



European Network Against Racism

Réseau européen contre le racisme

Europäisches Netz gegen Rassismus

FACT SHEET 33

Multiple Discrimination

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This fact sheet aims to explain multiple discrimination with a view to enhancing the capacity of ENAR members to develop mechanisms to address, in their work, the intersection between racism and other forms of discrimination. It begins by providing an overview of the historical background, as well as definitions and examples of key concepts and their implications. Subsequently, two approaches to anti-discrimination are explored and key limitations and challenges are highlighted in the EU context. Finally, examples of good practice in the area of multiple discrimination are provided.

Introduction

The right to non-discrimination and equality before the law, including equal protection of the law, constitutes a universal right recognised by various international, regional and domestic legal sources¹. Along with complimentary non-legal mechanisms, these sources form the basis of human rights frameworks established to protect these rights and to address negative social realities such as inequality, discrimination and disadvantage. These frameworks in general, and in particular the EU anti-discrimination framework, are currently grappling with challenges posed by social realities of multiple discrimination.

Multiple discrimination as a concept has emerged in academic and human rights fora to address the reality that experiences of discrimination are shaped by one's multiplicity of identity. As each individual has an age, a gender, a sexual orientation and an ethnicity, and some have or acquire a religion or a disability, discrimination may be experienced on multiple grounds. For example, an individual belonging to an ethnic minority may be a woman, a woman may be a lesbian, and a lesbian may be an individual with a disability. In fact, one person could identify themselves or be perceived as all of these simultaneously and may experience specific and complex forms of discrimination on this

¹ For example, Article 7 of the United Nations Universal Declaration on Human Rights states that "All are equal before the law and are entitled without any discrimination to equal protection of the law."

basis.² In recognising the complexity of identity, the concept of multiple discrimination endeavours to explain social realities and shape approaches to addressing the complexity of discrimination, disadvantage and exclusion in such a way as to better reflect these social realities.

Background

Historically, the term ‘multiple discrimination’ emerged in the late 1980s to describe the reality that one can belong to several different disadvantaged groups and as a result suffer aggravated and specific forms of discrimination. This intersectional analysis was largely introduced by the African American feminist scholar and proponent of Critical Race Theory, Kimberle Crenshaw, who called attention to the many ways in which race and gender interact to shape the experiences of black women. Crenshaw noted that neither the traditional understanding of racial discrimination nor that of gender discrimination adequately reflected the experiences of African American women or addressed the specific forms of discrimination they faced distinctive of that faced by African American men or white women. It was on this basis that Crenshaw and her fellow scholars began criticising the single-ground approach³ for providing neither adequate protection nor a full picture of the social reality.⁴

From there, the understanding of intersectional analysis evolved into an understanding that all grounds of discrimination may interact with each other and produce specific experiences of discrimination. Until the second half of the 1990’s, dialogue on the subject took place primarily in the academic arena. In recent years, the importance and usefulness of the concept has also become increasingly recognised in different international human rights fora, both governmental and non-governmental.⁵

Concepts, definitions and examples

Though considerable work exists on the topic, a common understanding of the meaning and implications of multiple discrimination⁶ is still taking shape. However, most scholars and individuals working in the field of anti-discrimination agree that three relevant distinctions exist when analysing situations in which an individual experiences discrimination on more than one ground: **multiple, compound and intersectional discrimination**.⁷

²Fredman, Sandra. “Double trouble: multiple discrimination and EU law” (2005); and Makkonen, Timo. “Multiple, compound and intersectional discrimination: Bring the experiences of the most marginalised to the fore” (2002).

³The single-ground approach is further explored below.

⁴Danish Institute for Human Rights. “Literature review on multiple discrimination” (2007).

⁵Ibid.

⁶Collectively, these distinctions have been referred to as either multiple discrimination or intersectional discrimination. In the academic arena, this group of phenomena are most often referred to as intersectional discrimination, while among human rights activists and in the non-governmental sector, the term most frequently used seems to be multiple discrimination. For the purposes of this fact sheet, the term ‘multiple discrimination’ refers to the collective term unless otherwise stated.

⁷Danish Institute for Human Rights. “Literature review on multiple discrimination” (2007).

Multiple discrimination, in its narrower sense, describes a situation in which discrimination occurs on the basis of two or more grounds operating separately. For example, a woman with a disability 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 where public office buildings are not wheelchair accessible.⁸ In this case, multiple discrimination describes the cumulative impact of distinct and separate experiences of discrimination.

In contrast, **compound discrimination** describes a situation in which discrimination occurs on the basis of two or more grounds at the same time and where one ground multiplies or intensifies in the same instance the discrimination experienced on another ground.⁹ For example, in a segregated labour market where migrants are isolated in low-pay, low-status jobs and where women suffer a gender-specific pay-gap, migrant women are likely to both experience under-employment, being relegated to lower status jobs than the majority population, *and* to receive lower pay than their male counterparts for such work due to the gender pay gap.

Lastly, **intersectional discrimination** describes a situation where several grounds operate simultaneously and interact in an inseparable manner. This has the effect of producing distinct and specific forms of discrimination. Minority women may be subject to specific types of prejudice and stereotyping and face specific types of discrimination, not experienced by minority men or majority women in general.¹⁰ For example, in some European countries, Romani women have been coercively sterilised¹¹; an experience of discrimination very specific to Romani women that does not often affect women in general or Romani men. The concept of specificity is thus of crucial importance when examining intersectional discrimination.

Implications and closer analysis

Multiple discrimination merits particular attention since those experiencing these complex forms of discrimination are among the most vulnerable, marginalised and disadvantaged. This is because, for a number of reasons to be outlined below, their experiences of discrimination often remain hidden and are more frequent, intense, and specific. It also has also been argued that existing human rights frameworks and anti-discrimination approaches have evolved in such a way as to exclude their experiences.

A key phenomenon to consider is the **multiplier-effect** inherent in multiple discrimination. The impact of experiencing discrimination on multiple grounds does not amount to merely the sum of experiences on each of the single grounds. Instead, experiences of discrimination based on multiple grounds interact in such a way as to multiply and intensify the overall impact of discrimination on the victim as well as to create forms of discrimination that affect the victim in very specific ways. For example, a black individual with a disability suffers racism when he is denied entrance to a private

⁸Makkonen, 2002.

⁹Danish Institute for Human Rights, 2007.

¹⁰Ibid.

¹¹The issue of coercive sterilisation of Romani women has been explored extensively by the European Roma Rights Centre (www.errc.org).

establishment, but when he goes to file a complaint with the relevant body; he finds the building is not wheelchair accessible. These experiences of discrimination are more complicated than merely the racism faced by a black individual combined with the disablism faced by an individual with a disability. Taken together these experiences interact in such way as to magnify their overall impact.

Belonging to multiple vulnerable groups also puts individuals at risk of experiencing discrimination more frequently. First of all, there are simply more grounds on which to face discrimination. A so-called **trigger-effect** may also be at play¹²: an individual might not in general discriminate against women or migrants, but the combination of these two traits may trigger discriminatory behaviour. Also, the fact that an individual experiences one type of multiple discrimination (i.e. multiple, compound, or intersectional) does not preclude them from experiencing other types of multiple discrimination. Finally, these individuals may experience discrimination not only by society in general, but also from their own communities, a type of discrimination termed in-group discrimination.

In-group discrimination refers to a situation in which an individual is treated adversely by his or her own community or reference group on the basis of belonging to another vulnerable group. For example, a woman belonging to an ethnic minority may face racism from women belonging to the majority community. Conversely, this woman may also face discrimination from within her ethnic community on the basis of her gender. This type of discrimination explains in part the increased frequency, intensity and specificity of experiences faced by victims of multiple discrimination, reinforcing their status as the most vulnerable. For the victim, in-group discrimination can be particularly damaging as denial of equal treatment comes from a community which the victim wishes to relate to rather intimately and from which the victim might need to seek support.¹³

Thus the fact that a particular group faces discrimination does not preclude the group or its members from discriminatory behaviour. In-group discrimination can expose what has been referred to as the '**paradox of multicultural vulnerability**'¹⁴: by remedying one type of vulnerability, multiculturalist policies may reinforce other vulnerabilities. For example, instances of in-group discrimination, such as early forced marriages, female genital mutilation, and honour killings, have occurred in the name of culture. In the context of increasingly diversified societies, efforts to promote cultural tolerance must not allow cultural practices to override fundamental individual rights. At the same time, discussions of in-group discrimination must be treated in a sensitive manner as they can too easily fuel racist sentiment and support the tendency to '**blame the victim**'¹⁵. Indeed, for this reason, group members and victims alike may feel pressure to keep these practices hidden.¹⁶

¹²Makkonen, 2002.

¹³Ibid.

¹⁴Ayelet Schachar (2001) as cited by Makkonen (2002).

¹⁵Generally speaking, 'blaming the victim' refers to the tendency for members of the general public to use differences - socio-economic, cultural or otherwise - as proof of inferiority or some other defect on the part of the victim, reinforcing existing stereotypes which perpetuate discrimination. This arises out of a misunderstanding about the real causes of these differences and of disadvantage in general.

¹⁶Makkonen, 2002.

Finally, existing human rights frameworks and anti-discrimination policies based on a single-ground approach and lacking any intersectional analysis may themselves have a role to play. In so far as experiences of multiple discrimination fall outside of existing categories, these experiences remain hidden and are excluded by policies aimed at addressing discrimination. In this way, individuals experiencing multiple discrimination are placed at a greater risk of experiencing **structural discrimination**. The exclusion of experiences of multiple discrimination from the policy-development process means that the resulting policies, while benefiting those members of vulnerable groups affected by single grounds alone, can at times have an unintentional negative impact on those experiencing discrimination on the basis of multiple grounds, ultimately reinforcing their status as the most vulnerable and disadvantaged.¹⁷

Anti-discrimination approaches and the limitations of EU law

The **single-ground approach** analyses discrimination on the basis of each of the single grounds in isolation. Makkonen explains the evolution of this approach in a historical context where the various grounds have been considered by policy-makers and activists in single-issue movements that have kept considerable distance from each other and therefore have given rise to separate bodies and legal instruments.¹⁸

Much of the existing literature on multiple discrimination has concentrated on criticising the single-ground approach from a legal perspective. The main criticism of anti-discrimination law is that it is structured and pursued on a single-ground basis, and the prevailing argument is that this ignores the most vulnerable, by excluding those individuals situated at the intersection of the grounds.

In contrast, the **intersectional approach** is argued to be more effective in addressing multiple discrimination by analysing discrimination in a manner that allows for the experiences of discrimination to be acknowledged and remedied on the basis of the intersection of the grounds involved¹⁹. This approach has mainly received academic attention in the US, Canada, South Africa, the United Kingdom and Ireland, while in many of the (other) EU Member States the concept of intersectionality is only just emerging.

It is not therefore surprising that, as EU legislation and policies aimed at addressing discrimination are based on a single-ground approach, they do not adequately address experiences of multiple discrimination. This is due in large part to the fact that since the adoption of the Treaty of Amsterdam and its Article 13²⁰, EU anti-discrimination law has evolved to include protection, in varying degrees and scope, for six grounds of discrimination²¹, but in a manner that addresses the grounds in isolation, which has been

¹⁷Ibid.

¹⁸Ibid.

¹⁹Danish Institute for Human Rights, 2007.

²⁰Article 13 of the Treaty of Amsterdam gave the EU competence to provide protection beyond the grounds of gender and nationality.

²¹The six grounds covered by the EU anti-discrimination framework are race, religion and belief, gender, sexual orientation, disability and age.

argued to have the effect of excluding intersectional experiences of discrimination. More specifically, EU legislation risks excluding experiences of multiple discrimination by: (1) providing protection for only a restricted list of grounds; and (2) lacking provisions that explicitly recognise multiple discrimination beyond provisions to promote gender mainstreaming.

Firstly, by providing protection for only a restricted list of grounds, EU legislation leaves little room for interpretation to allow for consideration of the intersection of those grounds. For example, EU Equality Directives provide protection for a restricted list of grounds in the field of employment:

The principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status²²;

To this end, any direct or indirect discrimination based on racial or ethnic origin...should be prohibited²³; and

To this end, any direct or indirect discrimination based on religion or belief, disability, age, or sexual orientation...should be prohibited²⁴.

In contrast, Article 7 of the United Nations Universal Declaration of Human Rights and Article 14 of the Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provide more open-ended provisions:

*All are equal before the law and entitled without **any** discrimination to equal protection of the law. All are entitled to equal protection against **any** discrimination in violation of this declaration and against **any** incitement to such discrimination²⁵; and*

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, birth **or other status**²⁶.*

While it is true that the EU Equality Directives are themselves based on the larger international human rights framework shaped both by the Council of Europe and the United Nations, protection for situations of multiple discrimination has not been among

²²Council Directive 2006/54/EC on implementing the principle of equal treatment between men and women in matters of employment and occupation.

²³Council Directives 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

²⁴Council Directives 2000/78/EC on establishing a framework for equal treatment in employment and occupation.

²⁵United Nations Universal Declaration of Human Rights, 1948.

²⁶Council of Europe European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

the issues that have been explicitly carried over in the development of the Directives. This is because, while the Directives cite specific references to the ECHR and various UN conventions in their recitals, these references do not extend to the operational provisions of the EU instruments. That is to say, that while there has been recognition that the EU anti-discrimination framework exists in the context of this broader international human rights framework, EU Member States are not explicitly obliged to transpose and implement provisions from this framework that might recognise situations of multiple discrimination.

Secondly, EU anti-discrimination law lacks specific comprehensive provisions that explicitly recognise multiple discrimination beyond provisions to promote gender mainstreaming. For example, both Recital 3 of the Race Equality Directive and Recital 14 of the Employment Equality Directive mention multiple discrimination in relation to gender:

In implementing the principle of equal treatment,... the Community should...aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination²⁷.

However, despite this explicit recognition of the issue, these instruments do not include specific and comprehensive provisions expressly recognising multiple discrimination. In this way, they do not explicitly provide protection and redress for intersectional experiences involving grounds other than gender.

In contrast, Canada and South Africa may offer examples of good practice in the intersectional and contextual approach taken in their legislation. Both the Canadian Human Rights Act and the South African Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) include provisions recognising multiple discrimination:

*For greater certainty, a discriminatory practice includes a practice based **on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds**²⁸; and*

*Discrimination includes any act or omission...which directly or indirectly (a) imposes burdens, obligations or disadvantages on; or (b) withholds benefits, opportunities or advantages from, any person **on one or more prohibited grounds**²⁹.*

Furthermore, both the Canadian and South African legislation go a step further as they reflect a conceptualisation of discrimination that depends less on a comparison of the treatment that may be discriminatory and more on the actual effect of the treatment on the complainant. In contextualising the evaluation of cases by focusing on the effect of the treatment, this legislation permits the particular experience of the individual, shaped by a

²⁷Council Directives 2000/78/EC on establishing a framework for equal treatment in employment and occupation.

²⁸Canadian Human Rights Act, 1985.

²⁹South African Promotion of Equality and Prevention of Unfair Treatment Act, 2000.

number of relevant factors and including the intersection of grounds, to be both acknowledged and remedied³⁰.

Challenges in the evolving EU anti-discrimination framework

Within the EU, there is hesitation to expand the list of grounds covered by the Equality Directives or include specific provisions recognising multiple discrimination for fear of opening a Pandora's box of claims by limitless sub-groups. Nevertheless, current legislation in many EU countries forces victims to choose one element of their identity over others in the interest of being strategic and does not fully reflect the realities of discrimination nor provide redress to the whole person with a complex identity. While both a non-exhaustive list of grounds and the contextualised approach offered by the Canadian and South African examples may be unrealistic given the constraints of Member State consensus, if the EU anti-discrimination framework is to be effective in addressing the realities of discrimination, it will need to evolve in such a way that provides a space for the recognition of intersectional experiences.

Recently, EU debates on anti-discrimination and equality mainstreaming have increasingly centred around the move towards a **single-equality approach**. Specifically, such an approach entails a focus on discrimination and equality mainstreaming in general as opposed to focusing on initiatives to fight specific forms of discrimination based on each of the grounds. While this less segregated approach could provide a greater space for the recognition of intersectional experiences, it poses the risk of the opposite evil: a framework that evolves to lose sight of the specificities of each of the grounds. Thus, the key challenge in the evolution of the EU anti-discrimination framework will be to continue to recognise and address the specificities of each of the grounds while providing a space for recognising and addressing their intersectionality.

Examples of good practice by civil society and governmental actors

Despite the complexity of the issue, with its various definitions, distinctions and implications, what is important to recognise is that multiple discrimination is a social reality that affects the daily experiences of individuals in very concrete ways. While the current EU legislative framework may not adequately address multiple discrimination, there are practical steps that can be taken in this regard by both civil society and governmental actors in their policy-development and activities. Initiatives aimed at addressing multiple discrimination can be effective if they consider how the intersectionality of identity and experiences of discrimination play into real-life, day-to-day situations.

The following are examples of good practice in the area of multiple discrimination by civil society as well as governmental actors:

- The European Roma Rights Centre (ERRC) has a Women's Rights Officer on staff whose work focuses directly on addressing the impact of race and gender on Romani

³⁰ Moon, Gay. "Multiple discrimination – problems compounded or solutions found?"; and Ontario Human Rights Commission. "An intersection approach to discrimination: Addressing multiple grounds in human rights claims" (2001).

women. The Centre has produced publications on the topic, including an issue of their Roma Rights quarterly journal dedicated to the Romani women's rights movement across Europe. They are also involved in relevant advocacy and litigation activities such as reporting to the UN Committee on the Elimination of Discrimination Against Women (CEDAW) and taking cases on the coercive sterilisation of Romani women in several European countries. (www.errc.org)

- At annual conferences, ILGA-Europe has specific workshops focused on each of the other grounds to inform their membership of the intersection between sexuality and the other grounds and to promote diversity internally. As an outcome of this initiative, the organisation will be undergoing shortly an inward-looking equality and diversity evaluation, along with four member organisations. This process will include evaluations of structures, systems and programmes, as well as action planning for change to better promote equality and diversity within these organisations. This will be facilitated by an external expert and the boards, staff and members of each organisation will participate. (www.ilga-europe.org)
- An informal working group on multiple discrimination was formed jointly by anti-discrimination networks working on each of the grounds in the aim of promoting effective responses to multiple discrimination at both the European and national levels. The six networks involved are the European Older People's Platform (AGE), the European Disability Forum (EDF), the European Network Against Racism (ENAR), the European Women's Lobby (EWL), the European Youth Forum (YFJ) and the International Gay and Lesbian Association for Europe (ILGA-Europe). The working group meets regularly to: exchange information on relevant activities and develop joint projects; develop common understanding and conceptualisation of multiple discrimination; develop practical supports for awareness-raising within the networks; and develop common positions on key policy issues in the European context as appropriate. In September 2007, the European Youth Forum will host a conference on multiple discrimination, developed and implemented in collaboration with the working group.
- The European Commission will publish a study on multiple discrimination to be completed by the Danish Institute for Human Rights (a literature review has already been completed). The study aims to improve the understanding of the causes and consequences of multiple discrimination, raise awareness of the particular difficulties facing victims, facilitate expertise and experience to be found in this area, and practical recommendations towards addressing multiple discrimination. The study will be launched at the Commission's conference on multiple discrimination to be held in Copenhagen on 6-7 December 2007. (http://ec.europa.eu/employment_social/eyeq/index.cfm?page_id=302)

Key Resources

Makkonen, Timo. “Multiple compound and intersectional discrimination: Bringing the experiences of the most marginalized to the fore”

<http://www.abo.fi/instut/imr/norfa/timo.pdf>

Moon, Gay. “Multiple discrimination – problems compounded or solutions found?”

<http://www.justice.org.uk/images/pdfs/multiplerediscrimination.pdf>

Ontario Human Rights Commission. “An intersectional approach to discrimination: Addressing multiple grounds in human rights claims”.

http://www.ohrc.on.ca/en/resources/discussion_consultation/DissIntersectionalityFtnts/pdf

Directorate-General of Employment Social Affairs and Equal Opportunities of the European Commission (DG Employment)

http://ec.europa.eu/employment_social/gender_equality/index_en.html

Action against Discrimination, Civil Society Unit of DG Employment

http://ec.europa.eu/employment_social/fundamental_rights/index_en.htm

EU Race Equality Directive

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf

EU Employment Equality Directive

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_78_en.pdf

EU Equality Directives on Gender

http://ec.europa.eu/employment_social/gender_equality/legislation/legalacts_en.html

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ENAR is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.



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