

Women's International and Comparative Human Rights

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*To Jonathan, my loving husband and
to Michele, Gregory, and Jeremy, my loving children, and
to Julian, Max, Levi, Isadora, and Otis, my loving grandchildren
and the new generation of human rights advocates.*

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Preface

This book is a collection of excerpted cases, statutes, treaties, newspaper articles, law review articles, books, and UN committee reports that provide insight into the complex issue of women's international and comparative human rights, as protected and provided by laws in countries all over the world. The international law of human rights is defined as the laws dealing with the protection of individuals and groups against violations of their internationally guaranteed rights. International human rights include civil, political, economic, social, and cultural rights. Since women in society are regarded as child bearers and a primary source of child care and child rearing, women's human rights are intricately related to children's human rights.

This book looks into the history of the global human rights movement and how international and comparative human rights laws,¹ instruments, and institutions respond to women's human rights violations. Since World War II, there has been a significant development of international human rights institutions and conventions emanating from the UN Charter and the international bill of human rights. These institutions and treaties have influenced the protection and provision of women's human rights all over the world.

Human rights are not found exclusively in laws. They are reflected in political policies, moral ideas, customs, international relations, and in foreign policies. In this book we adopt an interdisciplinary approach that takes into account the multiple sources of women's rights and their diverse representations in international human rights laws, international legal instruments, UN treaty organs and reports, the jurisprudence of regional and international tribunals, and the work of non-governmental organizations (NGOs) in the human rights movement to protect and provide women's rights. Rules and standards of contemporary human rights are expressed in states' constitutions, laws, practices, international treaties, customs, court decisions, investigative reports, and recommendations of international institutions and of governmental and non-governmental actors. These sources help to understand the ongoing development of women's human rights in the world.

In the comparative vein, we focus on women's rights reflected in particular legal instruments and practices of other countries like Chinese criminal law, the Chinese Constitution, Iranian family laws, French case law, European human rights laws, Guatemalan human rights practices, African practices regarding the use of girl children as soldiers, and US statutes as well as the US Constitution protecting women. Moreover, we analyze and com-

1. See A. MARK WEISBURD, *COMPARATIVE HUMAN RIGHTS LAW*, vols. 1 and 2 (Carolina Academic Press 2008), a short casebook featuring variations in approaches to human rights in several legal systems of the world including Japan, Europe, India, and the United States.

pare state and international policies, practices, and attitudes in many countries in order to understand the causes and consequences of discrimination and abuse perpetrated on women.

Gender justice and the empowerment of women to facilitate the full enjoyment of their human rights, accountability, and enforcement is a central theme of this book. We pay special attention to the international crimes of sex slavery, human trafficking, child soldiering, and rape as a weapon of war in the development of massive human rights violations in which women and girls are particularly vulnerable.

In this book we look at both international law and international human rights law because human rights are an integral part of international law. International law has traditionally been defined as the law of nations or the law governing relations exclusively between nation-states. Therefore, only states have been the subjects of, and have legal rights under, international law. After World War II, this definition was expanded to include newly created intergovernmental organizations having some limited rights under international law. However, even according to this expanded definition of international law, individual human beings have had no international legal rights as such and are said to be objects rather than subjects of international law. Because international law does not apply to human rights violations committed by a state against its own citizens, the jurisdiction of a human rights case falls exclusively within the domestic jurisdiction of each state. According to the sacred rule of non-intervention and the importance of the doctrine of state sovereignty, other states are barred from intervening on behalf of the nationals of one state who have been mistreated by their own government officials. There are, of course, exceptions to the rule of non-intervention and the threat or use of force against the territorial integrity or political independence of any state; however, generally the principles of non-intervention, as articulated in Article 2(4) of the UN Charter, and the doctrine of state sovereignty are sacred in international law and can deter or even prevent a humanitarian intervention that might otherwise avoid the denial of human rights to individuals and especially to the most vulnerable who are the women and children.

Another branch of international law that has a human rights component is known as “humanitarian law” or the law of armed conflict, one of whose basic tenets is the principle of respect for “humanity” during war. Therefore, in the spirit of interdisciplinary analysis, we will refer to women’s human rights as reflected in international law, international human rights law, and international humanitarian law.

The purpose of this book is to investigate international as well as comparative women’s human rights. Comparative law is the study of differences and similarities among the laws and legal systems of other countries. Different legal systems that are relevant to women’s human rights in the world include the common law, the civil law, socialist law, Islamic law, Hindu law, and Chinese law. The importance of comparative law has increased in the present age of internationalism, economic globalization, and democratization. The human rights laws and practices of other countries are greatly influenced by international law. If a country is a signatory to an international treaty which is not self-executing, that country must enact domestic laws enabling the provisions of the international treaty, and then it must implement the treaty’s norms in its own state. Even if a country is not a signatory to a particular international treaty, the country may be bound to the laws of that convention by “customary international law.”

Women’s international and comparative human rights law is a vast subject that cannot be covered in one relatively short book. Therefore, we have chosen some of the most important and controversial women’s rights issues, knowing that we will not be able to touch upon many other serious problems that women face all over the world. This book examines women’s civil, political, social, economic, and cultural rights; women’s human

rights in armed conflict; women's fundamental right to manifest their religion; their right to be free from slavery and sex trafficking; the rights of women with disabilities; and the right of women to be free of institutionalized female infanticide, sex-selection abortion, child soldiering, sexual violence, and torture.

The major human rights treaties and other international instruments discussed are provided in the Appendix to this book.

I would like to give special thanks to Thomas Jefferson School of Law and its wonderful library research staff for enabling me to do the research and writing of this book. I would also like to thank my research assistants, Christie Edwards, Oksana Golovina, John G. McCreary, and Brian J. Link for their patience, determination, and invaluable assistance with the production of this book.

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