

# Montréal Principles on Women's Economic, Social and Cultural Rights

## I. INTRODUCTION

The Montréal Principles were adopted at a meeting of experts held 7–10 December 2002 in Montréal, Canada. These principles are offered to guide the interpretation and implementation of guarantees of non-discrimination and equal exercise and enjoyment of economic, social, and cultural rights, in order to ensure that women can enjoy these rights fully and equally. Guarantees of non-discrimination and equal exercise and enjoyment of economic, social, and cultural rights are found, *inter alia*, in Articles 3 and 2(2) of the International Covenant on Economic, Social and Cultural Rights, so that women can enjoy these rights fully and equally.

The participants at the Montréal meeting were: Sneh Aurora, Fareda Banda, Reem Bahdi, Stephanie Bernstein, Gwen Brodsky, Ariane Brunet, Christine Chinkin, Shanthi Dairiam, Shelagh Day, Leilani Farha, Ruth Goba, Soledad Garcia Muñoz, Sara Hossain, Lucie Lamarche, Marianne Möllmann, Dianne Otto, Karrisha Pillay, Inés Romero Bidegaray, and Alison Symington. They unanimously agreed on the following principles.

Sex or gender inequality is a problem experienced primarily by women. The systems and assumptions which cause women's inequality in the enjoyment of economic, social, and cultural rights are often invisible because they are deeply embedded in social relations, both public and private, within all states. Acknowledging this systemic and entrenched discrimination is an essential step in implementing guarantees of non-discrimination and equality.

The terms "gender" and "sex" should both be understood as referring to the range of economic, social, cultural, historical, political, and biological

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The primary organizers and promoters of the Montréal Principles are: Shelagh Day (Women's Economic Equality Project), Leilani Farha (CERA—Centre for Equality Rights in Accommodation and ESCR-Net), Ruth Goba (CERA), and Marianne Möllmann (International Network on Economic, Social and Cultural Rights, ESCR-Net). The Montréal Principles were drafted collaboratively by the persons listed in the introduction.

constructions of norms of behaviour that are considered appropriate for women and men. Implicit in such an understanding of "gender" or "sex" relations is that male and female norms have been constructed so as to privilege men and disadvantage women. "Gender" and "sex" discrimination can be used interchangeably, and both "gender inequality" and "sex inequality" are used to refer to the disadvantaged position of women. In order to reflect this understanding of women's disadvantage, the Montréal Principles use the terms "discrimination against women" and "women's equality" wherever possible.

Economic, social, and cultural rights have a particular significance for women because as a group, women are disproportionately affected by poverty, and by social and cultural marginalization. Women's poverty is a central manifestation, and a direct result of women's lesser social, economic, and political power. In turn, women's poverty reinforces their subordination, and constrains their enjoyment of every other right.

The UN Charter mandates universal respect for, and observance of all human rights, including the right of women to equal exercise and enjoyment of their economic, social, and cultural rights.<sup>1</sup> All regional and global instruments which set out economic, social, and cultural rights contain guarantees of non-discrimination and of equal enjoyment for women of these rights.<sup>2</sup> An expression of this global consensus is found in Articles 3 and 2(2) of the International Covenant on Economic, Social and Cultural Rights.

In the political context of the early twenty-first century, it is particularly important to underline this long-standing international consensus regarding human rights primacy. The lack of priority accorded to securing universal enjoyment of economic, social, and cultural rights hurts women disproportionately. Women's particular vulnerability to social and economic

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1. UN CHARTER arts. 55, 56, 103, *signed* 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (*entered into force* 24 Oct. 1945).
  2. International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at arts 2(2), 3, U.N. Doc. A/ 6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976) [hereinafter ICESCR]; American Convention on Human Rights, *signed* 22 Nov. 1969, O.A.S.T.S. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979) (*entered into force* 18 July 1978), *reprinted in* 9 I.L.M. 673 (1970) [hereinafter ACHR]; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" *adopted* 17 Nov. 1988, O.A.S.T.S. No. 69 art. 3 (*entered into force* 16 Nov. 1999), *reprinted in* 28 I.L.M. 156 [hereinafter San Salvador Protocol]; European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* 4 Nov. 1950, art. 14, 213 U.N.T.S. 221, Europ. T.S. No. 5 (*entered into force* 26 Feb. 1965) (read in conjunction with its Protocols); African Charter on Human and Peoples' Rights, *adopted* 26 June 1981, art. 2, O.A.U. Doc. CAB/ LEG/67/3 Rev. 5 (*entered into force* 21 Oct. 1986), *reprinted in* 21 I.L.M. 58 (1982) [hereinafter African Charter]; Cairo Declaration on Human Rights in Islam, art. 1 (1990), U.N. Doc. A/Conf. 157/PC/62/Add. 18 (1993).

deprivation is deepened further in conflict and post-conflict situations and when economic sanctions are imposed. The Committee on Economic, Social and Cultural Rights has stated that economic, social, and cultural rights must be taken into account when imposing sanctions, and state parties to the Covenant should take account of the suffering that such sanctions are likely to inflict on certain sectors, such as women. As the UN Security Council has recognized, peace and women's equality are inextricably linked.<sup>3</sup>

The inequality in the lives of women that is deeply embedded in history, tradition, and culture<sup>4</sup> affects women's access to, and enjoyment of, economic, social, and cultural rights. To ensure women's enjoyment of these rights, they must be implemented in a way that takes into account the context in which women live. For example, the traditional assignment to women and girls of the role of primary caregiver for children, older persons, and the sick restricts women's freedom of movement and consequently their access to paid employment and education. The economic and social devaluation of the work, paid and unpaid, that women traditionally do from a very young age, contributes further to fixing women in a position of economic and social inequality. These factors diminish women's earning capacity and their economic autonomy, and contribute to the high rates of poverty among women worldwide. Traditional, historical, religious, or cultural attitudes are also used to justify and perpetuate discrimination against women in the delivery of economic, social, and cultural rights, including health services and education, by public and private agencies.

Inequality in women's enjoyment of economic, social, and cultural rights contributes to their economic dependence, denial of personal autonomy, and lack of empowerment. These in turn limit still further women's ability to participate in public life, including policy development and decision making. As the Committee on the Elimination of Discrimination against Women has noted: "Policies developed and decisions made by men alone reflect only part of human experience and potential."<sup>5</sup> Such policies and decisions are less likely to take account of gendered consequences, and the economic and social factors that affect women's lives.

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3. S.C. Res. 1325, U.N. SCOR, 4213 mtg., U.N. Doc. S/RES/1325 (2000).

4. As identified by the Human Rights Committee at ¶ 5 in its *General Comment 28: Equality of rights between men and women*, General Comment No. 28, U.N. GAOR, Hum. Rts. Comm., 68th Sess., 1834th mtg., art. 3, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000) [hereinafter General Comment 28].

5. *Report of the Committee on the Elimination of Discrimination Against Women: General Recommendation No. 23: Political and Public Life* (16th Sess. 1997), ¶ 13, U.N. Doc. A/52/38 (1997).

Economic, social, and cultural rights and civil and political rights are particularly indivisible and interconnected in the lives of women: inequality in economic, social, and cultural rights undermines women's ability to enjoy their civil and political rights, which then limits their capacity to influence decision and policy making in public life. Since "[a]ll human rights are universal, indivisible and interdependent and interrelated"<sup>6</sup> equality in civil and political rights<sup>7</sup> is undermined unless equality in the exercise and enjoyment of economic, social, and cultural rights is secured.

It is especially important that women's entitlement to equal enjoyment of economic, social, and cultural rights is acknowledged and re-emphasized in the current climate of neo-liberalism and economic globalization. Policies of privatization, economic austerity, and structural adjustment have negative impacts for women.<sup>8</sup> For example, women are often the hardest hit by economic transition, financial crises, and rising unemployment. In part, this is because women are relied upon to provide services such as caring for children, older persons, and the sick when services are cut. Also because women are often in insecure, part-time employment, they are commonly the first to lose their jobs. Furthermore, poverty can lead to a decrease in food intake among women and girls; girls are the first to drop out of schools; greater numbers of women are forced to migrate; and women are vulnerable to trafficking, violence, and ill health. Economic and political insecurity provoke private and public backlash against women's rights that may be expressed through violence and articulated in the form of defending cultures and traditions.

To fully implement the rights set out in Articles 3 and 2(2) of the International Covenant on Economic Social and Cultural Rights, and similar guarantees in other human rights instruments, requires an understanding that focuses upon the subordination, stereotyping, and structural disadvantage that women experience. It requires more than just formal legal recognition of equality between the sexes. It requires commitment by all responsible parties to take all necessary steps to address the actual material and social disadvantage of women.

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6. Vienna Declaration and Programme of Action, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., 22d plen. Mtg., part I, ¶ 5, U.N. Doc. A/CONF.157/23 (1993), reprinted in 32 I.L.M. 1667 (1993).
  7. As reiterated in General Comment 28, *supra* note 4.
  8. *Report by the Independent Expert, Mr. Fantu Cheru, Effects of structural adjustment policies on the full enjoyment of human rights, Submitted in Accordance with Commission decisions 1998/102 and 1997/103*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., Provisional Agenda Item 10, U.N. Doc. E/CN.4/1999/50 (1999).

## II. DEFINITION OF WOMEN'S ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

### 1. *Women's Economic, Social and Cultural Rights*

Women's economic, social and cultural rights include, but are not limited to, the right to:

- (a) An adequate standard of living including:
  - food and freedom from hunger;
  - water;
  - clothing;
  - housing and freedom from forced eviction;
  - continuous improvement of living conditions<sup>9</sup>;
- (b) The highest attainable standard of mental and physical health throughout a woman's life cycle, including reproductive and sexual health and freedom<sup>10</sup>;

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9. See, e.g., ICESR, *supra* note 2; Convention on the Elimination of All Forms of Discrimination against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR 34th Sess., Supp. No. 46 U.N. Doc. A/34/36 (1980), (*entered into force* 3 Sept. 1981), *reprinted in* 19 I.L.M. 33 (1980) [hereinafter CEDAW]; Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), UN GAOR, 3rd Sess., (Resolutions, part 1), at 71, Supp. No. 13, U.N. Doc. A/810 (1948), *reprinted in* 43 Am. J. Int'l L. Supp. 127 (1949) [hereinafter UDHR]; Universal Declaration on the Eradication of Hunger and Malnutrition, *adopted by the World Food Conference, endorsed by* G.A. Res. 3348 (XXIX) 1974, 29th Sess., U.N. Doc. E/CONF. 65/20 (1974) [hereinafter UDEHM]; Declaration on the Right to Development, G.A. Res. 41/128, annex, 41 U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/53 (1986) [hereinafter DRD]; *Committee on Economic, Social and Cultural Rights: General Comment No. 15*, U.N. ESCOR, Comm. On Econ., Cultural and Soc. Rts., 29th Sess., E/C.12/2002/11 (2003); San Salvador Protocol, *supra* note 2; Rome Declaration on World Food Security, Food and Agriculture Organization of the United Nations, Report of the World Food Summit, Rome, 13–17 Nov. 1996, Part One (WFS 96/REP) (Rome, 1997), appendix; Istanbul Declaration and Program of Action on Human Settlements, *adopted by United Nations Conference on Human Settlements*, 4 June 1996.

10. See, e.g., ICESCR, *supra* note 2; International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) [hereinafter ICCPR]; Declaration on the Elimination of Discrimination against Women, G.A. Res. 2263 (XXII), UN GAOR, 22d Sess. (1967) [hereinafter DEDAW]; CEDAW, *supra* note 9; UDHR, *supra* note 9; Cairo Declaration on Population and Development, *adopted at the International Conference of Parliamentarians on Population and Development*, Cairo, 4 Sept. 1994; *Report of the Fourth World Conference on Women: Platform for Action*, A/ Conf.177/20, 17 October 1995 [hereinafter Platform for Action]; Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* 2 Sept. 1990), *reprinted in* 28 I.L.M.

- (c) Equal inheritance and ownership of land and property<sup>11</sup>;
- (d) Social security, social protection, social insurance and social services, including special assistance before, during, and after childbirth<sup>12</sup>;
- (e) Training and education<sup>13</sup>;
- (f) Freely chosen work, as well as just and favorable conditions of work, including fair wages, equal remuneration and protection from sexual harassment and sex discrimination at work<sup>14</sup>;

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1448 (1989) [hereinafter CRC]; ACHR, *supra* note 2; San Salvador Protocol, *supra* note 2; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, "Convention of Belém do Pará," adopted 9 June 1994, OAS/Ser.L.V/II.92/doc.31 (entered into force 5 March 1995), reprinted in 33 I.L.M. 1534 (1994) [hereinafter ICPPEVAW]; American Declaration on the Rights and Duties of Man, signed 2 May 1948, OEA/Ser.L.V/II.71 (1988) [hereinafter Rights and Duties]; Declaration on Social Progress and Development, G.A. Res. 2542 (XXIV), 24 U.N. GAOR 24th Sess., Supp. No. 30, U.N. Doc. A/7630 (1969) 49 [hereinafter DSPD]; DRD, *supra* note 9; Maternity Protection Convention, 2000, 15 June 2000, I.L.O. No. 183, 40 I.L.M. 2 (entered into force 7 Feb. 2002) [hereinafter MPC]; African Charter, *supra* note 2; Report of the Committee on the Elimination of Discrimination Against Women: General Recommendation No. 24: Women and Health (20th Sess. 1999), U.N.Doc A/54/38 at 5(1999)

11. See, e.g., ICESCR, *supra* note 2; CEDAW, *supra* note 9; DEDAW, *supra* note 10; DRD, *supra* note 9; International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 Dec. 1965, 660 U.N.T.S. 195 (entered into force 4 Jan. 1969), reprinted in 5 I.L.M. 352 (1966) [hereinafter CERD]; UDHR, *supra* note 9; ACHR, *supra* note 2; African Charter, *supra* note 2; Platform for Action, *supra* note 11.
12. See, e.g., ICESCR, *supra* note 2; CERD, *supra* note 11; DEDAW, *supra* note 10; CEDAW, *supra* note 9; MPC, *supra* note 10; UDHR, *supra* note 10. San Salvador Protocol, *supra* note 2; Rights and Duties, *supra* note 10; ICPPEVAW, *supra* note 10; CRC, *supra* note 10.
13. See, e.g., ICESCR, *supra* note 2; CEDAW, *supra* note 9; DEDAW, *supra* note 10; UDEHM, *supra* note 9; CERD, *supra* note 11; UDHR, *supra* note 9; ACHR, *supra* note 2; ICPPEVAW, *supra* note 10; San Salvador Protocol, *supra* note 2; CRC, *supra* note 10; Convention Against Discrimination in Education, adopted 14 Dec. 1960, 429 U.N.T.S. 93 (entered into force 22 May 1962); Rights and Duties, *supra* note 10; Platform for Action, *supra* note 10.
14. See, e.g., ICESCR, *supra* note 2; CEDAW, *supra* note 9; CERD, *supra* note 11; ICCPR, *supra* note 10; DEDAW, *supra* note 10; Abolition of Forced Labour Convention (ILO No. 105), adopted 25 June 1957, 320 U.N.T.S. 291 (entered into force 17 Jan. 1959); DSPD, *supra* note 10; UDHR, *supra* note 9; Declaration on the Elimination of Violence Against Women, GA Res. 48/104, U.N. GAOR, 48th Sess., Supp. No. 49, U.N. Doc. A/48/49 (1993) 217 [hereinafter DEVAW]; ACHR, *supra* note 2; African Charter, *supra* note 2; Rights and Duties, *supra* note 10; San Salvador Protocol, *supra* note 2; Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 4 Nov. 1950, 213 U.N.T.S. 222, E.T.S. No. 5 (entered into force 3 Sept. 1953) [hereinafter CPHRFF]; MPC, *supra* note 10; Equal Remuneration Convention (ILO No. 100), adopted 29 June 1951, 165 U.N.T.S. 303 (entered into force 23 May 1953); Convention on Employment Policy (ILO No. 122), adopted 9 July 1964, 569 U.N.T.S. 65 (entered into force 15 July 1966); ILO Declaration on Fundamental Principles and Rights at Work (1998), 37 I.L.M. 1233 (signed 19 June 1998); ICPPEVAW, *supra* note 10.

- (g) Form and join trade unions<sup>15</sup>;
- (h) Protection from economic exploitation<sup>16</sup>;
- (i) Protection from coerced and uninformed marriage<sup>17</sup>;
- (j) A clean and healthy environment<sup>18</sup>;
- (k) Participate in cultural life<sup>19</sup>;
- (l) Claim and enjoy the benefits of patents and intellectual property<sup>20</sup>;
- (m) Nationality; and to bestow nationality on children<sup>21</sup>;
- (n) Freedom from trafficking and exploitation; recognition of the human rights of trafficked persons.<sup>22</sup>

## 2. *Indivisibility and Interdependence of Rights*

Economic, social, and cultural rights and civil and political rights are indivisible, interdependent and interconnected. In the real lives of women,

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15. See, e.g., ICESCR, *supra* note 2; ICCPR, *supra* note 10; CERD, *supra* note 11; DSPD, *supra* note 10; San Salvador Protocol, *supra* note 2; Freedom of Association and Protection of the Right to Organize Convention (ILO No. 87), *adopted* 9 July 1948, 68 U.N.T.S. 17 (*entered into force* 4 July 1950).
  16. See, e.g., ICESCR, *supra* note 2; ICCPR, *supra* note 10; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, C.T.S. 1963/7 (*entered into force* 30 April 1957). CRC, *supra* note 10; Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182), *adopted* 6 June 1999, 38 I.L.M. 1207 (*entered into force* 19 Nov. 2000); UDHR, *supra* note 9; ACHR, *supra* note 2.
  17. See, e.g., ICESCR, *supra* note 2; CEDAW, *supra* note 9; DEDAW, *supra* note 10; ICCPR, *supra* note 10; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *adopted* 7 Nov. 1962, 521 U.N.T.S. 231 (*entered into force* 9 Dec. 1964); CERD, *supra* note 11; UDHR, *supra* note 9; ACHR, *supra* note 2.
  18. See, e.g., ICESCR, *supra* note 2; African Charter, *supra* note 2.
  19. See, e.g., ICESCR, *supra* note 2; CRC, *supra* note 10; CEDAW, *supra* note 9; ICCPR, *supra* note 10; DEVAW, *supra* note 14; CERD, *supra* note 11; UDHR, *supra* note 9; ACHR, *supra* note 2; African Charter, *supra* note 2; ICPPEVAW, *supra* note 10; San Salvador Protocol, *supra* note 2.
  20. See, e.g., ICESCR, *supra* note 2; San Salvador Protocol, *supra* note 2.
  21. See, e.g., CEDAW, *supra* note 9; DEDAW, *supra* note 10; Convention on the Nationality of Married Women, *adopted* 20 Feb. 1957, 309 U.N.T.S. 65 (*entered into force* 11 Aug. 1958); Convention Relating to the Status of Refugees, *adopted* 28 July 1951, 189 U.N.T.S. 150 (*entered into force* 22 Apr. 1954); UDHR, *supra* note 9; ACHR, *supra* note 2; CERD, *supra* note 11.
  22. See, e.g., CEDAW, *supra* note 9; DEDAW, *supra* note 10; DEVAW, *supra* note 14; CRC, *supra* note 10; ICPPEVAW, *supra* note 10; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, U.N. Doc. A/45/49 (Vol. I) (2001) (not yet in force), *reprinted in* 40 I.L.M. 335.

it is difficult to separate these rights. For example, a woman's right to life and to security of the person are threatened as much by the deprivation of economic, social, and cultural rights as by the deprivation of civil and political rights.

### *3. No Justification for Restriction*

Nothing in the wording or substance of any international or regional human rights document, policy, practice or custom can be used to justify restricting women's equal enjoyment and exercise of economic, social, and cultural rights.

### *4. Highest Level of Available Protection*

International law entitles women to claim the highest level of available protection for their rights that is afforded by international human rights instruments or national law, policy, or custom.

## **III. PRINCIPLES OF EQUALITY AND NON-DISCRIMINATION**

### *5. Women's Sex and Gender Inequality*

Unequal power relations between women and men must be acknowledged and changed, and the entrenched disadvantage caused by this power imbalance must be addressed, if women are to achieve the equal exercise and equal enjoyment of their economic, social, and cultural rights.

### *6. Non-Discrimination and Equality*

Legal guarantees of non-discrimination based on sex and legal guarantees of equality for women, though expressed differently, are articulations of the same obligation. This obligation is not confined to negative restraints on states and third parties because negative restraints alone do not successfully eliminate discrimination against women. Both the right to non-discrimination and the right to equality mandate measures that prevent harmful conduct and positive steps to address the long-standing disadvantage of women.



### 7. *Definition of Sex Discrimination*

Sex or gender discrimination occurs when intentionally or unintentionally, a law, program or policy, or an act or a failure to act, has the effect or purpose of impairing or nullifying the recognition, exercise or enjoyment by women of their economic, social, and cultural rights.<sup>23</sup>

### 8. *Forms of Sex Discrimination*

Sex or gender discrimination is experienced as discrimination because of being a woman. It can also be experienced as discrimination on the basis of marital status, for example, as discrimination against wives, co-habitees, unmarried women, divorced women or widows, or on the basis of family status, family responsibility, pregnancy, reproductive capacity, or sexuality. Sexual harassment of women and violence against women must also be understood as forms of sex discrimination.

### 9. *Substantive Equality*

Economic, social, and cultural rights must be interpreted and implemented in a manner that ensures to women substantively equal exercise and enjoyment of their rights. Substantively equal enjoyment of rights cannot be achieved through the mere passage of laws or promulgation of policies that are gender-neutral on their face. Gender-neutral laws and policies can perpetuate sex inequality because they do not take into account the economic and social disadvantage of women; they may therefore simply maintain the *status quo*. *De jure* equality does not, by itself, provide *de facto* equality. *De facto*, or substantive equality, requires that rights be interpreted, and that policies and programs—through which rights are implemented—be designed in ways that take women's socially constructed disadvantage into account, that secure for women the equal benefit, in real terms, of laws and measures, and that provide equality for women in their material conditions. The adequacy of conduct undertaken to implement rights must always be assessed against the background of women's actual conditions and evaluated in the light of the effects of policies, laws, and practices on those conditions.

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23. CEDAW, *supra* note 9, art. 1; *General Comment on Non-Discrimination*, General Comment No. 18, U.N. GAOR, Hum. Rts. Comm., 37th Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.1 (1989); *General Comment on Gender-related dimensions of racial discrimination*, General Comment No. 25, U.N. CERD, 56th Sess., Annex V, U.N. Doc. A/55/18 (2000).

### *10. Intersectionality*

Many women encounter distinct forms of discrimination due to the intersection of sex with such factors as: race, language, ethnicity, culture, religion, disability, or socioeconomic class. Indigenous women, migrant women, displaced women, and non-national or refugee women experience distinct forms of discrimination because of the intersection of their sex and race, or their sex and citizenship status. Women may also confront particular forms of discrimination due to their age or occupation; family status, as single mothers or widows; health status, such as living with HIV/AIDS; sexuality, such as being lesbian; or because they are engaged in prostitution. Intersecting discrimination can determine the form or nature that discrimination takes, the circumstances in which it occurs, the consequences of the discrimination, and the availability of appropriate remedies. To ensure that all women enjoy the benefits of their economic, social, and cultural rights, specific measures are needed to address the ways in which women are differently affected in their enjoyment of a right as a result of the intersection of discrimination based on sex with discrimination based on other characteristics.

### *11. Autonomy*

Women are entitled to exercise and enjoy their economic, social, and cultural rights as autonomous persons. They cannot enjoy their economic, social, and cultural rights equally if they are treated as inferior to men or as adjuncts of, or dependents of men, whether those men are family members or others. In turn, economic, social, and cultural rights must be interpreted and applied in ways that recognize women's right to full legal personhood and autonomy.

## **IV. IMPEDIMENTS TO WOMEN'S EQUAL ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

### *12. Impediments*

Structural impediments to women's equal exercise and enjoyment of economic, social, and cultural rights include, but are not limited to: (i) social norms, customs, and traditions that legitimize women's inequality; (ii) failure to take account of women's disadvantage or their distinct experiences when designing laws or measures to implement economic, social, and cultural rights; (iii) restrictions on access to legal or administrative

bodies where remedies for rights violations may be sought; (iv) women's under-representation in decision making processes; (v) women's unequal status in their families; (vi) the failure to recognize women's unremunerated work, and to encourage the fairer distribution between women and men of family and community supporting labour; (vii) the neglect of women's economic, social, and cultural rights in conflict and post-conflict situations; and (viii) the gender-differentiated effects of economic globalization. These impediments must be addressed and eliminated to ensure that measures adopted to implement economic, social, and cultural rights will benefit women equally.

## V. LEGAL OBLIGATIONS

### *13. Justiciability and Allocation of Resources*

Women's rights to non-discrimination and equality are enforceable by judicial bodies and administrative tribunals in all circumstances, including when they raise issues of government allocation of resources for the realization of economic, social, and cultural rights.

### *14. Immediate Obligation*

The right to non-discrimination and to the equal exercise and enjoyment of economic, social, and cultural rights imposes an immediate obligation on states. This obligation is not subject to progressive realization. The obligation is also an immediate one for intergovernmental bodies and quasi-State actors or other groups exercising control over territory or resources.<sup>24</sup>

### *15. Respect, Protect, Fulfill, and Promote*

Women's right to non-discrimination and equality imposes four specific obligations on states: the obligations to respect, protect, fulfill, and promote women's exercise and enjoyment of economic, social, and cultural rights. These four obligations are indivisible and interdependent and must be implemented by states simultaneously and immediately.

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24. *General Comment on the nature of states-parties' obligations* (art. 2, par. 1), General Comment No. 3, U.N. CESCR, Hum. Rts. Comm., 5th Sess., U.N. Doc. E/1991/23 (1990).

### *16. Range of Conduct*

The obligations to respect, protect, fulfill, and promote women's economic, social, and cultural rights require a range of conduct from states. States are obliged to both refrain from acting harmfully and to take positive steps to advance women's equality. States are required to repeal laws and policies that discriminate either directly or indirectly. They are also required to guarantee women's rights to non-discrimination and to the equal exercise and enjoyment of economic, social, and cultural rights in appropriate domestic laws, such as national constitutions and human rights legislation, and in the interpretation of customary and personal laws. States are obliged to regulate the conduct of third parties, such as employers, landlords, and service providers. States are also obliged to design and implement policies and programs to give long term and full effect to women's economic, social, and cultural rights. These may include the adoption of temporary special measures to accelerate women's equal enjoyment of their rights, gender audits, and gender-specific allocation of resources.<sup>25</sup>

### *17. Rights-claiming mechanisms*

States must ensure that women's rights to non-discrimination and to the equal exercise and enjoyment of economic, social, and cultural rights can be effectively interpreted and applied by judicial and quasi-judicial bodies that are independent from government. Further, states must ensure that the right to be free from discrimination and the right to equality are interpreted substantively, rather than formally, by judicial and quasi-judicial bodies, so as to foster the equal enjoyment by women of economic, social, and cultural rights. States, when appearing as parties or intervenors before judicial or quasi-judicial bodies, must advocate for the interpretation and application of rights that will ensure women's substantive enjoyment of them.

### *18. Maximum Available Resources*

States must use the maximum available resources to respect, protect, fulfill, and promote economic, social, and cultural rights. The maximum available resources must be distributed in a manner that provides substantively equal exercise and enjoyment of economic, social, and cultural rights by women.

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25. See, e.g., CEDAW, *supra* note 9, art. 4(1).

### *19. Trade, Trade Agreements, and International Financial Institutions*

States have a non-derogable obligation to guarantee women's equal enjoyment of their economic, social, and cultural rights in their actions and decision making in the context of trade, trade agreements, and agreements with, or participation in, international and regional financial institutions.

### *20. Due Diligence*

All states when participating in international financial institutions, trade agreements, or aid and development programs shall apply a due diligence test to assess, foresee, and prevent any adverse consequences of trade agreements, structural adjustment programs, development and humanitarian assistance, and other economic and social policies on women's economic, social, and cultural rights. Where harm is caused by such agreements or programs, the responsible states and institutions shall implement compensatory measures. This applies at national, regional, and international levels, in public and private spheres of life.

### *21. Provision for Basic Needs*

In the context of scarcity, states shall make sure that the basic needs of women are satisfied, especially in regard to health care, access to potable water, sanitation services, housing, education, energy, and social protection. This obligation prevails as well in times of conflict and post-conflict. States and other intergovernmental bodies must ensure that services are provided in a manner that does not discriminate against women, and that ensures women's equality.

### *22. Privatization and Regulation of Third Parties*

Where services are partially or wholly privatized, at a minimum states are required to adopt an effective regulatory system to monitor the distribution of such services, and service providers must work in cooperation with the state to ensure the substantively equal enjoyment of services by women in fulfillment of the state's international legal obligations.

### *23. Regulation of Transnational Corporations and Third Parties*

States have an obligation to require transnational corporations and other commercial entities, when they are providing services or programs related to the enjoyment of economic, social, and cultural rights, to ensure that women benefit equally. States also have an obligation to prevent transnational corporations and other commercial entities from violating women's economic, social, and cultural rights on their territory. When such rights are violated, states have a duty to provide women with effective remedies.

### *24. Recognition of Unremunerated Work*

States must adopt specific measures to recognize the economic and social contribution of the women who carry out unremunerated activities. States must also ensure that women or particular groups of women do not carry out a disproportionately large part of the unremunerated and devalued workload of families and communities, including domestic labor and the care of children, sick, and older persons.

### *25. Participation*

States and intergovernmental bodies must ensure that women can and do participate fully in the formulation, development, implementation, and monitoring of economic, social, and cultural programs and policies. They must also ensure the full participation of women in the formulation, development, implementation, and monitoring of specific strategies, plans, and policies that aim to eliminate their gender specific disadvantages. This may require states and intergovernmental bodies to ensure women's participation in decision making where non-state actors provide programs or services that are related to the enjoyment of economic, social, and cultural rights.

## **VI. VIOLATIONS**

### *26. Commission and Omission*

Violations of women's economic, social, and cultural rights can occur through acts of commission or omission by states and other actors who are insufficiently regulated by the state, or not regulated by the state.

### *27. Concrete Measures*

Where the economic, social, and cultural rights of women, or particular groups of women, have been violated, states are obliged to adopt concrete measures designed to ensure the immediate enjoyment of these rights by the affected women.

### *28. Undermining the Rights*

Undermining women's enjoyment or exercise of their economic, social, and cultural rights constitutes a violation. A state undermines these rights by: adopting overly restrictive interpretations of rights-conferring provisions; taking the position that economic, social, and cultural rights are not justiciable; restricting access by women, and organizations which represent them, to judicial and quasi-judicial bodies; implementing women's equal enjoyment progressively rather than immediately; and failing to maintain adequately funded and effective enforcement institutions.

### *29. Retrogressive Measures*

The adoption of retrogressive measures that further reduce women's access to or enjoyment of their economic, social, or cultural rights constitutes a violation.

### *30. Unwillingness to Use Resources*

A state which is unwilling to use the maximum of its available resources for the realization of economic, social, and cultural rights violates women's economic, social, and cultural rights.

## **VII. MECHANISMS AND REMEDIES**

### *31. Judicial and Quasi-Judicial Mechanisms*

States must establish and maintain effective mechanisms for fully claiming and enforcing women's economic, social, and cultural rights, including independent courts and tribunals, administrative authorities, and national human rights and women's commissions. Judges and other adjudicators must be provided with adequate training regarding women's rights to

equality and to the equal enjoyment of their economic, social, and cultural rights. States must also ratify relevant international and regional treaties that allow international remedies and communication procedures without reservations that have the effect of undermining women's equal exercise and enjoyment of their economic, social, and cultural rights.

### *32. Policy Mechanisms*

States are required to ensure that there is a national system of institutions and mechanisms, including national human rights institutions, commissions, and ombuds offices, which will support the development of strategies, plans, and policies specifically designed to guarantee women's equal exercise and enjoyment of their economic, social, and cultural rights. This system must guarantee the effective inclusion of women's perspectives in the design and application of public policies in economic, social, and cultural areas.

### *33. Resources for Mechanisms*

States must provide sufficient financial and physical resources to the institutions and mechanisms that have the responsibility to implement and enforce women's economic, social, and cultural rights in order to ensure their effectiveness and accessibility.

### *34. Access*

States must remove any obstacles that prevent women or certain groups of women from accessing institutions and mechanisms which enforce and implement women's economic, social, and cultural rights and provide women with information regarding how to access them. States must also adopt measures, such as legal aid, to facilitate women's access to institutions and mechanisms that can implement and enforce women's economic, social, and cultural rights.

### *35. Standards, Data, and Review*

States must continuously review and revise the implementation and enforcement of women's economic, social, and cultural rights by developing gender-sensitive standards, methodologies, criteria, targets, and indicators,



as well as tools for gender disaggregation of statistical data and for budgetary analysis to specifically assess women's substantively equal enjoyment of their economic, social, and cultural rights.

### *36. Remedies*

In the event of an infringement of the right to non-discrimination or the right to equal enjoyment of women's economic, social, and cultural rights, states are required to provide one or more of the following non-exhaustive list of remedies: compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, declarations, public apologies, educational programs, prevention programs, revised policies, benchmarks and implementation programs, and other effective and appropriate remedies. The state has a related obligation to ensure that the appropriate remedy is both ordered and effectively implemented.

## **APPENDIX. MONTRÉAL PRINCIPLES ENDORSEMENTS**

Listed below are the endorsers of the Montréal Principles, with the name of the individual or organization, contact information, and the affiliation.

1. Action Canada for Population and Development, Suite 300, 260 rue Dalhousie Street, Ottawa, Ontario K1N 7E4, Canada. Suki Beavers, Senior Advisor, Human Rights, Tel: (613) 562-0880 ext 224, Fax: (613) 562-9502, [suki@acpd.ca](mailto:suki@acpd.ca), [www.acpd.ca](http://www.acpd.ca). Institutional.
2. Association for Women's Rights in Development, 96 Spadina Avenue, Suite 401, Toronto, Ontario M5V 2J6, Canada. Alison Symington, [asymington@awid.org](mailto:asymington@awid.org). Institutional.
3. Sneh Aurora, Canadian Human Rights Foundation, 407-1425 René-Lévesque Blvd. West, Montréal, Québec H3G 1T7, Canada. [saurora@chrf.ca](mailto:saurora@chrf.ca). Individual.
4. Prof. Reem Bahdi, Faculty of Law, Windsor, Ontario N9B 3P4, Canada. [rbahdi@uwindsor.ca](mailto:rbahdi@uwindsor.ca). Individual.
5. Fareda Banda, Lecturer in Law, University of London, School of Oriental and African Studies, Thornhaugh Street, Russell Square, London WC1H 0XG, England. [fb9@soas.ac.uk](mailto:fb9@soas.ac.uk). Individual.

6. Prof. Stephanie Bernstein, UQAM—University of Quebec at Montreal, Departement des science juridiques, 8888 Succursale Centre-Ville, Montréal, Québec H3C 3P8, Canada. [bernstein.stephanie@uqam.ca](mailto:bernstein.stephanie@uqam.ca). Individual.
7. Inés Romero Bidegaray, Jiron Caracas 2624, Jesus Maria, Lima 11, Peru. [nes@demus.org.pe](mailto:nes@demus.org.pe). Individual.
8. Gwen Brodsky, Human Rights and Poverty Project, 307 West 18th Avenue, Vancouver, British Columbia V5Y 2A8, Canada. [brodsky@unixg.ubc.ca](mailto:brodsky@unixg.ubc.ca). Individual.
9. Ariane Brunet, Women's Rights Coordinator—Coordinatrice Droits des Femmes Rights & Democracy, Droits et Démocratie 1001, boul. de Maisonneuve Est Bureau 1100, Montréal, Québec H2L 4A2, Canada; Tel: (514) 283-6073, Fax: (514) 283-3792, <http://www.ichrdd.ca>, [abrunet@ichrdd.ca](mailto:abrunet@ichrdd.ca). Individual.
10. Center for Reproductive Rights, 120 Wall Street, New York, NY 10005. Andrea Lipps, [ALipps@reprorights.org](mailto:ALipps@reprorights.org). Institutional.
11. Centro De Estudios Históricos E Interdisciplinarios Sobre Las Mujeres, Universidad Nacional De Tucumán, Republica Argentina. Dra. Hilda Beatriz Garrido, Directora, [biazso@ciudad.com.ar](mailto:biazso@ciudad.com.ar). Institutional.
12. Centre for Equality Rights in Accommodation, 340 College Street, Suite 101A, Box 23, Toronto, Ontario M5T 3A9, Canada. Leilani Farha, [leilani@equalityrights.org](mailto:leilani@equalityrights.org), Ruth Goba, [ruth@equalityrights.org](mailto:ruth@equalityrights.org). Institutional.
13. Centro de la Mujer Peruana Flora Tristán, Parque Hernán Velarde No. 42—Lima 1. Eda Aguilar Samanamud, [eda@flora.org.pe](mailto:eda@flora.org.pe), Tel: 4332765/4331457, Fax: 4339500. Institutional.
14. Christine Chinkin, Professor of International Law, London School of Economics and Political Science, Houghton Street, London WC2A 2AE, England. [c.chinkin@lse.ac.uk](mailto:c.chinkin@lse.ac.uk). Individual.
15. Coalition on Violence Against Women—Kenya, Kamburu Drv, Ngong Road, Afya Maisonnets #13, PO Box 10658-00100, Nairobi, Kenya. Anne Gathumbi, Coordinator, Tel: 254-2-574357/8/9, Fax: 254-2-574253, [covaw@iconnect.cp.ke](mailto:covaw@iconnect.cp.ke), [infor@covaw.or.ke](mailto:infor@covaw.or.ke), Web: [www.covaw.or.ke](http://www.covaw.or.ke). Institutional.

16. Shanthi Dairiam, Executive Director, International Women's Rights Action Watch Asia-Pacific, 2nd Floor, Block F, Anjung FELDA, Jalan Maktab, Kuala Lumpur 54000, Malaysia. [iwraw@po.jaring.my](mailto:iwraw@po.jaring.my). Individual.
17. Shelagh Day, Poverty and Human Rights Project, Women's Economic Equality Project (WEEP), 307 West 18th Avenue, Vancouver, British Columbia V5Y 2A8, Canada. [sheday@unixg.ubc.ca](mailto:sheday@unixg.ubc.ca). Individual.
18. Eda Aguilar Samanamud, Directora Ejecutiva, Centro de la Mujer Peruana Flora Tristán, Parque Hernán Velarde No. 42—Lima 1. [eda@flora.org.pe](mailto:eda@flora.org.pe), Tel: 4332765/ 4331457, Fax: 4339500. Individual.
19. Leilani Farha, Executive Director, CERA, 1011 Chilver Road, Windsor, Ontario N8Y 2K6, Canada. [leilani@equalityrights.org](mailto:leilani@equalityrights.org). Individual.
20. Prof. Soledad García Muñoz, Lawyer/Teacher of Public International Law, Universidad Nacional de La Plata, Facultad de Ciencias Jurídicas y Sociales, Argentina. [fabisol@way.com.ar](mailto:fabisol@way.com.ar). Individual.
21. Ruth Goba, Staff Lawyer/Women's Program Coordinator, CERA, 340 College Street, Suite 101A, Box 23, Toronto, Ontario M5T 3A9, Canada. [ruth@equalityrights.org](mailto:ruth@equalityrights.org). Individual.
22. Justice Richard Goldstone, Constitutional Court of South Africa, South Africa, Salzburg Seminar. Rachel Cohen, [nhrubin@aol.com](mailto:nhrubin@aol.com). Individual.
23. Sara Hossain, Lancaster House, 33 Islington High Street, London N1 9LH, England. [hossainsara@hotmail.com](mailto:hossainsara@hotmail.com). Individual.
24. Human Strategies for Human Rights (HSHR), A United States Based Non Profit Organization. Gina Annette Gagnon, Executive Director, Web Site: [www.hshr.org](http://www.hshr.org). Institutional.
25. International Women Organizations (IWCC), No 232, Nicon House taiwo Road, P.O. Box 1750 Ilorin, Kwara State, Nigeria. Ms. Limota Goroso Giwa, Tel: 234 31/225688/2225805, [iwcc2002@hotmail.com](mailto:iwcc2002@hotmail.com). Institutional.
26. International Women's Rights Action Watch—Asia Pacific, 2nd Floor, Block F, Anjung FELDA, Jalan Maktab, Kuala Lumpur 54000, Malaysia. Shanthi Dairiam, [iwraw@po.jaring.my](mailto:iwraw@po.jaring.my). Institutional.

27. Islamic Women's Institute of Iran. Mehdi Caramad, Co. Manager, mkaramad@yahoo.com. Institutional.
28. Judith Keene, Clinic Resource Office, Legal Aid Ontario, Canada. keenej@lao.on.ca. Individual.
29. Prof. Lucie Lamarche, Université du Québec à Montréal, 8888 Succursale Centre-Ville, Montréal, Québec H3C 3P8, Canada. lamarche.lucie@uqam.ca. Individual.
30. Claire L'Heureux-Dubé, Former Justice of the Supreme Court of Canada. dubec@ca.inter.net. Individual.
31. Marianne Mollmann, Human Rights Watch, 350 5th Avenue, 34th Floor, New York, NY 10118-3299, USA +1 (212) 216-1285 (direct), mollmam@hrw.org. mmollmann@yahoo.com. Individual.
32. Prof. Diane Otto, Associate Professor, Faculty of Law, The University of Melbourne, Parkville, Australia 3010, Tel: 61 3 8344 4063, Fax: 61 3 9349 4287, d.otto@unimelb.edu.au, d.otto@law.unimelb.edu.au. Individual.
33. Karrisha Pillay, Advocate, Forty Two Keerom Street Chambers, Suite 201, Cape Town, 8001, South Africa. karrisha@mweb.co.za. Individual.
34. Edith Piña, economista, 45 años, venezolana. emagica2002@yahoo.com. Individual.
35. Ambassador Nancy Rubin, Salzburg Seminar, USA. Rachel Cohen, rnhubin@aol.com. Individual.
36. Salzburg Seminar Fellows. Fellows of Salzburg Seminar endorse new documentation of Women's Social, Economic and Cultural Rights, produce own *Salzburg Recommendations*. Rachel Cohen, rnhubin@aol.com. Institutional.
37. Birte Sholz, Centre on Housing Rights and Evictions, 83 Rue de Montbrillant, Geneva, 1202, Switzerland. birte@cohre.org.
38. Alison Symington, Senior Researcher, Women's Rights and Economic Change, Association for Women's Rights in Development, 96 Spadina

Avenue, Suite 401, Toronto, Ontario M5V 2J6, Canada.  
asymington@awid.org. Individual.

39. Teresa Wilson, 705 Clyde Street, Pittsburgh PA, The Grail.  
teresafwilson@msn.com. Individual.
40. World Organization Against Torture, P.O. Box 21, 8 rue du Vieux-  
Billard, 1211 Geneva 8, Switzerland. Carin Benninger-Budel,  
Programme Manager, cbb@omct.org, Tel: 0041 22 809 49 39,  
www.omct.org. Institutional.
41. Prof. Rebecca J. Cook, Faculty of Law, University of Toronto, Toronto,  
Canada. Individual.