Recognizing the Interdependence of Rights in the Antidiscrimination Context through the World Conference against Racism

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RECOGNIZING THE INTERDEPENDENCE OF RIGHTS IN THE ANTIDISCRIMINATION CONTEXT THROUGH THE WORLD CONFERENCE AGAINST RACISM

by Catherine Powell and Jennifer H. Lee*

BACKGROUND

A major theme embraced at the United Nations Third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) in Durban in 2001 was the principle that human rights are interdependent. The notion that civil and political rights depend on economic, social, and cultural rights (and vice versa) is implied in the Universal Declaration of Human Rights, the foundational document upon which the modern human rights framework rests. Articulating the concept of interdependence within the antidiscrimination law context, treaties and treaty bodies have acknowledged that gender equality and racial equality are interdependent rights. For example, in its preamble, the Convention

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1. Article 2 of the Universal Declaration of Human Rights (UDHR) states that "everyone is entitled to all the rights set forth in this Declaration." Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., art. 2, U.N. Doc. A/810 (1948) (emphasis added) [hereinafter UDHR]. At the same time that the UDHR provides for traditional civil and political rights such as the "right to life, liberty, and the security of person," it also recognizes that "everyone . . . is entitled to realization . . . of the economic, social and cultural rights indispensable for his dignity." Id. arts. 3, 22.
on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that the eradication of racial discrimination and other forms of subordination is "essential to the full enjoyment of the rights of men and women." Additionally, the U.N. Committee that oversees implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) has adopted General Recommendation 25 on Gender Related Dimensions of Racial Discrimination, which calls upon States Parties to include information on gender aspects of racial discrimination in their reports to the Committee on the Elimination of Racial Discrimination (the CERD Committee). The two central documents adopted at the 1995 United Nations Fourth World Conference on Women in Beijing, China (the Beijing Declaration and the Beijing Platform for Action) also recognize the interdependence of gender and racial equality in acknowledging that women and girls face barriers such as "race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people."

In an effort to facilitate and concretize this trend, the United Nations Development Fund for Women (UNIFEM) asked us to prepare a background paper for the WCAR process. A revised and updated version of the background paper, first published as the U.N. document, Integrating Gender into the Third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Integrating Gender), is republished below. Following its


5. Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference, World Conference Against Racism, Racial
initial publication, *Integrating Gender* was circulated along with background papers by other U.N. agencies in May 2000 at the first of three global Preparatory Committee meetings held in Geneva, where the outlines of the WCAR Declaration and Program of Action were discussed and negotiated.  

*Integrating Gender* sought to advance and expand the principle of the interdependence of rights by asserting that an international conversation on race and racial discrimination should include and fully explore gender issues from the outset. After making the case that gender and race equality depend on one another and sketching treaty and treaty body precedents, the background paper lays out a broad spectrum of concrete examples reflecting how racial inequality intersects with gender inequality. In doing so, we hoped to highlight the necessity of treating gender-related issues as integral to the World Conference process and follow up.

*Integrating Gender* also presented specific recommendations to WCAR participants, United Nations bodies, states, and non-governmental organizations (NGOs). Among other things, the recommendations included calling for the disaggregation of data along both race and gender lines; information gathering specific to


6. The second and third global Preparatory Committee meetings took place in Geneva, Switzerland from May 21 to June 1, 2001 and from July 30 to August 10, 2001, respectively.

women of disadvantaged racial groups; collaboration among governments, non-governmental organizations, and academic institutions; and the incorporation of gender issues into the work of governmental bodies.

WCAR took place in Durban, South Africa from August 31 to September 7, 2001. Despite the political controversy surrounding the Durban meeting, the resulting Declaration and the Program of Action negotiated by the governments through the WCAR process contain significant provisions reflecting and affirming Integrating Gender's recommendations. A Woman's Caucus, established at the first Preparatory Committee meeting leading up to the WCAR, lobbied government delegates to ensure the integration of gender into these documents. The preamble to the Declaration specifically asserts that states "should apply a gender perspective, recognizing the multiple forms of discrimination which women can face." The Declaration's section on combating racism asserts that "racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls" and recognizes "the need to develop a more systematic and consistent approach to evaluating and monitoring racial discrimination against women." The Declaration further expresses an understanding of the interdependence of the rights of women and the rights of racial or ethnic minorities in its provisions on trafficking. Furthermore, the Declaration contains an analysis about the rights of women belonging to certain faiths and religious minorities.

8. See Rachel L. Swarns, Racism Talks Still Seek to End Impasses on Israel and Slavery, N.Y. Times, Sept. 8, 2001, at A5; see also Catherine Powell, United States Human Rights Policy in the 21st Century in an Age of Multilateralism, 46 St. Louis U. L.J. 421, 422 n.7 (2002) (suggesting that the United States may have been able to reduce the controversy that had diverted WCAR's agenda if it had not withdrawn from the World Conference).


10. Id. ¶¶ 69, 70.

11. Id. ¶ 30 (affirming "the urgent need to prevent, combat and eliminate all forms of trafficking in persons, in particular women and children, and recognize that victims of trafficking are particularly exposed to racism, racial discrimination, xenophobia and related intolerance").

12. Id. ¶ 71 (deploring "attempts to oblige women belonging to certain faiths and religious minorities to forego their cultural and religious identity, or to
The Program of Action to the WCAR also explicitly recognizes the need for progress with respect to gender and the status of women by urging the following: states' signatures, ratifications, or accessions to the Convention on the Elimination of Discrimination Against Women; equal rights for women with respect to nationality; increased public actions and policies for women of African descent; public policies and programs benefiting indigenous women and girls; protections for migrant and refugee women; advancements in the area of violence against women; incorporation of gender perspectives in programs of action and involvement of women at decision making levels; the inclusion of gender-based manifestations of racism in national policies against racism; promotion of gender equality in social development policies; and development, enforcement, and strengthening of measures against trafficking and slavery of women and children.

A number of developments which paralleled the WCAR process also illustrate the principle of the interdependence of rights in the antidiscrimination law context. The United Nations Division for the Advancement of Women, the Office of the High Commissioner for Human Rights (OHCHR), and UNIFEM convened an expert group meeting of scholars and advocates on the gender-related aspects of racial discrimination in November 2000 in anticipation of the WCAR. In Spring 2001, the United Nations Commission on the
Status of Women drew upon the Beijing documents to emphasize the need to address intersectional discrimination. Similarly, in 2001, the OHCHR advocated that governments adopt a series of temporary special measures geared towards remedying the effects of multiple discrimination.

While these developments reflect progress in realizing the interdependence of rights in antidiscrimination law, this progress must be extended through international and national enforcement of laws recognizing this interdependence. Consistent with its General Recommendation 25, the CERD Committee has recently begun to solicit information on the gender aspects of racial discrimination in reports submitted by States Parties. The Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) has yet to issue a parallel general recommendation and broader coordination is lacking among U.N. agencies to address the interdependence of other rights. By calling on States Parties to report on discrimination at the intersection of race and gender, the CERD Committee and the CEDAW Committee can begin an important dialogue to flesh out and concretize how States can realize the interdependence of rights through equality law. National and subnational governments can assist in this process through local implementation of laws recognizing the interdependence of rights. Follow-up and implementation of the WCAR Declaration and

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Program of Action should also reflect the fact that securing racial equality depends on securing gender equality and other rights.

**INTEGRATING GENDER INTO THE THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

**I. INTRODUCTION**

1. This background paper assesses the importance of integrating gender into efforts to address racial discrimination and related intolerance in the WCAR process. While this background paper primarily focuses on racial discrimination, the analysis may be applied to xenophobia and related intolerance where these experiences are "raced" experiences. Addressing these forms of intolerance in a comprehensive manner requires unmasking the ways in which race intersects with gender and other status. A gender analysis is needed to make racism more fully visible, because "racial discrimination does not always affect men and women equally or in the same way." Women often experience compounded or intersectional discrimination, in which their experience of gender discrimination intersects with race discrimination and related intolerance.

2. By not taking gender into account, certain forms of race discrimination disproportionately affect women, and gendered structures of power and inequality contribute to the experience of racism.

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29. Men may also experience forms of racial discrimination which are gendered, but since male gender experiences of racism are already built into the baseline of racial discrimination concepts, this type of discrimination is typically already addressed within the traditional framework. However, certain forms of violence against men, including straight men, are sexualized and gendered in ways unique to men of color (for instance, violence against Asian men may carry undertones of the stereotype of Asian males as effeminate). A gender analysis of human rights violations against men of color could potentially help reveal patterns and causes of such violence, thereby improving institutional responses and prevention measures relating to violence against men of color. See Jennifer H. Lee, *Remembering Vincent Chin and Rethinking Paradigms of Hate Violence Against Asian Americans* (Oct. 25, 2002) (unpublished manuscript, on file with author).
discrimination may go undetected. Because women comprise approximately fifty percent of the world's populations affected by racism, failure to respond to discrimination at the intersection of race and gender has serious and widespread consequences. Recognizing the "multiple barriers to [women's] empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, disability, or because they are indigenous people," the Beijing Platform for Action acknowledges that gender subordination may be informed and heightened by race discrimination, xenophobia, and other experiences. Similarly, because racial discrimination may exist or be intensified due to its intersection with gender, attempts to address the persistence of racism must incorporate a gender analysis to be effective and inclusive.

3. The human rights framework, which animated the WCAR agenda, emphasizes the notion that rights are interdependent and indivisible. The primary treaty mechanisms that address race and gender discrimination acknowledge the crossroads of gender and race. CEDAW states that the "eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women." The Committee on the Elimination of Racial Discrimination has adopted General Recommendation 25 on Gender Related Dimensions of Racial Discrimination, which calls upon States Parties to report on gendered aspects of racial discrimination. The Committee's recommended reporting guidelines for States Parties ask that country reports "describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention."

4. Several other major human rights treaties provide anti-discrimination protections based on race and gender, though they are not as explicit in addressing the interdependence of race and gender

30. See Beijing Declaration, supra note 4, ¶ 32.
31. The Universal Declaration of Human Rights reflects this interdependence of rights by embracing economic, social, and cultural rights as well as civil and political rights. See UDHR, supra note 1, art. 1.
32. See CEDAW, supra note 2, pmbl., cl. 10 (emphasis omitted).
equality. Such guarantees are articulated in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, and the Standard Minimum Rules for the Treatment of Prisoners.

5. Women may experience some forms of race discrimination "specifically because of their gender, such as sexual violence against women members of particular racial or ethnic groups during armed conflict." Women may also be disproportionately affected by the experience of race discrimination when, for example, due to labor market segregation and relative economic disadvantage, women of racially disadvantaged groups are more likely than their male counterparts to bear the brunt of discriminatory and exploitative labor practices. This intersection of race and gender is amplified by

34. See UDHR, supra note 1, art. 1 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").

35. See International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, art. 2(1), S. Exec. Doc. E, 95-2, at 24 (1978), 999 U.N.T.S. 171, 173 (entered into force Mar. 23, 1976) [hereinafter ICCPR] ("Each State Party to the present Covenant undertakes to respect and ensure . . . the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex . . . or other status.").


40. Generally, there are two types of discriminatory policies and practices: those that disproportionately affect women, and those that target women because they are women. CEDAW recognizes this by defining discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing . . . the recognition . . . by women . . . of human rights."
economic rights violations, which disproportionately affect women who face dual or multiple forms of discrimination based on race, gender, immigration, and other status.

6. The term “racial discrimination” in this paper recognizes that race and ethnicity are socially constructed, and tracks the broad definition included in CERD, which states that racial discrimination is “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Use of the term “minority groups” here refers to communities lacking power whose status is socially constructed through historical relationships based on power that is justified through perceived difference due to race, ethnicity, color, descent, national origin, religion, language, culture, caste, class, and other status.

7. Consistent with CEDAW’s preambular language, this background paper provides groundwork for gendered experiences of race discrimination, particularly as it affects immigrant communities, indigenous peoples, minority groups, those affected by colonialism, and those affected by group-based conflict. In addition

CEDAW, supra note 2, art. 1 (emphasis added).

41. CERD, supra note 3, art. 1(1).

42. CEDAW, supra note 2, pmbl., cl. 10 (recognizing that the “eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neocolonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women”) (emphasis added).

43. Each of these categories of identity is socially constructed, as is “gender” itself:

The term “gender” refers to the socially constructed roles of women and men that are ascribed to them on the basis of their sex, in public and in private life. The term “sex” refers to the biological and physical characteristics of women and men. Gender roles are contingent on a particular socio-economic, political and cultural context and are affected by other factors, including age, race, class and ethnicity. Gender roles are learned and vary widely within and between cultures. As social constructs, they can change.

*Integrating the Gender Perspective into the Work of United Nations Human*
to analyzing manifestations of race discrimination within particular country contexts, this paper also addresses aspects of colonialism as a "raced" experience. Far from being a distant phenomenon of an imagined past, colonization continued well past World War II. Indeed, the effects, particularly the economic effects, of colonization continue to this day, including reliance on single crop economies (which makes countries vulnerable to shifting global prices) and reliance on cheap and exploitable labor.

II. THE INTERSECTION OF RACE AND GENDER IN CRITICAL AREAS OF CONCERN IDENTIFIED IN THE BEIJING PLATFORM FOR ACTION

8. A gender analysis of racism could build on the progress achieved in the Beijing Platform for Action. This background paper focuses on nine of the twelve Critical Areas of Concern identified in the Beijing Platform for Action to illuminate ways in which discrimination at the intersection of race and gender continues to limit opportunities for women and must therefore be the focus of serious examination.

9. Violence Against Women. International human rights law has long prohibited state-sanctioned violence against individuals and has imposed affirmative obligations upon states to protect


44. For a much fuller discussion of colonialism as a raced and gender experience, see Uma Narayan, Dislocating Cultures: Identities, Traditions, and Third World Feminism (Linda Nicholson ed., 1st ed. 1997).

45. Colonial powers encouraged the production of one crop, such as bananas, cocoa, or coffee, as a way to artificially control production and trade. Radhika Balakrishna & Uma Narayan, Combining Justice with Development: Rethinking Rights and Responsibilities in the Context of World Hunger and Poverty, in World Hunger and Morality 231, 236 (William Aiken & Hugh LaFollette eds., 2d ed. 1996).

46. While the availability of low wage and lax labor enforcement is a comparative advantage in the global competition for jobs and foreign investment, it creates a sense of vulnerability for the former colonies and the workers involved who are dependent on multi-national corporations. The decision-makers in these corporations are usually centered in financial capitals of the former colonizing powers.
individuals from violence by both private and public actors. In some cases, however, where gender and race converge to make women of disadvantaged racial groups among the most powerless in society, rates of violence are particularly high. For example, rigid caste systems, as in India, render Dalit ("untouchable") women particularly vulnerable to sexual violence and abuse. In South Africa, due to the lingering effects of apartheid and colonialism, there is a high incidence of sexual violence by white male farmers who prey on African women farm workers who work their land. This pattern of violence against women, many of whom come from neighboring African countries and occupy migrant status, replicates the gender and racial dynamics and violence that characterized apartheid. Violence is also used to target women perceived as being part of an economically elite ethnic minority. During a period of civil unrest in Indonesia in 1998, hundreds of ethnic Chinese women were specifically targeted for rape and sexual torture.

In addition to the physical and psychological harm that affects battered women (which makes it difficult to break the cycle of violence that often affects these women), domestic violence victims who belong to marginalized ethnic or racial groups confront additional obstacles to escaping violence. Battered women of color may face language barriers or cultural insensitivity. In the United States, for example, many immigrant women are prevented from seeking redress due to the legal requirement that women who come to the country through their U.S. citizen husbands must hold "conditional" status for two years. The failure of many countries to recognize gender-based violence as grounds for asylum also has an adverse impact on immigrant women.

47. See UDHR, supra note 1, art. 3 ("Everyone has the right to life, liberty and the security of person."); ICCPR, supra note 35, art. 2 (obligating States Parties to "take the necessary steps" to pass legislation implementing rights in Covenant and provide effective remedies); id. art. 7 (prohibiting "cruel, inhuman or degrading treatment"); CERD, supra note 3, art. 5 (obligating States Parties to "undertake to prohibit and to eliminate racial discrimination in all its forms," including the "right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution"); Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature Dec. 9, 1948, art. 1, 102 Stat. 3045, 3045, 78 U.N.T.S. 277, 280 (entered in to force Jan. 12, 1951) (obligating States Parties to punish perpetrators of genocide).
11. Indigenous women or women from racially or ethnically marginalized groups may fear state authority, if the police have traditionally used coercive and violent means of criminal enforcement in their communities. Furthermore, those who seek relief from the state for gender-related violence committed by male members of their racial, ethnic, religious, and indigenous communities often face pressure not to report violence due to the fear of greater group stigmatization.

12. Community members may invoke customary and religious practices to justify violence directed towards women. Those seeking to justify gender-related violence may also accuse challengers of imposing "western" or "colonial" or "white" cultural norms upon their own distinct cultures. For example, opposition to so-called "honor killings" in Jordan or to female circumcision in parts of Africa are characterized as being led by western or white feminists (even where these feminists are neither western nor white). In addition to minimizing violence against women, such appeals to the community's shared racial, national, cultural, or religious identity can serve to rationalize non-interference by the state. Similarly, some Muslim men appeal to the Shari'a to authorize beating their wives and to justify non-interference by the state. These uses of racial, national, cultural, and religious identity serve to normalize gender-based violence, as well as state acquiescence and failure to remedy this violence.

13. Women and Armed Conflict. Violence against women is rampant during periods of armed conflict, although international law prohibits gender-based violence as a weapon of war. In the context of recent ethnic-based conflicts in Rwanda and Bosnia, rape and

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48. See Rome Statute of the International Criminal Court, opened for signature July 17, 1998, art. 8(2)(b)(xxii), 37 I.L.M. 999, 1003 (entered into force July 1, 2002) [hereinafter ICC Statute] (including rape and other forms of sexual violence in the enumeration of war crimes); id. art. 7(1)(g) at 1004 (the definition of crimes against humanity includes "rape, sexual slavery, enforced prostitution, forced pregnancy, sterilization or any other form of sexual violence of comparable gravity" when committed as part of a systemic attack directed against any civilian population, with knowledge of the attack); see also Prosecutor v. Akayesu, Judgement, ICTR-96-4-T, ¶¶ 596–98 (ICTR Trial Chamber I 1998) (finding rape a genocidal act, where the other elements of genocide were met); Prosecutor v. Delalic (Celibici case), Judgement, IT-96-21-T, ¶¶ 495–96 (ICTY Trial Chamber 1988) (finding rape constitutes the specific war crime of torture, where other elements of torture—such as state action—are established).
sexual violence have been used to target women of particular ethnic
groups as an instrument of genocide or torture. In Rwanda, the
genocide exploited racial and gender stereotypes; for example, Tutsi
women were portrayed as economically elite evil temptresses and
spies. A more historical example is the World War II Japanese
military practice of forcing women from Korea, the Philippines,
Taiwan, Malaysia, and Indonesia into sexual servitude. "Some of
these situations of armed conflict have their origin in the conquest or
colonization of a country by another State and the perpetuation of
that colonization through state and military repression."

14. Ethnic conflict also produces many refugees and
internally displaced persons in ways that impact women differently.
International human rights law inadequately recognizes the rights of
female refugees. In addition to confronting the same problems that
their male counterparts face, women who are refugees or internally
displaced struggle with gender-related issues such as increased
vulnerability to sexual violence, gender and racial economic
inequality, increased domestic violence, gender-based limitations on
freedom of movement, and newly acquired head of household status
(where, for example, husbands had been killed in ethnic conflict in
countries from which these women fled). For example, Burundian
women in refugee camps in Tanzania have been regularly attacked
while conducting daily tasks. In fact, eighty percent of the world's
refugees are women and children, although these groups have
traditionally been marginalized in asylum law.

15. In post-conflict reconstruction efforts in the aftermath of
ethnic conflict, women's changed circumstances require specific
attention to their rights. Female victims of ethnic-based violence and
genocide face unique problems associated with sexual violence, such

49. See, e.g., Prosecutor v. Akayesu, Judgement, ICTR-96-4-T, ¶¶ 596–98
(ICTR Trial Chamber I 1998) (finding rape to be a genocidal act in the Rwandan
conflict); Prosecutor v. Delalic (Celibici case), Judgement, IT-96-21-T, ¶¶ 495–96
(ICTY Trial Chamber 1988) (finding rape a form of torture in the Bosnian
conflict).

50. Beijing Declaration, supra note 4, ¶ 131.

51. For example, see the nondiscrimination clause in the Convention
Relating to the Status of Refugees. Convention Relating to the Status of
Refugees, adopted July 28, 1951, art. 3, 19 U.S.T. 6259, 6264, 189 U.N.T.S. 137,
156 (entered into force Apr. 22, 1954) (requiring States Parties to apply
Convention to refugees without discrimination as to race, religion or country of
origin, but with no mention of gender).
as pregnancy, guilt, and community stigma. In Bosnia and Herzegovina’s reconstruction program, discrimination against women has diminished their employment opportunities. In Rwanda, women still cannot inherit property from their male relatives who were killed during the genocide there. A gender analysis of post-reconstruction initiatives could recognize the importance of providing economic opportunity to women, especially in light of the fact that women of racially and ethnically disadvantaged groups everywhere often live in poverty at disproportionately high rates.

16. Women and Poverty. International human rights law recognizes the right to an adequate standard of living and the state’s obligation to provide the means for women and men to achieve humane living standards. However, globalization, privatization, structural adjustment policies, and the weakening or removal of social safety nets undermine this right, with a particularly adverse impact on minority, immigrant, and indigenous women, as well as on women in countries that are newly independent or have undergone economic and political transitions. The cuts in social spending and public sector jobs that have accompanied structural adjustment and welfare reform policies disproportionately affect women at the intersection of race and gender. Moreover, the multiple roles women play and the burden of working harder to find clean water, fuel, food supply, and health care as a result of these policies are complicated for women of disadvantaged racial, ethnic, immigrant, and indigenous groups in societies. These groups often face patterns of residential segregation by race, racial discrimination by social service providers, restrictions prohibiting immigrants from accessing social services, and the absence of materials in more than one language describing how to access social services.

17. Finally, in certain racial and ethnic groups, families tend to be headed by single mothers, who are especially vulnerable to government spending cuts. This is particularly true for women who survive their male relatives following an ethnic-based genocide or

52. UDHR, supra note 1, art. 25 (declaring the right to an adequate standard of living); ICESCR, supra note 36, art. 11 (obligating States Parties to “take appropriate steps to ensure the realization” of the “right of everyone to an adequate standard of living”).

53. For a discussion of how structural adjustment and welfare reform policies place these additional burdens on women, see Balakrishna & Narayan, supra note 45.
war (as in Rwanda and Bosnia), or who lose their male relatives to prison, homicide, or economic dislocation (as in the African American community in the United States). This phenomenon is exacerbated by racial and gender stereotypes that construct, for example, African American women in the U.S. as paradigmatic welfare recipients and as lazy "welfare queens" or "welfare cheats" with out-of-control sexual habits that result in large families.\(^4\)

18. Strategies to alleviate poverty must take into account the multiple barriers that poor women face. For example, micro-enterprise development must recognize the fact that race and gender discrimination may limit access to resources, such as credit, for women from disadvantaged racial, ethnic, and immigrant communities. Along the same lines, measures relating to land reform in indigenous communities must address women’s right to own and inherit land and property.

19. **Education and Training of Women.** Women's education and training are intimately linked to women's experience of poverty. United Nations treaties and declarations establish the right to education, including the right to equal educational opportunities.\(^5\) Despite these guarantees, women from disadvantaged racial, ethnic, immigrant, and indigenous communities often have lower rates of literacy, secondary school attendance and graduation, access to higher education, and enrollment in scientific and other training programs that cultivate skilled workers.

20. The literacy rate for women worldwide is 71.48%, compared to 83.71% for men. In the developing countries, the literacy rate for women is 39.3%, while it is 59.19% for men.\(^6\) Seventy-three million out of the 130 million school-age children who do not receive

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54. While African American and Latino women are disproportionately enrolled in welfare programs, in fact white women and their families are the largest group of welfare recipients in the United States. Contrary to another myth, birth rates of welfare recipients are at approximately the same level as they are for the general population. Marlene Cimons, *Myths Blur the Realities of Welfare*, L.A. Times, Jan. 29, 1995, at A1.

55. See, e.g., *UDHR*, supra note 1, art. 26 (establishing right to education); *ICESCR*, supra note 36, art. 13 (establishing right to education); *CEDAW*, supra note 2, art. 10 (obligating States Parties to eliminate discrimination in education).

an education are girls, or about two out of three. Of all 960 million illiterate adults, two-thirds are women. Although these statistics are not disaggregated by race, other evidence suggests that women and girls of disadvantaged racial, ethnic, immigrant, and indigenous groups have fewer educational resources. In South Africa, where the educational system is still fairly segregated by race, girls of racially disadvantaged groups are doubly affected because they tend to work earlier to support their families, and have little education due to the expectation that they will marry. In the Czech Republic and Bulgaria, Roma children are disproportionately placed in schools designed for the mentally retarded.

21. Affirmative action programs recognize the role that apartheid, colonialism, slavery, and discrimination have played in foreclosing educational access for certain communities and women, particularly at higher levels of education. Also emerging are innovative programs that challenge racial and gender stereotypes, by encouraging education and training for women of disadvantaged groups, particularly in fields formerly closed to them, such as science and math. Because education and training are closely linked to employment opportunities and economic success, addressing race and gender inequalities in these areas is a significant key to securing women’s rights in other areas.

22. Women and the Economy. United Nations treaties and declarations establish women’s right to socioeconomic mobility and opportunity through employment as well as education. However, barriers to women’s advancement remain. Employment opportunities remain particularly limited for minority, immigrant, and indigenous women in industrialized countries, as well as for women in former colonies that are less developed countries. Many of these women hold jobs in free trade zones, the informal economy, the underground economy, or unregulated sectors that operate parallel to more formalized and unionized sectors.

23. Export processing zones (EPZs) have high concentrations of immigrant women and attract multinational corporations, who

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57. UDHR, supra note 1, art. 23 (establishing the “right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment,” and “to equal pay for equal work”); ICESCR, supra note 36, arts. 6, 7 (recognizing the right to work, and “the right to everyone to the enjoyment of just and favorable conditions of work”); CEDAW, supra note 2, art. 11 (obligating States Parties to eliminate discrimination in employment).
frequently subcontract overseas and benefit from intra-regional racial hierarchies to guarantee low labor costs. Multinational corporate mobility contributes to the problem. For instance, apparel companies may contract with male factory owners from East Asian countries, such as South Korea, who then oversee female workers from Southeast Asian countries such as Thailand, Vietnam, and Burma. While EPZs provide employment opportunities, they often extend a lower level of labor protections than are available in the mainstream economy.

24. Even in the formal economy, women of racially disadvantaged groups find sticky floors, broken ladders, locked doors, and glass ceilings preventing their access to equal opportunity. Employers tend to have considerable power over these women due to a confluence of gender, race, language, and immigration status-related factors. For example, wage disparities between white and black workers often intersect with wage disparities between men and women, which leave black and other minority female workers at the bottom of the labor market. The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance found that black women in Brazil "receive the lowest salaries (four times lower than white male salaries), are employed in the most unhealthy locations, work a triple working day and face threefold discrimination." In the United States, immigrant women of Latino and Asian descent are often limited to work in garment factories, sometimes in sweatshop conditions characterized by subminimum wages and poor working conditions.

25. Immigrant and migrant women worldwide face unique obstacles to their full enjoyment of human rights due to a combination of gender, race, ethnicity, language, immigration, and class status factors. Immigrant women domestic workers, for example, are particularly vulnerable because they often cannot access the public sphere. Many such domestic workers come from poorer countries, for example, in Asia, such as the Philippines, Indonesia, Thailand, Bangladesh, and Sri Lanka, to work in the

Middle East and affluent East Asian states where they face racism from the larger society. Domestic laws may compound the problems faced by immigrant and migrant women, as in the case of Hong Kong’s "two week" rule, or the United Arab Emirates's lack of response to reports of abuse, including sexual abuse, of domestic workers. Employers and/or the state often fail to provide female domestic workers and other low-wage workers with access to health care.

26. Women and Health. Women have the right to enjoy the highest degree of physical and mental health. A variety of factors, including the effects of underdevelopment and poverty, prevent women of disadvantaged racial and ethnic groups from accessing adequate health care. For example, African women experience disproportionately high rates of HIV/AIDS, which often goes untreated, in part due to the unequal global distribution of health care resources and access to HIV/AIDS drugs. African women's experiences with HIV/AIDS require specific gender-related attention because many women cannot protect themselves from the disease when they have limited access to birth control.

27. The privatization of health care in industrialized countries limits health care access for minority women in these countries. This problem is compounded by restrictions that limit public funding for reproductive health care for women. Gender and racial bias in the medical system and in medical practices also afflict minority women. Medical studies that fail to disaggregate data according to race and gender, or do not examine the specific health issues affecting women of color, can overlook medical problems specific to certain women.

59. The "two week" rule places illegal status on foreign workers who remain in the country for two weeks after the expiration of their contracts.

60. See UDHR, supra note 1, art. 25 (including the "right to security in the event of... sickness" in the definition of an adequate standard of living); ICESCR, supra note 36, art. 12 (recognizing "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"); CEDAW, supra note 2, art. 12 (obligating States Parties to "take all appropriate measures to eliminate discrimination against women in the field of health care").

61. For instance, medical researchers in the United States cannot explain why black women are more likely than white women to die from breast cancer, even though black women develop the disease at lower rates. See Deborah L. Shelton, Closing the Gap Between White and Minority Health, Star-Ledger (Newark), Jan. 25, 2000, at 8.
28. Forced sterilization and other coercive measures involving reproductive health have also targeted women of particular racial and ethnic groups. For example, Roma women in Europe have been subjected to involuntary gynecological examinations. Also, with population control measures informed by racial and gender stereotypes, women's bodies have become sites for policies that encourage reduced birth rates in the global South and in minority communities in the global North. In India, for example, economic coercion has been used to encourage Indian women to undergo sterilization procedures. In the United States, African American, Latino, and Native American women have been the targets of sterilization campaigns and selective drug screening and prosecution during pregnancy. Moreover, women of disadvantaged racial groups have been encouraged to participate in the use of experimental reproductive technology to control fertility, such as Norplant and Depo Provera. For example, when HIV-positive Haitian refugees were detained at the U.S. naval base in Guantanamo Bay, Cuba in 1993, doctors administered Depo Provera to female detainees and (mis)informed them that the birth control drug would help increase their T-cell counts, effectively treating their AIDS.62

29. There are also racial differentials in maternal and infant mortality rates. Indigenous women in Peru experience maternal mortality rates twice as high as the general population. In the United States, Latino women are twice as likely as white women to die in childbirth; African American women are four times as likely to die in childbirth.63 The average infant mortality rate of 80 per 1000 in Guatemala jumps to 160 per 1000 in the highlands Indian areas.64

30. For indigenous women whose communities have been the targets of genocide and mass extinction, health issues are linked to racial discrimination. For instance, high rates of alcoholism among Native American communities in the United States can in part be traced to longstanding patterns of neglect and of racial discrimination against Native Americans. Such communities suffer

from disproportionately high rates of fetal alcohol syndrome due to alcohol use during pregnancy.

31. Human Rights. "All human rights—civil, cultural, economic, political and social, including the right to development—are universal, indivisible, interdependent, and interrelated . . . ."65 Governments must not only refrain from violating the human rights of all women, but must work actively to promote and protect these rights.66 Women of disadvantaged groups are both subject to human rights violations in disproportionate ways and do not have access to remedies on an equal basis. Two examples serve to illustrate this particularly well.

32. In a well-known case in Australia, the rights of Ngarrindjeri Aboriginal women to protect a sacred site for religious purposes were denied when the Australian High Court rejected their race discrimination challenge to a bridge construction project on Hindmarsh Island.67 The government required the Ngarrindjeri people to verify the religious basis of their claims, but the women refused to reveal the basis of their beliefs based on the sacredness of these beliefs. Because of their refusal to reveal the religious basis of their claims, their religious practices were belittled and derided as "secret women's business."

33. In the United States, where drug sentencing policies have an adverse impact based on race and gender, African American women constitute the fastest-growing segment of the prison population. Because first-time, low level, nonviolent female drug offenders typically do not have as much information to bargain in exchange for reduced sentences, they often get longer prison sentences than men who are higher up in drug networks and more accountable, with greater access to information to barter in exchange for shorter sentences. African American and Latino women are doubly affected because these gender biases intersect with race disparities in drug sentencing policies, such as the fact that crack cocaine (a relatively inexpensive drug of choice for poor African Americans) is penalized one hundred times more severely than powder cocaine (an expensive drug of choice for affluent whites). Laws limiting prisoners' access to the courts restrict remedies for

65. Beijing Declaration, supra note 4, ¶ 213.
66. Id. ¶ 215.
women bringing challenges to dual and multiple forms of discrimination in the criminal justice system.

34. Institutional Mechanisms for the Advancement of Women. Mechanisms for reporting and remediing racial discrimination remain unavailable to many women due to "gender-related restraints, such as denial of suffrage, lack of legal capacity, gender-bias in the legal system, restrictions on women's access to public places, and discrimination against women in private spheres of life." While both the 1993 World Conference on Human Rights and the 1995 Fourth World Conference on Women declared that women's rights are human rights, "[w]omen's equal enjoyment of human rights and fundamental freedoms, do not occur automatically as a result of the overall protection and promotion of human rights." The various forms of racial discrimination experienced by women often "escape detection if there is no explicit recognition and systematic or focused monitoring of the different life experiences of women and men in both public and private life." Additionally, "structural imbalances of power between women and men, the systemic nature of discrimination against women and the general absence of women in law creation and implementation processes continue to reflect disproportionately the experiences of men and exclude the experiences of women." Because of this exclusion, women from disadvantaged racial and ethnic communities may be intimidated or discouraged from seeking official redress. For example, immigrant women who fear losing their legal immigrant status often do not seek redress for domestic violence and labor rights violations.

35. To overcome these limitations, various international institutions and instruments call on multilateral and governmental entities to integrate gender perspectives into all policies and programs. The Commission on Human Rights has recommended that human rights treaty bodies to integrate gender. Recent initiatives,

68. McDougall & van Boven, supra note 28, ¶ 2.
69. See Report by the Secretary General on Integrating the Gender Perspective, supra note 43, ¶ 17.
71. Report by the Secretary General on Integrating the Gender Perspective, supra note 43, ¶ 18.
72. Effective Implementation of International Instruments on Human
such as the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women, commit governments to mainstream gender.\textsuperscript{73} The Economic and Social Council's Agreed Conclusions further compel mainstreaming gender.\textsuperscript{74}

36. \textit{Women in Power and Decision-making}. Women's access to institutional mechanisms for advancement improves when more women have decision-making power. Women of racially disadvantaged groups are severely underrepresented in official decision-making capacities, in areas such as government, political parties, businesses, and trade unions. Women generally comprise only ten percent of all legislative bodies in the world, and an even smaller percent hold ministerial positions. Comparable statistics on political representation by women of racially disadvantaged groups are unavailable, but could be uncovered through disaggregation of data according to gender and race.

37. Women experience gender- and race-related barriers to holding positions of power. These barriers include discriminatory attitudes, structural inequalities in women's education and employment, and the absence of gender and race issues on public agendas.

38. In some circumstances, women's ethnic or religious communities may deny them the basic right to legal equality, in violation of human rights law.\textsuperscript{75} Not only does this prevent women


\textsuperscript{73} The Beijing Declaration commits governments to promoting active and visible policies of “mainstreaming a gender perspective into all policies and programmes.” \textit{Report by the Secretary General on Integrating the Gender Perspective, supra note 43, ¶ 7.}


\textsuperscript{75} \textit{See UDHR, supra note 1, art. 6 (“Everyone has the right to recognition everywhere as a person before the law.”); id. art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection before the law.”); ICCPR, supra note 35, art. 16 (“Everyone shall have the right to recognition everywhere as a person before the law.”); CERD, supra note 3, art. 5 (obligating States Parties to guarantee the right of “equality before the law”); CEDAW, supra note 2, art. 15 (“States Parties shall accord to women equality with men before
from assuming positions of power in the larger society, it inhibits women's decision-making capacity within the community. For instance, despite the strong equality guarantees in the new South African Constitution and in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, as a matter of practice, some ethnic groups in post-apartheid South Africa continue to treat women as minors, so that women cannot contract, acquire property, or marry without permission. Gender bias in the membership laws of some indigenous communities, which is prohibited by international human rights principles, also has the effect of denying indigenous women the ability to participate in community affairs.

III. RECOMMENDATIONS

39. In light of the complex intersections of gender, race, and other status, changes in reporting methodologies, information gathering, and working methods of the U.N. and other institutions would promote greater integration of gender into the effort to combat all forms of racial discrimination. Implementation of outcomes from the WCAR presents an important opportunity to take into account recommendations along the following lines.

40. Data Disaggregation. Often, data collection on racial discrimination is not disaggregated along gender lines. Racial discrimination against women often goes unnoticed and unaddressed in the absence of data disaggregated by race and gender. Multilateral organizations, governmental entities, and NGOs should disaggregate all information, particularly statistical data, by race, gender and other status.

41. Information Gathering at the Intersection of Race and Gender. Information collection should include a focus on issues that are particularly relevant to women of disadvantaged racial and

the law."); id. art. 16 (obligating States Parties to “eliminate discrimination against women in all matters relating to marriage and family relations”).

ethnic groups, which may be different from issues for men, even within the same community. The gender, race, and other relevant characteristics of victims should be identified when possible. Information gathering should include the extent to which human rights remedies are available to women of racially and ethnically disadvantaged groups, and women's de facto and de jure ability to access such remedies. Governmental initiatives should address the role of non-state as well as state actors in violating the human rights of women, and develop approaches to reporting on economic, social, and cultural rights in addition to civil and political rights.

42. Since community spokespeople are often men, information gathering activities should specifically seek out the perspectives of women. This may require confronting language barriers, women's inability to travel or learn about opportunities to speak with fact finders, and community norms that pressure women not to speak about their rights violations. For instance, on-site visits should seek access to facilities and sites where women can speak directly to officials, in conditions designed to safeguard women's security and confidentiality. Staff should include individuals with gender expertise and female interpreters.

43. Gender-Sensitive Language and Training. Governments should employ gender-inclusive and gender-specific language. “[T]erminology should characterize gender-specific abuses as accurately as possible.”77 All officials examining the problem of racial discrimination should receive training in recognition of women's human rights.

44. Collaboration Between Governments and NGOs. International and national women's NGOs “comprise a central source of information for reporting”78 on the human rights violations of women in conjunction with special mechanisms, treaty bodies, and other U.N. institutions. Although many women belonging to disadvantaged groups do not have decision-making power through traditional channels, their participation in NGOs and grassroots movements has enabled women to place their concerns on national, regional, and international agendas. Increased communication, and


78. Id. ¶ 13.
the provision of resources and training to support women's NGO monitoring and documentation of violations should occur.

45. Academic institutions also provide an essential source of information and can provide appropriate gender-based analyses of racial discrimination. An electronic database can coordinate contacts, information, and data among NGOs, academic institutions, think tanks, and other bodies. Studies that use gender as a cross-cutting variable in racial discrimination issues should be commissioned.

46. **Reporting.** The CERD Committee's General Recommendation 25 requesting that State Parties' reports include gender represents a commendable step forward. The CERD Committee should continue this progress by developing gender-sensitive standards for each of its articles and requiring reports to pay specific attention to gender and violations of the human rights of women. The CEDAW Committee should do the same vis-à-vis race by adopting a general recommendation similar to the CERD Committee's General Recommendation 25.

47. Governmental bodies should pay specific attention to gender issues and incorporate gender perspectives in their work. The gender-specific dimensions of human rights may be identified by considering "the effects of gender on: the form which a violation takes; the circumstances in which a violation occurs; the consequences of that violation for the victim; and the availability and accessibility of remedies."\(^7\)

48. In investigating or reporting on human rights, institutions at all levels should more fully consider women's experiences and the male-centered nature of economic, political, and legal institutions. Where data according to gender is unavailable, written materials should state so explicitly.

49. Legislative and other recommendations regarding racial discrimination should also include gender-based acts in the definition of "racial discrimination."

\(^{79}\) *Id. ¶ 3.*