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UNESCO Global Media Defence Fund (GMDF)

JULY 2022

**A GUIDE ON USING
INTERNATIONAL FREEDOM
OF EXPRESSION NORMS IN
DOMESTIC COURTS**

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Executive Summary

This Guide provides an overview of how international law can be used to inform domestic litigation, with a focus on the issue of freedom of expression. After providing a brief overview of the sources of applicable international law norms, it provides an overview of how different jurisdictions give effect to international norms while offering practical tips for deciding how and when to invoke those norms. The Guide then describes the ways international standards can be used as a tool to inform statutory and constitutional interpretation. The Guide concludes that although different legal traditions have adopted varied approaches to incorporating international norms domestically, regardless of how this is done, international standards can play a meaningful role in domestic human rights litigation.

Introduction¹

Freedom of expression is a key underpinning of any democratic society, in addition to being a fundamental human right on its own. In keeping with its foundational importance, the scope of this right and the legitimacy of any restrictions on it have long been a matter of international concern. A well-developed normative framework has emerged internationally to guide actors on the nature and scope of this right, as well as the restrictions which may legitimately be imposed on it. This rich normative ecosystem provides a powerful set of standards for advocates seeking to ensure that States respect, protect and fulfil the right to freedom of expression. However, invoking international norms in domestic legal systems raises complex legal questions about the relationship between international and domestic law. This Guide presents a succinct overview of the sources of international law and then focuses on the different systems for applying these norms in domestic legal frameworks.

1 The Sources of International Law: An Overview

The recognised sources of international law are conventions, customs, the general principles of law and, as a ‘subsidiary’ source, “judicial decisions and the teachings of the most highly qualified publicists of the various nations”.² The latter is part of what has come to be known as ‘soft law’: various standards elaborated by international bodies and experts which represent persuasive interpretations of binding international norms

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2 United Nations, Statute of the International Court of Justice, 18 April 1946, Article 38(1).



and summaries of best practices upon which international and domestic courts alike often rely to interpret the scope of human rights guarantees. Such ‘soft law’ standards play a significant role in the progressive development of international human rights law. Because of the slow nature of the development of other norms of international law, ‘soft law’ standards have proven to be important guides for contemporary best practices on many evolving issues of international human rights law.

1.1. Sources of Norms on Freedom of Expression

Modern international human rights law traces its origins to the *Universal Declaration of Human Rights* (UDHR), adopted by the UN General Assembly in 1948.³ The right to freedom of expression was enshrined in Article 19 of the Declaration, which provides:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Although the UDHR is not in itself a binding instrument, many of its provisions, including Article 19, are now considered to be customary norms of international law, which are binding on States.⁴

3 General Assembly Resolution 217A (III), 10 December 1948.

4 *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain)* (Second Phase), ICJ Rep. 1970

The UDHR lay the groundwork for the development of two binding international covenants: the *International Covenant on Civil and Political Rights* (ICCPR)⁵ and the *International Covenant on Economic, Social and Cultural Rights*,⁶ which, together with the UDHR, form the International Bill of Rights. The right to freedom of expression and the framework for evaluating the legitimacy of any restrictions on it, were enshrined in Article 19 of the ICCPR. Freedom of expression is also guaranteed in all of the main regional human rights instruments, namely the *European Convention on Human Rights*,⁷ the *American Convention on Human Rights*,⁸ the *African Charter on Human and Peoples' Rights*⁹ and the *Arab Charter on Human Rights*.¹⁰

The jurisprudence of treaty bodies, such as the UN Human Rights Committee (HRC), and international courts, such as the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights, offer important interpretive guidance for determining the scope of international human rights obligations. Of similarly key importance are authoritative interpretations of rights issued by the HRC in the form of General Comments.¹¹

Another important source of international norms and best practices on freedom of expression are the multitude of 'soft law' sources, including resolutions from UN bodies,¹² expert reports,¹³ the annual Joint Declarations of the UN and regional special rapporteurs¹⁴ and declarations of UNESCO Member States.¹⁵ These sources are highly persuasive as a means of interpreting binding international norms or domestic human rights guarantees. For example, the Supreme Court of the Republic of Chuvashiya in Russia cited the 2011 Joint Declaration on Freedom of Expression and the Internet of the special international mandates on freedom of expression of the UN, Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS) and

3 (International Court of Justice) and *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice).

5 UN General Assembly Resolution 2200A (XXI), adopted 16 December 1966, in force 23 March 1976.

6 UN General Assembly Resolution 2200A (XXI), adopted 16 December 1966, in force 3 January 1976.

7 Adopted 4 November 1950, in force 3 September 1953, Article 10.

8 Adopted 22 November 1969, in force 18 July 1978, Article 13.

9 Adopted 26 June 1981, in force 21 October 1986, Article 9.

10 Adopted 22 May 2004, in force 15 March 2008, Article 32.

11 See, notably, UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/G/GC/34, <http://undocs.org/ccpr/c/gc/34>.

12 See, for example, UN General Assembly Resolution 72/162, The Safety of Journalists and the Issue of Impunity, 10 February 2016, UN Doc. A/RES/70/162.

13 See, just as some examples, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression*, 20 April 2010, UN Doc. A/HRC/14/23; Organisation of American States, *Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts*, October 2019, https://www.oas.org/en/iachr/expression/publications/Guia_Desinformacion_VF%20ENG.pdf; and UN Special Rapporteur on the promotion and protection of the right to freedom of expression, *Disinformation and Freedom of Opinion and Expression*, 13 April 2021, UN Doc. A/HRC/47/25.

14 These are all available online at: <https://www.osce.org/fom/66176>.

15 See, for example, UNESCO Seminar on Promoting an Independent and Pluralistic African Press, Windhoek, Namibia, 29 April-3 May 1991, <http://unesdoc.unesco.org/images/0009/000931/093186EB.pdf>.

African Commission on Human and Peoples' Rights in reasons for a decision overturning a lower court finding that the owner of a website was liable for content.¹⁶

Further Resources:

- Centre for Law and Democracy, *Training Manual for Judges on International Standards on Freedom of Opinion and Expression* (December 2021, Halifax), <https://www.law-democracy.org/live/wp-content/uploads/2022/02/English-Judges-Toolkit.online.pdf> (although designed for the Jordanian context, this guide is essentially an internationally-focused resource).
- Centre for Law and Democracy and International Media Support, *Briefing Note Series: Freedom of Expression* (July 2014, Halifax and Copenhagen), <https://www.law-democracy.org/live/cld-and-ims-launch-briefing-notes-on-freedom-of-expression/>.
- European Court of Human Rights, caselaw database, <https://hudoc.echr.coe.int/>.
- African Court on Human and Peoples' Rights, caselaw database, <https://www.african-court.org/wpafc/online-database/>.
- Inter-American Court of Human Rights, Jurisprudence Finder, <https://www.corteidh.or.cr/jurisprudencia-search.cfm?lang=en>.
- Columbia University, Global Freedom of Expression case law database, <https://globalfreedomofexpression.columbia.edu/cases/>.
- Office of the High Commissioner of Human Rights, UN treaty bodies case law database, <https://juris.ohchr.org/>.
- Joint Declarations of Special Rapporteurs, <https://www.osce.org/fom/66176>.

2 Using International Law in Domestic Courts and Tribunals

It is one thing to be knowledgeable about international norms and quite another to advance these standards before domestic courts and tribunals. As a preliminary point, it falls primarily to litigants to advance their cases, including through trying to introduce international human rights law arguments. At the same time, many courts allow for third party interventions or *amicus curiae* briefs, whereby third parties – such as academics, legal clinics or local or international NGOs – may present submissions, and these may also rely on international law. Third-party submissions may give more weight to international human rights arguments due to their authors' expertise, independence from the primary litigants and ability to delve deeper into international standards.

In principle, applicable international human rights norms are binding on all levels and actors of the State. As summarised by the UN Human Rights Committee in General

¹⁶ As summarised in Dunja Mijatović, "Foreward" [sic], in OSCE Representative on Freedom of the Media, *Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression* (2013, Vienna, OSCE), pp. 6-7, <https://www.osce.org/fom/99558?download=true>.



Comment No 34 on Article 19 of the ICCPR:

The obligation to respect freedoms of opinion and expression is binding on every party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party. Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities. The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.¹⁷

Similarly, Article 26 of the Vienna Convention on the Law of Treaties provides: “Every treaty in force is binding upon the parties to it and must be performed in good faith”. Article 27 adds that a “party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”¹⁸

17 UN Human Rights Committee, note 11, para. 7.

18 Vienna Convention on the Law of Treaties, adopted 23 May 1969, in force 27 January 1980.

Despite the theoretically 'binding' nature of international law, in practice the means through which international law is given effect in domestic legal systems varies considerably based on the local constitution, legislation and legal practices. Depending on the specific circumstances, international law may be invoked directly or, alternatively, may be used as an interpretive tool for domestic constitutional guarantees and legislation.

2.1 *Direct Applicability of International Law*

In certain jurisdictions, practitioners may be able to invoke international law, for example to challenge legislation or the actions of officials, directly because it is formally applicable as part of their legal system. This depends on the State's approach to recognising international law, which is normally set out in the constitution. There are two main approaches to this, namely:

- Monist States (for example, France, Brazil, Belgium, Argentina, the Dominican Republic, Namibia, Senegal, the Democratic Republic of Congo, Japan and the Netherlands) where international law is automatically treated as part of the domestic legal system once the State has ratified or acceded to a treaty.
- Dualist States, often from the common law tradition, whereby international law is not directly part of the domestic legal system unless the legislature has passed legislation specifically giving effect to it. Examples of dualist States include the United Kingdom, Canada, Nigeria, Malawi, Zimbabwe, Australia, the Philippines and India.

As a gloss on this, the constitutions of some States only incorporate parts of international law into their domestic legal systems. While practice on this is not entirely uniform, where this is the case, international human rights treaties are more likely to be among those parts of international law which are given direct effect. For example, Article 46 of the Guatemalan Constitution, while titled generally "Preeminence of International Law", refers in its substantive text more narrowly to human rights instruments, providing: "The general principle is established that in the field of human rights treaties and agreements approved and ratified by Guatemala have precedence over municipal law".¹⁹ The Constitutional Court of Guatemala's jurisprudence has evolved to confirm the direct effect of international human rights instruments that Guatemala is party to and their normative precedence over non-human rights treaties.²⁰

19 31 May 1985 Constitution of Guatemala, as amended by Legislative Decree No. 18-93 of 17 November 1993, Article 46, <https://constitutionnet.org/sites/default/files/Guatemala%20Constitution.pdf>. The normative force of human rights treaties is given further support by Article 44 of the Constitution, titled, "Rights Inherent in the Human Person", which states: "The rights and guarantees granted by the Constitution do not exclude others which, even though they are not expressly mentioned in it, inhere in the human person. Social interest prevails over individual [particular] interest."

20 Carlos Arturo Villagrán Sandoval, "A Reflection on the 'Dualism within Dualism' in the Interaction between International Law and Domestic Law in Guatemala" (11 October 2016) International Association of Constitutional Law (IACL) blog, <https://blog-iacl-aidc.org/2016-posts/2016/10/10/analysis-a-reflection-on-the-dualism-within-dualism-in-the-interaction-between-international-law-and-domestic-law-in-guatemala>.

Some States which essentially adhere to the dualist model have ways to mitigate its otherwise harsh impact. For example, the United Kingdom and Canada take an essentially monist approach towards customary international law, which is considered to be part of the domestic common law system in the absence of a conflicting domestic statute.²¹ At the same time, some monist States have measures to limit the applicability of international law. In the United States, for example, Article VI of the Constitution declares treaties to be the ‘supreme Law of the Land’. However, courts have developed a doctrine distinguishing between self-executing and not self-executing treaties, with only the former applying directly.²² A similar distinction also applies in South Africa by virtue of section 231(4) of the Constitution.²³

Even in countries in which international law is formally part of the local legal system there are often problems convincing judges to apply these rules directly. For example, judges in many common law countries are far happier applying court rulings from other common law countries than international standards. And many civil law judges are suspicious about international law, about which they often know little. It is thus important to “educate” judges about the constitutional position on international law when seeking to introduce its norms in court, while also making sure to present well-researched and documented arguments in this area.

The effectiveness of directly invoking international law as a binding source of law at the national level will thus depend on the constitutional position on this in each State, as well as established domestic practice in this area. Practitioners who wish to rely directly on international human rights law should, therefore:

1. Consult their constitution to ascertain their legal system’s approach to using international law in domestic courts. Where the constitution is silent on this issue, it may be necessary to refer to judicial decisions or doctrine for guidance.
2. Determine which norms are directly applicable (for example, by assessing which international instruments the State is party to or the applicability of norms of customary international law).
3. As relevant, namely in dualist States, assess whether domestic legislation has incorporated treaty obligations.
4. Consider how comfortable domestic courts are in applying international law and be careful to frame arguments accordingly based on this.

2.2 *Incorporation of International Law Through Statute*

Even in dualist States, there may be statutes which incorporate parts of international

21 *Trendtex Trading Corp. v. Central Bank of Nigeria*, [1977] 1 Q.B. 529, p. 554 (UK Court of Appeal); and *R. v. Hape*, [2007] 2 SCR 292, paras. 37-39 (Supreme Court of Canada)

22 *Foster and Elam v. Neilson*, 27 US (2 Pet) 253 (1829), (United States Supreme Court).

23 Constitution of the Republic of South Africa, No. 108 of 1996, <https://www.gov.za/sites/www.gov.za/files/images/a108-96.pdf>.

law into the domestic legal system. For example, Article 24 of the Civil Code of Jordan provides that certain national laws are inapplicable to the extent that they contradict international treaties.²⁴ In other cases, States incorporate entire international instruments either by reproducing them verbatim in domestic legislation or by using legislation to give them domestic effect. For example, Nigeria incorporated the entirety of the African Charter on Human and Peoples' Rights into law through a single statute.²⁵ At other times, the substance of an international instrument is incorporated in whole or part through a variety of other methods, for example through legislation or regulations which require legislative provisions to be interpreted in conformity with international law. In the Canadian context, for example, researchers have identified thirteen common ways of implementing treaty obligations.²⁶

These piecemeal approaches can lead to confusion on the part of decision-makers. As a result, lawyers in dualist legal systems who wish to rely on international norms which have been incorporated into the domestic system need to be aware of exactly which international law provisions have and have not been incorporated. This requires them to be aware of any statutes or regulations giving effect to international obligations.

An interesting issue arises, in relation to international provisions which have been incorporated via statute, as to whether this also incorporates legal and other authoritative interpretations of those provisions into the domestic system. For example, does incorporation of the African Charter of Human and Peoples' Rights also incorporate the jurisprudence of the African Commission on Human and Peoples' Rights interpreting the Charter? While the strict answer to this in most legal systems is probably not, in some cases, implementing legislation itself provides an answer. For example, section 2(1) of the Human Rights Act 1998 of the United Kingdom, which largely incorporates the substantive provisions of the European Convention on Human Rights into domestic law in the United Kingdom, provides for courts to take into account judgments of the European Court of Human Rights when interpreting these rights.²⁷ Even where this is not the case, though, binding international court interpretations of incorporated international law provisions are likely to be very persuasive for domestic courts as to the meaning of those provisions, while other authoritative interpretations are likely to be persuasive absent countervailing considerations.

2.3. Using International Law to Inform Constitutional Interpretation

International human rights law can play an important role in helping to promote positive

24 Translated in the National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21: Jordan, 29 July 2013, A/HRC/WG.6/17/JOR/1, undocs.org/A/HRC/WG.6/17/JOR/1. Original Arabic version available at: <https://landwise.resourceequity.org/documents/794>.

25 Act No. 2 of 1983 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 10 LFN 1990, 17 March 1983, <https://www.refworld.org/docid/54f966c34.html>.

26 Evan Fox-Decent and Armand de Mestral, "Implementation and Reception: The Congeniality of Canada's Legal Order to International Law", *The Globalized Rule of Law: Relationships between International and Domestic Law*, Oonagh Fitzgerald, et al., eds., (2006, Irwin Law), p. 45, <https://ssrn.com/abstract=1089489>.

27 Human Rights Act 1998, <https://www.legislation.gov.uk/ukpga/1998/42/contents>.

interpretations of constitutional rights, including constitutional guarantees of freedom of expression. Constitutional rights guarantees tend to be cast relatively broadly in terms of their wording and scope, using a few short sentences or less to frame rights with very wide-ranging implications. As such, they normally leave wide scope for interpretation which judges must somehow fill. International human rights law is ideally suited for this purpose both because aligning the constitution with international law helps give effect to States' international human rights obligations and because the latter frequently offers the most authoritative interpretation of the meaning of constitutional rights from among competing views. Put differently, courts may be called upon to apply brief constitutional guarantees to very different circumstances and, where such issues have not yet been addressed domestically, international law provides a highly persuasive source for such interpretive exercises. International human rights law can thus play a key role in constitutional challenges which argue that legislation or practices unjustifiably restrict freedom of expression.

Judges in some countries have demonstrated a willingness to rely on international human rights jurisprudence when interpreting constitutional guarantees, especially when faced with new or changing circumstances. For example, early cases from the Supreme Court of Canada, following the 1982 adoption of a constitutional bill of rights in Canada for the first time, in the form of the Canadian Charter of Rights and Freedoms, drew on international law in interpreting the scope of freedom of expression. Thus, the Court has been quite willing to refer to European Court of Human Rights jurisprudence despite Canada not being a party to the European Convention on Human Rights.²⁸

Certain constitutions expressly provide that international law must be considered when interpreting their rights guarantees. For example:

- Section 39(1)(b) of the South African Constitution of 1996 provides that a court, tribunal or forum “must consider international law” when interpreting the country’s Bill of Rights.²⁹
- Article 1 of the Constitution of Mexico provides: “The provisions relating to human rights shall be interpreted according to this Constitution and the international treaties on the subject, working in favour of the broader protection of people at all times”. The invocation of international human rights law in the Mexican context is also assisted by the Mexican constitutional arrangement, which is robustly monist in nature. Indeed, judges must apply duly ratified treaties “despite any contradictory provision that may appear in the constitutions or laws of the states”.³⁰

28 See for example, *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927 (Supreme Court of Canada); and *R. v. Keegstra*, [1990] 3 S.C.R. 697 (Supreme Court of Canada).

29 Constitution of the Republic of South Africa, No. 108 of 1996, <https://www.gov.za/sites/www.gov.za/files/images/a108-96.pdf>.

30 Mexico’s Constitution of 1917 with amendments through 2015, https://www.constituteproject.org/constitution/Mexico_2015.pdf?lang=en.

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Case study: Mexico

In a 2013 judgment, the Supreme Court of Mexico considered a constitutional challenge by the National Human Rights Commission to Article 373 of the Penal Code, which penalised 'false speech', and found that although the provision pursued a legitimate purpose it failed to meet the requirement of legality because it lacked precision. It also failed to meet the requirement of necessity because a less restrictive means to achieve the stated aim of the rule was available. The Court referred in its reasons to the test for restricting freedom of expression under the American Convention on Human Rights and relied on pertinent Inter-American Court of Human Rights case law.³¹

Case study: Egypt

In 2013, a controversial Egyptian political figure applied to Egyptian authorities to have the license of an online newspaper, *Al-Youm Al-Sabea*, suspended over satirical content about him that he considered calumnious, obscene and contrary to the terms of their licence. When the authorities refused, he sought judicial review of their decision but the Court of Administrative Judiciary in Egypt's Chamber of Economical and Investment Disputes (7th Chamber) rejected his application on the basis that suspending a licence was not a proper response to a defamation allegation. In its reasons, the Court referred not only to constitutional guarantees of freedom of expression but also to Article 19 of the ICCPR and UDHR, as well as UN General Assembly Resolution No 59 of 1946, which states: "Freedom of information is a fundamental human right and is the touchstone of all the freedoms".³²

2.4 Using International Law to Interpret Statutes

Regardless of whether a State has incorporated international standards through its constitution or domestic legislation, international law may still be invoked to assist with statutory interpretation. Many common law courts have adopted doctrinal approaches to statutory interpretation whereby they will, where this is otherwise reasonably possible, endeavour to interpret statutes in a manner which gives effect to a State's international

31 Action challenging the constitutionality of Article 373 of the Criminal Code of the State of Veracruz penalising false speech (Case Number 29/2011) (Mexico). An English summary of the judgment prepared by Columbia Global Freedom of Expression is available at: <https://globalfreedomofexpression.columbia.edu/cases/action-challenging-constitutionality-article-criminal-code-state-veracruz-penalizes-false-speech-content-disturbs-public-order/>. The original Spanish judgment is available at: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774>.

32 English summary of decision and link to original Arabic are both available at: <https://globalfreedomofexpression.columbia.edu/cases/mansour-v-al-youm-al-sabea-website/>.

obligations.³³ In some cases, statutes or the constitution actually requires decision-makers to interpret laws, where possible, consistently with international norms. For example, the Human Rights Act of the United Kingdom requires all legislation to be interpreted as consistently as possible with the European Convention on Human Rights.³⁴ Similarly, section 233 of the South African Constitution of 1996 provides: “When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.”

Even where such interpretive doctrines or statutory provisions exist in a dualist legal system, decision-makers may take the position that they are bound to give effect to unambiguous domestic legislation which conflicts with international norms. Therefore, in dualist systems, how active a role international law can play as an interpretive device will depend at least to some extent on whether the legislation in question is sufficiently broad or ambiguous to leave room for an international law-based interpretation.

Even where international norms are not binding on a State, practitioners may consider referring to them as a form of best practice, since courts may still find international standards and jurisprudence to be persuasive. This applies to both treaties and even non-binding ‘soft-law’ statements or decisions interpreting a treaty to which the State is not party. Courts and tribunals may be open to these sorts of standards out of a desire to keep pace with contemporary trends in human rights or simply because they are the most persuasive argument as to how domestic law should be interpreted.

Conclusion

International human rights law can be a powerful tool to use in domestic litigation. The most appropriate approach to take when seeking to apply international standards will depend on the rules in each State’s legal system governing the recognition of international law. The most effective approach is where the constitution directly incorporates duly ratified treaties, and places them above statutory law in the domestic legal system. But even where there is very limited formal legal recognition of international standards, these can, if used effectively, play a significant role in the way that courts interpret both statutes and constitutional human rights guarantees. As such, international law can potentially play a very important role in advancing freedom of expression in countries around the world.

33 See, for example, *Minister of State for Immigration and Ethnic Affairs v Teoh*, [1995] HCA 20, (1995) 183 CLR 273 (7 April 1995), para. 34 (High Court of Australia); *R. v. Hape*, 2007 SCC 26 (CanLII), [2007] 2 SCR 292, para 53. (Supreme Court of Canada); and *Adoption of Children Act Chapter 26:01, Re, Ciccone, Decision on merits, Adoption case No 1 of 2009*, [2009] MWHC 3, ILDC 1280 (MW 2009), 3rd April 2009, para. 34 (High Court of Malawi).

34 Human Rights Act 1998, note 30, section 3(1). See also Canada’s Immigration and Refugee Protection Act, (S.C. 2001, c. 27), section 3(3)(f), which requires that the Act be “construed and applied in a manner that [...] complies with international human rights instruments to which Canada is signatory.”



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