



Women, Law
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International

**From Basic
Needs to
Basic Rights**

Edited by Margaret A. Schuler

Women's Claim to
Human Rights

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Foreword

Noeleen Heyzer

This foreword is being written on the eve of the Fourth World Conference on Women. Women have been working to ensure that Beijing affirms the kind of world we want to live in, a world where development processes will empower women in particular, a world in which the promotion and protection of all human rights and fundamental freedoms will be considered an international priority.

We are delighted to be involved in this project, and congratulate the Institute for Women, Law and Development for compiling these thoughtful and provocative pieces in time for the Beijing Conference.

The challenges inhibiting women's full enjoyment of their human rights and participation in development are manifold. Examining them, it is evident that sustainable development will remain elusive unless women can freely and effectively exercise the full range of their economic, social, cultural, civil, and political rights.

There are alarming trends which present key challenges in the areas of development and women's rights:

- ♦ *Globally women are still invisible in formal political institutions.* Worldwide, women hold only 10 percent of parliamentary seats. This figure fell by nearly three percentage points between 1989 and 1993.
- ♦ *In virtually every nation, violence or the threat of violence, constricts the range of choices open to women and girls in almost every area of life, public and private.* UNIFEM entered the human rights arena through its work on violence against women. In 1990, the Fund commissioned a study on the linkages between violence against women, human rights and development and that resulted in the *Battered Dreams: Violence Against Women as a Development Issue*. The study found that, internationally, gender violence is a major obstacle to the achievement of equality, development and peace. It inhibits

women's full participation in society, and creates a climate in which sustainable human development is manifestly impossible.

- ◆ *Women are increasingly the specific targets of aggression during wartime.* Systematic mass rape and forced impregnation have been documented as weapons of war and/or ethnic cleansing in many parts of the world. Frighteningly, there is growing evidence that war and civil unrest not only endanger women in the public sphere, but increase the risk of violence against women in the home.
- ◆ *Women all over the world perform multiple roles in productive labor, paid and unpaid, that are not reflected in official measures of economic activity.* Their access to family benefits, financial credit, the right to own and inherit property are either nonexistent or are seriously limited by law and/or traditional or religious practices.
- ◆ *Women's low status everywhere has been enshrined in law, and women continue to face injustice in virtually every nation solely on the basis of their gender.* Legal traditions and legal systems discriminate against women in many ways. Gender bias may be institutionalized through laws (legislated and customary) which openly discriminate against women. Laws may be passed which are gender neutral on paper but discriminatory in practice. Some tax laws, for example, may require married women to have their husbands signature to validate tax forms.
- ◆ *Today millions of women live in conditions where reproductive health is beyond their reach.* Around the world, an estimated 3 million couples do not have access to family planning services. Many societies, according low status to women, accept a high incidence of maternal death as natural and inevitable.
- ◆ *In both industrialized and developing countries women and girls suffer the effects of harmful and sometimes life-threatening traditional practices, rooted in long-held cultural assumptions and/or religious beliefs.* These practices include but are not limited to: female genital mutilation, female infanticide, son preference and eating disorders.

Such obstacles to women's equality ensure that the majority of the world's women and girls remain excluded from fully participating in society and from the prevailing vision of "universal," human rights. Women are asking for greater commitment, accountability and resources for the implementation of the results of the various world summits and conferences.

How do we make this possible?

Expanding the current understanding of state responsibility and accountability is a key element in implementing, enforcing, and assessing human rights instruments and laws from a women's human rights perspective. Activists are insisting upon a more expansive and inclusive interpretation of violations of women's human rights, which are not direct actions of the state (i.e., domestic violence) but for which the state may be held accountable.

It is crucial to insist on international recognition of all human rights as universal, interdependent and interrelated. This stresses the indivisibility of civil, political, social, economic and cultural rights, and allows the international community to identify the abuses and denial of rights which are unique to women. For instance, we know that the existence of extreme poverty amongst women inhibits their full and effective enjoyment of human rights, denying their full participation as both agents and beneficiaries in the development process.

Strategies to strengthen the Convention on the Elimination of All Forms of Discrimination Against Women are gathering momentum. CEDAW does not attempt to define rights in gender-neutral terms; rather, it elaborates the meaning of discrimination against women. The Convention is an important tool for the advancement of woman's human rights. Advocates of women's human rights are lobbying to strengthen CEDAW's implementation and monitoring procedures (particularly its investigatory and enforcement powers), to facilitate NGO input to the CEDAW Committee, and to increase its funding.

Finally, the Vienna Declaration articulates the necessity of integrating the equal status of women and the human rights of women into the mainstream of United Nations system-wide activity. It goes further, to assert that "these issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms." Women are pursuing this mandate comprehensively, including the UN's development agendas and peacemaking/keeping

programs, in order to combat the persistent and global scourge of violations of women's human rights.

Since the World Conference on Human Rights in Vienna in 1993, UNIFEM's approach to sustainable human development has increasingly integrated activities that support and promote women's human rights. Taking our cue from the international women's movement, UNIFEM has recognized that the pursuit of gender equality is an essential component to human rights and democratic development, and is focusing new attention on the human rights of women.

UNIFEM is the voice and conscience of women within the United Nations. In the interest of the political empowerment of women, UNIFEM advocates for the development of legal and policy frameworks which deal with issues of civil, political, cultural, economic and social rights. We are committed to utilizing a rights-based framework that views the pursuit of sustainable human development as a fundamental human rights issue, consistently relating human rights to the development dialogue.

Situated in the United Nations, UNIFEM is in a unique position to be an advocate for mainstreaming women's human rights in the international human rights arena, and developing strategies at the global policy level to ensure the achievement of women's fundamental human rights.

It is now clear that sustainable development will remain elusive unless women—more than half the world's population—can freely exercise their full panoply of rights. We must fashion a women's development agenda that is based on the principle of social justice, recognizing that neither the paradigm of basic needs nor basic rights will, on their own, speak to the issues impeding women's full participation in society.

Acknowledgments

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Margaret Schuler
August, 1995

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Introduction

From Basic Needs To Basic Rights: Women's Claim to Human Rights

Margaret A. Schuler

Engendering Human Rights

At the dawn of the 21st century, women's rights advocates around the world have achieved a significant victory in asserting that women's rights are human rights and that women are entitled to the protections provided by the international system to ensure the exercise of rights. The 1993 Vienna Declaration and Program of Action recognized that

the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community (para. 18).

Like all victories, however, acknowledgment of women's human rights by the international community represents as much a *commencement* as it does a *culmination* of a process.

The history of human rights since the framing of the Universal Declaration fifty years ago has been one of dynamic struggle to understand and make real the meaning of the rights enshrined therein. What evolved into the "traditional" human rights paradigm did so within an androcentric, patriarchal world dominated by East West polarization and the Cold War. During this period, worldwide economic, social and cultural pressures produced unparalleled technological achievements, economic growth and democracy for some and poverty, environmental degradation and political repression for others. In response to the most clamorous of social changes during this period, great strides were made in recognizing and affirming the concept that *human beings have rights to the minimum requirements of*

a life of dignity. Supported by a strong international consensus about the International Bill of Human Rights, the list of recognizable human rights has evolved and expanded over the past fifty years to cover a growing field of vital concerns and threats to human dignity.

The dynamic character of human rights—that is, the interaction of factors such as changing ideas about human dignity (the very cornerstone of the modern concept of human rights), emerging forms of human relationship (and human exploitation), the rise of new political forces and patterns of governance, new economic arrangements and interdependencies, and technological changes, among others—“allows attention and resources to be shifted to threats that previously were inadequately recognized or insufficiently addressed” (Donnelly, 1989, p.26). The interactive quality of the human rights process is what permits new ideas and needs to challenge current thinking and approaches and to articulate progressively new theory and practice.

The source of one recent and significant challenge to the traditional human rights framework is the international women’s rights movement.¹ The dynamic nature of human rights permitted women to enter the arena, challenge the current discourse and offer fresh perspectives on both theoretical and practical elements of the debate. Women recognized that the evolving human rights consensus of the late twentieth century was heading in a direction that affirmed the primacy—practically and conceptually—of men’s needs over women’s, of civil and political rights over social, economic and cultural rights, and the public sphere over the private.

In working at the local level to empower women to change discriminatory legislation, to educate women about their rights and redress grievances, activists and advocates in many parts of the world began to understand the patriarchal character of law and how even the concept of rights was skewed against women. They discovered in daily life the adverse consequences of the public sphere vs. private

¹ In reference to a “women’s rights movement,” I use this term broadly to include groups and individuals at the local and national level as well as regional and international networks working to promote and defend women’s *human* rights through a variety of strategies. I prefer not to use the term “movement” in the plural, since similarities and differences abound at every level and separating one movement from another is neither possible nor particularly enlightening. What is important is the convergence developing at all levels as groups progressively learn from one another and forge interactive linkages and common agendas.

sphere ideology which left women little recourse in law. As networks of women's rights advocates began to coalesce—primarily in the global south, in Latin America, Asia and Africa—their struggles, experiences and strategies stimulated a feminist critique of rights, mobilized attention around the more egregious violations of women's rights and opened up a broader debate about human rights. (Schuler, 1986). The work of feminist scholars exposed the essentialist assumptions underpinning international human rights law and produced compilations of human rights law demonstrating that violations of women's rights are violations of human rights. (Smart, 1989; Charlesworth, Chinkin & Wright, 1991; Cook, 1992, 1994, and Romany, 1994).

Over the past fifteen years, this emerging women's rights movement has insisted on reinterpreting human rights traditionally thought not to apply to women (interpreting the right to bodily integrity, for example, to include protection from domestic violence). In doing so, it has expanded to some degree the sphere of state responsibility and very gradually and recently increased the power of international mechanisms to monitor government actions and omissions related to women's human rights. Thus, women's participation in the system and worldwide mobilization under the motto of claiming "women's rights as human rights" have already had a fundamental and transformative effect on the human rights agenda by pushing the boundaries and altering ever so slightly the frontiers of the debate.

On the other hand, women and women's interests are not yet totally integrated within the human rights arena. Women still lack acceptance as full players in the system and as subjects of fully recognized and enforced human rights. Clearly, some progress in both directions has been achieved, exemplified by the assertions in favor women's rights in the Vienna Declaration and the naming of the Special Rapporteur on Violence Against Women among others, but there is still a long road ahead. For this reason, the victories of the Vienna and later the Cairo Conference are significant not only because they mark the successful completion of a dynamic mobilization, but because they mark the beginning of a new and challenging process necessary to complete the task begun a decade ago.

Progress on violence against women occurred because women vigorously engaged the system by requiring it to respond to women's reality, experiences and needs. Engaging the system meant getting its attention, forcing it to listen, requiring it to act on its own principles