

Lesson Series 19 I : USING HUMAN RIGHTS SYSTEMS AND MECHANISMS

Human rights Systems and mechanisms are outlined in a question and answer format below[A]. A resources section [B] provides a list of World Wide Web sites and other materials on how to find international human rights documents and other practical information.

A.QUESTIONS AND ANSWERS

QUESTION: WHERE DO I GO WITH MY HUMAN RIGHTS CLAIM?

ANSWER: THREE LEVELS.

Human rights issues can be heard at three levels:

(1) *Notional or "domestic"* level - such as a country's own judicial system and special commissions set up to deal with human rights.

(2) *Regional level* - Africa, the Americas and Europe all have formalized judicial systems and human rights organs: the Asian system is developing at a more subregional level.

(3) *International level* - the organs of United Nations, affiliated bodies and other international courts and commissions.

Usually you have no choice but to start in your own country. Under most circumstances you cannot bring your case to an international level until you have exhausted every possibility at the national level.

To see whether regional systems are available to you, find out whether your country is part of a regional system. You must also ask whether individuals and NGOs can bring claims before that particular system or mechanism. To determine whether international mechanisms are available a first step is to see whether your country has ratified relevant human rights treaties. You may also be able to access the international system if you bring your claim under customary international law or some other grounds that does not require written state agreement. Again, as at the regional you should also ask whether individuals can bring cases.

QUESTION: WHERE CAN I LOOK FOR THE LAW TO APPLY TO MY CASE?

ANSWER: THREE SOURCES.

There are three main sources of international law: treaties, international customary law and general principles of law. Consider whether you can bring a claim under any or all of the three.

When people think of law they often have in mind something that is written down and agreed upon by governments. In the international sphere, this kind of law is known as a treaty. The key to treaties is that they usually apply only to states that voluntarily agree to them. International customary law provides another source of law. Not all laws are written down in a clear and organized fashion, however. Sometimes laws develop over time. When the day to day practice of states consistently follow norms of behaviour over time these norms gain the status of customary international law.

A third source of international law has grown out of the general principles of law followed by state courts. This source sounds very much like customary law. However, to find general principles one looks for agreement among the unwritten and written laws of states. To find customary law, one looks at what states do on a regular basis.

***** **THE ABC's OF TREATIES** *****

- Treaties are also called conventions, covenants, charters and protocols.
- Treaties between two countries are bilateral treaties; between more than two, multilateral.
- What distinguishes a treaty from other kinds of law is that it does not work unless it is ratified (signed and officially adopted). This happens through a “process of ratification”.
- The process of ratification differs from country to country. In the US, for example, the President signs an international treaty but the Senate must then agree by two-thirds vote.
- When ratifying a treaty, a country can make “reservations” (exceptions) to parts with which it disagrees. This is known as “ratifying with reservations”.
- Countries are not supposed to make reservations to key sections of a treaty that would undercut the main purpose of the treaty.
- Usually states must only comply with treaties that they sign. However, if the ideas in the treaty have become almost universally followed a state may be held responsible whether it has signed or not. In these cases, we say the treaty has become a part of “customary law”.

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QUESTION: HOW DO THE SYSTEMS WORK?

ANSWER: TREATY AND NON-TREATY- BASED MECHANISMS

The array of names of conventions, commissions and courts can seem very confusing. However, although exceptions exist, you can generally assume a certain pattern of structure. The main difference is whether the mechanism you choose is a treaty-based mechanism or non-treaty - based mechanism.

(I) Treaty-based Mechanisms

Modern international human rights treaties have their roots in the *Charter of the United Nations* and the United Nations Commission on Human Rights, the organ charged with creating and implementing an international human rights system. The General Assembly of the United Nations adopted the primary human rights document of this system, the *Universal Declaration of Human Rights* (UDHR), on 10 December 1948. Countries never signed the UDHR as they would a formal treaty. Still, whatever the original intent, most commentators now agree that the Declaration has become binding as part of customary international law. In other words, countries do, in fact, act as if the provisions of the UDHR were law.

The other main human rights documents are divided between civil and political rights, and economic, social and cultural rights: The *International Covenant on Economic, Social, and Cultural Rights* and the *International Covenant on Civil and Political Rights* (with an Optional Protocol to permit citizens to lodge complaints against their own government). These covenants, together with the *Universal Declaration of Human Rights*, are collectively known as the International Bill of Rights. They took effect in 1976.

Other major international human rights treaties are divided into topical areas. Some address egregious acts, such as torture and genocide; others promote the rights of especially vulnerable populations, such as children and refugees. The main conventions include the:

Convention on the Prevention and Punishment of Genocide (1951); *Convention on the Elimination of All Forms of Racial Discrimination* (1969); *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) (1981); *Convention on the Rights of the Child* (1990); *Convention Relating to the Status of Refugees* (1951); *Convention Against Torture and Other Cruel and Unusual Punishment* (1987). Explicitly or implicitly nearly all treaties apply regardless of sex. Regional treaties relating to human rights include the *American Convention on Human Rights* (1978), the *African Charter on Human and People's Rights* (1981) and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1953).

A particular treaty on human rights is almost always paired with a committee that has a similar name to the treaty. The committee is the body that actually gives effect to the words of the Convention. Each has a "secretariat" which usually is the place you would address requests for information. A commission usually coordinates and considers report about adherence to its particular convention.

For example, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) is paired with the Committee on the Elimination of All Forms of Discrimination Against Women. This committee is charged with enforcing CEDAW and has a secretariat that provides information, including copies of public reports by states. The committee considers reports by states on how they are implementing CEDAW as well as alternative reports by NGOs.

For some treaties, a court hears complaints of noncompliance. In a few cases a further or concurrent level of review exists in a political body. The *European Convention on Human Rights*, for example, includes both a court (the European Court of Human Rights) and a political body (the Council of Ministers).

(2) Non-treaty-based Mechanisms

In addition to treaty-monitoring bodies, other avenues for enforcing human rights include the complaint and/or monitoring procedures of various United Nations bodies and associated agencies, such as the United Nations High Commissioner on Human Rights (UNHCHR), the International Labour Organization (ILO), and the World Health Organization WHO).

Gross violations of human rights can be brought to the Commission on Human Rights under the "Resolution 1503" procedure. Also, information can be sent to the Commission's various topical and geographical working groups, sub-commissions and special investigators, including the Special Rapporteur on Violence Against Women. In addition, advocates can submit individual communications to the Commission on the Status of Women.

Advocates can also bring information to the attention of other UN bodies that deal partially or incidentally with human rights, such as: the General Assembly, the Security Council, and the Economic and Social Council (ECOSOC). The General Assembly, in particular, may issue declarations that guide state policy although they lack power as binding law and enforcement mechanisms. One important example is the *Declaration on the Elimination of Violence Against Women*, adopted by the General Assembly in 1993.

The structure of the procedures under non-treaty-based mechanisms vary from the more formal (such as ILO procedures) to the less formal (such as letter writing to the Commission on the Status on Women).

QUESTION: WHAT KIND OF ROLE CAN I PLAY?

ANSWER: TWO TYPES

In order to discover the kind of role you could possibly play, you have to determine first what type of human rights procedure(s) are available. While the variety of human rights procedures can be dizzying, all procedures available to individuals or NGOs usually will fit within the following two types: (1) Complaint Mechanisms and (2) Monitoring and Reporting Mechanisms.

(1) Complaint Mechanisms

These types of procedures often resemble court procedures in many countries. An individual, NGO or state body submits a paper - the "complaint" or "petition" - stating (a) what happened and to whom;

(b) explaining how human rights violations occurred, who is responsible and why; (c) specifying which rights under which specific documents were violated. Sometimes only states and not individuals can make complaints. This section only discusses the possible types of complaints that could be made by individuals.

There are two types of complaint procedures: *complaint-recourse and complaint-information procedures*.

Under *complaint-recourse* procedures, you make a complaint for remedies for a specific grievance. For example, you could demand that you be compensated for a specific human rights violation committed against you, such as torture in prison. You deliver the complaint to the appropriate body which depends on what level you approach and what type of claim you are making. Under this type of procedure, you continue to participate in the process much as in a court. The state may respond to your complaint and the commission or court may undertake its own independent investigation of your claim. The complaint you make is extremely important as the commission or court relies heavily upon it in considering the case. Even if you are not the one bringing the case, as part of an NGO you may participate by monitoring and publicizing the proceedings.

Under *complaint-information* procedures, you can make a complaint for violations affecting a large population and deliver it to the appropriate body. In these cases, you cannot demand specific remedies, but you can demand that the state change its practices. For example, you could demand that the state change its treatment of all women prisoners. Once you deliver your communication, your participation in the case stops. The proceedings then continue largely in secret, with the commission possibly contacting the state for information and conducting its own investigation. Your complaint is important as it could help trigger an investigation, but it is only part of the information before the commission on that particular issue.

(2) Monitoring and Reporting Mechanisms

Monitoring and reporting procedures do not resemble court cases. Many regional and international agreements require states to submit periodic reports on their own behaviour, explaining whether they are complying with the obligations they willingly undertook. This is like a student reporting on herself. When she is a good student the self-criticism works, when she is not so good, there may be problems with such a system. Often the monitoring proceeds according to a regularly scheduled plan of inspection or, much more rarely the process may be triggered by advocates who point out a particularly pressing problem. Individuals and NGOs can usually review the state reports which must be made public - and

issue the NGO version of reality. In recent years, some NGOs working on women's human rights have issued "alternative reports" to the reports their countries must submit on their implementation of CEDAW.

A successful complaint procedure usually means "winning" a claim. On the other hand, monitoring and reporting procedures are successful if they bring publicity to human rights abuses and shame governments and other human rights violators into changing their behaviour.

B. ADDITIONAL RESOURCES

How to find UN documents

1. Internet Web site: If you have access to a computer; you can find all UN documents and many regional and domestic human rights documents on the Internet. UN documents are located at this address:

www.un.org/publications. Other good sources for full-text documents and other information on using human rights mechanisms are described below.

2. UN Office: Most UN offices will help you to locate relevant documents. They frequently have an information division whose job is to assist people in getting access to information and other resources. Approaching a local office of a UN body may help you obtain documents in your own language; you may also write for documents.

3. Local Libraries: Many community school or university libraries carry UN documents. A quick search will probably find the text by itself or included in a volume of UN documents addressing a particular subject.

4. Local Human Rights Groups: Many local human rights groups or local Amnesty International chapters will have copies of UN documents. These groups may be a good resource for discussing your plans for human rights education workshops

Human Rights Documents on the World Wide Web

Texts of human rights documents, information on country ratification and reports of governmental and non-governmental organizations may be found in the following World Wide Web locations:

- For quick reference to full-text versions of major international human rights documents pertaining to women, see the University of Minnesota Human Rights Library
- For topical and bibliographical information on women's human rights, see the University of Toronto.
- For official UN sites see those for the Commission on the Status of Women, the Committee on the Elimination of Discrimination Against Women and the United Nations Division for the Advancement of Women.

The University of Minnesota Human Rights Library, International Human Rights Instruments - Women's Human Rights Site (instruments on women's human rights in English, French and Spanish: includes chart of UN ratifications)
[<http://www.umn.edu/humanrtslinstree/auoe.htm>]

University of Toronto, Women'S Human Rights Site (extensive bibliographical and documentary information on the following topics: Women's Human Rights, Fourth Conference on Women (Beijing), Girl Child, Labour/Employment rights, Refugee Women, Reproductive Rights, Right to Health and Violence Against Women)
[http://www.law.toronto.ca/library/women_hr.htm]

United Nations Development Fund for Women (UNIFEM) (information on women's human rights, violence against women, governance/leadership and economic empowerment of women) [<http://www.unifem.undp.org>]

United Nations Division for the Advancement of Women (official site; services CEDAW)
[<http://www.un.org/womenwatch/daw/>]

WomenWatch (UN Internet gateway on the advancement and empowerment of women. Information on the Committee on the Elimination of Discrimination Against Women country reports, meeting agenda and recommendations, optional protocol to Women's Convention; follow-up to the 1995 Fourth World Conference on Women; reports on women and the UN system) [<http://un.org/womenwatch>]

United Nations Office of the High Commissioner for Human Rights (official United Nations human rights Web site. Information on UN human rights programme, treaties, meetings, Commission on Human Rights, follow-up to 1993 World Conference on Human Rights, human rights education, etc.) [<http://www.unhchrch/>]

International Law Database (ILDB) [UN Commission on International Trade Law (UNCITRAL), the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT) and the Organization of American States]
[<http://www.his.com/~pildb/>]

REFWORLD (UNHCR) (databases of the United Nations High Commissioner for Refugees)
[<http://www.unhcr.ch/refworld/refworld.htm>]

American University Washington College of Law (human rights general)
[<http://sraywcl.american.edu/hmnmrights.htm>]

Australian Human Rights Page (Australian human rights laws and others)
[<http://www.vicnet.net.au/~victorp/vphuman.htm>]

Adapted from: *Local Action, Global Change*, (Unifem & the Centre for Women's Global Leadership, Appendix III)