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Transnational Dimensions of Women's Empowerment:
Refocusing on Economic, Social, and Cultural Rights

by Hope Lewis¹

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Remarks at the International Conference on
The Protection of Women's Rights
Ministry of Foreign Affairs of Italy
Department for Equal Opportunity of Italy
Permanent Mission of Italy to the United Nations
Italian Cultural Institute in New York
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I. Introduction—Beyond National Security: Refocusing on Economic, Social, and Cultural Rights for Transnational Migrant Women

State obligations with regard to the civil and political rights of people who cross borders are high on the global agenda these days. Throughout North America, western Europe, South Africa, and Australia, for example, post-9/11 political controversies continue to rage about migration-related threats to national security.

Interestingly, in the U.S. context, the gender dimensions of national security vs. civil rights and civil liberties debates are rarely examined, even though women are among those caught up in the cross-border criminal and official violence, the deportation raids, and the associated crackdowns.

But the civil rights and civil liberties implications of migration should not be the end of the analysis even once comprehensive immigration reform becomes politically viable in places like the U.S. The economic, social, and cultural rights of immigrants, including immigrant women, should be an equally important component. The full protection of women's rights in a contemporary global economy is impossible without attention to such rights by state and non-state actors.

My brief talk draws inspiration from renewed calls for a multilayered and intersectional analysis of the human rights of what I call "transnational women." It represents an agenda for further research; I welcome your comments and suggestions.

I use the broad term "transnational women" here to encompass documented or undocumented (irregular) women who cross national borders in search of work, to accompany family or friends, to escape political or cultural persecution or environmental disasters, or because they are subjected to involuntary trafficking.

A recent report by the UN Office of the High Commissioner for Human Rights reminds us about the nature and scope of state obligations with regard to the economic, social, and cultural rights of all migrant workers.² Such obligations are particularly relevant for the protection and empowerment of poor and working-class women who migrate between the Global South and the Global North. These transnational migrant women workers certainly experience civil and political rights violations, but they also encounter complex barriers to the full enjoyment of their economic, social, and cultural human rights.

For them, *Millennium Development Goal No. 3*—"Promote Gender Equality and The Empowerment of Women"³ remains only a partially fulfilled promise. But some use the international human rights framework creatively to pressure even powerful states to work toward making that promise a reality. Their efforts highlight the significance of socio-economic human rights for the protection and empowerment of transnational women.

² Report of the Office of the High Commissioner for Human Rights, *Obligations of States with Regard to the Economic, Social, and Cultural Rights of All Migrants* (01 June 2010), available at: <http://www.ohchr.org/Documents/Press/OHCHRMigrantReporttoECOSOC.pdf> (last visited December 30, 2010).

³ See Millennium Development Goals, *Goal 3: Promote gender equality and empowerment for women*, available at: <http://www.un.org/millenniumgoals/> [accessed December 30, 2010].

II. Transnational Women from the Caribbean: A Case Study in Intersectionality and Interdependence

A. Intersectionality—Multiple Forms of Discrimination Facing Transnational Women from the Caribbean

Thirteen years ago, I began writing a series of essays about “Transnational” women whose lives and status reflect the complexity and multidimensionality of the contemporary global economy. They move physically from one country to another, but their civil, political, economic, social, and cultural lives and identities are often strongly influenced by two or more states and communities. I am pleased to see that the legal implications of women’s status as transnational subjects and actors have become a more central focus of analysis in subsequent years.

Beginning with a piece in the *Oregon Law Review* called “Lionheart Gals Facing the Dragon: the Human Rights of Inter/national Black Women,”⁴ I examined the international human rights issues facing transnational migrants from the English-speaking Caribbean (primarily Jamaica) and explored what we could learn from them about a more inclusive human rights framework.

I argued that recognition and protection of the human rights of transnational women workers could slip through the cracks in coverage between home state and host state. Such women could also be subject to violations for which both states are responsible, thus compounding the harm they experience. They also could suffer unique harms or violations resulting from the intersection of multiple forms of discrimination, including their race, gender, class, culture, and migration status.

We Critical Race Feminists believe that equality and non-discrimination for women who live under such complex conditions requires a three-pronged approach: 1) an intersectional view of their identity status and lived experience, 2) the recognition and implementation of the indivisibility and interdependence of rights, and 3) pragmatic and practical responses to the effective recognition, protection, and fulfillment of their rights.

Intersectionality. The first aspect, “intersectionality,” is also referred to in the literature as “multidimensionality” or “multiple forms of discrimination.” An intersectional approach to transnational migrant women requires states to recognize and address the multiple forms of discrimination they face. This has been recognized with regard to women and other groups more broadly in groundbreaking interpretive statements and reports by the Committee on the Elimination of Racial Discrimination,⁵ Independent Expert on Minority Issues Gay McDougall,⁶

⁴ Hope Lewis, *Lionheart Gals Facing the Dragon: The Human Rights of Inter/national Black Women in the United States*, 76 OREGON LAW REVIEW (1998), available at SSRN: <http://ssrn.com/abstract=996709> [accessed December 30, 2010].

⁵ Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation No. 25: Gender-related Dimensions of Racial Discrimination*. See also CERD *General Recommendation No. 30: Discrimination Against Non-citizens*; Radhika Coomaraswamy (Sri Lanka), *Special Rapporteur of the Commission on Human Rights on violence against women, on the subject of race, gender and violence against women*. A/CONF.189/PC.3/5 (27 July 2001), available at: http://ap.ohchr.org/documents/dpage_e.aspx?m=106 [accessed December 30, 2010] (contribution submitted by the Special Rapporteur to the Secretary-General for the Preparatory Committee and the World Conference Against Racism discussing intersectionality in the context of violence against women)

and former Special Rapporteur on Violence Against Women Radhika Coomaraswamy.⁷ Current mandate-holder Rashida Manjoo announced plans to focus on Intersectionality in her 2011 report to the Human Rights Council as well.

Many working-class Afro-Caribbean women experience intersections of racial, gender, and class discrimination in ways that are invisible or marginalized in mainstream international human rights legal scholarship. As African-descended women, they experience racism at home in encounters with tourists from North America, Europe, or Asia. As women, they experienced gendered divisions of labor and violence in the home or on the streets. Some experience sexual exploitation in the forms of sex tourism, forced prostitution, or sexual harassment in the workplace.

According to media statistics from 2007, there were more than 9,000 reports of domestic violence on the small island of Jamaica.⁸ Police reports from 2009 show 849 reported rapes, 2,615 assaults against females, 151 women shot, and 165 women or girls killed.⁹ Yet these figures represented an official decline in reported gender-based violence!

According to a 2005 Amnesty International report on sexual violence, “Violence against women in Jamaica persists because the state is failing to tackle discrimination against women, allowing social and cultural attitudes which encourage discrimination and violence.”¹⁰

Women in urban slums are also caught up in the growing impact of criminal and political violence. Jamaica still has one of the highest per capita murder rates in the world—with its highest ever statistic of 1680 murders reported in 2009.¹¹ It is often listed as having the third

⁶ See UN Press Release, *Hidden Victims of Multiple Discrimination: UN Expert on Minority Issues Calls for “Gender Lens” to Focus on Minority Women*, 7 March 2006, available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/C08BCCC8F7C3C471C125712A0059F2C7?opendocument> (last visited December 30, 2010) (quoting UN Independent Expert on Minority Issues, Gay McDougall); *Independent Expert on Minority Issues*, available at:

<http://www2.ohchr.org/english/issues/minorities/expert/standards.htm> [accessed December 30, 2010].

⁷ Radhika Coomaraswamy (Sri Lanka), *Special Rapporteur of the Commission on Human Rights on violence against women, on the subject of race, gender and violence against women. A/CONF.189/PC.3/5* (27 July 2001), available at:

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.189.PC.3.5.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.189.PC.3.5.En) [accessed December 30, 2010] (contribution submitted by the Special Rapporteur to the Secretary-General for the Preparatory Committee and the World Conference Against Racism discussing Intersectionality in the context of violence against women).

⁸ Rasbert Turner, *Domestic Violence Statistics Alarming*, JAMAICA GLEANER, July 21, 2008, available at:

<http://jamaica-gleaner.com/gleaner/20080721/lead/lead6.html>

[accessed December 30, 2010].

⁹ *Violence against women: the full story: An International Day for the Elimination of Violence Against Women*, THE JAMAICA OBSERVER, Nov. 30, 2009, available at:

<http://www.jamaicaobserver.com/magazines/allwoman/Violence-against-women--the-full-story>

[accessed 30 December 2010].

¹⁰ Amnesty International, “*Jamaica: Sexual violence against women and girls in Jamaica: ‘just a little sex,’*” available at: <http://www.amnesty.org/en/library/asset/AMR38/002/2006/en/d61bb513-d438-11dd-8743-d305bea2b2c7/amr380022006en.pdf/>

[accessed 30 December 2010].

¹¹ Freedom House, *Freedom in the World 2010 - Jamaica*, 3 May 2010, available at:

<http://www.unhcr.org/refworld/docid/4c0ceaea28.html> [accessed 17 July 2010].

highest murder rate in the world (behind Colombia and South Africa). NGOs also report high rates of extrajudicial killings by police and soldiers. The number of reported killings by police was 253 in 2009.¹² Of course, many in the United States and the expatriate Jamaican community were shocked at last Spring's state of emergency in Kingston, when nearly 100 people were killed in a joint police and military action to extradite accused drug kingpin Christopher "Dudus" Coke to the U.S.¹³

Discrimination and violence can be important reasons that "push" women to leave their homeland. But it turns out that the intersection of race, gender, and class stereotyping plays an important role in "pulling" such women to the Global North as well. Their racial, ethnic, and gender identities as Black women are important in the "care work" sectors of nursing, home health care, and domestic work, for example. Because of the U.S. legacies of slavery, xenophobia, and segregation, care work was seen as a traditional role for Black women and immigrant women.

As the post-World War II civil rights movement began to take off, and as the U.S. feminist movement allowed more middle-class women to enter the paid labor force, the need for outside low-wage labor to care for children, the sick, and the elderly increased in the Global North. Black women from the English-speaking Caribbean were, therefore, perceived by some as a desirable "commodity"—race and gender-appropriate, English-speaking, and in need of even relatively low wages.

Intersectionality analysis is therefore required to address the multiple forms of discrimination such women face at home and abroad. They may be targeted for trafficking, or pulled into low-wage work based on a combination of stereotypes about their perceived gender roles, their racial or ethnic status, and even cultural or religious norms or customs.

B. Indivisibility and Interdependence—Transnational Migrant Women in a Global Economy

Indivisibility. According to the 1993 Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."¹⁴

But the massive violations of socio-economic and cultural rights women experience—now further intensified by the global economic crisis—are ignored by some states. This has been recognized by the Committee on Economic, Social, and Cultural Rights (in General Comment No. 16 on "The Equal Rights of Men and Women to the Enjoyment of Economic, Social, and Cultural Rights" (2005)).¹⁵

¹² Amnesty International, Amnesty International Report 2010 - Jamaica, 28 May 2010, available at: <http://www.unhcr.org/refworld/docid/4c03a820c.html> [accessed 17 July 2010]

¹³ Human Rights Watch, Jamaica: Investigate Killings in Tivoli Gardens, 4 June 2010, available at: <http://www.unhcr.org/refworld/docid/4c1091bd1a.html> [accessed 17 July 2010]

¹⁴ World Conference on Human Rights, June 15-25, 1993, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (July 12, 1993), available at: <http://www.unhchr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en> [accessed 30 December 2010].

¹⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the

States should work together to ensure that all categories of the human rights of transnational migrant women are protected, respected, and fulfilled.

In their home countries, too many transnational women live in poverty, with all that poverty means for the failure to realize their rights to decent housing, health care, education, and jobs. Despite these realities, Jamaica, for example, is still a beautiful island, with beautiful and talented people, and culture that has influenced the world. Women help build the cultural, economic, and political infrastructure that sustains the island's people despite the challenges of globalization. One way they do so is through transnational migration.

Once they arrive in the host country, many transnational women work in the privacy of home and family. They may work in a single home, isolated from other workers, and therefore find it difficult to organize to protect their human rights.

Transnational women are vulnerable to a wide range of violations of economic, social, and cultural rights –the right to decent wages and safe working conditions, the right to rest, rights to physical and mental health, the right to food, the right to education, the right to an adequate standard of living (including housing and social security), rights and protections for family life and motherhood, and the right to cultural enjoyment.

Such women are often subject to precarious and complex migration laws and bureaucracies, making them inordinately dependent on the employer. Some of the work they do, often based in the informal sector, is not covered by domestic labor and wage laws, further putting them at risk of wage, worker safety, and sexual harassment violations. The need to work sufficient hours to send adequate remittances home for children and extended families, as well as restrictive immigration laws, keep them from being able to visit their home communities, sometimes for years.

C. A Pragmatic Agenda for Inquiry and Change

What are the obligations of states in regard to the protection of women in the transnational dimension? Women migrants share many of the concerns and risks facing other women throughout the world. States, therefore, have the same obligations to prevent, prohibit, and punish public sector discrimination against them, to respect and promote their right to equality with men, to take due diligence measures to protect them from discrimination and violence by non-state actors, and to take effective measures to fulfill their fundamental human rights.

Nevertheless, there may be more targeted ways that states can help support the empowerment of transnational women in particular. For example, they can support, provide additional space for, or increase the efficiency of, the power and survival strategies women already demonstrate.

Remittances and Family Unification. Many working-class Jamaican women migrate to North America or Western Europe in the “nanny chain” of care-work. They care for children and the elderly in the Global North so that they can earn remittances to sustain their children and families at home. Many of them are economic heads of households as single mothers. They send cash, clothing, shoes, and food for their children on planes or in shipping barrels. Such

Covenant), 11 August 2005, E/C.12/2005/4, available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm> [accessed 30 December 2010].

children were sometimes referred to as “barrel children”; their mothers may never see them grow up. The grandmothers and aunts who remain on the island try, under the most difficult of circumstances, to replace the personal guidance that absent biological parents cannot provide. The tragic story behind serial killer “DC Sniper” Lee Boyd Malvo and the transnational mother who tried to raise him, is one high-profile example of the consequences of such social dislocation.

This out-migration is not confined to poor or working-class women, of course, Jamaica has been hard-hit by the so-called “brain-drain,” in which 80% of college-educated persons born on the island leave to work elsewhere.

The global economic crisis has had a devastating impact on this important informal economy. Jamaica reported an 11.4 % fall in remittances in 2009 “the first time remittance inflows had declined in over 20 years.”¹⁶ That amount still reflected more than 15% of the country’s GDP at \$1.798 billion (US). It remains to be seen whether the amounts for 2010 will fully recover.

By protecting transnational women from wage abuses and providing for strong and effective laws against gender and race discrimination, states can help enhance the economic power women already exercise to sustain their own survival and that of their children, their families, and both sending and host economies. Host and sending states should therefore ask if there are additional ways to enable transnational women to support their families through decent wage laws, banking and savings protections for remittances sent home, and the relaxation of restrictions on visits home to children and other family members.

Cultural Rights. The cultural dimension is also significant for the empowerment of transnational women. In Jamaica, for example, Sistren, a women’s theatre collective, uses popular education and cultural expression to highlight issues of public and private violence, corruption, and transnational economic inequities. Some transnational women who migrate to host states attempt to recreate a sense of community in immigrant enclaves by organizing social and political networks, developing cultural connections, by cooking familiar foods, and participating in musical, religious and cultural customs.

States can play a role by embracing these efforts to “recreate home” by fostering respect for diversity and non-discrimination in education, and in supports for social and cultural life.

Local and Transnational Solidarity/Organizing. Some recent good news indicates that transnational women themselves are beginning to organize in ways that pressure the state to meet its obligations to them. New York Governor David Patterson, for example, recently signed into law the “Domestic Workers Bill of Rights,” slated to go into effect in November.¹⁷ This legislation, aimed at closing gaps in coverage for domestic workers under U.S. labor laws, is the direct result of organizing and activism, including on the international level, by transnational women themselves.

One such network, Domestic Workers United (DWU) describes itself as “an organization of Caribbean, Latina and African nannies, housekeepers, and elderly caregivers in New York,

¹⁶ Dennis Morrison, *Investors Seek Safe Harbours*, THE JAMAICA GLEANER, May 16, 2010. Available at: <http://gleaner-ja.com/gleaner/20100516/cleisure/cleisure5.html> [accessed 30 December 2010].

¹⁷ 2010 Sess. Law News of N.Y. Ch. 481 (A. 1470-B) (McKINNEY'S).

organizing for power, respect, fair labor standards and to help build a movement to end exploitation and oppression for all.”¹⁸

At the international level, a group of 50 transnational women --domestic workers-- attended a meeting of the International Labor Organization to urge the drafting and adoption of a new Convention on the Rights of Domestic Workers.¹⁹ Among the groups represented were the National Union of Domestic Employees (NUDE) from Trinidad and the Jamaica Household Workers Association (JHWA).²⁰ These Caribbean groups worked in coalition with other organizations as part of the International Domestic Workers Network (IDWN). At a session titled “Decent Work for Domestic Workers,” Gerry KangaLee described their reality:

Domestic Workers, work in private homes cooking, cleaning, washing, ironing, fetching drinking water, taking care of children, the elderly, the sick and disabled among an array of other duties. Workers who for decades suffered abuses by their employers and their family members, and who continue to work in abusive situations, whether it is non-payment or underpayment of wages, non adherence to the provisions of the laws wherever they exist, e.g. non payment of sick leave, vacation leave, maternity leave. No recourse to situations of wrongful dismissals, sexual harassment, physical and verbal abuse, and the in-attention to the Health and safety of Domestic Workers who remain excluded from under the Occupational Safety and Health Act.²¹

The women advocated for a treaty, with follow-up recommendations, because, they said, “the way Domestic workers are treated is surely a Human Rights issue that needs to be addressed. [Yet] employers and some governments are intent on watering down this important “possible” International Instrument that should be legally binding and not just a policy guideline to follow if they wish.”²²

Such stories strike me as promising evidence of the growing empowerment of transnational women, but there is still more to be done.

Access to Justice. Equally as important as such efforts at reforming the laws of the state and encouraging state recognition of rights through treaty ratification, human rights advocates and scholars are now emphasizing the importance of access to justice and effective remedies.

Earlier this year, for example, UN Special Rapporteur on Violence Against Women Rashida Manjoo, emphasized the importance of state obligations to pursue effective, creative, and even transformative remedies for women whose rights are violated. In a report titled “Reparations for Women Subjected to Violence,” Manjoo praised the Inter-American Court of Human Rights groundbreaking decision in *Caso-Gonzalez y otras v. Mexico* (“*Campo Algodonero*” or “*The Cotton Field*” case) as such a transformative model.²³ That decision holds

¹⁸ Domestic Workers United, <http://domesticworkersunited.org/> [accessed 30 December 2010].

¹⁹ Press Release: Report back on decent work for domestic workers at the International Labour Conference (ILC) 2010 (National Union of Domestic Employees (NUDE)), July 7, 2010,), available at: http://www.escr-net.org/news/news_show.htm?doc_id=1294053 [accessed 30 December 2010].

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, 23 April 2010, A/HRC/14/22, available at: <http://www.unhcr.org/refworld/docid/4c0cb3812.html> [accessed 30 December 2010] (discussing reparations for women subjected to violence).

the state of Mexico accountable for violations of the American Convention of Human Rights and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belem do Para).

The Court found that the state had failed to prevent, investigate, and punish unsolved murders of women in Ciudad Juarez. The case has implications for discriminatory state and corporate failures to protect women's human rights, the vulnerability of transnational women workers in a global economy, and their lack of access to effective redress or justice, as important causes and consequences of violence against women. Manjoo indicates that remedies for violations of economic, social, and cultural rights should be included as among the obligations of the state toward women and as a form of "reparations" for those women subjected to violence.²⁴

Her report lays out an ambitious and proactive agenda for the remediation of the consequences of violence that includes the creative promises of the Cotton Fields decision.²⁵ She noted the possibilities of civil tort law, criminal tribunals, restorative justice processes, and even popular education as means of reparations for women.²⁶

Given the importance of socio-economic rights in creating sustainable societies, shouldn't the empowerment of transnational women similarly include effective reparations and, perhaps, even criminal sanctions for violations of such rights?

Of course, the progressive realization of economic, social, and cultural rights and the promotion of compliance must begin with "soft" measures such as the training of government officials, the dissemination of "best practices," and international co-operation and technical assistance. There should also be room for a "violations" approach more traditionally used with civil and political rights that exposes and embarrasses affirmatively non-compliant states and their leaders.

Should this naming and shaming not also include donor governments and their leaders, for example, who pledge international co-operation, aid, and assistance for the protection of human rights, but then fail to follow through? Should it also include the naming and shaming of transnational corporations that fail to protect their women workers?

But perhaps full accountability will ultimately require yet another step. Like physical violence, lack of healthcare and education, unsafe working conditions, and poverty also kill and hurt women and girls, or provide a fertile ground for physical and emotional violence. In order to empower transnational women, states should therefore "put their money where their mouths are" by providing strong accountability mechanisms for violations or failures to protect.

Can we imagine criminal indictments for discrimination in the right to food, housing, or education for women and girls? Can we design restorative justice models that include settlements designed to lift women out of poverty, educate and train government actors and the community about the importance of economic, social, and cultural rights?

Perhaps criminal sanctions against the most egregious and recalcitrant violators would signal to state officials, corporate directors, and the international community that violations of ESCR must be taken as seriously as are violations of civil and political rights and humanitarian

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

laws. Holding individuals and groups criminally accountable might help end an environment of complacency and impunity for violations of economic, social, and cultural rights.

It seems to me that this is a rich area for continued research and advocacy.

III. Conclusion

In a time of global, national, and local economic crisis that reaches deep into the middle-class and even unsettles the wealthy, how can we talk about, much less advocate for, the implementation of socio-economic rights of non-citizens in any country?

State obligations to respect, protect, and fulfill human rights should not depend on political or economic expediency. They must not substitute for strong, effective commitments to implementation. For transnational women and children of color who often make up a disproportionate share of the poorest and most marginalized, there never seems to be a convenient time.

Five years before we hope to see the MDGs become a reality, the words of Reverend Martin Luther King Jr. should still ring in our ears as a challenge: "This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism.... Now is the time to... open the doors of opportunity to all of God's children."

And, I would add, "Now is the time to empower women..."
Thank you.