



## **Inclusion of intersectionality in the scope of human rights**

*Inclusão da Interseccionalidade no âmbito dos Direitos Humanos*

**Joana Stelzer<sup>1</sup>**

<sup>1</sup> Universidade Federal de Santa Catarina, Florianópolis, Santa Catarina, Brasil. E-mail: joana.stelzer@ufsc.br. ORCID: <https://orcid.org/0000-0002-9503-4080>.

**Gabriela M. Kyrillos<sup>2</sup>**

<sup>2</sup> Universidade Federal do Rio Grande, Rio Grande, Rio Grande do Sul, Brasil. E-mail: gabrielakyrillos@furg.br. ORCID: <https://orcid.org/0000-0001-7237-4210>.

Article received in 08/23/2019 and accepted in 04/13/2020.



This work is licensed under a Creative Commons Attribution 4.0 International License.



**Abstract**

The research is about the study of the concept of intersectionality of oppression or intersectional inequality - coined in 1989, by Kimberlé Crenshaw – and its analytical potential for the realization of women's access to Human Rights. Through bibliographical and documentary review, and the application of the hypothetical-deductive method, the research has a descriptive and explanatory character. It is concluded that gender discrimination interacts with other structural categories, such as race, producing particular exclusion processes that are barriers in accessing rights, with intersectionality being a tool with great potential to better understand these processes and minimize them.

**Keywords:** Intersectionality; Intersectional Feminism; Human Rights

**Resumo**

O estudo aborda o conceito de interseccionalidade das opressões ou desigualdades interseccionais – cunhado em 1989, por Kimberlé Crenshaw – e seu potencial analítico para a concretização do acesso das mulheres aos Direitos Humanos. Por meio de revisão bibliográfica e documental, de aplicação do método hipotético-dedutivo, a pesquisa possui caráter descritivo e explicativo. Conclui-se que as discriminações de gênero interagem com outras categorias estruturais, como raça, produzindo processos de exclusão particulares que são barreiras no acesso a direitos, sendo a interseccionalidade uma ferramenta com grande potencial para melhor compreender esses processos e minimizá-los.

**Palavras-chave:** Interseccionalidade; Feminismo Interseccional; Direitos Humanos.



## 1. Introduction

The search for the effectiveness of Human Rights was borne at the same occasion when some rights were stipulated as being fundamental and inalienable to all human beings. Since the Universal Declaration of Human Rights (1949), in a scenario marked by the atrocities committed during the two Great World Wars, the Human Rights speech has been included in a significant part of Western legal systems. Along with the emergence of such speech, the search for strategies and tools capable of putting into practice the fundamental guarantees that these documents intend to ensure also emerges.

The present research arises, therefore, out of the constant need for reflection on the means and strategies for the effectiveness of Human Rights, for that it goes through some Conventions on Human Rights focused on the protection of specific groups such as girls and women and black people. Thus, the investigation demonstrates the potential of the intersectionality category, as it recognizes that today there is a complex of oppression structures (multiple and simultaneous) that need to be analyzed as a system of disempowerment.

That said, identifying how the concept of intersectionality can contribute to the debate on access to Human Rights and how it has been developed in the international arena will be taken as the research problem. Thus, the main objective is to demonstrate the relevance of the intersectionality concept for the theoretical and practical construction of mechanisms to overcome inequalities based on the recognition of the intersectionality of oppression (CRENSHAW, 1991).

As for its nature, it is pure research, with a qualitative approach to the problem and data evaluation. The approach method was hypothetical-deductive, according to Marconi and Lakatos (2003). The means were bibliographic and documentary, with emphasis on the works of relevant theorists and the texts of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as well as the Recommendations produced by these Committees. The interpretation was predominantly teleological. As for the purposes, the research was descriptive and explanatory. After all, it was possible to recognize that intersectionality brings great contributions to a better understanding of the complexity of women's equal access to Human Rights. The results were presented in textual form.



In summary, it stimulates reflection on the subtle advances identifiable in the inclusion of intersectionality in the international arena of human rights, for the effectiveness of such rights. Taking Kimberlé Crenshaw, Meghan Campbell, Michel Foucault and Joan Scott as a theoretical framework, the aim is to advance in the understanding of the potential of intersectionality in the pursuit to make access to Human Rights more effective.

## 2. Roots of Intersectionality: Gender and Feminisms

Intersectionality can be understood as an analytical tool capable of contributing to the solution of problems that are often invisible when it comes to access to Human Rights: “Intersectionality is a conceptualization of the problem that attempts to capture both the structural and dynamic consequences of the interaction between two or more axes of subordination.” (CRENSHAW, 2002, p. 177).

This concept, created in 1989, when the American jurist Kimberlé Crenshaw named it, is still considered historically recent in the field of humanities and applied social sciences research. The initial production on intersectionality occurred mainly in the United States through an articulation between concepts such as gender, race and social class. This does not mean to say, however, that in Brazil, debates and researches that articulated these categories did not occur long before the concept of intersectionality arose.

It is worth noting that gender will be understood here as a first way of giving meaning to power relations, as conceptualized by the American historian Joan Scott (1995), after all, gender allows us to reveal that it is not coherent to see differences between men and women as something timeless and universal. In other words, gender promotes scientifically essential concerns about the ways in which biological differences are interpreted, as these interpretations and social constructions are the key elements for understanding the social relations between men and women. Gender is, therefore, how such differences are perceived in each society, how they are hierarchized and constructed as dichotomous and binary.

The concept of Race, in turn, should not be understood as it was used from the 16th to the 19th century, to reproduce ideas from modern coloniality that understood the



existence of a racial hierarchy. In this research, as it occurs when the concept of race is used in the Black Movements and by some intellectuals of Social Sciences today, it is starting from a new interpretation, as presented by Nilma Lino Gomes (2005, p. 45), which is based on the social and political dimension of the concept of race. The use of the term race is an appropriate political choice for Brazil since the way racial discrimination takes place in the country develops not only from elements of the ethnic identity of a certain group, but also due to the physical aspects possible of being observed in the body aesthetics of the members of this group (GOMES, 2005, p. 45). In other words, “race is still the term that manages to give the dimension closer to true discrimination against black people or, better, than it is racism that affects black people in our society.” (GOMES, 2005, p. 45).

Intersectionality arises, therefore, from the need to build a suitable analytical tool for research involving gender and race, as well as other categories that interact and create what Kimberlé Crenshaw calls the network of disempowerment. To better understand intersectionality, it is mandatory to understand the context from which it has emerged.

To address the history of intersectionality, it is necessary to start even before this concept was named by Kimberlé Crenshaw. This is the understanding of Patricia Hill Collins and Sirma Bilge (2016), as well as Anna Carastathis (2016), for whom intersectionality should be understood as representing a synthesis between social movements and critical academic knowledge. It is usual, however, that historical studies on intersectionality ignore that this concept originated in the United States, from the struggle of the Social Movements, especially those whose protagonists were black women.<sup>1</sup>

Minimizing this origin tends to diminish the transformative and critical potential of intersectionality itself.<sup>2</sup> Even in the academic field, it is necessary to highlight that

---

<sup>1</sup> Regarding this matter, please see: “Uma Análise Crítica sobre os Antecedentes da Interseccionalidade” de Gabriela M. Kyrillos (2020).

<sup>2</sup> In the book entitled 'Intersectionality' (2016) authored by sociologists Patricia Hill Collins and Sirma Bilge (still untranslated into Portuguese), the authors demonstrate how the absence of social movements in the history of intersectionality is not just a failure in the contextualization of the concept, but, above all, a mistake in assuming that intersectionality is just another academic field (COLLINS; BILGE, 2016, p. 64), ignoring that intersectionality starts from the synergy between critical research (critical inquiry) and the critical praxis (critical praxis). While the first concerns the development of intersectionality in academia, as an analytical tool for the construction of critical research and analysis; the second refers to the way people, either individually or as collectives, produce and use the structure of intersectionality in their day-to-day lives (COLLINS; BILGE, 2016, p. 32). A valid example of how the discussions that articulate race and gender are



discussions that articulated gender and race were fundamental predecessors for the construction of the very concept of intersectionality, as previously emphasized when the production of Brazilian black feminist researchers was highlighted, as it is possible to identify, for example, in the texts of Sueli Carneiro (1995; 2003) and Lélia Gonzalez (1984).

The broad term 'feminist movement' encompasses a wide range of different interpretations, currents, theories and practical actions, all with the common objective of improving the quality of life of women and reducing inequalities. The ways to achieve this goal, as is known, are multiple and many of them use the concept of gender as a key element to think about the socio-cultural differences between men and women. This concept is derived from the theoretical debates of the mid-20th century, important for having been able to, while revealing the asymmetries and hierarchies in the relations between women and men, make it visible that it is not possible to understand the breadth of the different roles assigned to men and women without a relational study (PEDRO, 2005, p. 88-89).

Gender, therefore, will become a highly relevant concept in academia and the feminist movement. When Joan Scott published in the late 1980s an article that became essential to the popularization of the concept, she dedicated herself to drawing a distinction between sex (what is biological) and gender (what is built by sociocultural relations). Scott's proposal differed from previous uses because it gives great relevance to social relations and is based on the understanding that the differences perceived between men and women are built within power relations (PEDRO, 2005, p. 86).

In this way, Scott will propose another way of understanding the gender from the moment that she presents power in a diffuse way. According to the author, it is necessary to replace the idea of social power as something "[...]unified, coherent, and centralized with something like Michel Foucault's concept of power as dispersed constellations of unequal relationships, discursively constituted in social 'fields of force'" (SCOTT, 1995, p.78). In the aim to define the concept, Scott clarifies that: "[...] gender is a constitutive element of social relationships based on perceived differences between the sexes, and gender is a primary way of signifying relations of power." (SCOTT, 1995, p. 81)

---

much earlier than the emergence of the concept of intersectionality and developed outside the academic field is the speech by Sojourner Truth 'Am I not a woman?'



Therefore, what is produced as an interpretation about sex or gender, in other words, the distinctions considered to be true between men and women are the result of relations of knowledge and power. In this sense, Michel Foucault is one of the most relevant authors who articulated knowledge, power and body, especially in the three volumes of the series *History of Sexuality* (2014a; 2014b; 2014c). The French philosopher and social theorist became known for his fragmented and diffuse understanding of power. Moreover, he made the body the privileged place of relations of power and knowledge - which is why it is an important reference for Joan Scott and other gender scholars.

Michel Foucault's (2014a) understanding of the body and sexuality understands that power is not exclusively or primarily associated with classical sources of power such as the nation-state or the law. Power is understood as something diffuse, multiple and complex. For this reason, Foucault will propose a new way of analyzing power relations, in a historical way and without attachment to the classic sources of power that for a long time were the starting point for these studies. To understand how the author deals with this theme is to recognize that every power that is exercised by different and diffuse instruments and mechanisms has a body, which is why the history of the bodies it produces seeks to reveal how the body becomes perceived and valorized in history (CIRINO, 2007, p. 79).

To the extent that the power is exerted on the body, different aspects that form this corporeality become relevant. Gender and race are some of those elements that make experiences not identical in a society where power is diffuse. In this sense, Michel Foucault's works are of great relevance for gender studies, as they highlight the diffuse character of the power that is exercised over bodies and sexualities.

Foucault's theorizations, in particular from his collection on the history of sexuality, occur at a time when there is a diversity of works, in different areas of knowledge, which seek to dissolve the concept of universal subject, prioritize the issue of language and discourse as practices that interact and are central to the understanding of society, especially when they perceive the production of knowledge as an act of power (PISCITELLI, 2008, p. 264).

In this way, the studies of the 1980s produce serious debates about equality and differences and strongly question the classic distinction between gender and sex, as distinct categories of order - one from culture and the other from nature - to the point of being stagnant and admitting the existence of only two possible and opposite genders:



the feminine and the masculine. This way of understanding genders greatly complexes the discussions about the differences placed on sexualized bodies.

Initially, it calls into question the very distinction between sex and gender, considering that the way human beings define and separate what is biological and what is cultural (or, the distinction between culture and nature) is also a process that is constructed based on social power relations. Thus, "[...] the 'sexual difference' was established not only as a natural fact, but also as an ontological basis for political and social differentiation." (SCOTT, 2005, p. 21).

When feminist movements began to use the term 'woman' it was to build a category that served as an opposition to that of men, who presented itself as universal, neutral and inclusive (PEDRO, 2005). It was, to some extent, a way of demonstrating that the category "man" was not able to include all the humankind. However, then, it was possible to perceive that the woman category itself also seemed to claim a universality that was not consistent with the daily life of the various women who sought feminism for a movement that represented their demands and claims. Lesbian women did not feel represented within a heteronormative feminism. Black women did not feel included when the flags and struggles promoted by the movement were almost entirely relevant issues for white women only. More than that, the feminist movement itself often ended up being a space for the perpetuation of heteronormativity and racism<sup>3</sup>.

Thus, it is possible to perceive the justification and the importance of the existence of the diverse feminisms that seek to account for the existing diversity among women, as well as, the category of woman itself is gradually replaced by the category of women, or at least, understood as a category that encompasses a wide range of diversity. As the Indian, feminist and activist of the anti-racist movement Avtar Brah summarizes:

Our gender is constituted and represented differently according to our location within global power relations. Our insertion in these global power relations takes place through a myriad of economic, political and ideological processes. Within these social relations structures, we do not exist simply as women, but as differentiated categories, such as "working class women", "peasant women" or "immigrant women". Each description is related to a specific social condition. Real lives are forged from complex joints of these dimensions. It is now axiomatic in feminist theory and practice that "woman" is not a unitary category. (BRAH, 2006, p.341)

---

<sup>3</sup> Regarding this matter, please see Angela Davis (2016) and her approach to disputes over women's right to vote in the United States.





The concept of intersectionality, therefore, can be an important means for non-essentialist analyzes of social differences and inequalities. Thus, in the following section, the central characteristics of the concept will be addressed to later consider its approach to the international field of Human Rights.

### 3. Core elements for understanding Intersectionality

In the first text in which she uses the term intersectionality, Kimberlé Crenshaw (1989) sought to examine the tendency to treat race and gender as categories of analyzes and concrete experiences that are mutually exclusive. She observed how this trend is perpetuated due to the single-axis form that dominates the production of laws against racial discrimination and feminist and anti-racist theories. The author suggests that this single-axis mode makes black women invisible in the conceptualization, identification and remediation of race and gender discrimination, being limited by the experiences of other members of the group, more privileged – in the case of the anti-racist movement, the privileged are black men, and in the case of gender discrimination the privileged are white women. This scenario therefore creates distorted analyzes and strategies on racism and gender discrimination (CRENSHAW, 1989, p. 140). Such distortion occurs because "[...] the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon." (CRENSHAW, 1989, p. 140).

It is important to understand that, according to Crenshaw (1989, p. 140), to solve the problem of black woman's invisibility regarding the processes of exclusion and marginalization it is not enough to include them in an already established structure of analysis. This is because the intersectional experience is greater than racism and sexism, therefore, an analysis that does not take into account intersectionality will not be sufficiently able to deal with the particular situation of subordination that is imposed on black women.

In this way, the concept of intersectionality was influenced by the debates that had been taking place within feminism, as a social movement, especially within the scope of black feminisms. This was due to the questionings that black feminisms make about the purposes of a movement mainly centered on issues that affected white, heterosexual and



middle class women, at which time there is a proliferation of claims for a feminism capable of meeting the demands of black women, homosexuals, transsexuals, poor, migrants, among others.

Part of the theoretical debates that have taken place since the 1980s, which have contributed to reducing the rigidity of the distinction between sex and gender, as previously discussed, were also influenced by these claims in the social field. However, as Adriana Piscitelli (2008, p. 265) summarizes:

[...] the theoretical reworkings did not incorporate the demands to pay attention to other differences besides the sexual one in a homogeneous way; that is, academic analyzes of gender inequalities continue without incorporating other relevant categories of oppression.

For this reason, the emergence of the concept of intersectionality comes to fill an analytical gap on the relations of oppression that arise beyond gender relations and which interact with it inseparably. In the words of Carla Akotirene (2018, p. 13) "Such a concept is an analytical sensibility thought by black feminists, whose experience and intellectual claims were unobserved by both white feminism and the anti-racist movement, strictly speaking, focused on black men".

As a result, intersectionality can be defined as an analytical tool, capable of contributing to the solution of often invisible problems. According to Kimberlé Crenshaw (2002, p.177): "Intersectionality is a conceptualization of the problem that seeks to capture the structural and dynamic consequences of the interaction between two or more axes of subordination", something that the author does very well in her analysis of the violence against black women in the text entitled: 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991). In this work, the author draws fundamental conceptual distinctions, in addition to relating her theory to concrete situations in which black women are more prone to violence, rape, inequality, and, mainly, how these experiences have specific characteristics and consequences.

Kimberlé Crenshaw presents the concept of structural intersectionality (1991; 2002), using two axes of violence against women: physical aggression (battering) and rape. As for physical aggression, Crenshaw presents data obtained from a study in which she visited some shelters for battered women in Los Angeles, aimed mainly to black



women and another to Asian women. A relevant conclusion of her study is that, in most cases, physical violence is the most immediate manifestation that takes women to shelters, but it is also just a part of the multiple subordination experiences to which these women are exposed, so that most of them are unemployed or underemployed and are poor (CRENSHAW, 1991, p. 1245).

The author addresses how this structure of discrimination contributes to black women being in a particular situation of vulnerability, as they are primarily responsible for the upbringing of children, are burdened by poverty and lack certain work skills that are socially valued. These weights are the result of combining the structures of gender discrimination and racial discrimination, so that the disproportionately high unemployment to which black people are subjected makes these women less likely to be able to take shelter in the house of friends or family members when they are victims of domestic violence (CRENSHAW, 1991, p.1246). Thus, Crenshaw (1991, p. 1246) highlights that the system of race, gender and class converge to the experiences of women who are attacked in their homes and, consequently, intervention strategies that are based only on the experiences of women who do not share similar socio-cultural contexts - do not have the same backgrounds - of class and race, are limited in their quest to help women who face different obstacles.

To demonstrate this, she uses the example of the immigration law that defined that to obtain US citizenship it is necessary not only to marry a citizen, but also to stay married for at least two years. As a result of this rule, many migrant women endured various forms of domestic violence and physical aggression, for fear of being deported. In order to prevent this type of violence, the law was changed and allowed an exception to the two-year rule, if some documents such as a police report or medical reports that attest to the violence suffered by the woman can be presented. However, what the legislator did not realize is that for many of these women there are cultural and linguistic difficulties that make it extremely difficult to obtain the requested documentation:

Tina Shum, a family counselor at a social service agency, points out that "this law sounds so easy to enforce, but there are cultural complications in the Asian community that make even these requirements difficult ... Simply finding the courage and opportunity to call us is an accomplishment for many. " The typical immigrant wife, she suggests, may live "in an extended family where several generations live together, perhaps with no privacy to use the phone, no opportunity to leave the house, and no knowledge of public



telephones." Therefore, many immigrant women are completely dependent on their husbands to acquire information regarding their legal status. Many women who are now permanent residents continue to be abused by their husbands under threat of deportation. Even if the threats are not legally based, women who do not have independent access to information will continue to be intimidated by such threats. [...] Language barriers present another structural problem that often limits the opportunities that non-English-speaking women have to make use of existing support services. Such barriers not only limit access to information about shelters, but also limit access to security that shelters offer. Some shelters reject non-English speaking women for lack of bilingual staff and resources. (CRENSHAW, 1991, p.1248-1249)

In this way and starting from real situations, Crenshaw seeks to demonstrate how the patterns of subordination interact in experiences about domestic violence, so that intersectional subordination does not need to be intentionally produced - usually, it occurs unintentionally. In fact, it is usually the result of a burden or obligation that interacts with other pre-existing forms of subordination (CRENSHAW, 1991, p. 1249). In the case mentioned, the burden is the legal obligation to be married for two years (or the possibility of not being married in case of domestic violence, but with the necessary proof of what happened) and the existing situation of subordination is the fact that they are migrant, non-speakers of the country's language, often poor and black women. The union of these two elements (the structurally imposed burden and the previous place of exclusion) makes the experiences of these women victims of domestic violence completely different from those women victims of domestic violence who are citizens in the state where they are, dominate the language and, therefore, access information about your rights and have some financial resource, as well as a network of friends and / or family members living in the country.

The fact that women who are part of minorities suffer from the effects of multiple subordinations, combined with institutional expectations based on inappropriate non-intersectional contexts, shapes and ultimately limits the opportunities for meaningful interventions on their behalf. Recognizing failure when considering intersectional dynamics can greatly explain the high levels of failure, frustration and exhaustion experienced by counselors who try to meet the needs of women who are part of minorities. (CRENSHAW, 1991, p. 1249)

These researches made by Crenshaw make evident the importance of understanding that intersectional subordination is notoriously a particular and complex



process that results in abusive barriers to accessing human rights. It is possible to understand that, to a large extent, public policies for women fail to reach those who are not white, national or middle class - such as black, Latin or immigrant women - since there are qualitative differences in the experiences of these women who are not perceived when drafting and implementing public policies that seek to guarantee access to rights for them.

A black woman belongs to, according to Crenshaw (1991, p. 1252), at least two groups that are subordinate in society and that, in addition, often have conflicting agendas. The author points out that the agenda of the anti-racist movement is based on the experiences and demands of black men, while the agenda of the feminist movement is based on the demands and experiences of white women. As a result, both movements not only fail to include issues that concern black women, but also fail to realize that the racism that a black woman suffers is often not identical to the racism that a black man suffers, as well as that sexism that affects black women at different times is not an experience equivalent to sexism that attacks white women. That is, the anti-racist struggles and the feminist movement are limited even considering their own terms and objectives, so that:

The failure of feminism to interrogate race means that the resistance strategies of feminism will often replicate and reinforce the subordination of people of color<sup>4</sup>, and the failure of antiracism to interrogate patriarchy means that antiracism will frequently reproduce the subordination of women. These mutual elisions present a particularly difficult political dilemma for women of color. Adopting either analysis constitutes a denial of a fundamental dimension of our subordination<sup>5</sup> and works to preclude the development of a political discourse that more fully empowers women of color. (CRENSHAW, 1991, p. 1252)

It is possible, from these considerations, to understand two concepts that Crenshaw uses to highlight how the issues that affect black women can be totally invisible

---

<sup>4</sup> The term "people of color" has an anti-racist connotation in English, as opposed to the term "colored". This is part of a more general tendency of social movements in English-speaking countries to employ something that is often called "people-first language" (similarly, "person with disability" is preferred to "disabled" for example). It is important to highlight this point, since the expression "people of color" may seem racist to Portuguese-speaking readers.

<sup>5</sup> "Our subordination" refers to the subordination of black women. This is one of many occasions when Crenshaw challenges the formal rule that advises not using the first person. This is not a mere idiosyncrasy of the text, but a deliberate choice, given the importance of the question of the place of speech when discussing issues related to the intersectionality of oppression.



or be underrepresented when it comes to the struggles of the anti-racist and feminist social movements, as well as in the field of knowledge about gender and race. These are the concepts of overinclusion and underinclusion, which mean to observe that “in underinclusive approaches to discrimination, difference makes a set of problems invisible; while in overinclusive approaches the difference itself is invisible” (CRENSHAW, 2002, p. 176).

When overinclusion is addressed, a problem or condition is dealt with that is disproportionately imposed in a particular and specific way on a subgroup of women and, when addressing that issue, it is treated only as a problem for women.

Overinclusion occurs to the extent that the aspects that make it an intersectional problem are absorbed by the gender structure, without any attempt to recognize the role of racism or any other form of discrimination that it may have exercised in such a circumstance. (CRENSHAW, 2002, p. 174).

In other words, it means making a problem that specifically affects a subgroup of women invisible, assuming that the issue will be addressed when thinking about the totality of women, which ends up generating a process of abandonment of that subgroup in detriment of a discourse dominated mainly by women in power conditions in the group (for example: white, heterosexual, non-poor women, among others). Crenshaw (2002, p. 175) uses as an example the discourse around the trafficking of women and how racial and social marginalization that are directly related to the greater probability that certain women are trafficked, and others are not, is commonly ignored.

In parallel and equally damaging, underinclusive approaches ignore when a subgroup of women faces certain problems among several reasons, also because they are women. However, this is not seen as a gender problem, simply because it does not affect other women who belong especially to the dominant groups. The same tends to occur when a problem is directed at black women and, to the extent that it does not directly affect black men, it is not seen as a problem of the anti-racist movement, it is not understood as a matter of ethnic-racial discrimination, assuming dealing exclusively with a gender problem.

Therefore, it is important to consider that these two recurring problems in the analysis and policy making for access to rights can be minimized with the appropriate use of the intersectional perspective. As these are issues that have been known in the feminist



field for almost two decades, it is possible to better understand the statement by the American sociologist Leslie McCall that feminists may be the only people who have embraced the challenge of dealing with intersectionality, or that is, “the relationships between multiple dimensions and modalities of social relations and subject formation” (McCALL, 2005, p. 1771).

McCall (2005) believes that intersectionality is the greatest theoretical contribution made by gender studies and related areas so far. To a large extent, this observation stems from the fact that most efforts to understand, instrumentalize and better apply the concept have occurred in the theoretical field of gender studies. The transformative potential of this category of analysis is still being discovered, but it undoubtedly already demonstrates that to deal with the issues that affect black women and/or indigenous women, it is not enough to include them in the discourse without making a review of the analysis and methodologies categories. The importance of this is not limited to the production of knowledge itself, but it is also reflected in the search for effectiveness on the access to human rights:

Ensuring that all women benefit from expanded protection of gender-based human rights requires attention to the various ways in which gender intersects with a range of other identities and the way in which these intersections contribute to particular vulnerability of different groups of women. As the specific experiences of women from defined ethnic or racial groups are often obscured within broader categories of race and gender, the full extent of their intersectional vulnerability still remains unknown and ultimately needs to be built from the ground zero. (CRENSHAW, 2002, p.174)

Crenshaw's proposal, in her text, is precisely to help understand how the particular experiences of non-white women are made invisible in the speeches about rights, “Where the specific contours of gender discrimination are not well understood, interventions to deal with abuse human rights of women are likely to be less effective.” (CRENSAW, 2002, p. 174). For this reason, the following section analyzes how intersectionality has been inserted in the international scope of Human Rights, using as examples the texts and the Committees of two International Conventions dedicated to the protection of women and black people.

#### 4. The inclusion of Intersectionality in the International Framework of Human Rights



One of Kimberlé Crenshaw's most popular texts in Brazil is the one for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerances, which took place in Durban, South Africa, in 2001. Its popularization in the country, to a large extent, occurred because it was translated into Portuguese in 2002 by the important journal of *Revista Estudos Feministas*. In addition, this is still one of the few Crenshaw materials with a Portuguese translation. This text by Crenshaw is also a milestone with regard to the inclusion of intersectionality in the international scope of Human Rights.

As Collins and Bilge (2016) very well identified from the invitation of the Conference Preparatory Committee to Crenshaw and the presentation of their position paper, references to the concept of intersectionality (even with other nomenclatures) became increasingly common in the international framework of human rights. In a similar sense, Maylei Blackwell and Nadine Naber (2002) highlight how intersectionality influenced the aforementioned Conference and how the understanding of the existence of “related intolerances” became part of the analysis of the discriminatory processes that different women in the world experience.

In this sense, Carla Akotirene's understanding in dialogue with the definition presented by Crenshaw reinforces that “intersectionality is, above all, an analytical lens on structural interaction in its political and legal effects.” (AKOTIRENE, 2018, p. 58). Therefore, the approximation of the concept to the field of Human Rights has expanded in different spaces.

Here, it was decided to analyze, in particular, gender issues and for that, it is worth starting with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (UNITED NATIONS, 1979). Its main objective is to systematize human rights for women - breaking with the supposedly universalist view of men rights, which, by waving the false promise that the term was neutral in relation to sex and gender, purged the possibility of discussing women's rights. The Convention was promulgated by the United Nations General Assembly in 1979 and ratified by Brazil in 1984.

Based on that, there is a commitment by Brazil to produce reports on the implementation of the Convention's guidelines, as well as on the advances and setbacks in women's access to Human Rights. The CEDAW Committee then analyzes the reports and makes suggestions directly to the country, as well as general recommendations for all member states. The gender perspective incorporated in the Human Rights discourse,





which was strengthened by the emergence of CEDAW, is related to the recent period in the history of human rights.

Over the past decade, as a result of women's activism, both at various world conferences and in the field of human rights organizations, a consensus has developed that women's human rights should not be limited only to situations in which their problems, their difficulties and vulnerabilities were similar to those suffered by men. The expansion of women's human rights has never been more evident than in the determinations regarding the incorporation of the gender perspective (gender mainstreaming) at the world conferences in Vienna and Beijing. [...] Thus, while in the past the difference between women and men served as a justification to marginalize women's rights and, more generally, to justify gender inequality, today the difference in women indicates the responsibility that any human rights institution has to incorporate a gender analysis in their practices. (CRENSHAW, 2002, p. 172).

From this perspective, gender becomes an element that must be transversally included in human rights treaties and conventions. A good example of how this has been happening is the inclusion of the gender discussion made by the Committee on the Elimination of Racial Discrimination (CERD) in its Recommendation nº 25, in which it starts to recognize the incorporation of gender analysis in its field of action (UNITED NATIONS, 2000).

Recommendation nº 25, which addresses gender issues related to ethnic-racial discrimination, highlights from the outset that CERD recognizes that racial discrimination does not affect women and men equally or in the same way. The Recommendation makes a great contribution when it recognizes that there are circumstances in which racial discrimination affects only or above all women or affects them differently, or even with a different degree of impact on their lives. In taking these issues into account, CERD recognizes that, often, such discriminatory processes escape detection because there is no explicit recognition of the different life experiences of men and women, both in the public and private spheres (UNITED NATIONS, 2000 ).

In addressing the intersectionality of rights violations suffered by women, CERD presented a strategy to include gender issues in analyzes of the fight against racial discrimination, highlighting four axes from which gender issues will be incorporated in the analyzes: (a ) forms and manifestations of racial discrimination; (b) the circumstances in which racial discrimination occurs; (c) the consequences of racial discrimination, and; (d) the availability and accessibility of resources and mechanisms for complaints and



denunciations of racial discrimination. In addition, the Committee expressed its interest that the reports of the signatory countries of the ICERD (UNITED NATIONS, 1965) seek to avoid the common gap on racial discrimination suffered by women, inviting them to describe the quantitative and qualitative factors that affect and hinder the guarantee and enjoyment of women's rights to live free from racial discrimination (UNITED NATIONS, 2000).

At the domestic level, few countries have met the task of ensuring that intersectional damage could be effectively remedied. Despite this, relevant treaties on discrimination require that signatory countries propose national legislation that addresses both racial and gender discrimination. If national mechanisms are unable to address these intersectional problems, marginalized women cannot receive all the protection to which they would be entitled. Therefore, countries that do not provide solutions to intersectional discrimination do not fully comply with their obligations. In order to fill this gap, it is essential not only that gender be incorporated into country reports and reviews through CERD, but also that race is similarly incorporated into the functioning of all UN institutions and bodies, including CEDAW, DAW and the Commission on the Status of Women (Commission on the Status of Women / CSW). (CRENSHAW, 2002, p.186)

In this sense, Kimberlé Crenshaw (2002) has already demonstrated since the beginning of the 2000s, as stated at the beginning of this section, the importance of incorporating the ethnic-racial element in the discussions on the Human Rights of women, both in the field of international law and in legislative and jurisprudential production of the CEDAW signatory countries, as well as other international human rights conventions.

CEDAW, in turn, has in its origin a fundamental proposal of non-discrimination based on gender differences and it is possible to identify from Recommendation nº. 28 the incorporation of the concern with discrimination based on gender differences (CAMPBELL, 2015, p. 486). Through the study developed by Meghan Campbell (2015, p. 483), it is possible to identify some advances in the inclusion of intersectionality in the analyzes and proposals of the CEDAW Committee. The author states that the texts of CEDAW and the CEDAW Committee were able to understand intersectional discrimination in a sophisticated way, which is why discrimination based on sex and gender differences is not analyzed separately from other forms of discrimination (CAMPBELL, 2015, p. 490). It is interesting that the only mention in the CEDAW text of poverty and ethnicity is in its preamble. However, as observed by Campbell (2015, p. 494), the recommendations of the CEDAW Committee have reinforced the importance of these categories and the intersectional inequality itself.



It is worth noting that intersectionality is not to be confused with the principle of transversality that was introduced in 1995 by the Beijing Conference and later included in the European Union's proposals. Transversality starts from:

[...]from the consideration that actions, policies and programs have different results for men and women. For this reason, the perspective of women must be considered in the design, implementation, emergence and evaluation of policies and programs in all areas, with the objective that men and women are equally benefited and that inequality is not perpetuated. Including specific activities and positive actions because the starting positions for men and women are not the same. (MOLINA, 2012, p. 205).

Transversality, therefore, is an important principle in the field of international law, as it contributed to thinking beyond the supposedly universalizing discourse that ended up excluding women. However, transversality is not to be confused with intersectionality, since it refers to any process of marginalization that interacts with other excluding categories, beyond gender, creating a specific situation of vulnerability. As highlighted by Spanish professor Carmen Molina (2012, p. 205), the two concepts are complementary tools in the search for overcoming gender inequalities, as intersectionality contributes to making visible the different realities in which women find themselves, thus improving the political strategy.

In the research by Marília Ortiz (2013) it is possible to see how intersectionality has been approaching the field of public policies in Brazil, especially from the State Secretariats that dealt with concepts such as race and gender in a transversal way. The conclusion presented by the author is that, in Brazil, there is a prevalence of only a overinclusion of terms and the permanence of a structure designed to deal with monolithic categories of discrimination.

This finding is similar to the conclusion of the study by Emanuela Lombardo and Mieke Verloo (2009) on the possible institutionalization of intersectionality in the European Union. In this research, the authors concluded that the legal frameworks of the European Union are not actually using intersectionality in its complex and transforming conception, but rather, juxtaposing categories of inequalities without, in fact, intersecting them.



These researches demonstrate that Crenshaw's concern that intersectionality is not to be confused with the mere addition of concepts is quite coherent (CRENSHAW, 2002, p. 175). For this reason, Akotirene reinforces that:

“Intersectionality prevents hierarchical or comparative mathematical aphorisms. Instead of adding identities, it analyzes which structural conditions cross bodies, which positionalities reorient subjective meanings of these bodies [...]” (AKOTIRENE, 2018, p. 39).

For this reason, it is worth remembering the criticism presented by Collins and Bilge (2016, p. 86), according to which the interpretations existing in the academy about intersectionality, after its institutionalization, undermined part of the concept's critical potential. Anna Carastathis also identifies this same problem in the way that intersectionality has been incorporated by academia and in the political field:

Initially, intersectionality was explicitly aimed at contesting these representational, discursive, and intersubjective dynamics within antiracist and feminist movements seeking to transform social relations. Yet much of what Crenshaw's analysis revealed about identities, oppressions, and political struggle has been forgotten— some say systematically (Bilge 2013)— as intersectionality became mainstreamed as an institutionalized intellectual project. Although intersectionality has become an axiom of feminist theory and research and has been “institutionalized” (Nash 2008) in academic and, increasingly, in human- rights discourses and policy frameworks, flippant or vague references to “intersectionality” abound and can serve to obscure a profound critique of deeply entrenched cognitive habits that inform feminist and antiracist thinking about oppression and privilege. In other words, paradoxically, the success of intersectionality may mark its failure, the wide travel of the concept its shallow apprehension. (CARASTATHIS, 2016, p. 42).

Thus, it is necessary to build critical analyzes on the expansion of the use of intersectionality in academia, in the field of public policies and access to Human Rights, including focusing on the Brazilian reality. Carla Akotirene (2018) is a notorious example of this type of analysis. The author also reinforces the importance of carefully perceiving these processes of incorporating the concept in the field of law, so that it does not pervert the initial proposal for a critical understanding and ends up reinforcing the status quo. The author therefore indicates the dangers of a violent appropriation of intersectionality that serves to reinforce racist structures of power, such as the State's own punitivist discourse (AKOTIRENE, 2018, p. 47).



Therefore, it is worth noting that the use of terms such as intersectionality or of categories other than gender in documents on women's human rights does not, in itself, characterize the presence of an intersectional view. It is necessary to recognize that although the international documents on Human Rights do not prescribe any formal inequality in access to rights, this still occurs unevenly. This is an important aspect of the inclusion of intersectionality in the international normative field, giving visibility to these inequalities of access and demonstrating how it is constituted. In this sense:

Despite human rights allowing unrestricted access, regardless of race, sex, nationality, ethnicity, language, religion or any other condition, black women are faced with the racist and sexist devices of public and private institutions for denying them their first job and, then, the human right to be complainers of the discrimination suffered. Intersectionality instrumentalizes the anti-racist and feminist movements and protective instances of human rights to deal with black women's agenda. (AKOTIRENE, 2018, p. 57).

It is possible to see, therefore, that it is not just a matter of including among the recommendations - either by the CEDAW Committee or CERD - that inequalities between white women and black and indigenous women be reduced. Such inclusion can be considered a first step, but it does not include structural reformulation or the inclusion of new analytical tools that are indispensable for a policy of access to rights to be able to break the intersectionally constructed inequalities.

The advances regarding the inclusion of intersectionality in the recommendations of the CEDAW Committee have relevant inconsistencies, according to the study by Meghan Campbell (2015, p. 498). Despite this, they demonstrate the potential of the concept in the search for new ways of dealing with problems in accessing Human Rights, based on the understanding of intersectional inequality. Therefore, it would be relevant not only to improve the inclusion of intersectionality in the international human rights scenario, but also to include the concept in the national scenario in Brazil, deepening the debate and contributing to the improvement of strategies aimed at achieving access to Human Rights.

## 5. Conclusion



In promoting the debate on the concept of intersectionality of oppression and intersectional inequalities, some essential elements were briefly developed for the expansion and inclusion of the topic on the Human Rights agenda. It was possible to verify that, through the bibliographic review carried out, combining intersectionality with the discourses and practices on Human Rights is essential to consolidate and expand access to such Rights.

It is not a matter of including one more term when elaborating strategies aimed at the realization of Human Rights, but rather, a new way of understanding the importance that different aspects have in limiting access to such rights. This understanding enables new strategies that will be better able to deal with the reality of a significant portion of the population.

For several decades, women's access to human rights has been the foundation and objective of several laws, including on the international scenario, with CEDAW being one of the most relevant documents. Intersectionality has significant potential in the quest to fill gaps that commonly render such mechanisms for the promotion of Human Rights ineffective for a significant portion of its recipients. Observe how intersectionality has progressively gained space in the international human rights protection scene since the early 2000s, as well as how this has emerged in specific proposals by the CEDAW Committee and CERD is relevant to note how this concept, which emerges in the social movements of black women and arrives at the academy with a critical character, it is being appropriate in the speeches of international organizations and States.

In this way, it comes close to criticisms about how the institutionalization of intersectionality has repeatedly undermined its critical potential, as well as the fact that strategies that seek to abandon the monolithic understanding of concepts such as gender and race have been limited. Thus, it is recognized as indispensable to expand on the complexity of intersectionality, as well as the importance of building strategies capable of dealing with intersectionally structured inequalities.

Despite the concerns about the emptying of the concept, there is no denying that intersectionality has great potential in the quest to achieve access to Human Rights in a country that is historically unequal and marked by social exclusion based on elements such as race, class, sexual orientation and gender identity. Broadening the understanding of the intersectionality of social inequalities in the country is a way of promoting more adequate mechanisms to remedy them. Thus, we seek to break with the discourse that



includes only a specific and minority portion of Brazilian women - white, heterosexual and middle or upper class - based on the understanding that structural elements such as race, produce particular processes of exclusion and, therefore, demand particular tools to solve them. Without such recognition, there is a risk that exclusions will continue to perpetuate based on a discourse that only formally defends the access of all people to Human Rights.

### Tradução

**João Zanine Barroso**, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, Rio de Janeiro, Brasil. E-mail: j\_zanine@hotmail.com.

## 6. Bibliographic references

AKOTIRENE, Carla. O que é interseccionalidade? Belo Horizonte: Letramento, 2018.

BLACKWELL, Maylei. NABER, Nadine. Interseccionalidade em uma era de globalização: as implicações da Conferência Mundial contra o Racismo para práticas feministas transnacionais. *Revista Estudos Feministas*, Florianópolis, v. 10, n. 1, jan 2002. p. 189-198

BRAH, Avtar. Diferença, diversidade, diferenciação. *Cadernos Pagu*. n. 26, janeiro-junho de 2006. p. 329-376.

CAMPBELL, Meghan. CEDAW and Women's Intersecting Identities: a Pioneering New Approach to Intersectional Discrimination. *Revista Direito GV*. n. 11 [2], jul-dez, 2015. p. 479-504

CARASTATHIS, Anna. *Intersectionality – Origins, Contestations, Horizons*. Nebraska: University of Nebraska Press, 2016.

CARNEIRO, Sueli. Enegrecer o feminismo: a situação da mulher negra na América Latina a partir de uma perspectiva de gênero. In: *Racismos contemporâneos*. Ashoka



Empreendimentos Sociais e Takano Cidadania (Orgs.). Rio de Janeiro: Takano Editora, 2003. p. 49-58.

CARNEIRO, Sueli. Mulheres em Movimento. Estudos Avançados. v. 17, nº 49, 1995, p. 117-132.

CEDAW – Committee on the Elimination of Discrimination Against Women – Introduction. Available at: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx>. Access on April 25, 2016.

CIRINO, Oscar. Os desejos, os corpos e os prazeres em Michel Foucault. Mental. Ano V, nº 8. Barcelona, 2007. p. 77-89

COLLINS, Patricia Hill. BILGE, Sirma Bilge. Intersectionality. Cambridge: Polity Press, 2016.

CRENSHAW, Kimberlé. Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. The University of Chicago Legal Forum. n. 140 p.139-167, 1989.

CRENSHAW, Kimberlé. Documento para o Encontro de Especialistas em Aspectos da Discriminação Racial Relativos ao Gênero. Revista Estudos Feministas. Ano 10 (1). Florianópolis, 2002. p.171-188

CRENSHAW, Kimberlé. Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. Stanford Law Review, Vol. 43, No. 6, Jul., 1991. p. 1241-1299

DAVIS, Angela. Mulheres, raça e classe. Tradução de Heci Regina Candiani. São Paulo: Boitempo, 2016.

FOUCAULT, Michel. História da Sexualidade I – A vontade de saber. Tradução de Maria Thereza da Costa Albuquerque e J. A. Guilhon Albuquerque. São Paulo: Editora Paz e Terra, 2014a.





FOUCAULT, Michel. História da Sexualidade II – O uso dos prazeres. Tradução de Maria Thereza da Costa Albuquerque. São Paulo: Editora Paz e Terra, 2014b.

FOUCAULT, Michel.. História da Sexualidade III – O cuidado de si. Tradução de Maria Thereza da Costa Albuquerque. São Paulo: Editora Paz e Terra, 2014c.

GOMES, Nilma Lino. Alguns termos e conceitos presentes no debate sobre relações raciais no Brasil: uma breve discussão. In: Educação Anti-racista: caminhos abertos pela Lei federal nº 10.639/03. Brasília, MEC, Secretaria de educação continuada e alfabetização e diversidade, 2005. p. 39-62

GONZALES, Lélia. Racismo e Sexismo na Cultura Brasileira. Revista Ciências Sociais Hoje, Anpocs, 1984. p. 223-244

KYRILLOS, Gabriela M. Uma Análise Crítica sobre os Antecedentes da Interseccionalidade. Revista Estudos Feministas. Florianópolis, v. 28, n. 1, 2020. p. 1-12

LOMBARDO, Emanuela. VERLO, Mieke. Institutionalizing Intersectionality in the European Union? International Feminist Journal of Politics. n. 11 v. 4 dez, 2009. p. 478-495

MOLINA, Carmen Expositó. ¿Qué es eso de la interseccionalidade? Aproximación al tratamiento de la diversidad desde la perspectiva de género em España. Investigaciones Feministas. vol. 3, 2012. p. 203-222

UNITED NATIONS. Convention on the Elimination of All Forms of Discrimination Against Women - CEDAW. 18 dez. 1979. Available at: <[http://www.onumulheres.org.br/wp-content/uploads/2013/03/convencao\\_cedaw1.pdf](http://www.onumulheres.org.br/wp-content/uploads/2013/03/convencao_cedaw1.pdf)>. Access on October 30, 2018.

UNITED NATIONS. International Convention on the Elimination of All Forms of Racial Discrimination - ICERD. 21 dez. 1965. Available at: <<http://www.pge.sp.gov.br/centrodeestudos/bibliotecavirtual/instrumentos/discrimi.htm>>. Access on October 30, 2018.



UNITED NATIONS. Committee on the Elimination of Racial Discrimination. General Recommendation No. 25: Gender related dimensions of racial discrimination. United Nations, Switzerland, 2000.

ORTIZ, Marília. Desvendando Sentidos e Usos para a Perspectiva de Interseccionalidade nas Políticas Públicas Brasileiras. Seminário Internacional Fazendo Gênero 10 (Anais Eletrônicos). Florianópolis, 2013. p. 1-15

MARCONI, Marina de Andrade. LAKATOS, Eva Maria. Metodologia Científica. São Paulo: Editora Atlas, 2003.

McCALL, Leslie. The Complecity of Intersecconality. Journal of Women in Culture and Society. Vol. 30 nº. 3, 2005. p. 1771-1800.

#### About the authors

##### **Joana Stelzer**

PhD and Master of Laws in the field of International Relations (UFSC). Post Doctorate in Law (USP). Associate Professor I at UFSC. Professor accredited in the Postgraduate Program in Law at the Federal University of Santa Catarina (PPGD / CCJ / UFSC) for Master and Doctorate. Vice-Leader of the Research Group Center for Legal-Economic Studies and Development Management - CEJEGD. E-mail: joana.stelzer@ufsc.br

##### **Gabriela M. Kyrillos**

PhD in Law from the Federal University of Santa Catarina (UFSC). Post Doctorate in Law and Social Justice at the Federal University of Rio Grande (FURG). Adjunct Professor of the International Relations course at the Federal University of Rio Grande (FURG). Leader of the Intersectionalities and Decoloniality in International Relations Research Group - INDERI. E-mail: gabrielakyrillos@furg.br

**The authors contributed equally to the writing of the article.**

