

**MULTIPLE, COMPOUND AND INTERSECTIONAL  
DISCRIMINATION:  
BRINGING THE EXPERIENCES OF THE MOST  
MARGINALIZED TO THE FORE**

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1. General Introduction	1
1.1 General Conceptual Framework	2
1.2 Direct, Indirect and Institutional Discrimination & Positive Action	4
1.3 Events-oriented vs. Process-oriented Approach to Discrimination	5
1.4 Grounds of Discrimination	5
1.5 Prejudices, Attitudes and Behavior	7
2. Multiple, Compound and Intersectional Discrimination	9
2.1 Conceptual Questions	9
2.2 Closer Analysis of These Phenomena	12
2.3 Structural and Other Types of Intersectional Discrimination	14
3. Two Major Reasons Why Intersectional Discrimination has Hitherto Remained Hidden	17
3.1 Narrow Understanding of Identity	17
3.2 Narrow Understanding of a Group and its Interests	18
4. Real-Life Examples of Intersectional Discrimination	22
4.1 At the Intersection of Ethnic or “Racial” Origin and Gender: Examples from Out-Group Discrimination	23
4.1.1 Women in Armed Conflicts	24
4.1.2 Exploitative Migration, Including Trafficking	25
4.1.3 Minority and Immigrant Women and Health	26
4.2. At the Intersection of Ethnic or “Racial” Origin and Gender: Examples from In-Group Discrimination	28
4.2.1 Harmful Cultural and Traditional Practices	28
4.2.2 Paradox of Multicultural Vulnerability	30
4.2.3 Other In-Group Subordination and Disadvantage	31
5. Potential Pitfalls and Benefits of Intersectional Approach	33
5.1 Potential Pitfalls of Intersectional Approach	33
5.2 Benefits of Intersectional Approach	36
6. The Challenges that Intersectional Discrimination Poses to the International System of Human Rights	37
6.1 The Ability of Human Rights System to Recognize Intersectional Discrimination: Assessing the Level of Awareness	37
6.1.1 Human Rights Committee	37
6.1.2 Committee on the Elimination of Racial Discrimination	39
6.1.3 Committee on the Elimination of Discrimination against Women	42
6.1.4 United Nations World Conferences	45
6.1.4.1 Vienna and Beijing	45
6.1.4.2. Durban	46
6.1.5 Conclusions on the Level of Awareness	48
6.2. The Ability of Human Rights Law to Deal with Intersectional Discrimination	49
6.2.1 Human Rights Law and Intersectional Discrimination	49
6.2.2 Human Rights and the Paradox of Multicultural Vulnerability	52
7. Overall Conclusions and Recommendations	55
7.1 Overall Conclusions	55
7.2 Overall Recommendations	59

## 1. General Introduction<sup>1</sup>

Equality and its concomitant principle of non-discrimination are so constitutive to our modern societies that we do not always even recognize their elementary role anymore. Democracy, for example, recognizes the equal worth and equal rights of all persons, for instance through adherence to the “one person, one vote” -rule. Equality is also the cornerstone of human rights: all human rights belong to all human beings, without discrimination of any kind, and thus the concept of equality is implicitly embedded in the concept of human rights itself. The prohibition of discrimination is also a crucial aspect of all legal systems as the prohibition seeks to eliminate arbitrariness in judicial and administrative decision making, thus enhancing the predictability and the fair functioning of these systems.

The right of all persons to equality before the law and protection against discrimination constitutes a universal human right recognized in some way in most human rights instruments, including the Universal Declaration of Human Rights (UDHR). These human rights instruments either focus on several grounds of discrimination, such as sex, ethnic or racial origin, disability and so on, or then on one of them specifically. The underlying idea, though largely unarticulated, has been that people are, or can be, discriminated against mainly on the grounds of one factor at a time, and that these grounds can be treated separately in legal instruments as well as in political action.

Lately it has been understood that this is not the whole story. The idea that people can belong to several disadvantaged groups at the same time, and suffer aggravated and specific forms of discrimination in consequence, was first recognized and termed as “multiple” or “intersectional” discrimination in the late 1980s and in the beginning of the 1990s. The concept was back then introduced and explored mainly by African American feminist scholars in the USA,<sup>2</sup> who discovered the fact that African American women suffered specific forms of discrimination not suffered by African American men or white women in general. The discussion on the subject remained predominantly academic in the first half of the 1990s, after which the importance and usefulness of the concept became increasingly recognized also in different international human rights fora,<sup>3</sup> both governmental and non-governmental.

However, the concept has not yet anywhere even nearly used up all of its potential. This is because of four main reasons, of which the first one is most important as it explains to some extent the others: 1) the meaning and the practical usefulness of the concept has remained rather abstract and obscure, to a certain extent perhaps because of the predominantly academic nature of the discussion on the phenomenon; 2) most international and national human rights institutions and organizations, be they governmental or non-governmental, are formed in such a way that they either specifically focus on only one of the grounds of discrimination (such as sex or “race”<sup>4</sup>) or then deal with all of the grounds at the

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<sup>1</sup>The author would like to thank the Ministry for Foreign Affairs of Finland for funding this research project. Thanks are also due to my colleagues Merja Pentikäinen and Pauliina Salmenhaara for excellent comments, and the latter also for proofreading. Obviously, none of the above are responsible for the observations, views and recommendations presented in this paper.

<sup>2</sup>The most eminent of them being Kimberle Crenshaw.

<sup>3</sup>See chapter 6.1.

<sup>4</sup>I have mostly subjected the concepts of “race” and “racial” to quotation marks, because according to contemporary scientific understanding, there are no genetically or biologically distinct races within the broad category of *human race*. This, however, should not obscure the fact that racial thinking persists in the general society and that people are often treated on the basis of their presumed

same time, but not in a crosscutting way; 3) the concept has only recently made the breakthrough it deserves in the international human rights movement, and is only slowly being taken into account; and 4) it has so far had even more modest success nationally, as only few governments or human rights organizations have recognized or taken action on the subject.

This study will proceed, on the basis of the above analysis as follows: First, the concepts that are being used in this context will be analyzed and defined, to the extent possible. Currently there is considerable conceptual disorganization, as several different concepts are used, and more importantly, they are seldom defined or analyzed. Second, a reasonable idea of the social phenomena of intersectional and multiple discrimination will be formed through providing concrete examples of real life situations involving intersectional aspects, in order to render the concept less abstract and to bring the analysis closer to everyday realities. Third, the different problems, especially human rights problems, that arise out of an intersectional analysis, will be identified and discussed. Fourth, it will be discussed how law, especially international human rights law, is able to deal with these problems so identified. Fifth, recommendations will be formulated on the basis of this analysis.

### 1.1. General Conceptual Framework

Before we can proceed into a discussion of the concepts of intersectional and multiple discrimination, we should have a good idea, first, of what discrimination is, and second, what the grounds for discrimination, such as gender, disability and ethnic origin are. This is especially so because these two are closely related to each other and to the concepts of multiple and intersectional discrimination.

The way people in general *perceive* different human traits, such as sex, origin or disability, has a closer connection to discrimination than what is usually recognized. This is because, to put it bluntly, people are not, as a general rule, discriminated against because of who or what they really are, but because of what they are *thought* to be or represent. An employer, for instance, might not hire a woman, not so much for the fact of her gender, but because the employer harbors stereotyped beliefs according to which women in general are not fit for that particular job. To give another example, Jews have been persecuted during different times not so much for their faith or ethnic origin, but because they have been represented e.g. as “controlling the economy” or “aspiring towards a world government” and so on. Immigrants in European countries are frequently denied access to restaurants and night clubs, and are under close surveillance in shops and stores, again not so much because of their origin or culture, but because being an immigrant is often, especially in the media, associated with trouble making and crimes, and thus the public reactions have been molded accordingly.

Sometimes the discrimination may, however, be directly related to a real trait of a person; for instance, when an employer discriminates against a pregnant woman because hiring her would incur “additional” costs, discrimination is related to a real and not imagined or stereotyped trait. However, even this type of discrimination takes place not only because of the existence of a real trait, such as sex, but chiefly because the society has been built up in a way that imposes “additional costs” upon employers hiring pregnant women, but not others.

What is at stake here, especially with direct (often intentional) discrimination, are thus prejudices, stereotypes and misrepresentations. A distinction between real and imagined traits, and discrimination based on them, is most useful. Thus it is essential to realize also how different categories into which human beings are typically divided, are socially constructed.

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“race”.

Take the concept of “gender”, for instance. The distinction between the terms sex and gender is widely accepted. The term “gender” refers to how women and men are perceived and expected to think and act in a particular political and cultural context.<sup>5</sup> The UN special rapporteur on violence against women defined the concept in this way:

“Gender refers to the socially constructed roles of men and women ascribed to them on the basis of their sex. Gender roles depend therefore on a particular socio-economic, political and cultural context, and are affected by other factors, including race, ethnicity, class, sex orientation and age. Gender roles are learned and vary widely within and between cultures.”<sup>6</sup>

The concept of gender can thus be characterized as a socially defined or constructed expectation regarding roles, attitudes and values which communities and societies ascribe as appropriate for one sex or the other. The term sex, on the other hand, refers to biological differences between women and men. Thus, gender differences exist because of the way society is organized, and not because of biological differences.<sup>7</sup>

Social construction is also heavily involved in the construction of the category of “disabled”. What constitutes an impairment or disability is socially constructed: disability has been understood and defined differently at different times and places. What can be validly pointed out, though, is that disability is largely a *relationship* between an individual and his or her physical and social environment, and that disability often manifests itself in the contradiction between the capabilities of an individual and the *expectations* of his or her environment. An impairment becomes a handicap only in a situation in which there is, for instance, no necessary accommodation in the form of special support measures, a fact which does not in itself deny the reality and the existence of an impairment itself. Asch has summarized this well:

“Impairments impose problems in living, but...most of those problems can be traced to the social arrangements, to the human created structures and practices in which people live and their arrangements that are created with the majority of people without impairments in mind; they could be re-created, they should be re-created to make the world a more possible for all its citizens.”<sup>8</sup>

“Race” and ethnicity may also be mentioned as examples of socially constructed categories, though people often take these concepts as self-evident givens. It is not so much so, that biological or cultural contents would determine group boundaries, rather than that the boundaries determine the biological and cultural contents, to the extent that they can even be said to exist.<sup>9</sup> Martin Bulmer and John Solomos, the editors of the “Rethinking Ethnic and Racial Studies” special issue of the *Ethnic and Racial Studies* journal, sum up the current understanding of the main scholars of the field in this way:

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<sup>5</sup>Ana Angrita, 2000.

<sup>6</sup>UN Special Rapporteur on Violence against Women, 2001, p. 4. See also Hillary Charlesworth & Christine Chinkin, 2000, pp. 3-4.

<sup>7</sup>Ana Angarita, 2000, p. 5.

<sup>8</sup>Adrienne Asch, 2001b.

<sup>9</sup>See Timo Makkonen 2000.

“Race and ethnicity are not ‘natural’ categories, even though both concepts are often represented as if they were. Their boundaries are not fixed, nor is their membership uncontested. Race and ethnic groups, like nations, are imagined communities.... They are ideological entities, made and changed in struggle. They are discursive formations, signalling a language through which differences may be named and explained.”<sup>10</sup>

At the same breath it has to be reminded, that the acknowledgment of the social constructedness of these categories does not necessarily *in itself* imply that these categories would be needless or harmful, or that they would not have social significance. But it does imply the possibility and the fact that the social nature of the production and reproduction of these categories makes possible the attribution of different kinds of stereotypes to them: groups that one belongs to are often associated with positive stereotypes,<sup>11</sup> while other groups are associated with negative ones.<sup>12</sup> And stereotypes, as will be established later, are intimately connected to discrimination.

## 1.2. Direct, Indirect and Institutional Discrimination & Positive Action

The concept of discrimination has been given several meanings and definitions.<sup>13</sup> In general, legal definitions of discrimination differ from definitions used in other disciplines and from meanings attributed to it in everyday language. Furthermore, there is not, for instance, only one *legal* definition of discrimination: the concept has been defined in international documents in several different ways, and national definitions also vary: for example the Finnish legal system employs several definitions of discrimination. If this diversity is kept in mind, one might provide a working definition of discrimination for the purposes of this study, and in a general way characterize the essence of discrimination in the following way:

discrimination refers to any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>14</sup>

When dealing with discrimination, distinguishing between direct, indirect and institutional discrimination is useful to a high degree. *Direct discrimination* refers to a situation in which a person is treated adversely directly on the basis of a prohibited ground, e.g. when an employer categorically refuses to hire immigrants. *Indirect discrimination*, on the other hand, refers to a situation in which an apparently neutral provision or practice is discriminatory in its effects. No proof of discriminatory intent is necessary, unlike usually in cases involving direct discrimination: the mere fact that the procedure, practice or decision has *de facto* led to a situation in which a group is put into an adverse position suffices. One typical example of a situation involving indirect discrimination is one in which one

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<sup>10</sup>Martin Bulmer & John Solomos, 1998, p. 822.

<sup>11</sup>E.g. the Finns often like to associate themselves with the ability to last long under conditions of duress (“*sisu*” in Finnish).

<sup>12</sup>For instance, the association of foreigners with crimes.

<sup>13</sup>This is related to the variation in conceptions of equality and justice in general.

<sup>14</sup>This formulation is based on General Recommendation 18 of the UN Human Rights Committee.

condition for hiring an employee is the complete fluency of the official language of the country, if the carrying out of the particular occupational activity does not in itself require such fluency: the effect of this condition is to exclude from the scope of qualified candidates a disproportionate amount of immigrants.

Besides direct and indirect discrimination, one may speak of *institutional discrimination*. Institutional discrimination refers to the practices or procedures in a company or an institution, even the society as a whole, which have been structured in such a way that they tend to produce discriminatory effects. Institutional discrimination is often unintentional, but it may also be intentional, in which case we may also speak of *institutionalized discrimination*. A prominent example of institutionalized discrimination used to be South Africa under the Apartheid regime.

The concept of *affirmative action*, or *positive action* as it is mainly called in Europe, and sometimes inappropriately referred to as “positive discrimination”, refers to such specific measures that are aimed at preventing or compensating disadvantages that are linked to grounds such as ethnicity, gender, and age. Positive action measures aim at attaining full equality in practice, and can override the basic prohibition of making distinctions between people: the objective of achieving *de facto* equality is often expressly recognized as a legitimate justification for making distinctions.

### 1.3. Events-oriented and Process-oriented Understanding of Discrimination

The predominant understanding of discrimination is one which focuses on single events that take place because of malevolent intentions. But as we can observe from the discussion on indirect and institutional discrimination above, discrimination as a phenomenon goes far beyond mere intentional discrimination: discrimination lies often in the various processes and procedures of a company or a public institution, and may take place without anyone with malevolent intentions having specifically designed the procedures with a discriminatory intent.

The prevailing, or “common sense” understanding of discrimination is a formal juridical one, and reflects the usage of the concept especially in the field of criminal law. It focuses on *single events* where one or more person is discriminated against on the basis of a prohibited ground (events-oriented approach).<sup>15</sup> Some researchers have suggested that instead of this events-oriented approach, we should see discrimination in its historical and social context, i.e. as a process (process-oriented approach),<sup>16</sup> due to which disadvantaged groups may become excluded or subordinated. Seeing discrimination in its specific context is one of the main elements of an intersectional approach.

Furthermore, in the experiences victims of discrimination, acts and situations of victimization often form a continuum in which one act follows another, and in which the totality becomes worse than the sum of its constituent parts. Discrimination and other forms of intolerance manifest themselves in various situations, and may take the form of e.g. verbal abuse, threats, violence, and discrimination in the labor and housing markets, access to goods and services and so on. Disadvantages in one field of life often reinforce disadvantage in the other fields of life. Focusing on just one event is thus often insufficient in remedying the experiences of a particular person.

### 1.4. Grounds of Discrimination

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<sup>15</sup>Benjamin Bowling, 1993.

<sup>16</sup>Idem.

Discrimination can take place on any characteristic attributable to a human being. These include inherent and rather stable characteristics such as ethnic origin and sex, as well as acquired and relatively changeable characteristics such as political and other opinions. In different times and places different grounds have been identified in law and politics as meriting particular attention, and even nowadays there are differences in the recognition of the experiences of different vulnerable groups in different countries.<sup>17</sup> One can identify a certain chronological evolution in relation to which grounds have been recognized and when, both nationally and internationally. In many national jurisdictions sex and racial or ethnic origin have traditionally enjoyed attention and protection, while other grounds, such as disability, age and sexual orientation have come aboard only later on. This expansion of the recognition of grounds of discrimination can be read as a symbolical recognition of the equality of these previously largely marginalized groups and as an attempt to facilitate the inclusion of these groups into the general society.

There are important differences between groups vulnerable to discrimination, also with respect to the forms and consequences of discrimination they face. Intentional discrimination often targets *visible minorities or groups*. “Racial” or ethnic origin, age and sex are usually highly visible traits, which means that these traits can easily be used for the purposes of judging and sorting people.<sup>18</sup> With respect to disability, there is huge variability among impairments: not all forms of disability are visible, and a distinction between hidden and visible disabilities may be made. Traits such as sexual or political orientation, on the other hand, are mostly “invisible” as such, but they may be *made* visible. Especially in the case of sexual preferences, staying invisible may not, however, often be a viable choice, as the stress of hiding may turn out to be as problematic as the feared responses from disclosure.<sup>19</sup> Age, for its part, is a special category in that aging is experienced by all and becoming old by most members of the society.

It would not make sense to try to articulate typical forms of discrimination experienced by each group, although some generalizations could undoubtedly be made. This is because the whole point in recognizing intersectional and multiple forms of discrimination is the fact that as different groups, sub-groups and individuals suffer different and particular kinds of discrimination, one should avoid making too general descriptions of discrimination. However, studying *practical, real-life experiences* from discrimination provides very useful information and insight of these diverse phenomena, and hence they will be discussed later on in chapter 4. This observation emphasizes the importance of qualitative information in addition to, or perhaps even instead of, quantitative data, when dealing with discrimination.

The consequences of, and reaction to, discrimination also vary from group to group, and from individual to another.

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<sup>17</sup>Differences in this respect exist also between international governmental actors. For instance, the explicit inclusion of sexual orientation into the listings of prohibited grounds of discrimination has not mustered broad enough consensus within the UN, while sexual orientation has explicitly been addressed by the EU e.g. in its Directive 2000/43/EC on the implementation of the principle of equal treatment in employment.

<sup>18</sup>Cf. European Womens’ Lobby (EWL), 2001.

<sup>19</sup>Cf. Adrienne Asch, 2001a.



Discrimination is about exclusion and subordination, and it effectively conveys an explicit message of difference and inferiority of the victim.<sup>20</sup> Given this humiliating nature of discrimination, victims often wish to get over with the experience as soon as possible, and may not file a crime report to the police.<sup>21</sup> Studies carried out in the field of racial discrimination provide also direct proof of this humiliating nature of discrimination, as it has been found that experiences from racism and racial discrimination have a direct bearing on the psychological well-being of ethnic minorities: such experiences have been found to increase symptoms related to anxiety and depression.<sup>22</sup>

Victims of discrimination cope with their experiences in a variety of ways. Some may engage in what could be called *denial of discrimination*. They may explain the incident in terms other than discrimination, and may even blame themselves for what happened.<sup>23</sup> Others may adopt a *strategy of accommodation*, and seek to avoid future situations involving the possibility of discrimination. Some may, due to the humiliating nature of discrimination, wish to *lose remembrance* of the incident as soon as possible. Yet others choose to *challenge the act of discrimination*, and take their case to the court, make it public or take other such action.

People in different groups are also differently positioned with regard to the support they are able to get in order to cope with discrimination. This has not only to do with the fact that some ethnic groups and women have rather strong international and national organizations backing them up, while others do not. There are differences also in familial support and understanding of the dynamics of discrimination. For instance disabled people and those with non-dominant sexual preferences are usually not born into families where the other family members share the same trait, unlike people belonging to, for instance, non-dominant ethnic communities.<sup>24</sup>

### 1.5. Prejudices, Attitudes and Behavior

*Prejudice* refers to unfairly or unreasonably formed opinions and feelings against a group of people. It has to do with the absence or lack of needed information and facts: as people usually want to come up with a justification for their action or inaction in a given situation, then in a situation in which a person does not possess the needed facts or other information, he or she may base his or her judgement on an assumption or a negative emotion. These assumptions and emotions, forming an attitude, may be called prejudices if they are unfairly or unreasonably formed, e.g. if they represent faulty or incorrect generalizations or rigid and inflexible attitudes. Scholars disagree to an extent on how to best describe prejudices as a form of an attitude.

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<sup>20</sup>This has also been recognized e.g. by the UN Committee on the Elimination of Racial Discrimination, which notes in its General recommendation 26 (24/03/2000) that “the degree to which acts of racial discrimination and racial insults damage the injured party's perception of his/her own worth and reputation is often underestimated.”

<sup>21</sup>According to international comparative studies, only 2,5 % - 25 % of victims of racial discrimination report the incident to the police. Björger, 1997.

<sup>22</sup>Inga Jasinskaja-Lahti & Karmela Liebkind, 1997, pp.59-60.

<sup>23</sup>John Griffiths, 1999, p. 317.

<sup>24</sup>Adrienne Asch, 2001b.

Prejudices are related to negative stereotypes and negative feelings towards a group or a person. The negative stereotypes and feelings reinforce each other, and result in the maintenance of social distance, which again serves to maintain the negative stereotypes and feelings.

The relationship between attitudes (such as prejudices) and behavior (such as discrimination) is a complicated one.<sup>25</sup> The starting point is that there is a causal connection between attitudes and behavior: prejudices arguably determine the overall tendency of a person to discriminate, but cannot predict specific single acts with much accuracy.<sup>26</sup> One should not assume a 100% correlation between attitudes and behavior, however: some people may be biased but nevertheless act fairly, while some people may discriminate but not be biased. Very much depends on the specifics of the situation: how socially acceptable or unacceptable it is to discriminate, are there any “costs” to discrimination (probability of legal proceedings or other social condemnation) and is there “surveillance” i.e. other people around. On a very general level it nevertheless holds true that there is a positive correlation between attitudes informed by prejudices and stereotypes on the one hand, and discriminatory action on the other, i.e

Attitudes (stereotypes, prejudices) -----> Action/Inaction (discrimination)

The same may also apply the other way around, i.e. a behavioral pattern, such as the maintenance of social distance, can influence prejudices.<sup>27</sup> It is however probable that *forced* action or inaction may not have such an effect, i.e. lead to a change of attitudes. This means that if a person is constrained e.g. by means of law from discriminatory action, his or her possibly biased attitudes may be left intact. This is why general awareness raising is needed *in addition* to legal measures: legal sanctions are important and necessary in curbing discrimination, but other measures are needed to effectively combat the motives underlying discrimination.

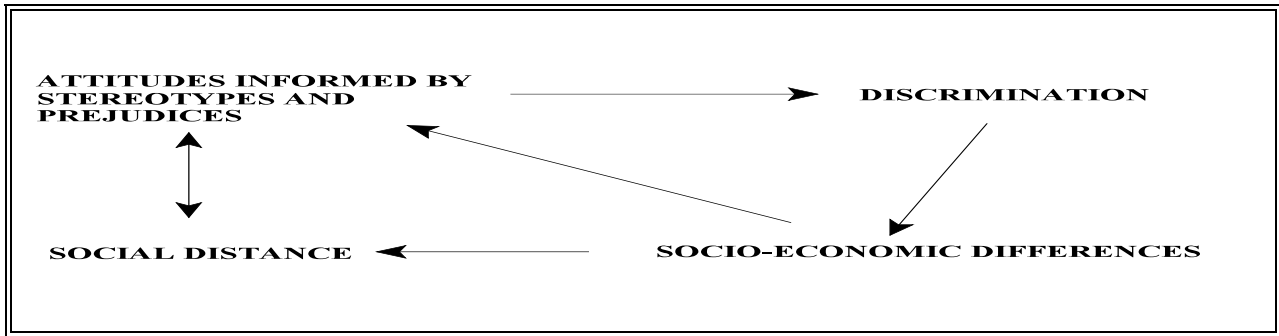
Disadvantages, in general, tend to reinforce each other and accumulate. When these processes of disadvantage take place for a longer period of time and in a large scale, one enters a situation in which the negative attitudes (including stereotypes and prejudices) towards a group (such as ethnic, religious or sexual minorities, the disabled, the women or the young/old) and events of discrimination against the members of that group start to reinforce each other. This situation may be called the *vicious circle of discrimination*, and can be illustrated as follows:

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<sup>25</sup>See John Duckitt, 1994, p. 26 in particular.

<sup>26</sup>Ibid, p. 41.

<sup>27</sup>Ibid, p. 42.



In addition to the interconnectedness of attitudes, discrimination and social distance, as discussed above, one has to recognize the causal connection between attitudes, discrimination *and* socio-economic differences. Discrimination by its very nature leads, on the long run, to socioeconomic differences between groups of people. The general public is however often blind to the real causes of these differences, and tend to use these differences as a proof of inferiority or some other defect on the part of the victims (*blaming the victim* -phenomenon), thus reinforcing existing stereotypes, which reinforce discrimination, and so on. In addition, socio-economic differences between groups of people tend to increase social distance as people belonging to different economic and social groups tend to have less voluntary interaction. A vicious circle of discrimination has been formed.

It should also be noted that there is a connection also between discrimination and social distance, given that it is usually psychologically “easier” to discriminate against people that one is not familiar with.

## 2. Multiple, Compound and Intersectional Discrimination

Historically, discrimination on the grounds of sex, ethnic or racial origin and so on, have been understood as separate issues, though they have largely been treated in a parallel way. Lately, however, it has been noted that particular situations involving discrimination or some other form of disadvantage may involve discrimination based on several grounds at the same time. An African American may be a woman, a woman may be a lesbian, a lesbian may be disabled, a disabled may be old, and one person can be all of this at the same time: an old disabled African American lesbian, who may experience very complex forms of discrimination.

Intersectional analysis first arose out of the experience of African American feminists in the USA, who noted that the traditional understanding of *racial* discrimination did not include experiences that were *particular* to African American *women*. From there, the understanding of intersectional analysis has evolved into an understanding that all grounds of discrimination may interact with each other and produce specific experiences of discrimination.

It is the definitional issues that we will now turn to.

### 2.1 Conceptual Questions

The above mentioned situation, in which several forms of discrimination interact with each other, has been conceptualized in several different ways, and there is currently considerable terminological ambiguity. Among the concepts that have been used to describe this situation are: “multiple

disadvantages”<sup>28</sup>, “multiple discrimination”<sup>29</sup>, “double marginalization” and “triple marginalization”, “intersectional discrimination”, “intersectional subordination”<sup>30</sup>, “intersectional vulnerability”<sup>31</sup>, “compound discrimination”, “cumulative discrimination”, “multidimensional discrimination”<sup>32</sup>, “interactive discrimination”, “double discrimination” and “triple discrimination”. In the academic circles the concept of “intersectional discrimination” is clearly then most often recurring term, while in the field of human rights the most often recurring term is “multiple discrimination”.

As will later be discussed in detail, the phenomenon at hand refers to several different types of situations:

First, a situation in which one person suffers from discrimination on several grounds, but in a manner in which discrimination takes place on one ground at a time. This is basically a recognition of the accumulation of distinct discrimination experiences. It is suggested here that the first type of discrimination should be termed *multiple discrimination*.

Second, a situation in which discrimination on the basis of two or more grounds add to each other to create a situation of *compound discrimination*.

Third, a situation involving discrimination which is based on several grounds operating and interacting with each other at the same time, and which produces very specific types of discrimination. This is called *intersectional discrimination*.

All of these types of discrimination would best be jointly called intersectional discrimination.

*Multiple discrimination*, as defined above, should thus be taken to describe the phenomenon in which one person is discriminated against on several different grounds at different times. A disabled woman may be discriminated against on the basis of her gender in access to highly skilled work, and on the basis of her disability in a situation in which a public office building is not accessible to persons with wheelchairs. Multiple discrimination is an apt term to describe this kind of situation, as the term “multiple” has mathematical connotations, and as this type of situation is one in which a person suffers discrimination on the basis of e.g. gender + disability + age. Exactly because of these mathematical connotations, the term “multiple” (or double, triple and so on) should *not* be used in connection with situations in which different grounds operate simultaneously and not separately. So, for instance, a disabled woman may experience specific forms of discrimination, in which discrimination on the grounds of being a woman and a disabled person interact, and which should not be called multiple but intersectional discrimination.

This is because in some situations discrimination on the basis of e.g. gender and origin are inseparable in the concrete lives of people to the extent that simplistic mathematical equations are completely out of question; for instance it would be a mistake to assume that

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<sup>28</sup>See e.g. Commission on the Status of Women, p. 45.

<sup>29</sup>See e.g. CEDAW Committee, A/56/38.

<sup>30</sup>See e.g. UN Special Rapporteur on Violence Against Women, 2001, p. 3.

<sup>31</sup>See e.g. Kimberle Crenshaw, 2000; UN Special Rapporteur on Violence Against Women, 2001, p. 39.

<sup>32</sup>See e.g. African American Policy Forum.

“typical experience of a woman in the USA” + “typical experience of an African American in the USA” = “typical experience of an African American woman in the USA”.<sup>33</sup>

*Compound discrimination* should be taken to refer to such a situation in which several grounds of discrimination add to each other *at one particular instance*: discrimination on the basis of one ground adds to discrimination based on another ground to create an *added burden*. There can be two or more types of discrimination in play at one given situation. An illustrious example would be, to continue along the intersection of origin and gender, a situation in which the labor market is segregated on multiple basis: some jobs are considered suitable only for men, and only some jobs are reserved particularly for immigrants. In such a situation the prospects of an immigrant woman to find a job matching her merits are markedly reduced because of compound discrimination.<sup>34</sup>

*Intersectional discrimination*, in its narrower sense, should be taken to refer to a situation in which there is a specific type of discrimination, in which several grounds of discrimination interact concurrently. For instance, minority women may be subject to particular types of prejudices and stereotypes. They may face specific types of racial discrimination, not experienced by minority men. Crucial to this kind of intersectional discrimination is thus the specificity of discrimination: a disabled woman may face specific types of discrimination not experienced by disabled men or by women in general. One example of such discrimination would be unjustified subjection of disabled women to undergo forced sterilization, of which there is evidence around the world: this kind of discrimination is not experienced by women generally nor by disabled men, not at least anywhere near to the same extent as disabled women.

This *specificity* of intersectional discrimination has been emphasized e.g. by Kimberle Crenshaw, who has noted that the “... intersection of racism and sexism factors into Black women’s lives in ways that cannot be captured wholly by looking at the race or gender dimensions of those experiences separately”<sup>35</sup>.

An interesting example of intersectional reasoning is evident in the following case before a US court, which concerned an Asian woman:

“Where two bases for discrimination exist, they cannot be neatly reduced to distinct components. Rather than aiding the decisional process, the attempt to bisect a person’s identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences.

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<sup>33</sup>Fredman & Szyszak write: “The cumulative effect of race and sex discrimination is not simply additive. Black women experience problems not shared by either white women or black men”, and provide an example of such a situation: “for instance, in contrast to white women, black women view abortion as a coercive mechanism, and not as a question of autonomy”. Fredman & Szyszak, 1993, p. 221. Quite interesting in the above passage is the way in which the universality of experiences of all women is denied while the universality of experiences of Black and respectively white women is supposed instead.

<sup>34</sup>See UN Special Rapporteur on Violence Against Women, 2001, p. 10, and Kimberle Crenshaw 2000.

<sup>35</sup>Kimberle Crenshaw, 1991, p.1243.

Like other subclasses under Title VII, Asian women are subject to a set of stereotypes and assumptions shared neither by Asian men nor by white women.<sup>36</sup>

One might also create a fourth category: that of *overlapping discrimination*. This would refer to a situation in which a person is discriminated against in one situation on several grounds that operate independently. If, for instance, a firm has a (hidden) policy of not hiring immigrants or disabled people, a disabled immigrant job seeker is discriminated against on two grounds operating simultaneously but individually. In such cases where the employer is aware of the existence of both of these traits it is patently difficult, if not impossible, to establish the ground on which that person was discriminated against. Yet in other cases one factor may be the decisive factor in which case the employer never gets beyond this first factor to take note of the other factor. It is enough that the person is an immigrant, for instance, and that he is disabled may or may not add to the decision not to hire that person.

All these types of discrimination would be best called intersectional discrimination, to the extent there is a need for an overarching term. This is because the term is already rather well established, and perhaps the best captures the idea of the phenomenon as a whole. However, given that the concept of multiple discrimination is rather exclusively used in the field of human rights, it may for practical reasons be necessary to use that concept as an overarching one in that specific context if conceptual accuracy is not needed - at least until the time that a new conceptual framework is adopted.

The definitional issues, however, do not stop there. Should we speak of *discrimination*, or should we instead speak of e.g. intersectional, compound and multiple *disadvantage*, *subordination* or perhaps *vulnerability*? This question arises because the concept of discrimination is used in different ways, and its use may sometimes be somewhat misleading. As discussed above, discrimination refers primarily to the making of an unjustified distinction, i.e. to adverse treatment on the basis of e.g. sex, age, origin etc. Intersectional discrimination *is* ‘discrimination’ in this sense, as it is about unjustified distinctions and adverse treatment on forbidden grounds. But both in every-day language, as well as in law, one does not necessarily label something as ‘discrimination’ even if there is an element of discrimination involved. The killing of Tutsis by Hutus in Rwanda, though it involved adverse treatment on the basis of ethnic origin, was not, and should not, be described and classified as “racial or ethnic discrimination”, but as “genocide”. Similarly, phenomena such as trafficking and rape during armed conflicts are often mentioned as prime examples under the rubric of intersectional or multiple discrimination, while there is much else than just discrimination involved. For instance, trafficking, along with its various side-phenomena, violates the right to life, the right to dignity and security, the right to just and favorable conditions of work and the right to health.<sup>37</sup> There is no reason to reduce trafficking to “mere” discrimination.

None of the suggested terms is able, because of different reasons, to be descriptive, unambiguous and wide enough in application to be useful for our purposes. Thus the concepts of discrimination, subordination and vulnerability will all be used in this study, depending on the particular context at hand. For all practical purposes, when academic preciseness is not needed, “intersectional discrimination” should perhaps be used, as the usage of the concept has to a certain degree already become customary. But as a general recommendation, one should always use specific concepts (such as “genocide”) where they exist, and use the intersectional terminology for analytical purposes only. Though intersectional discrimination is a very useful notion for the purposes of identifying and

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<sup>36</sup>Lam v. University of Hawaii, 40. F.3d 1551, 1562 (9th Cir. 1994).

<sup>37</sup>UNHCHR, 2000, p. 8;

combating specific forms of discrimination, the purpose should not be to create such a new overarching category that would *replace* the existing *specific* categories of human rights breaches.

## 2.2. Closer Analysis of These Phenomena

Persons disposed to *multiple discrimination* merit major attention, simply because of the frequency of discrimination they experience or are in danger of experiencing: if disabled people are discriminated against more likely than able-bodied people, and those belonging to ethnic minorities are discriminated against more likely than those belonging to the majority, then it is also likely that a disabled person belonging to an ethnic minority is discriminated against *more often* than those who are “only” disabled or who belong to a minority ethnic group. The fact that a person faces multiple discrimination does not in itself preclude the possibility that he or she faces also compound and/or intersectional discrimination: it is actually highly likely that it so happens. Multiple discrimination may involve different types of discrimination, both intentional and unintentional.

*Compound discrimination*, the situation in which the effects of discrimination on different grounds merge to create a unique predicament, also deserves major attention, as the resulting situation of compound discrimination is very intense in nature. This can be observed if we keep in mind the example given above in relation to the labor market: if an immigrant woman faces a “segregated” labor market which has specific “women’s jobs” and “immigrant’s jobs”, the position of an immigrant woman is very precarious. Compound discrimination may involve in itself elements from both intentional and unintentional discrimination.

*Intersectional discrimination*, in its narrower sense, is the key issue here. In such situations it is often markedly difficult to analyze whether a person was discriminated against because of, for instance, his or her gender, origin, age or disability. This is because different types of discrimination often intertwine in the way noted by the Combahee River Collective: “we...often find it difficult to separate race from class from sex oppression because in our lives they are most often experienced simultaneously”<sup>38</sup>. Not only is it difficult to categorize or define intersectional experiences, but as such specific types of discrimination in a manner fall outside the established categories and established expectations of the ways the “established victim groups” face discrimination, intersectional discrimination often remains hidden - the “system” simply does not anticipate and hence recognize such discrimination. The reasons why intersectional forms of discrimination have so far remained rather invisible will be discussed in detail elsewhere in this study, especially in chapter 3.

Crenshaw, speaking of the intersectioning of “race” and gender, has noted that “neither the gender aspects of racial discrimination nor the racial aspects of gender discrimination are fully comprehended within human rights discourses”<sup>39</sup>. By this she means that the specificity of the experiences of minority and immigrant women have been excluded both when discussing gender discrimination and when discussing racial discrimination. This analysis could be extended to any subgroup facing intersectional discrimination. This exclusion follows mainly from the fact, that simplification and generalization is needed in order to render various complex real-life phenomena (such as discrimination) more understandable and manageable. However, these processes of simplification and generalization serve only to recognize *typical* manifestations of that particular phenomenon, meaning that the experiences of a subgroup are not included into the cluster of typical experiences of the group as a whole.

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<sup>38</sup>Cited in Fredman & Szyszak, 1993, p. 1

<sup>39</sup>Kimberle Crenshaw, 2000.

Hence, along the lines of analysis developed by Crenshaw, one might from a particular viewpoint, say the promotion of women's rights, speak of over-inclusion and under-inclusion of intersectional issues in a given category. *Over-inclusion* would refer to a situation in which a particular practice, containing intersectional discrimination on the basis of both "racial" origin and gender, is labeled and understood only as "gender discrimination" and not as gender *and* racial discrimination. *Under-inclusion* in the same situation, again from the point of view of women's rights, would refer to a situation in which a practice is labeled and understood only as "racial discrimination" and not racial *and* gender discrimination.<sup>40</sup> This observation emphasizes the need to analyze all kinds of discrimination in order to examine their causes and consequences in greater detail.

One crucial feature linked to both compound and intersectional discrimination is that the conjoining of two or more grounds making a person vulnerable to discrimination may have a so-called *trigger effect*. A person might not in general discriminate against women or immigrants, but the combination of these two factors may trigger discriminatory behavior.

### 2.3 Structural and Other Types of Intersectional Discrimination

As discussed above, discrimination may be direct, indirect or institutional in nature. Discrimination may also be intentional, unintentional or structural. The implications of the term "structural" will be discussed later on in detail, but its use arises out of the observation that disadvantage is often not intentionally produced, in the sense that somebody wanted it, nor need it necessarily thus be unintentional, in the sense of having been completely randomly produced.<sup>41</sup> Structural discrimination is more about the failure to recognize the effects of a certain policy or practice with respect to a particular group, especially if that group is already in a vulnerable position socially.<sup>42</sup> Writes Crenshaw: "intersectional subordination need not be intentionally produced: in fact, it is frequently the consequence of the imposition of one burden that intersects with preexisting vulnerabilities to create yet another dimension of disempowerment".<sup>43</sup>

Intersectional discrimination, in its wider meaning, can result from any combination of these various types of discrimination. If, for instance, halal food is not available for elderly Muslims in a public institution for the care of the elderly in a non-Muslim country, we can see that there is direct discrimination, which may be intentional or unintentional, on the basis of religion, and also what we might call structural discrimination on the basis of age, because the society has not seen to it that people adhering to different religious beliefs are equally treated in public institutions for the elderly. The elderly in such a situation, while treated equally before the law, are not granted the equal protection of the laws.

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<sup>40</sup>See UN Special Rapporteur on Violence Against Women, 2001, p. 9, and Kimberle Crenshaw, 2000, pp. 4-5.

<sup>41</sup>See John Powell, 2000.

<sup>42</sup>Structural discrimination comes close to what was previously defined as institutional discrimination. However, these two concepts are not completely interchangeable, primarily because "institutional" refers especially to the use of public power, while "structural" may be something inherent e.g. in the labor market.

<sup>43</sup>Kimberle Crenshaw, 1991, p. 1249



Structural discrimination refers to a situation in which a person faces disadvantage or heightened vulnerability because of the functioning of the society and the specific communities the person is a member of. Crenshaw, writing on the experiences of minority women, notes that:

“Intersectional discrimination is particularly difficult to identify in contexts where economic, cultural or social forces quietly shape the background in a manner that places women in a position where they are then impacted by some other system of subordination. This structural backdrop is often rendered invisible because it is so common or widespread that it appears to simply constitute a natural - or at least unchangeable - fact of life. The effect is that only the most immediate aspect of discrimination is noticed, while the background structures remain obscured”.<sup>44</sup>

One example of this kind of structural intersectional discrimination would be the Dalit (“untouchable”) women in India, who face diverse kinds of harassment and breach of their rights, including rape, by those belonging to “higher castes”, particularly while carrying out of their responsibilities of acquiring water in public places. Here the gendered set of responsibilities positions these women to absorb the consequences of caste discrimination in the public sphere.<sup>45</sup> The Dalit women seldom report their experiences to the police; again, the reason is mainly structural, as nonreporting is related to the fact that the Dalits are economically dependent on the other groups, and cannot “afford” risking their relations with them: “the odds are stacked against them”.<sup>46</sup>

The next real life example deals with structural, compound and intersectional discrimination and disadvantage. This example has been chosen, not because it represents the “worst” case possible scenario (which it does not), but because it aptly illustrates how the “economic, cultural and social forces quietly shape the background”, as described by Crenshaw:

“Elizabeth came to California from Vietnam through the Amerasian Homecoming Act of 1988. Because of her limited English skills the only job she could find was in a restaurant where she faced racial and sexual discrimination. Under the California welfare reform program Elizabeth was required to take the first job she could get, but did not provide her the training or language classes necessary for successful and sustainable employment. Because of her limited income she cannot afford language classes and this has prevented her from finding a job that would pay a living wage for her and her two young children”.<sup>47</sup>

Another example of structural and compound discrimination and disadvantage would be the situation of a woman who immigrates to a given country in order to marry a local citizen or a person with a permanent residence status. According to immigration laws and marriage fraud provisions existing in several countries, such a person has to stay in the new country for a certain time (e.g. two years) and remain “properly married” before she can apply for a permanent status. If the woman then becomes a

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<sup>44</sup>Kimberle Crenshaw, 2000.

<sup>45</sup>Kimberle Crenshaw, 2000.

<sup>46</sup>Cf. UN Special Rapporteur on Violence Against Women, p. 17.

<sup>47</sup>Women’s Institute for Leadership Development for Human Rights.

victim of domestic violence, her options are either to divorce and get subsequently deported, or to suffer continuing violence. Faced with such a choice, many women choose the latter.<sup>48</sup>

A third example of structural intersectional subordination could be the following one: Suppose a state engages itself in structural adjustment policies and withdraws resources from the care of the young, old, disabled, etc. The consequences of such an engagement are felt most heavily by women, given that according to traditional gender roles women are allocated care taking activities. In addition, class structures, i.e. economical status, determines which women can afford having this work performed by the other women. The effects of such a policy change is most heavily felt by the economically challenged women.<sup>49</sup>

In connection with structural discrimination, one might speak of risk factors, such as non-dominant “racial” or ethnic origin, religion, gender, disability and sexual orientation, which predict the probability and forms of discrimination and disadvantage one is likely to suffer. The concept of *social location* is most insightful for our analysis here, as it adequately captures the role of these risk factors.

People living in a particular society can be represented in various ways, and we might for example draw a political map - in its most basic form, it would be a line from left to right both concretely and symbolically - and situate all people living in that society along that line. Similarly, we might draw a multidimensional map, where every member of the society would be situated according to his or her sex, age, health status, sexual preferences, social class and so on. The specific intersection of one’s traits and statuses thus determines his or her specific *social location*. Given that we know of the way in which some traits (in this case: “risk factors”) serve as basis of discrimination and subordination, we could determine from the *social location* where an individual is situated his or her overall degree of vulnerability to different kinds of discrimination. The social location affects, and is also affected by, such structural issues as education and employment, which shape the capabilities of an individual and the range of options a person has in deciding what kind of life to lead. It also has to be noted that people experience race, class, gender, and sexuality differently depending upon their social location, and that also other people perceive them differently depending on their location.<sup>50</sup>

For instance, if an immigrant with a darkish complexion tries to access a restaurant in a Northern European country, and behaves and dresses as he normally does, and possibly even tries to speak the official language of the country, it is highly more likely that he will not be let in, than if he pretends to be a foreign investor or business person temporarily visiting the country, and dresses formally and speaks English: this is because being “immigrant” is associated with negative issues such as low socio-economic status, while being a “foreign businessman” has exactly the opposite association: the assumed social location is different.<sup>51</sup>

The social location is not constant, but changes over time. For instance, recession tends to hit hardest those who already are disadvantaged, changing the social map. This is especially because of the tendency of disadvantages to cumulate. Poverty lessens one’s *de facto* possibility to acquire higher education, which limits one’s employment opportunities, which again is linked to the lack of economic

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<sup>48</sup>Kimberle Crenshaw, 1991, p. 1247.

<sup>49</sup>Kimberle Crenshaw 2000.

<sup>50</sup>Unit 1.

<sup>51</sup>This observation is based on the field work carried out by the author of this study.

success, which in turn e.g. limits one's access to health care especially if the health care system has been privatized, and so on. Besides poverty, also illiteracy is a major multiplier of disadvantage: rights which an individual may claim are no good, if one is not aware of them or if one cannot file complaints and other communications in the first place because of e.g. illiteracy. There are also other situations in which a person is socially situated in a way that he or she cannot *de facto* exercise his or her rights: there are also in modern democratic countries especially women of foreign origin, who have married to a local man, who by means of different kinds of subordination keeps her ignorant of her rights and excluded from the general society: in effect, she has no possibility to claim her rights, and is also "invisible" to the system of human rights. The same situation may also actualize as a result of cultural and linguistic barriers.

The idea of social location is useful for our analysis, as it specifically addresses the manner in which racism, sexism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of men and women, ethnic and other groups.<sup>52</sup> It also captures very well the structural role of many types of disadvantage and subordination, and allows us to better identify and analyze potential problem situations. This type of an approach is more advanced than the traditional approach to vulnerability and discrimination, which has proceeded along one single unidimensional line (such as sex) at a time, separated from the other dimensions of disadvantage.

### 3. Two Major Reasons Why Intersectional Discrimination has Hitherto Remained Hidden

While one probably could find several reasons for the fact that intersectional discrimination, in its wider sense, has so far remained largely hidden, two eminent reasons can be identified. These reasons are constitutive to the whole discussion on intersectional discrimination, and stand behind the other reasons. These two are a) the hitherto essentialist understanding of identity, and b) the exclusionary tendencies inherent in the formation of groups and their interests. These two factors will briefly be discussed in the following, as the nature and dynamics of intersectional discrimination cannot be properly understood without such a discussion.

#### 3.1 Narrow Understanding of Identity

Modern understanding of identity distinguishes between the social self and the personal self. The latter, the personal self, which is in focus here, is projected in the modernist understanding "as unitary, stable and transparent" and as existing prior to experience.<sup>53</sup> This understanding could also be called an essentialist understanding of identity, as it presumes that the "self" has an essence which is rather unchangeable over time. This essentialist and unitary understanding of identity also tends to reduce people into few traits that are thought to be somehow constitutive to the identity, especially if these traits "deviate" from the majority traits in some way, especially if one was gay, immigrant, disabled and so on.

Lately this understanding of identity has come under severe criticism, and recently an understanding which projects the self in antiessentialist terms as *situational* and *intersectional*, has gained significant support, also among anthropologists, as it has become noted that "in all cultures, people can be

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<sup>52</sup>See UN Special Rapporteur on Violence Against Women, p. 8.

<sup>53</sup> John Powell, 2000.

observed to project multiple, inconsistent self-representations that are context-dependent and may shift rapidly”.<sup>54</sup>

The intersectional self is descriptive of all individuals, not just those who suffer from multiple systems of oppression: we all have a sex, ethnicity, age, health status, along with literally endless array of other traits, affiliations, positions and opinions that we use to define “who we are”. The ‘self’ is no longer necessarily projected as a unitary whole: it is acknowledged that one person can be both a feminist and an Islamist at the same time, for instance. The intersectionality of the self also acknowledges that the traits that “define us” are multiple, and not beyond both internal and external stimulus and experience.<sup>55</sup> The theory of intersectional self “presumes that identity is marked by many intersecting traits and that the implications of this cannot be understood by simply adding these traits together”, so mathematical equations are out of question (e.g. woman + Sami = a Sami woman). In addition, it is not enough to recognize how different categories intersect to create a sense of the self, but it is vital to examine also how these categories themselves are created and maintained.<sup>56</sup>

The situational character of identity was illustratively put by Zora Hurston, who wrote that “I felt most colored when I was thrown up against a sharp white background”.<sup>57</sup> A person with a dark complexion certainly feels less colored in Nigeria than in Siberia. Another illustrative example of the situational character of identity could be this: when women participating in a seminar in the US were asked to pick out two or three words to describe who they were, none of the white women mentioned their “race”, but all of the women of color did.<sup>58</sup> This is because the white women living in a predominantly white society had not *experienced* “race” as a significant factor in their life, unlike the Black women. Furthermore, a person belonging to an ethnic group which is traditionally viewed as privileged in one country - say, Tutsis in Rwanda - finds him- or herself as belonging to a disadvantaged ethnic group in the West: this has an effect on the way one understands him- or herself, and is one more example of the situationality of identity.

As a consequence, one can note that the recognition of the existence of intersectional discrimination in the field of human rights has concurred with the recognition of the intersectional identity.

### 3.2. Narrow Understanding of the Group and its Interests

Political demands of millions speak more powerfully than the pleas of a few isolated voices.  
- Kimberle Crenshaw<sup>59</sup>

The most important factor determining why intersectional discrimination and subordination have in the past remained unrecognized has to do with the way in which different advocacy and identity-based

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<sup>54</sup> John Powell, 2000.

<sup>55</sup> Idem.

<sup>56</sup> Idem.

<sup>57</sup> Cited in Idem.

<sup>58</sup> Angela Harris, 1990, p. 604.

<sup>59</sup> Kimberle Crenshaw, 1991, p. 1241.

groups and their interests have been, and are being, formed. This has to do with two things: first, the claims and interests of a specific subgroup, often constituting a minority within a minority, are often excluded within the broader group; second, different issues, such as gender, disability and 'racial' or ethnic origin have been considered and advocated separately, and the different single-issue movements have kept considerable distance from each other, and consequently the way different traits interact has remained unrecognized. One of the reasons behind the fact that the different groups and movements, e.g. the anti-racist movement and the feminist movement, have not joined forces but have kept considerable distance, is probably the fact, that their agendas and interest have been thought to be completely different,<sup>60</sup> and the other camp has not been seen as a powerful ally, as both groups have still been striving for recognition and empowerment, and have thus been in a somewhat vulnerable position.

The above mentioned distance between different groups and movements, as well as the silencing of the dissident voices in a group, boil down to one thing: narrow and essentialist understanding of group formation and group interest. As will be discussed later in detail, for instance women's experiences have in the past been represented as if they were universal and hence the same for all women, monolithic and independent of social, political and economic circumstances, as well as separable from ethnic origin, health, age, sexual orientation and so on. The same goes to ethnic groups: they too have usually been represented in essentialist terms, as clearly bounded entities in which each member of that group shares the same essential interests and experiences with all the others, and no significant internal divisions on the basis of e.g. gender are assumed. This has resulted in a situation in which any woman, or respectively any member of a certain ethnic community, has been able to speak in the name of all from the same group: this serves to homogenize the interests represented in the name of that group. Below a critique, often advanced by e.g. contemporary multicultural feminism, of both mainstream feminism and mainstream anti-racism movement will be explored.

The early feminist theorists felt that they could "isolate" the variable of sexism from the variable of racism, and so better understand it.<sup>61</sup> They engaged themselves into what can in retrospect be labeled as "essentialism", and presumed that there was a unitary, universal and essential women's experience, which was then politicized for advocacy purposes.<sup>62</sup> This starting point, the blindness to differences within womanhood, and the consequent blindness to differences in the experiences and interests of women, inevitably finally led, especially in the USA, to accusations that feminism "overlooks 'racial identity' and fails to recognize that women from Black and ethnic minorities experience various forms of oppression simultaneously".<sup>63</sup> Others argued, and some still do, that feminism has no place in 'communities of color', because these issues are internally divisive, and represent the migration of *white women's* concerns into a context in which they are not just irrelevant but harmful.<sup>64</sup> Crenshaw has

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<sup>60</sup>That the separateness of the "big questions" of each single-issue movement leads to the separateness of "the big answers", has in another context been aptly noted by Bhikhu Parekh: "for women, it is a 'man's world'... for blacks it is a 'white man's world'; for the poor it is a 'middle-class world'; for the working classes it is a world of the 'bosses'; and for the Indian untouchables it is a world of higher castes". Bhikhu Parekh, 1993, p. 262:

<sup>61</sup>John Powell, 2000.

<sup>62</sup>Cf Angela Harris, 1990, p. 585.

<sup>63</sup>Cf. Fredman & Szyszak, 1993, p. 215.

<sup>64</sup>Kimberle Crenshaw, 1991, p. 1253.

summarized this criticism followingly: “while feminism purports to speak for women of color through its invocation of the term ‘woman’, the feminist perspective excludes women of color because it is based upon the experiences and interests of a certain subset of women”.<sup>65</sup> Feminism was, and to a certain extent still is, thus incapable of recognizing the way different traits interact in real life, and hence it is incapable of promoting interests that are specific to e.g. disabled women and minority women, who are thus largely excluded from the movement.

This critique seems to be leading to considerable changes within the feminist movement. The movement has become increasingly interested in older women, disabled women, minority women, lesbians and so forth. A new movement, called Multiracial feminism, has emerged in the US, and it self-consciously seeks to be inclusive of the experiences and interests of all women, especially those with a minority ethnic origin. This positive development has not, however, been universal: when the author of this study discussed with a leading disabled people’s spokeswoman in Finland about the reasons why the women’s organizations in Finland have hitherto not been interested in disabled women and their interests and rights, she had a ready and memorable answer: “they simply do not consider us women”.<sup>66</sup>

In a similar vein, multiracial feminism has criticized the way the African American communities and their interests are represented in the USA. The African American community is often represented as having a stable and homogenous racial group identity supposedly united by linked fate, a shared history and common lived experience.<sup>67</sup> “Race” is most consistently offered, by those inside and outside of these communities, as an explanation or justification for the substantial inequalities faced by them.<sup>68</sup> This assumed “racial” homogeneity, along with the assumed explanatory potential of “race”, have led to a situation in which the *whole* experience of the African American community in the US is being represented through a particular experience of *some* of them. According to analysts, this generalized particular experience is typically that of young African American men. This has been established e.g. by Cathy Cohen, who writes that “the troubling condition of young black men has become the marker by which the condition of the whole group is evaluated”.<sup>69</sup> Indeed, for instance the crime and imprisonment rates of young African American males are very often topical when “African American issues” are discussed in the media and politics. As a consequence, for instance, “the experience of young black women, e.g. from teen-age pregnancies, is portrayed as denying the ‘more’ dire position of young black men”.<sup>70</sup> If it is thus true, as it seems to a great extent be, that the African American community and its interests are being represented by and through a particular set of young African American men, this means that the African Americans living in other intersections are effectively excluded from representing African American interests and experiences: the excluded include old African American men, African American women old and young, not to speak of disabled African American women, gay African American women etc. In this scenario African American men, particularly young African American men, are seen to speak for the whole group, while the others are seen only as speaking for themselves.

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<sup>65</sup>Kimberle Crenshaw, 1991, p. 1245.

<sup>66</sup>Discussion with Pirkko Mahlamäki (from the Finnish Disability Forum) on 30.1.2002.

<sup>67</sup>Cf. Cathy J. Cohen, 1997.

<sup>68</sup>Idem.

<sup>69</sup>Idem.

<sup>70</sup>Cathy J. Cohen, 1997.

The failure of the feminist movement and the African American community to be inclusive and representative of the interests of *all* their members is neither a coincidence nor something arising out of bad will. It has rather to do with the general dynamics of group, and group interest, formation. For all practical and political purposes, groups are always presented, by outsiders as well as insiders, as more heterogeneous than they really are. Simplification and generalization makes the speaking of a group more pragmatic, as it would be very burdensome to keep the true diversity of the group in mind all the time. An agenda, which would represent the true interests of the whole group in all its diversity, would simply be too diverse, unclear and perhaps self-contradictory, and would hence not be viable and would have little chance of political success. The group has to stand, and be seen to stand, united: “United we stand, divided we fall”. But also this coin has its other side: dissident voices, those representing interests that are thought to deviate from the perceived interests of the whole group, are silenced, as they threaten the perceived unity of the group.

At the same time, the group has to differentiate itself from other groups, a factor which serves to emphasize the fundamental importance of belonging to that group. Ability to present the group as separable from other groups is essential, if the group wishes to be able to successfully to present its claims.

These processes of exaggerating out-group differences and minimizing in-group variation, however, lead to a situation in which only some issues are recognized as essential to the group, and some are not: how and which particular (and in that sense private) issues and interests become group issues and interests?

Cathy J. Cohen, who has studied the formation of the “racial” group interests in the US, has noted that “rarely do issues inherently comprise all the elements necessary to be recognized as a community/consensus issue”.<sup>71</sup> Those issues that concern only a subset of a particular group, are not seen as common enough to the members of that group,<sup>72</sup> because only the advancement of issues that are thought to be common for everybody can engender the necessary unity. Intersectional issues are thus excluded almost by definition from the outset. And as intersectional issues, for instance the issues important for minority women, are thus marginal to both the women’s movement and the minority movement, these issues are not recognized by anyone. An issue which *in principle* belongs to all to some extent, often does not *in fact* belong to anyone at any extent.

Ironically, the rhetoric attainment of a unified group thus necessitates exclusion and perhaps what might be called intellectual violence: not only are those who have intersectional concerns represented as if they would not have them, but they are also represented as having another set of interests (“the group interests”), initially foreign to them. This also has a side implication: people identifying with several groups can find out that they are not accepted by *any* group as such, but they are implicitly or explicitly forced to emphasize one aspect of their identity and de-emphasize others, or even made to categorically

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<sup>71</sup>Cathy J. Cohen, 1997.

<sup>72</sup>Writes Cohen: “the cross-cutting issues are presented as affecting only a specific segments of the group and thus, bring into question whether a shared group identity and feelings of linked fate can lead to the unified group resistance or mobilization that has proved so essential in the survival and progress of black and other marginal people”. In the terminology adopted by Cohen “cross-cutting refers to those issues which disproportionately and directly impact or affect only certain segments of a marginal group” i.e to what has been termed intersectional discrimination in this study. Cathy J. Cohen, 1997.

choose between various aspects of their identities. One of the first people to articulate this experience was Audrey Lorde, who noted that:

As a Black lesbian feminist comfortable with the many different ingredients of my identity, and a woman committed to racial and sexual freedom from oppression, I find I am constantly being encouraged to pluck out some one aspect of myself and present this as the meaningful whole, eclipsing or denying the other parts of self.<sup>73</sup>

In the experience of Lorde, she was welcomed and accepted neither by the feminist community, which was predominantly white, nor by the gay community, which also was predominantly white, nor by the African American community, which was predominantly straight. Lorde realized she did not fit into any defined category, but that she fit into multiple categories and there didn't seem to be a definition to accommodate that position.<sup>74</sup> She did not feel that she belonged to these communities and movements, because they did not recognize the intersectionality of her identity, but tried to see her only through one particular trait understood as superior to the others.

But as feminism and anti-racism have failed to consider intersectional identities of women of color, both of them have actually reproduced the power relations the other seeks to combat: colorblind feminism excludes the interests of minority women, as does male-dominated anti-racism movement.<sup>75</sup> And as these strong movements have excluded the intersectional issues, already excluded from the mainstream, intersectional issues have not been recognized, not even by the human rights community.

What then could be the way forward? If groups are always just simplified and generalized categories not representing the whole diversity of their membership, should we give up speaking of such broad categories as “women”, “blacks”, “gay”, “disabled” altogether, and start to talk more specifically of, for instance, “white middle-aged working class straight woman in a democratic state”? Or should we take even more drastic measures and perhaps deny the participation of ethnic groups in different governmental and intergovernmental affairs, given that no-one can claim to represent the full diversity of the group and its interests?

Of course not.<sup>76</sup> Categories are needed, and there may be times and places where it is for pragmatic and political reasons important to talk about these categories as more or less unitary and fixed.<sup>77</sup> And the problem of representation and exclusion of the marginalized can be observed also in all political and governmental life: it is a phenomenon of general order, and not something specific or inherent only to ethnic or advocacy groups. At the same time it should however increasingly be accepted, both inside and outside of particular groups, that the definition of the group and its interests can, and should always be understood to be contested and that these groups and their interests are, at the end of the day,

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<sup>73</sup>Cited in Angela Harris, 1990, p. 586.

<sup>74</sup>Vivian May, 2000.

<sup>75</sup>See Kimberle Crenshaw, 1991, pp. 1243, 1252 and 1282. According to Crenshaw, “both feminist and anti-racist politics have, paradoxically, often helped to marginalize the issue of violence against women of color”, p. 1245;

<sup>76</sup> As noted by Crenshaw, “to say that a category is socially constructed is not to say that that category has no significance in our world”. Kimberle Crenshaw, 1991, p. 1296.

<sup>77</sup>John Powell, 2000; Angela Harris, 1990, p. 586.



inherently tentative, relational and situational.<sup>78</sup> Along these lines it should always be noted that the representation of a group as unitary necessarily involves exclusion, the exclusion most probably of those who already are disadvantaged or vulnerable in some way. These multiply marginalized, and their interests and rights, is exactly what intersectional analysis is all about.

As regards the feminist and anti-racism movements as well as other similar movements, they should accept, recognize and promote the full diversity of the interests of the people that associate themselves with these movements. By now, being already established and recognized to a great extent, they should be able to afford this, as they no longer have to resort to the language of “universally shared interests” and the “unity of the group” that was initially necessary to enhance and ensure group cohesion and solidarity, and legitimacy to speak in its name.

#### 4. Real-Life Examples of Intersectional Discrimination

As has been discussed above in detail, the traditional approach to discrimination has proceeded from broad categories of sex, “race”, ethnic origin, language, disability, age, sexual orientation etc. This kind of “from top to down” -approach has obscured the oftentimes intersectional nature of discrimination, leading to its invisibility. Hence any future analysis of discrimination should proceed from the ground up and observe the real life experiences, instead of looking for conduct that fits the ready-made categories and assumptions. A new, less categorical approach to discrimination and disadvantage needs to be established.

Accordingly, in the following the real life evidence and experience from the intersection of “racial” or ethnic origin and gender is taken a look at. It is not the intention of the author to imply that this specific intersection is more important, complex or worrying than the others. It however reflects the fact there is a void of information on these other intersections, meaning that currently some “intersectional” groups are more disadvantaged and less well recognized than the other groups even *within* studies and movements operating on an intersectional basis. One of the reasons behind the concentration of intersectional analysis on “race” and gender probably has to do with the fact that the discovery of intersectional analysis coincided with two major UN Conferences which concentrated on the rights of women and on racism respectively.

##### 4.1. At the Intersection of Ethnic or “Racial” Origin and Gender: Examples of Out-Group Discrimination

Globally speaking, being a woman or being a member of an ethnic minority is associated with a certain amount of vulnerability. Evidence of this vulnerability tends to be of a structural nature, including statistics on illiteracy, poverty, socio-economic situation, and so on. Poverty and illiteracy could actually be characterized as the supreme structural risk factors.

Minorities and indigenous peoples tend to suffer from social and economic disparity in comparison to national majorities, sometimes as a result of repression and assimilation policies. As regards women, feminization of poverty has taken place: of the 1.3 billion people living in poverty, 70 per cent are women.<sup>79</sup> The literacy rate for women worldwide is 71 %, compared to 83 % for men, and in the

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<sup>78</sup>John Powell, 2000; Angela Harris, 1990, p. 586.

<sup>79</sup>Mary Robinson, 2000.

developing countries it is 39 % for women and 59 % for men,<sup>80</sup> which readily demonstrates the existence of intersectional disadvantage. According to World Health Organization 1 out of 5 women will be a victim of rape or attempted rape during her lifetime, and 20-50% of women experience domestic violence.<sup>81</sup>

The structural intersection of “racial” and ethnic origin and gender is often evident in the labor market. This has to a great extent to do with traditional understanding of the social division of work in which men are expected to be breadwinners and women child bearers, rearers and caretakers.<sup>82</sup> For instance in South Africa the unemployment rate is 11.5 % for men and 14.7 % for women, and when broken down by “race”, 3,9 % for white women and 17.9 % for Black women.<sup>83</sup>

Once in the work life, wage disparities between men and women often intersect with disparities between the majority and the minority.<sup>84</sup> According to a study made in the United States “...for every dollar the average man earned in 1999 in the USA, women earned 72 cents; African American women earned 65 cents; Latina women earned 52 cents; and Asian Pacific American women earned 80 cents”.<sup>85</sup>

Evidence exist also of the way in which intersectional discrimination on the basis of gender and origin has effects on the justice systems. Kimberle Crenshaw demonstrated in her analysis of rape trials that it was highly more likely that the offender was acquitted or that he received a lenient punishment, if the victim was a Black woman and not a white woman<sup>86</sup>. According to Crenshaw, this possibly was because jurors had been influenced by sexualized propaganda according to which Black women are more likely to consent to sex.<sup>87</sup>

African American women constitute the fastest growing prison population in the United States, and many are physically and sexually abused in these institutions.<sup>88</sup> Another kind of intersectional bias on the basis of gender and origin is at play in situations in which decisions to arrest, prosecute, and convict rest upon attitudes that do not take seriously the violence against women of color because it is thought that domestic violence is a typical feature of certain cultures.<sup>89</sup>

#### 4.1.1. Women in Armed Conflicts

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<sup>80</sup>UNIFEM, 2001, para 23.

<sup>81</sup>UNIFEM, 2000a.

<sup>82</sup>Cf. Fredman & Szyszak, p. 218.

<sup>83</sup>Georgia Tsaklanganos, 2001.

<sup>84</sup>UNIFEM, 2001, para 27.

<sup>85</sup>Women’s Institute for Leadership Development for Human Rights.

<sup>86</sup>Kimberle Crenshaw, 1991, p. 1269.

<sup>87</sup>Kimberle Crenshaw, 2000.

<sup>88</sup>Special Rapporteur on Violence against Women, 2002, p. 14.

<sup>89</sup>Women’s Institute for Leadership Development for Human Rights. These kinds of culturalist excuses are in fact a manifestation of *blaming the victim* -phenomenon.

Civilian casualties mount to more than 90 % of the victims of contemporary armed conflicts between and within nations.<sup>90</sup> Civil strife in particular has come to target women and children more than before and it is being increasingly acknowledged that these groups face particular forms of humiliation and breach of their rights during such conflicts.

Rape and other forms of sexual violence during armed conflicts have lately frequently been used as weapons of war and as a part of a strategy to undermine the military morale of the enemy. As sexuality and honor are often seen as related to each other, rape and sexual violence in conflict situations are seen as a way to symbolically destroy the honor of the enemy. As the UN Special Rapporteur on violence against women has noted,

“[t]he act of rape or sexual violence during ethnic and nationalist conflicts is not an isolated, aberrational act. It is extremely purposive and aimed not only at destroying an individual woman, but the community’s sense of ethnic purity, which many think is vested in the ‘honor’ of women. Linked to questions of shame and honor are issues of ethnic pollution.”<sup>91</sup>

The symbolical significance of saving the community honor by saving women from being raped by enemy soldiers has reportedly also led to situations in which men from the same community have themselves killed their wives, daughters and the other women in order to save them from being raped.<sup>92</sup>

In Rwanda, Tutsi women were first portrayed as evil temptresses and spies in the Hutu dominated media in order to justify sexual attacks on them.<sup>93</sup> After this sexualized propaganda, many Tutsi women were gang raped and made sex slaves to Hutu soldiers. Intimate family members were also forced to rape women in public, after which the majority of them were killed or left to lead a life with these memories.<sup>94</sup>

In Indonesia, the 1998 riots targeted the Chinese community in general and numerous Chinese women in particular. Many women declined from reporting the sexual abuse they had experienced, due to a fear of being excluded from their own community, as well as due to fear of rebuffs by the police.<sup>95</sup>

Rape and sexual assaults took place also in Bosnia and Herzegovina, as well as in Kosovo.<sup>96</sup> Such crimes have also reportedly been perpetrated by Russian soldiers in Chechnya.<sup>97</sup> Gender-based sexual and other violence perpetrated against “enemy women” seems in general to be a deplorably common real-life example involving intersectional subordination and discrimination.

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<sup>90</sup>UNIFEM, (d).

<sup>91</sup>UN Special Rapporteur on Violence Against Women, 2002, para 122.

<sup>92</sup>Ibid, para 124.

<sup>93</sup> UNIFEM, 2001. Philip Gourevich, 2001.

<sup>94</sup>UN Special Rapporteur on Violence Against Women, 2002, para 118.

<sup>95</sup>UNIFEM (d).

<sup>96</sup>Idem.

<sup>97</sup>UN Special Rapporteur on Violence against Women, 2002.

#### 4.1.2 Exploitative Migration, Including Trafficking

Exploitative migration, including trafficking, provides yet another complex example of intersectional vulnerability, discrimination and subordination. Already the push and pull factors behind migration are to a great extent gender and origin specific. The failure of governments to protect and promote the civil, political, economic and social rights of members of minority groups and especially minority women is one of the main causative factors behind immigration.<sup>98</sup> Another factor affecting women is that the traditional gender roles often limit their possibilities to earn a decent income. And at the same time that developed countries welcome technically highly-skilled migrants, most of whom are men, they restrict other types of migration, which again has specific effects on women. These factors increase the vulnerability of women especially from marginalized communities to trafficking and other kinds of exploitative migration, as despite push factors, possibilities for legal migration are slim.

Every year, millions of men, women, and children are trafficked worldwide into conditions amounting to slavery. Among these, many thousands are young women and girls lured, abducted, or sold into forced prostitution and other forms of sexual servitude. For instance in 1997 an estimated 175,000 women and girls were trafficked within OSCE area alone.<sup>99</sup> Trafficking as a term refers to trafficking in migrants for the purposes of sexual servitude, sweatshop, domestic, or agricultural labor, forced or fictitious "mail order" marriages, as well as buying and selling young women for brothels and strip clubs.<sup>100</sup> Trafficking is essentially about movement of people for the purposes of forced labor or other forms of involuntary servitude.<sup>101</sup>

Intersectional aspects of trafficking and exploitative migration are rather evident. Among those who are trafficked, clear gender and nationality patterns can be detected.<sup>102</sup> But the intersectional issues do not concern only those that are trafficked: once in the country of destination, also other immigrant women are allocated jobs that are likely to produce subordination and negative stereotypes against them:

“Millions of women migrants from racially and ethnically marginalized groups are targeted and de-skilled for sub-standard work as menial cleaners, sweatshop pieceworkers, home workers and sex workers, all occupations that perpetuate gender and racial stereotypes. These stereotypes not only encourage further exploitation. They are self-disempowering”.<sup>103</sup>

The intersectional aspects of trafficking and other exploitative migration are further underlined by the fact that trafficking and the stigmatization it arouses affects all women from the ethnic origin that is

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<sup>98</sup>Ibid, para 78.

<sup>99</sup>OSCE, 1999.

<sup>100</sup>Idem.

<sup>101</sup>Idem.

<sup>102</sup>As noted by UN Special Rapporteur on Violence against Women, “...trafficking in women and girls frequently involved racist attitudes and perceptions and were often directed at certain racial and ethnic groups, indigenous women and migrants”. UN Special Rapporteur on Violence against Women, p. 7.

<sup>103</sup>UNIFEM, (c).

associated with trafficking.<sup>104</sup> Further disadvantage follows from the fact that trafficked women are often viewed by the authorities as illegal migrants, and hence victims become officially labeled and treated as perpetrators, which further aggravates their condition.<sup>105</sup>

#### 4.1.3 Minority and Immigrant Women and Health

The specific social location in which immigrant and minority women live make them in various ways vulnerable to health concerns. This has to do with various reasons, for instance economic dependency, poverty, illiteracy, traditional values, a culture of silence that surrounds female sexuality in many communities, gender and “racial” bias in the medical system, and the failure of medical studies to break down data according to origin and gender.

In the United States, women of color have higher rates of AIDS, hypertension, stroke, heart disease, uterine cancer, breast cancer, respiratory disease, alcohol related diseases and conditions, lupus and pregnancy-related mortality than other ethnic groups. This is linked to the high rates of poverty, lower educational levels, the dangers of immigration, and often increased stress from dangerous, low-paying or unstable jobs and the double/triple workday.<sup>106</sup>

In Peru, the maternal mortality rates are twice as high among indigenous women; Aboriginal women in Australia have up to ten times higher risk of maternal mortality than the non-aboriginal women; and in South Africa, the risk is almost 1 000 times higher among Black women in comparison to white women.<sup>107</sup> In Europe, Roma women have been subjected to involuntary gynecological examinations.<sup>108</sup> Women of disadvantaged groups, especially in South Africa, have been encouraged to participate in the use of experimental reproductive technology.<sup>109</sup> Sex trafficking is a major factor in women’s growing HIV infection rates. The privatization of health care in industrialized countries limits health care access of minority women.<sup>110</sup>

Part of the health concerns that minority and immigrant women face are linked to institutional discrimination. In the United States, Latina and Native American women have reportedly been the targets of sterilization campaigns, selective drug screening and prosecution during pregnancy.<sup>111</sup> Patterns of bias have been found also in the medical profession: 720 primary care physicians were surveyed in the United States on how they diagnosed chest pain of patients who were shown to the physicians by means of multimedia presentations. Though patients represented different ethnic origins, the respondents were under the conviction that it was their ability to make correct diagnosis that was

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<sup>104</sup>European Women’s Lobby 2001.

<sup>105</sup>UN Special Rapporteur on Violence against Women, 25.

<sup>106</sup>Women’s Institute for Leadership Development for Human Rights.

<sup>107</sup>UN Special Rapporteur on Violence Against Women, para 164.

<sup>108</sup>UNIFEM, 2001, para 31.

<sup>109</sup>Idem, and UN Special Rapporteur on Violence Against Women, para 163.

<sup>110</sup>Ibid, para 30.

<sup>111</sup>Georgia Tsaklanganos, 2001.

being tested, while what was really under test was whether different patients having comparable symptoms were treated equally. The study results revealed that recommended treatment varied substantially on the basis of gender and origin, and that African American women were significantly less likely to be referred to catheterization than were white men.<sup>112</sup>

The issue of whether medical studies should disaggregate data according to “race” and gender is peculiarly complex: both the existence and lack of disaggregated data can be detrimental to minority women. The lack of such data inevitably leads to a lack of recognition of the specific health issues that affect minorities, especially minority women. This means also that action necessary to address these specific health concerns is not taken by the health authorities. On the other hand, disaggregated data can be misused as a part of medical diagnosis: an Asian woman was told by a specialized doctor that she could possibly not have breast cancer, as “Asian women do not get breast cancer”, even though cancer was subsequently found by another doctor.<sup>113</sup> This emphasizes the fact that disaggregated data should be used for the purposes of designing medical policies only, and not for the purposes of medical diagnosis.

The intersection of origin, gender and non-dominant sexual preference does not affect women only: in the United States, young gay Black men are becoming infected with AIDS virus at a rate of almost 15 % a year, compared with 3.5 % percent among Hispanic gay men, and 2.5 % among white gay men of the same age.<sup>114</sup>

#### 4.2 At the Intersection of Ethnic or “Racial” Origin and Gender: Examples of In-Group Discrimination

The fact that a group is in a subordinated position socially, and that the members of that group are often discriminated against, does not mean that the group itself would be free from discriminatory practices. Disabled people may be just as prejudiced against immigrants as the rest of the society, immigrants may be prejudiced against gays, and gays prejudiced against the disabled etc. Thus these groups can also be prejudiced against their internal subgroups: other disabled people may be prejudiced against disabled immigrants, the gay community against disabled gays or the immigrant community against gay immigrants etc.

In the following, one particular category, that of ethnic/religious groups, and the way they may engage in intersectional discrimination practices, is discussed. This particular group has been chosen because they often exert *de facto* or even *de jure* power over their members through social or legal norms. The following should by no means be taken as questioning in principle of the importance of the right of members of minorities to enjoy their culture and to practice their religion, which is - for good reasons - a well established right under contemporary international law.

##### 4.2.1 Harmful Cultural and Traditional Practices

Cultural and traditional practices that inhibit the realization of human rights take place in all countries.<sup>115</sup> Many of these practices target and affect especially women and girls, and are oftentimes

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<sup>112</sup>David Benjamin Oppenheimer and Marjorie M. Shulz, 1999.

<sup>113</sup>Women’s Institute for Leadership Development for Human Rights.

<sup>114</sup>Centers for Disease Control and Prevention (CDC). See also Cathy J. Cohen, 1997.

<sup>115</sup>Cf. UN Special Rapporteur on Violence against Women, 2002, p. 3.

defended in terms of cultural relativism and/or religious tolerance. Many identity-based struggles violate the rights of women: “the more militant an identity-based struggle is, the more conservative its position on women, and the more difficult the situation of women in those communities and societies”.<sup>116</sup> One extreme example comes from South Africa, where certain ethnic groups categorically treat women as minors.<sup>117</sup>

The UN Special Rapporteur on Violence against Women, Ms. Radhika Coomaraswamy, has produced an insightful report on cultural practices in the family that are violent towards women.<sup>118</sup> The array of harmful cultural practices, most if not all of which violate human rights, is depressingly long. Some of these practices will be discussed here for the purposes of providing examples of in-group discrimination at the intersection of origin, culture and gender.

*Female Genital Mutilation (FGM)*. It is estimated that 2 million girls every year are at risk of mutilation, while approximately more than 135 million girls and women already have undergone such an operation. FGM is practiced in at least twenty states in Africa, Middle East and Asia, and immigrants from these countries have been reported to practice FGM also in their countries of destination, including Sweden, the United Kingdom and the United States of America. The methods and types of mutilation vary from country to country and from group to group, and some forms are more harmful than others. The main reasons given for the continuation of this practice are custom, tradition and also religion, although the practice itself predates Islam. As pointed out by the Special Rapporteur, however, FGM is also a result of the patriarchal power structures which legitimize the need to control women’s lives.<sup>119</sup>

*Honor Killings*. So-called honor killings are reported especially in Pakistan, but take place also in Turkey and in several Mediterranean and Gulf countries, as well as in Western countries within immigrant communities from these countries. In Pakistan alone, more than 1 000 women are killed in the name of honor every year. In Iraq, more than 4 000 women have been killed since 1991. Honor killings are typically carried out by under-aged males of the family, for reasons of reducing the punishment. The act is also regarded as a rite of passage into manhood. Honor killings are based on deeply rooted cultural beliefs according to which women are symbolical bearers of honor, whose behavior has to be guarded by the men in the family. Some women are instead of killing pressured to commit suicide. The Penal Codes of Peru, Bangladesh, Argentina, Ecuador, Egypt, Guatemala, Iran, Israel, Jordan, Syria, Lebanon, Turkey, West Bank and Venezuela, allow the taking of the “honor” motive into account as a mitigating fact in murder trials (the so-called honor defence).<sup>120</sup>

*Witch Hunting*. Witch hunting and witch burning did not end in the seventeenth century Europe, but is still practiced in parts of Asia and Africa. It is estimated that 500 women are killed as witches alone in Tanzania every year, and many more are harassed and accused of witchcraft. While also men get

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<sup>116</sup>Women in Action, p. 6.

<sup>117</sup>UNIFEM 2001, point 38.

<sup>118</sup>UN Special Rapporteur on Violence against Women, 2002.

<sup>119</sup>Ibid, paras 12 - 20.

<sup>120</sup>Ibid, paras 21 - 37.

branded as witches, women are twice more likely to be accused of witchcraft, older women being most in danger. Witch hunting is closely related to traditional religions.<sup>121</sup>

*Unwanted Marriage.* In many societies girls may be wed before even reaching puberty, for reasons of controlling the conduct and sexuality of the girl by the groom and his family, and for ensuring a longer reproductive period. Marriages are also forced upon many women with the aim of strengthening family links, protecting perceived cultural ideals and the family honor, and controlling female sexuality. In many societies, victims of rape are forced to marry the perpetrator, in order to “protect the honor of the raped woman”, as a raped woman is often considered unmarrriageable. A rapist agreeing to marry the woman he has raped is pardoned in several countries.<sup>122</sup>

Not all discriminatory practices based on tradition, culture or religion target specifically women: there are also practices and values that are detrimental to children, sexual minorities, the elderly, the disabled and adherents of other religions.

#### 4.2.2. Paradox of Multicultural Vulnerability

In response to the *demographics of multiculturalism*, i.e. the fact that due to immigration people with different cultural backgrounds have more than ever before come to live together, states have increasingly started to adopt *policies of multiculturalism*, i.e. taken measures to accommodate diverse cultural and religious values. This positive development in the area of multicultural policies, backed up by important human rights instruments, can sometimes, however, have its drawbacks. The most important of these arise from situations in which ethnic or religious groups have been granted a certain autonomy over their members, if that autonomy also enables the institutionalization of the violation of the human rights of its members.

This kind of situation has aptly been termed by Ayelet Shachar as the *paradox of multicultural vulnerability*.<sup>123</sup> The paradox is that by remedying one type of vulnerability, some theories and policies of multiculturalism create another type of vulnerability: By way of recognizing different cultures in the name of accommodation, well-meaning states usually also have to recognize internal hierarchical structures and values which may be harmful to members of that community in a very fundamental way. With regard to cultural and traditional *values*, whether they are those of the majority or a minority, it should be kept in mind that they should be *presumed* neither suspect nor innocent: the right path for accommodation lies somewhere between the extremes of complete assimilation and unconditional “anything goes” multiculturalism.

The weaknesses of unconditional multiculturalism, and the consequent danger of intersectional discrimination under which especially children and women from these groups are subsumed, have not been identified only by academics such as Schachar. This predicament has increasingly been recognized by international human rights bodies and organizations. For instance the UN Special Rapporteur on

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<sup>121</sup>Ibid, paras 45 - 48.

<sup>122</sup>Ibid, paras 55- 64.

<sup>123</sup>Ayelet Schachar, 2001, p.3



violence against women, Ms. Radhika Coomaraswamy, has pointed out the vulnerable position of women in some communities:

“It’s significant that even so-called progressive policies and practices founded on the notion of ‘multiculturalism’ have the peculiar effect of reinforcing patriarchal power relations within black families and communities.”<sup>124</sup>

Perhaps even more marked is that these concerns have increasingly been voiced by minority women themselves. Pragna Patel, speaking for Southall Black Sisters - an organization based in London - has importantly summed up the paradox of multicultural vulnerability and the experience of many immigrant women living in the United Kingdom in the following way, reflecting also what was earlier discussed in Chapter 3.2 regarding the dynamics of the formation of groups and their interests:

“While the underlying notions of respect and tolerance for minorities are important, the tendency within multicultural discourses is to construct minority communities as homogenous, with static or fixed cultures and without internal divisions along gender, caste or class lines. The consequent power relations and internal contestations of power that flow from such division are not recognized. Also, the model is undemocratic since relations between the state and minority communities are mediated through unelected self appointed community leaders, who are men, usually from socially conservative backgrounds with little or no interest in women’s rights or social justice. Most are from religious backgrounds and their interests lie in preserving the family and religious and cultural values. The expectation that women will conform to religious and cultural dictates in order to transmit cultural values from one generation to the next is therefore considered crucial by such leaders”.<sup>125</sup>

Patel addresses several questions that are as complex as they are important. One of the most important is that of representation: who has the right to represent a community, its culture and values? How is it ensured that also the concerns of minorities within minorities are heard? These are immensely complex questions that have to be addressed before multiculturalist policies are adopted.

The paradox of multicultural vulnerability, a form of intersectional discrimination, is perhaps most visible in situations in which the police refuses to interfere in, for instance, situations of domestic violence, for the fear of being perceived as “culturally insensitive”, even despite calls for help from women from that particular community.<sup>126</sup> Here not even the fact that community women themselves ask for help is interpreted as evidencing that domestic violence is *not* accepted in that community but

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<sup>124</sup>UN Special Rapporteur on Violence against Women, p. 11. This problem is also addressed in a UNHCHR publication on Gender Aspects of Racial Discrimination: “[s]tates that adopt anti-racist policies must be aware of the potential for misuse of those policies. For example, some women may wish to challenge certain aspects of their culture, such as the practice of arranged marriages. However, they may find that they are unable to do so because the State in which they reside wants to be culturally sensitive to and tolerant of others’ values. In effect, then, women from minority or ethnic groups are denied their individual rights.” UNHCHR, 2001, p. 18.

<sup>125</sup>Pragna Patel, 2000, p. 95.

<sup>126</sup>Patel calls this kind of situation “underpolicing” in contrast to “overpolicing”, which refers to a situation in which members of minorities are unproportionately e.g. stopped and searched by the police. *Idem*.

is a contested practice. Instead, stereotyped, essentialist and particular understandings (that of community leaders or even policemen themselves) of “what that culture is like” prevail.

No wonder that Patel, speaking for the Southall Black Sisters, concludes that “the multicultural model in our view, poses one of the main obstacles to the enjoyment of equality and human rights by South Asian and other minority women in the UK today”.<sup>127</sup>

It should however be noted, that not all multiculturalist policies are inherently flawed, only those that allow cultural practices to override fundamental individual human rights. It is possible to design such multiculturalist policies which promotes and protects the rights of both the group and its members.<sup>128</sup>

#### 4.2.3. Other In-Group Subordination and Disadvantage

An ethnic or “racial” group which is in a vulnerable position, and which possibly strives for general recognition and acceptance, has considerable pressures to “look good” to outsiders. This means that negative phenomena are often kept hidden, and only positive and generally accepted phenomena are brought to the attention of the general public. This need to “look good” on the outside leads to a situation in which intersectional discrimination remains hidden, as the group refuses to acknowledge e.g. in-group violence. Oftentimes women are pressured not to report in-group violence or rape to the police, because community leaders do not want to increase negative attitudes towards the group.

According to Judith Lorber, women from oppressed groups often feel that they have to stand by their men for political reasons.<sup>129</sup> She mentions as an example a case in which a woman from one Portuguese working class community was repeatedly raped in a pool hall. After the incident the other women from the same community rallied around her. When the national media came in and started to vilify the men racially, the women turned on the rape victim, accusing her of sexual looseness and child neglect, and supported the men at the trial.<sup>130</sup>

The Mike Tyson rape trial provides another illustrative account of the way women may be marginalized and their experiences suppressed within a given community. Kimberle Crenshaw has aptly analyzed how forefront African American leaders - most of whom, if not all, were men - supported Tyson and interpreted the situation as one in which an African American male is once again falsely accused of rape, as had happened before.<sup>131</sup> The victim, Desiree Washington, was not supported by any established African American leader, nor by African American women, though she was herself an African American. The need of the community to defend one of its own in order to present the community in a more favorable light and the need to engage in the anti-racist struggle was so strong that it drove over the need to support a raped woman from the very same community.

A similar case in many respects was that of Clarence Thomas. Prior to charges of sexual harassment Thomas, a United States Supreme Court Candidate, had little name recognition and only tentative

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<sup>127</sup>Idem.

<sup>128</sup>See for instance Ayelet Schachar, 2001.

<sup>129</sup>Judith Lorber, 1998.

<sup>130</sup>Idem.

<sup>131</sup>Kimberle Crenshaw, 1991, p. 1273.

support in African American communities.<sup>132</sup> However, as analyzed by Cathy J. Cohen, when Thomas managed to represent the accusations against him as another instance of “white elites going after a Black official”, he started to garner wide support particularly among African American men. Thomas “was suddenly transformed into a victim of racial discrimination”, and had no difficulties before the all-white male Senate, “whose members could not muster the moral authority to challenge Thomas’s sensationalist characterization” of himself as a victim of racism.<sup>133</sup> In consequence Thomas was “deified”, while Anita Hill, an African American woman who had brought the charges against him, was vilified, and was widely regarded by many in the African American community as having betrayed the group’s interests.<sup>134</sup>

According to Crenshaw, the situation has subsequently developed into such in which “Black women who raise claims of rape against Black men are not only disregarded but also sometimes vilified within the African American community”.<sup>135</sup> Consequently, “gender domination has become subordinated to the struggle against racism”.<sup>136</sup> In such a situation raped women become doubly victimized: first, their physical integrity is violated, and second, their right to justice is effectively denied as a consequence of intersectional discrimination.

There is lots of ample evidence of similar or comparable cases and situations involving community pressure. For instance in Uttar Pradesh, India, it has been estimated that as much as 25 % of the witnesses withdraw their testimony because of pressure placed on them by the accused or their community, and that among the women the percentage is even higher.<sup>137</sup> Also many indigenous women have not raised issues of the right of indigenous women to land and inheritance, because they have felt that raising these issues would cause division within their already vulnerable communities.<sup>138</sup>

By way of a conclusion, those who are marginalized within marginalized groups often face a tremendously difficult choice not faced by anyone else within or outside these groups. They have to choose, for instance as sexually harassed minority women, between drawing negative attention to the already vulnerable group, and perhaps suffering isolation and vilification as a consequence, and suffering the infringement of her rights and the inviolability of her integrity by herself. Given these choices, and the fundamental importance of - sometimes a dependency on - a community with which one intimately identifies, along with the fact that there might be repression from the side of the general society against the members of that community, it is no wonder that many choose the latter. This is one more example of the complexity of situations involving intersectional discrimination and disadvantage.

## 5. Potential Pitfalls and Benefits of Intersectional Approach

### 5.1. Potential Pitfalls of Intersectional Approach

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<sup>132</sup>Cathy J. Cohen, 1997.

<sup>133</sup>Citation from Kimberle Crenshaw, cited in idem.

<sup>134</sup>Cathy J. Cohen, 1997; Kimberle Crenshaw, 2000.

<sup>135</sup>Kimberle Crenshaw, 1991, p. 1273.

<sup>136</sup>Kimberle Crenshaw, cited in Cathy J. Cohen.

<sup>137</sup>UN Special Rapporteur on Violence Against Women, p. 18

<sup>138</sup>Women in Action, p. 7.

There is one possible pitfall in the usage of the intersectional approach, if and as it becomes widely adopted. This is the possibility that the intersectional approach is used to create new essentialist and exclusionary categories of *presumed victims*, in the sense that new “intersectional” stereotypes are created, such as “all Muslim women are subordinated”. This kind of stereotyping is harmful in three respects.

First, there is a problem that we might define as the problem of “false positives”: some people, on the grounds of their social location, are “automatically” presumed victims even though they are not. For instance, stereotyping all Muslim women as victims does wrong to both the religion and the women in question: not all Muslim women are in fact victims of intersectional discrimination, even if some are. To give another example, those facing intersectional discrimination on the basis of socio-economic status and e.g. racial origin, are not always those who are socio-economically worse-off, but sometimes it is the better-off groups that are persecuted, often exactly for being better-off; one might think of the Chinese in the Philippines, or Tutsis in Rwanda.

Second, there is a problem that we might define as the problem of “false negatives”: some people are, again on the basis of their social location, *not* presumed victims, even though they are. This problem arises if it is mistakenly thought that intersectional discrimination is the only form of discrimination, or the only form of discrimination meriting attention, or if it is presumed that intersectional discrimination can target only women and not men at any instance. To simplistically presume that it is the disabled women, minority women, aged women, lesbians etc who are discriminated against, and not men in any instance, would be a mistake. One cannot *categorically* define discrimination and disadvantage as only affecting women, even though it is true that many, if not most of the women,<sup>139</sup> do face intersectional discrimination.

Intersectional discrimination often specifically targets at men, as noted by Susanna George:

“The most apparent case when gender becomes a liability for men is in cases of police and military brutality, especially in situations of armed conflict. There are many instances where men of certain religious, ethnic and minority groups, or from socially oppressed communities, such as the Dalits of South Asia, are targeted by police brutality as a direct result of their gender with other identities.”<sup>140</sup>

Another example could be domestic violence, which is a major human rights problem for instance in Finland. Domestic violence is often rather categorically understood in terms of male violence, to the extent that the whole phenomenon is often called “violence against women”. Yet, according to police statistics, every fourth victim of domestic violence in Finland is a man. And given that men with all probability are less likely to report domestic violence to the police (exactly because it is not anticipated), the proportion of men of the victims is even higher than that. While this should not overshadow the fact that the majority of victims probably still are women, this gendered understanding of domestic violence has led to a situation in which there are no shelters for men, only for women, and there are numerous projects combating male violence, but none combating female violence.<sup>141</sup>

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<sup>139</sup>See UN Special Rapporteur on Violence against Women, p. 3.

<sup>140</sup>Susanna George.

<sup>141</sup>Antti Pelttari, 2001, p. 49.

What is also often unrecognized, is the fact that the same gender stereotypes and role expectations that affect and subordinate women, can and do affect and subordinate men. It is usually recognized that traditional gender roles in which men are allocated the role of breadwinner and women the role of caretaker and housewife, can and do act as barriers to the equal opportunities of women to participate in the labor market. However, the imposition upon men of the role of breadwinner, along with the various pressures that such a role expectation creates, can and do lead to miserable personal outcomes, especially in situations in which there is scarcity of work and/or structural unemployment. The fact that some men benefit from the partial exclusion of women from the labor market does not mean that all men benefit from it, and the logic of intersectional discrimination instructs us to direct attention also to the men so disadvantaged.

Thirdly, the creation of a new category of presumed victims is harmful because those who are from the outside labeled as victims can develop what might be called a *victim identity*. Angela Harris has noted that the representation of women as victims has been part of feminist gender essentialism intended to encourage solidarity, and notes that women, who have been taught by the sexist ideology that to be female is to be a victim, may “rely on their victimization and be reluctant to let it go and create their own self-definitions”.<sup>142</sup> The internalization of the image of helpless victim can become a self-fulfilling prophecy, as such an identification shapes one’s expectations. This is related to the fact that there oftentimes is a tendency to treat women, minorities, elderly, children, disabled etc as the “victims, the acted-upon, the helpless”, as aptly noted by Harris.<sup>143</sup> Those who have faced intersectional discrimination should be seen as actors instead.<sup>144</sup>

In conclusion, the establishment of new “official” and “recognized” categories of victims would render other types of discrimination invisible, while the whole point of an intersectional analysis is to see discrimination and subordination in all its diversity. Intersectional analysis can only lead to a clearer and more complete picture of discrimination and disadvantage if it is applied *in addition* to other forms of analysis. It does *not* provide us an easy way to identify victims of human rights abuses, as noted by Susanna George:

“...drawing easy conclusions about victims could no longer be possible when an intersectional analysis is applied. Things won’t simply fall into neat North - South, Black - White categories ... being a Southerner, Black or woman, does not spell victimisations in every instance .... the degree of victimisations is affected by the context one finds oneself in.”<sup>145</sup>

One of the implications of this observation is that in the analysis of discrimination and disadvantage one cannot rely on statistics alone. Statistics, especially if broken down by sex, origin, age etc, are necessary and extremely helpful in recognizing general trend lines, but an analysis which “zooms in” to the real life is needed in top of that, lest particular victims of discrimination will be left unrecognized. Statistics will need to be supplemented by qualitative data as well as by testimonies of people living in particular intersections of disadvantage, in order to create a holistic and more accurate picture of discrimination and disadvantage.

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<sup>142</sup>Angela Harris, 1990, p. 613.

<sup>143</sup>Angela Harris, 1990, p. 613.

<sup>144</sup>Commission on the Status of Women, paragraph 4.

<sup>145</sup>Susanna George.

## 5.2. Benefits of Intersectional Approach

There are two enormously important benefits that follow from the adoption of the intersectional approach and which can have a major impact especially on the realization of human rights. First, intersectional analysis can have almost a revolutionary effect on how we understand discrimination, by way of revealing previously hidden discrimination and by unmasking the different aspects (gender, “racial” etc) of discrimination already recognized. Second, this enhanced understanding of discrimination can and should lead to enhanced and more effective policies aimed to combat the phenomenon.

The intersectional approach is particularly useful in exposing new forms of discrimination which have hitherto remained hidden from the public. This is because it directs attention to those who are the most disadvantaged, i.e those who are disadvantaged within the disadvantaged, those who constitute a minority within a minority, those who have been marginalized both within the general society and their primary reference group. Intersectional analysis brings to the international focus those that have so far been most distant from it. This approach is also useful in revealing the different (intersectional) aspects of discrimination, disadvantage and subordination already recognized. It is understood, for instance, that racial discrimination affects men and women in different ways,<sup>146</sup> and that gender discrimination affects women and men differently depending on their “racial” or ethnic origin.

Intersectional analysis is also useful in exposing the real diversity that characterizes different categories and groups and the interests of their members, even though these are often represented as unitary and homogenous. This observation applies to all categories and groups, including men/women, nations/minorities, religions and beliefs, disabled/able-bodied, feminist and anti-racism movements, and so on. This observation has important implications with regard to ethnic groups and minorities, who seek jurisdictional powers over the members of that group. While it is important to promote the possibility of the members of all ethnic groups to enjoy their culture and to practice their religion, possibly by way of granting some extent of jurisdiction to the group, this should not be done in a manner which makes possible the violation of the fundamental rights of the members of that community. Also, the feminist movement should acknowledge and reflect upon the true diversity of women and their interests, and advocate the interest and rights of all subsets of women, including disabled women and immigrant women. Respectively, the anti-racism community should recognize the importance of mainstreaming gender comprehensively in its work. If these and other respective movements do not wish to accommodate different subgroups within them, the only option available remains that these subgroups establish their own organizations, and that governments pay specific attention to them.

The mere recognition and identification of intersectional discrimination is obviously not enough, but policies have to be shaped and developed accordingly, both internationally and nationally. Intersectional analysis, bringing forth new information on what is experienced and by whom, enables the designing of policies that are more effective and which can be more specifically targeted and applied than the ones before. The intersectional approach should be fully integrated into all policymaking: with respect to all

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<sup>146</sup>UN Special Rapporteur on Violence against Women has noted that “...not only does mainstreaming gender bring race discrimination against women out of the shadows, it also permits a sharper understanding of the particular ways in which gender shapes the discrimination that men face as well”. UN Special Rapporteur on Violence against Women, p. 7.

policies, their intersectional effects should be analyzed by asking questions such as “what does this mean to women”, “what does this mean to the disabled”, “what does this mean to disabled women” etc. This kind of an impact assessment should be mainstreamed and become a standard procedure.

## 6. The Challenges that Intersectional Discrimination Poses to the International System of Human Rights

Intersectional discrimination, in its broader meaning, poses two major challenges to human rights. The first one concerns the ability of the human rights system to recognize the diverse situations involving intersectional discrimination and disadvantage. The second one concerns the ability of the current legal framework of human rights to address and cope with multiple and intersectional discrimination. These two questions are addressed below separately.

### 6.1 The Ability of Human Rights System to Recognize Intersectional Discrimination: Assessing the Level of Awareness

In order to assess the level of awareness within the UN human rights system the work of three United Nations treaty-bodies will be examined, as well as the documents adopted by three recent UN World Conferences.<sup>147</sup>

#### 6.1.1 Human Rights Committee

*General Comments.* The Human Rights Committee, monitoring and promoting the national implementation of the International Covenant on Civil and Political Rights, is theoretically speaking in a good position to address intersectional discrimination, especially considering the open-ended nature of the listing of grounds of discrimination in Articles 2.1 and 26 of the Covenant. However, so far the track record of the Committee has not in this matter been as impressive as it could have been expected.

The only General Comment in which the Committee explicitly takes up the issue of multiple and intersectional discrimination is the all-important General Comment 28 adopted in 2000. The General Comment addresses equality of rights between men and women. In it the Committee observes that

[d]iscrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. States parties should address the ways in which any instances of discrimination on other grounds affect women in a particular way, and include information on the measures taken to counter these effects.<sup>148</sup>

The recognition of the way in which discrimination against women “intertwines” with discrimination on other grounds to produce experiences that are specific to a subset of women is a recognition of

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<sup>147</sup>This examination of the level of awareness within the human rights system is limited in many respects: First, it concentrates only on the UN, instead of e.g. Council of Europe or other regional actors. This is precisely because of the global role of the UN. Second, the examination also within the UN system is limited and the work of only three treaty-bodies will be examined. However, it is submitted that they evidence a certain tendency in the UN, and are thus representative in an important sense. Third, as the aim is to assess the *current* level of awareness, events in the past and the practice of treaty bodies in the past will not be addressed.

<sup>148</sup>Human Rights Committee, General Comment 28 (29/03/2000), para 30.

intersectional discrimination as defined in chapter 2.1 above. The General Comment goes on to note, *inter alia*, that women are particularly vulnerable in times of internal or international armed conflicts and that states parties should inform the Committee of all measures taken during these situations to protect women from rape, abduction and other forms of gender-based violence.<sup>149</sup> Furthermore, it is noted that inequality in the enjoyment of rights by women is deeply embedded in tradition, history and culture, including religious attitudes,<sup>150</sup> which is an important acknowledgment of in-group disadvantage and discrimination. The Committee subsequently calls on states parties to ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights.<sup>151</sup>

*Consideration of State Reports.* Upon an examination of the ten most recent Concluding Observations issued by the Human Rights Committee by the time of the writing,<sup>152</sup> one can note that the Committee has taken up intersectional issues in approximately every other report. Trafficking and the situation of Roma children have been brought up most often, while other types of intersectional discrimination have largely remained unaddressed. However, Concluding Observations on the report of Sweden addresses traditional practices harmful to immigrant women and girls in two subsequent paragraphs:

The Committee notes with concern cases of female genital mutilation and "honour crimes" involving girls and women of foreign extraction (arts. 3, 6 and 7 of the Covenant). The State party should continue its efforts to prevent and eradicate such practices. In particular, it should ensure that offenders are prosecuted, while promoting a human rights culture in the society at large, especially among the most vulnerable sectors of immigrant communities.<sup>153</sup>

The Committee expresses its concern at the recognition of early marriage involving girls of non-Swedish nationality who are resident in Sweden (arts. 3 and 26 of the Covenant). The State party should take vigorous measures to provide better protection for minors in the matter of marriage and eliminate all forms of discrimination among them.<sup>154</sup>

In its Concluding Observations on the report of the Czech Republic, the Committee refers to "women in difficult circumstances" in the context of trafficking:

The State party should take resolute measures to combat this practice, which constitutes a violation of several Covenant rights, including article 3 and the right under article 8 to be free from slavery and servitude. The State party should also strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into its territory for the purpose of prostitution. Strong measures

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<sup>149</sup>Ibid, para 8.

<sup>150</sup>Ibid, para 5.

<sup>151</sup>Idem.

<sup>152</sup>The Concluding Observations examined were issued between 27 August 2001 and 24 of March 2002.

<sup>153</sup>Human Rights Committee, Concluding Observations/Comments on Sweden (24/04/2002), para 8.

<sup>154</sup>Ibid, para 9.



should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way.<sup>155</sup>

*Conclusions.* While the Human Rights Committee is favorably positioned to discuss intersectional discrimination, and while it has produced an important General Comment on equality between men and women in which intersectional issues are tackled face-on, the Committee is far away from having used up all of its potential in this matter. The Committee has in an important way addressed these issues both in its General Recommendations and in its Concluding Observations on state reports, but it has so far failed to do this on a comprehensive basis, as only certain forms and manifestations of multiple, compound and intersectional discrimination have been dealt with. Two recommendations can be made in this respect:

First, the Committee should in the future address all kinds of multiple and intersectional discrimination, not just those in which gender discrimination is manifest. Second, it should more vigorously request states parties to provide information on the situation of specific groups and individuals facing multiple and intersectional discrimination, as this would enhance the ability of the Committee to deal with these issues increasingly *in practice*.

#### 6.1.2. Committee on the Elimination of Racial Discrimination

*General Recommendations.* In its General Recommendations the Committee has occasionally recognized the fact that racial discrimination may mix with other types of discrimination. For instance, in its General recommendation 19 on racial segregation and apartheid, from the year 1995, the Committee observed that

“[i]n many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.”<sup>156</sup>

In its General Recommendation 27 on discrimination against Roma the Committee makes several references to Roma women and girls, and asks the states parties e.g. to ensure that the disadvantaged situation of Roma girls and women is taken into account in the field of education.<sup>157</sup> The Committee furthermore seems to acknowledge that Roma women and children are in a disadvantaged situation not just due to poverty and low level of education, but also due to cultural differences,<sup>158</sup> and emphasizes

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<sup>155</sup>Human Rights Committee, Concluding Observations/Comments on Czech Republic (27/08/2001), para 13.

<sup>156</sup>Committee on the Elimination of Racial Discrimination, General recommendation 19 on racial segregation and apartheid (18/08/95), para 3.

<sup>157</sup>Committee on the Elimination of Racial Discrimination, General recommendation 27 on discrimination against Roma (16/08/2000), para 22.

<sup>158</sup>The meaning of this paragraph is somewhat obscure: while it is recognized that cultural differences *have* contributed to the disadvantaged situation of Roma women and children, it is not spelled out whether this is a reference to some particular values or traditions existing in some Roma communities, or to the factual social and cultural distance between the Roma and the rest of the society, or both.

the importance of promoting the participation of Roma women in designing and implementing health programmes. In this respect the Committee recommends states to

[i]nitiate and implement programmes and projects in the field of health for Roma, mainly women and children, having in mind their disadvantaged situation due to extreme poverty and low level of education, as well as to cultural differences; to involve Roma associations and communities and their representatives, mainly women, in designing and implementing health programmes and projects concerning Roma groups.<sup>159</sup>

The Committee has most extensively explored the intersection of racial discrimination with other types of discrimination in its General Recommendation 25 on gender related dimensions of racial discrimination.<sup>160</sup> Article 1 of the recommendation aptly crystallizes what intersectional discrimination on the basis of gender and origin is all about:

The Committee notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.

The Committee also distinguishes between different types of intersectional discrimination<sup>161</sup> and pledges itself to take into account gender factors and issues interlinked with racial discrimination, as well as to incorporate gender analysis in its work.<sup>162</sup> It also requests states parties to describe in qualitative and quantitative terms factors affecting, and difficulties experienced in, ensuring the equal enjoyment by women of the rights under the Convention.<sup>163</sup> Quite notably, the Committee refrains here from using terms such as multiple or intersectional discrimination, and prefers to speak of “gender related dimensions of racial discrimination” instead.

Taken together, the General Comments of the Committee on the Elimination of Racial Discrimination show that it has acknowledged the existence of such intersectional and multiple discrimination in which racial discrimination plays a major part. However, this acknowledgment has been sporadic and predominantly confined to the intersection of “race” and gender, to the exclusion of all other possible intersections. Furthermore, the Committee has refrained from using the terms multiple and intersectional discrimination in its General Recommendations. This may be related to the fact that doubts have previously been expressed on the extent to which the Committee can address multiple and intersectional discrimination issues, and can perhaps be read to imply a position that the Committee considers itself to be able to deal only with such intersectional matters in which racial origin seems to be the main ground of discrimination or in which an element of racial discrimination is otherwise clearly manifest.

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<sup>159</sup>Ibid, para 34.

<sup>160</sup>Committee on the Elimination of Racial Discrimination, General Recommendation 25 (20/03/2000) on gender related dimensions of racial discrimination.

<sup>161</sup>Paragraph 2.

<sup>162</sup>Paragraphs 3, 4, and 5.

<sup>163</sup>Paragraph 6.

*Consideration of State Reports by the Committee.* Upon the examination of the ten most recent concluding observations issued by the Committee on the Elimination of Racial Discrimination at the time of the writing,<sup>164</sup> one can note that references to intersectional issues *in concreto* are surprisingly few, and that not even gender specific forms of racial discrimination are addressed on a frequent basis. The Committee does occasionally refer to such issues as trafficking and does from time to time express its concern on the situation of the Roma, immigrant and refugee children in schools, as well as to the need to disaggregate data on the grounds of origin and gender, but concrete discussion on intersectional and multiple discrimination is otherwise almost completely lacking.

An exception proves the rule, however. In examining the state report of Austria the Committee not just pinpoints to the government of Austria the importance of recognizing multiple discrimination, but issues rather unexpectedly an opinion of general nature and declares that multiple discrimination falls within the scope of the ICERD Convention:

The Committee is concerned by the wording of article 1.1 of the Federal Constitutional Act implementing the Convention, which stipulates that the legislature and the executive shall refrain from any distinction on the "sole" ground of race, colour, national or ethnic origin. In the Committee's view, this may be regarded as representing a narrower prohibition of discrimination than is provided in the Convention. The Committee recalls that multiple discrimination, for example discrimination based simultaneously on race and sex, falls within the scope of the Convention, and that such phenomena are addressed in the final documents of the World Conference against Racism.<sup>165</sup>

*Conclusions.* While the Committee on the Elimination of Racial Discrimination has in an important way recently recognized the existence of intersectional discrimination, this recognition has been limited in two respects.

Firstly one may note - though not in a completely categorical way - that the recognition by the Committee on the Elimination of Racial Discrimination of intersectional and multiple discrimination has hitherto remained more a matter of theory than practice: an important General Recommendation on gender dimension of racial discrimination has been issued, but intersectional discrimination is not addressed in the Concluding Observations on a regular basis. To a certain extent this is due to the failure of most governments, as well as concerned non-governmental organizations, to provide appropriate disaggregated data and information. A change may incrementally take place in this respect, however, if and when states start to include in their periodic reports information on measures that they have taken to implement nationally the Durban Declaration and Programme of Action, as rather consistently requested by the Committee in its Concluding Observations to states parties.

Second, the approach of the Committee in regard to intersectional discrimination has been somewhat cautious, as only such intersectional discrimination which is particular to *immigrant and minority women* has been recognized, to the exclusion of other intersections containing an element of racial discrimination. Furthermore, the Committee has concerned itself mostly with intersectional discrimination, and has not addressed multiple or compound discrimination.<sup>166</sup> This cautious and limited

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<sup>164</sup>All of the examined Concluding Observations were issued in March 2002.

<sup>165</sup>Committee on the Elimination of Racial Discrimination, Concluding Observations: Austria (21/3/2002), para 9.

<sup>166</sup>On terminology, see chapter 2.1.

approach most probably reflects cautiousness by the Committee with regard to its mandate. This cautiousness may not, however, be warranted, as currently some situations involving possibly even a high degree of racial discrimination may remain unaddressed.

### 6.1.3. Committee on the Elimination of Discrimination against Women

*General Recommendations.* Committee on the Elimination of Discrimination against Women has most consistently incorporated intersectional issues to its General Recommendations.

A good example of the approach adopted by the Committee in its General Recommendations is General Recommendation 24 on women and health,<sup>167</sup> which e.g. addresses women belonging to vulnerable and disadvantaged groups and recommends that

special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.<sup>168</sup>

General Recommendation 24 also mentions female genital mutilation and other harmful traditional practices as examples of health hazards faced by particular groups of women.<sup>169</sup> Furthermore the Recommendation notes the particularly vulnerable position of disabled women and women with mental disabilities.<sup>170</sup> The Committee issued, already in 1990, a specific General Recommendation on disabled women, in which the Committee noted, *inter alia*, that it is “[c]oncerned about the situation of disabled women, who suffer from a double discrimination linked to their special living condition.”<sup>171</sup> The Committee also recommended that States parties provide information on disabled women in their periodic reports and on measures taken to deal with their particular situation.<sup>172</sup>

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<sup>167</sup>Committee on the Elimination of Discrimination Against Women General Recommendation 24 on women and Health (02/02/99).

<sup>168</sup>Ibid, para 6.

<sup>169</sup>Ibid, paras 12 and 18. The Committee has also devoted a specific General Recommendation to the issue of female circumcision, see General Recommendation 14 (02/02/90).

<sup>170</sup> Ibid, para 25, in which the Committee notes, e.g. that “[w]omen with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation.”

<sup>171</sup>Committee on the Elimination of Discrimination against Women, General Recommendation No.18 on disabled women (04/01/91), preamble.

<sup>172</sup>Idem.

The Committee has also taken up such intersectional issues as polygamy,<sup>173</sup> forced marriages<sup>174</sup> and son preference,<sup>175</sup> and has noted that traditions and social and cultural stereotypes discourage women from exercising their right to vote in many nations.<sup>176</sup> Interestingly, the Committee has identified the “cultural framework of values and religious beliefs” to be the most significant factor inhibiting women’s ability to participate in public life.<sup>177</sup>

General Recommendation 19 on violence against women is very important from the point of view of intersectional discrimination. In it, the Committee notes that

[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.<sup>178</sup>

Though recognizing the role of traditional values in the subordination of women, General Recommendation 19 does not, when providing a definition of discrimination, take in explicit terms into account that different forms of discrimination may interact and accumulate.<sup>179</sup> Furthermore, when trafficking is addressed in the Recommendation, its relatedness to poverty and unemployment is recognized, while its relatedness to racial stereotypes and racial discrimination is not.<sup>180</sup> The General Recommendation was issued in 1992, which may explain the lack of intersectional analysis on these two issues.

As regards the periodic reports by states, the Committee has requested them to submit statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.<sup>181</sup>

*Consideration of State Reports.* The Committee on the Elimination of Discrimination against Women has rather routinely taken up intersectional issues also in its Concluding Observations on state reports, as could be observed upon an examination of the ten most recent state reports considered by the

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<sup>173</sup>General Recommendation 21 (04/02/94), para 16.

<sup>174</sup>Ibid, para 14.

<sup>175</sup>General Recommendation 19 on violence against women (29/01/92), para 20.

<sup>176</sup>General Recommendation 23 on political and public life (13/01/97), para 10 (c).

<sup>177</sup>Ibid, para 10.

<sup>178</sup>General Recommendation 19 on violence against women (29/01/92), para 11.

<sup>179</sup>Idem.

<sup>180</sup>Ibid, para 14.

<sup>181</sup>Idem.

Committee.<sup>182</sup> Recurring intersectional themes in the Concluding Observations included persistence of traditional and stereotyped gender roles, trafficking, poverty and illiteracy.

Concern for the situation of minority and immigrant women has also been topical in the Concluding Observations, as is evidenced for example by the following observations and recommendations made by the Committee while considering the state reports of Guyana, Netherlands and Sweden:

Guyana:

The Committee encourages the Government to give full attention to the needs of rural women and Amerindian women and to ensure that they benefit from policies and programmes in all areas, in particular access to decision-making, health, education and social services. The Committee requests that the Government provide detailed information in that regard in its next periodic report.<sup>183</sup>

Netherlands:

The Committee expresses concern at the continuing discrimination against immigrant refugee and minority women who suffer from multiple discrimination, based both on their sex and on their ethnic background, in society at large and within their communities, particularly with respect to education, employment and violence against women.<sup>184</sup>

Sweden:

It [the Committee] also encourages the Government to be more proactive in its measures to prevent discrimination against immigrant, refugee and minority women, both within their communities and in society at large, to combat violence against them and to increase their awareness of the availability of social services and legal remedies.<sup>185</sup>

In considering the report of Viet Nam, the Committee specifically recommended that the government of Viet Nam should in its next periodic report provide more statistical data and information on the situation of ethnic minority women.<sup>186</sup>

In considering the state report of the Netherlands, the Committee also took note of the vulnerable situation of elderly women: “[t]he Committee expresses concern that elderly women may be marginalized within, as well as insufficiently covered by, the health insurance and pension systems and urges the Government to pay special attention to the needs of elderly women in ‘Daily routine’ programmes.”<sup>187</sup>

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<sup>182</sup>Concluding Observations examined were from the period extending from 2 February 2001 to 31 June 2001.

<sup>183</sup>Concluding Observations on Guyana (31/07/2001), para 175.

<sup>184</sup>Concluding Observations on Netherlands (31/07/2001), para 205.

<sup>185</sup>Concluding Observations on Sweden (31/07/2001), para 357.

<sup>186</sup>Concluding Observations on Viet Nam (31/07/2001), para 263.

<sup>187</sup>Concluding Observations on Netherlands (31/07/2001), para 215.

*Conclusions.* The Committee on the Elimination of Discrimination against Women has rather consistently addressed intersectional issues both in its General Recommendations and in its Concluding Observations to country reports, and expressly identified the existence of “double discrimination” already in 1991. This progressive nature of the approach of the Committee has to a great extent to do with the fact that discrimination and subordination that women face are often based on cultural and religious traditions and beliefs, and consequently considerable amount of concerns identified by the Committee relate quite readily to the intersection of sex/gender and cultural/religious values and traditions.

That said, it must be noted that the approach of the Committee has been limited in two respects: First, while sporadic references are made also to other intersections that include a gender dimension, it is mostly the intersection of sex/gender and origin/culture that is addressed. Second, the Committee has mostly confined itself with intersectional discrimination, and has not so much addressed the compound or multiple discrimination that women may face.<sup>188</sup>

#### 6.1.4 United Nations World Conferences

##### 6.1.4.1 Vienna and Beijing

The Vienna Declaration and Programme of Action were adopted in June 1993 by the World Conference on Human Rights. The Declaration and Programme of Action do not recognize multiple or intersectional discrimination, though they address discrimination on the basis e.g. of gender and “racial” origin. Issues such as women’s rights in armed conflicts, trafficking and harmful cultural or customary practices are considered,<sup>189</sup> but their intersectional nature is not discussed at any length. Furthermore, though the documents acknowledge the need for gender mainstreaming,<sup>190</sup> the possible intersectional implications of such mainstreaming are not spelled out.

The Beijing Declaration and Platform for Action were adopted by the Fourth World Conference on Women in September 1995. These documents explicitly address the specific situation and experience of e.g. disabled women, immigrant women, indigenous women and rural women, in addition to which intersectional issues such as trafficking and violation of the rights of women during armed conflicts are discussed. While terms such as multiple or intersectional discrimination are not employed in these documents, the Declaration refers to “multiple barriers”. It is widely regarded that this was the first instance ever in which the issues at hand were addressed on such a high level. Particularly relevant to our discussion is Article 32 of the Declaration:

[We, the participating governments, are determined to]  
Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people.

The language of Article 32 of the Declaration is further elaborated in Article 46 of the Platform for Action:

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<sup>188</sup>On terminology, see chapter 2.1 above.

<sup>189</sup>Article 38 of the Declaration.

<sup>190</sup>Especially Article 37 of the Declaration.

46. The Platform for Action recognizes that women face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or because of other status. Many women encounter specific obstacles related to their family status, particularly as single parents; and to their socio- economic status, including their living conditions in rural, isolated or impoverished areas. Additional barriers also exist for refugee women, other displaced women, including internally displaced women as well as for immigrant women and migrant women, including women migrant workers. Many women are also particularly affected by environmental disasters, serious and infectious diseases and various forms of violence against women.

The language of these documents indicates that “multiple barriers” as a concept used therein refers to what was above in chapter 2.1 termed “multiple discrimination”, i.e. to a situation in which one person faces disadvantage and discrimination on several separate grounds on different occasions. It is thus not yet recognized that the conjoining of two or more grounds can lead to very specific forms and manifestations of discrimination and disadvantage.<sup>191</sup>

The Beijing + 5 special session of the UN General Assembly, and the declaration adopted therein,<sup>192</sup> did not in any important substantial way depart from the language and the approach of the Beijing documents, though recommendations directed at the elimination of racially motivated violence against women and girls were made.<sup>193</sup>

#### 6.1.4.2 Durban

A major international breakthrough in raising awareness of intersectional discrimination was the United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa in 2001.<sup>194</sup> The documents adopted at the conference, the Durban Declaration and the Programme of Action, contain numerous explicit references to the concept of multiple discrimination, in addition to which the provisions deal with concrete issues such as women in armed conflicts, trafficking and the right of an indigenous or minority child to enjoy his or her own culture and practice his or her own religion.

Already the preamble to the Declaration emphasizes that states have a duty to protect and promote the human rights and fundamental freedoms of *all* victims of racism and racial discrimination, and that they should apply a gender perspective and recognize the multiple forms of discrimination which women can face. The second Article of the Declaration lists the grounds on which racism and racial discrimination are taken to occur and the grounds on the basis of which victims of racism can suffer aggravated or multiple forms of discrimination:

We recognize that racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple

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<sup>191</sup>I.e. what was termed “intersectional discrimination” in chapter 2.1. above.

<sup>192</sup>UN General Assembly Resolution of 16 November 2000 on further actions and initiatives to implement the Beijing Declaration and Platform for Action. A/RES/S-23/3.

<sup>193</sup>Idem.

<sup>194</sup>The Conference was held in accordance with General Assembly resolution 52/111 of 12 December 1997.



or aggravated forms of discrimination based on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status.

While the list of grounds of racism and racial discrimination is a closed one, the list of *related grounds* is open-ended. Despite this open-endedness, some grounds are expressly included in the list of related grounds, while others are not, and this can be seen - whatever the political reasons behind this - at least as a symbolical gesture pointing to the assumed relative importance of different traits in building up multiple and intersectional discrimination. The list of related grounds does not contain, most notably, disability, sexual orientation or age, which are all grounds that have been quite firmly recognized in contemporary international and supranational (EC) law.<sup>195</sup>

Paragraphs 69 and 70 of the Declaration make important references to multiple and intersectional discrimination by recognizing the differentiated way in which women and girls, relative to men, may experience racial discrimination:

69. We are convinced that racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights. We recognize the need to integrate a gender perspective into relevant policies, strategies and programmes of action against racism, racial discrimination, xenophobia and related intolerance in order to address multiple forms of discrimination;

70. We recognize the need to develop a more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social and cultural rights because of racism, racial discrimination, xenophobia and related intolerance.

The Programme of Action expressly recognizes multiple discrimination by way of recognizing, *inter alia*, that people of African descent experience particularly severe problems of religious intolerance and prejudice that can combine with other forms of discrimination to constitute multiple discrimination (article 14), that indigenous women suffer from aggravated discrimination on multiple grounds (article 18), that multiple discrimination can take place in the context of employment, health care, housing, social services and education (article 49), that religious discrimination may combine with other grounds to constitute multiple discrimination (article 79), that states, NGOs and the private sector should specifically seek to improve the prospects of persons subject to multiple discrimination in finding, keeping and regaining work (article 104), that forms of multiple discrimination should be taken into account when legislative and other measures are developed to protect and promote the identity of minorities (article 172), and in urging states to provide support especially to such civil society actors that work to promote advancement of women subject to multiple discrimination (article 212). One of the most important recommendations is made in article 31 of the Programme, which

\_\_\_\_\_ [u]rges States, in the light of the increased proportion of women migrants, to place special focus on gender issues, including gender discrimination, particularly when the multiple barriers faced by migrant women intersect; detailed research should be undertaken not only in respect of human rights violations perpetrated against women migrants, but also on the contribution they make to

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<sup>195</sup>Disability, sexual orientation and age have been recognized as explicitly forbidden grounds of discrimination e.g. in the EU Council Directive 2000/78/EC prohibiting discrimination in employment.

the economies of their countries of origin and their host countries, and the findings should be included in reports to treaty bodies;

In addition the intersectional problematique is *implicitly* addressed e.g. in articles 9, 10, 30 (h), 36, 50, 51, 53, 54, 59, 62, 64, 69, 88, 97, 174, 186, and 202 of the Programme of Action. Most of these provisions deal with trafficking, the need to empower minority and immigrant women, violence against them, the specificity of racial discrimination women may face and the need to conduct studies on racism and racial discrimination in general and on the experiences of women in particular. Furthermore, throughout the documents gender and age -differentiated language is deployed by means of references to “women, children and men” instead of references to e.g. “persons” or “individuals”, a fact which can be taken as an acknowledgment of the fact that gender and age have a differentiating bearing on the issues that are being addressed.

By way of a conclusion, the Durban conference and the documents adopted therein clearly evidence overwhelming international recognition of intersectional and multiple discrimination. As the Secretary General of the Conference, Mrs. Mary Robinson put it, “Durban put the gender dimension of racism on the map”.<sup>196</sup> However, this recognition of intersectional and multiple discrimination was only partial, given that concrete recognition of other intersections besides that of origin and gender are almost completely lacking in the Declaration and the Programme of Action,<sup>197</sup> and that grounds such as age, disability and sexual orientation were not expressly recognized as “related grounds” that can combine with racial discrimination to create a situation of multiple, compound or intersectional discrimination.

#### 6.1.5 Conclusions on the Level of Awareness

Given the above evidence, as well as the fact that also other UN bodies, such as the Commission on the Status of Women and the Commission on Human Rights, including the several special rapporteurs established by the latter,<sup>198</sup> have tackled issues related to intersectional, compound and multiple discrimination, one can conclude that the UN human rights system has not only “noticed” the existence of these phenomena, but has taken these issues seriously and has subsequently taken concrete action. By way of analyzing the UN World Conferences arranged in 1993, 1995 and 2001, and the General Recommendations issued by the treaty bodies during the time of their functioning, one can clearly observe the expeditiousness with which these issues have lately been recognized: the growth of awareness has been tremendous. These issues have furthermore been addressed both in the more general and theoretical level, as evidenced by the General Recommendations issued by the treaty bodies, as well as in concrete level of real-life situations, as evidenced by the Concluding Observations/Recommendations. The root causes of structural intersectional discrimination, for instance poverty and illiteracy, have also in a very positive way been recognized in various documents and by a variety of actors.

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<sup>196</sup>Mary Robinson, (2001).

<sup>197</sup>Articles 30 (g), 57 and 180 of the Programme of Action do however mention disability, noting that the right to security of migrants in the event of disability has to be promoted, that disabled people may face racial discrimination, and that the UN general Assembly should consider elaborating a comprehensive international convention to promote the rights and dignity of disabled people.

<sup>198</sup>These include, but are not limited to, the Special Rapporteur on Violence against Women, the Special Rapporteur on Contemporary Forms of Racism and the Special Rapporteur on Human Rights of Migrants.

This positive development has however been partly compromised. Most importantly, intersectional discrimination has almost exclusively been framed in terms of gender/sex and culture/origin. This serves to exclude people living in other intersections and suffering from other forms of discrimination and disadvantage. These groups include, but are not limited to, disabled women and minority and immigrant gays, who may be in an extremely vulnerable position both within and outside their particular groups and communities. The development has been compromised also in that it has mainly been the intersectional discrimination which has been addressed, while compound and multiple discrimination, as defined above in chapter 2.1, have not received any considerable attention.

Furthermore, intersectional analysis has not so far been consistently and comprehensively adopted by the treaty bodies, as references to such situations have been rather sporadic, with the exception of the Committee on the Elimination of Discrimination against Women. This lack of consistency has obviously to do with the failure of the governments and interested non-governmental organizations to provide the respective Committees necessary qualitative and quantitative information on the situation of people vulnerable to intersectional discrimination. It may also be that some treaty bodies, in particular the Committee on the Elimination of Racial Discrimination, are overly cautious with regard their mandate to consider multiple, compound and intersectional discrimination and disadvantage, and wish to proceed upon the examination of only such issues that manifestly or mainly involve only a single ground of discrimination.<sup>199</sup>

## 6.2. The Ability of Human Rights Law to Deal with Intersectional Discrimination

### 6.2.1. Human Rights Law and Intersectional Discrimination

An Expert Group Meeting, convened by the United Nations Division for the Advancement of Women, concluded that the existing national and international legal framework is able to deal with intersectional discrimination and hence there is no need to develop any additional instruments to protect the rights of the victims of such discrimination.<sup>200</sup> This conclusion was arrived at through noting that international treaties, such as the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and national laws and regulations, are designed to provide extensive protection against all forms of discrimination.

While the argument given for the above conclusion is generally speaking correct, the conclusion itself was arrived at too hastily. This is because of three main reasons: first, legal provisions and mechanisms may be different for different grounds, meaning that the choice of the ground on which intersectional or compound discrimination is deemed to have taken place (if such a choice is needed) can have significant legal implications; second, certain groups suffering from intersectional discrimination might need added legal protection not currently afforded; third, intersectional discrimination, disadvantage and subordination often result partially or completely from structural factors which are of such nature that they are often “non-justiciable”, and hence as such beyond the grasp of law, and it is thus the consequences of intersectional discrimination, and not so much the phenomenon itself, which needs to

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<sup>199</sup>Upon examining the approaches adopted by the CERD Committee and the Human Rights Committee in their respective Concluding Observations/Recommendations, one could observe that these observations and recommendations were framed in rather general terms, and addressed e.g. all the Roma or all the women without specifications.

<sup>200</sup>UN Division on the Advancement of Women (DAW), 2000.

be targeted at by law. This, again, means that there may be need for further international and national regulation.

*Differences in Provisions and Mechanisms.* Provisions on non-discrimination differ in fundamental ways also within the regime of human rights law. Provisions can be open or closed in nature in three fundamentally important respects:

- in terms of the listing of grounds of discrimination;<sup>201</sup>
- in terms of the scope and the actors that the provision covers;<sup>202</sup>
- in terms of legitimate exceptions.<sup>203</sup>

Legal instruments, and provisions and mechanisms provided therein, differ to a great extent in that some instruments are ground-specific, while others are general in nature. Also remedies that are available differ from one instrument to another, as do the conditions under which a petition or communication is admissible. Given this complex situation, a person who has experienced intersectional discrimination can end up in a situation in which a ground-specific instrument, e.g. the CEDAW Convention, would otherwise be the most suitable one, but one has to take the risk that the specific form of discrimination one has experienced is not considered by the respective Committee as discrimination on the ground of sex as provided for in Article 1 of the Convention.

The new EU directives on equal treatment, adopted by the Council of the European Union in 2000, provide a case in point. The two directives provide in many respects far better protection against discrimination than other international or EU instruments, as they e.g. contain an all-important provision on partial reversal of burden of proof in discrimination cases and explicitly prohibit both direct and indirect discrimination as well as harassment and instructions to discriminate. The first directive targets discrimination on the grounds of racial and ethnic origin, and is wide in scope, as it applies e.g. in relation to education, social advantages, health care, access to goods and services, vocational training and employment.<sup>204</sup> The second one targets discrimination on the grounds of religion or belief, disability, age and sexual orientation, and is considerably more modest in scope, as it applies mainly in relation to employment. Consider then, for instance, a situation in which a disabled immigrant is refused access to a restaurant, *de facto* because of the combination of these two factors, the possibility of him being able to enjoy the added protection afforded by the directives depends on certain contingencies, such as whether the court finds that it was because of racial or ethnic discrimination that he was discriminated against, and not on the basis of disability. This problem would be diminished if all grounds of discrimination were treated in a parallel way in law.

*The Possible Need for Added Protection.* It is important to recognize that the content of human rights is not predetermined or fixed once-and-for-all. There has been development as regards the substance of

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<sup>201</sup>I.e. is the provision limited only to one ground, or limited to certain explicitly mentioned grounds, or is the listing of grounds open-ended?

<sup>202</sup>Is it limited to e.g. employment or is it more general in scope; does it concern only public authorities or does it cover also action taken by private individuals, and if yes, to what extent?

<sup>203</sup>Are exceptions allowed explicitly, implicitly or not at all?

<sup>204</sup>Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

rights,<sup>205</sup> and this development has not yet stopped, if it ever will. On top of the rights that are of relevance to all people, e.g. the rights contained in the Universal Declaration on Human Rights, specific rights and instruments that are of relevance to some people in specific situations have been developed and adopted. One might mention here the CERD and CEDAW Conventions,<sup>206</sup> the ILO Convention no 169 on the Rights of Indigenous and Tribal Peoples, the Convention on the Rights of the Child and its Optional Protocol on the involvement of the children in armed conflict, and the UN Declaration on the Rights of Disabled Persons.

The development of situation or ground specific regulation arises from the *recognition* that a certain group and/or its members need added and new forms of protection because of their vulnerable position. Changes in and additions to human rights law reflect changes in and additions to the understanding of what human aspirations are fundamental enough to be classified as human rights.<sup>207</sup> Now that the intersectional analysis has brought new knowledge and awareness of different and aggravated forms of discrimination, it is almost certain that this understanding will be reflected in the upcoming instruments; for instance, a future convention on the rights of the disabled will have to address also those manifestations of discrimination that affect specifically or only disabled women.

*“Non-justiciability” of Structural Discrimination.* The factors underlying structural intersectional discrimination are often manifestly complex and beyond any simple legal regulation. Globalization, for instance, is one of the structural factors behind exploitative migration and trafficking. The more perceptible negative phenomena within globalization may be reduced or cut back by means of law, just like the perceptible positive phenomena may be promoted by means of law. Yet, globalization involves social, economic and cultural forces which are not that evident but which may nevertheless contribute to very real disadvantages, including intersectional disadvantage and subordination.

This inability of the law as such to cope with the various structural root phenomena does not however mean that there is nothing that could be done about the resulting disadvantage. Affirmative action, or positive action as it is mostly called in Europe, is one viable way to compensate groups and individuals suffering from structural intersectional disadvantage and subordination. In certain situations states are under a legal obligation to take measures of positive action, as recognized by the Committee on the Elimination of Racial Discrimination in its Concluding Observations on the state report of the United States of America:

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<sup>205</sup>See in general on this development Martin Scheinin (1999).

<sup>206</sup>Crenshaw has noted that the system of human rights was initially based exclusively on a concept of universality which was not able e.g. to bring up gender-specific problems: “...while women’s enjoyment of human rights were formally guaranteed, these protections were compromised to the extent that women’s experiences could be said to be different from the experiences of men. Thus, when women were detained, tortured, and otherwise denied civil and political rights in the same fashion as men, these abuses were clearly seen as violations of human rights. Yet when women were raped in custody, beaten in private, or denied access to decision-making by tradition, their differences from men rendered such abuses peripheral to core human rights guarantees”. Kimberle Crenshaw, 2000.

<sup>207</sup>Martin Scheinin (1999), p.1.

The Committee emphasizes that the adoption of special measures by States parties when the circumstances so warrant, such as in the case of persistent disparities, is an obligation stemming from article 2, paragraph 2, of the Convention.<sup>208</sup>

However, the obligation of states under current human rights law to engage in positive action measures is somewhat limited. Recognition of the existence of multiple, compound and intersectional discrimination and disadvantage provides thus one more good argument in favor of developing positive state obligations in this respect. It has to be noted, though, that such practices should be well targeted: positive action in favor of broad categories of people, such as quotas or target percentages in employment focusing on all members of a minority group seem only to increase the relative position of those already better-off within that group,<sup>209</sup> while those who are worse-off and more marginalized within that group will not benefit from such action.<sup>210</sup> Intersectional approach and analysis can have a tremendous impact for the designing of such positive measures that are more effective and better targeted from the point of view of those truly marginalized.

### 6.2.2. Human Rights and the Paradox of Multicultural Vulnerability

Ethnic and religious communities sometimes support such values and practices, often based on traditions, which are not in line with human rights. Examples of such traditional practices have been given in chapter 4.2 above. Migration has increased the relevance of this concern also in Europe and North America, as immigrant communities may continue such questionable practices also in their countries of destination.<sup>211</sup> By way of recognizing and promoting the right of these groups to enjoy their specific cultures, states face the paradox of multicultural vulnerability: by way of recognizing the essential interests and values of a minority group that is in a vulnerable position socially and culturally, states may endanger the essential interest of those that are in turn most vulnerable within the group itself.

In analyzing the legal response to the paradox of multicultural vulnerability, we have to acknowledge that, first of all, members of religious and ethnic minorities have the same inalienable and universal human rights as everyone else. For instance Article 2 of the Universal Declaration of Human Rights implies this position:

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<sup>208</sup>Committee on the Elimination of Racial Discrimination, Concluding Observations: USA (14/08/2001), paras 380-407.

<sup>209</sup>Even this may sometimes be justified.

<sup>210</sup>Thomas Sowell, for instance, has analyzed on the basis of statistics the impact which affirmative action policies practiced in the 1970s in the United States had on the Black community. According to Sowell the great majority of Blacks, particularly those worse-off socioeconomically speaking, did not benefit from affirmative action policies. This was because “the net effect of affirmative action is to increase the demand for highly qualified minority employees, while decreasing the demand for less qualified minority employees or for those without sufficient track record to reassure employers”. Thomas Sowell (1997), p. 111. See also Timo Makkonen (2001).

<sup>211</sup>It has also to be noted that it is often so that cultural and religious values and traditions acquire new meaning and importance for the first generation immigrants upon immigration. This has probably to do with the increased vulnerability and differentness experienced in a new environment, as well as the need to emphasize those issues that one has in common with other people sharing the same cultural and/or religious origin.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

On top of these universal human rights, members of minorities enjoy added protection in the form of minority rights, the aim of which is, broadly speaking, to enable them to maintain and develop their distinct identities by way of protecting their right to enjoy their own culture and practice their own religion. The question which emerges is this: what about situations in which minority rights may seem to protect a practice which violates the rights of a member of that group, the rights which are protected by norms of universal application?

The International Covenant on Civil and Political Rights is of paramount importance when discussing minority rights, as the Covenant is a legally binding document widely ratified by states. Article 27 deals with minority rights and stipulates that

[i]n those States in which ethnic, religious and linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 27, despite its negative wording, implies a positive right and requires positive measures of protection against infringements of that right by the state concerned or by private individuals.<sup>212</sup> Positive, proactive measures to protect the identity of a minority and the rights of its members may also be needed,<sup>213</sup> and are necessary in such instances in which the enjoyment of these rights would otherwise *de facto* be endangered in some way.

Can then Article 27, which in itself does not seem to contain a clause that would restrict its applicability in regard to practices that violate other human rights, be used as a justification for these practices?

The answer is, in light of the Covenant and the views expressed by the Human Rights Committee, clearly “no”. Article 5.1 of the Covenant stipulates that

[n]othing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

The UN Human Rights Committee, which monitors the implementation of the Covenant, observed in its general comment on article 27 that none of the rights protected under the said article may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant.<sup>214</sup> This position was affirmed by the Committee also in its General Comment 28 on equality of rights between men and women:

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<sup>212</sup>Human Rights Committee, General Comment 23 on Article 27, para 6.1.

<sup>213</sup>Ibid, para 6.2.

<sup>214</sup>Ibid, para 8.

The rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to equal enjoyment by women of any Covenant rights, including the right to equal protection of the law.<sup>215</sup>

The General Comment actually goes on noting that “[i]nequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes”, and that consequently “[s]tates parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights”.<sup>216</sup> The General Comment thus seems to imply that the states have an obligation to actively combat such cultural and religious attitudes and values that question the equal rights of women in these respects: it is not enough just to prohibit discrimination.

The UN Declaration on the rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities addresses the issue of minority rights in several articles, including Article 4.2:

States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

The Article is rather clear in stipulating that the obligation of states to create favorable conditions does not extend to such practices that are in violation of international human rights. Not only shall states not support such practices, but Article 8.2. expressly notes that the exercise of the rights set forth in the Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

Comparable provisions exist also in the ILO Convention No.169 on the Rights of Indigenous and Tribal Peoples<sup>217</sup> and in the Council of Europe Framework Convention for the Protection of National Minorities (no. 157).<sup>218</sup>

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<sup>215</sup>Human Rights Committee, General Comment 28 on Article 3, para 32. See also para 5, which notes that “[i]nequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights.”

<sup>216</sup>Idem.

<sup>217</sup>Article 8(2) of the Convention stipulates that indigenous and tribal peoples have the right to reserve their customs and institutions only in so far as these customs or institutions are not incompatible with fundamental rights defined by the national legal system or with internationally recognized human rights.

<sup>218</sup>Especially Article 22, which stipulates that “[n]othing in the present Framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.”



The position of international human rights law is thus clear in that the rights of individual members of minorities cannot be denied or limited in any way, not even in the name of minority rights and the need to recognize and support the distinct identities, cultures and practices of ethnic and religious groups.

That said, one question with immense theoretical and practical implications remains: as human rights by their very nature are entitlements, something which individuals may in practice claim or not, are states under an obligation to see to it that all human rights are in fact observed in all possible situations and that all individuals actively claim their rights if these are violated? Could a member of a minority be able, by way of not claiming his rights, to legitimately consent to an act or practice that as such is not in line with human rights? The question concerns largely the extent and nature of rights as well as state obligations,<sup>219</sup> and will not be addressed here, as that is a question meriting a study of its own.

## 7. Overall Conclusions and Recommendations

### 7.1. Overall Conclusions

The concepts of “multiple discrimination” and “intersectional discrimination” were initially introduced and analyzed by feminist African American scholars in the late 1980s and in the beginning of the 1990s. The introduction of these terms was related to their observation that African American women faced particular kinds of stereotypes and discrimination not faced by African American men or other women in general. From there the recognition of these phenomena and their importance has incrementally grown especially in the field of human rights and in the academic circles, where these subjects have already been institutionalized even into specific courses on intersectional discrimination, particularly in the United States. As regards the field of human rights, the adoption of the Durban Declaration and Programme of Action in the UN World Conference against Racism in 2001 represented a major milestone in recognizing the way discrimination on the basis of origin and respectively on the basis of sex/gender can, and do in fact, interact and produce previously unrecognized forms and manifestations of discrimination.

*Modest Recognition in National Level.* Despite this positive development the recognition and analysis of multiple and intersectional discrimination by governments and human rights organizations on the national level has generally speaking remained rather modest. This has probably to do with the fact that the issue at hand is still a relatively newly recognized one and hence its practical implications have not yet been analyzed and articulated in a clear way. The discussion on the subject has also been quite theoretical and abstract in nature, emphasizing the need for practical analysis as well as for evidence of the way in which this analysis can be useful in dealing with various real-life problems.

*Conceptual Disorganization.* There is also considerable conceptual disorganization involved, as several different concepts, such as “multiple discrimination”, “double/triple discrimination”, “multidimensional discrimination”, “intersectional discrimination” and “intersectional vulnerability” have been used to describe essentially similar or comparable situations. In the academic field, the concept of “intersectional discrimination” is favored while references to “multiple discrimination” are scarce, while in the field of human rights the opposite is true.

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<sup>219</sup>On different types of state obligations, see Martin Scheinin, 1999. See also the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly Resolution 53/144.

This study suggests, for the sake of clarity, that a single conceptual framework should be promoted and adopted. When analyzed more closely, it can be observed that the phenomenon under study consists of three different main components (situations), for each of which a term of its own can be devoted:

First, there is the situation in which one person suffers from discrimination on several grounds, on the basis of one ground at a time. This is basically a recognition of the accumulation of distinct discrimination experiences. It is suggested here that this first type of discrimination should be termed *multiple discrimination*.

Second, this phenomenon refers to a situation in which discrimination on the basis of two or more grounds add to each other to create a situation of *compound discrimination*.

Third, the phenomenon refers to a situation involving discrimination which is based on several grounds operating and interacting with each other at the same time, and which produces very specific types of discrimination. This one is called *intersectional discrimination*.

All of these types of discrimination would best be jointly called intersectional discrimination to the extent that there is a need to use an overarching term. However, given that the concept of multiple discrimination is rather exclusively used in the field of human rights, it may for practical reasons be necessary to use that concept as an overarching one in that specific context if conceptual accuracy is not needed - at least until the time that a new conceptual framework is adopted. In addition, it is suggested that along the concept of *discrimination*, also the concepts of *disadvantage*, *vulnerability* and *subordination* may prove useful.<sup>220</sup>

Previously the starting point for both the theory and practice of law has been that discrimination on the basis e.g. of origin and discrimination on the basis of sex/gender are two distinct phenomena that should be dealt with along mutually exclusive lines. This unidimensional approach is evident for instance in the UN Convention on the Elimination of All Forms of Racial Discrimination as well as in the UN Convention on the Elimination of all Forms of Discrimination against Women, as well as in the recent EU directives on equal treatment. However, the assumption that the different forms of discrimination are separate from each other has contributed to the situation in which some manifestations of intersectional discrimination have remained undetected and thus unaddressed in anti-discrimination policies.

This observation emphasizes the need for provisions and institutions which are flexible in nature and able to deal with all kinds of discrimination based on all possible grounds.

*The Need to Include the Excluded.* Another reason which has previously contributed to the invisibility of intersectional discrimination has to do with the way in which single-issue groups, such as the feminist movement and the anti-racism movement, and their agenda, are formed. It is often only such interests that affect all people in a certain group, or the majority of that group, or an elite within that group, that are recognized in the group agenda. This means that experiences, concerns and interests that are

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<sup>220</sup>However, the intention should not be to use any of these concepts *instead* of particular and established terms: for instance, while the events of 1995 in Rwanda involved a strong element of discrimination based on ethnic origin, this tragic episode is not, and should not be referred to as “ethnic discrimination” but as “genocide”. Terms such as intersectional discrimination should be used only in situations in which there is no term that would be more fitting, as well as for analytical purposes, for which this kind of conceptual framework is most useful.

particular to a subset of individuals within that group are often excluded from the group agenda. Small groups of people and their needs tend to get lost within broader categories, which on the other hand need to be broad enough in order to influence policy making. Thus there often are, whether we speak of interest groups or of ethnic groups, *people who are disadvantaged within that particular disadvantaged group and the general society alike*, people who constitute a minority within a minority. This leads to a situation in which their concerns and interests become the most marginalized ones in the consideration of problems that need to be addressed.<sup>221</sup>

*Identifying Structural Contexts of Discrimination.* It is important to note how structural factors contribute to situations of multiple, compound and intersectional discrimination and disadvantage. By structural factors are meant such phenomena as poverty, illiteracy, cultural barriers, linguistic barriers and e.g. globalization. This observation emphasizes the need to analyze in detail the context in which discrimination or other disadvantage takes place. Without such an analysis anti-discrimination policies can never be effective enough.

*Harmful In-Group Practices.* Another point which is crucial to note in this regard is that multiple, compound and intersectional discrimination may involve discrimination by the general society (out-group discrimination) and/or by one's primary reference group (in-group discrimination). As regards the latter, attention has to be directed at such cultural, religious or traditional practices that negatively affect for instance women: in such a situation they face intersectional discrimination on the basis of their gender and origin. Examples of such practices that have aroused concern also in e.g. Nordic states include forced marriages, female genital mutilation and "honor" crimes.<sup>222</sup>

*The Compatibility of the Human Rights System.* Intersectional discrimination poses two major challenges to the system of human rights. First, is the human rights system able to recognize intersectional discrimination, given that such discrimination has in the past remained largely unrecognized? Second, is the legal framework of human rights able to cope with intersectional discrimination?

As regards the first question, it can be noted that as the human rights system, especially within the UN, has increasingly started to recognize the existence of intersectional discrimination, there is nothing that would in principle inhibit the recognition of intersectional discrimination as such. This recognition has, however, been very limited in nature: *It is mainly the intersection of origin and gender that has been recognized* and addressed, to the *exclusion* of all other possible intersections. It is very disturbing indeed to note this discriminatory tendency in action which itself aims to address multiple and intersectional discrimination and disadvantage. However, the failure is not entirely that of the system of

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<sup>221</sup>As noted by the UN Special Rapporteur on Violence against Women, "intersectional subordination by its very nature is often obscured both because it tends to happen to those who are marginalized even within subordinate groups and because existing paradigms do not consistently anticipate the discrimination". UN Special Rapporteur on Women, 2001, p. 4.

<sup>222</sup>One might consider the vulnerable situation of an immigrant or minority woman: she may, first of all, face discrimination from the side of the general society on the basis of her origin and on the basis of her gender in various ways (multiple, compound and intersectional discrimination); second, she may face discrimination on the basis of her gender, and because of harmful cultural practices within her own group (intersectional discrimination); third, these forms of discrimination can further interact or accumulate to create even greater degree of disadvantage and subordination, not to speak of structural disadvantage that is often experienced by a vulnerable group and its members.

human rights, as it cannot recognize phenomena which have not been adequately documented: hence the problem is more that of the *lack of production of relevant information* and data.

As regards the second question, the ability of the legal framework of international human rights to deal with intersectional discrimination, three observations can be made: First, it is possible that new regulation is needed to address the specific concerns that surface when an intersectional approach is adopted. It is nowadays widely accepted that human rights provisions of general application are not sufficient for the protection of the weakest or most vulnerable members of the society. Reference can in this regard be made to specialized conventions and declarations that address women, children, disabled people, indigenous and tribal peoples, refugees, migrants and minorities. This kind of an approach emphasizes that *efforts of protection need to be well targeted and specific* to the situation and problems faced by persons experiencing, for instance, intersectional discrimination.

Second, one has to take note of the fact that legal instruments and provisions that are ground-specific differ from each other. Hence the level of protection in situations involving compound or intersectional discrimination is contingent upon whether the discrimination on several interacting grounds can be established to constitute discrimination on one specific ground. Third, given that structural factors, which are to a great extent beyond the reach of discrimination law, do contribute to situations involving intersectional discrimination, it is the consequences of such discrimination and disadvantages that have to be addressed. This means that positive action measures are needed to redress the situation of those suffering from structural intersectional disadvantage. By way of a conclusion, then, one can note that there may be *a need for further regulation in this field of law*.

The most important *benefits* of an intersectional approach is its ability to unveil previously unrecognized forms and manifestations of discrimination. Intersectional analysis is also able to detect the various backgrounds and other factors that have contributed to such discrimination and disadvantage. And a *more comprehensive understanding* of the different forms and background factors behind discrimination and disadvantage obviously provides a better platform for political and legal action aimed at combating discrimination.

There is also one particular *pitfall* that might emerge from a misuse of the intersectional approach. This is the incorrect assumption that intersectional discrimination is the only form of discrimination, or only form of discrimination worthy of being addressed. This kind of an assumption would create new and harmful stereotypes, such as that “all Muslim women are victims of intersectional subordination”.

The whole point of an intersectional approach is to detect and analyze discrimination and disadvantage in all of its diversity, and not to render some other forms of discrimination invisible.

## 7.2. Overall Recommendations

### *Recommendations of a General Nature*

- there is a need to mainstream an intersectional approach and analysis into all action on human rights, including the work of the Commission on Human Rights and the Special Rapporteurs established by it;
- there is a need to promote and adopt an unambiguous conceptual framework on these phenomena;
- a new kind of approach to discrimination should to be adopted; this approach has to be holistic and has to be built from the ground up,<sup>223</sup>
- other intersections besides those of “racial” or ethnic origin and sex/gender need to be increasingly recognized and studied;
- promotion of economic, social and civic rights is especially needed to deal with the many background factors that contribute to intersectional and compound discrimination;
- promotion of positive action which is specifically targeted on those most disadvantaged is particularly needed.

### *United Nations’ System of Human Rights*

- United Nations treaty bodies need to take a conscious effort at fully integrating an intersectional analysis in their work, and address all kinds of multiple, compound and intersectional discrimination, within the limits of their respective mandates;
- treaty bodies and other human rights institutions should request, and engage in, collection of data disaggregated by different grounds, such as origin, sex, health status and age, where viable; qualitative data, including case studies, should be requested in addition to quantitative data;
- it should be considered whether a UN Special Rapporteur on Multiple, Compound and Intersectional Discrimination should be established, especially in order to increase both knowledge and awareness of these phenomena;
- the need to draft new provisions and international human rights instruments, and consider updating existing ones (especially instruments focusing on a single ground) should be assessed;
- as national recognition of multiple, compound and intersectional discrimination is largely lacking, international human rights bodies should work towards raising awareness of these issues and develop recommendations on the ways in which they can be acknowledged and tackled on a national level;

### *Empowerment of Vulnerable Groups and Persons*

- comprehensive and context sensitive action aiming at the empowerment of all groups vulnerable to intersectional discrimination need to be taken;
- it is extremely important to support in all possible and politically viable ways specific subgroups, including, but not limited to, immigrant, minority and indigenous women, disabled, gay and elderly women and their organizations;
- it is important to facilitate international networking of those groups and individuals who are vulnerable to multiple, compound and intersectional discrimination and disadvantage, such as indigenous women;

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<sup>223</sup>Crenshaw argues that “because the specific experiences of ethnically and racially defined women are often obscured within broader categories of race or gender, the full scope of their intersectional vulnerability cannot be known and must in the last analysis, be built from the ground up”. Kimberle Crenshaw, 2000.

- policies aiming at increasing the participation of immigrant, minority and indigenous women in decision- and policymaking need to be taken, including in the field of human rights;
- especially minority and indigenous women need to be made more visible: for this purpose, international and national seminars, symposiums and conferences are most useful and should be funded;
- people vulnerable to multiple, compound or intersectional discrimination, including migrant and disabled women, need to be educated of their rights;
- whenever studies, on-site visits, human rights missions, election observation missions or other information gathering activities are carried out, particular attention has to be paid to those most vulnerable, including minority, immigrant and indigenous women, and a conscious effort needs to be taken in order to ensure that their views are properly heard.<sup>224</sup>

#### *Multiculturalism and Harmful In-group Practices*

- multiculturalist policies that at the same time protect fundamental interests and rights of the group and its members need to be studied and developed; these policies need to acknowledge the dynamic and heterogenous nature of immigrant, minority and indigenous communities, and should reflect the experiences of marginalized women in order to guarantee their full enjoyment of all rights;
- problems that are internal to vulnerable groups need to be addressed, but this has to be done in a way that does not increase negative attitudes towards that group and also positive matters related to that group need to be taken up for the sake of providing a balanced view on them; these internal problems should principally be addressed in a way suggested by the group itself;
- the development of legal instruments and provisions, both international and national, combating harmful traditional practices, including FGM and forced marriages, as well as trafficking and gender-based violence during armed conflicts, needs to be considered in a comprehensive way from the point of view of intersectional analysis;

#### *Action on a National Level*

- the constructive role that the civil society can have in identifying and dealing with intersectional discrimination should be fully recognized;
- theoretical and practical research on all forms of multiple, compound and intersectional discrimination and disadvantage need to be taken;
- national legislation, especially integration and immigration laws, need to be reviewed from the point of view of multiple, compound and intersectional discrimination;
- intersectional analysis has to be carried out in drafting and designing of all policies and legal instruments;
- a comprehensive human rights education programme should be developed with a view to creating a value system that is supportive of all human rights for all;
- support structures need to be established for victims of, in particular, exploitative migration, domestic violence, and in-group discrimination and subordination.

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<sup>224</sup>On this question UNIFEM has noted that “[s]ince community spokespeople are often men, information gathering activities should specifically seek out the perspectives of women. This may require confronting language barriers, women’s inability to travel freely or learn about opportunities to speak with factfinders, and community norms that pressure women not to speak about their rights violations. For instance, on-site visits should seek access to facilities and sites where women can speak directly to officials and staff should include individuals with gender expertise and female interpreters”. UNIFEM, 2001, para 42.

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