

**Intersectional Discrimination
with a Special Focus on the
UN Convention on the Rights of Persons with
Disabilities (CRPD)**



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Introduction

Concepts

- K. Crenshaw
- Terminology
 - Intersectional discrimination
 - Additional discrimination
 - Multiple discrimination
- Groups within vulnerable groups
- Identity politics

Introduction

Examples

- ❑ Disabled people belonging to racial or ethnic minorities
- ❑ Women with disabilities
- ❑ Children with disabilities

Introduction

International human rights law

- Scant research
- Potential utility of the CRPD

EU Anti-Discrimination Law

- More research
- Difficulties

Introduction

Questions

- ❑ How can international human rights law be applied to practices of intersectional discrimination?
- ❑ How can the interplay between international human rights treaties give the law its full potential for the people who most need its protection?

Introduction

Content

- EU Anti-Discrimination Law
- International Human Rights Law
 - CRPD
 - Groups of persons with disabilities
 - Disabled people belonging to racial or ethnic minorities
 - Women with disabilities
 - Children with disabilities
 - Others
- Conclusion

EU Anti-Discrimination Law

Legal instruments

- Article 19 TFEU
- Equality directives
 - Race Equality Directive
 - Gender Goods and Services Directive and Recast Gender Directive
 - Employment Framework Directive

Has EU Anti-Discrimination Law the capacity to address practices of intersectional discrimination?

EU Anti-Discrimination Law

EU Anti-Discrimination Law

- ❑ Single discrimination grounds – limited picture of individuals
- ❑ Comparator – impossible for intersectional discrimination
- ❑ Different scopes and reasons for justiciation – problems for persons with disabilities

What are legal and policy consequences?

EU Anti-Discrimination Law

Solutions

- Equal Treatment Directive
- Other?

EU Anti-Discrimination Law is not suited to address intersectional discrimination

International Human Rights Law

Legal instruments

- ❑ International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ❑ Categories of vulnerable people
 - International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
 - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
 - Convention on the Rights of the Child (CRC)
 - Convention on the Rights of Persons with Disabilities (CRPD)

UN Treaty Bodies

Convention on the Rights of Persons with Disabilities

CRPD

- Last category-specific treaty – builds on previous treaties
- Focus on multiple discrimination
- EU accession to the CRPD

Categories

- Disabled persons from racial or ethnic minorities (CRPD + ICERD)
- Women with disabilities (CRPD + CEDAW)
- Children with disabilities (CRPD + CRC)
- Other categories (CRPD + ICERD + CRC / CRPD + 0)

Convention on the Rights of Persons with Disabilities

Preamble p), CRPD

“Concerned about 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*”

Does the CRPD devote same attention to disabled persons belonging to racial or ethnic minorities, women with disabilities and children with disabilities?

Disabled persons from racial or ethnic minorities

Legal instruments

- ❑ CRPD: no attention to race or ethnicity
- ❑ ICERD: no attention to disability

UN treaty bodies

Practice

- ❑ Dutch Equal Treatment Commission
- ❑ Aggression
- ❑ Labelling

Disabled persons from racial or ethnic minorities

Combined reading

- ❑ CRPD: Art. 16 (2) (support to victims of exploitation, violence and abuse)
- ❑ ICERD: Art. 4 (a) (sanctioning acts of violence)
- ❑ Durban Declaration and Program of Action: paras 14, 49, 79, 104, 172 and 212 (improving the prospects of vulnerable groups, including persons subject to “multiple discrimination”)

Little attention to disabled people belonging to racial or ethnic minorities

Women with disabilities

Legal instruments

- ❑ CRPD: attention to gender
- ❑ CEDAW: no attention to disability

UN treaty bodies

Practice

- ❑ Forced sterilisation
- ❑ Motherhood
- ❑ Violence and abuse

Women with disabilities

Combined reading

- ❑ CRPD's (twin-track approach)
 - Article 6 (States "recognise 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")
 - Articles 8 (1) (b) (awareness-raising), 16 (2) (violence and abuse) and 23 (1) (sexual and reproductive health)
- ❑ CEDAW and Declaration on the Elimination of Violence against Women

CRPD is able to protect women with disabilities on its own

Children with disabilities

Legal instruments

- ❑ CRPD: attention to disability
- ❑ CRC: attention to disability

UN treaty bodies

Practice

- ❑ Marginalisation
- ❑ Reliance on the family
- ❑ Special education

Children with disabilities

Combined reading

- ❑ CRPD's (twin-track approach)
 - Article 7 (States shall "take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children")
 - Articles 19 (life in the community), 23 (4) (separation from family) and 24 (2) (inclusive education)
- ❑ CRC: Article 23 (1) CRC (a disabled child "should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community")

Highest level of protection by applying the two treaties in combination

Disabled children from racial or ethnic minorities

Practice

- ❑ Linguistic and cultural barriers
- ❑ Labelling

Combined reading

- ❑ CRPD: Article 24 (1) (disability discrimination in education)
- ❑ CRC: Article 29 (1) (inculcating tolerance among children)
- ❑ ICERD: Article 5 (c) (racial discrimination in education)

Combination of disability, age and race, sometimes even combined with gender, leads to under-inclusion

Persons with disabilities who are lesbian, gay, bisexual or transgendered (LGBT)

Practice

- ❑ Participation in cultural life, recreation, leisure and sport
- ❑ Little awareness of disability among LGBT persons and *vice versa*

Combined reading

- ❑ CRPD: 8 (2) (social awareness) and 30 (5) (access to sporting, recreational and tourism venues)
- ❑ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity : Principle 2 “[d]iscrimination based on sexual orientation ... may be, and commonly is, compounded by discrimination on other grounds including ... disability”

Normative gap for LBGT persons with disabilities

Conclusion

EU Anti-Discrimination Law

- ❑ Harmonisation
- ❑ Not suited to address intersectional discrimination

International Human Rights Law

- ❑ Social complexities
- ❑ Varied level of human rights protection
 - Disabled persons from racial or ethnic minorities - lack of attention to the intersection between race and disability
 - Women with disabilities – gender mainstreaming through the UN
 - Children with disabilities – focus by both the children’s and disability rights communities
 - Other categories – not well protected

International human rights law is both a consequence and a cause of the varied level of human rights protection

End

Thank you for your attention!

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