Many countries are party to international instruments that contain strong protections for women from gender-based violence. Judges, prosecutors and advocates can utilize these laws in their domestic justice systems. Below is a checklist of the main issues that must be considered in order to use international law at the domestic level.

☐ Has the State signed and/or ratified the relevant international instrument(s)?

➢ For a State to be legally bound by a treaty, convention, covenant, or protocol, the State must have **signed and ratified** the instrument.\(^1\)

➢ Generally, if a State has **signed but not ratified** the instrument, its obligation is to refrain, in good faith, from acts that would defeat the object and purpose of that instrument.\(^2\)

☐ Is the instrument automatically incorporated into domestic law, or is it otherwise incorporated into domestic law through domestic legislation?

➢ Some states automatically incorporate ratified international instruments into domestic law (monist tradition) while others require that domestic legislation be enacted to give effect to treaty obligations (dualist tradition).

☐ Even if the State has not signed and ratified a treaty relating to an issue, do any principles of customary international law or jus cogens norms apply to the issue in question?

➢ In addition to international agreements, sources of binding international law include customary international law.\(^3\) In order for something to be considered customary law, it must be demonstrated that:

- There is a general practice among states, *i.e.* that state behavior conforms to some consistent pattern; and
- The state is acting under the belief of a legal obligation to practice such behavior (*opinio juris*).

➢ A *jus cogens* norm is something that is recognized by the international community of states as peremptory, or non-derogable. These rules prevail over and invalidate conflicting international agreements. *Jus cogens* norms include: the right to life; right to be free from torture and other cruel, inhuman and degrading treatment or punishment; the prohibition of genocide and the prohibition of slavery.

☐ When using international law in domestic cases, certain important rules may also apply and should be considered:

➢ The national constitution or other domestic law may give priority to international law in the case of a conflict with domestic law or in the absence of domestic law on point.

- Examples of two different approaches:
  - The Netherlands constitution states that ratified treaties occupy a superior position to domestic legal norms, prevailing even over inconsistent constitutional norms.\(^4\)
Acts of Congress, treaties and other international agreements of the United States, and principles of customary international law, are all federal law. A rule of international law or a provision of an international agreement of the United States will not be given effect as law in the United States if it is inconsistent with the United States Constitution. With regard to conflicts between international and domestic law, the latter in time prevails.

Courts may be required to consider international law as a result of common law principles that require that regulations be consistent with international law.

For example:

In the United States, the Charming Betsy, or “Friendliness toward International Law,” Principle of Interpretation applies, which requires that, in the absence of clear legislative repudiation of international standards, courts must:

- Determine the meaning and status of relevant international norms;
- If international norm is relevant and nothing in legislation overrides it, or if inconsistency can be fairly resolved, the court should interpret to preserve the maximum scope for both; but
- If conflict is unavoidable, then the court must choose the prevailing norm according to the hierarchy of laws applicable to their domestic systems.

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1 For a country-by-country listing of international human rights treaty ratification, see International Human Rights Treaty Ratification by Country.
2 Vienna Convention on the Law of Treaties, art. 19(c); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 28(2).
3 Restatement (Third) of the Foreign Relations Law of the United States, § 102 (Sources of International Law).
4 Article 94, The Netherlands Constitution: “Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions.”