



Global  
Justice Center

**Peace by Piece Conference**  
**Belfast, Northern Ireland**  
**June 24 - 26, 2008**

---

**Moving From Equal Opportunity to Equal  
Power: Using International Law to Advance  
Equality Rights and Restructure Government**

# International Law as a Tool for Women: Power not Pity

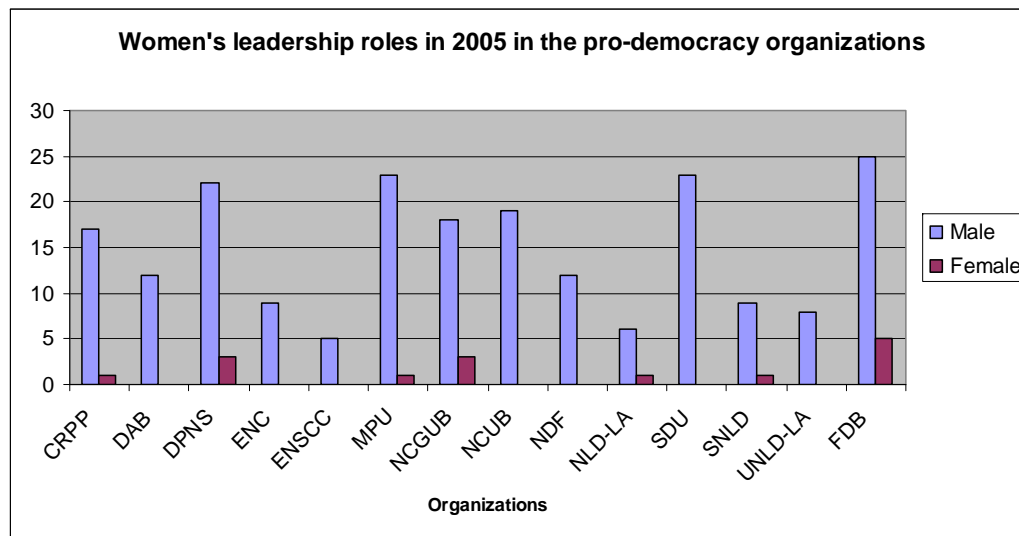
---

## What we do at the Global Justice Center:

- ❑ Provide legal expertise to women activists and the legal community during all points of conflict and post conflict.
- ❑ Develop new strategic tools using international law to challenge political and cultural norms perpetuating patriarchal structures of government

# Does democracy really help women? Why are patriarchy and democracy still best friends?

Women in the top leadership positions in the major pro democracy groups from Burma



# Defining Democracy in 2008

---

- ❑ Democracy in the United States in 1776
  - ❑ Free speech and white men with property could vote
- ❑ Democracy in 2008: how would you define it?
- ❑ Is a country a democracy if over one half of the country are the governed and less than one half –the men– are the governors?

# International Law Applies to The Process and the Product of Constitutions and Pre Constitutions

---

## Women's international legal rights to actual political participation

- ❑ Universal Declaration of Human Rights (Article 21)
- ❑ Covenant on Civil and Political Rights (Article 25)
- ❑ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- ❑ Beijing Agreement
- ❑ UN Security Council Resolution 1325 mandates gender equality in all stages of transition
- ❑ (Section 8 (c) Measures that ensure the protection and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.).

# Global Changes Advancing Equality Law

---

- ❑ Constitutionalism
- ❑ Globalization and international law
- ❑ Regional and international Courts including the UN established Tribunals
- ❑ New human rights laws such as the equality premises for gender crimes in the ICC and complementarily
- ❑ Security Council binding resolutions, SC 1325, SC 1674, SC 1820
- ❑ Transnational network of women's groups and INGO advocacy
- ❑ Increased independent judicial review, judicial entrepreneurship, use of international human rights law in national courts –Bangalore Principles

# Access Points for restructuring rights for women :

---

- ❑ **New Constitutions**
- ❑ **New Judiciaries or Judicial Actors**
- ❑ **New International Laws**
- ❑ **Times of political transition**
- ❑ **War Crimes Tribunals/International Criminal Court**
- ❑ **Regional Human Rights Courts and Treaties**
- ❑ **UN Security Council**

# How Should a Constitution Advance Equality?

---

- ❑ Constitutions are a tool to ensure equal political citizenship and help shape cultural and political norms.
- ❑ A constitution should require affirmative measures to redress historical discrimination against women including measure to lead to gender parity in all branches of government particularly within the judiciary. Quotas can be gender neutral i.e. no more than sixty percent of any one gender to hold ministers positions, etc.
- ❑ A Constitution should recognize international law as above domestic law.
- ❑ A Constitution should provide citizen access to judicial review of rights and encourage judicial use of international law.

# Positive Obligations in Constitutions

---

## South Africa

Founding Provisions, Chapter 1: The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- a) Human dignity, **the achievement of equality** and the advancement of human rights and freedoms.

Chapter 2, Section 9(2): “Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be take.”

## Rwanda

### Article 9

The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof: **equitable sharing of power;**

building a state governed by the rule of law, a pluralistic democratic government, **equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty per cent of posts in decision making organs;**

# Rwanda Constitution

## Transforming Political Parties

---

### Article 54

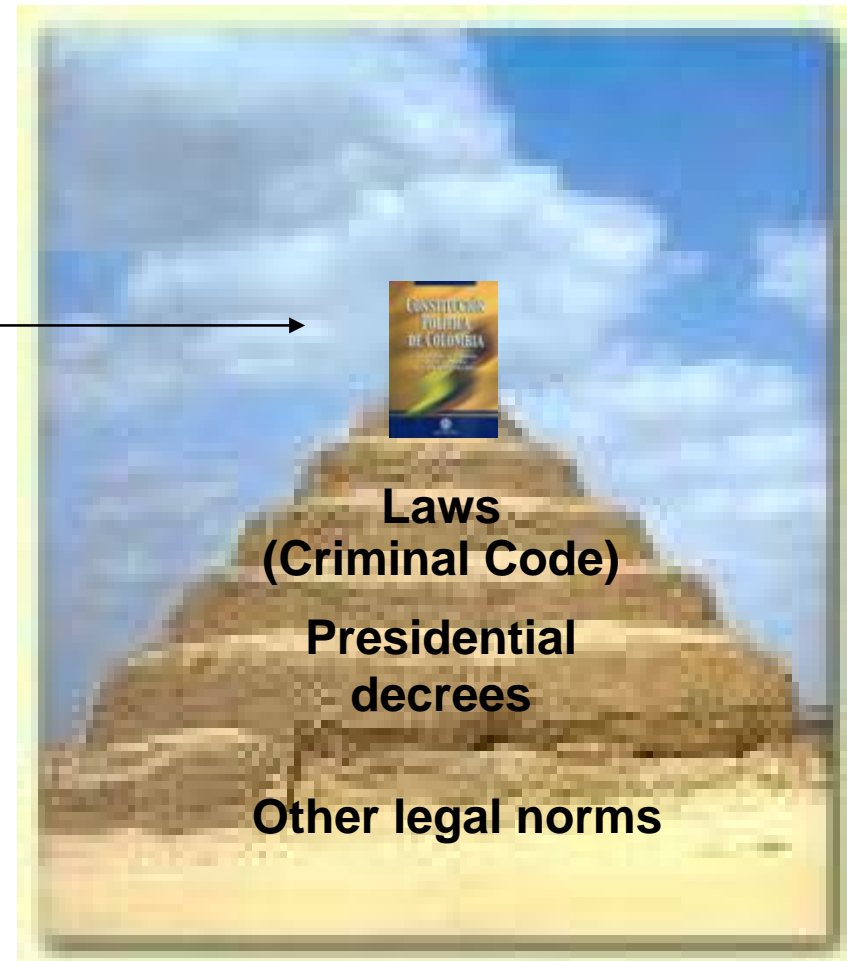
Political organizations are prohibited from basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination.

Political organizations must constantly reflect the unity of the people of Rwanda and gender equality and complementarity whether in the recruitment of members, putting in place organs of leadership and in their operations and activities.

# The “Constitutional Bundle” in Colombia

International human rights instruments ratified by Colombia.

**CEDAW Definition of Inequality:**  
“the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (Article I)



## Women Leaders Must Make Enforcing Rights and Transforming the Judiciary (Domestic and International) a Priority

---

Judicial commitment to equality can...

- ❑ Trigger entrepreneurship at the highest courts.
- ❑ Foster alliances between the judiciary and women's rights advocates.
- ❑ Influence judicial decisions on the advancement of women's rights in international law.

# Judges changing culture... and culture changing Judges

---

Colombian Constitutional Court: Reproductive Rights – subsequent to the May 2006 decision in Colombia overturning the criminal abortion law, public approval of legal abortion rose from about 20% before the case to about 80% after the decision.

## Iraq High Tribunal Judges:

- In the 2007 Anfal decision on the genocide of the Kurds, the IHT judges implemented the gender-sensitive ICC definition of rape, and held that rape could constitute torture and had been an element of the genocide.
- A delegation of IHT judges visited former US Supreme Court Justice Ginsburg, and pledged to advance women's rights under international law. They also lit candles to commemorate Jews who died in the Holocaust at the National Holocaust Memorial Museum in Washington.

# Regional Courts and Charters:

---

- ❑ New regional courts and charters reflect the most affirmative language on equality rights, i.e. the African Protocol and the Inter-American Commission.
- ❑ Regional human rights courts, such as the IACHR, the ECHR and the developing African and ASEAN regional court make international equality rights enforceable.
- ❑ International law is enforceable at the domestic level and there are strong arguments why implementing legislation may not be necessary.

# European Court of Human Rights and the Inter-American Commission:

---

- ❑ Vanguard for holding states accountable
- ❑ Judicial decisions are respected and implemented
- ❑ Legitimize human rights as being legally binding and enforceable laws
- ❑ Advance a culture of human rights

# European Court of Human Rights (weak for women!)

---

- ❑ Implements a Convention which has no separate provision for sex discrimination (Article 14 does not stand alone)
- ❑ No strong preamble or expression of affirmative commitment to overcoming embedded inequality structures
- ❑ Gender neutral, thus enforces patriarchal norms
- ❑ Decisions on sex discrimination are narrow - rarely cites to CEDAW, margin of appreciation used to justify inequality as cultural imperative
- ❑ Applicable to Northern Ireland through the UK Human Rights Act

# Inter-American Commission (strong on gender!)

---

- ❑ Nondiscrimination on gender as the heart of the Convention
- ❑ Views the ideal of ‘gender neutral’ as meaningless for assessing sex discrimination
- ❑ Proactive in human rights fact-finding, publishes general thematic reports and recommendations
- ❑ Sees its judicial role as one which uses individual cases to address systemic discrimination

# ECHR in re Fogarty Sex Harassment Case

---

- ❑ Perfunctory consideration of the facts of the sex discrimination issue
- ❑ No reference to CEDAW or other international human rights laws as EHCR routinely does in torture and other criminal justice cases
- ❑ Uses ‘margin of appreciation’ as a rationale for upholding laws or policies embedding inequality

# Inter-American Commission

---

- ❑ Increasingly broadening states' obligations under CEDAW; for example, in a **Guatemala** case:
  - ❑ The Court cited both to CEDAW and to its own investigative reports on systemic sex discrimination
  - ❑ The Court focused on the laws' effects on women and equality, and on the positive obligations of the state both to protect against sex discrimination and take steps to eradicate the system of advantages that perpetuate inequality (opposite of using a margin of appreciation)
- ❑ Held that the failure in **Brazil** to prosecute a husband for murder of his wife reflected systematic state failure which:
  - ❑ Condone violence against women
  - ❑ Violates the rights of women in general to access to justice
  - ❑ Violates CEDAW, the ICCPR and the American Convention, etc.

# Security Council Resolution 1325: Binding law on UN and all Member States

---

- ❑ Mandates equality in all stages of conflict and post conflict
- ❑ References women's right to enforcement of international legal rights and ICC
- ❑ Mandates criminal accountability for perpetrators of grave gender crimes and no amnesty for perpetrators

# Tribunals and Gender Justice

---

- ❑ International Tribunals --historic advancements for women's human rights
- ❑ Violence against women is taken out of the private sphere and treated as a crime like any other crime, deserving of recognition and redress
- ❑ This is a strategic opportunity for embedding and advancing international jurisprudence

# Why have Tribunals had such an impact on women's rights?

---

- ❑ Enforcement mechanisms
- ❑ Created by United Nations – funding and credibility
- ❑ Women judges
- ❑ Advocacy from women's community
- ❑ Single place to focus advocacy
- ❑ Public Attention/Monitoring

# Sources of law applicable to women in Northern Ireland

---

- 1) UK Sex discrimination Law (1975)
  - 2) Belfast Agreement (1998)
  - 3) Northern Ireland Act (1998)
  - 4) Human Rights Act (1998) - Treaty Law
  - 5) European Convention of Human Rights (1950)
  - 6) Convention to Eliminate all forms of Discrimination against Women (CEDAW) (1979)
  - 7) International Covenant on Civil and Political Rights (1976)
  - 8) Security Council Resolutions (1325 and now 1820)
  - 9) U.N. Jurisprudence
- \* Decisions of Constitutional courts, the International Court of Justice, Ad Hoc Tribunals or International Criminal Court on international law on equality as sources of support/interpretation

# Northern Ireland: Turning Devolution into Evolution

## First Steps

---

- ❑ Adopt a Bill of Rights for NI which
  - Includes the CEDAW definition of equality
  - insures means for judicial scrutiny of all laws which effect women
  - Requires gender quotas for all decision making positions including gender parity for judges
  
- ❑ Change the judicial culture by fully implementing the Bangalore Principles which provide for the invalidation of laws which contravene international human rights, and institute a judicial monitoring procedure, tracking the enforcement of CEDAW and the ICCPR.
  
- ❑ Clarify that “gender neutral” is an illegitimate state defense to laws or practices that perpetuate women’s inequality.

## One Feminist's Vision...

### A New Legal Structure for Women in Northern Ireland

---

- ❑ Bill of Rights with equality preamble and CEDAW as standard, not European Convention
- ❑ New Constitutional Court to ensure compliance with international human rights law, citizens standing to challenge practices or laws, and gender parity for judges
- ❑ Clear positive obligation to uphold an equality standard, not that of the UK Human Rights Act
- ❑ Judges trained to take more expansive role to enforce rights, establish a system to monitor judges and evaluate access to courts on sex discrimination cases
- ❑ Damages provided where state practices perpetuate inequality

# A Rights' Quiz: Piece by Peace

---

- When is the last time a judge in UK/NI cited to CEDAW?
- Is gender neutral a code word for patriarchy?
- What kind of right is equal opportunity?
- Why do men get rights and women get policy?