

Working Paper no. 66

Multiple Discrimination in the World of Work

**Colleen Sheppard
Professor, Faculty of Law, McGill University &
Director, Centre for Human Rights and Legal Pluralism**

Geneva, September 2011

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

ILO Cataloguing in Publication Data

Sheppard, Coleen

Multiple discrimination in the world of work / Coleen Sheppard ; International Labour Office, Programme for the Promotion of the ILO Declaration on Fundamental Principles and Rights at Work (DECLARATION). - Geneva: ILO, 2011

1 v.

ISBN: 9789221248828;9789221248835 (web pdf)

International Labour Office

discrimination / sex discrimination / racial discrimination / disabled worker / indigenous people / sexual behaviour / religion / equal employment opportunity / decent work / definition / measurement

ILO Cataloguing in Publication Data

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and electronic products can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland.

Catalogues or lists of new publications are available free of charge from the above address, or by email:

pubvente@ilo.org

Visit our web site: www.ilo.org/publns

Printed in Switzerland

TABLE OF CONTENTS

FOREWORD	v
I. Introduction: Confronting Multiple Discrimination.....	1
II. Terminology: An Expansive Definition of Multiple Discrimination.....	3
III. Difficulties in Measuring Multiple Discrimination.....	5
IV. Legal and Policy developments: Continuing Challenges.....	10
International and Regional Initiatives	10
National Initiatives: Legislative, Constitutional and Policy Changes.....	17
“Cross-Constituency Organizing:” Emerging Trends.....	21
V. Adjudicating Multiple Discrimination Claims.....	24
VI. Proactive Models for Equality	30
VII. Multiple Discrimination, Decent Work and Fair Globalization	35
VIII. Conclusion	37
Appendix A	39
Recommendations:.....	39
Appendix B	41
Selective Bibliography	41

FOREWORD

The ILO Declaration on Fundamental Principles and Rights at Work, adopted by governments, workers' and employers' representatives from across the world at the International Labour Conference in June 1998, has become an international reference in defining and promoting the basic rights at work. It covers four major areas: freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour, the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

The Declaration includes an obligation for the ILO member States to respect, promote and realize those fundamental principles and rights at work, and a concurrent obligation for the ILO to assist its member States in their efforts. For that purpose, several pieces of research and publication, formal reporting procedures, and extensive technical cooperation projects have been put in place to build knowledge, raise awareness, develop capacity, create new national institutions, and help elaborate new legislation and national policies in numerous countries.

The working papers published by the ILO Programme to Promote the Declaration on Fundamental Principles and Rights at Work contribute to the discussion of those principles. The current paper is addressing an issue of emerging topical importance, increasingly recognized as a subject of research on its own merits, and yet in the need of further research and discussion. It is hoped that the paper will raise further interest in the debate on multiple discrimination and will provoke further research and attention to the topic by both academia and the practitioners.

Professor Colleen Sheppard is well positioned to contribute to such an important debate. As a highly qualified member of Law Faculty at the University of McGill and the Research Director of the McGill Centre for Human Rights and Legal Pluralism, she teaches and conducts research in the field of human rights, Canadian and comparative constitutional law, equality rights, economic and social rights, and feminist legal theory. She has also engaged in public service activities to advance human rights in Canada and internationally and is familiar with the state of the art developments in Canada as regards non-discrimination law and practice. Her recommendations, reproduced at the end of the paper, are aimed at further enhancing the attention to the topic of multiple discrimination.

The traditional approach adopted in legislation, and in the institutional arrangements, is to address discrimination based on single specific grounds. This remains highly relevant. Human identity, however, is complex and an individual might be discriminated against because of his or her particular identity, which may combine a number of grounds for discrimination. This paper refers to the realities of additive, compound and intersectional forms of discrimination.

There is now a gradual trend towards a wider recognition of multiple discrimination as a legal concept in itself. Difficulties in defining, measuring and addressing such types of discrimination necessitate further legal and policy developments. A number of national and international initiatives are mentioned in this paper as regards legislation and national policy, adjudicating multiple discrimination cases and cross-constituency organizing. One of the approaches explored is to look beyond the traditional comparator group analysis, which is well suited to address discrimination based on a single ground but not always able to capture multiple discrimination. The traditional institutional remedies, such as affirmative action, also render themselves more to addressing inequalities resulting from discrimination on a single ground.

This is the first of four working papers which were prepared in the run up to the publication of the ILO Global Report on Non-Discrimination, *Equality at work: the continuing challenge*, published in May 2011. Non-discrimination is an essential element of decent work and social justice. The International Labour Organization has contributed to these goals through its numerous instruments and discussions, with remarkable impact at the global level. Achievements of the several past decades need to be guarded vigilantly in the midst of the series of social, economic and security crises in the first decade of the 21st century as non-discrimination is truly a continuing challenge.

Kamran Fannizadeh
Director
Programme to Promote the Declaration on
Fundamental Principles and Rights at Work

Acknowledgements

The author wishes to thank Jessica Drohan, a student at the Faculty of Law, McGill University, for her invaluable research assistance in the preparation of this working paper, and Julia Nanos, a student intern at the ILO, who assisted in the early stages of research for this report. I also benefit from the very helpful comments of Lisa Wong, Dia Dabby, Derek J. Jones and Hester Lessard.

I. Introduction: Confronting Multiple Discrimination

Multiple discrimination has always existed; yet it has not always been recognized as a legal concept. African-American women first spoke out about the ways in which single ground approaches to anti-discrimination law failed to capture the lived realities of inequalities linked to gender, race and ethnicity.¹ Given the early importance of racial and sexual equality rights movements, it is not surprising that the concept of multiple discrimination first emerged to describe the complex interplay of racial and gender inequalities. More recently, persons with disabilities, indigenous peoples, members of religious minorities, members of the LGBT community, the elderly and youth have also been increasingly vocal about how their experiences of disadvantage and exclusion are deeply affected by the multiple dimensions of their identity.² Thus, many forms of multiple discrimination are becoming more widely recognized (e.g. disability and age, religion and age, race and disability, ethnic origin, religion and sexual orientation).³ Economic vulnerability and social class also impact upon the multidimensional and complex character of discrimination.

Current challenges regarding multiple discrimination have been magnified by the global economic crisis, which has accentuated inequalities faced by the most vulnerable members of society. In the domain of employment, there have been deleterious effects in terms of increased unemployment, reductions in remuneration and benefits, and cutbacks in government retraining and educational initiatives. During economic crises, “it is more likely that the members of disadvantaged groups are made redundant first.”⁴ As data emerge with respect to the economic crisis, moreover, it is apparent that youth, children, racialized communities,

1 K. Crenshaw: “Demarginalizing the intersection between race and sex: A Black feminist critique of anti-discrimination doctrine, feminist theory and anti-racist politics”, in University of Chicago Legal Forum (1989), pp.139-167; see also, J. Conaghan: “Intersectionality and the feminist project in law”, in E. Grabham et al: Intersectionality and beyond – Law, power and the politics of location (New York, Routledge-Cavendish, 2009), pp.21-48 at pp. 22-24 and pp. 35-38.

2 See, for e.g., European Commission: Tackling multiple discrimination: Practices, policies and laws, Directorate-General for Employment, Social Affairs and Equal Opportunities (Italy, September 2007); T. Makkonen: Multiple, compound and intersectional discrimination: Bringing the experiences of the most marginalized to the fore (Institute for Human Rights, Åbo Akademi University, April 2002). S. Barnartt: “Deaf women and inequality in educational attainment and occupational status: Is deafness or femaleness to blame?”, in B. J. Brueggemann and S. Burch (eds.): Women and deafness: double visions (Washington, DC, Gallaudet University Press), pp.57-77.

3 European Commission: Tackling multiple discrimination: Practices, policies and Laws, Directorate-General for Employment, Social Affairs and Equal Opportunities (Italy, September 2007).

4 European Union Agency for Fundamental Rights: The impact of the Racial Equality Directive - Views of trade unions and employers in the European Union: Strengthening the fundamental rights architecture in the EU IV, (Luxembourg, 2010) p.45. On the impact of economic crises on racism and social cohesion, see Fact-Sheet on the impact of the economic crisis on discrimination and xenophobia, UNESCO and Global Migration Group, 2009, http://www.globalmigrationgroup.org/pdf/UNESCO_Fact-sheet_final.pdf (accessed 28 August 2010).

migrant workers, workers with HIV/AIDS, older workers, persons with disabilities, and women – have been affected most acutely.⁵

Multiple discrimination also continues to be deeply affected by the political and social volatility of a war-torn post 9/11 world. Ongoing tensions around national security, religious diversity, race and gender have led to growing controversies around racial profiling (predominantly affecting racialized Muslim men)⁶ and religious dress codes in the workplace (affecting predominantly racialized Muslim women).⁷ In these contexts, it is impossible to separate the overlapping strands of exclusion linked to national and ethnic origin, race, religion, and gender.

There is a growing appreciation, therefore, that individuals facing inequality at work often experience discrimination on more than one ground at the same time. These multiple realities of exclusion and inequality, moreover, have both qualitative and quantitative effects on the nature of discrimination at work.⁸ The standard categorical parameters of discrete, grounds-based anti-discrimination law, however, tend to overlook or obfuscate the complex and myriad experiences of multiple discrimination. As a result, there is a risk that critical violations of human dignity and respect will not be recognized, leaving some of the most marginalized and vulnerable individuals within socially disadvantaged communities without effective legal or

5 See ILO: Employers' organisations responding to the impact of the crisis, Working Paper No.2., Bureau for Employers' Activities, Geneva, 2010, http://www.ilo.org/public/libdoc/ilo/2010/110B09_17_engl.pdf (accessed 28 August 2010), at p. 1, noting that certain groups, such as women, migrant workers, and youth, have been disproportionately disadvantaged by the economic crisis, and that "export-oriented sectors, which in many developing countries are major providers of formal jobs, notably for women, face the prospect of rapidly shrinking world markets." See also, S. Allegretto A. Amerikaner and S. Pitts: Data Brief: Black Employment and Unemployment in June 2010 (UC Berkeley Labor Center, 2 July 2010), noting high unemployment levels of black male youth; ILO: Accelerating action against child labour, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work Report I(B), International Labour Conference, 99th Session, Geneva, 2010 (economic crisis could undermine progress being made in eliminating child labour). ILO: Technical Note: Asia in the Global Economic Crisis: Impacts and Responses from a Gender Perspective, Regional Office for Asia and the Pacific, 2009.

6 C. M. Gandara: "Post-9/11backlash discrimination in the workplace: Employers beware of potential double recovery", in *Houston Business and Tax Journal* (2006), Vol. 7, pp.169-200. See also, S. Estreicher and M. Bodie (eds.): *Workplace discrimination privacy and security in an age of terrorism: Proceedings of the New York University 55th annual conference on labor workplace, Discrimination in an age of terrorism* (Aspen Publishers, 2007); S. H. Razack: *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto, University of Toronto Press, 2008). M. Arai, M. Bursell, and L. Nekby: "Between Meritocracy and Ethnic Discrimination: The Gender Difference", in SSRN eLibrary, 2008, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1136268 (accessed May 18, 2010).

7 J. Syed and E. Pio: "Veiled diversity? Workplace experiences of Muslim women in Australia", in *Asia Pacific Journal of Management*, (2010), Vol. 27, No.1, pp. 115-137; see also G. Bouchard and C. Taylor: *Building the future: A time for reconciliation* (Gouvernement du Québec, 2008); D. Schiek and V. Chege: *European Union non-discrimination law : comparative perspectives on multidimensional equality law* (London; New York, Routledge-Cavendish, 2009).

8 P. Uccellari: "Multiple discrimination : How law can reflect reality," in *The Equal Rights Review* (2008), Vol. 1, pp. 24-49 at p. 29.

political redress. To prevent this risk, new concepts and approaches are needed to address the realities of multiple and overlapping inequalities and vulnerability at work.

This working paper examines the conceptual and practical challenges of confronting multiple discrimination. It begins, in Part II, with a brief note on terminology. In Part III, some of the difficulties in measuring multiple discrimination are reviewed. Part IV then turns to legal and policy developments at the international, regional and national levels. Part V examines the challenges of adjudicating cases involving multiple discrimination. The potential for proactive equality initiatives to redress multiple discrimination is discussed in Part VI. Finally, Part VII connects developments regarding multiple discrimination to the emergence of decent work as a central component of the ILO's agenda.

II. Terminology: An Expansive Definition of Multiple Discrimination

Different concepts and terms have emerged to describe the complexity of discrimination implicating more than one ground. Suggested terms include “additive,” “accumulative,” “compound,” “intersectional,” and “multiple” discrimination; terms such as “complex” bias or “multi-dimensional” inequalities have also been used.⁹

Though the terminology is confusing and contested, it tends to describe two situations. First, there is the situation where an individual is faced with more than one form of grounds-based discrimination (i.e. sex plus disability discrimination). In such circumstances, all women and all persons with disabilities (both male and female) are potentially subject to the discrimination. Such discrimination is often called additive, cumulative or compound discrimination. Moreover, it is important to emphasize that from the perspective of the individual who experiences the discrimination, it is often impossible to separate out the various strands of so-called additive, cumulative or compound discrimination. Second, there is the situation where discrimination affects *only* those who are members of more than one group (i.e. only women with disabilities and not men with disabilities). The latter situation is often characterized as intersectional discrimination. It is discrimination based on a combination of grounds and affects only those whose identities intersect more than one ground of discrimination.¹⁰ As noted in the 2003 ILO Global Report *Time for equality at work*, the

⁹ For an early discussion of terminology, see T. Makkonen: Multiple, compound and intersectional discrimination: Bringing the experiences of the most marginalized to the fore (Institute for Human Rights, Åbo Akademi University, April 2002) at pp. 9-12. See also, D. Schiek: “From European Union non-discrimination law towards multi-dimensional equality law for Europe” in D. Schiek; V.Chege (eds.): European Union non-discrimination law: comparative perspectives on multidimensional equality law (New York, Routledge-Cavendish, 2009), pp. 3-27 at p. 13. See also, G. Moon: “Multiple discrimination: Justice for the whole person,” in Roma Rights (2009), Vol. 2, Multiple Discrimination, European Roma Rights Centre, http://www.errc.org/en-research-and-advocacy-roma-details.php?page=1&article_id=3564 (accessed 6 October 2010).

¹⁰ See J. Burri and D. Schiek: Multiple discrimination in EU law: Opportunities for legal responses to intersectional gender discrimination? European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities (2009), at pp. 3-4. See also, S. Hannett: “Equality at the intersections: The

“interplay of identities results in experiences of exclusion and disadvantage that are unique to those with multiple identities.”¹¹

The term, “multiple discrimination” has been used in different ways. In much of the academic literature, and in North America, the concept of “intersectionality” has been used extensively to describe complex, overlapping and compound inequalities and the term “multiple discrimination” is used interchangeably with “additive” discrimination.¹² In international documents, however, the term “multiple discrimination” tends to be used as a broad umbrella concept to describe both additive discrimination and intersecting discrimination.¹³ In Europe, the terminology of multiple discrimination has been relied upon in a number of major reports and policy statements.¹⁴ It was recently defined to embrace discrimination that is based “on any combination of grounds” or “on any one or more grounds.”¹⁵ In this working paper, consistent with international law initiatives, the term “multiple discrimination” is used in its broadest sense to encompass additive and intersectional discrimination.

Recommendations:

- *That the terminology chosen to address multiple discrimination be explained and defined clearly by international organizations, governments, trade unions and civil society organizations.*
- *That a broad definition of multiple discrimination, inclusive of additive, compound and intersectional discrimination be adopted.*

legislative and judicial failure to tackle multiple discrimination”, in Oxford Journal of Legal Studies (2003), Vol. 23, No. 1, pp.65-86 at pp. 68-70; P. Uccellari: “Multiple discrimination : How law can reflect reality,” in The Equal Rights Review (2008), Vol. 1, pp. 24-49 at p. 29.

11 ILO: Time for equality at work, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference 91stSession, Geneva, 2003, p. 37.

12 I. Solanke: “Putting race and gender together: A new approach to intersectionality”, in Modern Law Review (2009), Vol. 72, No.5, pp. 723-749 at 727-31. See also, E. Grabham et al. (eds.): Intersectionality and beyond – Law, power and the politics of location (New York, Routledge-Cavendish., 2009). For examples from North American government agencies, see Ontario Human Rights Commission: An intersectional approach to discrimination: Addressing multiple grounds in human rights claims, Discussion Paper, Policy and Education Branch, 9 October 2001; US Equal Employment Opportunity Commission: “Intersectional Discrimination,” in Compliance manual section 15: Race and color discrimination , at EEOC.gov, 19 April 2006, <http://www.eeoc.gov/policy/docs/race-color.html#IVC> (accessed: 21 July 2010).

13 See, e.g., United Nations Committee on Economic, Social, and Cultural Rights, “General Comment No. 20 Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)”, E/C.12/GC/20, Article 17.

14 See, e.g., European Commission: Tackling multiple discrimination: Practices, policies and laws, Directorate-General for Employment, Social Affairs and Equal Opportunities (Italy, September 2007).

15 European Parliament Directive proposed amendments to P_6 TA (2009) 0211, cited in J. Burri and D. Schiek: Multiple discrimination in EU law: Opportunities for legal responses to intersectional gender discrimination? European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities (2009), p.10.

III. Difficulties in Measuring Multiple Discrimination

One of the most significant challenges regarding multiple discrimination is the difficulty in measuring its occurrence. The difficulties encountered in measuring discrimination even with respect to one ground of discrimination (i.e. sex, race, age, sexual orientation, religion, and disability) have been widely acknowledged.¹⁶ In the case of multiple discrimination, the problems are even more evident. If data are lacking with respect to specific grounds of discrimination, they are even more scarce with respect to multiple discrimination.¹⁷ Moreover, the complexities and wide range of variables make it difficult to expect comprehensive quantitative and qualitative data in the near future.¹⁸

Despite these challenges, there have been some important inroads. Disaggregated data, tracking the intersection of gender and other grounds of discrimination, are increasingly available, given the importance of gender as an integral dimension of many forms of multiple discrimination. Furthermore, there have been a growing number of studies measuring the overlapping and intersectional realities of multiple discrimination on other grounds (i.e. race and age; sex, race, and sexual orientation, etc.). These methodological developments reveal that attentiveness to intersecting and compound inequalities in data collection provides a more accurate picture of the complex and multi-dimensional realities of discrimination at work.¹⁹ Many combine quantitative and qualitative data collection.

16 T. Makkonen: *Measuring discrimination data collection and EU equality law* (Luxembourg, Office for Official Publications for European Communities, 2007). See also G. Muigai, *Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Data Collection and the Use of indicators to promote and monitor racial equality and non-discrimination*, Office of the High Commissioner for Human Rights Regional Seminar for the Americas, Rio de Janeiro, 3-5 May 2010 (recommending the collection of ethnically disaggregated data, while recognizing privacy risks and rejecting doctrines of racial superiority). It is noteworthy that no mention is made of the need for data on discrimination based on race in combination with other grounds.

17 S. Fredman : “Positive rights and duties: Addressing intersectionality”, in D. Schiek and V. Chege (eds.): *European Union non-discrimination law: Comparative perspectives on multidimensional equality law* (London, Routledge-Cavendish, 2008), pp. 73-89 at p. 84 (“Many national statistics do not include data disaggregated to reflect intersectionality.”). See also, P. Uccellari: “Multiple discrimination: How law can reflect reality,” in *The Equal Rights Review* (2008), Vol. 1, pp. 24-49 at p. 41.

18 As noted in T. Makkonen: *Measuring discrimination data collection and EU equality law* (Luxembourg, Office for Official Publications for European Communities, 2007), at pp. 80-81: “The construction of categories for the purposes of data collection gives rise to considerable challenges. This is because the reality that hides behind facially simple concepts such as ‘racial or ethnic origin’, ‘religion or belief’, ‘disability’ or ‘sexual orientation’ is characterised by deeper and wider diversity than the essentialist use of these terms in legal texts or everyday speech would lead one to expect.”

19 See also A. C. Steinbugler, J. E. Press and J. Johnson Dias: “Gender, race, and affirmative action: Operationalizing intersectionality in survey research”, in *Gender and Society* (2006) Volume 20, pp. 805-825 (plus erratum)

In a research study of migrant Chinese workers in South Korea, for example, empirical quantitative data included a breakdown of employees according to gender (4,961 females; 785 males) in the catering sector (including table waiting, cleaning, washing-up and kitchen assistance).²⁰ Age discrimination emerged as an additional source of discrimination in the qualitative interviews done as part of the study, concluding: “It was evident among the respondents that while young women did table waiting, older women tended to work in the kitchen where they were ‘invisible’ to customers.”²¹ The interviews also revealed that “gender relations and the racialisation of the workforce in catering have significant implications for sexual and racial harassment.”²² Thus, both quantitative and qualitative data were relied upon to identify the ‘multiple vulnerability’ faced by undocumented Korean-Chinese female migrant workers.²³

A recent study of unemployment in the United States provides another example of the importance of disaggregating data as much as possible to identify complex and multiple inequalities. A study done by the University of California Berkeley Labor Center indicated that in June 2010, unemployment figures for African Americans generally were 15.5 per cent, significantly higher than the unemployment rate for whites of 8.8 per cent. When the data is disaggregated based on age and gender, the unemployment rate rises to 43.2 per cent for African American male youth and 36.5 per cent for African American female youth (ages 16-19). This type of data is essential for the development of effective employment policies and initiatives.²⁴

20 J. Shin: "The gendered and racialised division in the Korean labour market: The case of migrant workers in the catering sector", in *East Asia* (2009), Vol. 26, No. 2, pp. 93-111 at p 103.

21 *Ibid.* at p. 105.

22 *Ibid.*

23 Numerous studies on migrant work reveal vulnerability to multiple discrimination. See, e.g. See A. Rosenthal: “Battling for survival, battling for moral clarity: “Illegality” and illness in the everyday struggles of undocumented HIV+ women migrant workers in Tel Aviv”, in *International Migration* (2007), Vol. 45, No.3, pp. 134-156; S. Mullally: Migrant women destabilising borders: Citizenship debates in Ireland, SSRN eLibrary, 2010, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1557355 (accessed May 18, 2010). United Nations Development Programme (UNDP): HIV Vulnerabilities of Migrant Women from Asia to the Arab States: Shifting from Silence, Stigma and Shame to Safe Mobility with Dignity, Equity and Justice, (Colombo 2008), http://www2.undprc.lk/resource_centre/pub_pdfs/P1105.pdf (accessed 21 July 2010).

24 See S. Allegretto, A. Amerikaner and S. Pitts: Data Brief: Black Employment and Unemployment in June 2010 (UC Berkeley Labor Center, 2 July 2010) (age, race and gender). http://laborcenter.berkeley.edu/blackworkers/monthly/bwreport_2010-07-02_20.pdf (accessed 23 July 2010). For another interesting study that tracks age, race and gender, see R. Hogan and C. C. Perrucci: "Black women: Truly disadvantaged in the transition from employment to retirement income", in *Social Science Research*, (2007), Vol. 36, No.3, pp.1184-1199 at p.1184: “Using data from Health and Retirement Study primary respondents who were not retired in 1992 (wave 1) but were retired in 2000 (wave 5), OLS regression and Heckman's two step analysis indicate that: (1) black and white women earn less from employment, even after controlling for employment and marital status, educational credentials, and work experience; (2) black and white women are less likely to retire, even after controlling for employment, age, insurance, assets, and spousal employment/retirement status; and (3) after controlling for these gender differences in employment earnings and in retirement decisions, white women actually receive more total (Social Security, pension, and asset) income in retirement than comparable white men. Black men continue to exhibit no significant (net effect) differences (compared to white men), while black women continue to

The importance of understanding inequality through a multiple discrimination lens is also apparent from an OECD study of equal job opportunities in Latin America. The study revealed very low rates of employment for young women in Chile in part because, “Chilean mothers tend to have their first child at a lower average age (less than 24 years), with a significant incidence of teenage pregnancies among those with relatively low education and low household incomes.”²⁵ In this context, gender, age, and socio-economic status intersect in important ways to reduce labour force participation. As noted in the study, “[t]he policy challenge is thus to help parents combine work and family responsibilities, a goal that will require more flexibility in enterprises and more child care and related measures.”²⁶

Quantitative data about multiple discrimination claims are also essential, yet often difficult to access.²⁷ It is significant that data from the US Equal Employment Opportunity Commission (EEOC) revealed “exponential growth in multiple claims in part because its intake procedures lead claimants to describe their multiple identities, at a time when they have little basis upon which to parse a specific category of bias.”²⁸ As noted by Minna J. Kotkin, however:

*Despite the common sense notion that the more "different" a worker is, the more likely she will encounter bias, empirical evidence shows that multiple claims--which may account for more than 50 per cent of federal court discrimination actions--have even less chance of success than single claims. ... the more complex the claimant's identity, the wider must be cast the evidentiary net to find relevant comparative, statistical, and anecdotal evidence.*²⁹

To improve the success rate of multiple discrimination claims, it is suggested that courts must be attentive to a growing body of social science research on intersecting and complex bias.

As these examples illustrate, despite the ways in which categories may be imperfect, disaggregated *quantitative* data still provide important concrete indicators of multiple and overlapping inequalities.³⁰ Moreover, for pragmatic reasons, and to advance social justice and

earn the least.” See also, V. Parks: “Gendering Job Competition: Immigration and African American Employment in Chicago, 1990-2000”, in *Urban Geography* (2010), Vol. 31, No.1, pp. 59-89 (for a detailed quantitative analysis broken down by race, gender and immigration status).

25 Organisation for Economic Co-operation and Development (OECD): *OECD Reviews of Labour Market and Social Policies: Chile*, (2009), p. 95.

26 *Ibid.*

27 See ILO: *Equality at work: Tackling the challenges*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B), International Labour Conference 96th Session, Geneva, 2007 at pp. 11-13.

28 M. J. Kotkin: "Diversity and discrimination: A look at complex bias", in *William and Mary Law Review* (2009), Vol. 50, No. 5, pp.1439-1500 at pp. 1439-1440.

29 *Ibid.* at p. 1440.

30 For a discussion of some of the methodological complexities of quantitative research, see L. McCall: “The complexity of intersectionality”, in E. Grabham et al. (eds.): *Intersectionality and beyond: Law, power*

effective public policy and law reform, it is often possible to identify two or three salient grounds for the purposes of data collection that are particularly significant in specific historical, institutional and societal contexts. In so doing, it is nevertheless important to be cautious about the risks of any category-based analysis, and to be open to revising the categories over time. One important safeguard is to ensure that anti-discrimination data collection is attentive to the complex and multi-dimensional identities of the most vulnerable members of the specific social groups included in the research.

Numerous studies on multiple discrimination rely predominantly on qualitative interviews. The complex realities of overlapping inequalities – realities that do not align readily with an analysis based on a single ground of discrimination – are often revealed most eloquently in the narratives of those experiencing complex multiple discrimination. This experiential knowledge provides critical insights about the phenomenon of multiple discrimination and the importance of taking it into account in strategies for securing equality at work.

In contrast to the more categorical approach prevalent in quantitative data collection, qualitative studies often ask much more open-ended questions that are not bound to specific identity categories.³¹ As Lisa Bowleg cautions, however, in her work on Black lesbian women, “the wording of questions shapes how participants respond to them.”³² She is critical of an additive approach to research on multiple discrimination “because it conceptualizes people’s experiences as separate, independent, and summative.”³³ Thus, she suggests that the challenge is to “ask questions about experiences that are intersecting, interdependent, and mutually constitutive, without resorting, even inadvertently, to an additive approach.”³⁴ The ways in which the individuals speak about their lives is also deeply affected by the relational context of their speech.³⁵ In addition to the challenges of collecting data about multiple inequalities, the

and the politics of location (New York, Routledge-Cavendish, 2009), pp 49-76, particularly her discussion of the intercategorical versus the intracategorical approach.

31 See discussion of empirical qualitative social science evidence in I. Solanke: “Putting race and gender together: A new approach to intersectionality”, in *Modern Law Review* (2009), Vol. 72, No.5, pp. 723-749 at 731-736.

32 L. Bowleg: “When Black + Lesbian + Woman =/ Black Lesbian Woman: The methodological challenges of qualitative and quantitative intersectionality research”, in *Sex Roles* (2008), Vol. 59, No. 5, pp. 312-325 at p. 314.

33 Bowleg, *Ibid.* It has also been suggested, however, that inequalities based on ethnicity, gender and class may be separated in certain circumstances (i.e. when one aspect of an individual’s identity is significant in one sphere of life and a different one is important in another). See N. Toren: “Intersection of ethnicity, gender and class: Oriental faculty women in Israel”, in *Gender Issues* (2009), Vol. 26, No. 2, pp.152-166

34 Bowleg, *Ibid.*

35 M. Buitelaar: “‘I am the ultimate challenge’: Accounts of intersectionality in the life-story of a well-known daughter of Moroccan migrant workers in the Netherlands”, in *European Journal of Women's Studies* (2006), Vol. 13, No.3, pp.259-276.

interpretation of the data is complex and requires understanding and knowledge about the broader “context of socio-historical and structural inequality.”³⁶

One example of a qualitative study of multiple inequalities examined the labour market experiences of Muslim women in Australia. The study was based on stories “collected through exploratory interviews of 25 working women originating from Pakistan (10), Iran (8) and Afghanistan (7) located in Sydney, Australia.”³⁷ What emerged was evidence of “triple/multiple jeopardy” linked to gender, ethnicity, religion and country of origin.³⁸

In a similar study, 27 first generation Pakistani women working in the United Kingdom were interviewed.³⁹ The research examined “the ways in which doing paid work enmeshes with the constitution of their gendered, racialised, and classed identities.” The researchers concluded that these identities were also deeply connected to religion and “a wider diasporic Pakistani/South Asian Islamic culture.”⁴⁰

In the European Union study in 2007, *Tackling Multiple Discrimination*, a case study methodology was employed which involved individual interviews with individuals from diverse communities about the experiential realities of inequality.⁴¹ The interviews revealed “widespread ignorance about different cultures, personal characteristics and lifestyles as well as a lack of recognition of multiple identities.”⁴² Exclusion and perceptions of marginalization resulted from “questions and stereotyped comments” rooted in prejudice and discrimination.⁴³

36 Bowleg, at 321. L. McCall: “The complexity of intersectionality”, in E. Grabham et al. (eds.): *Intersectionality and beyond: Law, power and the politics of location* (New York, Routledge-Cavendish, 2009), pp 49-76, for a review and critique of methodological approaches that endeavour to address the complexity of identity.

37 J. Syed and E. Pio: “Veiled diversity? Workplace experiences of Muslim women in Australia”, in *Asia Pacific Journal of Management* (2010), Vol. 27, No.1, pp. 115-137 at p. 122.

38 Ibid. at p. 132.

39 S.L. Evans and S. Bowlby: “Crossing boundaries: Racialised gendering and the labour market experiences of Pakistani migrant women in Britain”, in *Women's Studies International Forum* (2000), Vol.23, No. 4, pp. 461-474.

40 Ibid at p. 461. For other examples of studies that rely on qualitative interviews, see N. Toren: “Intersection of ethnicity, gender and class: Oriental faculty women in Israel”, in *Gender Issues* (2009), Vol. 26, No. 2, pp.152-166; A. Adib and Y. Guerrier: “The interlocking of gender with nationality, race, ethnicity and class: the narratives of women in hotel work”, in *Gender, Work, and Organisation* (2003), Vol. 10, No. 4, pp.413-432.

41 European Commission: *Tackling Multiple Discrimination: Practices, Policies and Laws*, Directorate-General for Employment, Social Affairs and Equal Opportunities (Italy, September 2007) at p. 14 (s. 1.3.4). See also recommendation number five regarding the need for multiple discrimination data collection at p. 55.

42 Ibid. at p. 39.

43 Ibid.

In addition to qualitative evidence based on the experiential knowledge of discrimination, expert evidence based on social science research can play an important role in elucidating discrimination when institutional inequalities are complex and multi-dimensional, and when comparative empirical data is lacking. Social science research in sociology, cognitive sciences, and history, for example, has proven invaluable in helping us to understand the connection between the complex experiential realities of exclusion and grounds of discrimination, especially when the connection is not widely acknowledged in society.⁴⁴

Recommendations:

- *That international organizations, governments, employers and trade unions promote research to secure: (i) quantitative data that is disaggregated to track problems of multiple discrimination and; (ii) qualitative data that is attentive to multiple and complex experiential realities of inequality.*
- *That research and data collection be inclusive of the most vulnerable individuals within socially disadvantaged groups.*

IV. Legal and Policy developments: Continuing Challenges

The development of integrated and comprehensive substantive protections and complaints processes that allow individuals to advance multiple discrimination claims rather than having to base their claim exclusively on one ground is of critical importance.⁴⁵ More explicit acknowledgement of multiple discrimination in anti-discrimination laws and international documents is also important. To date, however, there is very little in either domestic or international law that deals explicitly with multiple discrimination. A brief review of selected international, regional and national anti-discrimination law and policy developments reveals that multiple discrimination has only recently begun to attract significant attention.

International and Regional Initiatives

Despite a propensity for international responses to inequality to focus on discrete grounds of discrimination, express recognition of the phenomenon of multiple discrimination is emerging. At the international level, the 2001 *Durban Declaration and Programme of Action on Racism*

44 S. Goldberg: “Discrimination by comparison”, in Columbia Public Law & Legal Theory Working Papers, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010). See also, I. Solanke: “Putting race and gender together: A new approach to intersectionality”, in *Modern Law Review* (2009), Vol. 72, No. 5, pp. 723-749 at 742-9.

45 For a review of the advantages and disadvantages of single ground human rights bodies, see ILO: *Equality at work: Tackling the challenges*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B), International Labour Conference 96th Session, Geneva, 2007, Table 3.1, at p. 56.

is heralded as an important breakthrough in this regard.⁴⁶ It recognized 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 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.”⁴⁷ More recently, the *Durban Review Conference* in 2009 included a specific side event on multiple discrimination, entitled, “Double Odds: Women Overcoming Multiple Discrimination.” In her opening remarks, UN High Commissioner for Human Rights, Navi Pillay, noted:

*We all know that racism and related intolerance do not affect all members of groups suffering from discrimination in the same way. The Durban Declaration and Programme of Action focused attention on the issue of multiple, or aggravated forms of discrimination. This multi-faceted discrimination is most significantly experienced by the most vulnerable members of society. These may include women, but also persons with disabilities, or affected by HIV/AIDS, or children, or elderly people. Marginalized individuals may be ostracized for one of these characteristics or for a combination of two or more of them. To be sure, it is such people that are at greater risk of economic hardship, exclusion and violence.*⁴⁸

The 2009 *Durban Review Conference* also demonstrated a commitment to understanding the complex realities of inequality by organizing *Voices – Everyone affected by racism has a story that should be heard* – involving 21 diverse narratives of inequality and social exclusion⁴⁹.

A commitment to building international initiatives in ways sensitive to experiential knowledge about intersecting and compound inequalities is also evident in the work of Special UN Rapporteur on Minority Issues, Gay McDougall. In her country visits to Hungary, Ethiopia, France, Dominican Republic, Guyana and Greece, she held special forums to learn about

46 T. Makkonen: Multiple, compound and intersectional discrimination: Bringing the experiences of the most marginalized to the fore (Institute for Human Rights, Åbo Akademi University, April 2002).

The World Conference for Women in Beijing also revealed concern with multiple discrimination facing women: See S. Fredman: “Positive rights and duties: Addressing intersectionality” in D. Schiek and V. Chege (eds.): *European Union non-discrimination law: Comparative perspectives on multidimensional equality law* (London, Routledge-Cavendish, 2008), pp.73-89 at p. 78)

47 Durban Declaration and Programme for Action, World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, 31 August – 8 September, 2001, http://www.un.org/durbanreview2009/pdf/DDPA_full_text.pdf (accessed 21 July 2010).

48 Opening Statement of the High Commissioner for Human Rights on the occasion of the Durban Review Conference Side Event "Double Odds: Women Overcoming Multiple Discrimination", United Nations, Durban Review Conference, 2009, http://www.un.org/durbanreview2009/stmt_Double_Odds_04-21-08.shtml (accessed 21 July 2010).

49 Side Events: Voices - Everyone affected by racism has a story that should be heard, United Nations, Durban Review Conference, 2009, http://www.un.org/durbanreview2009/side_voices.shtml (accessed 21 July 2010).

minority women's views.⁵⁰ These meetings prompted her to conclude “that women belonging to minorities experience unique challenges and multiple or intersectional discrimination emanating from their status as members of minorities and as women or girls.”⁵¹ In particular, she cited problems minority girls had in accessing education – a critical precursor to decent work. She also reported that “Poverty and discrimination add to the weight of the ‘burden of family care’ shouldered by most women. Minority women, whose families are most often extended ones, find those burdens particularly constraining.”⁵²

Multiple discrimination has also been expressly acknowledged by the Committee on the Economic, Social and Cultural Rights in its 2009 General Comment on non-discrimination.⁵³ In Article 17, it explains that multiple discrimination occurs when: “Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.” The Committee further affirms the need to expand the scope of grounds over time, using a “flexible approach to the ground of ‘other status’” to extend protection to “social groups that are vulnerable and have suffered and continue to suffer marginalization.”⁵⁴ In this regard, the Committee notes that “the intersection of two prohibited grounds, e.g., where access to a social service is denied on the basis of sex and disability” could be protected under the rubric of “other status.”⁵⁵

Additionally, the general recommendations/comments of some of the other treaty bodies deal with intersectional issues (e.g. gender and race); although they do not refer to multiple discrimination by name. For example, the Committee on the Elimination of Racial Discrimination has a General Recommendation (No. 25) on the Gender-related Dimensions of Racial Discrimination.⁵⁶ In its General Recommendation (No. 27) on Discrimination against Roma, it further recommends that States take measures to “take into account, in all programmes and projects planned and implemented and in all measures adopted, the situation

50 United Nations Human Rights Council: “Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development – Report of the independent expert on minority issues, Gay McDougall”, at Office of the High Commissioner for Human Rights, 16 February 2009, <http://www2.ohchr.org/english/issues/minorities/expert/annual.htm> (accessed 6 October 2010).

51 Ibid, at para. 8.

52 Ibid, at para. 10.

53 United Nations Committee on Economic, Social, and Cultural Rights: “General Comment No. 20 Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)”, E/C.12/GC/20, Articles 17 and 27.

54 Ibid. Article 27.

55 Ibid.

56 United Nations Committee on the Elimination of Racial Discrimination: “General Recommendation No. 25: Gender related dimensions of racial discrimination”, A/55/18, annex V.

of Roma women, who are often victims of double discrimination.”⁵⁷ The Committee on the Elimination of Discrimination against Women has also made general recommendations on Women and AIDS (No. 15) and on Disabled Women (no. 18), and Women Migrant Workers (No. 26).⁵⁸

Two recent key developments in international human rights law also reflect growing attentiveness to multiple discrimination. The *International Convention on the Rights of Persons with Disabilities* (2006) and the *Declaration on the Rights of Indigenous Peoples* (2007) recognize the particularized needs of communities that have been subjected to long histories of exclusion, marginalization and mistreatment, including the need for the promotion of economic well-being through fairness at work and non-discrimination.⁵⁹ These initiatives play an important role in reinforcing earlier ILO conventions on the rights of persons with disabilities and indigenous communities.⁶⁰

The *Convention on the Rights of Persons with Disabilities* includes robust protection for equality in work and employment, an adequate standard of living and social protection.⁶¹ The Preamble to the *Convention* expresses concern for the “*difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status*”⁶² The *Convention* also contains explicit recognition of the multiple discrimination facing women and girls with disabilities. Article 6 provides that: “*States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.*”⁶³

57 United Nations Committee on the Elimination of Racial Discrimination: “General Recommendation No. 27, Discrimination against Roma”, A/55/18, annex V at Article 6.

58 United Nations Committee on the Elimination of Discrimination against Women: “General Recommendation No. 15: Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)”, HRI/GEN/1/Rev.9 (Vol.II); United Nations Committee on the Elimination of Discrimination against Women: “General Recommendation No. 18: Disabled women”, HRI/GEN/1/Rev.9 (Vol.II) ; United Nations Committee on the Elimination of Discrimination against Women: “General Recommendation No. 26 on women migrant workers”, CEDAW/C/2009/WP.1/R.

59 United Nations: *Convention on the Rights of Persons with Disabilities* (2006) and the United Nations: *Declaration on the Rights of Indigenous Peoples* (2007) .

60 See ILO: *Convention Indigenous and Tribal Peoples* Convention, No. 169 (1999). See also, A. O’Reilly: *The Right to Decent Work and Persons with Disabilities*, ILO Working Paper (Geneva, ILO, 2003); and ILO: *Vocational Rehabilitation and Employment (Disabled Persons) Convention*, No. 159 (1983).

61 United Nations: *Convention on the Rights of Persons with Disabilities*, (2006); see Articles 27 and 28 respectively.

62 Ibid, Preamble, paragraph p.

63 Ibid, Article 6. See also, articles 5(2), 7 and 28(2).

Of significance in the *Convention* is the expansive definition of persons with disabilities to “include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”⁶⁴ Such a broad definition encompasses a wide range of mental disabilities, which have been a source of significant discrimination in the workplace. Mental illnesses, such as situational depression, can also arise as a consequence of other forms of discrimination and exclusion at work.⁶⁵ Gender disparities in the incidence of some mental illnesses (e.g. depression) also mean that this is a domain where multiple discrimination often occurs.⁶⁶ Discrimination on the basis of mental disability is also rendered more complex when it intersects with other grounds of discrimination such as age, race, indigenous status, political opinion, sexual orientation and religion. As noted by the Special Rapporteur on the Right to Health in discussing discrimination based on mental health, “Where such disability-based stigma compounds discrimination on other grounds, such as gender, race and ethnicity, those affected are particularly vulnerable to violations of their human rights.”⁶⁷

It is widely recognized that individuals with HIV/AIDS experience discrimination at work. In many jurisdictions, discrimination against individuals with HIV/AIDS is treated as discrimination on the basis of disability or perceived disability.⁶⁸ Emerging studies continue to document how HIV/AIDS discrimination intersects with other inequalities at work (e.g. migrant status, gender, sexual orientation, race).⁶⁹

64 Ibid, see Article 1.

65 See, e.g., G. M. Wingood et al.: “HIV stigma and mental health status among women living with HIV in the Western Cape, South Africa”, in *S. Afr. j. sci.* (2008), Vol.104, No.5-6, pp. 237-240.

66 Gender and women’s mental health World Health Organization (WHO), 2010, http://www.who.int/mental_health/prevention/genderwomen/en/print.html (accessed 28 July 2010).

67 United Nations Commission for Human Rights: “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt”, at Office of the High Commissioner for Human Rights, 11 February 2005, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/108/93/PDF/G0510893.pdf?OpenElement>, (accessed 21 July 2010), at para 13.

68 For an overview of legal developments, see R. Elliot, L. Utyasheva, E. Zack: “HIV, disability and discrimination: making the links in international and domestic human rights law”, in *Journal of the International AIDS Society* (2009), Vol 12:29.

69 See A. Rosenthal: “Battling for survival, battling for moral clarity: “Illegality” and illness in the everyday struggles of undocumented HIV+ women migrant workers in Tel Aviv”, in *International Migration* (2007), Vol. 45, No.3, pp. 134-156. United Nations Development Programme (UNDP): *HIV Vulnerabilities of Migrant Women from Asia to the Arab States: Shifting from Silence, Stigma and Shame to Safe Mobility with Dignity, Equity and Justice*, (Colombo 2008), http://www2.undprcc.lk/resource_centre/pub_pdfs/P1105.pdf (accessed 21 July 2010). See also, International Labour Conference, 99th Session: Recommendation Concerning HIV and AIDS and the World of Work, 2010 (No.200), (2010) http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/normativeinstrument/wcms_142706.pdf (accessed 6 October 2010), s. 3(c). See also, ILO: *HIV/AIDS and the world of work*, Report V (2B), International Labour Conference, 99th Session, Geneva, 2010.

With respect to the *Declaration on the Rights of Indigenous Peoples*, recognition is affirmed of the right of indigenous peoples to “improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.”⁷⁰ The *Declaration* then calls upon States to take effective measures and where appropriate special measures to improve economic and social conditions, while paying “particular attention... to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.”⁷¹ The special needs of indigenous children are also recognized, including the need to “take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.”⁷² Thus, there is growing explicit recognition of the multiple dimensions of inequality affecting the most vulnerable members of socially disadvantaged communities.

Attentiveness to the multiple discrimination facing indigenous women and children workers in Bolivia was demonstrated in a 2009 Special Report of the Inter-American Commission of Human Rights (IACHR).⁷³ It involved documentation of severe human rights violations experienced by the Guaraní indigenous people in Bolivia. As noted in the report, “the rights of Guaraní women and children in the captive communities are especially vulnerable, as they have no protection whatsoever, and are entirely at the will of the boss or estate owner.”⁷⁴

*The women perform “domestic” work on the estates and work in activities such as shelling peanuts and combing wool, and suffer discrimination because they receive less than half the wage received by a man, which in reality is a nominal payment in both cases because it is not made in cash, but rather is only registered in the notebook in which the boss keeps the accounts. Many women work more than 12 hours a day, some as of 4 a.m., every day of the week throughout the year, without any weekly rest or holidays. The IACHR received testimony from several persons indicating that many of them are subject to abuse, humiliation, and physical and psychological violence meted out by their bosses.*⁷⁵

70 United Nations: Declaration on the Rights of Indigenous Peoples, (2007), Article 21(1).

71 Ibid, Article 21(2).

72 Ibid, Article 17(2).

73 Inter-American Commission on Human Rights: Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco, OEA/Ser.L/V/II. Doc. 58, 24 December 2009, <http://www.cidh.org/pdf%20files/BOLIVIA-CAPTIVE-COMMUNITIES.eng.pdf> (accessed 27 August 2010).

74 Ibid at p. 34.

75 Ibid.

Throughout the report, there is an awareness of the multiple dimensions of inequality linked to gender and indigenous status; yet, the terminology of “multiple or intersectional discrimination” is not used.⁷⁶

At the regional level, the European Union has been the most active in pursuing policy and law reform initiatives to recognize, define and respond to multiple discrimination. In 2000, anti-discrimination directives were expanded beyond gender and nationality to provide protection on the basis of race and ethnic origin, age, disability, sexual orientation, religion or belief.⁷⁷ Over the past few years, two major reports on multiple discrimination have examined the parameters of the debate and the challenges involved in rethinking anti-discrimination law outside of a single-axis of discrimination framework.⁷⁸ These reports build upon the experiential realities of multiple discrimination, examine legislative and jurisprudential developments, and include concrete policy recommendations. Concerns have also been raised about how to institutionalize attentiveness to multiple discrimination. The Fundamental Rights Agency in Europe, for example, was established to “ensure respect of fundamental rights in...policymaking”⁷⁹ and is mandated to work on “discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination).”⁸⁰

76 For another example, see United Nations Development Programme (UNDP): HIV Vulnerabilities of Migrant Women from Asia to the Arab States: Shifting from Silence, Stigma and Shame to Safe Mobility with Dignity, Equity and Justice, (Colombo 2008), http://www2.undprcc.lk/resource_centre/pub_pdfs/P1105.pdf (accessed 21 July 2010).

77 See D. Schiek: “From European Union non-discrimination law towards multi-dimensional equality law for Europe”, in D. Schiek and V.Chege (eds.): *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (New York, Routledge-Cavendish, 2009), pp. 3-27 at p. 4. R. Nielsen: “Is European Union equality law capable of addressing multiple and intersectional discrimination yet?: precautions against neglecting intersectional cases”, in D. Schiek; V.Chege (eds.): *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (New York, Routledge-Cavendish, 2009), pp. 31-51; O.M. Arnardottir: “Multidimensional equality from within : themes from the European Convention on Human Rights”, in D. Schiek; V.Chege (eds.): *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (New York, Routledge-Cavendish, 2009), pp. 53-72.

78 European Commission: *Tackling multiple discrimination: Practices, policies and laws*, Directorate-General for Employment, Social Affairs and Equal Opportunities (Italy, September 2007), J. Burri and D. Schiek: *Multiple discrimination in EU law: Opportunities for legal responses to intersectional gender discrimination?* European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities (2009).

79 E. Lombardo and M. Verloo: "Institutionalizing intersectionality in the European Union? – Policy developments and contestations" in *International Feminist Journal of Politics*, (2009), Vol. 11, No. 4, pp. 478 – 495 at 485.

80 See Council Decision (2008/203/EC) implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012, part (b) http://fra.europa.eu/fraWebsite/about_fra/what_we_do/themes/themes_en.htm

National Initiatives: Legislative, Constitutional and Policy Changes

At the national level, there has been considerable discussion of the content of legislative protections against discrimination and the enforcement infrastructure for individual complaints. Two significant trends in legislative reform at the national level include (i) the shift from single ground anti-discrimination laws to statutes that include an expansive list of prohibited grounds of discrimination, and (ii) the establishment of human rights bodies with a mandate to address all of the prohibited grounds of discrimination. A number of European jurisdictions have implemented these reforms, including the United Kingdom, Norway, Sweden and some Central and Eastern European Countries (CEECs).⁸¹ In Sweden, for example, one comprehensive piece of legislation, The Discrimination Act, replaced a series of other Acts dealing with discrimination on a single ground (e.g. sex) or in a particular field (e.g. education). Moreover, the Equality Ombudsman and Board against Discrimination are mandated to deal with all areas of discrimination covered by the act. New grounds of discrimination, including age and transgender identity or expression were also added.⁸² In the UK, the Equality Act, 2010 provides protection against discrimination on the basis of age, disability, gender reassignment, marriage or civil partnership, race, religion or belief, sex and sexual orientation.⁸³ An employment tribunal is accorded jurisdiction to enforce discrimination cases arising out of any one or more of the grounds of discrimination.⁸⁴ While these initiatives do not guarantee a legal approach sensitive to multiple discrimination, they lay the groundwork for doing so. Of most significance in this regard, is that an individual no longer needs to choose a procedural complaint process that addresses only one ground; their claims can be framed more readily as multiple claims. It has been suggested that the reforms were specifically designed to ensure that multiple (both additive and intersecting) discrimination would be redressed more effectively.⁸⁵

In many jurisdictions around the world, anti-discrimination statutes and human rights bodies were developed to address a number of grounds of discrimination from the outset.⁸⁶ Some jurisdictions have separate laws providing substantive protection against discrimination to

81 J. Kantola and K. Nousiainen: "Institutionalizing Intersectionality in Europe -- Introducing the Theme", in *International Feminist Journal of Politics*, (2009), Vol. 11, No. 4, pp. 459 - 477.

82 See Factsheet: New anti-discrimination legislation and a new agency, the Equality Ombudsman, Sweden, Ministry of Integration and Gender Equality, January 2009, <http://www.sweden.gov.se/content/1/c6/11/80/10/4bb17aff.pdf> (accessed: 21 July 2010).

See also, Discrimination Act, SFS 2008:567, <http://www.sweden.gov.se/content/1/c6/11/81/87/f6e1a2b8.pdf> (accessed 21 July 2010).

83 Equality Act, 2010 c. 15, s. 4.

84 *Ibid*, s. 120.

85 J. Kantola and K. Nousiainen: "Institutionalizing intersectionality in Europe -- Introducing the theme", in *International Feminist Journal of Politics*, (2009) Vol. 11, No. 4, pp. 459 – 477.

86 See, e.g., Canadian Human Rights Act, R.S.C. 1985, c. H-6; United States Civil Rights Act – Title VII – Equal Employment Opportunities U.S.C. Title VII of the Civil Rights Act of 1964, 42 U.S.C. (1964).

specific groups, while one investigative and/or adjudicative body is charged with enforcing, implementing or interpreting all of the various statutes. Despite these legislative frameworks – which appear more amenable to multiple discrimination – there continues to be a tendency in anti-discrimination law to treat each ground separately and to resist a more holistic, integrated approach.⁸⁷ Having one body with authority to apply the full panoply of potential grounds-based discrimination has not resulted in any widespread shift to embrace the complexities and intersectional realities of multiple discrimination. Indeed, to ensure the development of a multiple discrimination approach, federal legislators in Canada amended the *Canadian Human Rights Act*, to specify that “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.”⁸⁸

Beyond legislative reforms, constitutional frameworks for protecting equality and non-discrimination have important ramifications for the recognition of multiple discrimination. Many constitutional texts are much more open-ended in terms of protected grounds of discrimination; as such, judges may be more inclined to recognize complex and intersecting forms of discrimination or newly recognized grounds. In the case of South Africa, for example, the Bill of Rights provides that the state “may not unfairly discriminate directly or indirectly against anyone on *one or more* grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”⁸⁹ Additionally, it extends the protection to the private sphere providing that “No person may unfairly discriminate directly or indirectly against anyone on one or more grounds” and that “National legislation must be enacted to prevent or prohibit unfair discrimination.”⁹⁰ In Canada, the *Canadian Charter of Rights and Freedoms* accords every individual the right to “equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”⁹¹ This provision has been interpreted to extend to non-enumerated grounds that are analogous to the enumerated ones. Accordingly, constitutional protection against discrimination has been extended to include, for example, the grounds of marital status, non-citizenship and sexual orientation.⁹² Such open-ended protection also makes possible the recognition of more complex and intersecting categories of group-based disadvantage; however, courts have had difficulty

87 See S. Bilge and O. Roy: “La discrimination intersectionnelle: la naissance et le développement d’un concept et les paradoxes de sa mise en application en droit antidiscriminatoire” [Intersectional discrimination: The birth and development of a concept and the paradoxes of its implementation in anti-discrimination law], in *Canadian Journal of Law and Society* (2010), Vol. 25, No. 1 pp. 51-74 at 65-66. See also, S. Hannett: “Equality at the intersections: The legislative and judicial failure to tackle multiple discrimination”, in *Oxford Journal of Legal Studies* (2003), Vol. 23, No.1, pp. 65-86.

88 *Canadian Human Rights Act*, R.S.C. 1998, c.9, s.11, s. 3.1.

89 Constitution of the Republic of South Africa 1996, No. 108 of 1996, s. 9(3) (emphasis added).

90 *Ibid*, 9(4)

91 *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act (U.K.), 1982, c11, s. 15(1).

92 See *Miron v. Trudel*, [1995] 2 S.C.R. 418, *Egan v. Canada*, [1995] 2 S.C.R. 513 and *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, respectively.

developing such an approach.⁹³ Nevertheless, broad constitutional protections for equality and non-discrimination are important because they may be relied upon to encourage the development of more inclusive anti-discrimination laws.

In addition to legislative and constitutional reform, in countries around the world, governments are beginning to develop important programmes and policies that address multiple discrimination. Instead of focusing exclusively on gender and racial equality, governments are becoming more aware of other sources of discrimination and the interplay between grounds of discrimination. Increasingly, therefore, policy initiatives, such as gender mainstreaming, are being extended to include the integration of other sources of exclusion and disadvantage into the policy-making process.

One example of this enlargement of the scope of mainstreaming in the Canadian context is the Integrated Diversity and Equality Analysis Screen (IDEAS).⁹⁴ Developed by the federal government and intended to promote attentiveness to diversity throughout the public policy-making process, it includes the following series of questions:

To apply the diversity and equality screening instrument, the following questions should be addressed:

1. *STATUS*

What is the initiative; what is its purpose; what stage is it at; what research or consultation has been done; what is the target date for completion?

2. *IMPACTS*

What are the likely impacts (whether intended or unintended) of the initiative on individuals involved with the justice system, or on the public at large?

What are the foreseeable specific impacts of the initiative on members of any of the following groups?

Women

Youth and children

93 See S. Bilge and O. Roy: “La discrimination intersectionnelle: la naissance et le développement d’un concept et les paradoxes de sa mise en application en droit antidiscriminatoire” [Intersectional discrimination: The birth and development of a concept and the paradoxes of its implementation in anti-discrimination law], in *Canadian Journal of Law and Society* (2010), Vol. 25, No. 1 pp. 51-74, B. Baines, “Section 28 of the Canadian Charter of Rights and Freedoms: A purposive interpretation,” in *17 Canadian J. Women & L.* (2005) Vol. 17, No. 1 pp. 45-70 at p. 65.

94 Integrated Diversity and Equality Analysis Screen, Department of Justice Canada, Federal-Provincial-Territorial Working Group on Diversity, Equality and Justice, 2009, <http://www.justice.gc.ca/eng/dept-min/pub/ideas-giade/> (accessed 19 July 2010). See also, “Equality Proofing Initiative of the Irish Department of Justice”, in *European Commission: Tackling multiple discrimination: Practices, policies and laws*, Directorate-General for Employment, Social Affairs and Equal Opportunities (Italy, September 2007), p. 49.

Seniors
Aboriginal peoples
Racial and ethnocultural minorities
Refugees
Recent immigrants
Persons with disabilities
Persons with literacy problems
Social assistance recipients and the poor
Religious groups
Gays, lesbians and bisexual persons
Transgendered persons

What are the foreseeable specific impacts on individuals who belong to more than one of these groups?

3. *MODIFICATIONS*

How could the initiative be modified to reduce or eliminate any identified negative impacts, or to create or accentuate positive ones?

Would these modifications affect the ability of the initiative to achieve its purpose?

Would they be likely to have impacts on other groups?

4. *FURTHER RESEARCH*

Given what has been learned in the analysis undertaken to this point, what, if any, additional research or consultation is desirable/essential to better appreciate the impacts of the proposal on diverse groups?

In Europe, some policy initiatives designed to mainstream equality concerns include specific directives to take into account multiple and overlapping identities. In a comprehensive report on multiple discrimination in EU law, it was recommended that such initiatives be developed further.⁹⁵

⁹⁵ See J. Burri and D. Schiek: Multiple discrimination in EU law: Opportunities for legal responses to intersectional gender discrimination? European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities (2009), at p. 24, citing Spanish and Romanian legislation as examples in this regard.

In some countries, attentiveness to the overlapping realities of inequality is growing; though the terminology of multiple or intersectional discrimination is not used. For example, changes in the pension contribution rules in Argentina reflected a concern with multiple inequalities based on gender and age. The revised rules allowed those who were not formally employed to contribute to social security schemes, including the pension fund. Upon retirement, these individuals would receive a pension equal to 80 per cent of the minimum wage, funded partly by individual contributions, but predominantly from public funding and the contributions of other workers.⁹⁶ This type of social policy reform contributes to reducing inequalities linked to age and gender.

“Cross-Constituency Organizing:”⁹⁷ Emerging Trends

Trade unions, employer organizations and civil society organizations are important partners in the development of public policy and best practices on multiple and complex inequalities. Yet, in the past, their work on these issues has often focused on single grounds of discrimination. Indeed, many non-governmental organizations were established to address one specific group, rather than multiple groups. Their single ground focus is institutionalized in the very structure and mandate of the organization. How has the emergence of concerns with multiple discrimination affected the strategies of trade unions, employer organizations and civil society organizations for advancing equality rights?

In the case of trade unions, concerns with equality rights gained institutional expression in the establishment of constituency structures within unions.⁹⁸ For example, a woman’s caucus would be set up to address the specific concerns and interests of women trade union members. Similarly, a committee on racial equality would be established to address problems of racism in the workplace. A recent study of three large trade union organizations, however, revealed that

96 See J. Morris: Discussion Guide. Decent work, decent life for women: trade unions taking the lead for economic and social justice and equality, International Trade Union Confederation, 1st World Women’s Conference, Brussels 19-21 October 2009, http://www.ituc-csi.org/IMG/pdf/DECENT_WORK_DECENT_LIFE_FOR_WOMEN.pdf (accessed 3 June 2010) at p. 37.

97 As Linda Briskin explains: “Constituency structures inside unions, then, provide the foundation for new forms of equity organizing which facilitate co-operation across various marginalized constituencies, what I call ‘cross-constituency organizing.’ L. Briskin: “Cross-constituency organizing in Canadian unions”, in *British Journal of Industrial Relations* (2008), Vol. 46, No. 2, pp. 221-247, at p. 225.

98 J. Morris: Discussion Guide. Decent work, decent life for women: trade unions taking the lead for economic and social justice and equality, International Trade Union Confederation, 1st World Women’s Conference, Brussels 19-21 October 2009, http://www.ituc-csi.org/IMG/pdf/DECENT_WORK_DECENT_LIFE_FOR_WOMEN.pdf (accessed 3 June 2010) pp. 25-28.

attentiveness to multiple discrimination often occurred through “cross-constituency organizing.”⁹⁹

*Combining umbrella equity or human rights committees with constituency-based organizing for marginalized groups may help to maintain the delicate balance between addressing the concerns of specific equity-seeking groups, and working across these constituencies to develop an intersectional politic, and a culture and practice of alliances.*¹⁰⁰

A similar pattern is evident in civil society organizing. Many equality rights advocacy organizations were established to mobilize around single identity issues. Nevertheless, in a study of US advocacy organizations, it was found that separate groups representing the interests of “African Americans; Asian Americans; Latinos; Native Americans; women; lesbians, gay men, bisexuals, and transgender (LGBT) people; and people with mental or physical disabilities” did not work in isolation from each other.¹⁰¹ Rather, they regularly collaborated in political coalitions, public education initiatives, and intervened in litigation involving other groups.¹⁰² In their “cross-identity advocacy”, however, there was a tendency to treat “identity categories as stable ... rather than attempting to destabilize their boundaries.”¹⁰³ At the same time, however, reliance by advocacy groups on identity categories reflected dynamic strategic choices to contest specific problems of inequality, subordination and social exclusion.¹⁰⁴

In addition to cross-constituency organizing, three other trends are apparent. First, single group organizations are increasingly acknowledging diversity and devoting resources to addressing the particular problems facing those who experience multiple discrimination within their communities.¹⁰⁵ Secondly, new civil society organizations are emerging to reflect the realities of multiple inequalities and exclusions e.g. DAWN – Disabled Women’s Network

99 L. Briskin: “Cross-constituency organizing in Canadian unions”, in *British Journal of Industrial Relations*, (2008), Vol. 46, No. 2, pp. 221-247, reviewing the experiences in the Canadian Union of Postal Workers, the Canadian Union of Public Employees (Ontario Division and the British Columbia Teachers’ Federation).

100 Ibid. at p. 242.

101 S. B. Goldberg, “Intersectionality in theory and practice”, in E. Grabham et al. (eds.): *Intersectionality and beyond – Law, power and the politics of location* (New York, Routledge-Cavendish., 2009), pp. 124-158 at 124-5.

102 Ibid.

103 Ibid, at p. 126.

104 See N. Ehrenreich: “Subordination and symbiosis: Mechanisms of mutual support between subordinating systems”, in *UMKC Law Review* (2002), Vol. 71, pp. 251-324.

105 See, for example, NIKE project, initiated in 2004 to assist immigrant women with rheumatic disease by the Swedish Rheumatism Association, European Commission: *Tackling multiple discrimination: Practices, policies and laws*, Directorate-General for Employment, Social Affairs and Equal Opportunities (Italy, September 2007) at p. 51.

(Canada);¹⁰⁶ International Indigenous Women's Forum (IIWF),¹⁰⁷ the Equalities National Council of Black and Minority Ethnic Disabled People and Carers (UK).¹⁰⁸ And thirdly, civil society organizations that are not organized around single identity groups are becoming increasingly attentive to issues of inequality and discrimination, including multiple discrimination.¹⁰⁹

In the case of employer organizations, there is growing collaboration to advance equality and prevent discrimination at work; however, the focus still tends to be on discrimination generally, including various discrete grounds of discrimination.¹¹⁰ Some initiatives do address multiple inequalities; however, this terminology is not being used extensively. For example, in a report outlining initiatives by a number of African employer organizations on HIV/AIDS in the workplace, multiple discrimination is not mentioned explicitly. Nevertheless, the report outlines the high incidence of HIV/AIDS among women (e.g. in Lesotho and Burkina Faso), reflecting attentiveness to the interplay of two sources of inequality – HIV/AIDS and gender.¹¹¹

Recommendations:

- *That human rights documents at the international, regional and national levels include explicit recognition of the phenomenon of multiple discrimination.*
- *That government policy-making be attentive to multiple discrimination and strategies advanced for addressing it, including specific initiatives aimed at groups who*

106 DAWN: Disabled Women's Network Ontario, <http://dawn.thot.net/what.html#whom> (accessed 27 August 2010).

107 International Indigenous Women's Forum, MADRE, <http://www.madre.org/index/meet-madre-1/our-partners-6/international-international-indigenous-womens-forum-148.html> (accessed 27 August 2010).

108 European Commission: Tackling multiple discrimination: Practices, policies and laws, Directorate-General for Employment, Social Affairs and Equal Opportunities (Italy, September 2007), p. 50.

109 See, for e.g., Human Rights Watch: Discrimination in the Name of Neutrality – Headscarf Bans for Teachers and Civil Servants in Germany (New York, 2009), <http://www.hrw.org/en/reports/2009/02/25/discrimination-name-neutrality>, at pp. 52-54. (accessed 6 October 2010); Equitas - International Centre for Human Rights Education: Equality for women - A handbook for NHRIs on Economic, Social and Cultural Rights, (Montreal, 2008), <http://www.equitas.org/english/pdf/EquitasWESCRHandbook.pdf>, at pp.43-44 (accessed 6 October 2010).

110 See United Nations Global Compact, which includes equality and non-discrimination as a key principle. <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html> (accessed 6 October 2010).

111 See, HIV/AIDS challenges in the workplace: Responses by employers' organisations and their members in Africa – Case studies and good practices, International Organisation of Employers, Pan-African Employers' Confederation, May 2009, http://www.ioe-emp.org/fileadmin/user_upload/documents_pdf/papers/guides/english/guide_2009_hiv aids.pdf (accessed 21 July 2010).

experience multiple discrimination and mainstreaming initiatives that take into account complex, intersecting and multiple inequalities.

- *That trade unions, employers, and civil society organizations expressly recognize the realities of multiple discrimination, and develop both substantive and procedural mechanisms for incorporating sensitivity to the multiple dimensions of inequality. Such mechanisms may involve both constituency and cross-constituency organizing and solidarity.*

V. Adjudicating Multiple Discrimination Claims

It is increasingly recognized that categories of discrimination may overlap, and that individuals may suffer historical exclusion on the basis of both race and gender, age and physical handicap, or some other combination. The situation of individuals who confront multiple grounds of disadvantage is particularly complex... Categorizing such discrimination as primarily racially oriented, or primarily gender-oriented, misconceives the reality of discrimination as it is experienced by individuals. Discrimination may be experienced on many grounds, and where this is the case, it is not really meaningful to assert that it is one or the other. It may be more realistic to recognize that both forms of discrimination may be present and intersect.¹¹²

Although there has been a gradual increase in the number of grounds of discrimination protected in national and international human rights documents, courts have had difficulties developing a jurisprudence that takes into account the complex realities of multiple discrimination. The predominant approach continues to entail a focus on single grounds of discrimination, a tendency that is reinforced when institutional processes for seeking redress are structured on the basis of single grounds of discrimination or when legal protection is limited to a single ground of discrimination.¹¹³ Even when legal protections and institutional processes allow multiple discrimination claims to be advanced, courts and tribunals still have difficulties and tend to revert to legal reasoning that is rooted in the traditional categories of anti-discrimination law. Anti-discrimination law, therefore, has been critiqued for the ways in which it promotes an “atomized” conception of human identity and for the “tautological

112 Canada (Attorney General) v. Mossop, [1993] 1 S.C.R. 554 per Madame Justice Claire L’Heureux-Dubé, (Dissenting) at p. 645 (concluding that the claimant was discriminated against on the basis of both sexual orientation and family status when he was denied bereavement leave to attend the funeral of a family member of his same sex spouse) (citations omitted).

113 See S. Hannett: “Equality at the intersections: The legislative and judicial failure to tackle multiple discrimination”, in Oxford Journal of Legal Studies (2003), Vol. 23, No.1, pp. 65-86 (on the limitations in legal protections, she cites equal pay protections, which are often limited to gender-based inequities); see also K. Abrams: “Title VII and the complex female subject”, in Michigan Law Review (1994), Vol. 92, No. 8, pp.2479-2540. One case that is widely cited to illustrate the difficulties courts have in integrating multiple discrimination claims into their analyses is Bahl v. The Law Society [2004] IRLR 799, [2004] EWCA Civ 1070, a case involving a Black Asian woman, where the Court of Appeal found that claims of sex discrimination and racial discrimination must be considered separately.

attempts by courts to sever” identity into discrete categories, even in the face of a deep “symbiosis” between the different dimensions of an individual’s identity.¹¹⁴

In reviewing multiple discrimination jurisprudence, scholars acknowledge some limited progress in cases involving additive discrimination. Courts and adjudicators have been willing to recognize that an individual’s experience of discrimination may be aggravated if he or she is subjected to more than one form of discrimination (i.e. sex plus race discrimination; age plus disability).¹¹⁵ For example, compensation may be increased to take into account the double/triple/multiple dimensions of the discrimination. However, numerous problems have been identified with the additive approach to multiple discrimination. First, in most cases, it is difficult to disentangle the different strands of inequality to delineate distinct problems of discrimination that can then be treated as additive. To do so risks reinstating a dominant norm within each category of discrimination and/or minimizing the complexity of the situation in ways that do not resonate with the lived realities of inequality.¹¹⁶ Secondly, there continues to be a tendency for individuals to focus on one ground of discrimination, even if they have experienced multiple discrimination.¹¹⁷ Indeed, the difficulties of addressing multiple discrimination in the face of single ground analytical and evidentiary traditions have resulted in a lower success rate being documented for multiple claims.¹¹⁸ Thirdly, it has been suggested that the cumulative or additive approach risks creating a hierarchy of inequalities with socially disadvantaged groups competing for resources between each other, based on which group is considered the most disadvantaged.¹¹⁹

Beyond additive discrimination, multiple discrimination cases may entail intersectional discrimination -- where the discrimination affects only those individuals whose identities

114 S. Hannett: “Equality at the intersections: The legislative and judicial failure to tackle multiple discrimination”, in *Oxford Journal of Legal Studies* (2003), Vol. 23, No.1, pp. 65-86 at p. at 71.

115 See, e.g. S. Bilge and O. Roy: “La discrimination intersectionnelle: la naissance et le développement d’un concept et les paradoxes de sa mise en application en droit antidiscriminatoire” [Intersectional discrimination: The birth and development of a concept and the paradoxes of its implementation in anti-discrimination law], in *Canadian Journal of Law and Society* (2010), Vol. 25, No. 1 pp. 51-74 at 65-66.

116 S. Hannett: “Equality at the intersections: The legislative and judicial failure to tackle multiple discrimination”, in *Oxford Journal of Legal Studies* (2003), Vol. 23, No.1, pp. 65-86; I. Solanke: “Putting race and gender together: A new approach to intersectionality”, in *Modern Law Review* (2009), Vol. 72, No. 5, pp. 723-749.

117 *Ibid.*

118 S. Goldberg: “Discrimination by comparison”, in *Columbia Public Law & Legal Theory Working Papers*, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010);

M. J. Kotkin: “Diversity and discrimination: A look at complex bias”, in *William and Mary Law Review*, (2009), Vol. 50, No. 5, pp.1439-1500.

119 S. Bilge and O. Roy: “La discrimination intersectionnelle: la naissance et le développement d’un concept et les paradoxes de sa mise en application en droit antidiscriminatoire” [Intersectional discrimination: The birth and development of a concept and the paradoxes of its implementation in anti-discrimination law], in *Canadian Journal of Law and Society* (2010), Vol. 25, No. 1 pp. 51-74 at 65-66, at 66, citing E. Martinez, “Beyond Black/ White: The Racisms of our Time” in *Social Justice* (1993) 22.

encompass a combination of grounds. The uniqueness of the discrimination, experienced by only some members of historically disadvantaged social groups, presents particular challenges in litigation. One of the most intractable problems raised by intersectional discrimination is the difficulty in identifying an appropriate group with whom to compare the multiply disadvantaged individual seeking redress for discrimination.¹²⁰

Anti-discrimination law has historically been rooted in the idea of comparison. Discrimination by definition has been understood to occur when one group is treated less well than another, either directly or indirectly through the inequitable effects of laws and policies.¹²¹ Thus, for example, discrimination on the basis of ethnic origin was identified, by comparing the treatment of the ethnic minority group to the treatment accorded the dominant ethnic community. Similarly, discrimination on the basis of disability was identified by comparing the situation of persons with disabilities with the situation of those without disabilities. Discrimination against women would be determined by examining the situation of men. This seemingly straightforward legal framework for comparison does not readily lend itself to multiple discrimination. If an individual woman, who is a member of an ethnic minority community, and has a disability, for example, experiences discrimination at work, to whom do we compare her situation? At once, it becomes apparent that the answer is more complicated than in the case of a claim based on only one of the identified grounds. Moreover, if some members of each of those social groups are not excluded or disadvantaged, there is a risk that her claim may be denied when assessed through the lens of discrete grounds of discrimination. Where “comparator methodology” has become central to “the substantive law of discrimination,” it has allowed “for only a narrow set of circumstances to be considered discrimination.”¹²² As a result, real problems of discrimination have fallen through the categorical “cracks” of anti-discrimination law.¹²³

120 S. Goldberg: “Discrimination by comparison,” in Columbia Public Law & Legal Theory Working Papers, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010) at p. 8 Solanke maintains: at p. 748 “Intersectionality highlights that anti-discrimination laws have posited discrimination as a zero-sum game: if one form, then not the other. However discrimination is not zero-sum at all: it is often not just one or the other ground but can be many together acting in addition or intersecting.”(I. Solanke: “Putting race and gender together: A new approach to intersectionality”, in *Modern Law Review* (2009), Vol. 72, No. 5, pp. 723-749)

121 For example, ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation (Note: Date of coming into force: 15:06:1960.) defines discrimination to include, “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation...” (Article 1).

122 S. Goldberg: “Discrimination by comparison”, in Columbia Public Law & Legal Theory Working Papers, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010)., at 29. Goldberg writes: Comparator methodology’s “embedded expectation that identities are simple and that workers are comparable strikingly belies contemporary understandings of both identity and the modern workforce.” (p. 69)

123 See, for example, K. Crenshaw: “Demarginalizing the intersection between race and sex: A Black feminist critique of anti-discrimination doctrine, feminist theory and anti-racist politics”, in *University of Chicago Legal Forum* (1989), pp.139-167, discussing *DeGraffenreid v. General Motors Assembly Division*, 413 F. Supp. 142 (e.d. Mo. 1976) *aff’d in art, rev’d in part on other grounds*, 558 F.2d. 480 (8th cir. 1977) -

Many courts and adjudicators have been stymied by the comparator group analysis when confronted with multiple discrimination claims, involving intersectional claims. As a result, they have retreated to an additive discrimination analysis, selected one ground upon which to base their reasoning, or even denied claims -- effectively rendered invisible by the comparator group approach.¹²⁴ For example, in cases involving workplace discrimination against Muslim women for wearing a religious headscarf or hijab, claims have often been raised on the ground of religion exclusively, rather than a combination of religion, national or ethnic origin, and gender.¹²⁵

Some judges have been open to integrating an understanding of multiple and complex identities into their analyses. For example, in an important decision involving discrimination against a Vietnamese woman applying for a position at a Hawaiian law school, the U.S. Ninth Circuit Court of Appeal critiqued the lower court's categorically rigid approach:

...the court seemed to view racism and sexism as separate and distinct elements amenable to almost mathematical treatment, so that evaluating discrimination against an Asian woman became a simple matter of performing two separate tasks: looking for racism 'alone' and looking for sexism 'alone,' with Asian men and white women as the corresponding model victims. (...) Where two bases for discrimination exist, they cannot be neatly reduced to distinct components. Rather than aiding the decision 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."¹²⁶

While this decision demonstrates a willingness on the part of some judges to develop integrated approaches that take into account the complexities of multiple discrimination, there is still a lot of work to be done in this regard. Rethinking our ways of conceptualizing discrimination may

a case where black women sought a remedy for race and sex discrimination under Title VII of the Civil Rights Act, alleging that the seniority system at GM discriminated against black women. For a more recent discussion of the case and the treatment of intersectionality under Title VII, see B. A. Areheart: "Intersectionality and identity: Revisiting a wrinkle in Title VII, 2006-2007", in Geo. Mason U. Civ. Rts. L.J., Vol.17, pp. 199-235.

124 S. Goldberg: "Discrimination by comparison", in Columbia Public Law & Legal Theory Working Papers, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010). See also, S. Hannett: "Equality at the intersections: The legislative and judicial failure to tackle multiple discrimination", in Oxford Journal of Legal Studies (2003), Vol. 23, No.1, pp. 65-86 at p.82; I. Solanke: "Putting race and gender together: A new approach to intersectionality", in Modern Law Review (2009), Vol. 72, No. 5, pp. 723-749; E. Holzleithner: "Mainstreaming equality: Dis/Entangling grounds of discrimination", in Transnat'l L. & Contemp. Probs, (2005), Vol. 14 pp. 927-957 at p. 934.

125 See cases cited in J. Burri and D. Schiek: Multiple discrimination in EU law: Opportunities for legal responses to intersectional gender discrimination? European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities (2009) in country reports on Denmark, and Sweden. See also, J. Syed and E. Pio: "Veiled diversity? Workplace experiences of Muslim women in Australia", in Asia Pacific Journal of Management (2010), Vol. 27, No.1, pp. 115-137 (on discrimination against Muslim women for wearing headscarf) .

126 Lam v. University of Hawaii, 40 F.3d. 1551 (9th Cir. 1994) at 1561-62.

help adjudicators to address the “intersectional problematic”.¹²⁷ What are these alternative concepts and approaches?

One strategy is to develop creative and flexible mechanisms to find workable comparators, including a broadening of the comparative lens and reliance on hypothetical and/or proxy comparators, when no suitable comparator group is available within certain workplace contexts.¹²⁸ Proxy comparators have been used in the pay equity context, where no comparable male job classification exists in a workplace.¹²⁹ For women employed in predominantly female sectors of labour force – often in low skilled and low paid jobs – for which there is often no available male comparator group, the proxy method enhances the possibility of effective pay equity. These women are also most likely to experience multiple realities of inequality linked to race, age, ethnic origin, religion, language, disability.

A second approach is to move away from a methodology based on comparator groups and instead focus on the contextual realities of stigma, prejudice, exclusion and disadvantage. To address the realities of the “complex plaintiff”, it has been suggested that not all claims need to rely on a rigid comparator group methodology.¹³⁰ From this perspective, “what matters for seeing discrimination is context, with comparison but one technique among several for making that contextual evaluation.”¹³¹ Such an approach has been used in sexual and racial harassment cases, where judges acknowledge the complex and overlapping realities of sexism and racism. Rather than premising the legal analysis on a “but for” type of assessment, often used in comparator group analyses, the focus shifts to a consideration of “but why” and “but how.” As such, the evidence would highlight why and how the exclusion or disadvantage reflects and

127 H. Skjeie, and T. Langvasbråten: "Intersectionality in practice? -- Anti-Discrimination reforms in Norway", in *International Feminist Journal of Politics* (2009), Vol.11, No. 4, pp. 513 - 529.

128 D. Pothier: “Equality as a comparative concept: Mirror, mirror, on the wall, what’s the fairest of them all?”, in *Supreme Court Law Review* (2006), Vol. 33, no. 2, pp. 135-150; also published in S. McIntyre and S. Rogers (eds.): *Diminishing returns - Inequality and the Canadian Charter of Rights and Freedoms* (CITY, LexisNexis Butterworths, 2006), pp. 135-150 (arguing for a non-formalistic approach to comparator groups). See also, P. Uccellari: “Multiple discrimination: How law can reflect reality,” in *The Equal Rights Review* (2008), Vol. 1, pp. 24-49 at p. 34 and S. Goldberg: “Discrimination by comparison”, in *Columbia Public Law & Legal Theory Working Papers*, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010) at p. 64 (on hypothetical comparators).

129 See *Pay equity: The proxy comparison method*, Ontario, Pay Equity Commission (Queen’s Printer for Ontario, 2008), <http://www.payequity.gov.on.ca/peo/english/pubs/proxycomp.html> (accessed 6 October 2010). It should be noted, however, that protection for pay equity has historically tended to focus on the single ground of gender and not recognized multiple and intersecting inequalities

130 S. Goldberg: “Discrimination by comparison”, in *Columbia Public Law & Legal Theory Working Papers*, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010), at 32.

131 S. Goldberg: “Discrimination by comparison”, in *Columbia Public Law & Legal Theory Working Papers*, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010) at p. 43.

perpetuates “deeply embedded stigmas and stereotypes.”¹³² To this end, social science studies and/or expert testimony can play a critical role in helping judges to understand the connections between certain policies, practices or laws and the broader realities of stigma, prejudice and inequality.¹³³ Such an approach has also been labelled a “holistic approach” – treating individuals as complex and acknowledging their membership in multiple groups.¹³⁴

A third approach is to develop legal strategies that are attentive to the most vulnerable individuals within particular social groups. Anti-discrimination law has tended to reinforce the assimilation of historically excluded individuals into the institutional status quo by securing equal treatment and inclusion of those who can emulate dominant norms – generally those whose lives differ least from those with power and privilege in society. For example, middle class white women have historically benefited most from gender equality protections; economically-disadvantaged, racialized women have often been left behind.¹³⁵ Thus, a jurisprudence of gender equality should be attentive to ensuring the inclusion of the most vulnerable members of social groups within the categories of anti-discrimination law.

Finally, shifting the focus from the categorization of complex identities to structural and systemic sources of exclusion and disadvantage provides another pathway out of the comparator group dilemma. It has been suggested that adjudication tends to reinforce “an individualized model of equality, where courts seek to combat discrimination arising from unfair practices, but are ‘poorly equipped to implement a group-based concept of equality and to tackle more complex structural aspects of discrimination.’¹³⁶ Moreover, the failure of anti-discrimination law “to probe the structural disadvantages in society inevitably impacts most severely on those at the intersection of one or more disadvantaged social characteristics.”¹³⁷ To

132 I. Solanke: “Putting race and gender together: A new approach to intersectionality”, in *Modern Law Review* (2009), Vol. 72, No. 5, pp. 723-749, at p. 738-43.

133 I. Solanke: “Putting race and gender together: A new approach to intersectionality”, in *Modern Law Review* (2009), Vol. 72, No. 5, pp. 723-749.; S. Goldberg: “Discrimination by comparison”, in *Columbia Public Law & Legal Theory Working Papers*, Paper 9185, Nellco.org, 2010, http://lsr.nellco.org/columbia_pllt/9185/ (accessed 21 July 2010); P See P. Uccellari: “Multiple discrimination : How law can reflect reality,” in *The Equal Rights Review* (2008), Vol. 1, pp. 24-49

134 I. Solanke: “Putting race and gender together: A new approach to intersectionality”, in *Modern Law Review* (2009), Vol. 72, No. 5, pp. 723-749, p. 725. See also, S. Bilge and O. Roy: “La discrimination intersectionnelle: la naissance et le développement d’un concept et les paradoxes de sa mise en application en droit antidiscriminatoire” [Intersectional discrimination: The birth and development of a concept and the paradoxes of its implementation in anti-discrimination law], in *Canadian Journal of Law and Society* (2010), Vol. 25, No. 1 pp. 51-74.

135 K. Crenshaw: “Demarginalizing the intersection between race and sex: A Black feminist critique of anti-discrimination doctrine, feminist theory and anti-racist politics”, in *University of Chicago Legal Forum* (1989), pp.139-167.

136 J. Squires: “Intersecting inequalities”, in *International Feminist Journal of Politics* (2009), Vol. 11, No.4, pp. 496-512 at p.507; D. Mabbett: “Aspirational legalism and the role of the Equality and Human Rights Commission in equality policy”, in *Political Quarterly* (2008), Vol. 79, No.1, pp. 45-52 at p.46.)

137 S. Hannett: “Equality at the intersections: The legislative and judicial failure to tackle multiple discrimination”, in *Oxford Journal of Legal Studies*, (2003), Vol. 23, No.1, pp. 65-86, at p. 83 and p. 81.

address intersecting inequalities, therefore, we need to assess the systemic and structural dimensions of inequality at work. While litigation may be used to address these broader concerns, particularly if creative, structural remedies are invoked, more proactive policy initiatives appear to be the most promising pathway to structural and systemic change.¹³⁸

Recommendations:

- *That anti-discrimination laws and conventions allow complaints based on allegations of multiple discrimination (both additive and intersectional).*
- *That adjudicators take into account the realities of multiple discrimination in interpreting and applying anti-discrimination protections by focusing on the experiential realities of the most vulnerable individuals within social groups.*
- *To the extent that a comparator group is needed to substantiate a claim of discrimination, that a broad and non-formalistic approach be taken to comparator groups, and/or hypothetical or proxy comparators be used.*
- *That anti-discrimination analysis move away from a comparator group analysis to assess why and how a particular social group was disadvantaged or excluded.*
- *That structural and systemic dimensions of discrimination that contribute to multiple discrimination be identified and proactive remedies developed.*

VI. Proactive Models for Equality

The conceptual difficulties courts have in developing a jurisprudence of multiple discrimination reinforces the importance of examining non-adjudicative strategies for redressing multi-dimensional, complex and intersecting inequalities. In the domain of employment, affirmative action, employment equity, pay equity, contract compliance, government procurement and other special measures have been endorsed in legislation, constitutional and international instruments and institutionalized in workplaces and educational

138 One cautionary note, however, has been raised regarding the shift away from the historical grounds of discrimination. It is important not to lose the political and social significance of naming inequalities in terms of racism, sexism, xenophobia, able-bodyism, homophobia etc. Recognition of intersecting and complex inequalities should heighten our understanding of multiple and overlapping patterns and ideologies of group-based subordination and exclusion – not obscure them. See S. Bilge and O. Roy: “La discrimination intersectionnelle: la naissance et le développement d’un concept et les paradoxes de sa mise en application en droit antidiscriminatoire” [Intersectional discrimination: The birth and development of a concept and the paradoxes of its implementation in anti-discrimination law], in *Canadian Journal of Law and Society* (2010), Vol. 25, No. 1 pp. 51-74.

institutions.¹³⁹ Scholars have suggested that proactive models “open up many more possibilities to deal with intersectionality than a complaints-led model.”¹⁴⁰ Similarly, in commenting on equality rights in Latin America, affirmative action was described as “the guiding paradigm needed to combat the intersectionality of discrimination.”¹⁴¹ Two key reasons appear to inform these conclusions.

First, a key advantage to proactive programmatic initiatives is the possibility of surmounting the comparator group problem – a recurring source of confusion in anti-discrimination litigation.

*There is no need to prove specifically that a person was treated less favourably than a comparator is or would be, and therefore many problems in finding an appropriate comparator are avoided. This means that cumulative, intersectional and multiple discrimination can be dealt with more effectively. A subgroup, such as ethnic minority women, or disabled older people, or gay youths can be separately identified as suffering from discrimination and measures taken to redress that.*¹⁴²

In this way, proactive initiatives can address the complex and overlapping realities of disadvantage and exclusion within particular institutional, historical and social contexts.¹⁴³ Indeed, proactive initiatives could focus on remedying multiple discrimination and the exclusions experienced by multiply disadvantaged groups.¹⁴⁴ For example, in the European

139 See, e.g. E. Kennedy-Dubourdieu (ed.): *Race and inequality -World perspectives on affirmative action* (Burlington, VT, Ashgate, 2006), M. Orton and P. Ratcliffe, “From single to multi-dimensional policy approaches to equality – The example of contract compliance”, in D. Schiek and V. Chege, (eds.), *European Union non-discrimination law – Comparative perspectives on multidimensional equality law*, (New York, Routledge-Cavendish, 2009), pp. 163-184.

140 S. Fredman: “Positive rights and duties: Addressing intersectionality” in D. Schiek and V. Chege (eds.): *European Union non-discrimination law: Comparative perspectives on multidimensional equality law* (London, Routledge-Cavendish, 2008), pp. 73-89 at p.81.

141 C. Romany and K. Culliton write: “The UN World Conference Against Racism: A race-ethnic and gender perspective”, in *Human Rights Brief, A Legal Resource for the International Human Rights Community* (2002), Vol. 9, No. 2, <http://www.wcl.american.edu/hrbrief/09/2racism.cfm> (accessed 19 August 2010) at p. 17.

142 S. Fredman : “Positive rights and duties: Addressing intersectionality” in D. Schiek and V. Chege (eds.): *European Union non-discrimination law: Comparative perspectives on multidimensional equality law* (London, Routledge-Cavendish, 2008), pp. 73-89 at p. 81.

143 *Ibid.* p. 82.

144 S. Fredman: “Positive rights and duties: Addressing intersectionality” in D. Schiek and V. Chege (eds.): *European Union non-discrimination law: Comparative perspectives on multidimensional equality law* (London, Routledge-Cavendish, 2008), pp. 73-89 at p. 84 “It is well known that the most advantaged of a disadvantaged group may make best use or even capture the benefits of positive action measures. This problem could be mitigated by targeting positive action on groups defined on the basis of multiple discrimination, which by definition comprise the least advantaged in each of the relevant groups.”

context, a proactive initiative could be developed to address the needs of Roma women and in so doing be attentive to the multiple inequalities linked to ethnic origin, race, gender and age.¹⁴⁵

It should be noted, however, that the development of institutional initiatives attentive to the historical specificity of exclusion and discrimination, should not result in an unwillingness to recognize new and emerging sources of exclusion, or problems experienced by groups not targeted by the affirmative action initiative. Affirmative action programmes should be subject to challenge based on arguments of “underinclusiveness.” In other words, such initiatives should be subject to challenge, revision and change to ensure that all those who have been disproportionately excluded are included in affirmative action policies and programmes.

Although proactive measures have the potential to incorporate attentiveness to multiple discrimination, most have not done so. Instead, they have addressed group-based disadvantages defined with respect to single grounds of discrimination. In most countries, affirmative action initiatives were initially developed to redress racial or gender discrimination; more recently, special measures for persons with disabilities and indigenous peoples have been implemented. Indeed, rather than privileging an approach that focuses on individuals experiencing compound and intersecting discrimination, the beneficiaries of affirmative action are often those who are least disadvantaged within the targeted groups. It is the least disadvantaged individuals within historically excluded groups who are best able to assimilate into mainstream institutions and positions of power and privilege – thus disproportionately benefiting from affirmative action programmes.¹⁴⁶

This tendency in affirmative action implementation is most pronounced when the objective of proactive initiatives is integration into an unchallenged institutional status quo rather than transformation – that is when individuals from historically excluded groups are accorded special access to workplaces and professions provided they adopt and accept dominant institutional norms and practices. To the extent that affirmative action initiatives seek to promote the transformation of institutional norms and traditions, they hold greater promise for addressing complex and overlapping realities of multiple discrimination and for shifting away from a rigid categorical approach. Pursuant to a more transformative systemic approach, proactive initiatives begin with the identification of institutional sources of exclusion and then promote the revision of institutional policies, practices and norms to alleviate their exclusionary and discriminatory effects. The revised policies and practices are not framed in identity-based categorical terms; nor do they entail special differential treatment for targeted

145 Fredman, *ibid*, at p. 76. See also, A. Oprea: “Intersectionality backlash : A Romani feminist response” in *Roma Rights*, Vol. 2, <http://www.errc.org/cikk.php?page=3&cikk=3564> (26 August 2010).

146 For example, C. Romany and K. Culliton write: “Human rights law has already been utilized to mandate affirmative actions for women in Latin American legislatures, yet it has fallen short for Afro-descendent and indigenous women.”, “The UN World Conference Against Racism: A race-ethnic and gender perspective”, in *Human Rights Brief, A Legal Resource for the International Human Rights Community* (2002), Vol. 9, No. 2, <http://www.wcl.american.edu/hrbrief/09/2racism.cfm> (accessed 19 August 2010) at p. 17. See also, C. Sheppard, “Challenging systemic racism: Affirmative action and equity for racialized communities and Aboriginal Peoples in Canada” in E. Kennedy-Dubourdieu (ed.): *Race and Inequality: World Perspectives on Affirmative Action* (Burlington, VT, Ashgate Press, 2006), pp. 43-61.

groups. Instead, they involve changing the practices, norms and policies that apply to everyone, while still being informed by the needs and realities of more vulnerable and historically excluded members of the workplace community.

One key dimension of an institutional transformation model for implementing proactive equality measures is participation of the intended beneficiaries of the programmes in their formulation and implementation.¹⁴⁷ Creative and effective equality initiatives are often informed by the experiential knowledge of those excluded or at the bottom of institutional hierarchies. Given power inequities and the vulnerabilities of those who have been denied equality rights, participation is often most effective in unionized workplaces. Indeed, legislative provisions for employment and pay equity often require consultation and participation of trade unions (or employee representatives if the workplace is non-unionized).¹⁴⁸ Unfortunately, many workers facing multiple discrimination are in sectors of the labour force with very low levels of unionization and little access to the decision-making processes of institutional change-making.¹⁴⁹

Beyond the formal workplace context, it is also important to consider what proactive equity initiatives could address the problems of multiple discrimination facing those working in informal sectors of the labour force. Indeed, some scholars have advocated the inclusion of redistributive objectives aimed at socio-economic inequalities as critical components of affirmative action policies to ensure that they “redress all forms and intersections of race, ethnicity, and gender discrimination.”¹⁵⁰ Addressing the realities of social exclusion for marginalized workers raises questions about how multiple inequalities might be reduced by policies aimed at securing decent work and social inclusion. In the concluding section of this working paper, therefore, the links between complex and multiple inequalities and decent work are explored.

Recommendations:

147 On the debate regarding equality rights and new governance initiatives, see D. Schiek: “From European Union non-discrimination law towards multi-dimensional equality law for Europe”, in D. Schiek; V. Chege (eds.): *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (New York, Routledge-Cavendish, 2009), pp. 3-27 at pp. 10-11.

148 See C. Sheppard: *Inclusive equality – The relational dimensions of systemic discrimination in Canada* (Montreal, McGill-Queen’s University Press, 2010) at pp. 134 .

149 See A. Blackett and C. Sheppard: “Collective Bargaining and Equality: Making Connections” in *International Labour Review* (2003), Vol. 142, pp. 419-457. See also, J. Fine: *Workers Centers: Organizing Communities at the Edge of a Dream*, (CITY, Cornell University Press, 2006). See chapter 3, “Organizing at the intersection of ethnicity, race, gender, and class.” Outlining how community-based unions provide a mechanism for voice for workers who are often in non-union sectors of the economy.

150 C. Romany and K. Culliton, “The UN World Conference Against Racism: A race-ethnic and gender perspective”, in *Human Rights Brief, A Legal Resource for the International Human Rights Community* (2002), Vol. 9, No. 2 , <http://www.wcl.american.edu/hrbrief/09/2racism.cfm> (accessed 19 August 2010) at p. 17.

- *That proactive equity programmes and initiatives be developed that address the complex and contextual realities of multiple inequalities.*
- *That programmes and policies be attentive to the specific needs and concerns of particular groups within a workplace, while leaving open avenues for expanding or revising programmes or policies when new forms of inequality and discrimination (not considered at the time program or policy was adopted) become apparent.*
- *That proactive programmes and policies that endorse and promote broader institutional transformation be promoted as an alternative to special measures for specific categories of workers.*
- *That intended beneficiaries (including individuals who experience multiple inequalities) of proactive programmes and initiatives have a voice in developing the objectives, structure, and content of programmes.*

VII. Multiple Discrimination, Decent Work and Fair Globalization

*Precarious work is not isolated from other socio economic issues and struggles To tackle precarious work as though it exists in contractual isolation is to ask to fail. For the working class, poverty and fear are the cement of precarious work along with a host of other social ills including racism, gender discrimination and HIV prevalence.*¹⁵¹

While much of the analysis thus far has focused on the importance of enhancing our understanding of multiple discrimination and developing better ways to identify and measure it, multiple discrimination may in fact be most effectively remedied by moving away from an approach based on increasingly complex and overlapping categories of horizontal inequality.¹⁵² Instead, a renewed focus on vertical socio-economic inequalities and poverty may constitute a critical pathway to redressing multiple discrimination. Indeed, the most vulnerable workers in our global economy – those whose lives are characterized by poverty, exploitation, and social exclusion – are disproportionately women, racialized communities, persons with disabilities, ethnic, religious and national minorities, indigenous peoples, the elderly and the young – particularly those who are included in more than one of these groups. Thus, the multiple, complex, and structural inequalities at work faced by different groups of workers, may be remedied most effectively by broad-based initiatives aimed at improving the conditions of the most economically and socially vulnerable workers in our global economy.

In this regard, the 2008 ILO Declaration on Social Justice for a Fair Globalization has important implications.¹⁵³ The Declaration affirms the Decent Work agenda of the ILO, and identifies four strategic objectives. The four objectives include: ensuring access to employment, with decent remuneration and working conditions; reinforcing and strengthening social protection measures; promoting social dialogue and tripartism; and reaffirming the fundamental principles and rights at work. As stated in the Declaration, gender equality and non-discrimination are considered cross-cutting issues integral to these objectives.

One critical component of the Decent Work agenda, which would help to reduce multiple discrimination, is the reduction of informal work. Informal work refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements (it is also more simply defined as employment “without secure contracts, worker benefits, or social protection.”¹⁵⁴) Studies have revealed that

151 K. Naidoo: “Understanding precarious work in Africa”, in International metal workers union, <http://www.imfmetal.org/index.cfm?c=20470> (accessed 27 August 2010).

152 For a discussion of horizontal inequalities, see F. Stewart (ed.): Horizontal inequalities and conflict: Understanding group violence in multiethnic societies (CITY, Palgrave Macmillan, 2008).

153 Adopted by the International Labour Conference at its 97th Session, Geneva, June 10, 2008 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf (accessed 27 August 2010).

154 J. Morris: Discussion Guide. Decent work, decent life for women: trade unions taking the lead for economic and social justice and equality, International Trade Union Confederation, 1st World Women’s

“over 60 per cent of working women are in informal employment outside agriculture, and when agriculture is taken into account the figures are even higher.”¹⁵⁵ Thus, policies aimed at reducing informal work would also generate greater equality for women. And the women engaged in informal work tend to be those who experience overlapping, compound and intersecting inequalities linked to race, religion, disability, HIV/AIDS status, class, national and ethnic origin. Indeed, it is becoming increasingly apparent that individuals “who suffer several forms of discrimination tend to be over-represented among the poor, particularly the chronic poor, and in the informal economy.”¹⁵⁶ Multiple discrimination in this context raises issues that transcend individual workplaces and raises questions about how government economic and labour policies risk contributing to structural and systemic discrimination. Such a focus also implicates constitutional and international law obligations.

The second component of the Decent Work agenda, ensuring the provision of basic social protections to all individuals would also help to relieve the effects of multiple discrimination. Those facing multiple inequalities based on factors such as gender, race, disability, HIV/AIDS status, and age disproportionately experience poverty and economic marginalization. Thus, enhanced social protection for all individuals would provide necessary support to the most socially and economically vulnerable members of society – and in so doing help to alleviate some of the most egregious effects of multiple discrimination. In this regard, the ILO Conference conclusions concerning gender equality at the heart of decent work¹⁵⁷ recognize that social security is a powerful tool to alleviate poverty and inequality. Moreover, the most efficient way to ensure effective income security and access to health care is through the provision of social security benefits.¹⁵⁸

Social dialogue, the third component of the Decent Work agenda, affirms the need to promote democratic participation in the workplace and in public policy making. Individuals facing multiple discrimination need to be included as active citizens and agents in processes of social change and law reform.¹⁵⁹ Too often, however, they are excluded. Efforts by trade unions to organize the unorganized and initiatives to enhance community-based representation of vulnerable workers are important steps that are particularly important for those facing multiple inequalities. An equitable and inclusive approach to social dialogue initiatives, therefore, is

Conference, Brussels 19-21 October 2009, http://www.ituc-csi.org/IMG/pdf/DECENT_WORK_DECENT_LIFE_FOR_WOMEN.pdf (accessed 3 June 2010) at p. 9.

155I bid.

156 ILO: Equality and Discrimination, Training Material, Workers' Activities Programme (ACTRAV) ILO International Training Centre, http://actrav.itcilo.org/index_en.php?PageID=64 (accessed 21 July 2010) at p. 4.

157 ILO: Resolution concerning gender equality at the heart of decent work, International Labour Conference, 98th Session, Geneva, 2009, para 25.

158 ILO : GB.306/3/2, para 11.

159 See ILO: Gender Equality at the heart of decent work, Report VI, International Labour Conference, 98th Session, Geneva, 2009, p. 12.

critical and should be advocated by representatives of governments, employers and workers.¹⁶⁰ One important dimension of inclusive social dialogue includes ensuring that women in all of their diverse circumstances have an equal voice with men in discussions on recovery packages during economic crisis.¹⁶¹

And finally, the advancement of fundamental principles and rights at work includes equality and non-discrimination as one of the core ILO principles. An expansive and inclusive conception of equality at work has been widely endorsed and efforts made to advance comprehensive protections against discrimination. In addition to the general endorsement of the principle of equality, however, is the concomitant and continued development of specific and detailed labour standards that speak to the specificity of inequality and disadvantage. Important initiatives in this regard include the recently adopted *Recommendation concerning HIV/AIDS in the World of Work*¹⁶² and the Domestic Workers Convention, 2011 (No. 189).¹⁶³ Both acknowledge the complex and overlapping dimensions of inequalities at work and the need for robust, proactive protections.

Recommendation:

- *That national and international commitment to decent work be deepened as a strategy for remedying the complex and multi-dimensional realities of multiple discrimination.*

VIII. Conclusion

Increased recognition of the multiple and overlapping strands of discrimination at work has been an important development since the last Global Report on equality at work. The complexities of human identities render approaches to inequality at work that focus exclusively on single axes of discrimination inadequate. Instead, we need to ensure that legal and policy responses are developed that are informed by the myriad realities of additive, compound and intersectional forms of discrimination. The recommendations set out in this working paper identify some strategies and approaches for taking multiple discrimination into account. To fail to do so risks allowing some of the most vulnerable and multiply disadvantaged individuals in society to be excluded from the reach of anti-discrimination law and policy.

160 ILO: Resolution concerning gender equality at the heart of decent work, International Labour Conference, 98th Session, Geneva, 2009, para 36.

161 ILO: Recovering from the crisis: A Global Jobs Pact, International Labour Conference, 98th Session, Geneva, para. 24.

162 International Labour Conference, 99th Session, Recommendation Concerning HIV and AIDS and the World of Work, 2010 (No.200), (2010), http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/normativeinstrument/wcms_142706.pdf (accessed 6 October 2010). See also, ILO: HIV/AIDS and the world of work, Report V (2B), International Labour Conference, 99th Session, Geneva, 2010.

163 See http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang-en/index.htm, accessed 30.08.2011.

The challenges of confronting multiple discrimination occur at all levels and stages of the implementation of anti-discrimination principles – including processes of data collection, social science and legal research, advocacy, judicial interpretation, the development of remedial strategies (including proactive policies) and the formulation of larger social policy initiatives to address structural inequalities at work.

As this working paper has shown, two recurrent strategies are evident in endeavours to address multiple discrimination. First, there have been concerted efforts to name the complex realities of inequality by enumerating the multiple grounds of discrimination implicated in a particular problem of workplace exclusion or mistreatment. Rather than focusing on a single ground of discrimination, therefore, multiple grounds of discrimination are raised (e.g. gender, sexual orientation and race; age, race and disability). When the discrimination only affects individuals with all of the characteristics (i.e. intersectional discrimination), some legal and policy approaches have entailed recognition of new categories that embrace the specificity of the intersection of identities.

A second strategy that is important to redressing multiple discrimination is the development of proactive policy initiatives designed to redress structural and institutional inequalities at work. At the workplace level, such a policy orientation translates into more transformative approaches aimed at securing more equitable and inclusive policies and structures for those at the bottom of workplace hierarchies. Not only does this require commitments to participatory approaches to workplace governance; it also requires attentiveness to the needs of the most vulnerable individuals at work – precisely those who experience multiple forms of inequality, exclusion and discrimination. At a larger social policy level, it means that government initiatives aimed at securing decent work and greater socio-economic equality have important ramifications for remedying the persistent and complex realities of multiple discrimination.

Appendix A

Recommendations:

- *That the terminology chosen to address multiple discrimination be explained and defined clearly by international organizations, governments, trade unions and civil society organizations.*
- *That a broad definition of multiple discrimination, inclusive of additive, compound and intersectional discrimination be adopted.*
- *That international organizations, governments, employers and trade unions promote research to secure: (i) quantitative data that is disaggregated to track problems of multiple discrimination and; (ii) qualitative data that is attentive to multiple and complex experiential realities of inequality.*
- *That research and data collection is inclusive of the most vulnerable individuals within socially disadvantaged groups.*
- *That human rights documents, at the international, regional and national levels include explicit recognition of the phenomenon of multiple discrimination.*
- *That government policy-making be attentive to multiple discrimination and strategies advanced for addressing it, including specific initiatives aimed at groups who experience multiple discrimination and mainstreaming initiatives that take into account complex, intersecting and multiple inequalities.*
- *That trade unions, employers, and civil society organizations expressly recognize the realities of multiple discrimination, and develop both substantive and procedural mechanisms for incorporating sensitivity to the multiple dimensions of inequality. Such mechanisms may involve both constituency and cross-constituency organizing and solidarity.*
- *That anti-discrimination laws and conventions allow complaints based on allegations of multiple discrimination (both additive and intersectional).*
- *That adjudicators take into account the realities of multiple discrimination in interpreting and applying anti-discrimination protections, by focusing on the experiential realities of the most vulnerable individuals within social groups.*
- *To the extent that a comparator group is needed to substantiate a claim of discrimination, that a broad and non-formalistic approach be taken to comparator groups, and/or hypothetical or proxy comparators be used.*

- *That anti-discrimination analysis move away from a comparator group analysis to assess why and how a particular social group was disadvantaged or excluded.*
- *That structural and systemic dimensions of discrimination that contribute to multiple discrimination be identified and proactive remedies developed.*
- *That proactive equity programmes and initiatives be developed that address the complex and contextual realities of multiple inequalities.*
- *That programmes and policies be attentive to the specific needs and concerns of particular groups within a workplace, while leaving open avenues for expanding or revising programmes or policies when new forms of inequality and discrimination (not considered at the time program or policy was adopted) become apparent.*
- *That proactive programmes and policies that endorse and promote broader institutional transformation be promoted as an alternative to special measures for specific categories of workers.*
- *That intended beneficiaries (including individuals who experience multiple inequalities) of proactive programmes and initiatives have a voice in developing the objectives, structure, and content of programmes.*
- *That national and international commitment to decent work be deepened as a strategy for remedying the complex and multi-dimensional realities of multiple discrimination.*

Appendix B

Selective Bibliography

Abrams, K. 1994. "Title VII and the complex female subject", in *Michigan Law Review*, Vol. 92, No. 8, pp.2479-2540.

Adib, A.; Guerrier, Y. 2003. "The interlocking of gender with nationality, race, ethnicity and class: the narratives of women in hotel work", in *Gender, Work, and Organisation*, Vol. 10, No. 4, pp.413-432.

Allegretto, S.; Amerikaner, A.; Pitts, S. 2010. *Data Brief: Black Employment and Unemployment in June 2010* (UC Berkeley Labor Center). Available at: http://laborcenter.berkeley.edu/blackworkers/monthly/bwreport_2010-07-02_20.pdf [23 July 2010].

Arai, M.; Bursell, M.; Nekby, L. 2008. "Between meritocracy and ethnic discrimination: The gender difference", in *SSRN eLibrary*. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1136268 [May 18, 2010].

Arnardottir, O. M. 2009. "Multidimensional equality from within: themes from the European Convention on Human Rights", in D. Schiek; V.Chege (eds.): *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (New York, Routledge-Cavendish), pp. 53-72.

Baines, B. 2005. "Section 28 of the Canadian Charter of Rights and Freedoms: A purposive interpretation," in *Canadian J. Women & L.*, Vol. 17, No. 45 pp. 45-70.

Bilge, S.; Roy, O. 2010. "La discrimination intersectionnelle: la naissance et le développement d'un concept et les paradoxes de sa mise en application en droit antidiscriminatoire" [Intersectional discrimination: The birth and development of a concept and the paradoxes of its implementation in anti-discrimination law], in *Canadian Journal of Law and Society*, Vol. 25, No. 1, pp. 51-74.

Barnartt, S. 2006. "Deaf women and inequality in educational attainment and occupational status: Is deafness or femaleness to blame?", in B. J. Brueggemann; S. Burch (eds.): *Women and deafness: double visions* (Washington, DC, Gallaudet University Press), pp. 57-77.

Bouchard, G.; Taylor, C. 2008. *Building the future: A time for reconciliation*. (Government of Québec).

Bowleg, L. 2008. "When Black + Lesbian + Woman =/ Black Lesbian Woman: The methodological challenges of qualitative and quantitative intersectionality research", in *Sex Roles*, Vol. 59, No. 5, pp. 312-325.

Briskin, L. 2008. "Cross-constituency organizing in Canadian unions", in *British Journal of Industrial Relations*, Vol. 46, No. 2, pp. 221-247.

Buitelaar, M. 2006. "'I am the ultimate challenge': Accounts of intersectionality in the life-story of a well-known daughter of Moroccan migrant workers in the Netherlands", in *European Journal of Women's Studies*, Vol. 13, No.3, pp.259-276.

Burri,S.; Schiek, D. 2009. *Multiple discrimination in EU law: Opportunities for legal responses to intersectional gender discrimination?* (European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities).

Canada. 2009. *Integrated Diversity and Equality Analysis Screen* (Department of Justice Canada, Federal-Provincial-Territorial Working Group on Diversity, Equality and Justice). Available at: <http://www.justice.gc.ca/eng/dept-min/pub/ideas-giade/> [19 July 2010].

Conaghan, J. 2009. "Intersectionality and the feminist project in law", in E. Grabham et al (eds): *Intersectionality and beyond – Law, power and the politics of location* (New York, Routledge-Cavendish), pp.21-48.

Crenshaw, K. 1989. "Demarginalizing the intersection between race and sex: A Black feminist critique of anti-discrimination doctrine, feminist theory and anti-racist politics", in *University of Chicago Legal Forum*, pp.139-167.

Ehrenreich, N. 2002. "Subordination and symbiosis: Mechanisms of mutual support between subordinating systems", in *UMKC Law Review*, Vol. 71, pp. 251-324.

Estreicher, S.; Bodie, M. (eds.). 2007 . *Workplace discrimination privacy and security in an age of terrorism: Proceedings of the New York University 55th annual conference on labor workplace discrimination in an age of terrorism* (Aspen Publishers).

Equitas - International Centre for Human Rights Education. 2008. *Equality for women - A handbook for NHRIs on Economic, Social and Cultural Rights*, (Montreal, Equitas - International Centre for Human Rights Education). Available at: <http://www.equitas.org/english/pdf/EquitasWESCRHandbook.pdf> [26 August 2010].

European Commission. 2007. *Tackling multiple discrimination: Practices, policies and laws*, (Italy, Directorate-General for Employment, Social Affairs and Equal Opportunities).

European Union Agency for Fundamental Rights. 2010. *The impact of the Racial Equality Directive - Views of trade unions and employers in the European Union: Strengthening the fundamental rights architecture in the EU IV* (Luxembourg).

—. 2008. *Council Decision (2008/203/EC) implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012, part (b)*. Available at: http://fra.europa.eu/fraWebsite/about_fra/what_we_do/themes/themes_en.htm [26 August 2010].

Evans, S.L.; Bowlby, S. 2000. "Crossing boundaries: Racialised gendering and the labour market experiences of Pakistani migrant women in Britain", in *Women's Studies International Forum*, Vol.23, No. 4, pp.461-474.

Fine, J. 2006. *Workers Centers: Organizing Communities at the Edge of a Dream* (CITY, Cornell University Press).

Fredman, S. 2009. "Positive rights and duties: Addressing intersectionality", in D. Schiek and V. Chege (eds.): *European Union non-discrimination law: Comparative perspectives on multidimensional equality law* (London, Routledge-Cavendish), pp. 73-89.

Gandara, C. M. 2006. "Post-9/11 backlash discrimination in the workplace: Employers beware of potential double recovery", in *Houston Business and Tax Journal*, Vol. 7, pp.169-200.

Grabham, E. et al. (eds.). 2009. *Intersectionality and beyond – Law, power and the politics of location* (New York, Routledge-Cavendish).

Goldberg, S. 2010. "Discrimination by comparison", in *Columbia Public Law & Legal Theory Working Papers*, Paper 9185, Nellco.org. Available at: http://lsr.nellco.org/columbia_pllt/9185/ [21 July 2010].

—. 2009. "Intersectionality in theory and practice", in E. Grabham et al. (eds.): *Intersectionality and beyond – Law, power and the politics of location* (New York, Routledge-Cavendish), pp. 124-158.

Hannett, S. 2003. "Equality at the intersections: The legislative and judicial failure to tackle multiple discrimination", in *Oxford Journal of Legal Studies*, Vol. 23, No. 1, pp.65-86.

Hogan, R.; Perrucci, C.C. 2007. "Black women: Truly disadvantaged in the transition from employment to retirement income", in *Social Science Research*, Vol. 36, No.3, pp.1184-119.

Holzleithner, E. 2005. "Mainstreaming equality: Dis/Entangling grounds of discrimination", in *Transnat'l L. & Contemp. Probs*, Vol. 14, pp. 927-958.

Human Rights Watch. 2009. *Discrimination in the Name of Neutrality – Headscarf Bans for Teachers and Civil Servants in Germany* (New York, Human Rights Watch). Available at: <http://www.hrw.org/en/reports/2009/02/25/discrimination-name-neutrality> [26 August 2010].

Inter-American Commission on Human Rights. 2009. *Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*, OEA/Ser.L/V/II. Doc. 58, 24 December 2009.

International Labour Organisation (ILO). 2010a. *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work Report I(B), International Labour Conference, 99th Session, Geneva, 2010 (Geneva).

- . 2010b. *Employers' organisations responding to the impact of the crisis*, Working Paper No.2., Bureau for Employers' Activities, Geneva, 2010 . Available at: http://www.ilo.org/public/libdoc/ilo/2010/110B09_17_engl.pdf [20 May 2010].
 - . 2009a. *Gender Equality at the heart of decent work*, Report VI, International Labour Conference, 98th Session, Geneva, 2009 (Geneva).
 - . 2009b. *Technical Note: Asia in the Global Economic Crisis: Impacts and Responses from a Gender Perspective*, Regional Office for Asia and the Pacific.
 - . 2007. *Equality at work: Tackling the challenges*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference 96th Session, Geneva, 2007 (Geneva).
 - . 2003. *Time for equality at work*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference 91st Session, Geneva, 2003 (Geneva).
 - . *Equality and Discrimination, Training Material*, (Workers' Activities Programme (ACTRAV) ILO International Training Centre). Available at: http://actrav.itcilo.org/index_en.php?PageID=64 [21 July 2010].
- International Metal Workers Union. Available at: www.imfmetal.org [26 August 2010].
- International Organisation of Employers; Pan-African Employers' Confederation. 2009. *HIV/AIDS challenges in the workplace: Responses by employers' organisations and their members in Africa – Case studies and good practices*. Available at: http://www.ioe-emp.org/fileadmin/user_upload/documents_pdf/papers/guides/english/guide_2009_hiv aids.pdf [21 July 2010].
- Kantola, J.; Nousiainen, K. 2009. "Institutionalizing intersectionality in Europe -- Introducing the theme", in *International Feminist Journal of Politics*, Vol. 11, No. 4, pp. 459 – 477.
- Kennedy-Dubourdieu, E. (ed.): *Race and inequality -World perspectives on affirmative action* (Burlington, VT,, Ashgate, 2006).
- Kotkin, M. J. 2009. "Diversity and discrimination: A look at complex bias", in *William and Mary Law Review*, Vol. 50, No. 5, pp.1439-1500.
- Lombardo, E.; Verloo, M. 2009. "Institutionalizing intersectionality in the European Union? – Policy developments and contestations" in *International Feminist Journal of Politics*, Vol. 11, No. 4, pp. 478 – 495.
- Mabbett, D. 2008. "Aspirational legalism and the role of the Equality and Human Rights Commission in equality policy", in *Political Quarterly*, Vol. 71, No.1, pp. 45-52.
- Makkonen, T. 2007. *Measuring discrimination data collection and EU equality law* (Luxembourg, Office for Official Publications for European Communities).

—. 2002. *Multiple, compound and intersectional discrimination: Bringing the experiences of the most marginalized to the fore* (Institute for Human Rights, Åbo Akademi University, April 2002).

Martinez, E. 1993. "Beyond Black/ White: The Racisms of our Time" in *Social Justice*, Vol. 20, No. 1-2, pp. 22-34.

McCall, L. 2009. "The complexity of intersectionality", in E. Grabham et al. (eds.): *Intersectionality and beyond: Law, power and the politics of location* (New York, Routledge-Cavendish), pp 49-76

Monture-Angus, P. 1995. *Thunder in my soul: A Mohawk woman speaks* (Halifax, Fernwood).

Moon, G. 2009. "Multiple discrimination: Justice for the whole person," in *Roma Rights* (2009), Vol. 2, Multiple Discrimination, European Roma Rights Centre, http://www.errc.org/en-research-and-advocacy-roma-details.php?article_id=3564 [27 August 2010].

Moon, G. 2007. *Multiple discrimination*. Available at www.justice.org.uk.

Morris, J. 2009. *Discussion Guide. Decent work, decent life for women: trade unions taking the lead for economic and social justice and equality*, International Trade Union Confederation, 1st World Women's Conference, Brussels 19-21 October 2009. Available at : http://www.ituc-csi.org/IMG/pdf/DECENT_WORK_DECENT_LIFE_FOR_WOMEN.pdf [3 June 2010].

Muigai, G. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. 2010. *Data Collection and the Use of indicators to promote and monitor racial equality and non-discrimination*, Office of the High Commissioner for Human Rights Regional Seminar for the Americas, Rio de Janeiro, 3-5 May 2010.

Mullally, S. 2010. *Migrant women destabilising borders: Citizenship debates in Ireland*, SSRN eLibrary. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1557355 [May 18, 2010].

Nielsen, R. 2009a. "Is European Union equality law capable of addressing multiple and intersectional discrimination yet?: precautions against neglecting intersectional cases", in D. Schiek; V.Chege (eds.): *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (New York, Routledge-Cavendish), pp. 31-51.

—. 2009b. "Denmark", in J. Burri; D. Schiek (eds.): *Multiple discrimination in EU law: Opportunities for legal responses to intersectional gender discrimination?* (European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities), pp.43-45.

Ontario Human Rights Commission. 2001. *An intersectional approach to discrimination: Addressing multiple grounds in human rights claims*, Discussion Paper, Policy and Education Branch.

Opening Statement of the High Commissioner for Human Rights on the occasion of the Durban Review Conference Side Event "Double Odds: Women Overcoming Multiple Discrimination", United

Nations, Durban Review Conference, 2009. Available at:

http://www.un.org/durbanreview2009/stmt_Double_Odds_04-21-08.shtml [21 July 2010].

Oprea, A. 2010. "Intersectionality backlash : A Romani feminist response", in *Roma Rights*, Vol. 2. Available at: <http://www.errc.org/cikk.php?page=3&cikk=3564> [26 August 2010].

O'Reilly, A. 2003. *The Right to Decent Work and Persons with Disabilities*, ILO Working Paper (Geneva, ILO). Available at:

<http://www.ilo.org/public/english/region/ampro/cinterfor/news/rightto.pdf> [21 July 2010].

Organisation for Economic Co-operation and Development (OECD). 2009. *OECD Reviews of Labour Market and Social Policies: Chile*.

Orton, M.; Ratcliffe, P. 2009. "From single to multi-dimensional policy approaches to equality – The example of contract compliance", in D. Schiek and V., (eds.): *European Union non-discrimination law – Comparative perspectives on multidimensional equality law*, (New York, Routledge-Cavendish), pp. 163-184.

Parks, V. 2010. "Gendering Job Competition: Immigration and African American Employment in Chicago, 1990-2000", in *Urban Geography*, Vol. 31, No.1, pp. 59-89

Pothier, D. "Equality as a comparative concept: Mirror, mirror, on the wall, what's the fairest of them all?", in *Supreme Court Law Review* (2006), Vol. 33, no. 2, pp. 135-150; also published in S. McIntyre and S. Rogers (eds.): *Diminishing returns - Inequality and the Canadian Charter of Rights and Freedoms* (CITY, LexisNexis Butterworths, 2006), pp. 135-150

Razack, S. H. 2008. *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto, University of Toronto Press).

Romany, C.; Culliton, K. 2002. "The UN World Conference Against Racism: A race-ethnic and gender perspective", in *Human Rights Brief, A Legal Resource for the International Human Rights Community*, Vol. 9, No. 2. Available at: <http://www.wcl.american.edu/hrbrief/09/2racism.cfm> [19 August 2010].

Rosenthal A. 2007. "Battling for survival, battling for moral clarity: "Illegality" and illness in the everyday struggles of undocumented HIV+ women migrant workers in Tel Aviv", in *International Migration*, Vol. 45, No.3, pp. 134-156.

Schiek, D. 2009. "From European Union non-discrimination law towards multi-dimensional equality law for Europe", in D. Schiek; V.Chege (eds.): *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (New York, Routledge-Cavendish), pp. 3-27

Schiek, D.; Chege, V. (eds.) 2009. *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (London, New York, Routledge-Cavendish).

Sheppard, C. "Challenging systemic racism: Affirmative action and equity for racialized communities and Aboriginal Peoples in Canada" in E. Kennedy-Dubourdieu (ed.): *Race and Inequality: World Perspectives on Affirmative Action* (Burlington, VT, Ashgate Press, 2006), pp. 43-61.

Sheppard, C. 2010. *Inclusive equality - The relational dimensions of systemic discrimination in Canada* (Montreal, McGill-Queen's University Press).

Shin, J. 2009. "The gendered and racialised division in the Korean labour market: The case of migrant workers in the catering sector", in *East Asia*, Vol. 26, No. 2, pp. 93-111.

Side Events: Voices - Everyone affected by racism has a story that should be heard, United Nations, Durban Review Conference, 2009. Available at:
http://www.un.org/durbanreview2009/side_voices.shtml [21 July 2010].

Skjeie, H.; Langvasbråten, T. 2009. "Intersectionality in practice? -- Anti-Discrimination reforms in Norway", in *International Feminist Journal of Politics*, Vol.11, No. 4, pp. 513 - 529.

Solanke, I. 2009. "Putting race and gender together: A new approach to intersectionality", in *Modern Law Review*, Vol. 72, No.5, pp. 723-749.

Squires, J. 2009. "Intersecting inequalities – Britain's equality review", in *International Feminist Journal of Politics*, Vol. 11, No.4, pp. 496-512.

Stewart, F. (ed.): 2008 *Horizontal Inequalities and Conflict: Understanding Group Violence in Multiethnic Societies* (CITY, Palgrave Macmillan).

Steinbugler, A. C.; Press, J. E.; Dias, J.J. 2006. "Gender, race, and affirmative action: Operationalizing intersectionality in survey research", in *Gender and Society*, Vol. 20, pp. 805-825 (plus erratum).

Sweden. 2009. *New anti-discrimination legislation and a new agency, the Equality Ombudsman*, (Ministry of Integration and Gender Equality). Available at:
<http://www.sweden.gov.se/content/1/c6/11/80/10/4bb17aff.pdf> [21 July 2010].

Syed J.; Pio E. 2010. "Veiled diversity? Workplace experiences of Muslim women in Australia", in *Asia Pacific Journal of Management*, Vol. 27, No.1, pp. 115-137.

Toren, N. 2009. "Intersection of ethnicity, gender and class: Oriental faculty women in Israel", in *Gender Issues*, Vol. 26, No. 2, pp.152-166.

Uccelleri, P. 2008. "Multiple discrimination: How law can reflect reality", in *Equal Rights Review*, Vol. 1, No.15, pp. 24-49.

United Nations Commission for Human Rights. 2005. "Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt" (Office of the High Commissioner for Human Rights). Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/108/93/PDF/G0510893.pdf?OpenElement> [21 July 2010].

United Nations Committee on Economic, Social, and Cultural Rights. 2009.

General Comment No. 20 Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) CESCR 42d Sess. Geneva, 4-22 May 2009 Item 3 of the provisional agenda, E/C.12/GC/20.

United Nations Committee on the Elimination of Discrimination against Women. 2009. *General Recommendation No. 26 on women migrant workers*, CEDAW/C/2009/WP.1/R. Available at: http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf [31 August 2010].

—. 1991. *General Recommendation No. 18: Disabled women*, HRI/GEN/1/Rev.9 (Vol.II). Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom18> [31 August 2010].

—. 1990. *General Recommendation No. 15: Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)*, HRI/GEN/1/Rev.9 (Vol.II). Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom15> [31 August 2010].

United Nations Committee on the Elimination of Racial Discrimination. 2000. *General Recommendation No. 25: Gender related dimensions of racial discrimination*, CERD 56th Sess., 20 March 2000. Available at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/76a293e49a88bd23802568bd00538d83?OpenDocument> [28 July 2010].

—. 2000. *General Recommendation No. 27, Discrimination Against Roma*, CERD 57th Sess. 16 August 2000. Available at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/11f3d6d130ab8e09c125694a0054932b?OpenDocument> [28 July 2010].

United Nations Development Programme (UNDP). 2008. *HIV vulnerabilities of migrant women from Asia to the Arab States: Shifting from silence, stigma and shame to safe mobility with dignity, equity and justice*, (Colombo). Available at: http://www2.undprcc.lk/resource_centre/pub_pdfs/P1105.pdf [21 July 2010].

United Nations Global Compact. *The Ten Principles*. Available at: <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html> [26 August 2010].

United Nations Human Rights Council. 2009. "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development – Report of the independent expert on minority issues, Gay McDougall" (Office of the High Commissioner for Human Rights). Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/111/77/PDF/G0911177.pdf?OpenElement> [25 August 2010].

United Nations Educational, Scientific, and Cultural Organization (UNESCO) and Global Migration Group. 2009. *Fact-Sheet on the impact of the economic crisis on discrimination and xenophobia*. Available at: http://www.globalmigrationgroup.org/pdf/UNESCO_Fact-sheet_final.pdf [28 May 2010].

United States Equal Employment Opportunity Commission. 2006. "Intersectional Discrimination," in *Compliance manual section 15: Race and color discrimination*. Available at: <http://www.eeoc.gov/policy/docs/race-color.html#IVC> [21 July 2010].

World Health Organization (WHO). 2010. *Gender and women's mental health*. Available at: http://www.who.int/mental_health/prevention/genderwomen/en/print.html [28 July 2010].

Zappone, K.E. (ed.) 2003. *Rethinking identity: The challenge of diversity*. (Ireland, Joint Equality and Human Rights Forum).