This manual is the product of a collaboration between two organizations that share a common commitment to human rights and justice: the American Bar Association’s Center for Human Rights (ABA Center for Human Rights) and the Center for the Public Interest at Brown Rudnick LLP, an international law firm.

One of the programs at the ABA Center for Human Rights is the Justice Defenders Program (JD Program), which provides pro bono legal assistance to human rights defenders working in difficult environments and vulnerable circumstances around the globe. Through the JD Program, the ABA observes, advises on, and raises public awareness of sensitive trials and cases. The JD Program also deploys legal experts to help human rights defenders represent themselves or their clients in court against frivolous charges. These experts provide local attorneys and advocates with research on relevant international standards of due process and fair trials, and assist in the use of international law to bolster domestic legal arguments. In recognition of a mutual interest in these cases, Brown Rudnick and the ABA Center for Human Rights explored ways to combine forces in support of such courageous human rights defenders.

Brown Rudnick is a premier international commercial law firm emphasizing corporate restructuring, high-stakes litigation, mergers and acquisitions, securities, corporate finance, white-collar defense, and services in the areas of energy, real estate/environmental, and tax matters. The firm also has made a unique commitment to the pursuit of the public interest through its Center for the Public Interest. For more than a decade, the center has combined the power of pro bono legal representation, charitable giving, and community service to help those in need.

The center has long been active in each of the cities and countries in which the firm has offices, and the International Due Process and Fair Trial
Manual marks an opportunity to bring that commitment to the global community. To that end, Brown Rudnick attorneys worked closely with the ABA Center for Human Rights in designing, creating, and editing this manual into a sophisticated but practical guide. These extensive efforts resulted in a manual that will supplement and maximize the effect of the ABA’s deployed experts and will serve as a practical and approachable introduction to international law for the human rights defender on the ground.

Although this manual cannot and should not replace in-depth legal analysis tailored to a specific case, it provides the basis for human rights arguments that can be made in any courtroom, police station, or prison in the world. While we have tried to make this manual as user-friendly as possible, a few words are needed to describe how it was constructed and how to navigate and use its contents.

I. Structure of the Manual

The manual is divided into two sections: a Quick Reference section and in-depth chapters devoted to specific topics. All of the sections have been similarly organized, which means the headings in each section will mirror the headings in the other sections.

The Quick Reference Section gives the reader a convenient way to review possible issues that may affect his or her client and to offer information that will help lead to a quick understanding of the issues. For instance, if an advocate learns that a client has been arrested, the Quick Reference Section will provide an overview of relevant international standards concerning arrest and detention, and a “practice point” will offer advice on how to deal with the client’s situation.

Each part of the Quick Reference Section corresponds with the in-depth section, in which the reader can find more detail about a specific area of law. The in-depth sections provide further discussion and citations that an advocate can use in formulating oral arguments or drafting briefs, motions, or other legal submissions.

Further, the in-depth sections have terms in boldface type, which are defined in the Glossary, as well as important legal points to remember. For
the reader’s convenience, the beginning of each section lists the main legal sources found in that section.

Last, but likely most important, these sections provide advocates with advice on how to handle legal or factual issues discussed in that particular portion of the manual, offering pointers such as how to object orally or how to draft a motion. These “practice points” appear in boxes for easy identification.

II. The Relationship of International Law to Domestic Jurisdictions

The first part of this manual, “International and Comparative Law,” deals with the interaction between international law and domestic legal systems. Generally, domestic laws are specific rules that bind the inhabitants of a particular state, whereas international laws are concerned primarily with standards that are applicable worldwide. However, states and their domestic laws must conform to international obligations, specifically with respect to treaties that they ratify, as well as universal standards of customary international law. In other words, international law provides the foundational principles with which all domestic law should comply, while domestic law fills out the details of how those legal principles are applied and, in some cases, may provide additional protections.

Every state has a different approach to how it actually applies international law. Some countries allow international law, such as treaties, to be applied directly in their courts once the state signs a treaty. This approach, however, is unusual. Many countries require domestic action, such as passing a national law implementing a treaty, before international law can be applied in the local courts. For example, although the rights of a criminal defendant are guaranteed under the International Covenant on Civil and Political Rights (ICCPR), those rights do not have effect domestically until implementing legislation is passed. In other cases, implementing legislation may be unnecessary because domestic law already guarantees the rights found in the ICCPR. Regardless of how international law is applied domestically, is an important consideration for advocates to consider when making their arguments.
III. How to Use the Manual

Due to the different approaches among nations with respect to international law, the laws and practice tips in this manual should be used to *supplement*, not supplant, domestic legal arguments. Unless the country in which one is arguing has made international law directly enforceable in its courts, advocates should not claim that the sources in this manual are directly binding on a local court. On the other hand, advocates are strongly encouraged to look to this manual for international law that *supports* their domestic arguments. Most important, when local laws directly *conflict* with international standards, an advocate should politely—but firmly—argue that the domestic law violates international law and should not be followed.

For example, if an individual is arrested and interrogated by the police without being given access to a lawyer, his attorney should present any appropriate arguments under domestic law on the right to legal counsel. After these arguments have been made, this manual can be used to determine if there are any relevant standards under international law that may complement these domestic legal arguments.

Staying with this example, Section 2 of this manual discusses Article 14 of the ICCPR, which deals with the general right to be represented by an attorney. Advocates must first determine whether the state has signed the ICCPR and, if so, that it did not make any Article 14 reservations to the treaty. Next, the advocate determines whether, through self-execution or implementation of the legislation, the ICCPR has been given effect domestically. If the state has signed and made the ICCPR enforceable domestically, the advocate would inform the court or government official that Article 14 of the ICCPR applies domestically and insist that the arrested person be allowed to see a lawyer and/or that any evidence from an interrogation would be considered illegally obtained because the arrested person was prevented from consulting a lawyer.

However, if the advocate discovers that self-execution does not apply or ICCPR implementation legislation does not exist, the advocate may nonetheless argue that the state is bound by the ICCPR as a signatory and is required to interpret its laws in a manner consistent with its treaty obligations.

If the state has not signed the ICCPR, the advocate would determine if the
right or norm in question is recognized as a universally binding international norm, or “customary international law,” using the standards and methods described in the “International and Comparative Law” chapter as a guide. If so, he or she would argue that the domestic court is bound by the norm, or Article 14 of the ICCPR in this example. If neither the treaty nor customary international law applies, the advocate may nonetheless argue that the norms are persuasive authority that should be considered by the court.

On a separate but related note, Section 2 of the manual also describes the procedural rules that apply at international criminal tribunals and other human rights bodies. For example, these rules describe exactly when counsel should be assigned to an arrested individual. Although these rules are almost never directly applicable to domestic states, they are persuasive authority of how the ICCPR has been interpreted by respected legal institutions. Therefore, the advocate in the example above would also argue that these rules (such as the rules of the International Criminal Court) are examples on how and when defendants should have access to an attorney before being interrogated. This same step-by-step process should be followed in using the manual to confront a variety of legal issues.

* * *

It is our great hope that this manual will empower human rights defenders around the world to protect their clients and ensure respect for human rights enshrined in international law.