

CONTENTS

List of abbreviations	<i>page</i> xviii
Table of cases	xxvi
Introduction	1
1 International human rights law and notions of human rights: foundations, achievements and challenges	4
1.1 Introduction	4
1.2 The development of human rights and international human rights law	6
1.2.1 Foundations	6
1.2.2 The American and French declarations of rights	8
1.2.3 The struggle for rights in the nineteenth century	10
1.2.4 World War I, the League of Nations and human rights	12
1.2.5 World War II, the Holocaust and the foundations of the international human rights system	14
1.2.6 The UDHR: origins, content and significance	15
1.2.7 Cold War and decolonisation	19
1.2.8 The growth of international human rights law	21
1.3 Current challenges	23
1.3.1 International/cross-border dimension of violations	24
1.3.2 Responsibility of multiple actors	25
1.3.3 Effective monitoring and implementation	26
1.3.4 Human rights imperialism and exceptionalism	27
1.4 The idea of human rights: theories and critiques	29
1.4.1 Moral and liberal human rights theories	30
1.4.2 Meeting the challenge: reconstructing human rights	32
1.5 Universal human rights: contestations and practices	35
1.5.1 The debate	35
Interview 1.1: Human rights and the uprisings in the Arab world (Moataz El Feghery)	40
1.5.2 Experiences in combating female genital cutting/mutilation	44
Further reading	48

vi	Contents	
2	International human rights law: the normative framework	49
2.1	Introduction	49
2.2	Sources	52
2.2.1	Treaties	52
2.2.1.1	Treaty-making	52
2.2.1.2	Reservations	55
2.2.2	Customary international law	59
2.2.2.1	The UDHR and customary international law	61
2.2.3	Judicial decisions as source of law	62
2.2.4	Soft law	65
2.2.5	UNDRIP: a soft law success story?	66
2.2.6	<i>Jus cogens</i> and <i>erga omnes</i>	67
2.3	Principles, rights, obligations and scope of application	71
2.3.1	Principles	71
2.3.2	The concept of rights	72
2.3.3	The right to equality, non-discrimination and sexual orientation	76
2.3.4	Obligations	79
2.3.5	Derogation in times of emergency	80
2.3.6	Scope of application	82
2.4	Implementation	83
2.4.1	The role of national human rights institutions	87
	Interview 2.1: Reflections on the work of Uganda's Human Rights Commission (Med. S. K. Kagwa)	88
2.5	State responsibility and human rights treaties as self-contained regimes	91
2.6	Practical application: the role of law reform	93
	Interview 2.2: The campaign to repeal Pakistan's <i>Hudood</i> laws (Sohail A. Warraich)	98
	Further reading	101
3	Human rights in practice	102
3.1	Introduction	102
3.2	Civil society	103
3.3	Social movements	105
3.4	NGOs	107
3.4.1	General considerations	107
3.4.2	Human rights NGOs	109
3.4.3	Assessing the role of human rights NGOs	111
3.5	Human rights defenders	116
	Case Study 3.1: NGOs and human rights protection in Sudan	119
3.6	Legal professionals and human rights	121
3.7	Health professionals and human rights	124
3.8	Human rights field officers	126

vii	Contents	
	Interview 3.1: Experiences of a UN human rights officer (Huma Shakeb Khan)	127
3.9	Human rights strategies	130
	3.9.1 Documentation and fact-finding	130
	Interview 3.2: Documenting human rights violations in volatile environments: the Libyan experience (Elham Saudi)	134
	3.9.2 Human rights reporting	138
	3.9.3 Monitoring	140
	3.9.4 Advocacy	142
	3.9.5 Awareness-raising, capacity-building and human rights education	145
	Case Study 3.2: Responding to serious human rights violations in Darfur, Sudan – strategies, critiques, impact	149
	Further reading	152
4	The United Nations Charter system	154
4.1	Introduction	154
4.2	The human rights dimension of the charter	156
4.3	The HRC	159
	4.3.1 The UPR	164
	4.3.2 The HRC's complaints procedure	167
4.4	Special procedures	170
	Interview 4.1: With former UN Special Rapporteur (Cephas Lumina)	173
	4.4.1 Communications	175
	4.4.2 Country visits	176
	4.4.3 Annual reports	177
	Case Study 4.1: Reprisals against those collaborating with UN human rights procedures	177
4.5	The UNGA and human rights	179
4.6	The UNSC	180
	Case Study 4.2: The UNSC and human rights in North Korea	185
	4.6.1 Fact-finding in practice: the UN mission in the Gaza conflict	187
	Further reading	191
5	The UN human rights treaty system	192
5.1	Introduction	192
5.2	Common features of international human rights treaty bodies	194
5.3	Reporting procedure	198
	5.3.1 Overview	198
	Interview 5.1: Using shadow reports to promote gender equality and combat sexual violence: South Africa (Lesley Ann Foster)	202
	5.3.2 Strengthening the reporting procedure	205
5.4	General comments/recommendations	208
5.5	Complaints procedures and jurisprudence of treaty bodies	212

viii	Contents	
	5.5.1 Overview	212
	5.5.2 The HRCtee	215
	5.5.3 Breadwinners, social security and discrimination: <i>Zwaan-de Vries v. The Netherlands</i>	218
	5.5.4 The CERD	219
	5.5.5 Still facing discrimination: <i>Durmic v. Serbia and Montenegro</i>	220
	5.5.6 The CtAT	222
	5.5.7 Rendered defenceless: <i>Agiza v. Sweden</i>	223
	5.5.8 The CtEDAW	224
	5.5.9 ‘We don’t believe you’: <i>Vertido v. The Philippines</i>	225
	5.5.10 The CtRPD	227
	5.5.11 Shortchanged: <i>Nyusti and Takács v. Hungary</i>	228
	5.5.12 Achievements and challenges	229
	Interview 5.2: Working for the CESCR (Eibe Riedel)	231
	Further reading	233
6	Regional human rights treaty systems	235
6.1	Introduction	235
6.2	The European human rights system	237
	6.2.1 Overview	237
	6.2.2 The ECHR	239
	6.2.3 Key institutions	240
	6.2.4 The ECtHR: structure and functions	241
	6.2.5 Jurisprudence of the ECtHR	242
	6.2.5.1 Development of the ECtHR’s jurisprudence	242
	6.2.5.2 The ECtHR’s interpretation of the ECHR	244
	6.2.5.3 Responses to the ECtHR’s jurisprudence	246
	6.2.6 Impact	249
	Interview 6.1: The nature and impact of litigation concerning Turkey (Dr Başak Çali)	250
	Interview 6.2: Nature and impact of litigation concerning Turkey and Russia (Bill Bowring)	253
	6.2.7 The struggle for efficiency, effectiveness and institutional reforms	256
	6.2.8 The EU	260
6.3	The Inter-American human rights system	262
	6.3.1 Overview	262
	6.3.2 The IACHR	264
	6.3.3 The IACtHR	266
	6.3.4 Impact	270
	Interview 6.3: An intimate experience of the Court as litigant and Senior Staff Attorney (Oswaldo Ruiz-Chiriboga)	271
6.4	The African human rights system	274

ix	Contents	
	6.4.1 Overview	274
	6.4.2 The ACmHPR	277
	Case Study 6.1: <i>Modise v. Botswana</i> and the question of nationality rights	280
	6.4.3 Impact	281
	6.4.4 The ACtHPR	282
	6.4.5 African regional economic courts	284
	Interview 6.4: Making the system work (Ibrahima Kane)	286
6.5	Towards an Asian human rights system?	290
6.6	Comparison of regional systems	291
	Further reading	292
7	Individual complaints procedures	295
7.1	Introduction	295
7.2	Admissibility	297
	7.2.1 Jurisdiction	298
	7.2.1.1 <i>Rationae personae</i> : who can bring a complaint?	298
	7.2.1.2 Against whom can a complaint be brought?	300
	Case Study 7.1: Protection against the implementation of UN Security Council sanctions: <i>Sayadi and Vinck v. Belgium</i>	302
	7.2.1.3 <i>Rationae materiae</i> : what rights?	303
	7.2.1.4 Jurisdiction in respect of extraterritorial conduct	304
	7.2.1.5 The long reach of the ECHR: <i>Al-Skeini v. United Kingdom</i>	306
	7.2.1.6 <i>Rationae temporis</i> : when?	308
	7.2.2 Exhaustion of domestic remedies	310
	7.2.2.1 What remedies must be exhausted?	310
	7.2.2.2 'An affront to common sense and logic': <i>Dawda Jawara v. The Gambia</i>	313
	7.2.3 Other procedural requirements	314
	7.2.3.1 Time limits	314
	7.2.3.2 Duplication	315
	7.2.3.3 Well-foundedness	316
	7.2.3.4 Abuse of rights	316
	7.2.3.5 Anonymity	317
7.3	Merits	317
7.4	Decisions by human rights treaty bodies	320
7.5	Implementation of decisions and judgments	322
	Case Study 7.2: Restoring ancestral lands to indigenous peoples – <i>Mayagna (Sumo) Awas Tingni Community v. Nicaragua</i>	326
7.6	Additional procedural options	327
	7.6.1 Interim measures	327
	7.6.2 Friendly settlements	329

x	Contents	
	Interview 7.1: Nepal before the Human Rights Committee (Mandira Sharma)	331
7.7	The <i>Hissène Habré</i> case: the interplay between domestic, regional and international proceedings	334
	Further reading	337
8	Civil and political rights	339
8.1	Introduction	339
8.2	The right to life	340
	8.2.1 Practice	340
	8.2.2 Sources	342
	8.2.3 The prohibition of arbitrary deprivation of life	342
	8.2.4 <i>McCann v. United Kingdom</i> : absolute necessity in the European Court of Human Rights's jurisprudence	343
	Case Study 8.1: The killing of Bin Laden and the right to life	344
	8.2.5 The death penalty under international law	345
	8.2.6 Positive obligations to protect the right to life	348
	8.2.6.1 Providing protection against threats to life	348
	8.2.6.2 Duty to investigate, prosecute and punish and to provide redress	350
	8.2.7 A right to survival?	352
8.3	The right to be free from torture and other ill-treatment	353
	8.3.1 Practice	353
	8.3.2 Sources	355
	8.3.3 The absolute prohibition of torture	355
	8.3.4 The case of <i>Gäfgen</i> and the German torture debate	356
	8.3.5 The definition of torture and other forms of ill-treatment and punishment	358
	8.3.6 Obligations	363
	Interview 8.1: The role of medical documentation in combating torture: Istanbul Protocol (Dr Önder Özkaliççi)	364
8.4	The right to liberty and security of person	367
	8.4.1 Practice	367
	8.4.2 Sources	368
	8.4.3 Scope of the right to liberty and security	369
	8.4.4 Justification of arrest and detention	369
	8.4.5 Administrative detention: law and power in the pursuit of policy	372
8.5	The right to a fair trial	376
	8.5.1 Practice	376
	8.5.2 Sources	377
	8.5.3 Main features of the right to a fair trial	378
	8.5.3.1 General principles	378
	8.5.3.2 Criminal proceedings	379

xi	Contents	
	Case Study 8.2: The problem with military and special courts	381
8.6	Enforced disappearance as multiple human rights violation	382
	Interview 8.2: Inquiries into enforced disappearances in Sri Lanka (M. C. M. Iqbal)	386
8.7	Qualified rights, with a particular focus on freedom of expression	390
	8.7.1 Practice	390
	8.7.2 Sources	391
	8.7.3 Freedom of religion vs. freedom of expression	393
	8.7.4 To wear or not to wear: freedom of conscience and religion, the rights of women and the veil	395
	Further reading	397
9	Economic, social and cultural rights	399
9.1	Introduction	399
9.2	Brief historical context of ESC rights	400
9.3	Progressive realisation and the nature of state obligations	403
9.4	Resource implications: the obligation to utilise ‘maximum available resources’	408
	Case Study 9.1: United States budget allocated to primary and secondary education	412
9.5	Minimum core obligations	413
9.6	Justiciability of ESC rights	415
	9.6.1 Individual communications and the ICESCR Optional Protocol	419
	9.6.2 The ECSR	420
9.7	Extraterritoriality of ESC rights	422
9.8	Indicators and benchmarks for measuring compliance	423
	Case Study 9.2: Indicators on the right to food	427
9.9	The right to health	428
	Interview 9.1: Greek NGO implements the right to health for the socially excluded (Tzanetos Antypas)	430
9.10	The right to water	432
	Case Study 9.3: The deprivation of water rights as cruel and inhuman treatment	435
9.11	The right to education	436
9.12	The right to food	439
9.13	Links between unemployment, debt crises and mental illness	443
	Further reading	446
10	Group rights: self-determination, minorities and indigenous peoples	448
10.1	Introduction	448
10.2	The nature of collective rights	449
	10.2.1 External self-determination	451
	10.2.2 Exceptionalism in the external dimension of self-determination	455

xii	Contents	
	10.2.3 The essence of internal self-determination	458
	Case Study 10.1: Participatory budgeting in Porto Alegre, Brazil	460
10.3	Minorities as a subject of human rights	461
	10.3.1 The historical and political context: should minorities be treated differently from majorities?	463
	10.3.2 Membership rights	467
	Case Study 10.2: The Malay <i>Bumiputra</i> policy	472
10.4	Indigenous peoples: is there a need for additional protection?	474
	10.4.1 Indigenous rights over traditional lands	478
	10.4.2 Indigenous land rights in contemporary international law	479
	10.4.3 Indigenous ownership as a right to property	481
	10.4.4 Special considerations in the design of indigenous peoples' development plans within the World Bank	484
	10.4.5 The Chad–Cameroon pipeline and the Baka/Bakola: what to look for in social impact assessments	487
	Further reading	490
11	The human rights of women	491
11.1	Introduction	491
11.2	Normative framework	493
	11.2.1 Key violations of women's human rights: the Convention on the Elimination of All Forms of Discrimination against Women	493
	11.2.2 Critiques of CEDAW	495
	11.2.3 CEDAW, violence against women and reproductive rights	498
11.3	Conceptual development	509
	11.3.1 The development of feminist legal theory and women's human rights	509
	11.3.2 Critiques of liberal and non-discrimination approaches to women's human rights	510
	11.3.3 Critiques of 'Western' feminist approaches to women's human rights	512
	11.3.4 Sex, gender and sexuality	516
11.4	Women's human rights and domestic contexts: 'honour crimes' in the English legal system	517
	11.4.1 Definitions and concepts of 'honour'	518
	11.4.2 Practical legal approaches to 'honour crimes': culture, gender and mainstreaming	519
	11.4.3 Non-state actors and due diligence: a human rights response?	521
	Case Study 11.1: Banaz Mahmod	523
	Further reading	525

xiii	Contents	
12	Children's rights	526
12.1	Introduction	526
12.2	Childhood: a non-static concept	527
12.3	The need for a specialised protection regime	528
12.4	Fundamental principles	531
	12.4.1 The child's best interests	531
	12.4.2 The child's right to be heard	532
	12.4.3 Right to life, survival and development	533
	12.4.3.1 Child soldiers	534
	12.4.4 Non-discrimination	537
	Case Study 12.1: Discrimination against fathers in custody proceedings: the critical role of neuroscience	538
12.5.	Children's right to be free from poverty	541
	Case Study 12.2: Anti-child poverty legislation in the United Kingdom and austerity measures	545
	Further reading	549
13	The right to development, poverty and related rights	550
13.1	Introduction	550
13.2	The human dimension of development	551
13.3	The RTD	555
	13.3.1 Making the RTD justiciable	559
	Case Study 13.1: The International Monetary Fund's structural adjustment programmes	561
13.4	Global partnerships for the financing of development	562
13.5	Practical application	567
	13.5.1 Microfinance: breaking the cycle of poverty by small loans to the ultra-poor	567
	Case Study 13.2: Grameen microlending: access to credit as a human right	569
	Interview 13.1: Microfinance non-governmental organisation (NGO) (Ramanou Nassirou)	571
13.6	Sovereign debt and the enjoyment of fundamental rights	574
	13.6.1 Accumulation of sovereign debt and its human rights dimension	574
	13.6.2 Odious, illegal and illegitimate debt	578
	13.6.3 Unsustainable debt	581
	Case Study 13.3: The Parliamentary Committee on the Truth about the Greek Debt: the artificiality of Greek debt and its odious nature	583
13.7	The right to a corruption-free society	587
13.8	The right to a healthy environment	591
	Case Study 13.4: The <i>Minors Oposa</i> case: intergenerational environmental equity/rights	595
	Further reading	596

xiv Contents

14	Victims' rights and reparation	598
14.1	Introduction	598
14.2	The development of the right to reparation	601
14.3	The right to reparation in international human rights law	602
	14.3.1 Treaties and UN declarations	602
	14.3.2 Practice at the inter-state level	605
	14.3.3 State practice at the national and transnational level	607
14.4	The right to reparation in international humanitarian law	608
14.5	The right to reparation in international criminal law	609
14.6	The right to reparation and violations by non-state actors	611
14.7	The right to reparation for historical injustices and violations	612
14.8	The notion and legal significance of the term 'victim'	614
14.9	The procedural right to an effective remedy	615
	14.9.1 Overview	615
	14.9.2 The nexus between civil and criminal proceedings: <i>Rajapakse v. Sri Lanka</i>	617
	14.9.3 The right to property, and the choice between investment arbitration and human rights avenues	618
14.10	The substantive right to reparation	620
	14.10.1 State responsibility	620
	14.10.2 Liability	620
	14.10.3 Standard of reparation	620
	14.10.4 Forms of reparation	621
	14.10.5 Restitution	622
	14.10.6 Compensation	623
	14.10.7 Types of damages	623
	14.10.8 <i>Proyecto de vida: Loayza Tamayo v. Peru</i>	625
	14.10.9 Should previous conduct be taken into consideration when awarding compensation?	627
	14.10.10 Rehabilitation	628
	14.10.11 Satisfaction	629
	14.10.12 Guarantees of non-repetition	631
	14.10.13 Reparation for the violation of collective rights: <i>Saramaka People v. Suriname</i>	631
	14.10.14 A brief assessment and outlook	632
14.11	The double-edged sword of victims' politics	633
14.12	Negotiating, litigating and administering reparations: experiences from the Holocaust and World War II reparations	636
14.13	Reparation in action: litigating human rights cases	638
	14.13.1 Litigation strategies	638
	14.13.2 Pursuing reparation claims, with particular reference to litigating torture cases	640

xv	Contents	
	Interview 14.1: Litigation, advocacy and social change (Basil Fernando)	641
	Further reading	647
15	The application of human rights in armed conflict	649
15.1	Introduction	649
15.2	The fundamental premises of IHL	650
	15.2.1 Distinction between combatants and non-combatants	650
	15.2.2 Restricted targeting of military objects	652
	15.2.3 Means and methods of warfare are not unlimited	654
15.3	Rights and obligations in humanitarian law	654
15.4	Humanitarian law as <i>lex specialis</i> to human rights law	657
15.5	Why human rights bodies find the application of humanitarian law problematic	659
15.6	Human rights in situations of military occupation	662
	15.6.1 The extraterritorial application of human rights in occupied territories	666
	15.6.2 The effective control test	667
	15.6.3 The decisive influence test	669
15.7	The relevance of the law to battlefield conditions	670
	15.7.1 Human physiology in combat situations	670
	Interview 15.1: Battlefield compliance (Charles Garraway and anon)	674
	15.7.2 The dilution of humanitarian law and problems in ensuring compliance	677
	Further reading	681
16	Human rights and international criminal justice	682
16.1	Introduction	682
16.2	Relationship between international criminal law and human rights	683
16.3	Individual criminal liability under international law	686
	Case Study 16.1: International Criminal liability at the Nürnberg Trial	687
16.4	The enforcement of international criminal law	688
16.5	Universal jurisdiction	692
16.6	Peace vs. international criminal justice	695
	Interview 16.1: Siri Frigaard: Former Chief Public Prosecutor and Director of the Norwegian National Authority for Prosecution of Organised and Other Serious Crime	702
16.7	Core international crimes	705
	16.7.1 Genocide	706
	16.7.2 Crimes against humanity	709
16.8	The place of immunities in human rights and international criminal justice	711
	Further reading	714

xvi	Contents	
17	Human rights and counter-terrorism	715
17.1	Introduction	715
17.2	The legal nature of terrorism	717
17.3	The discussion on underlying or root causes	719
17.4	The obligation of states to protect their populations from terrorism	721
	Case Study 17.1: <i>Finogenov and Chernetsova v. Russia</i> : European Court of Human Rights admissibility decision of 18 March 2010	723
17.5	Human rights in counter-terrorism operations	725
	17.5.1 Anti-terrorist legislation and the principle of legality	727
	17.5.2 Permissible restrictions and derogations arising from terrorist threats	729
17.6	The right to life in counter-terrorism operations	733
	17.6.1 Situations when lethal force is permissible	733
	17.6.2 Targeted killings and ‘shoot-to-kill’ strategies	735
17.7	Attempts to justify arbitrary detention	738
17.8	Unlawful extraditions and illegal renditions of suspected terrorists	742
	17.8.1 Washing one’s hands and hiding every trace	742
	17.8.2 From arbitrary detention and unlawful extradition the road to torture is open. . .	745
	Case Study 17.2: <i>Al-Rabiah v. USA</i>	748
17.9	Legal and other strategies regarding disappeared terrorist suspects	750
	17.9.1 The potency of advocacy and outreach	750
	17.9.2 Tracing strategies and release arguments	751
	17.9.3 Advocacy strategies	754
	17.9.4 Counter-terrorism: the real testing ground for <i>erga omnes</i>	756
	Interview 17.1: Legal defender of Guantánamo detainees (Clive Stafford Smith)	758
	Further reading	759
18	Human rights obligations of non-state actors	761
18.1	Introduction	761
18.2	The status of NSAs in human rights law	762
18.3	Multinational corporations in the human rights architecture	767
	18.3.1 Human rights obligations of MNCs	771
	18.3.2 Human rights and foreign direct investment	778
	Case Study 18.1: Unilateral repudiation of arbitral awards violating constitutional guarantees	782
	18.3.3 Corporate social responsibility	783
18.4	Human rights obligations of international organisations	785
	18.4.1 General obligations	785

xvii	Contents	
	Case Study 18.2: Non-consideration of economic and social rights by the IMF in Tanzania	790
	18.4.2 International organisations as violators of human rights: the need for dual attribution	790
	Case Study 18.3: Complicity of states through/with IGOs	796
18.5	National liberation movements and armed rebel groups	797
	18.5.1 'To Suffer thy Comrades': responding to human rights abuses by NSAs in the Philippines	798
	Interview 18.1: Judge and activist on Philippines' armed groups (Soliman M. Santos)	800
	Further reading	804
19	Globalisation and its impact on human rights	805
19.1	Introduction	805
19.2	The origins and nature of globalisation	807
19.3	Does the existing model of trade liberalisation promote development and alleviate poverty?	810
	19.3.1 Liberalisation of agriculture and its impact on food security	815
	Case Study 19.1: Liberalisation of Zambia's maize production	817
	Interview 19.1: The director of Food First (Eric Holt-Giménez)	817
19.4	How intellectual property rights hinder access to essential medicines for the poorest	819
	Case Study 19.2: Biopiracy and the mayocoba bean	821
19.5	The protection of persons in flight or movement	822
	19.5.1 The protection of refugees in international law	824
	19.5.2 The protection of migrants	831
19.6	The <i>McLibel</i> case: sales globalisation and its impact on rights	835
	Further reading	838
	Index	840