the Rights of the Child:</strong> “The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.” Declaration of the Rights of the Child, principle 9, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).</td>
<td>Article 9(1) of the CRC: “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.” Convention on the Rights of the Child, art. 9(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Principle 10 of the Declaration of the Rights of the Child:</strong> “The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.” Declaration of the Rights of the Child, principle 10, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).</td>
<td>Article 2(2) of the CRC: “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.” Convention on the Rights of the Child, art. 2(2), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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**Article 9(2) of the CRC:** “In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.” Convention on the Rights of the Child, art. 9(2), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.

**Article 9(3) of the CRC:** “States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.” Convention on the Rights of the Child, art. 9(3), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.

**Article 9(4) of the CRC:** “Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.” Convention on the Rights of the Child, art. 9(4), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.

**Article 10(1) of the CRC:** “In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.” Convention on the Rights of the Child, art. 10(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.

**Article 12(1) of the CRC:** “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.” Convention on the Rights of the Child, art. 12(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.

**Article 12(2) of the CRC:** “[T]he child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.” Convention on the Rights of the Child, art. 12(2), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.

**Article 19(1) of the CRC:** “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Convention on the Rights of the Child, art. 19(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.
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<td><strong>Article 19(2) of the CRC:</strong> “Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.” Convention on the Rights of the Child, art. 19(2), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Article 20(1) of the CRC:</strong> “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” Convention on the Rights of the Child, art. 20(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Article 20(2)-(3) of the CRC:</strong> “States Parties shall in accordance with their national laws ensure alternative care for such a child. (3) Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.” Convention on the Rights of the Child, art. 20(2)-(3), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Article 23(2)(3) of the CRC:</strong> “States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.” Convention on the Rights of the Child, art. 23(2)(3), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>Article 23(4) of the CRC:</strong> “States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.” Convention on the Rights of the Child, art. 23(4), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), <em>entered into force</em> Sept. 2, 1990.</td>
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<td><strong>Article 24(1) of the CRC:</strong> “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” Convention on the Rights of the Child, art. 24(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), <em>entered into force</em> Sept. 2, 1990.</td>
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<td><strong>Article 28(1) of the CRC:</strong> “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.” Convention on the Rights of the Child, art. 28(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), <em>entered into force</em> Sept. 2, 1990.</td>
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<td><strong>Article 28(2) of the CRC:</strong> “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.” Convention on the Rights of the Child, art. 28, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), <em>entered into force</em> Sept. 2, 1990.</td>
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<td>Article 37 of the CRC:</td>
<td>“States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. [maltreatment in care] Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.” Convention on the Rights of the Child, art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<tr>
<td>The American Convention on Human Rights (ACHR)</td>
<td>Article 11(2) of the ACHR: “No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.” American Convention on Human Rights, art. 11(2), Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99(1969).</td>
</tr>
<tr>
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<td>Article 18 of the UDHR: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Universal Declaration of Human Rights, art. 18, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).</td>
</tr>
<tr>
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<td>Article 25(2) of the UDHR: “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Universal Declaration of Human Rights, art. 25(2), G.A. Res. 217A (III), U.N. Doc. A/810 (1948).</td>
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Treaty or Declaration | Article/Citation
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ARTICLE 8(2) OF THE ECHR: “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8(2), Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221 (1950).

U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW: CHILDREN’S RIGHTS
- None available yet –

CASES BEFORE INTERNATIONAL BODIES: CHILDREN’S RIGHTS

*Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Inter-Am Ct. H.R. (Ser. C) No. 77 (2001). Inter-American Court on Human Rights Petition related to the death of five street children and the right to life. Court concluded the State had failed to comply with its obligation to adopt special measures to protect children whose rights are under threat or violated (*cf.* Art. 19 ACHR).

CASES BEFORE OTHER NATIONAL COURTS OR SUB-REGIONAL BODIES. CHILDREN’S RIGHTS

*Cape Forum for Intellectual Disability v. Government of the Republic of South Africa & Government of the Province of Western Cape*, 2011 (5) SA 87 (WCC); 18678/2007 (S. Afr. 2010). Complaint regarding children’s right to education, alleging the only available education for children who are severely and profoundly intellectually disabled occurs at "Special Care Centers" operated by non-governmental organizations. The Constitutional Court of South Africa considers both the positive and negative dimensions of the right to education and ultimately concludes that the State policy violated children's rights in both respects.


TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS: CHILDREN’S RIGHTS

*General Comment № 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, U.N. Doc. CRC/C/GC/8, ¶18 (2006). “Article 37 of the Convention requires States to ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”. This is complemented and extended by article 19, which requires States to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental
violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. There is no ambiguity: “all forms of physical or mental violence” does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”

General Comment Nº 12 (2009): The right of the child to be heard, U.N. Doc. CRC/C/GC/12, ¶18 (Jul. 20, 2009). “States parties shall assure the right to be heard to every child “capable of forming his or her own views”. This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.”


- “[T]here can be no therapeutic justification for the prolonged use of restraints, which may amount to torture or ill-treatment” (¶ 55)
- “[P]rolonged solitary confinement and seclusion of persons may constitute torture or ill-treatment.” (¶ 56)
- “Inside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment. The administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence, has been recognized as a form of torture... Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual’s health may constitute a form of torture or ill-treatment.” (¶ 63)

5.6.4 SAMPLE ARGUMEN TS: CHILDREN’S RIGHTS

These sample arguments should be used to supplement your state and federal-law based claims and defenses. Do not rely these arguments alone. The Children’s Rights Sample Arguments were originally drafted by Erik Pitchal.

**SAMPLE ARGUMENT 1 - RIGHT TO BE FREE FROM RESTRAINTS, SECLUSION, AND FORCED MEDICATION WHILE IN STATE CUSTODY AS A FOSTER CHILD IN STATE CUSTODY, [NAME OF CHILD] IS ENTITLED TO BE FREE FROM PHYSICAL RESTRAINTS, SECLUSION, AND FORCED MEDICATION.**


Placing children in physical restraints or in seclusion, or forcing them to take psychotropic medication without their informed consent, violates the basic command of international law to offer minors special considerations as well as more specific prohibitions against cruel, inhuman treatment – and even torture. “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” CRC Art. 37(1). Any and all forms of legalized violence against children are affronts to international human rights norms. See Committee on the Rights of the Child, ¶18, General Comment Nº 8, U.N. Doc. CRC/C/GC/8 (2006), http://www2.ohchr.org/english/bodies/crc/comments.htm. Placing a child in seclusion or restraints violates her right to recreation, and forcing her to take mind-altering drugs without her informed consent deprives her of the right to adequate medical services.

Indeed, “The child shall have the right to adequate . . . recreation and medical services.” Declaration of the Rights of the Child, principle 4, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959). Placing a child in seclusion or restraints violates her right to recreation, and forcing her to take mind-altering drugs without her informed consent deprives her of the right to adequate medical services.

[insert facts of this case] rise to the level of torture. According to the Convention Against Torture, which the U.S. has signed and ratified, and enacted implementing legislation (Torture Victims Protection Act, Pub.L. 102-256, H.R. 2092, 106 Stat. 73, enacted March 12, 1992), “Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . intimidating or coercing him, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20(1988); 23 I.L.M. 1027(1984), as modified by 24 I.L.M.535 (1985), ratified by the U.S. Nov. 20, 1994. “There can be no therapeutic justification for the prolonged use of restraints, which may amount to torture or ill-treatment.” Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, U.N. Doc. A/63/175, ¶ 55 (2008), www.un.org/disabilities/images/A.63.175.doc. Moreover, prolonged solitary confinement and seclusion of persons may constitute torture or ill-treatment. jj. ¶ 56. With respect to the provision of psychotropic medications without the informed consent of the patient, the Special Rapporteur on Torture has declared: “Inside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment. The administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence, has been recognized as a form of torture. . . Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual’s health may constitute a form of torture or ill-treatment.” Id. ¶ 63.

[Insert the important facts of this case] violates the Plaintiffs’ fundamental human right to be free from torture. Because the U.S. has ratified the Convention Against Torture, the United States is obligated to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Id. art. 2 (emphasis added). Thus, [insert your specific request of the court in this case].
SAMPLE ARGUMENT 2 - RIGHT TO PLACEMENT AND CONTACT WITH SIBLINGS, AND/OR RIGHT TO PLACEMENT WITH RELATIVE CARETAKERS AND/OR RIGHT TO ONGOING CONTACT WITH PARENTS AND REUNIFICATION SERVICES


In order for children to be separated from their parents, international law requires governments to provide due process. “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.” CRC, Art. 9(1). When children must be removed from their parents, they are still entitled to maintain the parent-child relationship, so long as doing so is not contrary to their best interests. See CRC Art. 9(3). This is true even if the parent is incarcerated. See CRC Art. 9(4) (requiring governments to “upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child”). Human rights law supports the concept of preventive and/or reunification services. “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.” IESCR, art 10(1). Additionally, the CRC recognizes the rights of disabled children – which could be defined broadly to include many, if not most, children in foster care – to special care. See CRC Art. 23(2). The CRC requires nations to provide services and aid “which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.” Id.

Children in foster care should be provided every opportunity to maintain family ties, in accordance with human rights principles. Because of the importance of family relationships, international law places special obligations on governments to ensure that children whose families have been disrupted are able to maintain as many aspects of their family life and relationships as possible. Children “shall, wherever possible, grow up in the care and under the responsibility of [their] parents. . .Society and the public authorities shall have the duty to extend particular care to children without a family.” Declaration, principle 6. If the parents are not able to care for children themselves, then consideration should be given to making other relatives the primary caretakers – and governments should provide them the adequate support to do so. Id. See also IESCR, art. 10(1). Moreover, children’s relationships with their siblings should be protected. See Id. See also American Convention on Human Rights, Art. 17(1), Art. 11(2), Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99 (1969).

[Insert name of child] has the right to placement/contact with his/her siblings / placement with relatives / a service plan that gives his/her parents a meaningful opportunity to reunify the family.
SAMPLE ARGUMENT 3 - RIGHT TO FREE EXERCISE OF RELIGION

[NAME OF CHILD] HAS THE RIGHT TO PRACTICE HER/HIS OWN RELIGION WHILE IN STATE CUSTODY AND/OR NOT TO BE FORCED TO PRACTICE A RELIGION NOT OF HIS/HER CHOICE.


Non-discrimination principles, which are so central to international human rights norms, also extend to children. “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. ICCPR, art. 24(1). Governments must “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.” Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990 [hereinafter “CRC”]. This is because of the imperative to raise all children “in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that [their] energy and talents should be devoted to the service of [their] fellow [human beings].” Declaration of the Rights of the Child, principle 10, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

Children in state custody and those who are disabled are granted even greater protection by human rights law. “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” CRC, art. 20(1). Specifically, when children are placed in foster care, international law continues to protect their right to practice their chosen religion. “When considering [foster care placements], due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.” CRC, art. 20(2)(3). Disabled children – who constitute an overwhelming majority of foster children when the term is defined broadly – have additional protections, as they have the right under international law to the full enjoyment “of all human rights and fundamental freedoms on an equal basis with other children.” International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 7, Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), entered into force May 3, 2008.

The practices of [insert name of facility] in this case violate [insert name of child]’s right to practice his/her own religion, by forcing him/her to [insert facts].
5.6.5 TALKING POINTS: CHILDREN’S RIGHTS

The Children’s Rights Talking Points below were originally drafted by Erik Pitchal.

TALKING POINTS #1- RIGHT TO BE FREE FROM RESTRAINTS, SECLUSION, AND FORCED MEDICATION WHILE IN STATE CUSTODY

- Human rights law protects the dignity of every human being, most importantly children.
- Human rights law and also provides special protections for children because children are vulnerable.
- Human rights norms make the best interests of children the most important factor to consider.
- Children in state custody and children with disabilities must be provided even greater protections.
- Under international law, children are entitled to adequate recreation and medical care. The use of seclusion and restraints, and the provision of psychotropic medication without informed consent, violate these rights.
- Certain practices in group homes, residential treatment centers, and psychiatric facilities which may or may not be disfavored under state or federal law are considered inhumane and can be considered under international law.
- Depending on the circumstances, seclusion, restraints, and forced medication can be considered torture.

TALKING POINTS #2- RIGHT TO PLACEMENT AND CONTACT WITH SIBLINGS, AND/OR RIGHT TO PLACEMENT WITH RELATIVE CARETAKERS AND/OR RIGHT TO ONGOING CONTACT WITH PARENTS AND REUNIFICATION SERVICES

- Human rights law makes the family the primary unit of society and requires governments to protect family life.
- The state may interfere with family life only when absolutely necessary to protect children.
- International norms require states to provide support and assistance to families in the task of raising children.
- If children must be separated from their parents into foster care, human rights law requires states to preserve their family ties as much as possible, by, for example, placing them with relatives and/or siblings, permitting them to visit their parents if not contrary to their best interests, and otherwise supporting the maintenance of established family relationships.
- When children are placed with relatives, those relatives should receive the same kind of support that parents would otherwise have been entitled to receive, in order to maintain that placement as a nurturing and stable family home.

TALKING POINTS #3- RIGHT TO FREE EXERCISE OF RELIGION

- Certain rights are so fundamental that they are enshrined not only in our federal and state constitutions, but also in international law.
- One of these is the right to free exercise of religion.

- International law provides that children are rights-holders of certain human rights, including the right to free exercise of religion.

- Disabled children and children in foster care are entitled to special protections under international law.

- Non-discrimination on the basis of religion is a critically important universal value that applies to children throughout the world, and especially vulnerable children who are in state custody and do not have their parents to advocate for them.

### 5.6.6 CASE STUDIES OF LEGAL AID ATTORNEYS: CHILDREN’S RIGHTS

- None available yet –

### 5.6.7 SAMPLE BRIEFS & PETITIONS: CHILDREN’S RIGHTS

- None available yet –

### 5.6.8 OTHER RESOURCES: CHILDREN’S RIGHTS


5.7 IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

The Immigration: Family & Border Rights section of the Handbook was written by Lynsay Gott. ^

5.7.1 INTRODUCTION: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

Numerous international human rights principles are applicable to immigration proceedings. This section focuses on those principles most relevant to family unity and certain border-rights issues.

Under human rights law, everyone has a right to family life, the right to found a family, and the right to state protection of their family rights. While “family” is not specifically defined in any treaty, it should be interpreted flexibly to encompass modern social norms. Decisions regarding admissibility, removal, and detention can all potentially result in interference with family rights. While migrants do not have an automatic right to enter or remain in a country simply because they have family present there, in the circumstances of a particular case an individual’s family rights interests may outweigh a state’s interest in upholding its immigration policies.182

Migrants attempting to enter the United States often face other human rights violations, including racial profiling and arbitrary detention. The principles of non-discrimination, right to liberty, right to a fair hearing and access to courts, and freedom from arbitrary detention are also fundamental international human rights norms. All the rights enshrined in international instruments must be guaranteed to migrants and citizens alike without any distinctions such as the race, national origin, religion or immigration status of the person in question. Immigration-related judicial or administrative decisions may not be based on such grounds. An individual’s detention may be arbitrary, and thus in violation of international law, if based on discriminatory grounds, if it severely infringes on the right to family life, or if it is not necessary in all the circumstances of a particular case.

This section of the Local Human Rights Lawyering Project Handbook will provide legal aid attorneys with model written and oral arguments with statistics and resources for relevant data, arguments to use in litigation, a list of relevant international and U.S. law, and case studies of legal aid attorneys fighting for the rights of immigrant clients and their families.

^ Lynsay Gott is an Associate Attorney with WMR Immigration Law Group. Ms. Gott received her J.D. from University of Cincinnati College of the Law, and was the recipient of an Equal Justice Works Fellowship upon graduation in 2007. Her fellowship project, carried out at Human Rights USA, involved working to close the loopholes in U.S. law that limited the availability of asylum protections for trafficked persons and mandated the return of some to the countries of origin where they were originally victimized. She remained with Human Rights USA upon completion of the fellowship, eventually becoming the Acting Executive Director, and her work expanded to pursuing civil remedies for survivors of human rights abuses. She joined WMR Immigration Law Group in 2012 and currently helps clients receive humanitarian protection such as asylum, as well as other forms of immigration relief. Ms. Gott is a member of the Maryland and District of Columbia Bars.


185 See, e.g., ICCPR, art. 9(1); American Declaration of the Rights and Duties of Man (ADHR), art. 25, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).

186 See, e.g., ICCPR, art. 14(1); CERD, art. 6., ADHR, art. 18.

187 See, e.g., ICCPR, art. 9(1); UDHR, art. 9.

188 See, e.g., ICCPR, art. 2; ADHR, art. 2.

Here are some quick statistics related to immigration, family and border rights issues:

- The United States removed 387,242 individuals in 2010.  
- 74.7% of cases before Immigration Judges in 2010 ended in removal orders.
- Approximately 5 million children living in the United States have an undocumented parent, including 3 million children born in the United States.
- Between 1998 and 2007, 108,434 of the individuals removed from the United States had U.S. citizen children. Only about half of these removals were based on aggravated felony convictions.
- Asylum denial rates are extremely high for individuals of certain nationalities, approaching 100% for Jamaican applicants.

Resources for data related to family and border rights issues within immigration enforcement:

- Department of Homeland Security, Yearbooks of Immigration Statistics
- TRAC Immigration
- Executive Office for Immigration Review, U.S. Department of Justice Statistical Yearbooks
- Congressional Research Service Reports on Homeland Security
- International Organization for Migration, World Migration Report
- U.N. Office of the High Comm’rer for Refugees, Statistics and Operational Data

194 Id. at 10.
195 TRAC Immigration, Asylum Denial Rates by Nationality. [Link](http://trac.syr.edu/immigration/reports/240/include/nationality_denial.html).
### 5.7.3 RELEVANT HUMAN RIGHTS LAW: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

#### RATIFIED TREATIES. IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

<table>
<thead>
<tr>
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<tr>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td><strong>Article 5 of CERD:</strong> “In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law.” International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994.</td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td><strong>Article 6 of CERD:</strong> “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.” International Covenant on the Elimination of All Forms of Racial Discrimination (CERD), art. 6, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994.</td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td><strong>Article 2 of the ICCPR:</strong> “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” International Covenant on Civil and Political Rights, art. 2, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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### Article 12(2) of the ICCPR

“Everyone shall be free to leave any country, including his own.”


### Article 14(1) of the ICCPR

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”


### Article 17 of the ICCPR

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, [or] home...; and 2. Everyone has the right to the protection of the law against such interference or attacks.”


### Article 23 of the ICCPR

“1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State; and 2. The right of men and women of marriageable age to marry and to found a family shall be recognized


### Article 26 of the ICCPR

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”


### Article 3 of ICRSR

“The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”


### Article 33(1) of ICRSR

“No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

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<tr>
<td><strong>International Convention Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment (CAT)</strong></td>
<td><strong>Article 3(1) of CAT:</strong> “No State Party shall expel, return (&quot;refouler&quot;) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3(1), Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20(1988); 23 I.L.M. 1027(1984), as modified by 24 I.L.M.535 (1985), <strong>ratified by the U.S.</strong> Nov. 20, 1994.</td>
</tr>
<tr>
<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 2 of the Declaration:</strong> “All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.” American Declaration of the Rights and Duties of Man, art. 2, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>Article 5 of Declaration:</strong> “Every person has the right to the protection of the law against abusive attacks upon … his private and family life.” American Declaration of the Rights and Duties of Man, art. 5, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>Article 6 of Declaration:</strong> “Every person has the right to establish a family, the basic element of society, and to receive protection therefor.” American Declaration of the Rights and Duties of Man, art. 6, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>Article 18 of Declaration:</strong> “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.” American Declaration of the Rights and Duties of Man, art. 18, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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<td><strong>Article 25 of Declaration:</strong> “No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.” American Declaration of the Rights and Duties of Man, art. 25, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948) [emphasis added].</td>
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### HUMAN RIGHTS INSTRUMENTS NOT RATIFIED BY THE U.S.: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

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<tr>
<td><strong>International Covenant on Economic, Cultural and Social Rights (ICESCR)</strong></td>
<td>Article 10 of the ICESCR: “1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children; (...and 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.” International Covenant on Economic, Social, and Cultural Rights, art. 10(1), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D. 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976 [emphasis added].</td>
</tr>
<tr>
<td><strong>International Convention on the Rights of the Child (CRC)</strong></td>
<td>Article 3 of CRC: “1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration; and 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.” Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990 [emphasis added].</td>
</tr>
<tr>
<td><strong>The American Convention on Human Rights (ACHR)</strong></td>
<td>Article 10(1) of CRC: “In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.” Convention on the Rights of the Child, art. 10(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</td>
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<td><strong>The American Convention on Human Rights (ACHR)</strong></td>
<td>Article 22(2) of the ACHR: “Every person has the right to leave any country freely, including his own.” American Convention on Human Rights, art. 22(2), Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99 (1969) [emphasis added].</td>
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<tr>
<td>Treaty or Declaration</td>
<td>Article/Citation</td>
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<td>The Universal Declaration of Human Rights (UDHR)</td>
<td>Article 2 of the UDHR: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Universal Declaration of Human Rights, art. 2, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [emphasis added].</td>
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<td>Article 7 of the UDHR: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” Universal Declaration of Human Rights, art. 7, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).</td>
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<td>Article 8 of the UDHR: “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.” Universal Declaration of Human Rights, art. 8, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).</td>
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<td>Article 9 of the UDHR: “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, art. 9, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [emphasis added].</td>
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<td>Article 12 of the UDHR: “No one shall be subjected to arbitrary interference with his privacy, family, [or] home…. Everyone has the right to the protection of the law against such interference or attacks.” Universal Declaration of Human Rights, art. 12, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [emphasis added].</td>
</tr>
<tr>
<td>The European Convention on Human Rights (ECHR)</td>
<td>Article 8 of the ECHR: “1. Everyone has the right to respect for his private and family life, his home and his correspondence; and 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society.” European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8, Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221 (1950) [emphasis added].</td>
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<td>Article 14 of the ECHR: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 14, Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221 (1950) [emphasis added].</td>
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<tr>
<td>Treaty or Declaration</td>
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<tr>
<td><strong>International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family (ICPRM)</strong></td>
<td>Article 7 of the ICPRM: “States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 7, UN Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force July 1, 2003 [emphasis added].</td>
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<td></td>
<td>Article 14 of the ICPRM: “No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, [or] home.... Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 14, UN Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force July 1, 2003 [emphasis added].</td>
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<td></td>
<td>Article 16(4) of the ICPRM: “Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 16(4), UN Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force July 1, 2003 [emphasis added].</td>
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<td>Article 17(6) of the ICPRM: “Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 17(6), UN Doc. A/RES/45/158, 30 I.L.M. 1517 (1990), entered into force July 1, 2003 [emphasis added].</td>
</tr>
<tr>
<td><strong>Boston Principles on the Economic, Social and Cultural Rights of Noncitizens (Boston Principles)</strong></td>
<td>Principle 5 of the Boston Principles: “All persons subject to immigration enforcement actions and proceedings have the right to full protection of the core human rights at stake in such actions and proceedings, including the right to life, security and bodily integrity, physical and mental health, family unity, livelihood, and education. Humanitarian factors, including length of residence in the United States and family ties, should be given due consideration in any proceeding that may result in deportation.” Boston Principles on The Economic, Social and Cultural Rights of Noncitizens (2011).</td>
</tr>
<tr>
<td><strong>The Charter of the Organization of American States (OAS Charter)</strong></td>
<td>Article 45 of the OAS Charter: “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms....Adequate provision for all persons to have due legal aid in order to secure their rights.” Charter of the Organization of American States, art. 45, Apr. 30, 1948, 119 U.N.T.S. 3, ratified by the U.S. Dec. 13, 1951.</td>
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</table>
U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW. IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES.

**Maria v. McElroy**, 68 F.Supp.2d 206 (EDNY 1999). The court held that retroactive application of a law prohibiting discretionary relief from deportation for individuals convicted of “aggravated felonies” may violate customary international law and the ICCPR’s article 17 prohibition against arbitrary interference with family life. Explaining that article 23’s obligation to protect the family implicitly included “the right of family members to live together,” the court added that deporting an individual from a country where he has close ties might also violate article 7’s prohibition against cruel, inhuman or degrading treatment. See also **Beharry v. Reno**, 183 F.Supp.2d 584 (EDNY 2002) reversed on other grounds by **Beharry v. Ashcroft**, 329 F.3d 51 (2d Cir. 2003).

**Matter of C-Y-Z**, 21 I. & N. Dec. 915 (BIA 1997). The Board of Immigration Appeals found a Chinese man eligible for asylum based on the fact that his wife had been subjected to forced sterilization in China. A concurring opinion emphasized the fundamental nature of the rights to privacy and to have a family, under both U.S. and international law, and that interference with these rights could constitute persecution under refugee law.

CASES BEFORE INTERNATIONAL BODIES. IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES.


**Smith, et al. v. U.S.**, Case 12.562, Inter-Am. Ct. H.R., Report No. 81/10 (2010). The Inter American Court held that immigration authorities must weigh the state’s interest in immigration control against an individual’s right to family life, which includes consideration of the best interests of the individual’s children.

**Shevanova v. Latvia**, App. No. 58822/00, Eur. Ct. H.R. (2007). The European Court of Human Rights held that deporting a woman who had lived in Latvia for several decades, married, and had a child there would violate the ECHR’s article 8 protection for family life. Although a state has a sovereign right to control the entry and residence of non-nationals in its territory, an individual’s deportation may be disproportionate under article 8, “where the individual concerned has strong personal or family ties within the country.”

**Advisory Opinion on Juridical Conditions and Rights of the Undocumented Migrants**, OC-18/03, Inter-Am Court H.R. (2003). Mexico requested an advisory opinion which was provided by the Inter-American Court of Human Rights on the human rights of migrant workers, especially with respect to the principles of legal equality, non-discrimination and the equal and effective protection of the law.

**Advisory Opinion on Condition and Human Rights of the Child**, No. OC-17/02, Inter-Am Court H.R., Series A No. 17, ¶¶ 62-77, 92-103 (2002). The Inter-American Commission on Human Rights requested an advisory opinion from the Inter-American Court of Human Rights regarding interpretation of Articles 8 and 25 of the American Convention, and their compatibility with some measures that states had adopted for regarding minors including: separating children from their family because their families were unable to afford their education or maintenance; and proceedings without guarantees for the right of the minor to be personally heard and failure to take into account the opinion and preferences of the minor in such determination.

**CASES BEFORE NATIONAL COURTS OR OTHER SUB-REGIONAL BODIES. IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES.**

**R v. Secretary of State for the Home Department ex parte Quila & Anor,** [2011] UKSC 45 (Eng. 2011). The court invalidated a law prohibiting grants of marriage-based visas when either spouse was under age 21. The fact that “the refusal to grant marriage visas either condemned both sets of spouses to live separately… or condemned the British citizens in each case… to live with their spouses” abroad was “a colossal interference” with the right to family life. Under international law “anyone of marriageable age is free to marry whom they choose….Married couples also have the right to live together.”

**VW (Uganda) v. Secretary of State for the Home Department,** [2009] EWCA Civ 5 (Eng. and Wales A.C. 2009). The court held that a woman’s deportation would violate her right to family life, as well as that of her partner and UK citizen child since it was unreasonable to expect her partner to relocate to a country to which he had no connection to keep the family together, and it was likely the child would remain in the United Kingdom as well. This “enforced break-up of this family…[was] not justified by the legitimate demands of immigration control.”

**Okoloubu v. Canada (Minister of Citizenship and Immigration),** 2008 F.C.A. 326 (Can. Fed. Ct. 2008). Immigration officials considering claims for relief based on family hardship must consider the principles enshrined in the ICCPR, including “non-interference in family life in Article 17, the importance of a family unit and protection thereof by society and the State in Article 23, as well as the child’s ‘right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State’ in Article 24 of the ICCPR.”

**A & Ors. v. Sec’y of State for the Home Dep’t,** [2004] UKHL 56 (Eng. H.L. 2004). The English House of Lords invalidated a law authorizing the detention of suspected terrorists who were not UK nationals. By discriminating between suspected terrorists who were UK nationals and those who were not, the law violated the non-discrimination provisions in article 14 of the ECHR and article 26 of the ICCPR.

**R v. Immigration Officer at Prague Airport & Anor. ex parte European Roma Rights Centre & Ors.,** [2004] UKHL 55 (Eng. H.L. 2004). The fact that a disproportionate number of those migrants who traveled to the United Kingdom from the Czech Republic with no intention of returning to their home country were ethnic Roma did not justify racial profiling in decisions regarding admission of Czech nationals to the United Kingdom. Since Roma seeking to travel to the United Kingdom were, “routinely treated with more suspicion and subjected to more intensive and intrusive questioning than non-Roma,” the immigration authorities’ actions unlawfully discriminated on racial grounds in violation of UK and international law.

**TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES**

**Criminalisation of Migrants in Europe,** CommDH/IssuePaper (2010) 1 (2010). The Council of Europe Commissioner for Human Rights stressed that “the actions of states at borders on many occasions may have human rights consequences.” For instance, while there is no automatic right to enter another country, some of the actions taken by states to prevent undocumented immigrants entering their territory may implicate the right to leave one’s country freely. The Commissioner also emphasized that border control operations “may engage a duty not to discriminate against one foreigner in comparison with another,” and that “the conditions under which individuals...
are refused access to states or admission may [implicate] the prohibition on torture, inhuman or degrading
treatment or punishment.”

78/10, ¶ 98 (2010). Report by the Inter-American Commission on Human Rights on immigrant detention and due
process in the U.S., along with recommendations for conforming immigration practices in the U.S. with
international human rights standards.

Concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination: UNITED

“The Committee also notes with concern the disproportionate impact that the lack of a generally
recognized right to counsel in civil proceedings has on indigent persons belonging to racial, ethnic and
national minorities (art. 5 (a)).

...The Committee further recommends that the State party allocate sufficient resources to ensure legal
representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings.”

General Comment No. 32: Right to equality before courts and tribunals and to a fair trial, U.N. Human Rights

“The right to equality before courts and tribunals also ensures equality of arms. This means that the same
procedural rights are to be provided to all the parties unless distinctions are based on law and can be
justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the
defendant. There is no equality of arms if, for instance, only the prosecutor, but not the defendant, is
allowed to appeal a certain decision. The principle of equality between parties applies also to civil
proceedings, and demands, inter alia, that each side be given the opportunity to contest all the arguments
and evidence adduced by the other party.”


“Recommend that the States parties, as appropriate for their particular circumstances, adopt some or all
of the following measures...Take the necessary steps to secure equal access to the justice system for all
members of descent-based communities, including by providing legal aid.”

Report on the Situation of Human Rights of Asylum seekers within the Canadian Refugee Determination System,
report and recommendations on the Canadian system aimed at meeting the needs of persons fleeing persecution.

General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms (Art. 5), U.N. CERD

“Many of the rights and freedoms mentioned in article 5, such as the right to equal treatment before
tribunals, are to be enjoyed by all persons living in a given State; others such as the right to participate in
elections, to vote and to stand for election are the rights of citizens.”

General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23),
that the family is the natural and fundamental group unit of society and is entitled to protection by society and the
State.

General Comment No. 15: The position of aliens under the Covenant, U.N. Human Rights Comm., 27th Sess., ¶¶ 5,
7 (1986). U.N. Human Rights Committee comment on equal rights of aliens under the ICCPR.
5.7.4 SAMPLE ARGUMENTS: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

These sample arguments should be used to supplement your state and federal-law based claims and defenses. Do not rely on these arguments alone.

<table>
<thead>
<tr>
<th>SAMPLE ARGUMENT 1 - RIGHTS TO FAMILY LIFE AND PROTECTION OF THE FAMILY</th>
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<tbody>
<tr>
<td><strong>[STATUTE/REGULATION AT ISSUE] SHOULD BE READ CONSISTENTLY WITH INTERNATIONAL HUMAN RIGHTS LAW STANDARDS BY BALANCING THE GOVERNMENT’S INTEREST WITH THE RIGHTS TO FAMILY LIFE AND PROTECTION OF THE FAMILY</strong></td>
</tr>
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</table>


The right to family life is a fundamental right that applies to citizens and migrants alike, and may give rise to the right to enter or remain in a foreign territory regardless of eligibility to immigrate under the domestic law of that state. General Comment No. 15: The position of aliens under the Covenant, U.N. Human Rights Comm., 27th Sess., ¶¶ 5, 7 (1986), [http://www.unhcr.org/refworld/docid/45139acfc.html](http://www.unhcr.org/refworld/docid/45139acfc.html); Criminalisation of Migrants in Europe, CommDH/IssuePaper (2010)1, (2010), [https://wcd.coe.int/ViewDoc.jsp?id=1579605](https://wcd.coe.int/ViewDoc.jsp?id=1579605) (“the fact that a person never arrived regularly on the territory of a state does not exclude the fact that his or her family life in the state may preclude expulsion”).


Due to the fundamental nature of the right to family life and the potential harm resulting from separation of family members, states are obligated to determine the reasonableness of any interference on a case-by-case basis, and should only justify that interference “where necessary to meet a pressing need to protect public order” based on “very serious” factors. Report on the Situation of Human Rights of Asylum seekers within the Canadian Refugee Determination System, at ¶ 166.

[Insert the important facts of this case] violates/would violate Respondent’s/Plaintiff’s fundamental human rights under international law.
SAMPLE ARGUMENT 2 - Right to Establish a Family

[DECISION AT ISSUE] VIOLATES/WOULD VIOLATE INTERNATIONAL HUMAN RIGHTS NORMS.


The U.N. Human Rights Committee, the European Court of Human Rights, and the IACHR have repeatedly considered numerous factors in the effort to balance a state’s interest in immigration control against an individual’s right to enter or remain in a host country. Among these factors are “the age at which the non-citizen immigrated to the host state; the non-citizen’s length of residence in the host state; the non-citizen’s family ties in the host state; the extent of hardship the non-citizen’s deportation poses for the family in the host state; the extent of the non-citizen’s links to the country of origin; the non-citizen’s ability to speak the principal language(s) of the country of origin...” Smith, et al. v. U.S., Case 12.562, Inter-Am. Ct. H.R., Report No. 81/10 (2010), www.cidh.org/annualrep/2010eng/USPU12562EN.DOC.

By separating [or threatening to separate] the Respondent/Petitioner/Plaintiff’s family, [the decision at issue] implicates the right to family life. Based on [insert the important facts of this case], the rights of Respondent/Petitioner/Plaintiff and her family outweigh the government’s interest in effective immigration control.
SAMPLE ARGUMENT 3 - Right to Non-Discrimination

[DECISION/ACTION AT ISSUE] VIOLATES/WOULD VIOLATE INTERNATIONAL HUMAN RIGHTS NORMS.


The U.N. Human Rights Committee has made clear that the non-discrimination principle applies to individuals outside their country of citizenship, and that all the provisions of the ICCPR “must be guaranteed without discrimination between citizens and aliens.” General Comment No. 15: The position of aliens under the Covenant, U.N. H.R. Comm., 27th Sess., ¶ 2 (1986), http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument; Juridical Condition and Rights of the Undocumented Migrants, at ¶ 118.

Further, the U.N. General Assembly has called on all States to ensure their immigration laws and practices “are free of racial discrimination and compatible with their obligations under international human rights instruments.” G.A. Res. 195, U.N. GAOR, 57th Sess., U.N. Doc. A/RES/57/195, Agenda Item 107, at ¶ I.6 (2002). In carrying out border control operations, State have “a duty not to discriminate against one foreigner in comparison with another”. Criminalisation of Migrants in Europe, CommDH/IssuePaper (2010)1, (2010), https://wcd.coe.int/ViewDoc.jsp?id=1579605. Additionally, while migrants do not have an automatic right to enter or reside in another state’s territory, “considerations of non-discrimination” may give rise to a right to remain in a particular case. U.N. Human Rights Comm., General Comment No. 15, at ¶ 5. For any distinction based on race or other grounds enumerated under international human rights instruments to be justified, “states must provide an especially weighty interest and compelling justification for the distinction.” Inter-Am. Cm. H.R., Report on Terrorism and Human Rights, at ¶ 412.

[Insert the important facts of this case] violates/violated international human rights law by impermissible discriminating on the basis of [insert relevant ground(s)].
5.7.5 TALKING POINTS: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

TALKING POINTS #1 - Right to Family Life

- U.S. ratified the ICCPR.
- Moreover, the U.S. Supreme Court has recognized that the laws of the U.S. must be construed to be consistent with international law whenever possible.
- Under the ICCPR, in removal proceedings the government’s interest must be balanced with the reasonableness of impairing the family rights of the respondent and his/her family members.
- The court can construe U.S. law to comply with ICCPR by interpreting the eligibility requirements for cancellation of removal or waivers of admissibility to allow for consideration of the family rights of the respondent and his/her family.

TALKING POINTS #2 - Right to Establish a Family

- Respondent’s removal would impair his/her and family’s rights under international law.
- ICCPR and American Declaration ratified by U.S.
- ICCPR and American Declaration prohibit arbitrary interference with family life and require states to protect the right to establish a family.
- Right to establish family includes right of family members to live together.
- Severe infringement of respondent’s and family’s rights caused by separating the family is disproportionate to the government’s interest in respondent’s removal.

TALKING POINTS #3 - Right to non-discrimination

- The principle of non-discrimination is a key element of the international human rights framework with the status of binding law on all nations.
- The non-discrimination principle underlies all other rights guaranteed by international law.
- CERD and ICCPR ratified by U.S.
- CERD and ICCPR both prohibit racial discrimination; ICCPR also prohibits discrimination based on “color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- International norms expressly prohibit discrimination between citizens and migrants and discrimination in enforcement of immigration laws.
- No government may ever derogate from the non-discrimination principle under international law.
- National security concerns, including the threat of terrorism, are not justifications for discrimination.

5.7.6 CASE STUDIES OF LEGAL AID ATTORNEYS: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

- None available yet -
5.7.7 SAMPLE BRIEFS & PETITIONS: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

- Beharry v. Ashcroft, Brief of Petitioner-Appellee
- Beharry v. Ashcroft, Amicus Brief in Support of Petitioner-Appellee

5.7.8 OTHER RESOURCES: IMMIGRATION: FAMILY & BORDER RIGHTS ISSUES

U.S. Human Rights Online Library, provides sample briefs, pleadings and non-litigation advocacy materials on the domestic implementation of human rights law, hosted by Columbia University Human Rights Institute.
The Immigration: Trafficking and Domestic Violence section of the Handbook was written by Lynsay Gott.  

5.8 IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

Human trafficking and domestic violence are issues of great concern under international law. Numerous treaties, declarations, and other international materials make clear that States are obligated to end slavery, human trafficking and all forms of violence against women, and to protect those who suffer from these abuses.  

For immigrant victims of trafficking or domestic violence, the most important protection may be relief from removal. Removing a trafficked person who faces retaliation from traffickers in her country of origin, or other forms of harm as a result of having been trafficked, can violate many human rights, including the right to life, the right to be free from slavery, the right to protection against persecution and torture, as well as specific international law provisions regarding the protection of trafficked persons.  

Removing a victim of domestic violence can also implicate many human rights, including the right to freedom from gender-based discrimination and the right to protection against persecution and torture.  

International law provisions regarding discrimination and violence against women, slavery and trafficking can be useful in defining the United States’ responsibility to immigrant victims of these forms of harm. In certain cases, these provisions may intersect with international refugee law and strengthen claims for asylum or protection under the Convention Against Torture. This section of the Local Human Rights Lawyering Project Handbook will provide legal aid attorneys with model written and oral arguments with statistics and resources for relevant data, arguments to use in litigation, a list of relevant international and U.S. law, and case studies of legal aid attorneys fighting for relief from removal for immigrant survivors of trafficking and domestic violence.

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^ Lynsay Gott is an Associate Attorney with WMR Immigration Law Group. Ms. Gott received her J.D. from University of Cincinnati College of the Law, and was the recipient of an Equal Justice Works Fellowship upon graduation in 2007. Her fellowship project, carried out at Human Rights USA, involved working to close the loopholes in U.S. law that limited the availability of asylum protections for trafficked persons and mandated the return of some to the countries of origin where they were originally victimized. She remained with Human Rights USA upon completion of the fellowship, eventually becoming the Acting Executive Director, and her work expanded to pursuing civil remedies for survivors of human rights abuses. She joined WMR Immigration Law Group in 2012 and currently helps clients receive humanitarian protection such as asylum, as well as other forms of immigration relief. Ms. Gott is a member of the Maryland and District of Columbia Bars.

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197 See, e.g., ICCPR, art. 8; ACHR, art. 6; ECHR art. 4.


199 See, e.g., ICCPR, art. 8; ACHR, art. 5(2); ECHR art. 3.

200 ICCPR, art. 6(1); ADHR, art. 1; ACHR, art. 4(1); UDHR, art. 3.

201 ICCPR, art. 3; ACHR, art. 22(8); UDHR, art. 2; CEDAW, art. 2.

202 ACHR, art. 33.

203 ICCPR, art. 7; CAT, arts. 2(1), 3(1); ACHR, art. 5(2); ECHR, art. 3.
5.8.2 QUICK STATISTICS & RESOURCES FOR DATA: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

Here are some quick statistics related to immigration, trafficking and domestic violence issues:

- U.S. government estimates vary regarding the number of people trafficked into the U.S. annually from 14,500 to 50,000. 204
- Between 2002 and 2010, USCIS has received 2968 applications for T visas; 1862 have been approved. 205
- In 2009 and 2010, USICS received 18,126 applications for U visas; 10,712 have been approved. 206
- 59.5% of married immigrant women in the U.S. experience domestic abuse, compared to 49.8% of unmarried immigrant women. 207
- The U.S. received the highest number of asylum applications of any industrialized country in 2010 at 55,500. 208
- Of the 55,500 asylum applications received by the U.S. in 2010, only 21,113 were granted. 209
- Only 35% of the defensive asylum applications filed in 2010 were granted. 210
- Data shows that domestic violence rates are three times higher among couples with a U.S. citizen husband and immigrant wife than in the general U.S. population. 211
- A study of asylum seekers in Texas indicated that women’s claims were 472% less likely to be granted. 212

Resources for relevant data related to forms of relief for immigrant victims of trafficking and domestic violence:

- U.N. Office of the High Commissioner for Refugees, Statistics and Operational Data
- U.S. Department of Justice, Executive Office for Immigration Review, Statistics and Publications
- Congressional Research Service Reports

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205 Id. at 27.
206 Id. at 30.
### 5.8.3 RELEVANT HUMAN RIGHTS LAW: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

#### RATIFIED TREATIES: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

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<tr>
<td>International Covenant Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment</td>
<td><strong>Article 7 of the ICCPR:</strong> “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td><strong>Treaty or Declaration</strong></td>
<td><strong>Article 8 of the ICCPR:</strong> “1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited; 2. No one shall be held in servitude; and 3.(a) No one shall be required to perform forced or compulsory labour.” International Covenant on Civil and Political Rights, art. 8, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td>International Convention Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment</td>
<td><strong>Article 33(1) of ICRSR:</strong> “No Contracting State shall expel or return (&quot;refouler&quot;) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” International Convention Relating to the Status of Refugees, art. 33(1), 189 U.N.T.S. 150, <em>entered into force</em> April 22, 1954.</td>
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<td><strong>Article 3(1) of CAT:</strong> “No State Party shall expel, return (&quot;refouler&quot;) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3(1), Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20(1988); 23 I.L.M. 1027(1984), as modified by 24 I.L.M.535 (1985), ratified by the U.S. Nov. 20, 1994.</td>
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<td><strong>American Declaration on the Rights and Duties of Man (Declaration)</strong></td>
<td><strong>Article 1 of the Declaration:</strong> “Every human being has the right to life, liberty and the security of his person.” American Declaration of the Rights and Duties of Man, art. 1, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Article 27 of Declaration:</strong> “Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.” American Declaration of the Rights and Duties of Man, art. 27, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).</td>
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<td><strong>Convention Against Transnational Organized Crime (CATOC)</strong></td>
<td><strong>Article 24(1) of the CATOC:</strong> “Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.” Convention Against Transnational Organized Crime, art. 24(1), Nov. 15, 2000, 2225 U.N.T.S. 209, U.N. Doc. A/45/49 (Vol. I), ratified by the U.S. Nov. 3, 2005.</td>
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<td><strong>Article 25(1) of the CATOC:</strong> “Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.” Convention Against Transnational Organized Crime, art. 25(1), Nov. 15, 2000, 2225 U.N.T.S. 209, U.N. Doc. A/45/49 (Vol. I), ratified by the U.S. Nov. 3, 2005.</td>
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**Human Rights in the United States: A Handbook for Legal Aid Attorneys**

Version 4/22/13


**HUMAN RIGHTS INSTRUMENTS NOT RATIFIED BY THE U.S.: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES**

**International Covenant on Economic, Cultural and Social Rights (ICESCR)**

**Article 10 of the ICESCR**: “1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children; (...) and 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.” International Covenant on Economic, Social, and Cultural Rights, art. 10, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, *entered into force* Jan. 3, 1976 [emphasis added].

**International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

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<td>International Convention on the Rights of the Child (CRC)</td>
<td><strong>Article 3 of CRC</strong>: “1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration; and 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.” Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), <em>entered into force</em> Sept. 2, 1990 [emphasis added].</td>
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<td>The American Convention on Human Rights (ACHR)</td>
<td><strong>Article 4(1) of the ACHR</strong>: “Every person has the right to have his life respected. This right shall be protected by law.” American Convention on Human Rights, art. 4(1), Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99 (1969).</td>
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<td><strong>Article 5(2) of the ACHR</strong>: “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” American Convention on Human Rights, art. 5(2), Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99 (1969).</td>
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<td><strong>Article 6 of the ACHR</strong>: “1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women; and 2. No one shall be required to perform forced or compulsory labor.” American Convention on Human Rights, art. 6, Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99 (1969).</td>
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<td><strong>Article 22(7)-(8) of the ACHR</strong>: “7. Every person has the right to seek and be granted asylum in a foreign territory...; and 8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.” American Convention on Human Rights, art. 22(7)-(8), Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99 (1969).)</td>
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<td>The Universal Declaration of Human Rights (UDHR)</td>
<td><strong>Article 2 of the UDHR</strong>: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Universal Declaration of Human Rights, art. 2, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) [emphasis added].</td>
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<td>Article 4 of the ECHR: “1. No one shall be held in slavery or servitude; and 2. No one shall be required to perform forced or compulsory labour.” European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 4, Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221 (1950).</td>
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<td>Preamble of DEVAW: “Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.” Declaration on the Elimination of Violence against Women, preamble, G.A. Dec. 48/104, U.N. Doc. A/RES/48/104 (1993) [emphasis added].</td>
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<td>Article 2 of the DEVAW: “Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.” Declaration on the Elimination of Violence against Women, art. 2, G.A. Dec. 48/104, U.N. Doc. A/RES/48/104 (1993)</td>
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**U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES**

*Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005). The court looked to international law and United Nations materials to determine whether the harm the respondent suffered constituted persecution and whether her proposed particular social group was valid.
Rranzi v. Attorney General, 540 F.3d 165 (3rd Cir. 2008). The court determined that the CATOC may prohibit the removal of a witness to a convention crime when he faced a threat of retaliation from members of the crime ring against whom he testified. The lack of implementing legislation for the convention may be irrelevant since the U.S. Executive Branch and Senate had stated that U.S. law was already in full compliance without such legislation.

CASES BEFORE INTERNATIONAL BODIES: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

Rantsev v. Cyprus & Russia, Case no. 25965/04, [2010] ECHR 22, 51 EHRR 1 (2010). The European Court of Human Rights held that the ECHR’s article 4 prohibition on slavery and forced labor has to be considered in light of the international obligations created by the Trafficking Protocol and European Anti-Trafficking Convention. Thus, failure to adequately protect a victim or potential victim of trafficking could place a state in violation of the prohibition against slavery and forced labor.

CASES BEFORE NATIONAL COURTS OR OTHER SUB-REGIONAL BODIES: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

AZ (Trafficked women) Thailand v. Secretary of State for the Home Department, CG [2010] UKUT 118, (Eng. IAC. 2010). The Upper Tribunal of the Immigration and Asylum Chamber in the United Kingdom held that a trafficked person’s experiences constituted persecution, and that members of the social group of “young females who have been victims of trafficking for sexual exploitation” were at risk of additional forms of persecution in Thailand.

Joseph v. Canada (Solicitor Gen.), No. IMM-1981-05, 2006 FC 165 (Can. 2006). The court held that gender-based violence can constitute persecution, explaining that the fact that violence against women is universal is irrelevant. The issues in determining whether persecution has occurred are whether the discrimination suffered constitutes a serious human rights violation and whether it resulted from a failure of state protection. The court stressed that “women have an internationally protected right to protection from domestic violence and failure to provide such protection constitutes a form of gender-related discrimination.”

VXAJ v. Minister for Immigration & Anor, [2006] FMCA 234 (Austl. 2006). In a case involving a fear of persecution in the form of trafficking, the court accepted that “sex workers in Thailand constituted a particular social group because their occupation is a unifying characteristic that sets them apart in society.”

Minister for Immigration v. Khawar, [2002] HCA 14, 187 ALR 574 (Austl. 2002). The Australian High Court held that “women in Pakistan” could constitute a particular social group, noting that this conclusion found support in decisions of foreign courts and statements by the U.N. High Commissioner for Refugees. Furthermore, the court held that domestic violence could constitute persecution when coupled with “state tolerance or condemnation of domestic violence, and systematic discriminatory implementation of the law.” The court emphasized that the ICCPR and CERD “are obviously important in expressing the concept of women's equality before the law and the unacceptability of the state and its agencies discriminating unjustly against women solely by reason of their sex.”

McPherson v. Sec’y Of State For Home Dep’t, [2001] EWCA Civ 1955, [2002] INLR 139 (Eng. & Wales 2001). A refugee claim based on domestic violence could not be defeated merely by a showing that the applicant’s country had laws in place to address domestic violence. If an applicant can show “that the remedies provided under the law...against domestic violence are unlikely to be an effective deterrent,” then her removal to that country would violate the ECHR’s article 3 prohibition on torture and other inhuman or degrading treatment.
Li v. Canada (Minister of Citizenship and Immigration), No. IMM-932-00, 2000 CanLII 16776 (Can. 2000). The Canadian high court determined that trafficking could constitute persecution, and that the applicants’ fear was well-founded since their families were still in debt to the traffickers.

Islam v. Sec’y of State for the Home Dep’t, & R v. Immigration Appeal Tribunal, ex parte Shah, [1999] UKHL 20, 2 AC 629 (Eng. H.L. 1999). The House of Lords held that women can constitute a particular social group under the Refugee Convention in societies which severely discriminate against women. This decision was “simply a logical application” of the reasoning put forward by the U.S. Board of Immigration Appeals. Furthermore, while domestic violence would not constitute persecution in every country, it rose to the level of persecution in Pakistan since “the State was unwilling or unable to offer [domestic violence victims] any protection.”

X (Re), CRDD T98-06186, 1999 CanLII 14662 (Can. 1999) (Bousfield, Milliner (dissenting)). The Canadian Immigration and Refugee Board held that persecution could occur on account of membership in the particular social group of “women and/or former sex trade workers,” the court explained that “[t]he fact that this claimant is a woman is a major cause of her predicament; not the only cause, but a major one.”

TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS:
IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, U.N.H.C.R., U.N. Doc. HR/Pub/10/2, at 175 (2010). This analysis of both general principles of international law and the specific rules that relate directly to trafficking was published by the U.N. High Commissioner for Refugees.

Annual Reports of the Special Rapporteur on trafficking in persons, especially women and children, (2005-2011). These reports provide an overview of the activities of the Special Rapporteur on Trafficking and also analysis of the rights and recommendations for trafficked persons.

Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N.H.C.R., U.N. Doc. HCR/GIP/02/01 (2002). These guidelines were issued by the U.N. High Commissioner for Refugees to provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field.

Council Framework Decision on Combating Trafficking in Human Beings, Official Journal of the European Communities, European Union, No. L 203/1, ¶ 3 (2002). “This framework aims to approximate the laws and regulations of European Union (EU) countries in the field of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings. It also aims to introduce common framework provisions at European level in order to address issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction and extradition.”


5.8.4 SAMPLE ARGUMENTS: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

These sample arguments should be used to supplement your state and federal-law based claims and defenses. Do not rely on these arguments alone.

**SAMPLE ARGUMENT 1 - Domestic Violence and Asylum**

DOMESTIC VIOLENCE CAN BE GROUNDS FOR ASYLUM UNDER INTERNATIONAL LAW.


Furthermore, domestic violence can occur on account of membership in a particular social group. Domestic violence often occurs at least in part because the abuser believes he has a right or responsibility to control or punish his spouse or children; the spouse or child’s inferior status is a partial motivation for the abuse. Report of the Special Rapporteur on violence against women, its causes and consequences, ¶ 26. See also Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention, U.N. H.R.C., U.N. Doc. A/HRC/14/L.9/Rev.1 (2010), [http://www.unhchr.org/refworld/docid/4c2b155f2.html](http://www.unhchr.org/refworld/docid/4c2b155f2.html) (“Recognizing that power imbalances and structural inequality between men and women are among the root causes of violence against women”); *DEVAW*, preamble (“Recognizing that violence against women is a manifestation of historically unequal power relations between men and women”).

Courts in other signatory countries have also recognized social groups defined, at least in part, by female gender, often citing the inferior status held by women in the country in question. See, e.g., *Khawar,* at ¶¶ 32-33 (“women in Pakistan” can constitute a valid social group and the potentially large size of that group is...
SAMPLE ARGUMENT 2 - Trafficking and Asylum

HUMAN TRAFFICKING CAN BE GROUNDS FOR ASYLUM UNDER INTERNATIONAL LAW.


The United Nations High Commissioner for Refugees has stated that trafficking involves numerous forms of harm which can constitute persecution. Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked, U.N.H.C.R., U.N. Doc. HCR/GIP/06/07, ¶ 15, (2006), http://www.unhcr.org/refworld/docid/443679fa4.html. Trafficked persons may also face additional forms of persecution as a result of the trafficking experience. id. at ¶¶ 18-19. Additionally, UNHCR’s guidelines explain that trafficking can occur on account of social group membership, since traffickers typically target people based on specific characteristics, such as gender, ethnicity, or social status. id. at ¶¶ 32, 38. A social group could also be defined as “former victims of trafficking” for asylum seekers who fear additional forms of persecution as a result of having been trafficked. id. at ¶ 39.

The jurisprudence of fellow signatories to the Refugee Convention is also illustrative in determining whether a U.S. asylum seeker meets the requirements of the Convention. See, e.g., VXAJ v. Minister for Immigration & Anor., [2006] FMCA 234 ¶¶ 25, 26 (Austl. 2006) (social group defined as “sex workers in Thailand”); Li v. Canada (Minister of Citizenship and Immigration), IMM-932-00, 2000 CanLII 16776, ¶¶ 23, 26 (Can. 2000) (noting that trafficking can constitute persecution); AZ (Trafficked women) Thailand CG, UK Immigration and Asylum Chamber, [2010] UKUT 118, ¶¶ 140-42, 146-54 (Eng. 2010) (holding that the social group of “young females who have been victims of trafficking for sexual exploitation” were at risk of additional forms of persecution in Thailand).

Given [insert the important facts of this case], Respondent’s past experiences and feared future harm constitute persecution under international law, and this persecution occurred or will occur on account of her social group membership.
SAMPLE ARGUMENT 3 - Duty to Protect Trafficked Persons

UNDER INTERNATIONAL LAW, THE U.S. MUST PROVIDE RELIEF FROM REMOVAL TO TRAFFICKED PERSONS WHO FACE RETALIATION OR RE-TRAFFICKING IN THEIR COUNTRY OF ORIGIN.


Survivors of trafficking often have legitimate fears of violent retaliation or other harm at the hands of their traffickers if repatriated. See Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, U.N.H.C.R., U.N. Doc. HR/Pub/10/2, 175 (2010), http://www.unhchr.org/refworld/docid/4d2eb7cf2.html. This is especially true for those who cooperate with law enforcement efforts. According to the UNHCHR, individuals who cooperate with law enforcement are often, as a result, in greater danger than they faced while in the original trafficking situation. Id. at 143-44. Thus, states have an even greater duty to protect victims who participate in the criminal justice process than to trafficked persons generally. Id. at 153. See also Report of the Special Rapporteur on trafficking in persons, especially women and children, U.N. Doc. A/64/290, ¶ 46 (2009), www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx.

The United Nations Office on Drugs and Crime (“UNODC”), the U.N. agency charged with overseeing states’ compliance with the CATOC, explains that states parties to the Trafficking Protocol must consider protection and assistance needs “in all dealings with actual and potential victims of trafficking.” UNODC, Toolkit to Combat Trafficking in Persons 349 (2008), http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook%5B1%5D.pdf. Failing to effectively provide for victim protection can undermine a state’s anti-trafficking efforts by helping to perpetuate the trafficking cycle. Id. at 325. See also Rantsev v. Cyprus & Russia, Case no. 25965/04, [2010] ECHR 22, 51 EHRR 1 (2010), http://bit.ly/zpnKD3. The UNODC also emphasizes that articles 24 and 25 of the CATOC are mandatory provisions, and that the Trafficking Protocol broadens the CATOC’s protection requirements by obliging states to protect victims from re-trafficking or other re-victimization. UNODC, Legislative Guides for the implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto 167, 285, 297 (2004), http://www.unodc.org/ pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf. See also Report of the Working Group on Contemporary Forms of Slavery on its twenty-ninth session, U.N. Doc. E/CN.4/Sub.2/2004/36, ¶ 29(a) (2004) (“Calls upon all states to ensure...No victim of trafficking is removed from the host country if there is a reasonable likelihood that she will be re-trafficked or subjected to other forms of serious harm.”). Even after a criminal investigation or trial has concluded, states may still have a duty to protect victims from “from reprisal attacks by traffickers and their allies.” Report of the Special Rapporteur on trafficking in persons, especially women and children, at ¶ 46. See also Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, at 156.

U.S. law provides numerous avenues for upholding the obligation to protect trafficked migrants: the T visa, the U visa, asylum and withholding of removal. The latter two forms of relief are mandatory for individuals who

Trafficked persons who can show it is more likely than not they will face retaliation or re-trafficking if removed must be granted protection in compliance with the CATOC, the Refugee Convention, and the CAT. Those who can show a likelihood of such harm, even if not enough to meet the “more likely than not” standard, still trigger the U.S.’s obligations under the CATOC and potentially the Refugee Convention. Adjudicators must consider trafficked persons’ claims for T visas, U visas, asylum or withholding of removal in light of the international obligation to protect survivors of trafficking who face further harm in their home country.

In light of [insert important facts of case], the United States has a duty under international law to protect the Respondent/Petitioner; the United States can comply with this obligation by granting Respondent/Petitioner’s claim/petition for [insert form of relief].

5.8.5 TALKING POINTS: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

TALKING POINTS #1- Trafficking, Domestic Violence, and Asylum

- The Supreme Court has stated that treaty interpretations of other signatory nations should be given considerable weight by U.S. courts interpreting that treaty.
- Courts in numerous states parties to the Refugee Convention have held that [trafficking/domestic violence] can rise to the level of persecution under the Convention.
- These courts have also held that [trafficking/domestic violence] can occur on account of social group membership.
- In societies with severely unequal balances of power between men and women, women are often regarded as an inferior class unworthy of protection from violence.
- Under international norms, violence against women occurring in such societies can constitute persecution on account of social group membership.

TALKING POINTS #2- Protection from Domestic Violence

- International law requires governments to protect women from discrimination and ensure men and women’s equal enjoyment of their human rights.
- The prohibition on gender-based discrimination found in the ICCPR implicitly requires states parties to prevent violence against women.
- Severe societal discrimination fuels violence against women, and a state’s failure to adequately protect women from gender-based violence is a violation of the right to freedom from gender-based discrimination.
- International law norms are broader than the ICCPR’s prohibition on gender-based discrimination and expressly require states to prevent gender-based violence and protect victims of such violence.
- Under international law, domestic violence is a form of violence against women.
A state’s systematic failure to protect women from domestic violence is a violation of international law and can be considered persecution.

**TALKING POINTS #3- Protection from Trafficking**

- At international law, states are obligated to protect trafficked persons and witnesses to trafficking crimes from retaliation or further harm at the hands of traffickers.
- The Trafficking Protocol specifically states that the provisions of the CATOC apply to transnational trafficking crimes.
- U.S. ratified CATOC and Trafficking Protocol and took significant role in drafting of Protocol.
- Retaliation and re-trafficking are common occurrences for escaped or rescued victims.
- Cooperation with law enforcement can significantly enhance the danger faced by victim-witnesses, thus states have a heightened duty to protect victims who cooperate with law enforcement, including after the conclusion of the criminal justice process.
- Failure to protect victims and witnesses undermines a state’s entire anti-trafficking scheme as victims get absorbed back into the cycle.
- The respondent is not claiming that the adjudicator must create a new form of relief under CATOC; U.S. law already has provisions that render it compliant and provide avenues for upholding obligations to trafficked persons under international law.
- If an individual can show their risk of further harm is more likely than not, he/she must be granted some form of withholding or deferral of removal, as required by multiple treaties and the non-derogable principle of nonrefoulement.
- Individuals who can show a lesser likelihood of harm may be eligible for asylum (or a U visa or T visa); the CATOC and Protocol obligations heighten the U.S.’s responsibility to thoroughly analyze the individual’s claim for eligibility for relief.

### 5.8.6 CASE STUDIES OF LEGAL AID ATTORNEYS: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES

**HUMAN RIGHTS USA’S VICTORY IN A FORCED MARRIAGE/DOMESTIC VIOLENCE-BASED ASYLUM CASE**

Human Right’s USA brought an affirmative asylum claim on behalf of a Cameroonian woman who fled a forced marriage after enduring two decades of brutal domestic violence. The petitioner had been sold in marriage by her father as an adolescent to a much older man. The man raped and beat her repeatedly, psychologically abused her, and forbade her to continue attending school or to have a job. On behalf of the petitioner, attorneys at Human Rights USA filed an asylum petition and a memorandum of law including international human rights arguments discussing the right to choose one’s spouse, the right to be free from slavery, the right to be free from domestic violence, and categorizing this violence as persecution and torture under international law. In November 2008, the Arlington Asylum Office granted the petition for asylum.
Jacksonville Area Legal Aid filed this asylum and withholding of removal case in Immigration Court on behalf of a survivor of trafficking who had testified against his traffickers in criminal court. The respondent had been unable to receive a T visa, and challenged his deportation based on his fear of being persecuted or tortured by members of the trafficking ring if he were returned to his country of origin. A staff attorney at Jacksonville Area Legal Aid filed the respondent’s asylum petition and a legal brief arguing that the Convention Against Transnational Organized Crime (CATOC) prohibited the removal of a witness in a criminal prosecution against an organized trafficking ring who faced retaliation in his home country as a result of his testimony. In July 2011, the Immigration Judge (IJ) granted the withholding of removal claim on other grounds without considering the CATOC argument. The Department of Homeland Security appealed the grant, and the attorney cross-appealed for the failure to consider the CATOC argument. The Board of Immigration Appeals remanded the case to the IJ for reconsideration, and the attorney renewed her prior arguments, supported by an amicus brief filed by Americans for Immigrant Justice and Human Rights USA. The amicus brief elaborated on the CATOC argument, emphasizing the United States’ international obligation to protect trafficked persons and witnesses in organized crime prosecutions, and explaining the interplay between these obligations, the international prohibition against returning an individual to a situation of persecution or torture, and domestic U.S. law. The IJ denied the claim in January 2012.

5.8.7 SAMPLE BRIEFS & PETITIONS: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES


5.8.8 OTHER RESOURCES: IMMIGRATION: TRAFFICKING AND DOMESTIC VIOLENCE ISSUES


5.9 HIV/AIDS

The HIV/AIDS section of the Handbook was written by Lauren E. Bartlett.¹

5.9.1 INTRODUCTION: HIV/AIDS.

The need to protect and advance the human rights of all persons in response to the international HIV/AIDS crisis is recognized at the international level and by more than 186 countries throughout the world.²¹³ Human rights violations fuel the epidemic, increasing vulnerability to infection. Human rights violations also follow infection and people living with HIV and AIDS can be subjected to discrimination, ill-treatment, and even torture.²¹⁴

The human rights relevant to HIV/AIDS-law are broad and include the rights of persons living with HIV/AIDS, such as the right to life, freedom from discrimination, privacy rights, and the right to healthcare, the right to an adequate standard of living, and the right to housing. Also relevant here are the rights to state protection for persons at risk of contracting HIV/AIDS.

5.9.2 QUICK STATISTICS & RESOURCES FOR DATA: HIV/AIDS

Some statistics which can be used connect the HIV/AIDS-law movement in the U.S. to the international crisis:

- Over one million people in the U.S. are living with HIV.²¹⁵
  - One in five (20%) are unaware of their infection.²¹⁶

- HIV disproportionately affects persons with less access to prevention and treatment services, which often leads to poorer health outcomes.²¹⁷
  - Blacks represent 14% of the U.S. population, but account for 46% of people living with HIV as of 2008.²¹⁸
  - Hispanics/Latinos make up 16% of the U.S. population, but account for 17% of people living with HIV as of 2008.²¹⁹

- In the U.S., 16 states require some form of disclosure of HIV/AIDS status by public officials or health care providers.²²⁰

- HIV has claimed over 25 million lives around the world in the past three decades.²²¹

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¹ Lauren E. Bartlett is director of the Center’s Local Human Rights Lawyering Project. From 2008-2011, Ms. Bartlett worked as a legal services attorney at Southeast Louisiana Legal Services in the foreclosure prevention unit. She taught a housing law and policy course at Loyola University New Orleans College of Law and served on the board of the ACLU of Louisiana. In 2007, she co-founded the Louisiana Justice Institute, a nonprofit civil rights legal advocacy organization. During law school, Lauren focused on gaining a strong background in international law and human rights. She was an articles editor for the Human Rights Brief, participated in a research program in Geneva, Switzerland for the U.N. Committee Against Torture, and was an Executive Board Member of the student group Action for Human Rights. She also served as a summer associate with the group Advocates for Environmental Human Rights, based in New Orleans, Louisiana. Before law school, Ms. Bartlett worked with non-profit organizations in California, Nepal, Ghana, Bangladesh and India, alongside advocates fighting for social and environmental justice.


²¹⁶ Id.

²¹⁷ Id.

²¹⁸ Id.

²¹⁹ Id.

²²⁰ Center for HIV Law & Policy, Resources (2009), http://www.hivlawandpolicy.org/resources/view/182.

• Approximately 34 million people around the world were living with HIV in 2010.\textsuperscript{222}

• 97% of people living with HIV reside in low- and middle-income countries.\textsuperscript{223}
  
  o More than 67 percent (22.4 million people) of those infected are in sub-Saharan Africa.\textsuperscript{224}
  
  o In Asia, an estimated 4.7 million people were living with HIV in 2008.\textsuperscript{225}
  
  o In Latin America, there were an estimated 2 million people living with HIV/AIDS in 2008.\textsuperscript{226}
  
  o In Eastern European & Central Asia, there were 1.5 million people living with HIV/AIDS.\textsuperscript{227}

5.9.3 RELEVANT HUMAN RIGHTS LAW: HIV/AIDS.

The language from the treaties listed below is merely a sampling. This is not an exhaustive list of treaties or the relevant articles in each treaty that are available. There may be language or another treaty not yet listed that is more relevant to your case at hand. Please be sure to review the full treaty text, which is available by clicking on the links below.

<table>
<thead>
<tr>
<th>Treaty or Declaration</th>
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<tr>
<td><strong>International Covenant on Civil and Political Rights (ICCPR)</strong></td>
<td><strong>Article 6 of the ICCPR:</strong> &quot;Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.&quot; \textit{International Covenant on Civil and Political Rights, art. 6, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992.}</td>
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| **Article 17 of ICCPR:** | "(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks." \textit{International Covenant on Civil and Political Rights, art. 17, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992.} |

| **Article 26 of ICCPR:** | "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." \textit{International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992.} |

\textsuperscript{222} Id.  
\textsuperscript{223} Id.  
\textsuperscript{224} Id.  
\textsuperscript{225} Id.  
\textsuperscript{226} Id.  
\textsuperscript{227} Id.
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<td><strong>International Convention Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment (CAT)</strong></td>
<td><strong>Article 16 of CAT:</strong> “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 16, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984), as modified by 24 I.L.M. 535 (1985), ratified by the U.S. Nov. 20, 1994.</td>
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<td><strong>Committee on the Elimination of Racial Discrimination (CERD)</strong></td>
<td><strong>Article 5 of CERD:</strong> “In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . . (c)(iv) The right to marriage . . . (3) Economic, social and cultural rights . . . (iv) The right to public health, medical care, social security and social services.” International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, ratified by the U.S. Nov. 20, 1994.</td>
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**TREATIES NOT RATIFIED BY THE U.S.: HIV/AIDS.**

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<tr>
<td><strong>International Covenant on Economic, Cultural and Social Rights (ICESCR)</strong></td>
<td><strong>Article 2(2) of ICESCR:</strong> “The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. International Covenant on economic, Social, and Cultural Rights, art. 2(2), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</td>
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<td><strong>Article 12 of ICESCR:</strong> “(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: . . . (c) The Prevention, treatment, and control of epidemic, endemic, occupational and other diseases.” International Covenant on economic, Social, and Cultural Rights, art. 12, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</td>
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<td><strong>International</strong></td>
<td><strong>Article 11(1) of CEDAW</strong>: “State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: . . . (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave[,]” Convention on the Elimination of Discrimination Against Women, art. 11(1), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, <em>entered into force</em> Sept. 3, 1981.</td>
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<tr>
<td>Rights of Persons</td>
<td><strong>Article 14(2) of CEDAW</strong>: “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure . . . to such women the right; . . . (b) To have access to adequate health care facilities, including information, counseling and services in family planning; (c) To benefit directly from social security programmes[,]” Convention on the Elimination of Discrimination Against Women, art. 14(2), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, <em>entered into force</em> Sept. 3, 1981.</td>
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**U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW: HIV/AIDS.**

- None available yet -
**CASES BEFORE INTERNATIONAL BODIES: HIV/AIDS.**

**D v. United Kingdom,** 30240/96 Eur. Ct. H.R. (1997). The applicant, a St. Kitts national diagnosed with AIDS and ordered removed to his home country, applied to the United Kingdom for leave to remain on compassionate grounds arguing that removal would entail the loss of medical treatment he was receiving and thereby shorten his life expectancy. The court held removal would expose him to a real risk of dying under distressing circumstances and thus amounts to inhuman treatment and a violation of Article 3 of the European Convention on Human Rights.

**CASES BEFORE OTHER NATIONAL COURTS OR SUB-REGIONAL BODIES: HIV/AIDS.**

**Patricia Asero Ochieng, Maurine Atieno and Joseph Munyi vs Republic,** H.C.C.C. Petition No. 409 of 2009 (Kenya, 2009). HIV+ petitioners challenge the Anti-Counterfeit Act of 2008 as interfering with their right to the highest attainable standard of health due to its limiting access to affordable drugs, including generic drugs for the treatment of HIV/AIDS. The Court held the Act violative of the fundamental right to life, human dignity and health in Articles 26(1), 28 and 43(1) of the Kenyan Constitution.

**Azanca Alhelí Meza García,** Expte. N.° 2945-2003-AA/TC (Peru, 2004). Petitioner, an HIV/AIDS positive individual without the financial means to pay for his medical treatment, submitted an amparo action for HIV/AIDS treatment. The Court accepted the amparo petition and ordered government agencies to provide full treatment in compliance with Article 8 of Law 2662, noting the State’s obligation to realize a citizen’s right to health regardless of financial resources.

**Minister of Health v Treatment Action Campaign (TAC),** (2002) 5 SA 721 (CC). Right to healthcare challenge to restrictions on the provision of anti-retroviral drugs to HIV positive pregnant women, allegedly resulting in tens of thousands of unnecessary infections and deaths. The Constitutional Court of South Africa ordered the government to immediately extend availability of the anti-retroviral drugs to hospitals and clinics, provide counselors, and take reasonable measures to extend the testing and counseling facilities throughout the public health sector.

**Cruz del Valle Bermúdez y otros vs. MSAS s/amparo,** Expediente N° 15.789. Sentencia N° 196 (Ven. 1999). Group of citizens living with HIV/AIDS filed an amparo action to obtain HIV/AIDS treatment drugs, claiming a violation of their rights to life, health, personal freedom and security, non-discrimination and the benefits of science and technology guaranteed in the Venezuelan constitution, the International Covenant on Economic, Social and Cultural Rights, and other international instruments. The Court granted the amparo action, ordered the government to supply the applicants with drug treatments and all required medical tests.

**TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS: HIV/AIDS.**


¶39 [R]ecognize that addressing stigma and discrimination against people living with, presumed to be living with or affected by HIV, including their families, is also a critical element in combating the global HIV epidemic, and recognize also the need, as appropriate, to strengthen national policies and legislation to address such stigma and discrimination;

¶42. Recognize the importance of strengthening health systems, in particular primary health care and the need to integrate the HIV response into it, and note that weak health systems, which already face many challenges, including a lack of trained health workers and a lack of retention of skilled health workers, are among the biggest barriers to accessing HIV and AIDS-related services;
84. Commit to address, according to national legislation, the vulnerabilities to HIV experienced by migrant and mobile populations and support their access to HIV prevention, treatment, care and support;


56. The provision of comprehensive education and information on sexual and reproductive health [including HIV/AIDS] is an essential component of the right to health and to the realization of other rights, such as the right to education and access to information. Criminal and other laws restricting access to comprehensive education and information on sexual and reproductive health are thus incompatible with the full realization of the right to health and should be removed by States.


16. Drug use may have harmful health consequences, but the Special Rapporteur is concerned that the current drug control approach creates more harm than the harms it seeks to prevent. Criminalization of drug use, designed to deter drug use, possession and trafficking has failed. Instead, it has perpetuated risky forms of drug use, while disproportionately punishing people who use drugs. Its ramifications for the health of the wider community, particularly in relation to HIV/AIDS, are no less severe: the 2010 Vienna Declaration notes that the criminalization of illicit drug users is fuelling the HIV epidemic. Millennium Development Goal 6 requires States to commit to halting and beginning to reverse the spread of HIV/AIDS by 2015 (see General Assembly resolution 55/2), but continuing criminalization directly contradicts several multilateral health policies.

18. Criminalization of drug use and possession are implicated in violation of several human rights, including the right to health.

5.9.4 SAMPLE ARGUMENTS: HIV/AIDS.

**SAMPLE ARGUMENT 1 - [HIV/AIDS DISCLOSURE LAW] IS INCONSISTENT WITH INTERNATIONAL STANDARDS**


The international community agrees that medical information regarding HIV/AIDS status deserves absolute protection, under both the human right to privacy and freedom from discrimination. See The International Guidelines on HIV/AIDS and Human Rights, 22(d), U.N. Doc. E/CN.4/1997/150 (1997), [http://www.ohchr.org/EN/Issues/HIV/Pages/InternationalGuidelines.aspx](http://www.ohchr.org/EN/Issues/HIV/Pages/InternationalGuidelines.aspx). See also International Covenant on Civil and Political Rights, art. 17, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992, [http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx). Just last year the United Nations General Assembly, which consists of representatives of all member nations, officially recognized that “addressing stigma and discrimination against people living with, presumed to be living with or affected by HIV, including their families, is also a critical element in combating the global HIV epidemic, and recognize also the need, as appropriate, to strengthen national policies and legislation to address such stigma and discrimination”.

Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, U.N. General Assembly
The [HIV/AIDS disclosure law] stands in stark contrast to international community agreement, actually allowing disclosure by government officials. This [HIV/AIDS disclosure law] fails to protect the privacy of persons living with HIV and AIDS in any significant way. Moreover, the law also does not help combat the global HIV epidemic because it discourages treatment and testing by those at risk of HIV, who worry that their HIV-positive status would be disclosed to third parties such as their employer, neighbors or complete strangers. Even more than failing to combat the global HIV epidemic, the [HIV/AIDS disclosure law] actually perpetuates stigma and discrimination against people living with HIV and AIDS.

**SAMPLE ARGUMENT 2 - [CRIMINALIZATION OF HIV/AIDS LAW] SHOULD BE CONSISTENT WITH INTERNATIONAL HUMAN RIGHTS LAW**

The U.S. Supreme Court has recognized that U.S. law should be interpreted to be consistent with international law whenever possible. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (“A[n] act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.”) See *Sosa v. Alvarez-Machain* 124 S. Ct. 2739, 2764 (2004) (declaring “[f]or two centuries we have affirmed that the domestic law of the United States recognizes the law of nations.”); *Talbot v. Seeman*, 5 U.S. (1 Cranch) 1, 43 (1801) (“[T]he laws of the U.S. ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations.”). See also U.S. Const. art. VI, cl. 2. (stating “[A]ll Treaties made... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby....”); U.S. Const. art. 1, § 8, cl. 10 (“The Congress shall have Power... [t]o define and punish... Offences against the Law of Nations.”); Restatement (Third) of Foreign Relations, §§ 701, 701 cmt. e (“The United States is bound by the international customary law of human rights.”)


Not only does the [Criminalization of HIV/AIDS law] deter people living with and at risk of HIV and AIDS from seeking information regarding prevention, testing, and treatment, the law is also incompatible with the goal of addressing stigma and discrimination against people living with HIV and AIDS to combat the HIV epidemic. The [Criminalization of HIV/AIDS law] spreads false information about the real risks of transmission of HIV and AIDS (e.g. there is no real risk of transmitting HIV via biting and spitting) which, in turn, perpetuates fear and causes stigma and discrimination.
5.9.5 SAMPLE TALKING POINTS: HIV/AIDS.

TALKING POINT 1 - HIV/AIDS DISCLOSURE LAW

- International human rights law requires that HIV/AIDS status deserves absolute privacy protection.
- Fails to protect the privacy of persons living with HIV and AIDS.
- Does not help combat the HIV epidemic.
- Perpetuates stigma and discrimination against people living with HIV and AIDS.

TALKING POINT 2 - CRIMINALIZATION OF HIV/AIDS LAW

- U.S. law should be interpreted as consistent with international law whenever possible.
- Convention shows international agreement to protect persons with HIV and AIDS against discrimination on the basis of their health status.
- This statute fails to protect against discrimination and likely causes stigma.
- Discourages those at risk from seeking information regarding prevention and testing.
- Deters those with HIV and AIDS from seeking treatment.

5.8.6 CASE STUDIES OF LEGAL AID ATTORNEYS: HIV/AIDS.

- None available yet -

5.8.7 SAMPLE BRIEFS & PETITIONS: HIV/AIDS.

- None available yet -

5.9.6 OTHER RESOURCES: HIV/AIDS.

International Guidelines on HIV/AIDS and Human Rights, Nonbinding, drafted to show evidence of international agreement on the rights and state obligations relevant to HIV/AIDS-law.


Resource Bank, The Center for HIV Law & Policy: The National Legal Resource and Strategy Center for HIV Advocacy, Free database of quality memoranda, research, reports, legal guides, court and agency decisions, pleadings and briefs, policy analyses and recommendations, and other materials on topics of importance to people living with HIV and their advocates.

The White House, The National HIV/AIDS Strategy for the United States, 36 (2010), “To be free of discrimination on the basis of HIV status is both a human and a civil right.”
5.10 DISABILITY RIGHTS

The Disability Rights section of the Handbook was written by Lauren E. Bartlett, with assistance from Kevin Cremin. ^

5.10.1 INTRODUCTION: DISABILITY RIGHTS

Disability is a natural part of the human condition and almost everyone will be temporarily or permanently disabled at some point in his or her life. Those who are lucky enough to survive to old age will experience increasing disability.

The definition of “disability” is an evolving concept. The human rights framework views disability as an interaction between persons with impairments and barriers that hinder their full and effective participation in society on an equal basis with others. Rather than thinking of disability as an attribute of a person, who is then treated as an object of charity, provided with medical treatment, and social protection, progress towards full social participation for all persons with disabilities can be made by addressing and removing the barriers which hinder their day to day lives. The human rights framework requires treating persons with disabilities as rights holders, able to claim those rights through active participation in society.

The full scope of human rights, including civil, political, economic, social, and cultural rights, applies to persons with disabilities. Moreover, human rights law provides for special protections for persons with disabilities, and

^ Lauren E. Bartlett is director of the Center’s Local Human Rights Lawyering Project. From 2008-2011, Ms. Bartlett worked as a legal services attorney at Southeast Louisiana Legal Services in the foreclosure prevention unit. She taught a housing law and policy course at Loyola University New Orleans College of Law and served on the board of the ACLU of Louisiana. In 2007, she co-founded the Louisiana Justice Institute, a nonprofit civil rights legal advocacy organization. During law school, Lauren focused on gaining a strong background in international law and human rights. She was an articles editor for the Human Rights Brief, participated in a research program in Geneva, Switzerland for the U.N. Committee Against Torture, and was an Executive Board Member of the student group Action for Human Rights. She also served as a summer associate with the group Advocates for Environmental Human Rights, based in New Orleans, Louisiana. Before law school, Ms. Bartlett worked with non-profit organizations in California, Nepal, Ghana, Bangladesh and India, alongside advocates fighting for social and environmental justice.

Kevin Cremin is the Director of Litigation for Disability and Aging Rights for MFY Legal Services, Inc. (MFY). He supervises MFY’s Adult Home Advocacy Project and coordinates MFY’s affirmative advocacy and litigation involving the rights of people who are elderly or have disabilities. Mr. Cremin has litigated numerous cases in federal, state, and local courts, including, with co-counsel, DISABILITY ADVOCATES, INC. v. PATERSON, which resulted in a finding that New York State discriminated against approximately 4,300 individuals with disabilities. In 2006, Mr. Cremin received a fellowship to conduct a study to determine whether law and public policy should be reformed to facilitate better community-based services for individuals with psychiatric disabilities in India. He has also worked for the West Side SRO Law Project and Legal Services NYC. After clerking for a federal district court judge and a federal appellate court judge, he was a Trial Attorney for the Civil Rights Division of the United States Department of Justice. Mr. Cremin is a graduate of the University of Chicago and Yale Law School. He has published numerous articles on the rights of individuals with disabilities, and he is an adjunct at Cardozo Law School and Columbia Law School.

228 First attributed to Robert Burgdorf, disability rights attorney, draft of first version of the Americans with Disabilities Act.
230 Id.
231 Id.
233 See id.
especially women and girls with disabilities.\textsuperscript{235} Governments have a duty to protect, respect, and fulfill the human rights of persons with disabilities, including the rights to non-discrimination, access to healthcare, workers' rights, education, political participation and to independent living.\textsuperscript{236}

5.10.2 QUICK STATISTICS AND RESOURCES FOR DATA: DISABILITY RIGHTS

About 1 billion people in the world currently live with some form of disability and among those at least 200 million experience considerable difficulty in functioning.\textsuperscript{237} Here are some specific statistics regarding persons with disabilities in the U.S. and globally:

- The prevalence of disabilities worldwide is increasing due to the aging world population and the higher incidence of disability in older people.\textsuperscript{238}
- In addition, the global increase in chronic health conditions such as diabetes, cardiovascular disease, cancer and mental health disorders mean that disability will be an even greater concern in coming years.\textsuperscript{239}
- The global literacy rate is as low as one per cent for women living with disabilities.\textsuperscript{240}
- More than 54 million people, including 27 million women, in the U.S. are living with disabilities.\textsuperscript{241}

Here are some resources for relevant disability rights data for the U.S. and worldwide:

- **DISTAT**, The United Nations Disability Statistics Database, Human Functioning and Disability
- **World Health Organization**
- **Centers for Disease Control and Prevention**
- **U.S. Department on Health and Human Services, Office on Disability**

\textsuperscript{235} See Universal Declaration of Human Rights, art. 25, G.A. Res. 217A (III), U.N. Doc. A/810 (1948); American Declaration of the Rights and Duties of Man, art. 16, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948); CRPD art. 6, 7.
\textsuperscript{238} World Disability Report, supra note 229 at xl.
\textsuperscript{239} Id.
### 5.10.3 RELEVANT HUMAN RIGHTS LAW: DISABILITY RIGHTS

#### RATIFIED TREATIES: DISABILITY RIGHTS

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<td><strong>Article 7 of ICCPR:</strong> “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), <em>ratified by the U.S.</em> Sept. 8, 1992.</td>
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<td><strong>International Convention Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment (CAT)</strong></td>
<td><strong>Article 2 of CAT:</strong> “(1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. (2) No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984), as modified by 24 I.L.M. 535 (1985), <em>ratified by the U.S.</em> Nov. 20, 1994.</td>
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<td><strong>Article 16 of CAT:</strong> “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture...when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 16, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984), as modified by 24 I.L.M. 535 (1985), <em>ratified by the U.S.</em> Nov. 20, 1994.</td>
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<td><strong>Committee on the Elimination of Racial Discrimination (CERD)</strong></td>
<td><strong>Article 5 of CERD:</strong> “In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . . (c)(iv) The right to public health, medical care, social security and social services[,] International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, <em>ratified by the U.S.</em> Nov. 20, 1994.</td>
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<td><strong>TREATIES NOT RATIFIED BY THE U.S.: DISABILITY RIGHTS.</strong></td>
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<td><strong>Convention on the Rights of Persons with Disabilities (CRPD)</strong></td>
<td><strong>Article 4 of CRPD:</strong> “States Parties undertake: 1. ... (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities; (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes; (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention; (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise; (f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention... (g) To undertake or promote research and development of, and to promote the availability and use of new technologies... (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities; (i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights...” International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 4(1), Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GOAR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), <em>entered into force</em> May 3, 2008.</td>
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<td><strong>Article 7 of CRPD:</strong> “(1) States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. (2) In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. (3) States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right. International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 7, Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GOAR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), entered into force May 3, 2008.”</td>
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<td><strong>Article 9 of CRPD:</strong> “(1) To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties shall take appropriate measures to ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.” International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 9, Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GOAR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), entered into force May 3, 2008.”</td>
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<td><strong>Article 14 of CRPD:</strong> “(1) States Parties shall ensure that persons with disabilities, on an equal basis with others: (a) Enjoy the right to liberty and security of person; (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty. (2) States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation. International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, art. 14, Mar. 30, 2007, G.A. Res. 61/106, Annex I, U.N. GOAR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 46 I.L.M. 433 (2007), entered into force May 3, 2008.</td>
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<td>Article 2(2) of ICESCR:</td>
<td>“The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. International Covenant on economic, Social, and Cultural Rights, art. 2(2), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</td>
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<td>Article 11(1) of CEDAW:</td>
<td>“State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: . . . (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave[.]” Convention on the Elimination of Discrimination Against Women, art. 11(1), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.</td>
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<td>Article 14(2) of CEDAW:</td>
<td>“States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure . . . to such women the right: . . . (b) To have access to adequate health care facilities, including information, counseling and services in family planning; (c) To benefit directly from social security programmes[.]” Convention on the Elimination of Discrimination Against Women, art. 14(2), Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.</td>
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U.S. STATE AND FEDERAL COURT CASES CITING HUMAN RIGHTS LAW: DISABILITY RIGHTS.

In the Matter of the Guardianship of Dameris, L., 38 Misc.3d 570, 956 N.Y.S.2d 848 (2012), finding that the use of supported decision making rather than a guardian’s substituted decision making is consistent with international human rights, citing Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD). The Court also notes that while the CRPD does not directly affect New York’s guardianship laws, international adoption of a guarantee of legal capacity for all persons, a guarantee that includes and embraces supported decision making, is entitled to “persuasive weight” in interpreting laws and constitutional protections.

In re Mark C.H., 906 N.Y.S.2d 419 (N.Y. Sur. 2010), finding that granting guardianships without regular review by an independent body undermines the object and purpose of the Convention on the Rights of Persons with Disabilities, specifically article 12 which ensures equal protection before the law for persons with disabilities.

Franco-Gonzales v. Holder, 767 F.Supp.2d 1034 (C.D.Cal. 2010), finding that aliens in removal proceedings who are mentally incompetent must be provided reasonable accommodation that would provide for adequate representation. Representation that met the following five requirements would be considered adequate: (1) be obligated to provide zealous representation; (2) be subject to sanction by the EOIR for ineffective assistance; (3) be free of any conflicts of interest; (4) have adequate knowledge and information to provide representation at least as competent as that provided by a detainee with ample time, motivation, and access to legal materials; and (5) maintain confidentiality of information.

CASES BEFORE INTERNATIONAL BODIES: DISABILITY RIGHTS.

Mihailovs v Latvia, 35939/10 Eur. Ct. H.R. (2013). Petitioner, a man with a psychosocial disability, was placed under guardianship of his wife, who forcibly institutionalized Petitioner. Petitioner, still institutionalized, brings this case alleging arbitrary detention and forced treatment for more than ten years. The European Court of Human Rights found that Petitioner’s detention, as well as lack of proper initial and ongoing medical assessment violated article 5 §1 of the European Convention.

Alajos Kiss v. Hungary, 38832/06 Eur. Ct. H.R. (2010). Petitioner was diagnosed with manic depression in 1991 and placed under partial guardianship in 2005. Under the civil code in Hungary, his partial guardianship denied the Petitioner his right to vote. The European Court of Human Rights found that the indiscriminate bar of voting rights in the Hungarian civil code, without an individualized evaluation, was a violation of Article 2 of Protocol No. 1 of the European Convention.

Glor v. Switzerland, 13444/04 Eur. Ct. H.R. (2009). Petitioner challenged a state tax assessed based on inability to serve in the military because of a disability. The Court found discrimination under Article 14 of the European Convention on Human Rights on the basis of a disability. This is the first case where the Court recognized discrimination based on disability as such and referred to reasonable accommodation for the disability. The Court also mentions the CRPD in its decision.

Victor Rosario Congo v. Ecuador, Case 11.427, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc.7 rev. at 475, para. 54 (1998). Petitioner was charged with robbery and assault and placed in detention. Allegedly, Petitioner showed signs of a mental disorder and was placed in an isolation cell. A guard then attacked Petitioner, both mentally and physical, and was not given medical treatment and instead returned to the isolation cell. More than a week later, Petitioner’s condition deteriorated and he was finally transferred to a hospital for care, but died shortly thereafter of malnutrition, hydroelectrolitic imbalance, and heart and lung failure. The Inter-American Court of Human Rights found Ecuador responsible for violation of the rights to life (Article 4), to humane treatment (Article 5(1) (2)), and to judicial protection (Article 25), set forth in the American Convention.
Petitioner was convicted of murder and sentenced to execution. After his trial, he was shot by a police officer in his lower spine and was paralyzed from the waist down. Petitioner was given no special accommodations for his disability in prison and even had to pay other inmates to move his waste from his cell (usually prisoners were required to conduct this physical activity themselves). The Human Rights Committee found violations of the Optional Protocol to the ICCPR arts. 10, paras. 1, 9, 3, 14, and para. 3(c) of the ICCPR.

**CASES BEFORE OTHER NATIONAL COURTS OR SUB-REGIONAL BODIES: DISABILITY RIGHTS.**

**Hamilton v. Jamaica**, Comm. No. 616/1995, U.N. Doc. CCPR/C/66/D/616/1995 (Jul. 23, 1999). Petitioner was convicted of murder and sentenced to execution. After his trial, he was shot by a police officer in his lower spine and was paralyzed from the waist down. Petitioner was given no special accommodations for his disability in prison and even had to pay other inmates to move his waste from his cell (usually prisoners were required to conduct this physical activity themselves). The Human Rights Committee found violations of the Optional Protocol to the ICCPR arts. 10, paras. 1, 9, 3, 14, and para. 3(c) of the ICCPR.

**CASES BEFORE OTHER NATIONAL COURTS OR SUB-REGIONAL BODIES: DISABILITY RIGHTS.**

**O’Donoghue v. Minister for Health & Ors**, [1996] 2 I.R. 20 (Ir.). After being denied full-time admission to several state funded pre-school facilities due to their inability to accommodate the severity of his mental disability, Petitioner (mother on behalf of her son) sued the Minister for Health, the Minister for Education, and the Attorney General requiring free primary education. The high court of Ireland followed an earlier Supreme Court definition of education as being “the teaching and training of a child to make the best possible use of his inherent and potential physical, moral, and mental capacities, a definition in harmony with other definitions established by the United Nations and the European Convention on Human Rights”. In addition, the court recognized a violation of Article of the Constitution, which guaranteed free primary education to all, interpreting primary education as principal advice, instruction, and teaching necessary to help each child achieve their “fullest possible social integration and individual development”.

**TREATY BODY AND SPECIAL PROCEDURES COMMENTARY AND RECOMMENDATIONS: DISABILITY RIGHTS.**


“¶89. The Special Rapporteur calls upon all States to:

(a) Review the anti-torture framework in relation to persons with disabilities in line with the Convention on the Rights of Persons with Disabilities as authoritative guidance regarding their rights in the context of health-care;

(b) Impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs such as neuroleptics, the use of restraint and solitary confinement, for both long- and short term application. The obligation to end forced psychiatric interventions based solely on grounds of disability is of immediate application and scarce financial resources cannot justify postponement of its implementation;

(c) Replace forced treatment and commitment by services in the community. Such services must meet needs expressed by persons with disabilities and respect the autonomy, choices, dignity and privacy of the person concerned, with an emphasis on alternatives to the medical model of mental health, including peer support, awareness-raising and training of mental health-care and law enforcement personnel and others;

(d) Revise the legal provisions that allow detention on mental health grounds or in mental health facilities, and any coercive interventions or treatments in the mental health setting without the free and informed consent by the person concerned. Legislation authorizing the institutionalization of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished.”

**Human Rights in the United States: A Handbook for Legal Aid Attorneys**

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“¶12. Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.”

“¶128. The Committee regrets that the Disability Bill does not adopt a human rights-based approach, as recommended in its previous concluding observations...

... ¶129. The Committee is concerned about the persistence of discrimination against persons with physical and mental disabilities, especially in the fields of employment, social security benefits, education and health. The Committee is particularly concerned that people with disabilities, including those working in sheltered workshops, do not have the status of employees and therefore do not qualify for the minimum wage arrangements; if, however, they do benefit from minimum wage arrangements, they are liable to lose their rights to free medical care.

... ¶135. The Committee strongly recommends that the State party adopt a human rights-based approach in the Disability Bill. In particular, the Committee recommends that the clause in section 47 of the Disability Bill, which purports to deny people with disabilities the right to judicial redress, be removed.

... ¶140. The Committee recommends that the State party conduct and complete as soon as possible a thorough review of the sheltered workshops for the disabled and consider adopting measures, legislative or otherwise, allowing people with disabilities to work with full employment status and to retain the right to free medical care.

... ¶148. The Committee reiterates the recommendation it made in 1999 that the State party speed up the process of transferring persons with mental disabilities who are not suffering from serious psychiatric illness and who are still living in psychiatric hospitals, to more appropriate care settings.”

“¶10. Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child’s access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect...Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home.
Children with HIV/AIDS are also heavily discriminated against in both settings. All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential.”


“¶12. The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

(b) Accessibility...Accessibility has four overlapping dimensions:

(ii) Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS...Accessibility further includes adequate access to buildings for persons with disabilities;

...Children and adolescents

¶22. Article 12, paragraph 2 (a), of the Covenant outlines the need to take measures to reduce infant mortality and promote the healthy development of infants and children...Children with disabilities should be given the opportunity to enjoy a fulfilling and decent life and to participate within their community.

...Persons with disabilities

¶26. The Committee reaffirms paragraph 34 of its General Comment No. 5 (1994) on persons with disabilities, in particular the issue of persons with disabilities and the right to physical and mental health. Moreover, the Committee stresses the need to ensure that not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.”


“¶6. [S]pecial attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as...women with physical or mental disabilities.

...¶25. Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.”


“¶1. The central importance of the International Covenant on Economic, Social and Cultural Rights in relation to the human rights of persons with disabilities has frequently been underlined by the international community...

¶5. The Covenant does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full
range of rights recognized in the Covenant. In addition, in so far as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability. Moreover, the requirement contained in article 2 (2) of the Covenant that the rights "enunciated...will be exercised without discrimination of any kind" based on certain specified grounds "or other status" clearly applies to discrimination on the grounds of disability…"

5.10.4 SAMPLE ARGUMENTS: DISABILITY RIGHTS.

**SAMPLE ARGUMENT 1 - [STATE/LJCAL LAW REGARDING COURT WEBSITE ACCESSIBILITY FOR PERSONS WITH DISABILITIES] IS INCONSISTENT WITH INTERNATIONAL DISABILITY RIGHTS STANDARDS.**

The [State Law/Policy Regarding Court Website Accessibility for Persons with Disabilities] is inconsistent with U.S. Federal law, as explained in detail above, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794d requires Federal Court websites to be accessible for persons with disabilities. Moreover, the [State Law/Policy Regarding Court Website Accessibility for Persons with Disabilities] is inconsistent with international human rights standards.

The U.S. Supreme Court has recognized that U.S. law should be interpreted to be consistent with international law whenever possible. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.") See *Sosa v. Alvarez-Machain* 124 S. Ct. 2739, 2764 (2004) (declaring "[f]or two centuries we have affirmed that the domestic law of the United States recognizes the law of nations."); *Talbot v. Seeman*, 5 U.S. (1 Cranch) 1, 43 (1801) ("[T]he laws of the U.S. ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations."). See also U.S. Const. art. VI, cl. 2. (stating "[A]ll Treaties made... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...."); U.S. Const. art. 1, § 8, cl. 10 ("The Congress shall have Power... [t]o define and punish... Offences against the Law of Nations."); Restatement (Third) of Foreign Relations, §§ 701, 701 cmt. e (1987) ("The United States is bound by the international customary law of human rights.")


The information provided on a court website may make the difference between attending or missing a hearing, winning and losing a case, keeping a roof over your head or being homeless, achieving visitation rights for your children, or for crime victims, knowing when the perpetrator of a crime is released from jail. Pro se and self-help centers are located in some court houses, yet do not all have staff who are fluent in American Sign Language or who can provide other accommodations for persons with disabilities. In this day and age with more and more people turning to the internet for basic information such as location, hours, and procedural questions, a court
website needs to be accessible to all people, especially persons with disabilities who are often the most vulnerable in our society.

**SAMPLE ARGUMENT 2 - INTERNATIONAL NORMS REQUIRE THAT SPECIAL ATTENTION BE PAID TO THE RIGHTS OF WOMEN LIVING WITH DISABILITIES WHEN ISSUING A TEMPORARY RESTRAINING ORDER**


Moreover, international norms call for governments to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programs. CRPD, art 1(c) (emphasis added). This would include when a court is making an important decision about whether or not to issue a Temporary Restraining Order. In addition, the *Convention Against Torture*, Cruel, Inhuman or Degrading Treatment or Punishment urges governments to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 2(1), Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984), as modified by 24 I.L.M. 535 (1985), *ratified by the U.S.* Nov. 20, 1994, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx [hereinafter “CAT”]. The circumstances of abuse in the case herein may or may not amount to torture, and yet the Convention still urges governments “to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture...when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” *Id.*, art. 16. The CRPD goes further and requires judicial measures to prevent persons with disabilities from being subjected to cruel treatment. See also CRPD, art. 15(2) (“take all effective...judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment”).

For more on the domestic violence-side of the argument, see Handbook section 5.1.4 Sample Arguments: *Freedom From Domestic Violence*, Sample Argument 4 – Right to Judicial Remedies.
5.10.5 TALKING POINTS: DISABILITY RIGHTS.

TALKING POINTS 1 - [STATE/LOCAL LAW REGARDING COURT WEBSITE ACCESSIBILITY FOR PERSONS WITH DISABILITIES] IS INCONSISTENT WITH INTERNATIONAL DISABILITY RIGHTS STANDARDS

- The law at issue is inconsistent with both federal law and international human rights norms
- The Supreme Court has held that US law should be interpreted to be consistent with international law whenever possible.
- The Convention on the Rights of Persons with Disabilities is an international treaty dedicated to promoting the rights of persons living with disabilities.
- The U.S. is one of 155 countries around the world that have signed the Convention on the Rights of Persons with Disabilities.
- The Convention urges governments to ensure persons with disabilities have equal access to information and communications systems, like court websites.
- The court’s website should be accessible to everyone, but especially persons with disabilities who are often the most vulnerable in our society.

TALKING POINTS 2 - INTERNATIONAL NORMS REQUIRE THAT SPECIAL ATTENTION BE PAID TO THE RIGHTS OF WOMEN LIVING WITH DISABILITIES

- U.S. Courts have looked to international human rights law, not as controlling, but as respected confirmation of their own conclusions.
- Similar to looking to other state courts to see what decisions have been made on the same issue.
- International human rights law recognizes that special attention must be paid to persons with disabilities.
- And even greater attention for women with disabilities, who are often among the most vulnerable in society.
- Governments should take into account the protection and promotion of the human rights for women with disabilities in all policies and programs, including when considering whether or not to grant a temporary restraining order.
- Governments should take all effective measures to prevent persons with disabilities from being subjected to torture and/or cruel, inhuman or degrading treatment.

5.10.6 CASE STUDIES OF LEGAL AID ATTORNEYS: DISABILITY RIGHTS.

- None available yet -

5.10.7 SAMPLE BRIEFS AND PETITIONS: DISABILITY RIGHTS.

- None available yet -

5.10.8 OTHER RESOURCES: DISABILITY RIGHTS.

International and Comparative Disability Law Web Resources at the Syracuse University College of Law.

U.N. Special Rapporteur on Disability of the Commission for Social Development.


U.S. Human Rights Online Library, provides sample briefs, pleadings and non-litigation advocacy materials on the domestic implementation of human rights law, hosted by Columbia University Human Rights Institute.