

Black Women and International Law

DELIBERATE INTERACTIONS, MOVEMENTS,
AND ACTIONS

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International Human Rights and Black Women: Justice or Just Us?

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INTRODUCTION

Women's issues and perspectives have become more salient in international law over the past few decades. When I joined the American Society of International Law (ASIL) in 1982, there were a few tables of female international lawyers; we met over lunch and made note of our small numbers and our exclusion from the subjects featured and the people found worthy of being panelists at the annual meeting. Since that time, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) came into effect and now has 187 state parties.¹ Women became more prominent as international law scholars; many wrote about traditional subjects, while a few wrote on gender. A feminist article even debuted in the *American Journal of International Law*.² Eventually, the very active ASIL Women's Interest Group grew large enough to have year-round programs and needed an entire ballroom for the luncheon at the annual meeting.

Although some relative strides have been made for women overall in various aspects of international law, little attention has been paid to women of color. Even at the ASIL annual meetings, we would still fill only one or two tables. It is notable that two of us, the late Professor Coler Butcher, and myself, stayed around long enough and were active enough to be elected to serve as ASIL vice presidents, albeit two decades apart.

Women of color remain marginalized in a normative and physical sense, as they have been historically within U.S. domestic law. The issues and perspectives of women of color are commonly thought to be appropriately subsumed

¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess. Supp. No. 107, U.N. Doc. A/Res/34/180 (Dec. 18, 1979) [hereinafter CEDAW].

² Hilary Charlesworth, Christine Chinkin, & Shelley Wright, *Feminist approaches to international law*, 85 AMER. J. INT'L L. 613 (1991).

under the rubric of all people, all women, or all people of color. When a group like women of color is not mentioned specifically and salient issues about that group are not discussed within a discipline, then a subtle or overt message may be sent out that this group does not count or that it has no distinct issues worthy of mention. Moreover, the bulk of the information that does get into the media is negative, often portraying women of color as poor, silent, brutalized victims in need of rescue by others.

Dean Jeremy Levitt of the University of New Brunswick Faculty of Law and former Associate Dean and Distinguished Professor of International Law at Florida A&M University, helped to address the marginalization of one group of women of color – Black women – when he hosted a historic roundtable entitled “Towards an International Law of Black Women: New Theory, New Praxis” in March 2010. The distinguished panel included Penelope Andrews, former Dean of Albany Law School; Indiana University law professor Karen Bravo; Linda Greene, Wisconsin-Madison law professor Villanova law professor Ruth Gordon; Northeastern law professor Hope Lewis; Arizona law professor and former Nigerian Minister of Mines Leslye Obiora; Loyola-New Orleans law professor Jeanne Woods; and myself. This event was followed-up with a panel on the same theme at the Third National People of Color Legal Scholarship Conference in September 2010.

This chapter contributes to the demarginalization of Black women in one area of international law – international human rights. The work surveys various international human rights documents and cases to determine the extent to which these sources specifically concern Black women and/or treat them as distinct subjects of international law. The chapter also looks at Black women as contributors to human rights law themselves. The result will illustrate that Black women’s issues have been and are contributing to the field and that Black women are active participants, not just passive or silent victims of human rights violations.

I leave to others to address the particularities of issues that may be relevant outside of human rights. For instance, Black women are making contributions in fields like international business transactions and international arbitration. I also leave for further development issues that apply to other women of color, including Asians, Latinas, indigenous peoples, and Arabs, for instance.

The perspective utilized in this chapter is that of *critical race feminism* (CRF), a jurisprudential theme that emphasizes the legal status of women of color both domestically and internationally. Therefore, the next section first describes CRF in more detail, illustrating its links to other progressive jurisprudential trends such as critical legal studies (CLS), critical race theory (CRT), and feminist jurisprudence.

The third section, "Problems Facing Black Women," highlights some of the challenges Black women face around the world. Although, obviously, there are Black women in North and South America, as well as in the Caribbean and Europe, this chapter emphasizes Black women on the African continent in particular.

The fourth section, "Women's Protocol and CERD General Recommendation No. 25," looks at two documents involving Black women that attempt to provide solutions to some of the problems confronting them. Africa made an important contribution to the international human rights of women by enacting the Women's Protocol³ of the African Charter on Human and Peoples' Rights.⁴ The Women's Protocol, which came into effect in November 2005,⁵ makes significant contributions to African women's rights, at least on paper. The second document is somewhat different. In 2000, the Committee on Elimination of Race Discrimination (CERD Committee), the United Nations treaty body that provides oversight for the Convention for the Elimination of Race Discrimination (CERD), issued General Recommendation No. 25, which concerns gender.⁶

The section "Legal Entities: ICTR, Sierra Leone TRC, Liberia TRC" explores how three particular legal entities have redressed injustices involving Black women within their jurisdiction. The International Criminal Tribunal for Rwanda (ICTR) defined rape for the purposes of the international law in the *Akayesu* decision. The Truth and Reconciliation Commissions (TRCs) for Sierra Leone and Liberia paid particular attention to the harms faced by Black women, a feature missing from most TRCs.

The sixth section, "Legal Actors," details the various positive roles Black women are playing as legal actors in international human rights: presidents, prime ministers, and Nobel Prize winners; judges; prosecutors and special advisers; members of human rights treaty bodies; nongovernmental organization (NGO) activists; and professors. Far from being silent, these women are speaking out, even though their numbers are small. The final section concludes with the issue of whether Black women can ever achieve justice under

³ See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (July 11, 2003), <http://wgd.au.int/en/content/protocol-african-charter-human-and-peoples-rights-women-africa> (last visited September 24, 2013) [hereinafter Women's Protocol].

⁴ See African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3/rev. 5, 21 I.L.M. 58 (1982) (entered into force October 21, 1986) [hereinafter Banjul Charter].

⁵ The Women's Protocol came into force on November 27, 2005.

⁶ CERD Committee. General Recommendation No. 25: Gender Related Dimensions of Racial Discrimination: 03/20/2000, available at <http://www2.ohchr.org/english/bodies/cerd/comments.htm> (last visited August 1, 2013).

international human rights frameworks or if they are destined to remain “just us,” alone – de facto outside the protections theoretically offered.

CRITICAL RACE FEMINISM

CRF⁷ examines the legal status of women of color, whether they are minorities within the United States or Europe or part of majority cultures elsewhere. These women are disproportionately stalled at the bottom of every society – economically, socially, and politically. CRF seeks to identify their problems and to formulate relevant solutions.

CRF originated out of a much broader set of legal and social movements – most notably CLS, CRT, and feminist jurisprudence. CRF agrees with the progressive postmodern tenets of CLS,⁸ which challenge conceptions of law as objective and neutral, and uses this framework to expose how the law has served as a tool in perpetuating not only class distinctions, but also unjust race and gender hierarchies. CRF, as part of CRT, challenges conventional strategies of providing social and economic justice by using an antisubordination approach that brings race discourse into progressive class analysis.⁹ CRF uses some tenets of feminism,¹⁰ yet distinguishes the unique and varied experiences of women of color¹¹ as distinct from those of White women. Similarly, CRF has drawn from the energy and ideas of Black feminism and “womanist” feminism to address the concerns for equality and fair treatment of women of color. CRF is a gender intervention in CRT that illustrates that women of color may have perspectives on race and ethnicity issues that differ from those of their male peers.

CRF also introduces its own distinct analytical contributions. Most notable is the concept of *antiessentialism*. CRF contradicts the traditional feminist ideology of the “essential female voice” and instead relies on the theory of intersectionality, in which CRF demarginalizes the antiessentialist plight of

⁷ See Adrien K. Wing, *Introduction: Global critical race feminism for the twenty-first century in GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* (Adrien K. Wing ed., 2000).

⁸ For sample publications on CLS, see, e.g., *CRITICAL LEGAL STUDIES* (James Boyle ed., 1992); *CRITICAL LEGAL STUDIES* (Peter Fitzpatrick and Alan Hunt eds., 1987); *CRITICAL LEGAL STUDIES* (Alan Hutchinson ed., 1989).

⁹ For anthologies on CRT, see, e.g., *Introduction to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* xix (Kimberlé Crenshaw et al. eds., 1996); and *CRITICAL RACE THEORY: THE CUTTING EDGE* (Richard Delgado ed., 1995).

¹⁰ For collections on feminism, see, e.g., *FEMINIST LEGAL THEORY* (Frances F. Olsen ed., 1995); *FEMINIST LEGAL THEORY: FOUNDATIONS* (D. Kelly Weisberg ed., 1993); Lisa R. Pruitt, *A survey of feminist jurisprudence*, 16 U. ARK. LITTLE ROCK L. REV. 183 (1994).

¹¹ See Angela P. Harris, *Race and essentialism in feminist legal theory*, 42 STAN. L. REV. 581 (1990).

women of color by analyzing the intersection of their race and gender identities.¹² A related term is “multiple consciousness,” which Mari Matsuda used to describe the intersectional identities of women of color.¹³ Matsuda also has called for scholars to “look to the bottom,” to the lives of women themselves.¹⁴ In earlier scholarship, I have chosen to use the word “multiplicative” to configure identity that can also include class, age, disability, religion, sexual orientation, parental status, marital status, or nationality.¹⁵

Global CRF extends some of the concepts just described into the realms of international and comparative law.¹⁶ CRF has embarked on international legal journeys, interrogating issues in public international law, international business transactions, and human rights. CRF has contributed to global feminism and postcolonial theory by moving women of color away from the margins, in both a theoretical and a practical sense. In this regard, women of color are nonessentialized subjects of international law.

Thus, this chapter uses a demarginalizing and intersectional approach to illustrate how Black women’s issues and Black women themselves are not only not silent, but are instead at the forefront in human rights efforts. By looking to the bottom, we will reveal the problems faced by Black women, but we will also illustrate solutions made for and by them.

PROBLEMS FACING BLACK WOMEN

Although Black women face problems wherever they are around the world,¹⁷ this part of the chapter focuses on Africa, where the largest number of Black women live.¹⁸ The worldwide media has frequently focused on the bleak

¹² Kimberlé Crenshaw, *Demarginalizing the intersection of race & sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics*, 1989 U. CHI. LEGAL F. 139.

¹³ Mari Matsuda, *When the first quail calls: Multiple consciousness as jurisprudential method*, 11 WOMEN’S RTS. L. REF. 7 (1989).

¹⁴ Mari Matsuda, *Looking to the bottom: Critical legal studies and reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

¹⁵ Adrien K. Wing, *Brief reflections on a theory and praxis of being*, 6 BERKELEY J. GENDER L. & JUST. 181 (1990–91).

¹⁶ See Adrien K. Wing, *Introduction: Global critical race feminism for the twenty-first century in GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* (Adrien K. Wing ed., 2000); Penelope E. Andrews, *Globalization, human rights and critical race feminism: Voices from the margins*, 3 J. GENDER RACE & JUST. 373 (2000).

¹⁷ This section draws in part from Adrien K. Wing & Tyler Murray Smith, *The new African Union and women’s rights*, 13 TRANSNAT’L L. & CONTEMP. PROBS. 33 (2003).

¹⁸ For Black women in the Americas, see, e.g., Hope Lewis, *Universal mother: Transnational migration and the human rights of Black Women in the Americas*, 5 J. GENDER RACE & JUST. 197 (2001). For more on women in Africa, see VOICES OF AFRICAN WOMEN: WOMEN’S RIGHTS IN GHANA, UGANDA, AND TANZANIA (Johanna Bond ed., 2005); ENGENDERING HUMAN RIGHTS:

plight of African women. They do suffer from a myriad of intersecting civil, political, economic, social, and cultural problems. Yet, rarely is positive emphasis given to the vital roles they play in their communities and how they shape law, doctrine, and norms. Although this section highlights challenges, those that follow will explore the more positive aspects of Black women's lives and contributions.

Family, inheritance, and property laws in many countries are still based on customary practices.¹⁹ Under customary law, women do not own property.²⁰ Polygamy, specifically polygyny – a man having more than one

CULTURAL AND SOCIOECONOMIC REALITIES IN AFRICA (Obioma Nnaemeka & Joy Ezeilo eds., 2005); Otiocha E. Elcazar, INTERNATIONAL HUMAN RIGHTS: THE PROTECTION OF THE RIGHTS OF WOMEN AND THE FEMALE CHILD IN AFRICA: THEORY AND PRACTICE (2011); Tamar Ezer et al., *Human rights clinic report: Divorce reform: Rights protection in the New Swaziland*, 8 GEO. J. GENDER & L. 883 (2007); Uche Fwelukwa, *Centuries of globalization; centuries of exclusion: African Women, human rights, and the "new" international trade regime*, 20 BERKELEY J. GENDER L. & JUST. 75 (2005); Esther Kisaakye, *Reflections on the contribution of Georgetown's International Women's Human Rights Clinic to advancing the protection of women's rights in Uganda and Tanzania*, 7 GEO. J. GENDER & L. 343 (2006); Julie R. Hess, *United States and Africa on FGM: Cultural comparativists, resolutions, and rights*, 10 ILSA J. INT'L & COMP. L. 581 (2003–2004); Ben K. Twinomugisha, *Do the rights of poor women really matter? Globalization and the protection of reproductive health rights in Uganda*, 13 EAST AFRICAN J. PEACE HUMAN RTS. 81 (2007); Penelope E. Andrews, *Who's afraid of polygamy? Exploring the boundaries of family, equality and custom in South Africa*, 11 J. L. & FAM. STUD. 303 (2009); Lizzie L. Green, *Gender hate propaganda and sexual violence in the Rwandan Genocide: An argument for intersectionality in international law*, 33 COLUM. HUM. RTS. L. REV. 733 (2002); Flynn Coleman, *Pan-African strategies for environmental preservation: Why women's rights are the missing link*, 23 BERKELEY J. GENDER L. & JUST. 181 (2008); Lisa Vetten, *The imprisonment of women in Africa*, in HUMAN RIGHTS IN AFRICAN PRISONS 134 (Jeremy Sarkin ed., 2008); Melanie R. Wallace, *Voiceless victims: Sex slavery and trafficking of African women in Western Europe*, 30 GA. J. INT'L & COMP. L. 569 (2002); Tamar Ezer, *Inheritance law in Tanzania: The impoverishment of widows and daughters*, 7 GEO. J. GENDER & L. 599 (2006); Association of the Bar of the City of New York, *Gender-based violence laws in sub-Saharan Africa*, 63 THE RECORD 200 (2008); Fareda Banda, *Understanding women's economic and social human rights*, 12 EAST AFRICAN J. PEACE HUMAN RTS. 232 (2006); Esther Kisaakye, *Global rights, local harms: The case of the human rights of women in sub-Saharan Africa*, in WOMEN, CRIME AND SOCIAL HARM: TOWARDS A CRIMINOLOGY FOR THE GLOBAL AGE 123 (Maurcen Cain & Adrian Howe eds., 2008); Fareda Banda, *Building on a global movement: Violence against women in the African context*, 8 AFRICAN HUMAN RTS. L. J. 1 (2008); Florence Shu-Acquaye et al., *WOMEN, THE LAW, AND HIV/AIDS IN AFRICA: A CONUNDRUM FOR THE LEGISLATURE* (2008); Rachel Slate, *Gender violence or violence against women? The treatment of forced marriage in the special court for Sierra Leone*, 13 MELBOURNE J. INT'L L. 732 (2012).

¹⁹ See generally Leon Shaskolsky Sheleff, *THE FUTURE OF TRADITION: CUSTOMARY LAW, COMMON LAW AND LEGAL PLURALISM* (2000).

²⁰ See, e.g., Celestine I. Nyamu, *How should human rights and development respond to cultural legitimization of gender hierarchy in developing countries?*, 41 HARV. INT'L. L. J. 381 (2000).

wife – is a declining practice but is still prevalent in many communities on the African continent.²¹

Religious practices around the world, including in Africa, are deeply patriarchal. Due to space constraints, I discuss here only Islam. Pursuant to Islamic *sharia* law, a Muslim woman must marry a Muslim man, but a Muslim man can marry up to four women, whether they are Muslim, Christian, or Jewish.²² A Muslim woman inherits only a half share compared to a man of the same level, and she needs a male guardian.²³ Islam requires people accused of adultery to be confronted by four male witnesses, whereas a woman who gives birth outside of marriage is presumed guilty of adultery in places like Nigeria.²⁴

African women face many kinds of violence, whether in wartime, as in Rwanda or the Congo,²⁵ or through the much more prevalent avenue of domestic violence. They are overrepresented as refugees.²⁶ They can suffer severe short- and long-term effects from female genital surgery (FGS), also known as female circumcision or female genital mutilation.²⁷ They lack the ability to make decisions with respect to all issues involving reproductive autonomy,²⁸ and they are disproportionately affected by HIV.²⁹

Women face considerable discrimination in other areas as well. Customs often favor male children in education, with fewer females attending or completing schooling.³⁰ The labor market favors men to the exclusion of women, making women dependent on men for financial support for themselves and their children.³¹ There are even places where women are literally

²¹ Adrien Katharine Wing, *Polygamy from southern Africa to Black Britannia to Black America: Global critical race feminism as legal reform for the twenty-first century*, 11J. CONTEMP. LEGAL ISSUES 811, 844 (2001) [hereinafter *Polygamy*].

²² *Id.* at 841.

²³ *Id.*

²⁴ *Id.*

²⁵ See Stefan Kirchner, *Wartime rape in the Congo*, in CRIMES AGAINST WOMEN 81 (David Wingeate Pike ed., 2011).

²⁶ J. Oloka-Onyango, *The plight of the larger half: Human rights, gender violence and the legal status of refugee and internally displaced women in Africa*, 24 DENV. J. INT'L L. & POL'Y 349, 393–94 (1996).

²⁷ Fitnat Naa-Adjeyey Adjeyey, *Religious and cultural rights: Reclaiming the African woman's individuality: The struggle between women's reproductive autonomy and African society and culture*, 44 AM. U. L. REV. 1351, 1362 (1995).

²⁸ *Id.* at 1351.

²⁹ See Alexandra Arriaga, *HIV/AIDS and violence against women*, 29 (3) HUM. RTS. Q. Summer 2002, at 18.

³⁰ Joy K. Asicma, *Gender equity, gender equality, and the legal process: The Kenyan experience*, 10 TRANSNAT'L L. & CONTEMP. PROBS. 561, 571–72 (2000).

³¹ Michelo Hansungule, *The African Charter on Human and Peoples' Rights: A critical review*, AFRICAN YEARBOOK OF INTERNATIONAL LAW 265, 325 (2001).

enslaved in unique ways, ways that are different from the slavery that may still exist in places like Mauritania and Sudan.³² For example, the practice of *trokosi* in Ghana keeps girls and women as slaves to atone for sins of the family.³³

These human rights problems have contributed to the vast underrepresentation of African women in the political arena. On the positive side, Rwanda now has the highest percentage of women – 56 percent – in any parliament in the world.³⁴ Through affirmative action, the African National Congress of South Africa reserves one-quarter of its parliamentary seats for women.³⁵ Finally, in 2005, Africa elected its first female president, Liberian Ellen Johnson Sirleaf, who will be mentioned again later, in the section “Legal Actors.”³⁶

When African states adopt and ratify international conventions that promise to protect women’s rights, protections that are sometimes even mirrored in the states’ own constitutions and national laws, these documents often fail to penetrate deeply because implementing mechanisms or laws are not passed.³⁷ Women may not be aware of the international or national protections available.³⁸

The culmination of the denial of women’s rights in the domestic and public spheres result in “spirit injuries” – a critical race-feminist term that contemplates the psychological, spiritual, and cultural effects of multiple assaults upon women.³⁹ Nonetheless, the spirit injuries inflicted on African women as a result of decades of repression should not be taken as a sign of hopelessness. Instead, they should serve as a reminder and an inspiration for the urgency of addressing all violations against Black women. The remaining parts of the chapter illustrate ways in which international human rights law and Black women themselves are assisting in the solutions to human rights problems, including those specifically affecting Black women.

³² A. Yasmine Rassam, *Contemporary forms of slavery and the evolution of the prohibition of slavery and the slave trade under customary international law*, 39 VA. J. INT’L. L. 303, 321 (1999).

³³ Sam Kiley, *Child slaves “used by West Africans to appease spirits,” Times* (London), September 17, 1996, at 11.

³⁴ See *Quota Project: Global database of quotas for women*, available at <http://www.quotaproject.org/country.cfm?SortOrder=Percentage> (last visited May 26, 2013).

³⁵ Adrienne Katherine Wing & Mark Richard Johnson, *The promise of a post-genocide constitution: Healing Rwandan spirit injuries*, 7 MICH. J. RACE & L. 247, 302 (2002).

³⁶ See *Liberia; celebrate in joy and gladness*, AFRICA NEWS, December 12, 2005.

³⁷ Juliette Ayisi Agyei, *African women: Championing their own development and empowerment – case study, Ghana*, 21 WOMEN’S RTS. L. REP. 117, 120 (2000).

³⁸ Takyiwaa Manuh, *Africa Recovery Briefing Paper, Women in Africa’s development: Overcoming obstacles, pushing for progress*, U.N. Dep’t of Pub. Info., No. 11, 12 (1998).

³⁹ GLOBAL CRITICAL RACE FEMINISM, *supra* note 16, at 14.

WOMEN'S PROTOCOL AND CERD GENERAL
RECOMMENDATION NO. 25

This part of the chapter discusses two international rules that address the above-mentioned problems facing Black women: the Women's Protocol of the Banjul Charter and the CERD General Recommendation No. 25.⁴⁰

Women's Protocol

The Banjul Charter of the Organization of African Unity (OAU) was adopted in 1981 and entered into force in 1986.⁴¹ Although the Charter does make direct reference to gender issues, including an antidiscrimination clause that includes "sex,"⁴² "tradition," and "culture," other provisions that aspire to preserve African tradition and culture proved to be open floodgates for human rights violations. These sections institutionalized myriad practices of gender discrimination that were already inherent in African culture.

The African Union (AU), which came into being in 2000 as the successor to the OAU, has among its objectives the protection of human rights, including gender equality.⁴³ The Women's Protocol⁴⁴ is perhaps the most promising

⁴⁰ This subsection draws from Adrien K. Wing, *Women's rights and Africa's evolving landscape: Can the Women's Protocol of the Banjul Charter make a contribution?* in *AFRICA: MAPPING NEW BOUNDARIES IN INTERNATIONAL LAW* 13 (Jeremy I. Levitt ed., 2008).

⁴¹ See Banjul Charter, *supra* note 4, art. 30.

⁴² *Id.* at art. 2.

⁴³ Preamble to Constitutive Act of the African Union, July 11, 2000, OAU Doc. CAB/LEG/23.15 (entered into force May 26, 2001), available at http://www.africa-union.org/About_AU/Constitutive_Act.htm.

⁴⁴ For more on the Women's Protocol, see Rachel Mayanja, *The Protocol on the Rights of Women in Africa*, in *THE AFRICAN UNION: LEGAL AND INSTITUTIONAL FRAMEWORK. A MANUAL ON THE PAN-AFRICAN ORGANIZATION* 455 (A.A. Yusef & F. Ougergouz eds., 2012); Danwood Mzikenge Chirwa, *African regional human rights system: The promise of recent jurisprudence on social rights*, in *SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW* 323 (Malcolm Langford ed., 2008); BREATHING LIFE INTO THE AFRICAN UNION PROTOCOL ON WOMEN'S RIGHTS IN AFRICA (Roselynn Musa et al. eds., 2006); Ebenezer Durojaye, *Addressing human rights concerns raised by the mandatory HIV testing of pregnant women through the Protocol to the African Charter on the Rights of Women*, 52 *J. AFRICAN L.* 43 (2008); Rachel Rebouche, *Labor, land, and women's rights in Africa: Challenges for the New Protocol on the Rights of Women*, 19 *HARV. HUM. RTS. J.* 235 (2006); Ntombizozuko Dyani, *Protocol on the Rights of Women in Africa: Protection of women from sexual violence during armed conflict*, 6 *AFRICAN HUM. RTS. L. J.* 166 (2006); Kaniye S. A. Ebeku, *Considering the Protocol on the Rights of Women in Africa*, *RIGHT IN AFRICA* 171 (2006); Rachel Murray, *Women's rights and the Organization of African Unity and African Union: The Protocol on the Rights of Women in Africa*, in *INTERNATIONAL LAW: MODERN FEMINIST APPROACHES* 253 (Doris Buss & Ambreena Manji eds., 2005). For more on African Union, see Karen Stefiszyn, *The African Union: Challenges and opportunities for*

vehicle theoretically at the AU's disposal for promoting and protecting African women's rights. It is the first international treaty to specifically protect Black women. It addresses domestic violence, forbids FGS, favors monogamy, and calls for the right to abortion in certain circumstances – all of which are unprecedented in international law. As of 2014, thirty-six countries had ratified it.⁴⁵

The Women's Protocol, the first international treaty to contemplate Black women's rights, requires that states use education and communication "to modify the social and cultural patterns of conduct" that perpetuate sexual discrimination.⁴⁶ It encourages education for more women as well.⁴⁷ Women have a right to dignity, which precludes exploitation or degradation.⁴⁸ Similar to the South African Constitution, the Protocol prohibits violence from both public and private sources.⁴⁹ Female refugees have an equal status to male refugees.⁵⁰ Women must be protected in armed conflict.⁵¹ FGS is listed as a harmful practice that must be prohibited.⁵² The Women's Protocol does not ban polygamy, but declares a preference for monogamy as a form of marriage.⁵³ Women are entitled to keep their own names and nationalities⁵⁴ and to acquire property.⁵⁵ They have the same ability to separate or terminate marriages and to obtain marital property as do their husbands.⁵⁶ Widows can get custody of their children; it is not presumed that the fathers own the children.⁵⁷ Moreover, widows have a right to inheritance and to live in the matrimonial house because it is not presumed that the husband's family owns his possessions after death.⁵⁸ Finally, widows can remarry the person of their choice, thus undercutting forced marriage practices. The Women's

women, 5 AFRICAN HUM. RTS. L. J. 358 (2005); Tiffany M. McKinney Gardner, *The commodification of women's work: Theorizing the advancement of African Women*, 13 BUFF. HUM. RTS. L. REV. 33 (2007); Fareda Banda, *Blazing a trail: The African Protocol on Women's Rights comes into force*, 50 J. AFRICAN L. 72 (2006).

⁴⁵ See Solidarity for African Women's Rights, SOAWR congratulates the Republic of Cameroon on its ratification of the AU Protocol, April 13, 2013, available at www.soawr.org/cn/news

⁴⁶ Women's Protocol, *supra* note 3, at art. 2(2).

⁴⁷ *Id.* at art. 12.

⁴⁸ *Id.* at art. 3.

⁴⁹ *Id.* at art. 4(2)(a); South Afr. Const. Art. 12.

⁵⁰ Women's Protocol, *supra* note 3, at art. 2(k).

⁵¹ *Id.* at art. 11.

⁵² *Id.* at art. 5.

⁵³ *Id.* at art. 6.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at art. 7.

⁵⁷ Women's Protocol, *supra* note 3, at art. 20.

⁵⁸ *Id.* at art. 21.

Protocol encourages female political participation through affirmative action and encourages equal pay and benefits.⁵⁹ It calls for a minimum age for work,⁶⁰ as well as paid pre- and postnatal maternity leave.⁶¹ Women should be provided with adequate food, water, and housing,⁶² as well as a healthy and sustainable environment along with sustainable development.⁶³

Most notable is the provision in the reproductive rights article that authorizes abortion in cases of rape or incest or to preserve the health of the mother.⁶⁴ Significantly, this is the first explicit mention of abortion in international law.⁶⁵ Even though the Women's Protocol does not promote the right to abortion on demand, it does go further than many national laws in Africa on the subject, and it elevates the issue in the global sphere.

Success in interpretation and implementation of the Women's Protocol, however, depends in large part on the new African Human Rights Court.⁶⁶ NGOs or individuals can apply to the Court if the Court permits.⁶⁷ As of 2014, the Court has not taken up women's issues.⁶⁸ The African Commission for Human and Peoples' Rights has not discussed these issues either.⁶⁹

The potential theoretical contribution of the Women's Protocol to international law and the achievement of women's rights is great. The main challenges facing its implementation include gaps and ambiguities; general lack of awareness of the document; weakening of the women's movement in the region; lack of political will on the part of governments; strength of patriarchy, tradition, culture, and religion; public/private dichotomies; and lack of resources.⁷⁰

⁵⁹ *Id.* at art. 13.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Women's Protocol, *supra* note 3, at arts. 15, 16.

⁶³ *Id.* at arts. 18, 19.

⁶⁴ *Id.* at art. 14(2).

⁶⁵ See Chad Gerson, *Toward an International standard of abortion rights: Two obstacles*, 5 CHI. J. INT'L. L. 753, 753 (2005).

⁶⁶ Women's Protocol, *supra* note 3, at art. 27.

⁶⁷ See art. 5 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, available at http://www.achpr.org/english/_info/court_en.html.

⁶⁸ Rashida Manjoo, *Women's human rights in Africa*, in THE AFRICAN REGIONAL HUMAN RIGHTS SYSTEM 137, 143 (Manisula Ssenyonjo ed., 2012).

⁶⁹ *Id.* See generally Udemé Essien, *The African Commission on Human and Peoples' Rights: Eleven years after*, 6 BUFF. HUM. RTS. L. REV. 93 (2000). For more on the African system, see Obiora Chinedu Okafor, *THE AFRICAN HUMAN RIGHTS SYSTEM, ACTIVIST FORCES, AND INTERNATIONAL INSTITUTIONS* (2007); Melinda Adams, *Regional women's activism: African women's networks and the African Union*, in GLOBAL FEMINISM: TRANSNATIONAL WOMEN'S ACTIVISM, ORGANIZING, AND HUMAN RIGHTS 187 (Myra Marx Feitoe and Aili Mari Tripp eds., 2006).

⁷⁰ Rosemary Semafumu Mukasa, *THE AFRICAN WOMEN'S PROTOCOL: HARNESSING A POTENTIAL FORCE FOR POSITIVE CHANGE* 72 (2009).

African women and men must be involved in confronting these challenges in the future if they are to enable the Women's Protocol to live up to its potential.

*Committee on the Elimination of Racial Discrimination
(CERD) General Recommendation No. 25*

In the CERD General Recommendation No. 25 on the gender-related dimensions of racial discrimination, the CERD Committee arguably adopts a critical race feminist approach on race issues. It embraces the intersectionality approach and the idea that, on the grounds of race, color, descent, or national or ethnic origin, women of color face different realities than do other women or men of color.⁷¹ African women played a critical role in the adoption of the recommendation. It notes that women of color face specific harms on the basis of gender, such as sexual violence, forced sterilization, abuse in informal sectors or as domestic workers abroad, and inability to access complaint mechanisms due to the gender-biased nature of those systems.⁷² The recommendation contains a four-point intersectionality questionnaire that asks about the form the violation takes, the circumstances in which the violation occurs, the consequences of a violation, and the availability and accessibility of remedies and complaint mechanisms.⁷³ The CERD Committee requested that states disaggregate the data so that the situation of women facing racial discrimination will be clear, after which the CERD Committee and the states will be able to take steps to provide remedies to women specifically.⁷⁴ Many of the CERD Committee reports do mention General Recommendation No. 25 to encourage states not to forget the plight of women of color or other minority-group females. Unfortunately, like all treaty bodies, the CERD Committee has no police power to follow up on states violating CERD or any of the General Recommendations. Notwithstanding, the theoretical and normative value of the recommendation is significant. It provides a useful and needed tool to combat the exclusion of Black women and their concerns under the CERD treaty and other instruments that may have an impact on the gender-related dimensions of racial discrimination.

⁷¹ See Lisa A. Crooms, *To establish my legitimate name inside the consciousness of strangers: Critical race praxis, progressive women-of-color theorizing, and human rights*, 46 *How. L. J.* 229, 247 (2003); CERD, *supra* note 6, para. 1.

⁷² *Id.* para. 2.

⁷³ *Id.* para. 5.

⁷⁴ *Id.* para. 6.

LEGAL ENTITIES: ICTR, SIERRA LEONE TRC, LIBERIA TRC

This part of the chapter discusses how the ICTR and the Sierra Leone and Liberia TRCs have intentionally carved out a normative framework on the protection of women based on the horrific experiences of Black women as objects and subjects of international law. The TRCs have thus contributed to the development of gender-based international criminal law, humanitarian law, and human rights law. The ICTR defined rape under international law in the 1998 *Akayesu* case, and the TRCs of Sierra Leone and Liberia emphasized harms to Black women, more so than other truth commissions.

Gender strategies were used at the ICTR and the International Criminal Tribunal for the Former Yugoslavia (ICTY) that led to solid gains for women under international law.⁷⁵ Historically, most leaders have dismissed crimes against women, either considering them not to be crimes or to be private crimes that did not warrant public attention. Cases heard at both tribunals helped end these crude presumptions, which had been common even though rape and sexual violence were designated violations under the 1949 Geneva Conventions, the 1948 Genocide Convention, and the 1984 Torture Convention and are considered a crime against humanity under customary international law. The ICTR's decision in the *Akayesu* case was historic because it was the first to punish sexual violence in a civil war and determine that systematic rape could amount to genocide, as well as being an act of torture.⁷⁶ Former Taba commune mayor Jean-Paul Akayesu was originally charged in the ICTR in 1996; none of the initial twelve counts included sexual violence. Ultimately, he was sentenced to three life sentences for genocide and crimes against humanity and to eighty years for other violations, including rape and encouraging widespread sexual violence.⁷⁷ Presiding Judge Navanethem Pillay, a South African, stated: "From time immemorial, rape has been regarded as spoils of war. Now it will be considered a war crime. We want to send out a strong message that rape is no longer a trophy of war."⁷⁸ In the *Muhimana* case, sexual violence was a component of the crime of genocide.⁷⁹ In the *Nahimana, Barayagwiza & Ngeze* case, the court found the defendants committed the crime of direct and public incitement to

⁷⁵ Patricia Viseur Sellers, *Gender strategy is not a luxury for international courts*, 17 AM. U. J. GENDER & SOC. POL'Y. & L. 301 (2009).

⁷⁶ *Id.*

⁷⁷ See Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (September 2, 1998).

⁷⁸ *Id.*

⁷⁹ See Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Judgment (Apr. 25, 2005); Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment (June 17, 2004).

commit genocide.⁸⁰ These cases, which included Black women victims, judges, and prosecutors as the key actors, have chiseled out a new jurisprudential framework on the prohibition of sexual violence during war.

The Sierra Leone and Liberia TRCs presented rare examples in which the concerns of Black women shaped their legal frameworks and operations.⁸¹ Unlike the South African TRC, violence in the private sphere was analyzed.⁸² Both TRCs included women commissioners (50 percent in the case of the Liberian TRC), provided gender training for commissioners, hired senior women staff, held women's-only hearings, and had a large number of women testify.⁸³ Both TRC acts also required their respective governments to implement TRC recommendations, including taking legislative action. In Sierra Leone, a number of laws have been passed: the Domestic Violence Act, which broadened the definition of domestic violence and allowed for criminal and civil sanctions; the Devolution of Estates Act, which entitled a widow to inherit her husband's property; and the Registration of Customary Marriages and Divorce Act.⁸⁴ The Liberian TRC formally incorporated sexual crimes into its legal framework, including the jurisprudence of the ICTR and ICTY. More than any other TRC, it targeted perpetrators of sexual violence within its mandate. Unfortunately, the government of Liberia has been unable to implement TRC recommendations that could provide justice and reparation to women victims of Liberia's various episodes of armed conflict.⁸⁵

The ICTR and the Sierra Leone and Liberia TRCs laid a foundation that other tribunals and TRCs will undoubtedly follow in the future. Women and

⁸⁰ See *Prosecutor v. Nahimana, Barayagwiza & Ngeze*, Case No. ICTR-99-52-T, Judgment (December 3, 2003).

⁸¹ See, e.g., Paul James-Allen et al., *Liberia: Beyond the Truth and Reconciliation Commission: Transitional justice options in Liberia* 5, ICTJ, May 2010, available at <http://www.ictj.org/sites/default/files/ICTJ-Liberia-Beyond-TRC-2010-English.pdf>; Sierra Leone Truth & Reconciliation Commission, *The Mandate of the Truth and Reconciliation*, Vol. 1, Ch. 1, para. 55 in Final Report, available at http://www.sierraleonetrac.org/index.php/view-report-text-vol-1/item/vol-one-chapter-one?category_id=19; An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia art. IV, § 4, May 12, 2005 (Liber.), available at <http://trcofliberia.org/reports/final-report>; Truth and Reconciliation Commission Act 2000, Schedule (a)(v), § 10.(2), available at <http://www.sierra-leone.org/Laws/2000-4.pdf>; Truth and Reconciliation Commission Act 2000, Schedule (a)(v), § 10.(2), available at <http://www.sierra-leone.org/Laws/2000-4.pdf> (requiring gender to be taken into account when forming the commission).

⁸² Margaret (Peggy) Maisel, *Have truth and reconciliation commissions helped remediate human rights violations against women? A feminist analysis of the past and formula for the future*, 20 CARDOZO J. INT'L & COMP. L. 143, 167 (2011-12).

⁸³ *Id.* at 168. South Africa held all-female hearings. *Id.* at 152.

⁸⁴ *Id.* at 169-70.

⁸⁵ See *Liberia truth and reconciliation final report*, available at <http://trcofliberia.org/> (December 3, 2009).

men of all backgrounds will ultimately benefit from the normative development of protective principles originally made for and in part fashioned by Black women.

LEGAL ACTORS

Going beyond any notions of victimhood, this part of the chapter details selected roles that Black women are playing in international law and relations as transnational legal actors: presidents, prime ministers, and Nobel Prize winners; judges; prosecutors and advisers; members of human rights treaty bodies; NGO activists; and professors. Although most of these women are not widely known, they have been in the forefront of global governance in their respective fields. Some of the women may be the first Black person or the first Black woman to hold their respective positions. In that capacity, their mere existence can be an overt or subtle message that Black women can obtain and succeed in positions of power. The women are role models not only for other Blacks or Black women, but also for everyone. In some cases, these women may hold a post specifically related to race or gender issues, such as being members of the CERD or CEDAW committees. In those posts, their day-to-day work is on the forefront of achieving global justice for Blacks, women, or Black women.

Africa has produced two female presidents. Both Liberian President Ellen Johnson Sirleaf, who was the first democratically elected female president in the continent, and Malawian President Joyce Banda are committed to enhancing the status of women in Africa. They have also pledged to support the AU's Women's Decade as principal actors. Unfortunately, Liberia and Malawi rank very low in areas such as empowerment, education, and maternal health, according to the UN Millennium Development Goals.⁸⁶ Sirleaf won the 2011 Nobel Peace Prize for her efforts that led to the end of the Liberian civil war, and she has pledged that in her second term she will make women's rights a top national priority.⁸⁷ Liberian women eagerly await action.

Africa is not the only place where Black women have held leadership roles. Portia Lucretia Simpson-Miller became the seventh prime minister of Jamaica in 2012. She was previously PM in 2006–07. She has headed the People's National Party since 2006 and has been a member of Parliament since 1976. Simpson-Miller held a number of cabinet positions over the years and has been very active in the Caribbean region and at international levels.

⁸⁶ Travis Lupick, *Africa: Continent's two female presidents join forces for women*, Africa.com, available at <http://allafrica.com/stories/201205091149.html> (May 9, 2012).

⁸⁷ *Id.*

She serves on the Council of Women World Leaders, which is an international group of current and former women presidents and prime ministers who focus on women's issues.⁸⁸

Black female Nobel Peace Prize winners include Liberian Leymah Gbowee, whose efforts helped to end the civil war in Liberia, and Kenyan environmental rights activist Wangari Mathai, who started a green movement. Both women are mentioned in the section "Legal Entities: ICTR, Sierra Leone TRC, Liberia TRC."

Black women are now represented at the highest levels in international judicial bodies. Judge Gabrielle Kirk McDonald, to whom this book is dedicated, was the third African-American female to be a U.S. federal judge, serving as a federal district judge in Texas. She was named one of the first eleven judges to serve on the ICTY in 1993. As presiding judge of Chamber II, she issued the decision against Duško Tadić, which was the first international war crimes case involving sexual violence charges. She was the president of the ICTY between 1997 and 1999, and she remains the only woman to have held that position. And until August 2014 served as one of three American arbitrators on the Iran–U.S. Claims Tribunal at The Hague.⁸⁹

Other women of grand stature have followed in her footsteps. Ugandan Judge Julia Sebutinde joined the International Court of Justice in 2012. Before that, she had served on the Special Court for Sierra Leone since 2005. In Uganda, she had previously served as a judge on the High Court. She has written on the topic of violence against women in Uganda and Sierra Leone.⁹⁰

Several Black women serve as judges on the International Criminal Court (ICC). Fatoumata Dembele Diarra, a Malian, has served since 2003 and also served a term as first vice president. Prior to that, she was also a member of the ICTY.⁹¹ Akua Kuenyehia, a Ghanaian, was the first vice president of the ICC and has also served since 2003. Prior to that, she spent most of her career as a law professor, and she was the dean of the University of Ghana.⁹² Joyce

⁸⁸ *Jamaica, nation on a mission*, available at <http://www.jis.gov.jm/ja50/v2/pm-profiles/portia-simpson-miller/> (last visited May 26, 2013).

⁸⁹ *About the ICTY, former presidents*, available at <http://www.icty.org/sid/155> (last visited May 28, 2013).

⁹⁰ *International Court of Justice current members*, available at <http://www.icj-cij.org/court/?p1=1&p2=2&p3=1&judge=194> (last visited May 28, 2013).

⁹¹ *About the ICC*, available at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/presidency/the%20first%20vice%20president/Pages/judge%20fatoumata%20dembele%20diarra%20_mali_%20first%20vice_president.aspx (last visited May 28, 2013).

⁹² *About the ICC*, available at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/chambers/the%20judges/Pages/first%20vice%20president%20%20judge%20akua%20kuenyehia.aspx (last visited May 28, 2013).

Aluoch, a Kenyan, has also served on the ICC since 2009. She had been a member of the Kenyan Court of Appeal prior to that appointment.⁹³

Among the other Black women serving on the ICTY is Andresia Vaz. She had a career as a judge in Senegal, rising to the Supreme Court. She was appointed to the ICTR in 2001 and was named vice president of this tribunal before joining the ICTY in 2005.⁹⁴ Judge Elizabeth Gwaunza is an ad litem judge of the ICTY and also serves as a judge of appeal on the Supreme Court of Zimbabwe. She has written a number of publications on family and inheritance law.⁹⁵

Black women judges are affiliated with the ICTR as well. Judge Florence Rita Arrey served on the Cameroonian Supreme Court prior to joining the ICTR. She has been president of the Cameroon chapter of the International Association of Women Judges.⁹⁶ Solomy Balunga Bossa has worked as an ad litem judge for the tribunal since 2003. She has also served as a judge for the East African Court of Justice.⁹⁷

Justice Sophia A. B. Akuffo, a Ghanaian, was elected president of the African Court on Human and Peoples' Rights in 2012 for a two-year term. She was first elected as a Judge in 2006 for a two-year term, then re-elected in 2008 for a six-year term. She was elected vice president of the African Court in September 2008 for a two-year term, and re-elected in September 2010 for a final two-year term. She is also a judge of the Supreme Court of Ghana.⁹⁸

Elsie Nwanwuri Thompson, a Nigerian, was elected to the African Court for a term of six years in 2010. She is also a judge of the High Court of Rivers State, Nigeria. Prior to her appointment as a High Court Judge, she was in active private legal practice for twenty years and worked on human rights cases. She has served in several associations, notably the International Federation of Women Lawyers (FIDA).⁹⁹

⁹³ *About the ICC*, available at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/chambers/the%20judges/Pages/judge%20joyce%20aluoch%20kenya_.aspx (last visited May 28, 2013).

⁹⁴ ICTY, Chambers judges, Andresia Vaz, available at <http://ict-archive09.library.cornell.edu/ENGLISH/factsheets/vaz.html> (last visited September 25, 2013).

⁹⁵ ICTY, Chambers Judges, Elizabeth Gwaunza, available at http://www.icty.org/x/file/About/Chambers/judges_bios_en/ALJ_Gwaunza_Bio_en.pdf (last visited May 28, 2013).

⁹⁶ ICTR, About the Court, available at <http://ict-archive09.library.cornell.edu/ENGLISH/factsheets/arrey.html> (last visited May 28, 2013).

⁹⁷ ICTR, About the Court, available at <http://www.unict.org/AboutICTR/ICTRStructure/TheChambers/JudgeSolomyBalungiBossa/tabid/144/Default.aspx> (last visited May 28, 2013).

⁹⁸ African Court on Human and Peoples' Rights, available at <http://www.african-court.org/en/index.php/about-the-court/jurisdiction-3/office-of-the-president> (last visited August 1, 2013).

⁹⁹ *Id.*

Former Justice Kelello Justina Mafoso-Guni is from the Kingdom of Lesotho. She served as a magistrate in Zimbabwe for twelve years, becoming the first woman to be appointed to the bench. Returning to Lesotho, Justice Kelello took up a position at the High Court Bench, another post to which she was the first female appointee. She was elected a judge of the African Court in 2006 for a four-year term.¹⁰⁰

Black women have extended their service to the newest Hague tribunal. Judge Janet Nosworthy, a Jamaican, has served as an alternate trial judge and a judge for the Special Tribunal for Lebanon. Before joining that court, she was an ad litem judge at the ICTY.¹⁰¹

Fatou Bensouda was named Prosecutor of the ICC in 2012. She had previously been Deputy Prosecutor since 2004. Prior to joining the ICC, she was senior legal advisor and head of the Legal Advisory Unit for the ICTR. She is from Gambia.¹⁰²

Patricia Viseur Sellers was named a special adviser to the ICC in 2012, focusing on international criminal law prosecution strategies.¹⁰³ She was previously acting senior trial lawyer and legal adviser for gender at the ICTY. She has written extensively on gender violence and is a recipient of the ASIL Prominent Women in International Law Award.

The African Commission on Human Rights has a post known as the Special Rapporteur on Women's Rights in Africa; this person promotes and protects women in Africa. She assists governments and takes fact-finding missions. She prepares reports, drafts resolutions on women, and proposes recommendations to be adopted by the African Commission. She conducts studies, defines guidelines for state reports to the African Commission, and collaborates with relevant parties to promote and protect women's rights.¹⁰⁴ The current Rapporteur is attorney Soyata Maiga from

¹⁰⁰ *Id.*

¹⁰¹ Special Tribunal for Lebanon, available at <http://www.stl-tsl.org/en/about-the-stl/biographies/judges-of-the-special-tribunal-for-lebanon/trial-chamber-judge-janet-nosworthy> (last visited September 25, 2013).

¹⁰² ICC, Structure of the Court, available at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/Pages/theprosecutor2012.aspx (last visited May 28, 2013).

¹⁰³ ICC Prosecutor Fatou Bensouda appoints Patricia Sellers, Leila Sadat and Diane Marie Amann as Special Advisers, Press release December 12, 2012, available at http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/news%20and%20highlights/Pages/pr861.aspx (last visited May 28, 2013).

¹⁰⁴ Solidarity for African Women's Rights, A GUIDE TO USING THE PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA FOR LEGAL ACTION 5 (2011).

Mali.¹⁰⁵ Unfortunately, some believe that the Special Rapporteur position has been ineffective in practice.¹⁰⁶ This lack of success may represent the general weakness of special rapporteur positions more broadly, rather than a problem with this particular post. Alternatively, this job may also suffer simultaneously from weaknesses found in employment related to gender issues in the international arena.

A number of Black women have served on the various human rights treaty bodies that supervise the implementation of international human rights treaties. The chosen experts serve for several years and are supposed to be independent of any government influence. At the time of writing this chapter CERD committee members include Patricia Nozipho January-Bardill (South Africa) and Fatimata-Binta Victoire Dah/Diallo (Burkina Faso).¹⁰⁷ Gaby McDougall was the first American to serve on CERD. As an African-American female, she was a strong proponent of understanding how gender and race intertwined in her work. Now Chair of the International Council of the Minority Rights Group International, she has served on the board of the Global Fund for Women.¹⁰⁸ The Human Rights Committee, which is affiliated with the International Covenant for Civil and Political Rights (ICCPR), has Dr. Zonke Zanele Majodina (South Africa), whose many affiliations include serving on the board of directors of the Human Rights Institute of South Africa.¹⁰⁹ The UN Committee on the Rights of Persons with Disabilities (UNCRPD) includes Wangechi Maine Edah (Kenya), who was the inaugural vice president and Rapporteur for 2010.¹¹⁰ The Committee on Migrant Workers (CMW) included Vice Chairperson Myriam Poussi (Burkina Faso), Andrea Miller-Stennett (Jamaica), and still includes Fatoumata Abdourhamana Dicko (Mali).¹¹¹ The Committee on the Rights

¹⁰⁵ See resume of Soyata Maiga, available at http://www.achpr.org/files/members/12/bio_soyata_maiga.pdf (last visited August 1, 2013).

¹⁰⁶ Manjoo, *supra* note 67.

¹⁰⁷ Office of United Nations High Commissioner for Human Rights, members of the CERD Committee, available at <http://www2.ohchr.org/english/bodies/cerd/members.htm> (last visited August 1, 2013).

¹⁰⁸ See International Human Rights Law Group, available at http://www.hrlawgroup.org/about_ihrlg/bios/gay_mcdougall.asp (last visited September 10, 2013).

¹⁰⁹ Office of the United Nations High Commissioner for Human Rights, members of the Human Rights Committee, available at <http://www2.ohchr.org/english/bodies/hrc/membersCVs/majodina.htm> (last visited August 1, 2013).

¹¹⁰ Office of the United Nations High Commissioner for Human Rights, members of the CRPD Committee, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx> (last visited August 1, 2013).

¹¹¹ Office of the United Nations High Commissioner for Human Rights, members of the CMW Committee, available at <http://www2.ohchr.org/english/bodies/cmw/members.htm> (last visited August 1, 2013).

of the Child (CRC) has Dr. Agnes Akosua Aidoo (Ghana).¹¹² The CEDAW Committee includes Barbara Evelyn Bailey (Jamaica), Hilary Gbedemah (Ghana), and Theodora Oby Nwankwo (Nigeria).¹¹³

African women have been human rights activists in many countries. For example, the Niger Delta Women for Justice waged a successful campaign to get oil companies to provide concessions to the community. It gained worldwide attention because these poor women also threatened to disrobe and afflict the company with “the curse of nakedness.”¹¹⁴ This group started in 1998 and was committed to improving the status of women and to ensure their environmental and other human rights.¹¹⁵ Similarly, Wangari Mathai’s Green Belt activism to restore green spaces for the environment in Kenya led to a Nobel Prize. It helped raise consciousness and also encouraged more women to participate in government.¹¹⁶ Leymah Gbowee, who won the Nobel Prize in 2011 with President Sirleaf, is a mother of six who was instrumental in building a women’s peacebuilding movement in Liberia. Her efforts helped lead to an end to the civil war and made it possible for Liberia to elect its first woman president.¹¹⁷

Black women have become professors of international human rights, and this subpart features some who live in the United States. Although the field of international law is still mainly populated by White men, there are some extraordinary Black women who have broken in and excelled. They have made wonderful contributions to teaching, scholarship, and service, albeit mainly unknown to the general public. Some of these women have emphasized Black issues, women’s issues, or Black women’s issues in their work.

The “mother” of all Black women in the international human rights field was Professor Goler Teal Butcher, who passed away in 1993. She heavily emphasized Africa throughout her life. Her career included stints at the Office of the Legal Advisor at the State Department and work as a consultant to the House Foreign Affairs Committee’s Subcommittee on Africa. She worked for the Africa unit in the U.S. Agency for International Development (USAID), as well as for the Clinton transition team for USAID. She spent many years as a

¹¹² Office of the United Nations High Commissioner for Human Rights, members of the CRC Committee, available at <http://www2.ohchr.org/english/bodies/crc/members.htm> (last visited August 1, 2013).

¹¹³ Office of the United Nations High Commissioner for Human Rights, members of the CEDAW Committee, available at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Membership.aspx> (last visited August 1, 2013).

¹¹⁴ Deseriee A. Kennedy, *Transversal feminism and transcendence*, 15 S. CAL. REV. L. & WOMEN’S STUD. 65 (2005–06).

¹¹⁵ *Id.* at 83.

¹¹⁶ *Id.* at 91.

¹¹⁷ Leymah Gbowee, *MIGHTY BE OUR POWERS: HOW SISTERHOOD, PRAYER, AND SEX CHANGED A NATION AT WAR* (2011).

law professor at Howard, her law school alma mater. She was at the forefront in the struggle to end apartheid and was also the first Black woman to become vice president of ASIL, which later created the Butcher medal for human rights in her honor. Howard sponsors the Butcher International Moot Court Team.¹¹⁸

Another Black woman who has also emphasized Africa in her work recently served as the first female Dean and President of Albany Law School. Penelope Andrews is a native of South Africa and spent most of her teaching career at CUNY Law School at Queens College in New York, where she served as Associate Dean for Academic Affairs. In her honor, there is an Andrews Human Rights Award at the University of KwaZulu-Natal in South Africa. In 2006, she was a finalist for a position on the South African Constitutional Court. Andrews has also emphasized women's rights from a CRF perspective and has published on race and gender issues, including in South Africa and Australia. Her latest book is *From Cape Town to Kabul: Rethinking Strategies for Pursuing Women's Human Rights*.¹¹⁹

Leslye Obiora is a notable Nigerian jurist who has also emphasized Africa and gender issues. She is a law professor at the University of Arizona. She is unique among this group of professors in that she also served in her government as the Nigerian Minister of Mines and Steel Development. Her teaching includes courses on gender and the law, as well as on human rights. Her scholarship has tackled controversial issues such as African Feminism and FGS.¹²⁰

¹¹⁸ See Clay Smith, *Tribute: United States foreign policy and Goler Teal Butcher*, 37 *How. L. J.* 139, 160 (1994).

¹¹⁹ See *Penelope Andrews to be 17th president and dean*, available at <http://www.albanylaw.edu/faculty/infocus/Pages/Penelope%20Andrews%20to%20be%2017th%20President%20Dean.aspx>. Her biography can be found at [http://www.albanylaw.edu/faculty/pages/faculty-listing.aspx?ind=Andrews,%20Penelope%20\(Penny\)](http://www.albanylaw.edu/faculty/pages/faculty-listing.aspx?ind=Andrews,%20Penelope%20(Penny)). Her publications include: *FROM CAPE TOWN TO KABUL: RETHINKING STRATEGIES FOR PURSUING WOMEN'S HUMAN RIGHTS* (2013); *Sixty years on: The human rights movement today*, 24 *MD. J. INT'L L.* 47 (2009); *Who's afraid of polygamy*, *supra* note 18; *"Democracy stops at my front door": Obstacles to gender equality in South Africa*, 5 *LOY. U. CHI. INT'L L. REV.* 15 [(2007)]; *Big love? The recognition of customary marriages in South Africa*, 64 *WASH. LEE L. REV.* 211 (2007); *Learning to love after learning to harm: Post-conflict reconstruction, gender equality and cultural values*, 15 *MICH. ST. J. INT'L L.* 41 (2007); *Some middle-aged spread, a few mood swings and growing exhaustion: The human rights movement at middle age*, 41 *TULSA L. REV.* 693 (2005); *Women's human rights and the conversation across cultures*, 67 *ALB. L. REV.* 609 (2003); *From gender apartheid to non-sexism: The pursuit of women's rights in South Africa*, 26 *N.C. J. INT'L L. & COM. REG.* 693 (2001).

¹²⁰ Leslye Obiora's biography can be found at <https://www.law.arizona.edu/faculty/>, click on Obioral. Her publications include: *"Supri, supri, supri, Oyibo?": An interrogation of gender*

Hope Lewis has used a CRF perspective to focus on Black women in the African Diaspora, especially in the economic rights field. She has overcome blindness to become a leading scholar. Teaching at Northeastern Law School, she cofounded the Program on Human Rights and the Global Economy. Her areas of specialty include international disability rights and critical approaches to identity and the law (i.e., race, gender, culture, and transnational migration). She co-authored *Human Rights and the Global Marketplace: Economic, Social, and Cultural Dimensions*, a winner of the 2008 U.S. Human Rights Network Notable Contribution to Human Rights Scholarship Award. Lewis also co-edits the online abstracts journal *Human Rights and the Global Economy*, and she regularly contributes to *IntLawGrrls.com*, the international law professors' blog. The American Bar Association Section on International Law named her the 2012 recipient of the Mayre Rasmussen Award for supporting the advancement of women in international law.¹²¹

In addition to a CRF perspective, there are Black women using a CRT perspective in their scholarship. Villanova law professor Ruth Gordon has written in the field of CRT and international law,¹²² and her courses have included international environmental law. She co-authored a UN Council for Namibia study addressing Namibia's violations of UN decrees and

mainstreaming deficits, 29 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 649 (2004); *Bridges and barricades: Rethinking polemics and intransigence in the campaign against female circumcision*, 47 CASE W. RES. L. REV. 275 (1997); *Reconsidering African customary law*, 17 LEGAL STUD. F. 217 (1993).

¹²¹ Hope Lewis's biography can be found at <http://www.northeastern.edu/law/faculty/directory/lewis.html>. Her publications include: Stephanie Ortoleva & Hope Lewis, *Forgotten sisters – A report on violence against women with disabilities: An overview of its nature, scope, causes and consequences* (Northeastern University School of Law Research Paper 104–2012 (2012)); Hope Lewis & Rachel E. Rosenbloom, *The Boston Principles – An introduction*, 1 NOTRE DAME J. INT'L. COMP. HUM. RTS. L. 145 (2011); *Transnational dimensions of racial identity: Reflections on race, the global economy, and the human rights movement at 60*, 24 MD. J. INT'L. L. 296 (2009); *Female genital mutilation and female genital cutting*, in ENCYCLOPEDIA OF HUMAN RIGHTS (David P. Forsythe et. al. eds., 2009); *Human rights and the global economy: The promises and failures of globalization*, in PROGRESSIVE LAWYERING, GLOBALIZATION AND MARKETS: RETHINKING IDEOLOGY AND STRATEGY (Clare Dalton ed., 2007); HUMAN RIGHTS AND THE GLOBAL MARKETPLACE: ECONOMIC, SOCIAL AND CULTURAL DIMENSIONS (Jeanne M. Woods & Hope Lewis eds., 2005); *Embracing complexity: Human rights in critical race feminist perspective*, 12 COLUM. J. GENDER & L. 510 (2003); *Lionheart gals facing the dragon: The human rights of inter/national Black women in the United States*, 76 OR. L. REV. 567 (1997); *Between Irua and "female genital mutilation": Feminist human rights and the cultural divide*, 8 HARV. HUM. RTS. J. 1 (1995).

¹²² See Ruth Gordon, *Critical race theory and international law: Convergence and divergence*, 45 VILL. L. REV. 827 (2000). For other publications, see <http://www1.villanova.edu/villanova/law/academics/faculty/Facultyprofiles/RuthGordon.html>.

resolutions, and she has written on the impact of Hurricane Katrina.¹²³ Her work has also focused on failed states and constitutionalism.¹²⁴

My own work has used a CRT and CRF perspective to address the human rights of Black people generally, Black women, and other people of color, as well as other women as well. I am unique among the group in that I advised the founding fathers and mothers of three constitutions: South Africa, Palestine, and Rwanda. I was particularly concerned with the human rights provisions of these documents, including the rights of women. I have maintained a central focus on human rights for thirty years and am now the director of the University of Iowa Center for Human Rights. In addition to teaching the human rights course, I teach other courses that all involve human rights such as Law in the Muslim World, Critical Race Theory, and Sex Discrimination Law.¹²⁵ I am the author of more than one hundred publications, and my international scholarship has emphasized two regions: Africa, especially South Africa, and the Middle East, in particular the Palestinian legal system. Constitutionalism, women's rights, rape in Bosnia, Muslim headscarves in France, Tunisian secularism, Turkish democracy, and the Arab Spring are among the topics of my articles. I currently serve on the ABA Middle East/North Africa Law Initiative, which is concerned with human rights issues in both regions.

The major contributions that all the Black women featured in this part of the chapter have made to international human rights need to be better publicized. They should not just be inspirational to other Black women, but also to everyone interested in this field. If more people knew of their accomplishments, it would make a critical contribution to defeating the notion that Black women are and have only been victims.

CONCLUSION

This chapter has used a CRF approach to illuminate the contributions of Black women in the human rights protective regime and has demarginalized rather than essentialized them as transnational actors. Whereas Black

¹²³ See Ruth Gordon, *Afro America and the third world in the wake of Hurricane Katrina*, 21 (3) NAT'L. BLACK L. J. 1(2009).

¹²⁴ See Ruth Gordon, *Saving failed states: Sometimes a neocolonialist notion*, 12 AM. U. INT'L L. REV. 903 (1997); *Intervention by the United Nations: Iraq, Somalia, and Haiti*, 31 TEX. INT'L. L. J. 43 (1996); *Some legal problems with trusteeship*, 28 CORNELL INT'L. L. J. 301, 306 (1995); *United Nations Intervention in internal conflicts: Iraq, Somalia, and Beyond*, 15 MICH. J. INT'L. L. 519 (1994); *Growing constitutions*, 1 U. PA. J. CONST. L. 528 (1999).

¹²⁵ My biography can be found at <http://www.law.uiowa.edu/faculty/adrien-wing.php> with links to my publications.

women's issues may be invisible to many and unimportant to others, this chapter has shown that these issues have begun to be addressed by Black women, especially in the area of international human rights. The Women's Protocol and the CERD General Recommendation No. 25 are two examples where "looking to the bottom," in the words of Matsuda, and placing Black women at the center of the analysis makes important contributions to the ways in which we think about and rationalize international law. Exploring the decisions of the ICTR and the Sierra Leone and Liberia TRCs shows how the law can aid Black women specifically, at least on a theoretical and normative basis. The chapter shows that Black women are not only victims of human rights violations, but also vibrant contributors to the making and implementing of international law.

It is thus clear that Black women are entitled to, and are beginning to get, international recognition and justice in theory and practice. Despite these gains, hundreds of millions of Black women still feel that it is "just us" and are overwhelmed with the efforts of day-to-day survival for themselves and their families. On the other hand, it is also true that some Black women are on the front lines of authoring and shaping, or attempting to author and shape, international law and justice. Some of us are committed to aiding other Black women in particular and others to helping humanity more generally as well. We stand on the shoulders of our ancestors, sung and unsung, sheroes and heroes, and acknowledge the contributions of men dedicated to achieving global justice.

In the future, it is clear that a multidimensional approach is required for improving Black women's status – incorporating legal and nonlegal remedies and utilizing individuals, civil society, NGOs, and corporate and governmental sectors. Black women must be at the center of the process, not only at the margins. Because Black women remain disproportionately disempowered, there is the need for coalitional praxis working with all types of dedicated people, male and female. Dr. Levitt's role in bringing together the conference upon which this chapter is based is a perfect example of the commitment and cooperation needed to move Black women forward in the twenty-first century.