One of the challenges to developing and implementing international laws effectively is to recognize when so-called “universal” norms conflict with local beliefs and practices. This multi-cultural challenge is perhaps felt nowhere as strongly as in the domain of gender and human rights. In order for fundamental human rights to be accorded to every person, the problematic status of women in many parts of the world and their particular vulnerabilities must be closely examined.

BIJJ participants were asked to contemplate the nature of human rights and whether they should be differentiated from women’s rights. The following questions were posed:

• Is the experience of women, as a group, so distinct that they should benefit from particular rights, like certain minorities and indigenous populations around the world? Or does the fact that women number more than half the world’s population preclude such a classification?

• How should women’s “harm” be characterized, beyond clear violations of rights such as rape?

• Can the rights of women be protected regardless of the cultural context?

Violations of women’s rights are often difficult to examine since they tend to take place in the domestic sphere or in an intimate context, outside of the public gaze. Historically, there has been a feeling that the state should not intervene in this private realm, a feeling reinforced by many cultural beliefs.

Cultural norms and the law are often in contradiction when it comes to the rights of women. There are many different approaches to addressing this conflict. Some believe that culture should always determine what is appropriate in a given context, while others believe that international laws protecting women should have the ultimate determination. In certain countries, laws have even been enacted that address this conflict. For example, given a choice between gender equality and cultural tradition in South Africa, the courts will support the former. Some argue that the protection of women might best be approached not through international human rights law at all, but instead through social movements and the advocacy of civil society at a more local level. This has been the case with female genital mutilation (FGM), a practice that is culturally defended in many parts of the world but generally viewed as a human rights violation by the international community.

While the dichotomy of culture and international law might appear difficult to bridge, participants were asked to remember that cultures are not fixed in stone but changeable, porous, and often inconsistent. There may be “competing traditions” within a single culture that can be used to reinterpret certain practices, thereby eliminating the need for interference by outside laws. Once again, this has been the case with FGM. Local NGOs have convinced some populations to highlight the coming of age and initiation aspects of the ceremonies surrounding the practice but to abandon the actual physical procedure. Others have encouraged re-readings of religious texts to remove interpretations that apparently but erroneously encourage the practice.
Several BIIJ participants noted that the domestic laws concerning the protection of women’s rights in their countries are inconsistent, outlawing gender discrimination in some areas and allowing it in others. They suggested that the domestication of international instruments concerning women would be a first step in applying such norms both locally and more uniformly. But legal investment in these norms, they added, must be accompanied by political support and public consciousness-raising.

While establishing international standards for the rights of women around the world is far from being a reality, international courts have made strides in defining certain crimes that violate the rights of women. The ICTY was successful in establishing rape as a war crime. The ICTR was the first tribunal to convict a defendant for rape as an act of genocide. The SCSL more recently established that the forced marriage of women is a crime. Yet, women’s rights issues that do not come before high-profile criminal courts—lack of access to education, child marriage, the protection of women refugees, the rights of widows—have received less systematic and sustained attention.

Finally, BIIJ participants discussed another gender inequity, this one closer to home—the under-representation of women in their own courts. It was asked whether women judges bring special insights to the profession or to the judgment of particular cases. Or does this idea itself suggest a bias or stereotyping of gender identities? It has been argued that women tend to be more sensitive to the crimes of rape and domestic abuse. But there is also evidence that some female judges may be less sympathetic to the victims of these crimes, perhaps anticipating accusations of partiality.

Whether women perform differently on the bench or not, it is clear that they are greatly outnumbered by their male peers. The ICC responded to this imbalance by instituting a quota for women judges on their bench. The newly established African Court for Human and Peoples’ Rights, following the lead of the African Commission, will also call for a balanced representation. It was agreed that women face more challenges in becoming judges on international courts and tribunals because they are less likely to hold top positions in law schools or other posts that typically lead to election or appointment. This pattern of discrimination is clearly not confined to the international justice system but is global in nature.