

A Brief Guide to International Human Rights Law for Canadian Advocates

Confronting Violence Against Women

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for

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If one looks at the Women's Convention and other international documents of human rights, every title begins with the word 'States parties', and proceeds to unfold the obligations of the State. As states are the foundation of the international order, this is inescapable. However, if the state is entrusted with the responsibility of ensuring women's rights, if it is always viewed as active and paternalistic in a benign manner, then this does pose serious questions. Unless these human rights values take root in civil society, and unless civil institutions and NGO's take up the cause, then women's rights as rights will have no resonance.

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INTERNATIONAL WOMEN'S RIGHTS PROJECT

Confronting Violence Against Women A Brief Guide to International Human Rights Law for Canadian Advocates*

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BACKGROUND AND PURPOSE OF THIS PAPER

This introductory guide grew out of collaborative work facilitated by the York University International Women's Rights Project with volunteers from the LEAF Toronto (Women's Legal Education and Action Fund) branch and METRAC (Metropolitan Action Committee on Violence Against Women). We believe that it is helpful for women's rights activists to demystify the instruments and mechanisms available in the international human rights system and to provide this information so that activists can make an informed choice about when to incorporate international standards into advocacy strategies. This paper was prepared for this special issue of JCWS to serve as an introductory guide to the international human rights system for advocates to use in developing strategies to counter violence against women (VAW).

CANADIAN RIGHTS LEGISLATION AND MECHANISMS

The Canadian Constitution

The fundamental law in Canada is our constitution, which includes the *Canadian Charter of Rights and Freedoms*³. For Canadian women's rights activists, a primary function of international law is as a tool to ensure that the government of Canada lives up to its legal obligations to the women of Canada. The Constitution of Canada is the supreme law of Canada. The Charter applies to the parliament and government of Canada as well as to the legislature and government of each province and territory.

Section 15 of the Charter guarantees *that every individual is equal before the law, and has the right to the equal protection and equal benefits of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age, sexual orientation or mental or physical disability*.

During the drafting of the Charter, feminists insisted that it encompass not just formal equality, but also substantive equality. Section 15 provides four distinct protections of equality: before the law, under the law, equal protection of the law, and equal benefit of the law.

Section 28 was negotiated as a separate "equal rights amendment" (ERA) to reinforce women's equality, stating that:

Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Other sections of the Charter that are important when addressing violence against women and equality claims are Section 7, which guarantees the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice; and Section 12, which guarantees the right not to be subjected to any cruel and unusual treatment or punishment.

These sections are not merely abstract principles for the federal and provincial governments of Canada to adhere to at their discretion. Their supremacy is set out by the Constitution. In fact, in terms of actual written law, women in Canada should have more protection and benefit of the law than most international law could provide. But we know the difference between the written law, and women's lived experiences. While women in Canada are often perceived as relatively privileged – and we are when compared to most of the rest of the world – not **all** women in Canada are so privileged. And the fact is that women's rights in Canada are being systematically and systemically eroded. Our struggle in Canada is not over until **all** women everywhere have substantive equality.

We need to be increasingly knowledgeable of international laws and treaties so we have the option of making an informed choice to argue in domestic courts and in public debate that a Canadian law needs to be read in accordance with international laws and treaties. How do we develop strategies to use international law to uphold the Charter and to make governments comply with national and provincial policies, recommendations and laws? How do we move our governments and society beyond studying the deaths and damage to women and children toward implementation of achievable, useful changes such as those set out in the jury's set of recommendations in the Inquest Touching the Deaths of Arlene May and Randy Joseph Isles (the May-Isles Inquest)⁴; or the recommendations for changes to the Ontario Crown Policy Manual⁵.

Sometimes we need to take preventive measures, applying an equality rights analysis to demonstrate the negative impact of government proposals. For example, when 15 years of women's advocacy was being undermined by the intention of the Ontario government to remove victim-sensitive guidelines from the manual for crown attorneys (the Crown Policy Manual), METRAC⁶ put the government on notice that the proposed removal would undermine access to justice by women victims of violence, reminding the Attorney General that:

Sections 7, 15 and 28 of the Charter guarantee that, with respect to domestic violence, women and children have the right to equal benefit and protection of the criminal law.

The Crown Policy Manual is just one example of government policies that should acknowledge and act upon commitments to national and international human rights standards. To date, the Ontario government has not removed the victim-sensitive guidelines from the manual. Hopefully this particular battle has been averted - at least for now.

An example of judicial application of international standards in the interest of women can be found in the Ewanchuk⁷ decision by the Supreme Court of Canada, in which Justice L'Heureux-Dubé explored issues of consent and noted:

Canada is a party to the *Convention on the Elimination of All Forms of Discrimination against Women*, which requires respect for and observance of the human rights of women. Violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights. These human rights are protected by ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* and their violation constitutes an offence under the assault provisions of s. 265 and under the more specific sexual assault provisions of ss. 271, 272 and 273 of the *Criminal Code*.⁸

Activists call for a 'judicial transformation' - which will ensure that international human rights norms are woven into the fabric of Canadian politics and human rights culture, to strengthen implementation of our Charter rights.⁹ Women's organizations and NGO's engaged in litigation can look to how international law may be meaningful in terms of enforcement, breathing life into possibility. It is the indivisibility and interdependence of all human rights that is the key to building a culture of human rights. An equality-based framework is a signal to policy makers, legislative drafters, and judges to consider international obligations, standards and commitments when making decisions.

Canadian Human Rights Legislation

Our tax dollars are invested in government agencies whose job it is to protect and implement human rights in Canada. United Nations (UN) human rights treaty monitoring bodies have recently directed unprecedented criticism at Canada for neglect of social and economic rights. In 1998, the UN Human Rights Committee recommended that Canada's national human rights legislation be amended to include these rights¹⁰. The Canadian Human Rights Commission (CHRC) is the federal human rights institution, with enforces the Canadian Human Rights Act (CHRA), which deals with claims under federal jurisdiction i.e., military, banks, federally regulated industries such as our railways and airlines. A wide-ranging review of the Canadian Human Rights Act recently chaired by retired Supreme Court Justice La Forest¹¹ revealed many of the inadequacies already identified by the UN. Ensuring that recommendations to include international human rights will need to become yet another advocacy task for activists, if the change is to occur.

Provincial and Federal Human Rights Commissions are quasi-constitutional and are therefore supposed to be paramount over law in every jurisdiction. Human rights legislation in Canada has seldom delivered substantive equality for women. But there are a number of ways and means that our domestic human rights legislation can be used, long before we get to international law. Relevant to violence against women are human rights provisions regarding sexual harassment, poisoned work environments, race, age, physical disability, sexual orientation.

LEGAL LITERACY – DOMESTIC AND INTERNATIONAL LAW

Can international rights treaties help Canadian women?

Evidence-based advocacy is a tool for women's empowerment. Legal literacy – especially "equality literacy"¹² - promotes women's capacities to critique the law and to assert our equality rights. Through legal – and equality - literacy women are equipped to address the implementation of the law and the cultural context in which it is defined, applied, and understood. Feminist anti-violence activists have long been engaged in this struggle with regard to national or domestic equality law in Canada, but it is only recently that the discourse on international human rights law has begun to impact on our work. Through organizations such as LEAF, METRAC and CASAC, consultation with frontline anti-violence workers has given direction to much of the work on equality litigation and legislative drafting; this now needs to be done with international law. We have an opportunity – and an obligation - to educate ourselves about all the options available in the struggle to end violence.¹³

This is an important time to develop our capacity to work at the international, as well as the domestic, level. There are several reasons for this, a significant one being:

Women are being affected negatively by the rush to liberalize trade and investment, to form regional trading blocs, and to implement a hegemonic formula for economic prosperity which requires downsizing governments, and diminishing the scope and strength of social programs. Through these economic processes, governments around the world appear to be relinquishing sovereignty, including their ability to protect the human rights of women by regulating corporate conduct. Women, in future, may need to rely more on international human rights instruments and agencies for the protection and promotion of our human rights.¹⁴

Using international human rights agreements and standards can be just one tool we can use to continue to pressure our own governments to apply the national, or domestic, laws of our own countries. This paper will focus on the mechanisms that are most relevant to advocates in Canada working on issues of violence against women. There are many useful web sites where much of this information can be found in detail.¹⁵

INTERNATIONAL HUMAN RIGHTS LAW

The promotion and protection of human rights was a fundamental priority of the United Nations in 1945, when the UN's founding nations resolved that the atrocities of the Second World War should never be repeated. Three years later, the UN General Assembly adopted in the *Universal Declaration of Human Rights* the principle that respect for human rights and human dignity "is the foundation of freedom, justice and peace in the world."

International human rights treaties tend to be viewed as needed in other countries, not at home in Canada. As a signatory to all the major human rights treaties and conventions, the Canadian government has committed to respecting international human rights obligations. There are two kinds of obligations: negative ones that prohibit government action violating specified rights, and positive obligations that require governments to take proactive steps, exemplified by the Canadian *Charter*, to ensure and protect the enjoyment of human rights.

Declarations, treaties, conventions and protocols

A treaty is a formal agreement between states that defines their mutual duties and obligations – it is used interchangeably with "convention" or "covenant". When the UN General Assembly adopts conventions, legally binding international obligations for signatory member States are created. When national governments ratify treaties, they become part of the nation's legal obligations as a member of the global community. Ratification means the formal procedure by which a State becomes bound to a treaty after signing it as acceptance. In order to have legal status, an international instrument must have been adopted by a majority vote of the UN General Assembly. It must also have been ratified by a certain number of states in order to be activated.

The main legal instruments are defined as:

- Declaration – passed by UN to affirm and recognize principles and rights, but declarations are not treaties; they are not ratified and do not have legal effect.
- Covenant or Convention - have an executive nature; they are treaties. By ratifying or acceding to these conventions, a State commits to adopting laws and measures to implement the rights that are stated in the convention. A UN committee is the treaty body mandated to monitor, receive and assess reports from States on their progress in implementing the treaty. Often, a protocol will be attached to a covenant or convention to provide for complaint procedures.
- Protocols – enable a State, a group or a person to file a complaint under the terms of the related treaty. Protocols constitute a means to exercise pressure internationally to oblige States to implement the rights specified in the treaties, covenants or conventions. When each State must individually show acceptance by signing the protocol, the term "optional protocol" is used.

THE ENFORCEMENT OF HUMAN RIGHTS STANDARDS

In many countries, international instruments are used as a means to exert pressure on UN member States for the recognition of women's rights. Compared to most other countries, Canada's human rights laws are strongly worded. Yet anti-violence advocates know that much of our work is in trying to get the words in our criminal and civil laws - in Canada - enforced so that they protect women and children from violence. So where would one even begin with international law?

Monitoring the implementation of human rights treaties and exposing the violations is really an exercise in democracy. No one has any expectations that the UN is going to enforce Canadian women's constitutional rights. The political organizing task is to ensure that Canadian courts and systems uphold Canada's commitment to human rights. Country reports submitted to the UN, the assessments in comments made by the Committee members, and the subsequent use of any indictment of Canada's failure to take positive steps to end violence against women are practical tools to be used by advocates.

A BRIEF HERSTORY:

VIOLENCE AGAINST WOMEN AS AN INTERNATIONAL HUMAN RIGHTS ISSUE

The story¹⁶ of the emergence of VAW as an international issue is partly about the converging of the human rights and women's rights networks; but it is mostly a wonderful testimony to the capacity of women's autonomous movements, especially non-governmental organizations, to be the initiators of public debate. The history of feminist activism at the international level can be seen in the chronology of the last decade of UN conferences, documents, declarations, etc.¹⁷

The UN Decade for Women (1975-85) comprised 3 World Conferences for Women – Mexico (1975), Copenhagen (1980), and Nairobi (1985). While the official conferences of government delegates took place, women from all over the world met at the "informal" NGO meetings. Over time, divisions between women from the North and the South began to recede and women began to converge around issues such as VAW, appreciating the linked concerns of women around the world. Activists had found a common denominator¹⁸ about the belief in the bodily integrity of women – a belief that was central to liberalism as well as core to the understanding of human dignity in other cultures. Notions of liberalism are essential to human rights – which has historically been a 'discourse' about the rights of individuals.

When the CEDAW Convention was drafted in the 1970s, there was nary a mention of violence against women - VAW – not a single reference to rape, domestic violence, sexual abuse, or female genital mutilation. In 1985¹⁹ after years of hard work, women placed violence on the UN agenda. Soon, there became another focus: VAW in the private sphere. Up until then, international human rights had mostly been about state actions, like the acts of oppressive regimes. Violations of women's human rights had been ignored or marginalized within the human rights system. This case for changing the assumptions was effectively made by women's rights activists²⁰. As a result, the 1993 World Conference on Human Rights held in Vienna explicitly recognized a range of gender-specific human rights violations, including violence against women, through the *UN Declaration on the Elimination of Violence Against Women*, known as *DEVAW* or the *Vienna Declaration*. States were charged with the duty to protect and promote women's rights as human rights. The definition in the Vienna Declaration was a real victory:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

The issue of violence against women was first discussed in terms of acts of overt physical and sexual violence, for example, female infanticide, female feticide, incest, wife beating, marital rape in the private sphere, and sexual harassment and rape in the public domain. In recent years, the definition has been expanded to include more structural forms of gender-based violence. Certain cultural practices, like son-preference, dowry customs and virginity tests, for example, are highlighted as denigrating or objectifying women. Increasingly, violence against women is also understood to encompass all forms of discrimination that create an environment in which such violence can be perpetrated with impunity and sometimes even with social sanction. In recent years, much of women's activism in this area has also been directed toward asserting women's agency in transforming the conditions that foster male violence.

More and more, feminists began to take on the international systems with strategic challenging of the neglect of women and our rights in all areas of life and argued that the improvement of women's status anywhere depends on advancing our rights everywhere.²¹ Our ability to participate in UN world conferences generated increasingly sophisticated strategic intervention, culminating in the last of the four world conferences on women held in Beijing in 1995, where the Beijing Declaration and its Platform for Action (BPFA) presented the world with a comprehensive plan of action to enhance the social, economic and political empowerment of women. The 12 themes or critical areas of concern of the BPFA included VAW. In June of this year, the "Beijing plus 5" UN General Assembly Special Session for the five year review of progress from UN world conferences, the world's governments stopped short of allocating significant resources to actually addressing women's economic impoverishment and vulnerability to violence. Activists can familiarize themselves with the Canadian government's performance in the Beijing process by contacting the Feminist Alliance for International Action²².

ANTI-VIOLENCE MECHANISMS

The following section gives brief examples of relevant mechanisms such as monitoring procedures, Committees, Conventions, Declarations, UN agencies and other international organizations in the human rights system.

1. Example of a Monitoring Procedure: The Special Rapporteur on Violence Against Women

There are various monitoring procedures at the UN. The most important one for our work is the *Special Rapporteur on Violence Against women, Including its Causes and Consequences*, Radhika Coomaraswamy, who was appointed by the UN Commission on Human Rights. We can see her appointment as a victory for the global women's movement.²³

The mandate for the Special Rapporteur is

- To collect information on violence against women and its causes and consequences from sources such as governments, treaty bodies, specialized agencies, intergovernmental and NGO's, and to respond effectively to such information;

- To recommend measures for the national, regional and international levels to eliminate violence against women and its causes and to remedy its consequences;
- To work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights.

2. CEDAW: The Women's Convention and The Committee on the Elimination of Discrimination Against Women

CEDAW, often called the Women's Convention, is the *UN Convention on the Elimination of All Forms of Discrimination Against Women*. This Convention is the only major UN human rights treaty devoted to the equality of women. It was adopted by the United Nations in 1981 and is monitored by the Committee on the Elimination of Discrimination Against Women, usually known as the CEDAW Committee. CEDAW is an important human rights tool in combating violence against women because it now defines such violence as a form of gender-based discrimination.²⁴ In 1992, the Committee affirmed that both public and private forms of violence ("all forms of discrimination") against women are human rights violations in the CEDAW Committee's Recommendation 19, which establishes the links between violence and discrimination:

Violence against women is both a consequence of systematic discrimination against women in public and private life, and a means by which constraints on women's rights are reinforced. Women are vulnerable because of disabilities imposed on them in economic, social, cultural, civil and political life and violence impairs the extent to which they are able to exercise *de jure* rights.

3. CEDAW Optional Protocol

CEDAW now has an Optional Protocol²⁵, which is a mechanism that offers victims of rights violations the possibility of real remedy in two ways: through a complaints procedure (Article 2) which allows individual women and women's groups to file a complaint of violation of her or their rights directly to the Committee; and, through an inquiry procedure (Article 8), which enables the Committee to initiate direct inquiries and seek information to verify complaints of systematic violations of the Convention in a country that is a State party to the Convention and the Optional Protocol. It also establishes a follow-up procedure where governments may be required by the Committee to submit a progress report on remedial efforts taken regarding complaints (Article 9). However, women must show that they have exhausted their domestic remedies before they can submit a complaint to the Committee.

Mary Robinson, High Commissioner for Human Rights, described the Optional Protocol thus²⁶:

..in addition to providing an international remedy for violations of women's rights, the Optional Protocol will act as an incentive to Governments to take a fresh look at the means of redress that are currently available to women at the domestic level. This is perhaps the most important contribution of the O.P. It is action at the national level which will create the environment in which women and girls are able to enjoy all their

human rights fully, and where their grievances will be addressed with the seriousness and speed they deserve.

Canada has not yet ratified the CEDAW Optional Protocol, despite promises. In order for Canadian women to be able to use the CEDAW Optional Protocol, we need a campaign to ensure that Canada will ratify it, in effect, signing it into law.

4. Convention on the Rights of the Child

This Convention promotes the right to a standard of living that is sufficient to ensure the development of the child; elimination of violence; and the elimination of the sexual and economic exploitation of children. This Convention is "gender neutral, with no specific reference to girls. Somalia and the USA are the only two member States of the UN that have not signed this Convention.

5. International Criminal Court

The Statute of the International Criminal Court (ICC) was adopted by the Rome Convention in July 1998. The Court's jurisdiction is limited to crimes against humanity, war crimes and crimes of genocide. The ICC operates independently of all political powers, and its power to investigate is not subordinated to any agreement by any States. It will only intervene when national courts are unwilling or unable to prosecute their own citizens.

During the International Criminal Tribunal for the Former Yugoslavia [ICTY-1994], and Rwanda [ICTR-1995], investigators were specifically empowered to prosecute rape as a crime against humanity, thus breaking new ground in recognizing war crimes against women. The feminist advocacy around this tribunal was carried into the campaign for the ICC. The Women's Caucus for Gender Justice²⁷ ensured that the Rome Statute is an example where violations against women that have always been unrecognized are now codified in an international law, particularly where crimes of violence against women are recognized as crimes of war and crimes against humanity. In this perspective, the ICC will help acknowledge the violations of the fundamental rights of women so that the sexual assaults may be judged by a capable court.²⁸

Canadian advocates must remain aware, however, that using criminal law in the international arena should raise the same concerns as have been expressed nationally with regard to the law and order agenda. The international law and order agenda will not necessarily serve the interests of women but has the potential to be used against poor nations and disadvantaged people. This is a current topic of debate between activists and legal experts of the North and the South, particularly on issues of migration and the trafficking of women.

6. Regional Human Rights Systems - The Inter-American Human Rights System

Canada is a member of the Organization of American States (the "OAS"), encompassing countries in North, South, Central and Latin America. In 1995 the *Inter American Convention*

on the Prevention, Punishment and Eradication of Violence Against Women went into effect, allowing women who had experienced violence in the Americas to have recourse to the existing regional mechanisms in the America's system: the Inter-American Court, the Inter-American commission on Human Rights, as well as an Inter-American Commission for Women.

African countries, through the Organization of African States and European countries, through the Council of Europe and the European Union, have been developing regional instruments and mechanisms for the enforcement of women's human rights within their member countries and in support of other countries.

7. Other International Organizations in the UN System

Other organizations within the UN system have responded to women's advocacy with policy changes. For example the World Health Organization (WHO) now defines violence against women as a health issue. Such statements encourage States to develop policies and fiscal programs for cross-sectoral violence prevention strategies.

Other organizations that must be understood to play a pivotal role in all policies that affect our work in eliminating violence against women are the World Trade Organization (WTO), the International Monetary Fund (IMF), and the World Bank. Clearly their fiscal policies on globalization are having a devastating impact on women in Canada and globally. Please reference other articles in this special issue for more detailed discussion of the economic agencies.

EXAMPLES OF HOW CANADIANS HAVE USED UN TREATIES

1. Lovelace Complaint under the Optional Protocol to the *International Covenant on Civil and Political Rights*²⁹

Sandra Lovelace, a Maliseet woman, lost her *Indian Act* status and band membership when she married a non-Aboriginal male in 1970. After her divorce, she was forbidden to live again on her reserve, the Tobique reserve in New Brunswick. On December 29, 1977, she filed a complaint with the United Nations Committee on Human Rights under the Optional Protocol to the *International Covenant on Civil and Political Rights*. Going to the international level represented the only recourse for Native women at that time

On July 30, 1981, the UN Human Rights Committee found Canada in violation of Article 27 of the *Covenant*, because ss.12 (1)(b) of the *Indian Act* effectively denied Sandra Lovelace the right to live in her community. She was denied access to her culture, her religion and her language contrary to Article 27. The Committee held that the denial to Sandra Lovelace of the right to reside on the reserve was neither reasonable nor necessary to preserve the identity of the tribe.

The *Lovelace* decision focused international attention on Canada. The Minister of Indian Affairs made it clear that the actions of Aboriginal women had played a key role in bringing the discriminatory impact of ss. 12(1)(b) of the *Indian Act* to the forefront. He also admitted that the enactment of the *Canadian Charter of Rights and Freedoms* in 1982 left little room for further postponement. On June 28, 1985, after the general election had returned a new Government, *Bill C-31* was passed. The struggle against only one of the *Indian Act's* provisions, ss. 12(1)(b), has consumed over thirty years of litigation and political action, and is not yet over.

The *Aboriginal Justice Inquiry of Manitoba* identified domestic violence as one strong reason why women have been forced to leave reserves.³⁰ Aboriginal women are subject to higher rates of domestic abuse than non-Aboriginal women - one in three, compared to one in ten.

The Native Women's Association of Canada launched an action against the Government of Canada in 1999, alleging that the failure of the government to provide for reserve residents an easily accessible way of resolving issues of occupation or possession of the matrimonial home, and related matters, in the event of family breakdown is a violation of the *Charter*. Aboriginal women living on reserves are the only women in Canada who do not have available to them a legal process for handling these issues. Whether they can continue to occupy the matrimonial home in the event of violence or separation depends entirely on the discretionary action of the Band Council. This surely is another factor explaining the flight of women from their reserve communities.

Two of the strongest instruments available to Aboriginal women in their quest for equality have been the *Charter of Rights and Freedoms*, particularly section 15, and the *Constitution Act, 1982*, in particular section 35(4). Also, the government of Canada has been a signatory to numerous international conventions relating to human rights, which exist because they have garnered sufficient support in the extremely diverse world human community to achieve ratification in the United Nations. These conventions are not narrowly Eurocentric, but represent some broader consensus about what is necessary to protect human dignity and further human aspirations. The *Lovelace* case focussed international attention on Canada in 1981, and 20 years later, even a brief review of international principles shows that in its treatment of Aboriginal women, Canada falls far below the standards set by the international community, and adopted by Canada, for basic human rights protection.

2. OAITH Submission to the Special Rapporteur on VAW

The Ontario Association of Interval and Transition Houses (OAITH) submitted a very detailed brief to the Special Rapporteur entitled ***HOME Truth, Exposing the False Face of Equality and Security Rights for Abused Women in Canada***.³¹ The report focused on the impact of social program cuts in the province of Ontario on the lives of women abused by their intimate partners. The report reviewed the public commitments of the government of

Canada to address violence against women and situated the impact on women of the Federal Government's elimination of national standards for social program delivery. The report outlined the cuts to services that have jeopardized women's freedom from violence. This report can be used as a model for other anti-violence advocates in other provinces. OAITH can update this report with more recent information from the last 4 years and submit another report to the Special Rapporteur. The OAITH report has also been cited now in many subsequent reports and briefs to various UN committees. This is very important as it places the issue of violence against women in the context of women's equality rights and the erosion of women's substantive equality in Canada.

3. NAWL Briefs to UN Monitoring Committees

The National Association of Women and the Law (NAWL) has submitted two very important "shadow" briefs to Committees at the UN.

Canadian Women and the Social Deficit: A Presentation to the International Committee on Economic, Social and Cultural Rights³² was submitted on the occasion of Canada's Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights – known as the ICESCR. This report brought to the attention of the Committee Canada's failure to realize the social and economic rights guaranteed by the Covenant, and that Canada is failing to take the necessary steps to realize these rights.

The Civil and Political Rights of Canadian Women,³³ was submitted by NAWL in March 1999, on the occasion of the consideration of Canada's Fourth Report on the Implementation of the International Covenant on Civil and Political Rights, known as the ICCPR. This report continues the analysis and documentation of the situation of women in Canada from the previous report. It makes specific reference to Canada's obligations under the ICCPR regarding violence against women. The main issues that the brief raises are about the cutbacks to shelters, transition houses and income assistance programs as failures of both the federal and provincial governments. Second, that the Jane Doe decision highlights the very real systemic problem of the police attitudes towards women and sexual assault.³⁴

4. The Ontario People's Reports by LIFT

The ***Ontario People's Report to the United Nations*** was submitted by Low Income Families Together (LIFT)³⁵ to the UN Committee that monitors the *International Covenant on Economic, Social and Cultural Rights* documenting violations of the Covenant by the government of Ontario. A wide coalition of civil society members contributed to the report. Particular references were made about the lack of child protection services, the increased poverty of families, and the need for women to escape domestic abuse, all issues relating to Article 10 of the Covenant. LIFT's second report, ***Reality Check***, was submitted to the Committee that monitors the *International Covenant on Civil and Political Rights*. It focused on the indivisibility of rights, emphasizing that the 'right to live' be interpreted in socioeconomic terms and raised the issue of workfare.

5. CEDAW Shadow Reports

When a State party submits a report to the CEDAW Committee outlining all the wonderful things that their government has done for the women in their country in compliance with the CEDAW Convention, there is a parallel "truth-telling" process, generated by the tenacity of women's NGOs, known as submitting a Shadow Report. Shadow Reports provide the monitoring Committee with alternative facts and figures on the situation of women in the country. The last Shadow Report on Canada was submitted by NAC and METRAC³⁶. States are scheduled to report to CEDAW every 4 years. Canada's next report to CEDAW is already overdue. The process for compiling the information for the Shadow Report is underway. It is being facilitated electronically by the IWRP³⁷, which collaborates with FAFIA on work related to CEDAW. If your organization wants to send information documenting the conditions of women in your region for inclusion in the report, please contact us.

The most important part of the process is the 'Concluding Comments' or 'Concluding Observations' of the Committee. This is, in essence, the CEDAW Committee telling the Canadian government what their concerns are, what they recommend, and what they want the next State report to report on. After reviewing the last Shadow Report in 1997, the Committee addressed itself to the discrepancy between Canada's positive role at the international level in promoting human rights of women, and the domestic policies that reinforce the erosion of women's social and economic rights within Canada *and elsewhere*. The Committee "recommended that the Government address urgently the factors responsible for increasing poverty among women and especially women single parents and that it develop programmes and policies to combat such poverty, and that social assistance programmes directed at women be restored to an adequate level."³⁸

SUGGESTED ACTION FOR ADVOCATES AND ACTIVISTS

1. Canada's ratification of the CEDAW Optional Protocol

The consensus of over 20 Canadian women's equality seeking organizations, as set out in the Canadian CEDAW Strategies Meeting summary³⁹ -is to use CEDAW as:

- a political advocacy tool for changes to policy and practice
- an instrument for reviewing Canada's performance
- an aid to interpret the *Charter* and other Canadian guarantees of equality
- an international legal forum for appeal with the Optional Protocol

To support evidence-based advocacy, the *Canada Country Report*⁴⁰ is found in the *First CEDAW Impact Study*⁴¹ and details the use – or lack thereof – of CEDAW by Canadian women's organizations and in Canadian legal decisions. We should concern ourselves with CEDAW where it can effectively assist in advancing the equality of women in Canada and globally. The CEDAW Optional Protocol must be made available to Canadian women.

There are several suggestions for advocacy around the Optional Protocol at the national level:⁴² signature and ratification; review national law and policy; promote public awareness;

and most importantly, use the mechanism to bring cases of women's rights violations before the CEDAW Committee where women in Canada have exhausted domestic remedies. A strategy for activists in Canada would be to build a grassroots campaign to have Canada ratify the Optional Protocol. Once it comes into effect, a popular or public legal education campaign could be undertaken to assist women in filing complaints to the UN against Canada for non-compliance with equality rights provisions.

2. Moving governments to take action

At the very least, governments must be pushed to live up to what they sign internationally, and live up to what they profess to do domestically⁴³.

Advocates can use national and international human rights tools to give effect to expert recommendations commissioned by and then largely ignored by various governments. For example, the Ontario May-Isles coroner's inquest jury recommendations – all 213 of them – are of no force and effect unless they become government policy of all departments and agencies, for example: law enforcement, court procedures, child welfare, firearms registration. The Ontario government's lack of implementation of the recommendations for change, and lack of enforcement of existing law and policy, could be seen as non-compliance with all the various international instruments that exist to recognize women's equality and freedom from violence.

The critique by both UN monitoring committees found in their Concluding Observations on Canada, with regard to the two shadow reports presented by NAWL (see endnotes 32 and 33) should be circulated widely and used in political advocacy strategies.⁴⁴ An audit of Canada's domestic human rights law as well as international law would illustrate Canada's non-compliance at all levels

3. Use of International Mechanisms in Domestic Litigation

Arguably, the most important function of international human rights law is to use it to make our governments live up to their legal obligations to create the conditions that will provide women with substantive equality rights and to focus on the integral link between the lack of social and economic rights and resultant violence against women. Some legal advocates in Canada have been quite adept at using international instruments in their arguments, particularly in the area of immigration law, for example, in the recent Baker case, both the majority and minority decisions emphasized that international law will be a critical influence on the interpretation of the scope of the rights included in the Charter.⁴⁵

One of the problems is that most lawyers and judges know little about international law, and it has not become part of the legal "culture" to make these arguments. We need to develop this training and expertise so that judges and lawyers in Canada understand that Canada has signed treaties and conventions that bind it to uphold international human rights

4. The World Conference Against Racism (WCAR) 2001

The upcoming WCAR, to be held in South Africa, August 2001, is the culmination of actions and decisions taken by the government members of the UN over the past 30 years.⁴⁶ The UN General Assembly has declared the year 2001 as the International Year of Mobilization Against Racism. This WCAR will be the third conference. The WCAR will focus on developing practical, action-oriented measures and strategies to combat contemporary forms of racism and intolerance. Advocates who wish to participate in submitting information for the Canadian Shadow Report to the WCAR should contact the African Canadian Legal Clinic⁴⁷. Anti-violence workers could prepare submissions on the intersection between racism in Canada and violence against women of colour that could be included in both this Shadow Report and the CEDAW Shadow Report.

5. Supportive strategies for building the culture of human rights

To make the work of Canadian women's NGO's at the national and international level more effective, we need to :

- educate ourselves and our constituencies
- develop training resources such as popular education tools about women's equality rights and international human rights instruments
- familiarize ourselves with the use of international human rights tools to incorporate into building a culture of "rights"⁴⁸
- have improved methods of consultation with government about Canada's international positions⁴⁹
- wherever possible in litigation include arguments about the importance of interpreting the Charter and other domestic law in light of Canada's international human rights obligations
- develop education and training tools for lawyers and judges on international human rights law – this would involve lobbying such associations and institutions as the Canadian Bar Association, the National Judicial Institute, etc.
- ensure that we are aware of Canada's stated commitments to the international community and develop tools or report cards to evaluate their progress
- develop our own evaluation tools in order to consider the effectiveness of our advocacy and activism – what procedural and/or policy changes have been made, what state and non-state actors behaviour has changed, what laws are being enforced, what gains are being taken away, etc.

Conclusion

Ultimately, the only way that equality-seeking organizations have won rights for women, and have had issues of violence against women addressed in law, policy, civil society and the courts, has been by combining political organizing strategies with legal and constitutional strategies. Indeed, international human rights standards have only been won through long and protracted political struggle. We must not let the appeal of distant international work turn us away from vigilance at home. While work needs to be done on all fronts, activists must not neglect their own constituencies.⁵⁰ We are reminded by feminists from other countries that, because Canada has such a good reputation, when standards are lowered for women in Canada, the international ripple effect is a decline in the vision of what is achievable for women all over the world.

At the beginning of the 21st century, we are moving into another refinement of the 'rights' practice. It has been argued⁵¹ that the rights framework in the past had privileged political and civil rights to the exclusion of economic, social or cultural rights; that its excessive focus on individuals obscured structural inequalities among classes and countries. With the increasing sophistication of feminist activism and the development of an equality based inclusive analysis, we see that a rights based approach now includes economic, social and cultural rights. This critical evolution in feminist analysis and strategy will be echoed in the voices of the women's march, demanding an end to poverty and violence against women.

¹ I would like to acknowledge the extensive contributions to this article of Marilou McPhedran, Director of the International Women's Rights Project (WRP); the detailed comments and editorial advice from Maureen Shebib, Legal Counsel of the Nova Scotia Human Rights Commission; and input from Mandy Bonisteel, AWCCA Program, George Brown College; Suki Beavers, FAFIA; Josephine Grey, LIFT; Lee Lakeman, CASAC. All mistakes, are, of course, my sole responsibility.

² Convened in 1999 by Marilou McPhedran, Director of the International Women's Rights Project (IWRP) and then chair of the Toronto branch of LEAF (Women's Legal Education and Action Fund), the reference group developed the concept of an international rights advocacy guide for "frontline" use. Reference group volunteers from LEAF, including Lara Karaian, Zeina Awad, Joanne Skolnick worked with Jan Aikins on the initial draft. The IWRP (Marilou McPhedran, Angela Green-Ingham, Susan Bazilli) facilitated consultations with Diane Oleskiw (LEAF co-counsel in the Ewanchuk case and a counsel to METRAC), Eileen Morrow of OAITH (Ontario Association of Interval and Transition Houses), Beth Acheson and Beth Symes of the Charter of Rights Education Fund, Pam Cross, Karen Schucher and Susan McDonald of METRAC. The IWRP appreciates the financial support of the Charter of Rights Education Fund and Status of Women Canada - Ontario in development of this guide.

³ Canadian Charter of Rights and Freedoms, part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (UK), c.11

⁴ May-Isles recommendations can be found at the OWJN web site at www.web.net/~owjn.

⁵ Diane Oleskiw, *Recommendations for Changes to the Ontario Crown Policy Manual*, METRAC, metrac@interlog.com

⁶ With legal advice from feminist criminal lawyer, Diane Oleskiw. See above.

⁷ R. v. Ewanchuk, [1999] 1 S.C.R. 330

⁸ *ibid.*

⁹ *Judging Poverty: Using International Human Rights Law to Refine the Scope of Charter Rights*, Bruce Porter, 15 *Journal of Law & Social Policy*, 2000, p.3

¹⁰ See the thorough review of the CHRA, *Women's Substantive Equality and the Protection of Social and Economic Rights Under the Canadian Human Rights Act*, Martha Jackman and Bruce Porter, 1999.

¹¹ *Promoting Equality: A New Vision*, Canadian Human Rights Act Review Panel, Dept. of Justice, June 21, 2000. See www.chrc-ccdp.ca for more information.

¹² Kathleen Mahoney, speech at her acceptance of the Bertha Wilson Touchstone Award 2000 at the CBA Annual Conference, August 2000.

¹³ For a guide to using the Internet for women's rights research and detailed on-line references, see *The Busy Woman's Guide to the Internet: Activism and Research On-line*, Kelly Mannix, the IWRP, York University, 1999. For a directory that reviews various sites and provides descriptive commentary on their content, see the IWRP site at www.yorku.ca/iwrp/web_directory.htm. See www.whrnet.org for a comprehensive site on women's human rights; and *Local Action Global Change: Learning About the Human Rights of Women and Girls*, Julie Mertus, Nancy Flowers and Mallika Dutt. UNIFEM and The Centre for Women's Global Leadership, 1999.

¹⁴ Shelagh Day, *The Canadian CEDAW Strategies Meeting Paper*, International Women's Rights Project CEDAW Strategies Meeting, November 1998.

¹⁵ See *Women's Human Rights on the Internet*, an annotated directory of human rights websites at <http://www.yorku.ca/iwrp> and *Rights of non-citizens in Canada a guide to international human rights law and mechanisms* at <http://www.law-lib.utoronto.ca/diana>

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- ¹⁶ Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, Cornell University Press, 1998. See entire text, but particularly Chapter 5 on Transnational Networks on Violence Against Women, for a most comprehensive history.
- ¹⁷ See *The Select Bibliography of Women's Human Rights* prepared by Rebecca Cook at www.law-lib.utoronto.ca/pubs/H_RGHTS.HTM, and the *Annotated CEDAW Bibliography* prepared by the International Women's Rights Project at www.yorku.ca/iwrp
- ¹⁸ Keck and Sikkink, op.cit.p.172
- ¹⁹ Nairobi Women's Conference
- ²⁰ Charlotte Bunch and the Centre for Women's Global Leadership at Rutgers University were instrumental in the 'women's rights are human rights' leadership – the first article that was written in 1990 became a cornerstone of the movement, playing a catalytic role.
- ²¹ *Women's Human Rights Step by Step: A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights*, Women, Law and Development International and Human Rights Watch Women's Rights Project, 1997, p. vii
- ²² In Canada, organizing for the follow-up to Beijing led to the formation of FAFIA, the Feminist Alliance for International Action, which coordinate the Beijing +5 follow-up process.
- ²³ She has focused on areas of concern where women are particularly vulnerable: in the family (including domestic violence, traditional cultural and religious practices, infanticide); in the community (including rape, sexual assault, trafficking, labour exploitation, migrant work, etc.) and by the state (including violence against women in detention, refugee women and women in situations of armed conflict).
- ²⁴ See the *Annotated CEDAW Bibliography*, organised by article, prepared by Marilou McPhedran, Angela Green-Ingham, Kelly Mannix and Valerie Markidis of the International Women's Rights Project at <http://www.yorku.ca/iwrp>
- ²⁵ Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women. Annex to the UN General Assembly Resolution, 15 October 1999. See <http://www.un.org/womenwatch/daw/cedaw/protocol>. This site also contains an overview of the protocol provisions and background on its adoption.
- ²⁶ *The Optional Protocol: Text and Materials*, UN Division for the Advancement of Women, May 2000
- ²⁷ See www.iccwomen.org
- ²⁸ *Advocacy Guide to Women's World Demands*, World March of Women in the Year 2000. See for details of March demands on poverty and violence.
- ²⁹ Excerpts from *Aboriginal women's rights are human rights*, prepared by Mary Eberts for the Native Women's Association of Canada presentation to the Canadian Human Rights Act Review, Spring 2000
- ³⁰ Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1: The Justice System and Aboriginal People (1991), Chapter 13, 482-485.
- ³¹ Ontario Association of Interval and Transition Houses [OAITH], 2 Carlton St., Suite 1404, Toronto, Ontario M5B 1J3. email: oaith@web.net
- ³² Shelagh Day and Margot Young, NAWL. Available from NAWL, Ottawa.
- ³³ Shelagh Day, NAWL.
- ³⁴ *Jane Doe v. Toronto (Metropolitan) Commissioners of Police*, [1998] O.J. No. 2681 (Gen. Div.)
- ³⁵ Josephine Grey, *Peoples Report to the UN on Violations of the International Covenant on Economic, Social and Cultural Rights in the Province of Ontario*, submitted to the Committee, Geneva, November 1998
- ³⁶ Coordinated by Susan Bazilli, Shelagh Day, Gwen Brodsky, Lois Chiang, January 1997. See www.yorku.ca/iwrp for a copy.
- ³⁷ The IWRP is facilitating the electronic process, and is collaborating with FAFIA on the consultation process – contact iwrp@yorku.ca.
- ³⁸ UN CEDAW Committee, Concluding Observations, 16th Session, 29 February 1997.
- ³⁹ International Women's Rights Project summary of the *Women reframing human rights* roundtable conducted during the Canadian CEDAW Strategies Meeting, November 22-24, 1998, available through <http://www.yorku.ca/iwrp>
- ⁴⁰ Lee Waldorf and Susan Bazilli, National Correspondents for Canada, in *The First CEDAW Impact Study – Final Report*, McPhedran et al for the International Women's Rights Project, (Centre for Feminist Research, York University) June 2000. See www.yorku.ca for Canada paper and full study.
- ⁴¹ McPhedran et al, see www.yorku.ca/iwrp for full study.

⁴² IWRAW-Asia Pacific Optional Protocol Campaign material.

⁴³ Lee Lakeman.

⁴⁴ During the 1999 process of the UN Committee on Civil and Political Rights reviewing Canada's record, the Hon. Hedy Fry made a public commitment to distribute to all Members of Parliament the Committees Concluding Observations, and to release them to the public. This has not yet been done, but could be incorporated into an advocacy strategy.

⁴⁵ *Mavis Baker v. Minister of Citizenship and Immigration* – see *Jurifemme*, Vol 19, No. 1, Fall 1999. See also *Using the Charter and International Human Rights Standards in Domestic Race-Based Litigation*, Estella Muyinda, Court Challenges Program of Canada.

⁴⁶ See *Combating Racism Together: A Guide to Participating in the UN World Conference Against Racism*, International Human Rights Law Group, at www.hrlawgroup.org.

⁴⁷ African Canadian Legal Clinic, 330 Bay St., Suite 306, Toronto, Ontario M5H 2S8.

⁴⁸ Canadian CEDAW Strategies Meeting summary, op cit.

⁴⁹ Day, op. cit.

⁵⁰ *Reflections of a Global Women's Activist*, Susan Bazilli, Human Rights Dialogue, Summer 2000 No. 3. www.cceia.org

⁵¹ Keck and Sikkink, op. cit. P.184

FOR MORE INFORMATION, PLEASE VISIT OUR WEBSITE
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