lawanddevelopment.org
exploring the links between law and economic development

Litigation, Transnational Civil Society and the Protection of Human Rights

Noah Gottschalk

lawanddevelopment.org
exploring the links between law and economic development

Global interactions increasingly rely on law to govern them. Today, numerous rules dominate the interactions between states and non-state parties. International courts and dispute settlement mechanisms are in place to ensure compliance with commonly agreed norms.

International Law, however, is complex and often lacks universal acceptance. Worse, its influence is disproportionally strong on the poorest countries and countries in crisis. It is in situations of poverty and conflict where international law has the most impact - for better or worse. International legal structures can provide security, stability and access to economic support, but they can just as easily prevent timely and adequate assistance. Development and humanitarian actors must increasingly be aware of their potential as well as their pitfalls.

Good Governance is easily prescribed, but must become a mindset of all involved to make the system work. Less and least developed countries are often governed by constitutions that are complex and inaccessible for their citizens. Without acceptance by their subjects, they weaken and cease to safeguard the nation state against failure. Development assistance must provide more than just models and institutions to move these countries forward.

Papers in the lawanddevelopment.org series aim to contribute to the understanding of the importance of these linkages and strive to support a better concept of how law can aid development. All papers are original works and are solely published on lawanddevelopment.org

---

For queries write to:

The Editor
lawanddevelopment.org
P.O.Box 1106
Nairobi 00502
Kenya

info@lawanddevelopment.org

www.lawanddevelopment.org

The Role of Transnational Civil Society in International Human Rights Law

"Transnational civil society" is the name given to networks between various non-state actors cooperating across state boundaries in matters of common political, social, and cultural interests.[5] These networks are increasingly important in addressing the exclusion of non-state actors from international law, a legal corpus that has traditionally been structured around the relations between states.[6] With few exceptions, although states may act on their behalf, individuals and groups within states lack the standing necessary to make claims of their own in international fora.[7] Complaint mechanisms to treaty-based bodies are one of the few instances in which an individual possesses *locus standi* and is therefore afforded direct access on an international level.[8] The International Covenant for Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are two examples of treaties with committees to which individuals may submit complaints against their states for violations of the rights contained therein.[9] For their part, NGOs are increasingly involved in international human rights law; not only do many possess consultative status to several

---

[5] Julie Mertus. "From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society." 14 American University International Law Review 1335 (1998-1999) at pp. 1337-8.
[6] Ibid, pp. 1339-40.
[7] Christine Chinkin. *Third Parties in International Law*. (Oxford 1993), p. 14
[8] Office of the UN High Commissioner for Human Rights, *Fact Sheet No.7/Rev.1, Complaint Procedures*. http://www.unhchr.ch/html/menu6/2/fs7.htm. Accessed 14/Apr/04.
[9] Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), G.A. Res 2200A (XXI), UN GAOR, Supp No. 16, at 59, UN Doc A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 11976; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Assembly resolution 54/4 of 6 October 1999, Entry into force 22 December 2000. Other examples include Optional Article 14 of the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD), G.A. Res 2106 A(XX), 20 UN GAOR Supp No. 14, at 47, UN Doc A/6014 (1965), 660 U.N.T.S. 195 and Optional Article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), G.A. Res. 39-46, 39 UN GAOR, 10th Sess, Supp. No. 51, at 197, UN Doc A/39/51. NGOs can also make "formal interventions on human rights matters" to the Committee on Economic, Social, and Cultural Rights, the Committee on the Rights of the Child, and the Committee Against Torture. Mertus, *supra* note 5, p. 1370, fn. 167 and p. 1371.

UN bodies, but others also participate in international conferences, both through involvement with their preparation as well as by holding parallel NGO conferences.[10]

Despite these expanding opportunities for participation in the conduct of international law, the limitations, both of access and of concrete results, in all these fora have led NGOs and individuals to become increasingly involved in a form of public interest law – referred to in this essay as human rights litigation – that contemplates the

> "subjects of traditional poverty lawyering – the poor, the powerless and other marginalized groups – in human rights terms, and formulates demands using tools of human rights accountability [including] the state's obligations to respect, protect, and fulfill individual and group rights."[11]

This essay will focus on human rights litigation in the courts of the developing world, paying particular attention to cases that involve cooperation between NGOs and individuals of both the developing and the developed worlds. Part I will attempt to place human rights litigation in context, firstly by offering a practical examination of its various forms, and secondly by exploring the reasons why human rights organizations might choose to pursue litigation as a means to their strategic ends. Drawing on a number of examples, Parts II and III will respectively examine the "pros" and "cons" of adopting the tactic of litigation in terms of the positive and negative impact it can have on the achievement of the broader human rights objectives in question. As the positive aspects of litigation are in many cases self-evident, its possible negative consequences will be examined in significant detail. Throughout the essay, the politics of voice and representation will be considered while probing the possible implications of human rights litigation on the creation of networks and partnerships between lawyers and activists in

---

[10] Mertus, *supra* note 5, pp. 1367-72.
[11] Deena R. Hurwitz. "Lawyering for Justice and the Inevitability of International Human Rights Clinics." 28 Yale Journal of International Law 505 (2003) at p. 513.

the developing and developed worlds in particular and on the state of the worldwide human rights movement in general. Finally, the Conclusion will balance the positive and negative aspects of human rights litigation to assess the necessary conditions for its successful application.

I. Human Rights Litigation in Context

A. Types of Human Rights Litigation

Several tactical options exist for those seeking to advance the cause of human rights through litigation. For example, while only states and international organizations possess *locus standi* to bring cases to international legal institutions such as the International Court of Justice (ICJ), NGOs may participate through the filing of *amicus curiae* or "friend of the court" briefs related to their position on the case.[12] Although they often represent a convenient and low-cost opportunity for NGOs to express their opinions and generally contribute to the richness and depth of legal arguments supporting their positions, organizations that submit *amici* briefs have no control over the course of litigation and can receive no direct benefit from a favorable decision.[13] Likewise, in the newly created International Criminal Court (ICC), the role of non-state actors is limited to offering information to the Prosecutor, who may "receive written or oral testimony" in accordance with *proprio motu* investigations of allegations of crimes that fall within the jurisdiction of the Court.[14]

---

[12] Dinah Shelton. "The Participation of Nongovernmental Organizations in International Judicial Proceedings." 88 American Journal of International Law 611 (1994).
[13] Ibid, pp. 611-612.
[14] Rome Statute of the International Criminal Court. U.N. Doc. A/CONF.183/9 (1998), *entered into force* July 1, 2002, Article 15. The concept of *proprio motu* refers investigations carried out at the Prosecutor's own initiative, as opposed to cases referred to him or her by the UN Security Council or States. See also Article 13 on Exercise of Jurisdiction and Article 14 on Referral of a situation by a State Party.

On the other hand, broadened definitions of standing in a number of jurisdictions as well as the increased incorporation of international human rights standards in domestic law have provided NGOs and their partners with access to a venue for the pursuit of binding remedies for human rights violations.[15] In the United States, however, where the public interest law movement initially benefited from broadened standing, successful human right litigation has been increasingly challenged by skyrocketing costs as well as a trend toward a narrowing of standing.[16] One notable exception to this trend is the growing number of cases litigated under the Alien Tort Claims Act (ATCA), which provides for original jurisdiction in federal courts for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."[17] Although this statute is itself presently the subject of a challenge in the US Supreme Court,[18] it has proved a important mechanism in a series of groundbreaking cases building on the initial precedent set for its use in 1980 by Filartiga v. Pena-Irala.[19] Recent cases brought under this statute include the successful albeit uncontested suit against Bosnian Serb leader Radovan Karadzic by victims of gross human rights abuses[20] and the pending case against Talisman Energy for its alleged role in financing and encouraging

[15] Jayanth Kumar Krishnan. "Public Interest Litigation in a Comparative Context." 20 Buffalo Public Interest Law Journal 19 (2001/2002) at pp. 53-54.
[16] Aron, *supra* note 1, pp. 14-21.
[17] Alien Tort Claims Act, 28 USC §1350
[18] Sosa v. Alvarez-Machain, US Supreme Court, Docket Number 03-339 (2004).
[19] Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir., June 30 1980). The petitioner, a Paraguayan political asylee living in the United States, brought a civil suit against the Inspector General of Police in Ascension, who was also living in the United States, for torturing her brother to death in Paraguay in connection to their father's political activities.
[20] Doe v. Karadzic, Kadic v. Karadzic, 866 F. Supp. 734, 70 F.3d 232 (filed in 1994, judgment for the plaintiffs in 2000)

human rights violations committed by the Sudanese government to secure its oil interests.[21]

Despite a small number of widely publicized judgments that provided for large monetary settlements, these ATCA cases are largely symbolic and psychological victories, as the actual recovery of damages would depend on the presence in the United States of assets belonging to the liable party.[22] Consequently, given the obstacles to successful human rights litigation, both in terms of lack of access to international bodies and in terms of lack of access to remedy in the case of the ATCA, many human rights NGOs have chosen to focus their efforts on litigating in the national courts of the country where the violations themselves are alleged to have taken place.

B. Factors Influencing the Adoption of Human Rights Litigation as a Tactic

> *"The public interest law movement…may forego the adversarial relationships of the courtroom in favor of mediating a dispute. Nonetheless, litigation remains the crucial weapon in their arsenal. The ability to sue is the great equalizer among parties to the public interest law case. Even if no lawsuit is brought, it is often the record of past litigation successes that puts "teeth" into these other strategies."*[23]

There are two major factors commonly recognized as influencing the decision by an NGO to employ human rights litigation: resource availability and degree of access to the courts.[24] The former refers both to financial and human resources, including attorneys and other legal personnel and the organization's ability to pay salaries as well as court and filing costs, while the latter refers to the requirements of standing in the country in

---

[21] The Presbyterian Church Of Sudan, Rev. John Sudan Gaduel, Nuer Community Development Services In U.S.A., Stephen Kuina, Fatuma Nyawang Garbang, And Daniel Wour Cluol, On Behalf Of All Others Similarly Situated, Plaintiffs, v. Talisman Energy, Inc. and The Republic Of The Sudan. 244 F.Supp.2d 289 (S.D.N.Y. 2003)

[22] John F. Murphy, "Civil Liability for the Commission of International Crimes as an Alternative to Criminal Prosecution," 12 Harvard Human Rights Journal 1, (1999) at pp. 28-30 and p. 31, fn. 195

[23] Aron, *supra* note 1, p. 96

[24] Krishnan *supra* note 15, pp. 51-53.

question.[25] There are several ways in which standing can be elaborated. In England and other common law jurisdictions, standing can be defined through evolving precedent, often at the instigation of judges themselves through conscious strategic decisions to expand the *locus standi* for public interest cases.[26]

A second means to this end is through constitutional law, both explicit – as in the case of Nepal and Botswana[27] –and implicit – as in the case of India, where activist judges such as Justice P.N. Bhagwati and Justice V.R. Krishna Iyer interpreted non-enforceable constitutional Directive Principles to constitute norms of social justice that legitimated the implementation of a broader *locus standi* in the public interest.[28] The third means of influencing standing is through statutory law, which can specify particular areas where an expanded *locus standi* is fundamental to public interests.[29]

Issues of resource availability and standing, however, only partly explain why NGOs choose to adopt litigation as a tactic. Other crucial motivations include five factors that Krishnan refers to as Interest Group Leadership Goals.[30] The first of these goals, the utilitarian, relates directly to the extent to which the NGO depends on litigation to achieve its policy objectives, and indirectly, the extent to which the victims on behalf of whom the organization is acting depend on a legal verdict to rectify or remedy human rights abuse.[31] Three of the goals are largely related to internal reasons an NGO might choose to litigate, including the reputation of the organization, pressure from strategic

---

[25] Ibid.
[26] John E. Bonine. "Standing to Sue: The First Step in Access to Justice." Mercer University Law School Virtual Guest Speakers, 1999. http://www.law.mercer.edu/elaw/standingtalk.html. Accessed 13/Apr/04.
[27] Ibid.
[28] Naim Ahmed. *Litigating in the name of the people: Stresses and strains of the development of public interest litigation in Bangladesh*. PhD Thesis, Department of Law, SOAS, University of London. (February 1998), pp. 42-50
[29] Bonine, *supra* note 26.
[30] Krishnan, *supra* note 15 at p. 58.
[31] Ibid, pp. 58-59.

partners to fulfill the perceived role of the organization, and the need to satisfy donors.[32] The final goal is based on the importance of publicizing the human rights issue in question, and like the reputation factor, might be particularly important in the negative sense in contexts where litigation carries a potentially damaging popular stigma.[33]

Given these numerous motivations, it is clear that much is at stake in pursuing litigation, both for NGOs as well as for the victims of human rights abuses themselves. It is therefore necessary to examine human rights litigation in practice in order to better assess its potential benefits and drawbacks from the perspective of both of these groups.

II. The Potential Benefits of Human Rights Litigation

For a number of reasons, human rights litigation can appear to all parties involved in bringing a suit to be a highly attractive option for addressing violations of human rights. As will be demonstrated below, significant benefits can often be accrued through adopting the tactic of litigation irrespective of the verdict; in fact, in some cases the eventual outcome of a case is less important than the process of litigating itself.

A. Successful Cases

Successful human rights litigation cases offer many of the same benefits to litigants as any civil suit. They might, for example, provide both immediate remedies such as compensation and injunctions against continued rights abuses to those wronged as well as the longer-term remedy of a binding precedent against future violations. To NGOs and lawyers, a successful case could mean substantial publicity for the issue concerned as well as for their organization.

---

[32] Ibid, pp. 58-62
[33] Ibid.

Fundamentally, the justice system can provide a unique venue where individuals can directly challenge authoritarian leaders and institutions of state, multinational corporations and others who exercise power seemingly without restraint. In the developing world, legal victories can be particularly important in the face of violations committed by multinational corporations, often in cooperation with governments that are more than willing to decease regulatory pressures to encourage "growth" and "development" regardless of the costs.[34] Favorable legal decisions provide a degree of legitimacy for fledgling or even relatively well established causes that in turn can be used as a source of strength, particularly in the face of seemingly invincible opponents.[35] When governments do seek change, legal victories provide both an avenue for approaching reform as well as a source of political momentum; they may also be particularly effective when it is the judiciary itself that is the source of human rights violations including limitations of access to justice.[36]

B. Unsuccessful Cases

Whether or not a case is ultimately successful, however, human rights litigation at its best can be a learning experience, both for lawyers who might not be familiar with the communities they are representing and for the community members who often lack knowledge of the law and of their rights. These learning experiences can form the basis of powerful transnational networks that can be mobilized to respond to future violations

[34] See, generally, Deborah Spar and David Yoffie, "Multinational Enterprises and the Prospects for Justice", in *Journal of International Affairs* (Spring 1999), vol. 52, No. 2.
[35] Tamara Jezic and Chris Jochnick. "The Meaning of a Legal Victory in the Ecuadorian Amazon" in Carnegie Council on Ethics and International Affairs, *Litigating Human Rights: Promise v. Perils*. Human Rights Dialogue, Spring 2000, Series 2, Number 2. http://www.cceia.org/media/608_hrd2-2.pdf. Accessed 07/Apr/04., p. 16. [Hereinafter, CCEIA]
[36] Richard J. Wilson and Jennifer Rasmusen. *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering.* International Human Rights Law Group (Washington DC 2001), pp. 51-2. http://www.hrlawgroup.org/initiatives/strategic_lawyering/promoting_justice.asp. Accessed 14/Apr/04.

and to mount proactive preventative campaigns.[37] Another way in which even failed litigation can be transformative for the communities and groups involved is that it can serve to frame issues of injustice in the language of rights, a development which can provide not only internal focus and legitimacy, but also national and international political currency for a struggle.[38] The process of litigation can therefore unite communities internally while providing a basis for seeking allies in the wider struggle for human rights.

Furthermore, the publicity of a public trial can harm the reputations of both governments and corporations that are slow to respond to demands for reform. Even unsuccessful suits – themselves often associated with the failure to deliver justice – can, for example, cause political and economic damage to governments that must meet loan conditions connected to human rights.[39]

<u>III. Possible Negative Consequences of Human Rights Litigation</u>

Despite the tangible benefits of human rights litigation discussed above, a significant number of negative repercussions must also be taken into account when assessing the conditions under which this tactic should best be applied.

<u>A. Litigation as a Drain on Limited Resources</u>

From the perspective of resource availability, human rights litigation can be extremely draining on an organization, particularly given the relatively small size of the average NGO involved in all types of human rights lawyering, including traditional legal aid and advice groups as well as general human rights organizations engaged in research

[37] "Introduction" in CCEIA, *supra* note 35, p. 3.
[38] Jezic and Jochnick in CCEIA, *supra* note 35, p. 16.
[39] Wilson and Rasmusen, *supra* note 36, p. 52.

and policy work.[40] The precarious nature of funding sources and the limited human resources, especially in terms of trained lawyers who can appear in courts, that are characteristic of most of these organizations encourages the implementation of less resource-intensive strategies including community-level training on basic legal issues and rights.[41] Furthermore, in accordance with the aforementioned strategic goal of donor satisfaction, the strains on time, money, and staff that litigation most often entails might alienate sponsors and other supporters who disagree with the allocation of limited resources to such cases.

B. Litigation and the Limitations of Formal Law

The nature of formal law within a particular national context may itself be an impediment to the effective use of litigation as a tool for advancing human rights. For example, specifically in cases related to the rights of women, minorities, and the poor, the association of formal law with structures of political power that "may be economically privileged, male-controlled, and geographically inaccessible to large segments of the population" presents obstacles both real and perceived to attempts at achieving meaningful social change through human rights litigation.[42] Furthermore, in countries where a system of customary law operates alongside formal law, it has been noted that formal guarantees of equality might have little effect on those issues, particularly in the case of women's rights, that are traditionally considered part of the private sphere and therefore encompassed by social, cultural and religious customs; consequently, changing

[40] Ibid, pp. 1-2.
[41] Ibid, p. 3.
[42] Hurwitz, *supra* note 11 at p. 519.

popular opinions might be a more urgent, and ultimately more effective, means of promoting human rights.[43]

C. The Divisive Potential of Litigation

Litigation might also expose or even foster divisions in communities, particularly with respect to who is included in the class bringing the suit and who is entitled to instruct lawyers, accept or reject settlement offers, and speak on behalf of the community to convey their opinions and interpret the human rights issues at the heart of the suit to the press and the general public.[44] These difficulties can be further complicated when the relationship between lawyers and clients and the population at large requires some form of cross-cultural communication. The case of Aguinda v. Texaco, which concerns indigenous communities in Ecuador seeking health-related and other damages against the oil company for gross environmental contamination including toxic waste dumping, presents a good example of the obstacles that cultural barriers can present.[45] Not only were there communication difficulties between the American lawyers and their clients, but other, arguably more critical divisions emerged between the Ecuadorian indigenous people who formed the majority of the class and the relatively small number of Ecuadorian non-indigenous who had settled in the affected region and increasingly operated without consultation with the entire class.[46] Judith Kimerling, an American lawyer who is heavily involved in much of the litigation and who has served as an

---

[43] Ibid, pp. 519-20, fn. 57.
[44] Benedict Kingsbury. "Representation in Human Rights Litigation." In CCEIA, *supra* note 35, p. 3.
[45] Aguinda v. Texaco, Inc.,945 F.Supp. 625 (S.D.N.Y.1996), *reconsid. denied,* 175 F.R.D. 50 (S.D.N.Y.1997), *vacated sub nomine,* Jota v. Texaco, Inc., 157 F.3d 153 (2d Cir.1998). This case was originally brought under the ATCA. A district court in New York, however, upheld an earlier dismissal of the case in response to Texaco's motion for *forum non conveniens*, challenging the court's jurisdiction. Subsequently, the case was brought in front of an Ecuadorian court.
[46] Judith Kimerling. "The Story from the Oil Patch: The Under-Represented in *Aguinda v. Texaco*" in CCEIA, *supra* note 35, pp. 6-7.

advisor to Ecuadorian indigenous groups, noted in response to reports that a settlers' group had secretly entered into negotiations with Texaco's lawyers that "ironically, it is precisely this pattern of closed-door deal making, without participation by affected peoples, that brought environmental devastation in the first place."[47]

Kimerling's involvement with this issue, which has spanned more than fifteen years and includes authoring major works in English and Spanish and conducting awareness campaigns in the Unites States and legal literacy trainings in the Ecuadorian Amazon,[48] is an example of the positive influence of the cooperative networks that can be formed between activists and lawyers of the developing and developed worlds. But she has also warned of the potential of foreign NGOs to pursue their own interests in the context of litigation in the developing world, to the detriment of the community and to the larger issues surrounding the litigation. In describing the failure of the foreign NGOs involved in the Ecuador litigation to participate in a comprehensive approach to the needs of the community, for example, she lamented that "supporting the litigation became an end unto itself, rather than one means among others to a greater goal."[49]

Foreign NGOs – or even local NGOs – may have strategic interests that lead them to take strategic positions that clash with the interests of the community they purport to represent.[50] For example, in Papua New Guinea, indigenous communities who brought a claim against an Australian mining company for violating their right to a safe environment found foreign environmental NGOs more concerned with the long-term

[47] Ibid, p. 7.
[48] City University of New York. "Our People: Faculty: Judith Kimerling." Available at http://web.law.cuny.edu/OurPeople/faculty/facultypages/kimerling.html. Accessed 14/Apr/2004.
[49] Kimerling in CCEIA, *supra* note 35, p. 7.
[50] Kingsbury in CCEIA, *supra* note 35, p. 4

ramifications of settling with the company, while locals are more preoccupied with day-to-day subsistence and survival.[51]

Therefore, at its worst, litigation can overshadow other tactics, exhausting human and material resources. In many cases, the law is simply not the most effective venue for the pursuit of human rights goals. Furthermore, the process of litigation can expose underlying divisions between locals and foreigners over long-term strategic interests; inevitably, the interests of one may be imposed on the other, to the detriment of the human rights concerns upon which litigation was based.

Conclusion

In light of the varied potential outcomes of human rights litigation, both inside the courts and out, it is imperative that NGOs and individuals considering adopting this tactic be aware of the consequences of their decisions. Several key factors can be extrapolated from the positive and negative implications described above that can help NGOs and individuals determine whether or not human rights litigation should form a part of their greater strategy for combating a human rights abuse.

The more informed NGOs and individuals are about the potential results of litigation, the better prepared they will be for the outcome, whatever it may be. Those considering human rights litigation must be informed of the costs, financial and human, at the outset; subsequently, a pragmatic decision must be made as to whether or not this tactic is most efficient given the resources of the group.

Time considerations are also important; groups facing problems that need immediate solutions should consider other strategies. This reality does not preclude any form of legal intervention however; the pursuit of temporary or preliminary injunctions,

[51] Stuart Kirsch, "An Incomplete Victory at Ok Tedi," in CCEIA, *supra* note 35, p. 11.

for example, can be an effective means of preventing a violation from continuing in the short-term while seeking to eradicate it altogether with other, non-legal means. For example, in Spain as well as in Latin American countries which possess legal systems based on that of Spain, persons seeking temporary injunctions can submit a writ of *amparo* (protection); although it was not customarily used for human rights purposes, a precedent was set when such a writ was employed by the Shuar indigenous community in Ecuador to obtain an injunction preventing the American oil company ARCO from pursuing further oil development on their lands.[52]

In the final analysis, inclusive human rights campaigns are the most effective. Particularly where standing to sue is limited to those who have directly suffered injury, NGOs seeking to advance policy aims can use their resources in traditional research and advocacy as part of a comprehensive, cooperative approach to support communities and individuals who have directly suffered as a result of human rights abuses. NGOs can also combine human rights litigation with more traditional techniques. Strategic litigation campaigns can be an important part of "naming and shaming" through the attention they gather in the media, but they can also be combined with grassroots training and political lobbying. Only when human rights litigation is considered as merely one component – albeit a powerful one – of social justice will its true potential for achieving positive change be fully realized.

[52] Jezic and Jochnick in CCEIA, *supra* note 35, pp.15-16.

Selected Bibliography

Books, Journal Articles, and Reports

Aron, Nan. *Liberty and Justice for All: Public Interest Law in the 1980s and Beyond* (Boulder and London 1989)

Bederman, David J. "International Law Advocacy and its Discontents." 2 Chicago Journal of International Law 475 (2001).

Bradley, Curtis A. "The Costs of International Human Rights Litigation." 2 Chicago Journal of International Law 457 (2001).

Carnegie Council on Ethics and International Affairs, *Litigating Human Rights: Promise v. Perils*. Human Rights Dialogue, Spring 2000, Series 2, Number 2. http://www.cceia.org/media/608_hrd2-2.pdf. Accessed 07/Apr/04.

Chinkin, Christine. *Third Parties in International Law*. (Oxford 1993)

Hurwitz, Deena R. "Lawyering for Justice and the Inevitability of International Human Rights Clinics." 28 Yale Journal of International Law 505 (2003)

Krishnan, Jayanth Kumar. "Public Interest Litigation in a Comparative Context." 20 Buffalo Public Interest Law Journal 19 (2001/2002).

Mertus, Julie. "From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society." 14 American University International Law Review 1335 (1998-1999).

Murphy, John F. "Civil Liability for the Commission of International Crimes as an Alternative to Criminal Prosecution." 12 Harvard Human Rights Journal 1 (1999).

Panikkar, Raimon. "The Mythical Horizon of Every Human Right: A Tale for Our Time." 21 Jeevadhara (1991), pp. 48-52. Available at http://sos-net.eu.org/red&s/dhdi/amis/panikka1.pdf. Accessed 14/Apr/04.

Shelton, Dinah. "The Participation of Nongovernmental Organizations in International Judicial Proceedings." 88 American Journal of International Law 611 (1994).

Short, Aric K. "Is the Alien Tort Statute Sacrosant? Retaining *Forum Non Conveniens* in Human Rights Litigation." 33 NYU Journal of International Law and Politics 1001 (2000-2001).

Spar, Deborah and David Yoffie, "Multinational Enterprises and the Prospects for Justice", in *Journal of International Affairs* (Spring 1999), vol. 52, No. 2.

Stephens, Beth. "Taking Pride in International Human Rights Litigation." 2 Chicago Journal of International Law 485 (2001).

Richard J. Wilson and Jennifer Rasmusen. *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering.* International Human Rights Law Group (Washington DC 2001), pp. 51-2. http://www.hrlawgroup.org/initiatives/strategic_lawyering/promoting_justice.asp. Accessed 14/Apr/04

Case Law (United States)

Aguinda v. Texaco, Inc.,945 F.Supp. 625 (S.D.N.Y.1996), *reconsid. denied,* 175 F.R.D. 50 (S.D.N.Y.1997), *vacated sub nomine,* Jota v. Texaco, Inc., 157 F.3d 153 (2d Cir.1998).

Doe v. Karadzic, Kadic v. Karadzic, 866 F. Supp. 734, 70 F.3d 232 (filed in 1994, judgment for the plaintiffs in 2000)

Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir., June 30 1980).

The Presbyterian Church Of Sudan, Rev. John Sudan Gaduel, Nuer Community Development Services In U.S.A., Stephen Kuina, Fatuma Nyawang Garbang, And Daniel Wour Cluol, On Behalf Of All Others Similarly Situated, Plaintiffs, v. Talisman Energy, Inc. and The Republic Of The Sudan. 244 F.Supp.2d 289 (S.D.N.Y. 2003)

Sosa v. Alvarez-Machain, US Supreme Court, Docket Number 03-339 (2004).

International Instruments

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), G.A. Res. 39-46, 39 UN GAOR, 10th Sess, Supp. No. 51, at 197, UN Doc A/39/51.

International Covenant on the Elimination of All Forms of Racial Discrimination (CERD), G.A. Res 2106 A(XX), 20 UN GAOR Supp No. 14, at 47, UN Doc A/6014 (1965), 660 U.N.T.S. 195.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Assembly resolution 54/4 of 6 October 1999, Entry into force 22 December 2000

Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), G.A. Res 2200A (XXI), UN GAOR, Supp No. 16, at 59, UN Doc A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 11976.

Rome Statute of the International Criminal Court. U.N. Doc. A/CONF.183/9 (1998), *entered into force* July 1, 2002.

Other

Ahmed, Naim. *Litigating in the name of the people: Stresses and strains of the development of public interest litigation in Bangladesh*. PhD Thesis, Department of Law, SOAS, University of London. (February 1998), pp. 42-50

Alien Tort Claims Act, 28 USC §1350.

Bonine, John E. "Standing to Sue: The First Step in Access to Justice." *Mercer University Law School Virtual Guest Speakers*. 1999. http://www.law.mercer.edu/elaw/standingtalk.html. Accessed 13/Apr/04.

City University of New York. "Our People: Faculty: Judith Kimerling." Available at http://web.law.cuny.edu/OurPeople/faculty/facultypages/kimerling.html. Accessed 14/Apr/2004.

Earthrights International. "ATCA Cases Against Government Officials." http://www.earthrights.org/litigation/governmentcases.shtml. Accessed 07/Apr/04.

Office of the UN High Commissioner for Human Rights, *Fact Sheet No.7/Rev.1, Complaint Procedures*. http://www.unhchr.ch/html/menu6/2/fs7.htm. Accessed 14/Apr/04.