

THE INTERSECTIONALITY OF RACE AND GENDER DISCRIMINATION*

I. ABSTRACT

Neither the gender aspects of racial discrimination nor the racial aspects of gender discrimination are fully comprehended within human rights discourses. Building on the growing recognition that race and gender discrimination are not mutually exclusive phenomena, this background paper offers a provisional framework to identify various forms of subordination that can be said to reflect the interactive effects of race and gender discrimination.¹ This framework suggests a provisional protocol to help identify the occasions in which such interactive discrimination may have occurred, and posits further that the responsibility to address the causes and consequences of such discrimination be shared widely among all human rights institutions.

II. INTRODUCTION AND OVERVIEW

Inspired by the desire to address the ongoing inequality of women world wide, women within human rights arenas have made important gains over the last decade to ensure greater inclusion of women and gender-related human rights abuses within the scope of human rights discourses. At the formal level, the principle of gender equality in the enjoyment of human rights is grounded in the United Nations Charter² and the Universal Declaration of Human Rights (UDHR)³ and it has been clarified

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¹ Here it is necessary to clarify the terms used throughout this paper. First, building on the broad scope of the International Convention on the Elimination of All Forms of Racial Discrimination, the terms “race,” “racism” and “racial discrimination” will be used broadly to capture all forms of group based discriminations including not only those based on formal racial distinctions but also those based on color, ethnicity, caste, national origin, and ancestry. See International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force January 4, 1969) [hereinafter Race Convention]. Because the nature of group-based discrimination varies widely around the world, there is no uniform way to name the women who are victimized by compound discrimination. In some contexts, the term “women of color” may be appropriate, in others, “ethnic women” or “minority women” is more descriptive and in still others, none of these terms is apt. To capture all the ways in which some women are marginal relative to others within their societies, various terms will be used interchangeably including “racialized women,” “racially marginalized women,” and “raced women.”

² U.N. Charter, art. 1, para. 3 (“The Purposes of the United Nations are: To achieve international cooperation in . . . promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race,

through the Convention on the Elimination of All Forms of Discrimination against Women⁴ (Women's Convention). These guarantees have been refined through a series of World Conferences, including the Cairo,⁵ Copenhagen,⁶ Vienna,⁷ and Beijing⁸ World Conferences.

sex, language, or religion. . .") (emphasis added).

³ Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. 1, at 71, art. 2, U.N. Doc. A/810 (1948) ("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.") (emphasis added).

⁴ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter Women's Convention].

⁵ *Programme of Action of the United Nations, International Conference on Population and Development, Cairo, 5–13 September 1994*, ch. IV, U.N. Doc. A/CONF.171/13 (1994).

⁶ *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, 14–30 July 1980*, U.N. publication, Sales No. E.80.IV.3 and corrigendum.

⁷ *Vienna Declaration and Programme of Action: Note By the Secretariat, World Conference on Human Rights*, U.N. GAOR, 1993 Sess., U.N. Doc. A/CONF.157/23 (1993) [hereinafter Vienna Declaration].

⁸ *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995*, U.N. GAOR, 1995 Sess., Agenda Item 165, at 131, 136, U.N. Doc. A/CONF.177/20 (1995) [hereinafter Beijing Declaration and Platform for Action].

These refinements have represented conceptual advances in expanding the scope of human rights beyond its initial parameters, which marginalized the range of human rights abuses that were gender-specific to women.⁹ The relative success of these efforts is evidenced in the substantive shift in perspectives about the relevance of gender difference in the process of expanding the scope of women's human rights. Although the UDHR in its own terms guarantees the enjoyment of human rights free of gender distinctions,¹⁰ the rights of women and the specific circumstances under which they suffer human rights abuses have in the past been framed differently from the classical visions of human rights abuse. In this sense, women have been marginal within a human rights regime that has aspired toward universal application.

This brand of universalism was firmly grounded in the experiences of men.¹¹ Thus, while women's enjoyment of human rights was formally guaranteed, these protections were compromised to the extent that women's experiences could be said to be different from the experiences of men. Thus, when women were detained, tortured, and otherwise denied civil and political rights in the same fashion as men, these abuses were clearly seen as violations of human rights.¹² Yet when women were raped in custody, beaten in private, or denied access to decision-making by tradition, their differences from men rendered such abuses peripheral to the core human rights guarantees.¹³

As a consequence of the efforts of women activists over the last decade, both at the various World Conferences and within auxiliary human rights arenas, a consensus has developed to the effect that human rights for women should not be limited to situations where women's problems, predicaments and vulnerabilities are similar to those suffered by men.¹⁴ The expanding scope of women's human

⁹ See generally Hilary Charlesworth, Christine Chinkin, & Shelley Wright, *Feminist Approaches to International Law*, 85 Am. J. Int'l L. 613 (1991) (arguing that both the structures of international lawmaking and the content of the rules of international law marginalize women and privilege men).

¹⁰ Universal Declaration of Human Rights, *supra* note 3, art. 2 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . sex . . .").

¹¹ See Charlesworth, Chinkin, & Wright, *supra* note 9, at 625–34.

¹² One commentator notes that this universalism extended both to governmental and non-governmental organizations (NGOs). Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism*, 25 Colum. Hum. Rts. L. Rev. 49 (1993). Kim notes that as of 1993, the U.N. Commission on the Status of Women had only recognized physical violence against women while in custody. *Id.* at 78 (citing Sandra Coliver, *United Nations Commission on the Status of Women: Suggestions for Enhancing its Effectiveness*, 9 Whittier L. Rev. 435, 440–41 (1987)). Similarly, Kim explains that the NGO Amnesty International published a report regarding women's rights violations, but focused "only on gender-specific human rights violations that fall into the preexisting, male-oriented definition of human rights." *Id.* at 83 (footnote omitted).

¹³ Hilary Charlesworth, *What are "Women's International Human Rights"?*, in *Human Rights of Women: National and International Perspectives* 58, 71–75 (Rebecca J. Cook ed., 1994) (describing how both "first generation" civil and political rights and "second generation" social, cultural, and religious rights are understood in ways that obscure and ignore the experiences of women); Kim, *supra* note 12, at 83 (paraphrasing Professor Charlotte Bunch, who summarized the excuses given by NGOs for not addressing gender-based violations as including that "the abuse of women, while regrettable, is a cultural, private, or individual issue and not a political matter requiring state action").

¹⁴ See, e.g., *Human Rights of Women: National and International Perspectives*, *supra* note 13 (offering a collection of articles by various scholars regarding the importance of recognizing women's human rights); Office of the High

rights is nowhere more evident than in the gender mainstreaming mandates of the Vienna and Beijing Conferences.¹⁵ Indeed, not only is difference no longer a justification for excluding gender analysis from the scope of core human rights discourses, the logic of gender mainstreaming in fact rests on the very importance of difference *per se*. Gender mainstreaming is predicated on the view that because gender matters, its differential effects must be analyzed in the context of all human rights activities.¹⁶ Thus, while women's differences from men have in the past served as a justification for marginalizing women's rights and gender inequality more broadly, women's differences now inform the responsibility of all human rights institutions to incorporate a gender analysis in their work.

The UDHR also entrenches the principle of non-discrimination on the basis of race.¹⁷ This guarantee was further elaborated in the International Convention on the Elimination of All Forms of Racial Discrimination¹⁸ (Race Convention) to encompass protection against discrimination on the basis of colour, descent and national or ethnic origin as well.¹⁹ Because the protection of civil and political rights lay at the core of human rights guarantees, the aspects of racial discrimination that have most closely tracked apartheid-like denials of equal citizenship rights have fallen squarely within the prevailing parameters of human rights discourse.²⁰ As in the case of gender discrimination, however, notions of difference also limit the possible expanse of race-based human rights guarantees to those contexts in which discrimination appears to be more like formal, *de jure* denial of civil and political rights. Discrimination that falls outside of this standard model can sometimes be regarded as "too different" from formal apartheid-like experiences to constitute human rights abuses. Efforts to further clarify the scope of the right to non-discrimination on the basis of race, like efforts to clarify the scope of gender discrimination, have also been undertaken in World Conferences,²¹ an

Commissioner for Hum. Rts., Working for Women's Human Rights and Gender Equality (recognizing "not only that women should be accorded rights equal to those of men, and that . . . there should be no *de jure* discrimination, but also that women should be able to enjoy all their rights, which calls for the identification and elimination of obstacles other than those of a legal nature"), at <http://www.unhchr.ch/women/focus.html> (last visited Nov. 2, 2001).

¹⁵ See Vienna Declaration, *supra* note 7; Beijing Declaration and Platform for Action, *supra* note 8. See also *Report of the Economic and Social Council for 1997*, U.N. GAOR, 52d Sess., U.N. Doc. A/52/3 (1997) ("In order to ensure effective implementation of the strategic objectives of the Beijing Platform for Action, the United Nations system should promote an active and visible policy of mainstreaming a gender perspective.") (footnote omitted).

¹⁶ See Ana Angarita, Office of the U.N. High Comm'r for Human Rights, *Introduction*, Hum. Rts., Special Issue on Women's Rights, Spring 2000, at 4–5 (defining gender mainstreaming and explaining that it has become an objective of the U.N. system), <http://www.unhchr.ch/html/menu2/publimuj.pdf>.

¹⁷ Universal Declaration of Human Rights, *supra* note 3, art. 2 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, . . .").

¹⁸ Race Convention, *supra* note 1.

¹⁹ *Id.* art. 1(1) (defining "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin . . .").

²⁰ See Louis Henkin et al., *Human Rights 332* (1999) (noting that the Race Convention "represents the determination of the international system to eliminate racial discrimination and its special manifestation as *apartheid* in South Africa").

²¹ See Basic Information, *The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (listing First World Conference to Combat Racism and Racial Discrimination, Geneva 1978, and Second World Conference to Combat Racism and Racial Discrimination, Geneva, 1983), at <http://www.un.org/WCAR/e>

opportunity which will again present itself with the upcoming UN World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance (WCAR) to be held in Durban, South Africa. So far, however, nothing equivalent to the Vienna and Beijing commitments to gender mainstreaming has been undertaken in the context of race and racial discrimination.

This contemporary overlap in the respective trajectories of gender and race related human rights activities—the conclusion of a decade-long strategy culminating in gender mainstreaming on one hand and the commencement of new strategies for deepening the commitment to eliminating race discrimination and related forms of intolerance on the other—creates a stage uniquely receptive to the efforts to engage the interaction between race and gender discrimination in at least two important ways. First, as governments and non-governmental organizations (NGOs) prepare for the upcoming WCAR, the imperative of gender mainstreaming, which applies broadly across U.N. treaty bodies and institutions, directs specific attention to the need to develop protocols and analyses explicitly designed to address the gendered dimensions of racism. Because racial discrimination is often gendered in the sense that women may sometimes experience discriminations and other human rights abuses in a manner that men do not,²² the mainstreaming mandate directs attention to the ways in which women and men are differently effected by race discrimination and other related intolerance. Not only does mainstreaming gender in the context of examining racism bring race discrimination against women out of the shadows, it also permits a sharper understanding of the particular ways in which gender shapes the discrimination that men face as well.

Second, the logic of mainstreaming gender, i.e., paying attention to difference in the name of greater inclusion, applies to differences *within* the category of women as well as to differences between women and men. There is growing recognition that the failure to attend to the various “differences” that characterize the problems and predicaments of different groups of women can operate to obscure or deny human rights protections due to all women.²³ While it is true that all women are in some way subject to the burdens of gender-discrimination, it is also true that other factors relating to women’s social identities such as class, caste, race, colour, ethnicity, religion, national origin, and sexual orientation are *differences that make a difference* in the ways in which various groups of women experience discrimination.²⁴

kit/background1.htm (last visited Nov. 2, 2001).

²² See *Gender Related Dimensions of Racial Discrimination*: 20/03/2000.CERD General Recom. 25, 56th Sess., U.N. Doc. A/55/18, annex V (2000) [hereinafter *CERD General Recom. 25*]; U.N. Office of the High Commissioner for Human Rights, *Gender Dimensions of Racial Discrimination* (2001) <http://www.unhchr.ch/pdf/wcargender.pdf>.

²³ See, e.g., Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581 (1990) (critiquing Catharine MacKinnon’s “color-blind” feminism).

²⁴ See, e.g., Tessie Liu, *Teaching the Differences Among Women from a Historical Perspective: Rethinking Race and Gender as Social Categories*, in *Unequal Sisters: A Multicultural Reader in U.S. Women’s History* 571, 574 (Vicki L. Ruiz & Ellen Carol DuBois ed., 2d ed. 1994) [hereinafter *Unequal Sisters*] (criticizing Robin Morgan’s anthology *Sisterhood is Global* for not understanding differences in the ways in which different women experience oppression); Audre Lorde, *An Open Letter to Mary Daly*, in *Sister Outsider* 66, 67 (1984) (“To imply, however, that all women suffer the same oppression simply because we are women is to lose sight of the many varied tools of patriarchy.”).

