

Black Women and International Law

Deliberate Interactions,
Movements, and Actions



EDITED BY
JEREMY I. LEVITT

CAMBRIDGE

Black Women and International Law

DELIBERATE INTERACTIONS, MOVEMENTS,
AND ACTIONS

Edited by

JEREMY I. LEVITT

University of New Brunswick Law School



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE
UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107021303

© Cambridge University Press 2015

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2015

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Black women and international law : deliberate interactions, movements, and actions /
Jeremy I. Levitt, University of New Brunswick Law School.

pages cm

1. Law. 2. Women, Black – Legal status, laws, etc.

I. Levitt, Jeremy I., 1970– editor. II. McDonald, Gabrielle Kirk, honouree.

K561.B57 2015

342.08'78–dc23 2014043734 .

ISBN 978-1-107-02130-3 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

BLACK WOMEN AND INTERNATIONAL LAW

Deliberate Interactions, Movements, and Actions

From Compton to Cairo and Bahia to Brixton, Black women have been disproportionately affected by poverty, illiteracy, unemployment, discrimination, and violence. Despite being one of the largest and most geographically dispersed groups in the world, they are rarely referenced or considered as a subject of analysis in international law literature. Thus, it is vital that scholars refashion global discourse by reconceptualizing international law and relations from their unique experiences and perspectives.

This unique and eclectic collection covers a broad range of topics and issues that examine the complex interactions – as subjects and objects – between Black women and international law. The book critically explores the manifold relationships between them with a view toward highlighting the historic and contemporary ways in which they have influenced and been influenced by transnational law, doctrine, norms, jurisprudence, public policy, public discourse, and global governance. It purports to unearth old law and fashion new paradigms born out of the experiences of Black women.

Jeremy I. Levitt is Dean and Vice Chancellor's Chair at University of New Brunswick Faculty of Law and Distinguished Professor of International Law at Florida A&M University College of Law. Professor Levitt is a leading scholar on the international law of the use of force, human rights law, peace studies, and the international law and politics of Africa. In 2012–13, he was the Fulbright Research Chair in Human Rights and Social Justice at the University of Ottawa. He has authored two books, edited four, and written more than thirty academic articles. He recently completed a groundbreaking study titled *Illegal Peace in Africa: An Inquiry into the Legality of Power Sharing with Warlords, Rebels, and Junta* (2012).



Judge Gabrielle Kirk McDonald

Contributors

Adjoa A. Aiyetoro

Associate Professor

University of Arkansas at Little Rock

William H. Bowen School of Law

Carol Boyce-Davies

Professor of English and African Studies

Cornell University

Ithaca, New York

Karen E. Bravo

Associate Professor of Law

Indiana University School of Law

Bloomington, Indiana

Eleanor Marie Lawrence Brown

Associate Professor of Law

George Washington University School of Law

Washington, DC

Fatou Kiné Camara

Associate Professor of Law

Faculty of Judicial and Political Science

Cheikh Anta Diop University

Dakar, Senegal

Erika George

Professor of Law

University of Utah S. J. Quinney College of Law

Salt Lake City, Utah

Linda Sheryl Greene*Evjue-Bascom Professor of Law**University of Wisconsin–Madison School of Law**Madison, Wisconsin***Gabrielle Kirk McDonald***Judge**Iran–United States Claims Tribunal**The Hague, The Netherlands***Judith A. M. Scully***Professor of Law**Stetson University School of Law**Gulfport, Florida***Anna Spain***Associate Professor of Law**University of Colorado Law School**Boulder, Colorado***Adrien Katherine Wing***Bessie Dutton Murray Professor of Law**University of Iowa College of Law**Iowa City, Iowa*

Foreword

Against all odds, Black women have carved themselves a remarkable niche in history. Our contributions to humanity are significant and undeniable. Since antiquity, we have built nations, fashioned law, led armies, ruled empires, and forged peace agreements and global alliances. Queen Hatshepsut of Egypt was one of the ancient world's most prominent Black woman leaders; after decades of war with the Hyksos and other nations, "Her Majesty the King," as she was known, brought prosperity to the vast Egyptian Empire. From the ancient Candace women leaders of Meroë, in what is now Sudan, to the seventeenth-century Queen Nzinga of Angola, powerful Black women have contributed much to African history.

But centuries of the slave trade, enslavement, colonialism, apartheid, racial oppression, and wars took a heavy toll on people of African descent, in Africa and elsewhere. The toll on women was, perhaps, particularly heavy.

After generations of oppression and inequality, we have begun to see tremendous progress in women's rights around the world. Black women, too, are advancing. They participate or hold high office in national governments and legislatures. Black women's groups and organizations in Africa and across the Diaspora are more organized and effective, both locally and transnationally, than they have ever been. Black women are playing key roles in global governance – from national governments to international organizations such as the UN, international courts and tribunals, and nongovernmental organizations – as well as in national and multinational corporations.

Yet this tide of progress is still not strong enough to ensure that women – and Black women in particular – can benefit from conditions of equality. Women remain sorely underrepresented in decision making at the local, national,

regional, and international levels. They experience gender-based violence or sexual assault disproportionately. Women, globally, do not receive equal pay for equal work. They do not have equal access to resources. And particularly – but not exclusively – in developing countries, they struggle against constraints on their sexual and reproductive health and rights. So far, the human rights of women have not been given their rightful, central place in the agenda for human development. This must change.

Black women have been at the forefront of protecting the principles of equity, equality, and nondiscrimination. Black women lawyers – pioneers like my dear friend Judge Gabrielle Kirk McDonald – have committed their lives to serving the public good through their affirmative efforts and model performance. Professor Levitt’s commendable study of the interactions and interplay between Black women and international law provides vital insights into the various ways in which they are portrayed as objects rather than subjects of international law. It documents an often tense and unacknowledged relationship, and it highlights the various ways in which Black women have contributed to the normative development of international law.

The life, career, and persona of Judge Gabrielle Kirk McDonald embody Zora Neal Hurston’s wry saying, “I do not weep at the world – I am too busy sharpening my oyster knife.” As a fellow international judge, I admire her record as one of the most prominent international jurists of the late twentieth and early twenty-first centuries. She was one of the eleven judges appointed to the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, and became its president from 1997 to 1999 – a crucial period as the newly created international criminal court, mandated to effectuate international criminal justice, became operational. Judge McDonald was the first (and only) female president of the court. As presiding judge in Trial Chamber II, she issued the court’s verdict against Duško Tadić – the first person to be prosecuted in an international war crimes court since the days of the Nuremberg Trials and the International Military Tribunal for the Far East. Her efforts, in no small part, set the ICTY on course to prosecute gender-related crimes, such as rape as a war crime and a crime against humanity, forever changing the course of international criminal justice.

In 2001, Judge McDonald was appointed to the Iran–United States Claims Tribunal in The Hague, which had been established by agreement between the United States and Iran to adjudicate state-to-state claims and claims for compensation by U.S. citizens regarding assets nationalized by the Iranian government. One of three American arbitrators, Judge McDonald was the

only woman and the only person of African descent on the nine-person panel. She served on the Claims Tribunal for thirteen years and distinguished herself as a leading arbitrator, unafraid to be objective and impartial.

This volume of essays is a timely and apt tribute to Judge McDonald for her tireless work for the international public good and her service as a role model, particularly for women of African descent. Over the course of twenty years, she played an important role in international criminal law and international arbitration, in both instances advancing the greater cause of human rights and justice. Her life is a vivid example of intellectual ingenuity, fortitude, and excellence in pursuit of freedom and justice.

Navi Pillay
UN High Commissioner for Human Rights

Preface

It is a great privilege to edit and contribute to this volume in honor of my mentor and friend, Judge Gabrielle Kirk McDonald, a preeminent African-American international jurist, scholar, and advocate who served as one of three American arbitrators on the Iran–United States Claims Tribunal and as former president of the International Criminal Tribunal for the former Yugoslavia. This short book of assorted essays on Black women and international law is a tribute to her remarkable career and legacy as a pioneering African-American internationalist. Judge McDonald’s renowned career as an advocate for the disadvantaged and oppressed has spanned fifty years, giving meaning to the imitable words of Shirley Chisolm, “Service is the rent that you pay for room on this earth.” Judge McDonald’s life is brilliant testimony that one courageous and righteous soul, steadfast in her conviction for justice, can chart the course of history.

This unique and eclectic collection of contributions addresses a narrow theme that is reflected in the title, *Black Women and International Law*. The chapters cover a broad range of topics and issues that examine the complex interactions – as subjects and objects – between Black women and international law. In addition to honoring Judge McDonald, the book critically explores the manifold relationship between Black women and international law with a view to highlighting the historic and contemporary ways in which they have influenced international law, doctrine, norms, jurisprudence, public policy, public discourse, and global governance. The term “Black women” is broadly construed in the Pan-African context to include all women of African descent, irrespective of their place of birth or national origin.

I began thinking about a *Black Women and International Law* project in 2002. My work and research in Africa signaled a shift in the perception of Black women from mere objects to formidable subjects of international law and

development. And, while this transference is ongoing, I was compelled to provide preliminary context to it. Consequently, on March 4, 2010, I organized a thought-provoking roundtable discussion entitled “Towards an International Law of Black Women: New Theory, Old Praxis” at Florida A&M University College of Law in Orlando, Florida. Six months later, on September 10, 2010, I chaired another provocative panel discussion with the same panelists at the Third National People of Color Conference at Seton Hall School of Law. Amended versions of some of the papers that originated from these panels, as well as offerings made by other scholars, comprise the essays in this book. What emanated from these discussions is a preliminary understanding that Black women have participated in authoring protective regimes on human rights, women’s rights, children’s rights, armed conflict, racial discrimination and reparations, humanitarian law, international criminal law, environmental law, democracy, self-determination, microfinance, and intellectual property norms, among other areas. It is my sincere hope that this limited collection of essays will spur a new field of inquiry on Black women and international law and address the multifarious ways in which they interact and contribute to its development.

The book seeks to reinterpret and determine – through global lenses – the extent to which Black women have impacted and been impacted by transnational law, norms, doctrine, jurisprudence, policy, processes, and thinking. It purports to unearth old law and fashion new paradigms born out the experiences of Black women. To this end, the book falls within the intellectual rubric of what the eminent international law scholar Henry J. Richardson III refers to as the Black International Tradition (BIT), which sits squarely within Pan-African philosophy. The BIT provides a malleable chronological corridor to Black claims and demands to “outside” or international law that offers “liberation-promising normative authority” “outside” of law and policy shaped by the internal vocation of racial and sexual domination and oppression.¹

Traditional international law discourse, as well as, for example, the newly formed regimes on women and racial discrimination and women and peace-building, are generally conceived in gender-bias and/or gender- or race-neutral terms. Black women are rarely specifically referenced or considered a subject of analysis in international law literature. Consequently, as one of the largest and geographically dispersed groups in the world, it is vital that Black scholars refashion global discourse by reconceptualizing international

¹ Henry J. Richardson III, “Two Treaties, and Global Influences of the American Civil Rights Movement, through the Black International Tradition,” *VA J. SOC. POL’Y & LAW*, Vol. 18, No. 1 (2010), p. 61.

law and relations from their unique experiences and perspectives. From Compton to Cairo and Bahia to Brixton, Black women have been disproportionately affected by poverty, illiteracy, unemployment, discrimination, and violence; notwithstanding, they have also been among the most intuitive, inventive, and ingenious actors in developing normative responses to local, national, regional, and international crises. Whereas international law and policy too often ignore the role that race and gender play in shaping it, this book will explore their intersectional ties with a view toward observing Black women as distinct subjects of international law.

The volume examines a myriad of topics, beginning with a biographical note on Judge Gabrielle Kirk McDonald and a short reflective essay written by her. Part I, entitled *Leadership, Human Rights, and Peace-building*, examines the contributions of African women to the development of human rights and peace-building norms. Part II, entitled *Black Women's Movements*, builds on the previous theme and contemplates the impact that transnational Black women's movements have had on the women's rights, reparations, and environmental protection regimes. Part III, titled *Feminine Sovereignty*, assesses the global complexities of female sovereignty, choice, and health in Africa and the Diaspora. Chapter 3 follows the biographical note and reflective essay and provides a short reflective essay on the complexities, challenges, and triumphs of Black women in governance, with a focus on how they have written themselves into political leadership. In Chapter 4, Adrien Wing surveys various international human rights documents and cases to determine the extent to which these sources specifically concern Black women and/or treat them as distinct subjects of international law, with a specific emphasis on the African Union Protocol on Women's Rights. Chapter 5, by Fatou Kiné Camara, analyzes the role African women have played as activists and technicians in conceptualizing and fashioning the gender parity provisions in the African Union Protocol to the African Charter of the Human and People's Rights of Women. In Chapter 6, the editor comparatively references peace deals birthed in the post-Cold War era in Africa and evaluates the extent to which African women's movements have influenced the gendered dimensions of what the author refers to as "peace construction." In this context, the chapter contemplates the role that law indicates for itself to play in informing, shaping, and regulating gender equality in transnational political power-sharing deals. Chapter 7, by Anna Spain, explores the instrumental role that Black women have played in advancing peace-building norms, rules, and practices under international law and how these normative contributions advance peace-building capacity.

Part II of the volume begins with Chapter 8, in which Linda Greene surveys the unique and substantive role Black women played in the Fourth World Conference on Women in Beijing, China in 1995 and considers the role that the African-American Women's Caucus had in formally and successfully integrating race, gender, and poverty considerations into the Beijing Declaration and Platform for Action. Chapter 9, by Adjoa Aiyetoro, reflects on the contributions that women's leadership has made to the development of national reparative programs in the Diaspora and Africa and the impact they have had on the international discourse on reparations and the accompanying international rules. In Chapter 10, Erika George considers the impact that environmental activism and the "bottom-up" approaches of Black women have had on the development of international law and global discourse on climate change.

Part III begins with Chapter 11 by Judith Scully, who examines the activism of Black women (in Africa and the Diaspora) around issues of population control, sterilization abuse, contraceptives, and coercive and intrusive family planning programs and policies and their impact on the development of the international human rights conception of reproductive health. In Chapter 13, Karen Bravo explores the contrasts between the status of Black females as chattel ("things") and their choices and actions in pursuit of the "things" of importance to them, as well as the normative impact of those choices on international law and policy, including the connection between Black African (female) enslavement and the status of the Black indigenous people of Tasmania. Chapter 12, by Eleanor Brown, contemplates whether a normative regime on sex workers is developing and examines the extent to which Black women are functionaries in its development. The study challenges predominate thinking about the utility of a normative asset/development-based framework that seeks to empower women to manage "sex resources."

Acknowledgments

I dedicate this book to the enduring power, strength, and spirit of Black women to whom the world owes an eternal debt of gratitude. I graciously thank my beloved wife, Latrice, and enlightening daughters, Makayla and Zara, for teaching me how to unconditionally love and courageously advocate for the public good.

For nearly thirteen years, I have desired to edit a collection of essays on *Black Women and International Law*. From Bahia to Brixton and from Compton to Cairo, I have admired the brilliant works of Black women. From shepherders and nation-builders to priestesses and advocates, Black women have shaped and influenced the world in extraordinary ways. On March 4, 2010, I organized and hosted a provocative roundtable discussion entitled “Towards an International Law of Black Women: New Theory, Old Praxis” at Florida A&M University College of Law in Orlando, Florida. Six months later on September 10, 2010, I chaired another provocative panel discussion with the same panelists at the Third National People of Color Conference at Seton Hall School of Law. I thank all of the presenters and contributors to these events. I especially thank my friend and mentor Dean LeRoy Pernelle for embracing and supporting the Black women and international law project. I am also indebted to John Berger of Cambridge University Press for his unqualified support of my work on international law and the Black world. Without him, this project would not see the light of day.

The examination of the crossings between Black women and international law or global norm making is new, and it is my sincere hope that this volume will serve as a catalyst for more nuanced inquiry. I am the beneficiary of the intellectual gifts of several friends and scholars; however, no one has guided my intellectual path more than Henry J. Richardson III, the dean of Black international lawyers. I thank the following scholars for their enduring support

and encouragement: Makau Mutua, Adrien Wing, Linda Greene, Mamphela Ramphele, Matthew Whitaker, Craig Jackson, Muna Ndulo, Colin Bruce, David Wippman, Ruth Wedgwood, Evelyn Ankumah, Edward Kwakwa, Abigail Noko, Leslye Obiora, Roderick Zak, Peniel Joseph, Ricky Jones, Yohuru Williams, Jelani Cobb, Lucie Lamarche, and all of the scholars who wrote chapters for this volume.

Finally, I am forever indebted to the hundreds of students that I have trained over the past decade and a half. Their various curiosities and queries heartened my desire for the project. I specifically thank Sabrina Collins, my former research assistant, for her affable assistance.

Contents

<i>Contributors</i>	<i>page</i>	ix
<i>Foreword</i>		xi
Honorable Navi Pillay		
<i>Preface</i>		xv
Jeremy I. Levitt		
<i>Acknowledgments</i>		xix
1 Judge Gabrielle Kirk McDonald: A Biographical Note		1
Jeremy I. Levitt		
2 Reflections on My Journey for Justice		9
Gabrielle Kirk McDonald		
PART I. LEADERSHIP, HUMAN RIGHTS, AND PEACEBUILDING		
3 Writing Black Women into Political Leadership: Reflections, Trends, and Contradictions		23
Carol Boyce-Davies		
4 International Human Rights and Black Women: Justice or Just Us?		37
Adrien Katherine Wing		
5 African Women and the Gender Equality Regime in Africa: From Patriarchy to Parity		61
Fatou Kiné Camara		
6 Law, Peace-Construction, and Women's Rights in Africa: Who Will Safeguard Abeena and Afia?		88
Jeremy I. Levitt		